[2016] UKFTT 239 (TC)

TC05015

Appeal number: TC/2012/10851

Corporation Tax – parking fines – whether allowable deduction in computing profits to be charged to corporation tax – held no – appeal refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

G4S CASH SOLUTIONS (UK) LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE ANNE SCOTT
MEMBER: ELIZABETH BRIDGE

Sitting in public at Bedford Square, London on 1-3 July 2014

Alun James, Counsel instructed by Herbert Smith Freehills, for the Appellant

Chris Stone, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

The Appeal

1. This appeal is a consolidated appeal by the appellant of

(i) an appeal of two discovery assessments issued by HMRC in respect of the corporation tax computation for the accounting periods ending 31 December 2007 and 31 December 2008 in the sums of £158,170.20 and £157,711.28 plus interest; and

(ii) an appeal in respect of two closure notices issued by HMRC in respect of the appellant's accounting periods ended 31 December 2009 and 31 December 2010. Those closure notices amended the appellant's returns by £124,679.24 and £139,667.08 respectively.

2. The amounts assessed by those assessments and notices represent the additional corporation tax payable if amounts accrued in the appellant's accounts for those periods in respect of penalty charge notices (parking fines or "PCNs") and deducted in computing its profits for corporation tax purpose are, as HMRC assert, not deductible under

(i) in relation to the periods ending 2007 and 2008 either section 74(1)(a) or (e) of the Income and Corporation Taxes Act (ICTA) 1988; and

(ii) in relation to the periods ending in 2009 and 2010, section 54 of the Corporation Tax Act 2009.

3. Further, there are still open assessments for the accounting periods ended 31 December 2005 and 2006 and the accounting periods ended 31 December 2010 onward. There are therefore very significant sums of money at stake.

Overview of the Arguments

The Appellant

4. Although the issues are complicated, the grounds of appeal are straightforward, namely

(a) the payments made in respect of the relevant PCNs were made wholly and exclusively for the purposes of the appellant's trade or alternatively they are a loss arising out of or connected with the trade,

(b) in the particular circumstances of that trade, public policy does not dictate that a deduction in respect of those payments should be denied,

(c) the appellant does not dispute the existence of a case law principle that fines and penalties are not deductible as a general presumption but contends that there has to be an exception where, as here, there is an entirely exceptional case,

(i) The trade in question is of social utility and must be carried on by someone,

(ii) The trade cannot be carried on safely without parking infringements being incurred,

(iii) The appellant seeks as an operational matter to ensure that parking infringements are avoided where possible and only occur where otherwise safety of employees and the general public would be compromised,

(iv) The appellant operates best practice and is socially responsible,

(v) Procedures are in place to ensure that no deduction is sought for tax purposes where parking infringements occur unnecessarily, and

(vi) Parking infringements are a civil matter not a criminal matter.

HMRC

5. Conversely HMRC argue that the assessments and closure notices have been issued on the basis that HMRC take the view that the sums expended on paying PCNs are not deductible in calculating the appellant's profit for the purpose of corporation tax, because PCNs are statutory fines imposed on the appellant for a breach of the law by the drivers and not for actions "in the course of the appellant's trade".

Specifically,

(a) the PCNs were incurred by the appellant because its vehicles parked in a prohibited place or in a prohibited manner and the consequential PCNs were issued and payable under statute. Accordingly the PCNs are not a deductible expense or loss in terms of the relevant legislation, and

(b) it has been well established in the UK for almost 100 years and subsequently followed in many commonwealth jurisdictions that a fine imposed by statute for a breach of the law is non-deductible in calculating profits for the purposes of corporation tax. All statutory fines imposed for a breach of the law are non-deductible notwithstanding the lack of "moral obliquity" or other mitigating factors such as the social utility of the business or public policy.

General

6. The parties stated that quantum is not in dispute for the purposes of this appeal.

7. It was agreed by the parties that the same issue arises in relation to the appellant's corporation tax for all of the accounting periods from and including that ending 31 December 2005. HMRC invited the Tribunal to reach a decision in principle that will apply to all of those accounting periods.

The Background facts

8. We had the benefit of an extensive Statement of Agreed Facts but that relates only to what is described as the relevant period being the period 1 January 2007 to 31 December 2010 ("the relevant period"). Of course that is the period, which is the 5 subject matter of the decisions, which have been appealed to the Tribunal. That was supplemented by

(a) a detailed Note by the appellant on the findings of fact that the appellant stated that the Tribunal should make, and

(b) a detailed summary of the evidence by HMRC.

10 9. HMRC stated in the latter that, as their primary case is to the effect that because the PCNs are statutory fines imposed for a breach of law, "*the Tribunal does not, on the binding authorities, need to go further in its analysis of the facts of this case than stating that the fines were imposed by statute for a breach of the law; the appellant cannot distinguish its factual case, in particular, by reference to the close nexus between the fines, and its business, as well as its concerns* 15 *for the safety of its drivers and staff.*"

10. We disagree. We do, however, agree with HMRC when they go on to say that many of the background facts are agreed between the parties. However, they take the view that that is of very limited assistance to the Tribunal in reaching its conclusions. Again, on that latter point, we disagree. Sadly, the matter is not as simple as that. At 20 the heart of the appellant's case is the assertion that all PCNs, for which a deduction is claimed, are incurred because of the overriding priority of safety and that they are unavoidable. That is clearly a question of fact, or not. In our view, there are also a number of other issues.

11. In correspondence dated 4 June 2013, the appellant argued that the appeal raises 25 questions of both fact and law and specifically that the Tribunal would have to make findings in fact as to whether

(a) the payments were made wholly and exclusively for the purposes of the appellant's trade, and

(b) on the particular facts and circumstances, public policy dictates that a 30 deduction for those payments should be denied

and in so doing the Tribunal would be required to consider

(i) the nature of the appellant's trade,

(ii) the way in which the appellant conducts its trade having regard to the factual issues regarding parking,

35 (iii) whether the appellant's actions accord with "best practice", and

(iv) public safety issues arising in connection with the operation of the appellant's trade.

12. We considered the totality of the extensive evidence before us and decided that it was both necessary and prudent to consider all of the evidence and find facts accordingly. This appeal, like so many others turns on its own facts. Once we found the facts we turned to the legal principles involved.

5 **The Evidence**

13. In addition to the Statement of Agreed Facts and commentaries thereon, we had the witness statements with appendices of, and heard evidence from, Peter Sewell and James Kelly. We also had a bundle of correspondence between the appellant, HMRC and the Tribunal.

10 14. Described as Authorities (see paragraph 187 below) we also had three bundles, which included documentation, extracts from legislation and other material that supported a summary document submitted with the appellant's Skeleton Argument giving background as to PCNs, traffic regulations etc.

Evidence of Peter Sewell

15 15. Mr Sewell was Employee Protection Manager - the National Health and Safety Manager - of the appellant from 2001 until 30 May 2014.

16. On 3 February 2014, the Tribunal directed that the evidence of Peter Sewell be heard in private and that the disclosure or publication of the witness statement and/or exhibits was prohibited. The rationale for that Direction was to ensure that aspects of 20 the appellant's working practices in regard to safety did not enter the public domain. We recognise the importance of that and have referred to the witness statement and exhibits, only where appropriate, and to that limited extent have varied the said Direction

Evidence of James Kelly

25

17. Mr Kelly is Chief Executive of the British Security Industry Association ("BSIA").

18. On 24 June 2014, in regard to Mr Kelly's evidence, the Tribunal endorsed a Direction in the same terms as that relating to Mr Sewell as set out in paragraph 16 30 above. As is the case with Mr Sewell we have varied that Direction but only to the extent that we have referred to the witness statement and exhibits where appropriate.

Expert Evidence

19. On 22 April 2014 Judge Raghavan directed that:

"The expert report of James Kelly be accepted as a witness statement, and that the application that it 35 *be accepted as expert evidence is to be held over to the substantive hearing".*

20. In terms of Rule 15(2) of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") the Tribunal has power to admit expert evidence.

However, it is common ground between the parties that although the Tribunal has that power it should, ordinarily, have regard to the Rules applicable in the High Court (the Civil Procedure Rules ("CPR")) and exercise that power only where expert evidence is reasonably required to resolve the proceedings. The CPR provide that the expert 5 evidence is reasonably required to resolve proceedings where it is properly admissible and will genuinely assist the trial judge in determining the matters which are in issue.

21. Mr Kelly had been instructed by the solicitors for the appellant to provide his opinion on:

(a) the seriousness and impact of cash and valuables in transit ("CViT") crime 10 and the social utility in transporting cash and valuables safely…,

(b) the vulnerability of the "across the pavement" ("ATP") phase of cash delivery/collection and automated teller machine ("ATM") replenishment services to CViT crime,

(c) industry best practice in relation to the transportation of cash and valuables, 15 including:

(i) industry best practice and recommendations regarding parking/the conduct of CViT business generally…, and

(ii) the impact of parking policies on the incidence of CViT crime during the ATP phase of cash delivery/collection and ATM replenishment 20 services.

(d) whether the appellant's business practices accord with that best practice and whether their business could, realistically, be carried on safely in any other way.

He had also been asked to provide an overview of the role of BSIA. He had been provided with, amongst other matters, a copy of the witness statement and exhibits of 25 Mr Sewell.

22. His conclusions are:

1. "*CViT crime is a real and significant issue, with which multiple harms are associated. It can involve the use, or threat of use, of weapons and/or violence, and can affect CViT industry employees, customers of the CViT industry, and members of the public. It is,* 30 *therefore, imperative that CViT activities are conducted in the safest and most secure manner possible.*

2. *CViT crime during the ATP phase of CViT services has accounted for a large proportion of all CViT crime recorded since 2007.*

3. *Best practice, endorsed by the industry, Home Office, and police, is to park CViT vehicles* 35 *as close as possible to the customer premises when a CViT service is being carried out (in order to minimise the length of the ATP phase of the CViT service), notwithstanding parking restrictions, provided that the manner of parking is not itself dangerous.*

4. *G4SCS conducts its business in accordance with the best practice endorsed by the industry, Home Office, and Police. In my view, given that safety is imperative, G4SCS could not carry out its business in any other way."*

23. We accept that Mr Kelly's evidence is both relevant and admissible, certainly in the format of a witness statement and oral evidence; whether it is admissible as expert evidence is quite another matter. We have compared his witness statement with that of Mr Sewell and there is much in common between them.

24. We have carefully analysed not only his witness statement but also all of the source material, which is very detailed but also interesting, explicit and unequivocal in its terms. We accept that a significant and identifiable body of study, research and learning has developed in relation to CViT crime and ATP issues but we had absolutely no difficulty in understanding and evaluating that source material. It was a great deal less difficult to understand than some decisions on taxation matters!

25. We do not accept the argument advanced for the appellant that the subject matter in Mr Kelly's report is not within the knowledge or experience of lay persons and that therefore a layperson would not be able to form a sound view of the matter without the assistance of a person with familiarity, knowledge and experience of CViT crime and the CViT industry.

26. HMRC objected to the evidence of Mr Kelly being categorised as expert evidence. An expert is defined in the White Book at paragraph 35.2.1 as "*an expert is a person with a high degree of skill and knowledge in a particular subject, who has relevant and up-to-date expertise with regard to the issues in the case …*". Mr Kelly's CV indicates that, prior to his position as head of the BSIA, his experience had been in marketing and advertising roles. His current role is as head of a Trade Association that represents the appellant and other companies who would have a vested interest in the outcome of this litigation.

27. Mr Kelly freely admitted in cross-examination that one of the principal activities of BSIA, of which he is CEO, is lobbying and one of the matters about which there had been lobbying was a change of policy regarding the imposition of parking fines on CViT companies. It was, and is, in BSIA members' interests that no parking fines are imposed for illegal parking and it would be in their direct financial interests that any such fines should be tax deductible. His precise words were "*As the lead representative of the industry body, I am very interested in the outcome of this litigation.*". For the avoidance of doubt, we accept that Mr Kelly was aware of his primary duty to the Tribunal and that he had, and has, an active role in relation to lobbying on CViT and that requires familiarity with the subject. However, that does not answer the question as to whether his opinion is of value in resolving the issues before the Tribunal.

28. We agree with HMRC that his evidence maps out extensive quotations from industry documents and reaches conclusions that could be made via submissions without incurring the cost of an expert. We have read those documents, where produced to us.

29. Mr Kelly has devoted much of the report to concluding, in essence, that transporting cash has a social utility and that CViT crime is serious and has far-reaching effects. HMRC accept, as do we, that that is the case. In our opinion, it is a matter of blindingly obvious common sense. It does not require an expert to arrive at that opinion.

30. Further, we consider that it is equally obvious and wholly uncontroversial that the risk of an attack in relation to a Cash in Transit ("CIT")/ATM service increases as the time taken to complete that service increases. The proximity (or otherwise) of the parking location of the security van used to carry out the relevant service will have a significant influence over the duration of that service. We have no hesitation in finding that minimising the walking distance of the ATP phase of any CIT or ATM service, from the parking location to the customer's premises, reduces the risk to employees' safety and public safety and further cash losses can be reduced. That too does not require an expert opinion.

31. We have read the BSIA guidance, and all of the other Industry Guidance produced to us (and indeed referred to in the Agreed Statement of Facts)in relation to best practice in the industry. By definition, that guidance was produced for industry use and certainly does not require an expert to interpret it.

32. Accordingly, whilst we admit the evidence in the format of a witness statement, as evidence of fact, we refuse the application to the effect that it be treated as expert evidence. For the avoidance of doubt, decision on classification of this evidence was taken when writing this decision, conform to *Eclipse Film Partners No 35 LLP*[1] having reviewed all of the evidence and the arguments.

The appellant's trade and its profile in the industry

Trade

33. The appellant is a secure cash transportation company providing cash delivery and collection services. The principal business activity comprises the secure delivery and collection of cash to and from customers' premises (cash in transit ("CIT")) and replenishment of ATMs, together with related activities (collectively CViT, activities).

34. Mr Sewell described in very considerable detail, which does not require to be rehearsed herein, the major extent of, and *modus operandi,* for the CIT services and ATM replenishment provided by the appellant. It suffices to find as a matter of fact that in each calendar year during the relevant period the appellant provided, on average, approximately 14.5 million such services. Approximately one-half of their employees are involved in the provision of those services and CIT and ATM replenishment business accounts for almost half of the appellant's business.

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[1][2011] UKFTT 401

35. His witness statement also covers the activities of the other employees, one-half of whom are involved in cash processing and cash centre activities and the other in retail and engineering solutions, including ATM maintenance. Neither of those matters are germane to this appeal.

5 36. The appellant's CViT customers include financial, retail, transport, catering, public sector, leisure and other institutions.

37. In each calendar year during the relevant period, on average, the appellant had a share of (i) more than 50% of the CIT market, and (ii) more than 40% of the ATM market. They provided approximately 35,000 CIT services and more than 4,500 10 ATM replenishments per day.

38. Their major competitors include Loomis UK Ltd and Post Office Ltd (Cash Services). There are a number of smaller market participators who are also in competition.

39. The transportation of cash is cited in the civil contingencies plan as an essential 15 public service. The appellant is listed as an essential service provider and given priority access to fuel stocks in times of shortage or disaster. It is a matter of agreement between the parties that the role of the appellant, in providing a secure cash transportation service, fulfils an essential public service and that, in turn, is an essential part of the modern economy.

20 ***Industry***

40. The CViT industry is regulated in the UK under the Private Security Act 2001, with the Security Industry Authority (the "SIA", a non-departmental public body reporting to the Home Secretary) responsible for its supervision. The SIA is responsible for licensing (amongst others) persons, such as the appellant, who 25 (i) manage, supervise and/or employ individuals engaged in CViT activities; or (ii) perform CViT activities. The SIA manages the Approved Contractor Scheme, awarding "Approved Contractor" status to organisations that satisfy various operational and performance standards (for suppliers of private security services) issued by the SIA. The appellant was awarded Approved Contractor status 30 throughout the relevant period and continues to maintain that status.

41. BSIA is the trade association for the professional security industry in the UK and was founded in 1967. The appellant was a founding member and remains actively involved and represented on most of BSIA's committees. As at 31 October 2013, the appellant, through BSIA, was then engaged in promoting within 35 the industry a Code of Practice on the safe movement of CIT vehicles in pedestrianised areas.

42. The key areas of activity for BSIA include

(i) lobbying,

(ii) disseminating information to raise awareness and understanding issues relating to security and crime prevention,

(iii) drafting industry codes of practice and technical documents; and

(iv) industry training.

5 43. The appellant remains actively involved with BSIA activities including promoting industry codes of practice and other initiatives aimed at ensuring that the CViT industry demonstrably carries out its activities in a responsible manner.

44. The appellant is also a member of various other industry and trade bodies and works with several of those bodies to develop best practice guidelines for the safe
10 conduct of CViT activities.

Industry Guidelines

45. There is a considerable amount of industry guidance about, and interest in, the CViT industry and the management of risk.

46. Mr Sewell produced and referred to an entry extracted from the BSIA website
15 on 12 September 2013 which reads as follows:-

> "*Cash and valuables in transit (CViT) companies are involved in transporting, storing and sorting cash and other valuables, typically for retail and financial organisations. They play a vital role in replenishing and protecting cash supplies for the business world and the wider community, keeping the economy running. …*
>
> 20 *Due to the nature of the CViT service unfortunately crime is a real challenge …".*

We accept that.

47. The BSIA "Cash in Transit effective practice guidelines" (January 2012) read in regard to parking:

"14 Parking

25 *CIT couriers are advised to park as close as possible to their point of delivery at a customer's premises. This often contravenes parking legislation which results in a Penalty Charge Notice being issued. Consultation with a number of Boroughs and Authorities has provided exemptions or dispensations for CIT vehicles.*

For the following contraventions, however, there is no exemption.

30
- *When contravening a moving Traffic Offence (including Box junction and bus lanes).*
- *When parked on a footpath (code 62).*
- *When parked within the zigzag lines at a pedestrian crossing (code 99).*
- *When parked in a dangerous position.*
- *When causing an unnecessary obstruction.*

35

The BSIA parking appeals section will challenge all PCNs issued to CIT vehicles whilst engaged in collecting or delivering cash for those participating companies."

Clearly, BSIA envisage, and endorse, contraventions of local parking restrictions in certain circumstances.

48. The British Bankers' Association ("BBA") 21 March 2007 "Cash in Transit Action Group: Best Practice Guidelines" (which are endorsed and supported by, amongst others, the Metropolitan Police Flying Squad) set out what are stated to be "*best practice to be considered and adopted where possible*" and read in regard to parking at paragraph 8:

"*…Where feasible, in accordance with local restrictions, relevant arrangements will be made to enable parking as near as possible to the collection/delivery point, offering safe access and egress for CIT guards.*"

It is quite clear to us that that envisages compliance with local restrictions.

49. Another body, which has issued Best Practice Guidelines to its members, is the British Retail Consortium ("BRC"). That Consortium worked with the industry and police to develop those best practice guidelines and they were approved and endorsed by the Home Office, the Association of Chief Police Officers ("ACPO"), BSIA and GMB. The 2011 and 2012 copies of those Guidelines were produced to us, but we noted in particular the following paragraphs which were quoted in the Agreed Statement of Facts at 5.11 and presumably came from a different version but carry the same message:-

> *"Where practicable Across The Pavement (ATP) movements should be designed out or significantly shortened, or otherwise protected..."*
>
> *"Provision for the safe exchange of cash and valuables should be considered at all times..."*
>
> *"Where feasible and in accordance with local restrictions, relevant arrangements should be made to enable parking as near to the collection/delivery point as possible, thus minimising the distance from the cash office to the vehicle."*

Again, it is quite clear to us that that envisages compliance with local restrictions and there is nothing in the 2012 version suggesting otherwise.

50. Mr Sewell stated explicitly in regard to the last point, that the appellant's policy is that:-

"*local restrictions should always be considered, but they have to give way to protecting CViT operatives and the public when conducting services (parking in a dangerous position excepted)*".

Safety and Risk issues

51. The BRC guidelines highlight the Health and Safety at Work etc. Act 1974 ("HSAW"), the Health and Safety Act 2008 (which deals with penalties) and Corporate Manslaughter and Corporate Homicide Act 2007.

52. Mr Sewell was very clear that his, and the appellant's, primary duty is to ensure the health and safety of company staff in the course of their employment, all in terms of Section 2 HSAW, and in terms of Section 3 they had an obligation to non-employees which includes members of the public, bystanders, bank staff or anyone else who might be affected or caught up in any problem that arises. There is therefore

potential conflict in ensuring the safety of staff and non-employees whilst also complying with the requirements in the Road Traffic Acts and Highway Code etc. It is a balancing exercise and in his view the prevention of danger was the pre-eminent duty and therefore his, and the appellant's primary obligation at all times was to comply with HSAW.

53. The Statement of Agreed Facts records that during the relevant period, approximately 1000 attacks per calendar year were perpetrated against persons carrying out CViT activities and approximately 65% of those were directed against the appellant. Of those attacks approximately 75% occurred during the ATP phase. In addition, on average, we note that in the industry as a whole there were approximately a further 2600 aborted or suspicious incident CViT attacks per calendar year.

54. The Statement of Agreed Facts also narrates that "*The Appellant has developed and/or deployed various safety technologies and practices in order to ensure that its business activities are conducted as safely as possible.*" and cites numerous examples. We fully accept that the safety aspect permeates their practice and that of the industry generally.

55. Although we were furnished with extensive detailed information about the risk factors relating to the appellant's trade and the safety measures adopted we do not consider it necessary or appropriate to record appellant specific detail in this Decision.

56. We, and the lay person watching Crimewatch or similar television programmes, to say nothing of news bulletins, are aware that:-

(i) Crime is a very real issue in the CViT industry; that is nothing new and goes back millennia,

(ii) Robberies and attempted robberies occur whilst cash is being transported; again that is not new as for example in the Great Train Robbery,

(iii) The criminals use a wide range of techniques including ram raids, vehicle hijackings, snatch attacks, kidnapping and other threatening behaviours, often using a range of weapons including firearms. There is also the not insignificant psychological threat,

(iv) It is not just the employee carrying the cash who is at risk. A great many robberies, and attempted robberies, take place in public places and in particular whilst the cash is being transported between a secure vehicle and a customer's premises (ie the ATP phase) and therefore the general public and customers' employees are also at risk,

(v) The impact of such robberies and attempted robberies is far-reaching and can be quite severe. Quite apart from the significant financial losses, those attacked can be, and often are, both physically and mentally scarred. Frequently, there is also a knock-on effect on their friends and families, even where they, themselves, have not been directly threatened,

(vi) Innocent members of the public who are inadvertently caught up in such robberies can be very adversely affected, and

(vii) In certain areas of the country, there have been very violent attacks in CViT robberies.

5 57. We accept that throughout the relevant period, and subsequently, that the appellant has done as much as possible to minimise the risk of successful criminal attacks against it whilst carrying out its business activities and has worked with its customers, the authorities and the industry in so doing. It is a major priority.

The attitude of the authorities

10 58. Considerable stress was placed by the appellant on the third of Mr Kelly's conclusions and although it is set out above it should be reiterated in this context:

"*Best practice, endorsed by the industry, Home Office, and police, is to park CViT vehicles as close as possible to the customer premises when a CViT service is being carried out (in order to minimise the length of the ATP phase of the CViT service), notwithstanding parking restrictions, provided that the*
15 *manner of parking is not itself dangerous.*"

His fourth conclusion was that the appellant had no choice but to conduct its business in accordance that best practice " *...which was endorsed by the industry, Home Office and Police.*"

59. In his evidence he extrapolated from that, that those bodies therefore endorsed
20 breaches of parking regulations. He had to concede in cross-examination that there was nothing in writing indicating that the Home Office or the ACPO endorsed the BSIA guidelines, which were the only guidelines to state that a breach of parking regulations was inevitable (However, see also paragraph 181 below).

60. On 12 June 2008, a joint letter ("the Joint Letter") was issued by the
25 Parliamentary Under Secretary of State for the Home Office, the Parliamentary Under Secretary of State for Communities and Local Government and the Minister of State for Transport to all Chief Executive Officers of Local Authorities in London, Transport for London ("TfL") and London Councils on the subject of CViT robberies. That letter identified the fact that:

30 "*Security personnel are at their most vulnerable when transferring cash in the open... It therefore makes sense to keep this distance as short as possible.*

However this is not always possible as parking restrictions mean cash in transit vehicles may have to park at some distance from the delivery site, putting the crew and the public at risk for a longer period.

35 *Under the Traffic Management Act 2004 it is your duty as a local authority to manage the existing road networks to get the most efficient movement of all road users on your roads. In considering how you carry out this duty, you may wish to give consideration to adequate provision for loading and unloading facilities for CViT vehicles engaged in deliveries and the use of exemptions from parking regulations where appropriate and safe.*"

40

That makes it explicit that parking restrictions are a valid and relevant consideration and it does not in any manner endorse breaches of those restrictions.

61. On 1 March 2010, a Detective Superintendent in the Metropolitan Police Flying Squad wrote to BSIA in response to a query from them and stated that:

> "*…I am able to confirm that it is considered crime reduction good practice that custodians should be able to walk the shortest possible distance to the destination premises, and vice versa, at an angle of 90 degrees from the traffic thoroughfare for the purpose of:*
>
> > *a) reducing the opportunity of attack while walking excessive distances between the vehicle and destination premises;*
> > *b) reducing exposure of surprise attack by suspects afforded cover in side alleys, doorways, recesses, etc., when walking parallel along pavements;*
> > *c) preventing the loss of line-of-sight between the vehicle crew and custodians, thereby reducing the effectiveness of two-way radio links to warn of suspected activity and being unable to raise an alarm should an attack take place; and,*
> > *d) preventing the loss of on-vehicle cameras monitoring the progress of custodians and the potential loss of important police evidence in the detection and conviction of those responsible should an attack take place.*
>
> *…these operatives need to remain close to the delivery vehicle to enable them to operate effectively."*

We do not accept Mr Kelly's explanation that the police would not have focussed on parking restrictions and that it was implicit that breaches might be appropriate. Rather this letter uses wording such as "excessive" and "shortest possible" without qualification. We do not accept that it endorses breaches of the parking restrictions.

62. On 29 November 2011, the Assistant Chief Constable of Merseyside Police, who was the ACPO Lead for CViT and Bulk Cash Attacks, wrote to the Chief Executive of the Newham Council. She stated that:

> "*…as the Police lead, I advocate that CViT companies park delivery vehicles as close as possible to customer premises so as to reduce the risk of attack while cash is being carried to and from a vehicle. However, in doing so, too many CViT vehicles operating in London then received penalty charge notices. These notices are also issued on the TfL network. I do not advocate thoughtless or dangerous parking but believe a sensible compromise can be achieved in most locations, balancing safety concerns.*
>
> *… I would encourage you to identify opportunities that exist to minimise the risk from these attacks and allow parking by CViT vehicles in areas on the TfL network or in your Borough without being penalised for contravention of parking restrictions."*

63. On 29 February 2012, Lord Henley, Minister of State for Crime Prevention and Anti-social Behaviour Reduction, at the behest of BSIA, wrote to Camden Council and four other Boroughs, TfL and City of London Corporation stating that in 2011 the number of parking tickets had risen again in some areas of London. He stated:

> "*…Discussions with the police have recommended reducing the walking distance between the vehicle and the delivery point as far as is possible to reduce the risk of attack. The very nature of the types of premises to which cash couriers deliver, often in busy locations in major retail and town centre areas, sees them having to comply with significant parking restrictions.*

…[BSIA] is not requesting a blanket exemption to parking restrictions. They accept that industry drivers can be at fault and the industry is taking measures to re-train their staff in relation to parking restrictions. There is also an acceptance that in some locations it is simply not suitable for them to park.

I do hope that you can consider again your policy locally for how you apply parking restrictions to cash in transit deliveries and reflect upon the unique and dangerous job that their custodians are undertaking."

64. We find that the Joint Letter clearly envisages compliance with parking restrictions, the Flying Squad letter does not mention parking and it is our view that whilst the APCO letter acknowledges that parking as close as possible could lead to a PCN being imposed, it certainly does not endorse infringement of the parking regulations.

65. Whilst both we, and HMRC, note that the various authorities have a level of sympathy with the practical difficulties experienced by the CViT operators such as the appellant, nevertheless, it is quite clear that not one of the letters produced to us supports a breach of parking regulations.

66. We therefore do not accept that, even if it were to be accepted that the BSIA guidelines were best practice in the Industry, those guidelines are endorsed by the bodies stated.

Internal Guidelines

67. We accept that the appellant has undertaken, and continues to undertake, significant work to develop safe processes and working practices in relation to parking policies and driver training.

Policies

68. The appellant publishes internal documents instructing its employees how to carry out CViT activities including an Operations Guidance Manual and "Operational Standing Orders Cash and valuables in transit" (CSF10)).

69. We were provided only with a three page excerpt from the Operations Guidance Manual, which is not provided to drivers on the basis that it is relatively large and very detailed. It is not dated but Mr Sewell states that materially identical instructions have been in force since 2001.

70. The September 2007 version of CSF10, with which we were provided, is the most recent version but Mr Sewell reports that the previous version did not differ materially.

71. These documents are drafted so as to require employees to treat security – and therefore safety – as the first priority – even where to do so would involve breaching parking restrictions. The appellant is quite clear that that is considered to be "*absolutely*" in line with best practice for the industry.

72. They are provided with the CSF10. The final page of the CSF 10 comprises an "employee certificate" which is required to be completed by employees confirming, amongst other things, that they have read, understood and undertake to comply with the CSF 10. Non-compliance with the operational procedures is a disciplinary matter 5 which might result in dismissal.

73. A consistent theme, and in particular it is included in the CSF10 at paragraph 10.1 and the Manual at 4.1, is the following wording or variations thereon:-

> "*During any collection the vehicle must be parked in or as near as possible to the position that offers the best possible visibility and security for the crew. Once parked the vehicle will not be* 10 *moved until the collection is completed ... Details of parking can be found in the relevant customer site survey and risk assessment document held by branch management.*"

74. The CSF 10 also provides at paragraph 10.1 that "*Details of parking can be found in the relevant Customer Site Survey and Risk Assessment Document (CSF 202) held by Branch Management.*"

15 75. The appellant has at all material times operated a process whereby a site survey and risk assessment ("SSRA") is carried out when they

(a) service a new customer,

(b) have experienced an attack at an existing customer's location, or

(c) when a member of staff has raised a concern in relation to an existing 20 customer location.

76. The SSRA is required to be completed by a trained assessor who is typically a branch manager, service manager or experienced driver. At some branches the GMB Union representative performs the surveys.

77. The 2008 version of the SSRA produced to us covers assessment of parking, 25 lighting, visibility and walking risk factors amongst others. It also puts that in the context of the type and time of the contractually agreed service to the customer. It identifies the "*preferred vehicle parking area, preferred walking route to the service location and hazards spotted.*"

78. The format of the SSRA is not unique to the appellant and the scoring system 30 was amended in partnership with the appellant's main competitor Loomis.

79. We note with interest that this process was developed by the appellant following the decision in *Henser-Leather v Securicor Cash Services Ltd*[2] where Lord Justice Kennedy stated *inter alia* that "*I do not doubt that the risk to someone doing the job ... can be to some extent controlled by measures such as parking his van reasonably close to the* 35 *office from which cash had to be removed ... There was therefore, in my judgment, a clear obligation on [Securicor] to carry out [an] assessment [relating to the need for personal protective equipment]... which they did not do, and then 'ensure' that 'suitable' body armour was provided...*".

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[2] 2002) EWCA Civ 816

80. Mr Sewell quoted that decision and quotation in his witness statement. We note that what that decision does not suggest is that parking restrictions should be breached but rather that other measures are adopted.

81. Completed SSRAs are available for review by drivers at the branch servicing any given location and a Parking Site Survey summary, such as those produced with the sample PCNs is also produced sometimes. The CSF 10 simply states that the SSRA is available from management.

82. In addition, where over time, parking at a particular location is identified as giving rise to a large number of PCNs, or where the parking position at a customer's premises has been identified as raising material difficulties, a parking survey is conducted in order to determine the optimum place or places in which to park. The survey advises drivers of the best location in which to park although it may be that no parking solution is available which avoids infringing parking restrictions,. Only the branches in the South East complete these surveys because that is where the vast majority of PCNs are issued. We have no information as to the number of such surveys.

83. Mr Sewell's evidence was that in 2014, there is still not an up-to-date SSRA for all sites although over a period of years the database had been considerably extended.

84. Mr Sewell was very clear that the appellant's procedures and working practices are continually refined in order to ensure that they carry out their businesses as safely as is possible.

85. There is also a Commercial Drivers Vehicle Handbook, which is given to drivers in conjunction with training.

Driver Training

86. Basic training has always been furnished on induction and new recruits are instructed to park as close as possible to customer premises and in a safe location, and not to park dangerously.

87. The appellant regularly provides crews with driver briefings at the beginning and end of shifts and publishes notices on branch noticeboards communicating best practice particularly identifying locations were parking has been identified as problematic. Each branch has a training officer.

88. We have no detail of precisely what training beyond this was provided in the relevant period. By 2012, Lord Henley had identified an industry wide need for further training of drivers. Employees are currently required to attend refresher training every three years.

Commercial Vehicle Drivers Handbook

89. Mr Sewell stated that in the course of training all drivers are told to park (i) so far as possible in accordance with relevant parking restrictions, and (ii) never in a manner which is dangerous and "to that end", all drivers are furnished with a Commercial Vehicle Drivers Handbook *("CVDH")*. The July 2010 version (and the previous edition was materially identical) was produced to us. Mr Sewell told us that amongst other things, the CVDH (i) reminds drivers of relevant stopping, parking, loading and unloading restrictions; and (ii) encourages drivers, where possible, to comply with parking restrictions and road traffic laws.

90. Whilst that is true, we note however that section 5 reads:-

"***5. Stopping, parking, loading and unloading***
5.1 Right to Stop
You may stop to unload anywhere except

(a) Where all stopping is prohibited, for example clearways, pedestrian crossings and double yellow lines.
(b) Where there is a loading ban.
(c) Where you would cause unnecessary obstruction, for example opposite another vehicle or a road island.
(d) In a dangerous position, for example, on a bend or bridge.
(e) On a Red Route other than at a designated area at the permitted times, or when specifically permitted by a Police Officer.

5.2 No Waiting

Red and yellow lines mean restrictions on parking and/or loading. Always check the yellow signs to make sure you understand the times during which waiting and/or loading is restricted.

(a) A double yellow line indicates no waiting at any time.
(b) A single yellow line indicates a waiting restriction for any lesser period.
(c) Double pips on the kerb indicate no loading at any time.
(d) A single pip on the kerb indicates a loading restriction for any lesser period.

5.5 Bus Lanes

G4S vehicles are not allowed to drive or park in bus lanes during the lane's hours of operation."

91. It is quite clear that that neither suggests nor implies that there should be any breach of the parking restrictions. On the contrary, the Foreword asks employees to comply with the Handbook so that they operate in a responsible and legal way.

92. The appellant has put in place various training packages both formal and informal. For example, in around 2012, which is of course after the relevant period, it developed and introduced an e-learning package.

93. Although it was introduced after the relevant period, and by that time the appellant was strenuously arguing with HMRC that certain PCNs were inevitable, the module is noteworthy and both parties relied upon it.

2012 Parking Awareness Training module

94. The electronic parking awareness module which was produced for training purposes states as its objective:

> *"The primary objective of this short module is to provide guidance and awareness of potential parking violations that in some cases Drivers may not be aware of.*
>
> *This module is purely a guide and some locations/areas carry a higher risk than others and will require illegal parking in most cases, but there are many customer sites that have parking obstacles which could be avoided."*

95. A number of the slides were of interest, including these:

(a) *"We should avoid at all times parking in Taxi bays, mounting the kerb, stopping on double yellow lines or ZigZags, these should only be used as a last option".*

(b) *"Did you know?*

Of the 8,900 tickets issued in 2010, 21% or 1,870 tickets valued at £110,000 were issued for vehicles parked with more than 1 wheel on a pavement. There was a high percentage of these that could have been avoided."

(c) *"Did you know?*

Not all bus-stops can be avoided as some can stretch for 100 yards or more, but most are approximately 23-33 metres long and could be avoided in most cases (if you are unsure contact your line manager for advice)."

(d) *"The use of loading bays are one for avoiding a ticket being issued but ensure there are no time restrictions.*

If the customer's time window does not match the time allowed to use the bay, then speak with your branch as they may be able to arrange different time windows with the customer".

96. The question of avoidable, or not, PCNs was explored at considerable length in questioning and we comment thereon in our conclusions.

Transport for London Publication

97. In April 2014, TfL issued their guidance called "Parking and loading legally". The introduction stated that PCNs are used to encourage drivers to observe the rules and regulations of the road but that they were aware that that made it an expensive business for any freight and fleet operators so the guidance had been compiled in order to assist in reducing the number of penalty charges received by fleets and to ensure that there was efficient management of PCNs.

98. It made it clear that that the object was to ensure that road users had the right systems and processes in place to reduce time and money expended on "avoidable"

fines and that penalty charges were needed "*to discourage illegal driver behaviour which often adversely affects other road users.*"

99. It recommended a number of proactive steps that road users could adopt including:

5 *(i)* where appropriate seeking dispensations from parking and loading restrictions. It is made explicit that that will be considered for CViT deliveries and collection but only where no alternative solution exists. The risk to public safety and other road users will be a factor which would be taken into consideration in that context. A dispensation never gives permission for a vehicle to mount the footway.

10 *(ii)* Ensuring continuous loading/unloading as there is no grace period for personal errands such as buying a paper.

(iii) Talking to customers before deliveries about available parking and checking if other deliveries are scheduled for the same time.

(iv) Considering alternative locations to load/unload.

15 *(v)* Identifying legal loading provisions at delivery sites.

(vi) Changing the time of day deliveries are made.

(vii) Improving driver training.

100. The document makes it clear that since the introduction of CCTV and in any event with civil enforcement officers, the vehicle is always observed before a PCN is 20 issued. Accordingly, for example where a vehicle was parked but not loading or was overstaying a time limit those would be factors in deciding whether to issue a PCN.

101. That document used a number of case studies. The appellant was one such case study and the document reads in that regard:

"*In 2012, G4S received 16,700 PCNs and anticipated spending £1.5m on PCNs during 2013. It was* 25 *clear that urgent action was required, so G4S formed a project team to reduce the number of PCNs by 50 per cent.*

Before 2011, 85 per cent of the PCNs G4S received were issued by CEOs, but by the end of 2012 the majority were issued via CCTV. With fewer PCNs being placed on drivers' windscreens, it was apparent they thought they could park almost anywhere.

30 *The project team tracked which customers were being delivered to when PCNs were received and identified 200 penalty charge hotspot locations. Surveys of the hotspot locations were carried out to find alternative parking loading options, and drivers were briefed to use these alternatives. At the same time as drivers were provided with updated instructions, the drivers training material was updated to ensure that drivers understood how to comply with on street restrictions.*

35 ***Results***

Six months into the project the goal of 50% reduction in PCNs was met."

102. It is not only the appellant who is cited as a case study in this document. One of its primary competitors, Loomis, is quoted as having seen a 46% reduction in the

number of PCNs received in 2013, having recruited a dedicated PCN manager and delivered staff training.

The appellant and parking in practice.

103. As we indicate above, the appellant’s operational instructions to employees carrying out cash transportation is that during any collection or delivery the vehicle must be parked in the position that offers the best possible visibility and security. That was explored at some length with Mr Sewell.

104. He explained that where an employee is unable to fulfil a planned service because, for example, there is no suitable, parking available at the customer location they are required to inform their branch or nominated location immediately (point 12.6 of the Operational Standing Orders reads "*If the crew are unable to complete a service on behalf of the customer they must immediately inform their own branch or nominated location*").

105. Agreements with larger customers usually take the form of “national framework contracts” (“NFC”) that typically stipulate the minimum number of services to be provided over a specified period of time and the price per service. It might specify the particular windows within which services will be carried out. The aspiration is that any NFC will be sufficiently flexible to allow the appellant to arrange a replacement service at a later time/date without the appellant failing to satisfy the minimum service levels required, when a situation arises for example where no - or no suitable - parking is available at the customer location.

106. It was formally conceded in the appellant’s Note on Material Findings of Fact at 22.4 that:

> “*Even where, in principle, there is suitable parking at a customer location which would not involve the infringement of parking restrictions, it may be that that parking position is unavailable when the appellant’s employees arrive to make a delivery/collection. Where that is the case, the driver will contact the Appellant's transport office and seek instructions, which office may advise that it is possible to reschedule delivery/collection. However, where it is not possible to reschedule the delivery (for example, where it has already been rescheduled multiple times and/or would give rise to a breach of service contract with the relevant customer), the Appellant's driver - in order to park in a safe location- may have to infringe parking restrictions.*”

107. Mr Sewell agreed that the office might instruct the driver to go around the block or return at another time or the driver might simply be told to park in breach of the restrictions.

108. He conceded that particular problems might arise where the appellant wishes to service multiple customers from a security van parked in a single location. In that instance there is yet another range of factors to be weighed in the balance particularly where the parking restrictions, or dispensations, involve time restrictions.

109. He confirmed that ultimately the decision to park or not to park, in a prohibited area or zone, is an operational decision made by the employee on the day in light of the available parking within acceptable proximity to the site and based on the particular circumstances presenting during a that collection or delivery. That is a

frequently occurring issue and has to be taken "*on the ground*". He stated that it is a "*holistic*" decision and the priority is always operational safety both for the employees and the public.

5 ***PCNs and the appellant in the relevant period***

Background

110. Many cities and local authorities across the UK do not issue any notices to the appellant. All PCNs, received by the appellant, were issued by local authorities or Transport for London ("TfL"), which had decided not to provide dispensations to
10 them. It is not disputed that whilst some PCNs have been issued by local authorities outwith London, approximately 90% of the PCNs in the relevant period were issued by 10 London boroughs and by TfL.

111. It is recorded in the Agreed Statement of Facts that, on average, the appellant received approximately 10,000 PCNs a year in each of the 2008, 2009 and 2010
15 calendar years and that in each such year the vast majority of those PCNs (approximately 80%) were incurred in respect of four particular contraventions:-

i. Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force,

ii. Stopped where prohibited on red route or clearway,

20 iii. Stopped on a restricted bus stop or stand, and

iv. Parked with one or more wheels on or over a footpath or any part of a road other than a carriageway.

112. We set out below the legislative and other provisions applying to PCNs but what is pertinent is that in terms of the relevant provisions throughout the relevant
25 period, these four contraventions were what were described as "more serious" contraventions warranting higher penalties, being contraventions numbered codes 02, 46, 47 and 62 respectively.

113. The appellant does not hold data in regard to the 2007 calendar year and only began collating centralised data in 2008.

30 114. Mr Sewell stated at paragraph 134 of his witness statement that the appellant did not begin to receive material numbers of PCNs until 2007 because "…(i) *until that point, the Police and not local authorities, had been primarily responsible for enforcing parking restrictions; and (ii) from that point, TfL began extending the 'red route' in London and issuing more PCNs on the basis of CCTV footage), and so G4SCS only started recording data the following year.*"

35 115. The point about the Police is incorrect since at all material times including the relevant period the Police would only occasionally have issued PCNs and then usually only where the vehicle was causing an obstruction.

116. We accept that prior to 2007, the appellant engaged with parking authorities at a local level since it was not a national priority and that the incidence of greater

numbers of CCTV cameras, red routes and bus lanes contributed to the increase in issue of PCNs from 2007.

Processing of PCNs

117. We have very little information about what actually happened when a PCN was either received at the appellant by post or a driver found one on the windscreen. We know that with effect from 3 May 2005 the driver was instructed to complete an A4 form with a small box headed "*Reason driver parked in that location/any other relevant information*" and post it to the branch with the "ticket".

118. In 2013, a new form was in use but it is not known when that was introduced. The driver completes that stating whether or not he or she is to blame.

119. The July 2010 CVDH does not cover PCNs. The CSF 10 only states "*All messages and requests etc from customers, operational issues, and equipment issues are reported to Branch Management at the end of trip de-brief.*" Presumably a PCN is an operational issue. Of course that cannot cover postal PCNs.

120. Mr Sewell indicated that when a driver receives a PCN he or she is required to make the initial assessment on the form as to whether they were to blame and thereafter if it is not obvious, an investigation is carried out by someone from the appellant's parking fine office to determine whether or not the driver is to blame. Following the investigation there should be a debrief at which point the line manager will present all of the evidence to the driver if the driver is considered to be to blame. The appellant pays all parking fines in the first instance irrespective of whether or not the driver was to blame. If the driver is to blame then the appellant seeks reimbursement via a payroll deduction.

121. We were furnished with two examples dated July and September 2013 in Glasgow and Oxford respectively where a driver had been requested to repay a fine which was allegedly the driver's fault. In the case of the Oxford example the letter indicated that if the driver felt that there was a reason why he should not pay the fine then those reasons should be put in writing. There is no evidence in regard to what then transpired. The same key wording is used in both letters, namely:

"*Any evidence provided from any council which has seen a G4S vehicle parked in Resident/Restricted Street; part loading or unloading in a restricted street; Red Route Area's (sic); Bus Lane/Stops or other road offences will have to be paid for by the driver.*

This has been agreed by the company and the GMB Union."

122. We were told that where a driver receives a PCN for parking dangerously or recklessly or in breach of the appellant's parking policies and guidance the driver should be responsible for payment of the PCN.

123. We have absolutely no detail as to the level of reimbursement from drivers or indeed the detail of the process in that regard. We can understand that where the

photograph on the PCN makes it explicit that the driver is at fault, eg parking in a box junction then reimbursement would be sought but in other cases there is little clarity.

124. Mr Sewell described it as "*some sort of review mechanism*" whereby the driver could defend his or her position. He did not think that PCNs would go through "*on the nod*". He suggested that there would be a conversation whereby the manager would ask where the driver had parked and management would want to know that it was "genuine".

125. Mr Sewell assumed that where reimbursement was obtained then no deduction would be sought for the cost of the PCN. We accept that.

PCNs in the period

126. We have absolutely no documentary detail about the actual PCNs issued in the relevant period. The appellant's policy is to destroy all PCNs two years after they have been paid and in any event there is only a three month window within which the appellant retains the information allowing identification of any link between a specific customer and a contravention.

Sample PCNs in 2013

127. HMRC's initial stance had been that sample fines were irrelevant since the circumstances in which the fine arose are not the issue. It was rather the inherent nature of the fines that was the issue.

128. We were furnished with the documentation pertaining to 12 PCNs received by the appellant during May and June 2013. These sample fines were said to have been selected at random. Mr Sewell argued that since they had all been issued in London and all relate to one of the four "more serious" contraventions they would be representative of the PCNs imposed in the relevant period. We think not.

129. Firstly, and very obviously, after the relevant period, as can be seen above, the appellant had invested heavily in a major exercise to reduce the number of PCNs incurred. Accordingly, there had been retraining of drivers, reappraisal of customer locations and parking options and amendment of processes.

130. Further, we know that in the period from 2008 leading up to 2013, BSIA and the appellant had successfully negotiated dispensations with various local authorities. That should have had, and was intended to have had an impact in reducing the number of PCNs.

131. The fact that the number of PCNs imposed in 2013 had halved is indicative that these measures had worked to a significant extent and that the "climate" in 2013 was quite different and there should have been less "unnecessary" PCNs (see paragraphs 95(b), 101, 106 and 108 above).

What is the evidential value of those sample PCNs?

132. Mr Sewell's evidence in regard to the sample PCNs was very limited. In his witness statement he had indicated that with the exception of two of the fines, the parking survey summary accompanying the fines clearly disclosed that as at the date the PCNs were issued the appellant had not been able to identify a location which (i) was sufficiently close to the relevant customer premises to allow for the safe provision of services, and (ii) not involve the appellant's operatives in infringing local parking restrictions.

133. As far as the remaining two of the 12 PCNs are concerned, he stated that he assumed that the appellant would have followed their process to identify whether or not the driver was "at fault" or whether, in order to carry out safely the relevant customer service, the driver was forced to park in a manner which infringed the parking restrictions. He was cross-examined in regard to that assumption but unfortunately could only say that in both cases without seeing or talking to the driver and without seeing the notes of any conversation with the manager, he simply could not comment.

134. Since Mr Sewell was the only witness and therefore could shed no light on any of the sample PCNs there was no further cross-examination in regard to them.

135. On the other hand, we have closely examined the sample PCNs together with the review document (where available) and the Parking Survey Summary since, in fact, they are very instructive.

136. It is not appropriate to identify the drivers, the locations or the customers and for that reason we refer to each PCN only by the last three numbers on the actual ticket. In most cases we were furnished with a PCN review form which included boxes which fell to be ticked indicating whether a survey had been completed and boxes in regard to debriefing. In not one of those were the boxes in regard to debriefing ticked. In only one instance (834) was the box for survey completed but as can be seen below that survey was not completed until after the PCN had been issued. On no form was it indicated that the driver was to blame.

137. We record the following findings in regard to those sample PCNs:-

(a) 363 - The PCN related to contravention code 46 (red route) on 31 May 2013. The parking site survey had been completed on 14 May 2013 and had recommended that a dispensation be sought. From the picture we can see that the vehicle poses an obstruction as it is parked just after the traffic lights at a point at which two lanes merge into one and close to a turn left junction.

(b) 834 – This was a contravention code 46 (red route) on 28 May 2013. The parking site survey in this instance was only completed on 5 June 2013 and recommended that a driver should park in a loading bay rather than on the double Red Route, Bus Lane and Bus-stop. From the picture on the PCN, we can see that the vehicle was not parked in a loading bay a few doors from the bank, but

directly outside the bank. It was a rainy day. There is one car in the loading bay which is large enough for more than one vehicle but it is not clear if the loading bay had space for the van or not.

(c) 127 – This was contravention code 46 (red route) on 16 May 2013. The parking survey conducted on 22 April 2013 had indicated that the driver should park in a parking bay a few yards to the left of the Red Route and Bus-stop. This was one of the two examples where Mr Sewell had assumed that a process had been implemented to check whether or not the driver had been at fault. Clearly, the recommendation was not followed. From the picture on the PCN, we can see that the vehicle was parked in the bus lane, causing a potential obstruction rather than in the parking bays. There is one car in the parking bays but it is not clear whether there was still space to park in the bay. Mr Sewell was unable to confirm whether or not the driver had attempted to seek to rearrange delivery.

(d) 470 – The contravention was again code 46 (red route) on 16 May 2013 but the date of the parking site survey was 31 May 2013. That survey identified that there was no immediate solution and that there should be an application in terms of a Memorandum of Understanding.

(e) 586 – This was contravention code 02 on 5 June 2013. The parking site survey was only completed on 18 June 2013 and the recommendation was to apply for a dispensation and to talk to the City of London.

(f) 240 – This was contravention code 02 on 16 May 2013 and the parking site survey was completed on 17 June 2013 with the recommendation that because the customer's premises were situated next to a pedestrian crossing, a driver should park on double yellow lines unless a dispensation could be obtained.

(g) 830 – This was contravention code 02 on 22 May 2013. The driver had been parked and loading or unloading in a restricted street where the parking restrictions were between 7am and 7pm. The contravention occurred at 7.30am but we noted with interest that the customer's window for the service commenced at 5am. Although the parking site survey, which had been completed two days earlier on 20 May 2013 indicated that an arrangement should be sought with City of London, on the face of it, this PCN could have been avoided had the service been delivered within the customer's agreed time window.

(h) 176 – This was a contravention code 02 on 16 May 2013. The parking site survey was only conducted on 21 June 2013. We note that that survey recommended parking on a double yellow line yet it is quite clear from that survey that it is a very narrow road with double yellow lines, a cycle lane, a bus-stop and a police bay. In our view any parking in the middle of the day, as this was, would be likely to pose a level of danger to other road users. Further, from the picture on the parking site survey, we can see that one of the appellant's vehicles was parked contrary to the instructions in the appellant's CDVH. The

vehicle was parked opposite a road island at the start of the bus stop and was causing a potential obstruction to any bus turning into the bus stop.

(i) 700 – This was a contravention on 30 May 2013 but the code is not clear. The parking site survey was only completed on 6 June 2013 recommending seeking a dispensation since "*the area was completely surrounded by bus stands, coach stands and a pedestrian crossing*". Accordingly any parking mid-morning, as this was, would be likely to pose a safety hazard for other road users.

(j) 493 – This was a contravention code 46 (red route) on 31 May 2013 and the parking site survey had been conducted on 9 May 2013. That recommended that a dispensation needed to be applied for since the customer's premises were next to a bus lane where there were then zig-zags at one end and a box junction at the other.

(k) 534 – This was the other PCN for which Mr Sewell had assumed that the driver had been found not to be at fault. It was a contravention code 62, which is parking with one or more wheels on a footpath, on 31 May 2013 and the parking site survey had been completed on 17 April 2013. That survey indicated that the crew could park in a red shaded area. That did not happen. There was absolutely no evidence as to why the driver had parked with one wheel on the pavement where there was a shaded area 40 metres away. Mr Sewell could not comment on whether or not the PCN might have been appealed or what might have happened. The parking site survey summary also indicated that for that site there was a dispensation within a Memorandum of Understanding. Quite why the appellant claimed a deduction for this PCN is a mystery.

(l) 960 – This was another contravention code 62 on 23 May 2013. The parking site survey was only conducted on 24 June 2013 and recommended seeking agreement with the local authority.

138. As we indicate above, Mr Sewell argued that the breach of parking restrictions was inevitable in ten of those samples (ie all but (c) and (k)). It can clearly be seen that for the majority, namely seven of the ten, the parking site survey was undertaken after the PCN had been issued. They were all household names and therefore presumably fell with an NFC (see paragraph 105 above). The obvious question is why the parking site surveys had not been conducted long before and appropriate dispensations sought, as the appellant recommends.

139. In the remaining two of the 12, Mr Sewell "assumed" that the appellant would have followed a process to identify that the driver had not been at fault and that therefore there had been a safety reason for the illegal parking. As we indicate above, we have no evidence on that and in any event in those two examples (being (c) and (k) above) we observe no "safety" reason *per se* for the illegal parking.

140. Amongst those sample PCNs are clear *prima facie* examples of drivers having parked contrary to the appellant's own guidance and in a potentially dangerous and/or obstructive manner.

141. In summary, in our view, the sample PCNs and supporting documentation provided were of limited evidential value to the appellant apart from the fact that apparently they were considered good examples and deductions had apparently been claimed for all of them. As far as the Tribunal is concerned, they were a useful indication to the Tribunal of the "improved" position after 2012.

Key Findings in Fact in relation to PCNs and reasons therefor

142. We have no hesitation in finding that at all times, including the relevant period, the incurring of the PCNs was connected with the appellant's trade in the sense that they were issued because employees had parked in such a way that the appellant, as registered owner of the vehicles in question, rendered itself liable to the PCNs received.

Were the all of the PCNs unavoidable?

Driver fault

143. The appellant strenuously argues that tax deductions were claimed only for PCNs that could not be avoided. Indeed, in that context, it is suggested that the slides in the 2012 training module indicating that there are avoidable PCNs, particularly for parking with one or more wheels on the pavement, is irrelevant to the tax position of the appellant because deductions would not have been sought for those. That argument was predicated on the basis that the appellant has procedures in place to monitor compliance with operational instructions and ensures that where parking restrictions are infringed "unnecessarily" the cost of the PCN is recovered from the employee and disciplinary action is taken.

144. As we indicate at paragraphs 123 and 124 above we have very little evidence as to the processes for establishing driver fault and the extent to which reimbursement was sought. What we do have is the sample PCN documentation. The assumption was that a deduction had been sought in every one of these examples. In every case the driver was deemed not to be at fault although there were clear breaches of the CVDH and, obviously, the parking regulations. Incidentally, two related to wheels on the pavement.

145. Further, clearly in two of the twelve there was no obvious safety reason for the infringement and in others the parking by the driver in question seems to have posed a potential safety risk to other road users, (which is in breach of the CDVH). We are very far from persuaded that there are robust measures in place to assess driver fault other than in blatant cases.

146. It would never be deemed to be the driver's fault where the appellant's office has told the driver to park illegally for operational or commercial reasons. Accordingly reimbursement from the driver would never be sought in those instances.

147. The inescapable conclusion from the TfL publication, which was widely disseminated, was that TfL's perception of the appellant's drivers' behaviour was that "*they thought they could park almost anywhere*". We were not entirely persuaded by Mr

Sewell's argument that that wording was "*possibly an oversimplification for the benefit of PowerPoint*". The fact that a 50% reduction in PCNs was achieved within six months of the project makes it clear that PCNs had been incurred unnecessarily in the previous years.

5 148. That is further supported by the appellant's own 2012 training module. We accept that the slide saying that a significant portion of PCNs in 2010 could have been avoided is attention grabbing, and rightly so, but it indicates that the in house trainers believed that not all PCNs were either necessary or that they arose because of safety concerns. There is no reason to think that the position is different in any year before
10 the training in 2012.

Commercial and operational imperatives

149. The appellant made it clear that *"There is a continuous strive to not only meet but exceed customer expectation and we are constantly challenging the way we do things to ensure that we are not only aligned with customer demand but operating in*
15 *the most efficient manner. To ensure we approach service delivery in a consistent way across our entire network to all of our customers across the UK there is significant emphasis on delivering service through managed processes"*.

150. It is accepted that the appellant would prefer not to incur any parking fines. Nevertheless, it is clear to us that the appellant does have a deliberate policy of
20 incurring parking fines where it deems it necessary.

151. What constitutes necessary? Obviously the appellant has argued that it only incurs a PCN where necessary (paragraph 4(c)(v) above) and "necessary" is always predicated on safety. We find that not to be the case.

152. As we note above at paragraph 106, it was conceded for the appellant that
25 sometimes it is decided that it is not possible to reschedule a delivery and the example given was where it had already been rescheduled multiple times and/or would give rise to a breach of service contract with the relevant customer. That would certainly not meet customer demand or exceed customer expectations. We were told that the decision might be taken simply to proceed.

30 153. In that instance the appellant's driver – in order to park in a safe location – would have to infringe the parking restrictions. We do not accept that, in that type of instance, the driver has no choice but to breach the parking infringement. That is a commercial decision, which is taken in order to avoid breaching a service contract with a customer. The simple economic choice is taken to incur the parking fine.
35 The fine could have been avoided if it were not for the commercial imperative.

154. The same sort of decision is taken in regard to other matters. Mr Sewell was asked why more deliveries were not undertaken at night, and the appellant indicates in the Note on Material Findings of Fact, that "*It is not possible for the appellant to carry out all of its deliveries/collections at night (when some parking restrictions may not be in force), since in many*
40 *cases it is necessary for the customer's staff to be on the premises to receive/ hand over the cash being delivered.*" Presumably, to have staff attend out of hours is not considered

economically viable but the fact remains that in those instances a commercial or operational decision is taken to make the delivery in the customer's preferred window of time.

155. Similarly, although we note that TfL state that in general the time allowed for loading and unloading bays across the capital is typically either 20 minutes or 40 minutes and for red routes a period of up to 20 minutes is usually observed, nevertheless operationally, where several customer sites are located in close proximity, the appellant will service several customers carrying out multiple CIT services in succession. Since each CIT service typically takes 20 to 30 minutes, the commercial decision to service more than one customer will inevitably lead to a breach of parking regulations even where there is a dispensation in place. We note in passing that the wish to service several customers from one parking "spot" does not sit easily with the argument, which we accept, that the risk of a duress attack increases with the time it takes to complete the service

156. In response to a question from the Tribunal, Mr Sewell stated that the appellant had refused some smaller contracts because there was no sensible way of servicing the customer. It was rather more difficult with national contracts. Where national contracts covered problematic sites then it was a question of mitigating the risk of losing national business. We find that that is a commercial decision. For example, in the case of the bank referred to in paragraph 158, if the appellant conducted an SSRA or parking site survey and found that in the absence of a dispensation there would be no safe place to park but decided to service the customer regardless, in our view, that decision is driven by the need or wish to keep the national contract. It is a deliberate decision.

157. In response to a question as to why the project teams (referred to in the TfL publication (see paragraph 101 above)) which had identified alternative parking loading options and briefed drivers had not been set up sooner, Mr Sewell said that *"…it is quite likely that it was in response to that increased use of camera coverage which encouraged a response from G4S."* Clearly PCNs only became a greater priority for the appellant when more were received

158. It is accepted that there were, and are, some customer locations where it is not possible to park in accordance with applicable parking restrictions, for example, at locations in London where a number of factors such as red routes, busy road intersections and pedestrian fencing combine. A particular example is a bank which is situated on a corner, on a red route, next to pedestrian railings, and next to zig-zag lines and a bus-stop. The closest parking position, which is not subject to parking restrictions, is located more than 50 metres away.

159. It has been readily conceded by HMRC, from the outset, that the appellant undertakes SSRAs to identify parking options and HMRC do not dispute that, in some circumstances, there is no practical alternative to infringing parking restrictions. The most appropriate next course of action in those circumstances is to attempt to persuade the local authorities to grant a dispensation. (We deal with HMRC's argument as to the position where a dispensation is refused elsewhere.)

160. We agree that seeking a dispensation at the earliest possible opportunity is both desirable and prudent. That requires resource. It is clear that at least by 2012, TfL were actively encouraging companies to seek dispensations.

161. We accepted Mr Sewell's oral evidence that the appellant's effort in negotiating dispensations was "*proportionate to the size of the problem*". In our view that is a not inconsiderable hurdle for the appellant.

162. It would seem that dispensations were sought after a formal or informal SSRA had been conducted or a parking site survey.

Parking Site Surveys

163. As we indicate at paragraph 138 above, in seven of the sample PCNs a parking site survey was conducted after the PCN was issued. That raises more than one issue.

164. Firstly, these would not appear to be new customers, since a SSRA is apparently conducted for all new customers and possibly if the need for a dispensation had been identified it would have been actioned. Secondly, this was after the "push" in 2012 to reduce the number of PCNs. Since the number of PCNs was halved as a result of that effort, on the balance of probabilities, in the relevant period even less SSRAs and parking site surveys would have been conducted prior to a PCN being issued.

165. Thirdly, five parking site surveys had been conducted before the sample PCN was issued but none had been conducted more than a month previously. In one case (830) it had only been two days previously. Whether the drivers in question would have had the opportunity to check those surveys in that timescale is a moot point and not known, and we have no information about the time scale between the completion of such a survey and briefing for drivers. We simply assume that the parking site surveys were available in the same way as the SSRAs were available to the drivers.

166. Lastly, why had the surveys not been conducted long before? Of the 12 sample PCNs, the survey in eight recommended seeking a dispensation and or speaking to the relevant local authority. Had that process been embarked upon much earlier, then there is the possibility that the PCN would not have been incurred.

Dispensations/Memoranda of Understanding/permits

167. We accepted Mr Sewell's clear evidence that when the level of PCNs became a concern to the industry in 2008, the tactics adopted, at the behest of BSIA, were to appeal every PCN and to embark on negotiations with the local authorities in a bid to achieve dispensations. Understandably, it is reported that the Parking Appeal Tribunal encouraged such negotiations.

168. The appellant and the industry bodies, particularly BSIA, have liaised with local authorities to attempt to persuade them not to issue PCNs to CIT vehicles because of the operational requirement to park as close as possible to the point of delivery or collection. Certain local authorities have agreed not to issue penalty charge notices whereas other local authorities, and notably Transport for London

("TfL"), for whatever reason, have decided to continue to issue PCNs where there are parking contraventions by vehicles.

169. The appellant has tried contacting parking authorities which do issue PCNs in order to negotiate dispensations from the parking regulations. The appellant has succeeded in agreeing a number of limited dispensations with those authorities and, in addition, the BSIA has concluded Memoranda of Understanding with both Camden London Borough Council and TfL for the benefit of its members. It was argued that because of the lead time in negotiation most only became of effect outwith the relevant period.

170. Those dispensations etc. have been granted on a limited basis. We have no evidence at all in regard to any period, let alone the relevant period, to indicate whether or not any of the PCNs imposed relate to infractions that might have been covered by the dispensations, which have been granted, had they been negotiated at an earlier date. It is not unreasonable to assume that some would have been.

171. More pertinently, it is very clear from the evidence of the sample PCNs that even after the exercise to reduce PCNs in 2012, comparatively few parking site surveys appear to have been conducted where a dispensation might be required (more than half of the parking site surveys for those sample PCNs recommended seeking a dispensation or similar).

172. We also note that TfL make it explicit that a dispensation will never permit a vehicle to mount the footway yet, as the 2012 training module shows, a significant number of PCNs related to that contravention.

173. There had been limited negotiation prior to 2008 but on a very localised basis.

174. Negotiation of dispensations had clearly not been a strategic priority for the appellant prior to 2008. The fact that there is no data for 2007, because the appellant states that until that year the number of PCNs was not material, supports that.

175. The formation of the project teams, which ultimately led to a reduction in the number of PCNs, only took place in 2012.

176. Although the appellant had systems in place in 2013, and indeed before that, we find that throughout the relevant period insufficient resources were being timeously deployed to identify the locations where dispensations might be sought and to seek those dispensations.

177. Although we heard extensive evidence as to the training of the drivers and the checks and balances within the appellant's organisation, nevertheless, looking at the totality of the evidence, it cannot be the case that only PCNs necessarily incurred for safety reasons were claimed.

178. We therefore cannot accept that the appellant only seeks to claim a tax deduction for penalty charges that could not have been avoided.

Best practice in relation to PCNs

179. We agree with HMRC that the appellant's case that it operates in accordance with industry best practice is nothing more than a statement that it acts in accordance with the BSIA guidance.

5 180. It was argued that Mr Kelly's recollection is that the BSIA Guidelines may have been explicitly endorsed by the police and Home Office even although that is not stated in terms. It was argued that even if not explicitly endorsed they have been tacitly endorsed by virtue of their having been discussed in a positive and supportive way at meetings. We cannot accept that his recollection of supportive discussions 10 could ever amount to endorsement of breaches of regulations. On the contrary the correspondence is predicated on compliance and seeking dispensations.

181. It should also be noted that Lord Henley, in the letter issued in February 2012 (see paragraph 63 above), made it clear that blanket exemptions from parking restrictions were not being sought and that "industry drivers can be at fault". That 15 does not sit well with a suggestion that breaches of parking restrictions were endorsed.

182. It is accepted by both HMRC and this Tribunal that the Metropolitan Police and the Home Office, amongst others, have sympathy for the members of the British Security Industry Association in respect of the practical difficulties experienced by 20 CIT operators but that does not amount to endorsement of breach of statutory regulations.

183. We note that the appellant does not have figures for 2007 because the number of PCNs received prior to that year was not "material". However, the number of PCNs received by the appellant substantially increased between 2007 and 2012, yet 25 the number of PCNs received by BSIA's members apparently halved between 2007 and 2012. In the absence of any evidence as to the reasons for such an increase, the inference therefore is that the appellant could not have been operating best practice on this issue across the relevant tax years.

184. The fact that the appellant's PCNs were halved in 2013 for the reasons set out 30 in TfL's publication, and the decrease was attributed to proactive work by the appellant, is another strong indication that best practice had not been adopted in previous years.

185. Lastly, we observe that "best practice" in any industry need not demand compliance with legal requirements or imply immunity from legal strictures that 35 would otherwise apply.

The Law and Authorities

186. We were furnished with four bundles of authorities, of which three give background as to the PCNs, the traffic regulations and similar matters. We annex at Appendix 1 a list of the case law authorities cited to us relating to tax deduction, fines 40 and penalties.

Traffic Regulatory Framework

187. We do not intend to rehearse at any length the extensive history, and detail, of traffic regulation with which we were provided but it is appropriate to set out the key provisions, together with detail of the Public Policy in regard to PCNs which applied in the period with which we are concerned, including the relevant period. We annex those at Appendix 2.

188. It suffices to record at this juncture that at all relevant times, parking restriction enforcement has been a civil matter administered by TfL and local authorities.

189. Contraventions designated as "more serious" and therefore warranting the higher penalties included:-

> 02 Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force
>
> 46 Stopped where prohibited (on a red route or clearway)
>
> 47 Parked on a restricted bus stop or stand
>
> 62 Parked with one or more wheels on or over a footpath or any part of a road other than a carriageway.

The list of those "Standard PCN Codes v6.5" was published in November 2007. We note that v6.6.1 published in April 2012 was in identical terms as far as those codes are concerned.

190. Any surplus rising out of the imposition of PCNs must be applied for specific purposes connected with the provision of transport services by the relevant local authority.

191. Relevant Authorities can choose not to issue a PCN or to cancel a PCN once issued.

Policy

192. The Explanatory Note 196 to the Traffic Management Act 2004 sets out explicitly the reasoning behind the decriminalisation of parking fines and the policy imperatives and reads:

"*196. Regulation of the movement of traffic on roads is intended to ensure safety and to avoid congestion problems. Regulation also enables specific classes of traffic, such as buses, to be given priority in the allocation of road space. Effective enforcement is required to ensure that the regulation of traffic is effective. Increasingly, because of having to focus on their core responsibilities, the police service is not in a position to give high priority to more minor traffic contraventions, such as parking offences. The notification adjudication and enforcement of such contraventions by civil (as opposed to criminal) bodies provide an alternative way of dealing with such contraventions.*"

193. The revised edition of the Operational Guidance issued in November 2010 is more detailed than the previous guidance but the core principles are not altered in any material manner. It states Authorities should implement a code of practice that states that:

5 • *"....high quality parking enforcement is delivered fairly and in accordance with the law;*

- *Parking restrictions are there for good reasons - to improve safety, prevent congestion, ensure a fair distribution of parking spaces, and help reduce pollution; and*

- *parking restrictions should be enforced efficiently, fairly and with proper regard to the rights of the motorist"*

10 *The taxation legislation*

194. The relevant statutes do not contain any express provision as to what expenses or deductions are deductible in the computation of profits or gains to be charged to corporation tax, but identify items that may not be deducted.

195. Section 54 of the Corporation Tax Act 2009 ("CTA") provides:-

15 "*54. Expenses not wholly and exclusively for trade and unconnected losses*

(1) In calculating the profits of a trade, no deduction is allowed for—

(a) expenses not incurred wholly and exclusively for the purposes of the trade, or
(b) losses not connected with or arising out of the trade.

20

(2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly or exclusively for the purposes of the trade."

196. Section 74(1) of Income and Corporation Taxes Act 1988 ("ICTA") provides:-

25 *"74 General rules as to deductions not allowable*

(1) Subject to the provisions of the Corporation Tax Acts, in computing the amount of the profits to be charged to corporation tax under Case I or Case II of Schedule D, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid
30 *out or expended for the purposes of the trade or profession; ....*

(e) any loss not connected with or arising out of the trade or profession;

...".

197. Section 74 ICTA applied for the majority of the relevant period and is in materially the same terms as section 54CTA and therefore for ease of reference
35 hereafter we refer only to the former section.

198. Subsections 74(1)(a) and (e) are alternative grounds upon which payments made by a company may not be deductible. Accordingly an expense which is wholly and exclusively for the purpose of the trade may nevertheless not be deductible if it is a loss not connected with or arising out of the taxpayer's trade and *vice a versa*.

The Arguments on law and policy

199. The burden of proof is upon the appellant to establish that the fines imposed by the PCNs were expended wholly and exclusively for their trade or that they were a loss connected with or arising out of the trade. It was not in dispute that not every loss incurred in the course of a trade can be said to be connected with or arising out of it.

200. There was no dispute between the parties that there is a general rule that breaches of the law, whether giving rise to a civil or criminal penalty, are by their very nature generally outside the conduct of a trade and/or excluded on policy grounds: see for example *Commissioners of Inland Revenue* v *Von Glehn*[3] where a trader was subject to a penalty for illegally trading with the enemy.

The appellant's principal arguments (in addition to those set out at paragraph 4 above)

201. It was argued for the appellant that the general rule, as in *Von Glehn,* can ultimately only be a presumption. Their primary argument is to the effect that none of the authorities which established that general rule involved a combination of circumstances where

> (a) the policy behind the legislation is not to punish but to deter and the breaches in question give rise to civil penalties which are at the very lowest end of the spectrum in terms of gravity,
>
> (b) the infringements in question are an inevitable part of the trade if that trade is to be carried on in a way which was in accordance with best practice, socially responsible and safe for employees and the general public alike, and
>
> (c) the trade is socially essential.

In those circumstances, which it is argued, are highly unusual if not unique, the presumption is rebutted because the trade simply cannot be carried on in any other way.

202. They argue that the various authorities can be distinguished because the cost of the PCNs for the appellant is wholly "contemplable" (*Commissioners of Inland Revenue v* E C *Warnes & Co Ltd*[4] per Rowlatt J*)* in the sense that the appellant had no choice but to incur the cost because the trade could not be conducted without incurring those costs. The authorities all involved a situation where the trade could not properly have been carried on without infringing whatever law was in play.

203. PCNs were never intended to punish, they are simply a deterrent and therefore it would not dilute public policy if they were to be allowed as a deduction.

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[3](1919) 12 TC 233

[4](1919)12 TC 227

204. Alternatively, where a trade consists of delivering an essential service there should be a policy allowing deduction where the PCN is incurred to ensure the safety of the public. An analogy was drawn with *McKnight v Sheppard*[5].

HMRC's principal arguments (in addition to those set out at paragraph 5 above)

5 205. The primary argument for HMRC was that a penalty imposed for breach of the law, even if found to be incurred in the course of exercising a trade, cannot be deducted because the breach of law takes it outside the character of a trading expense. They do concede that in this appeal the PCNs were connected with the trade, in the sense that the contraventions and offences for which they were issued were committed
10 whilst carrying on the trade.

206. However, they argue that they were imposed because of the wrongful acts on the part of the appellant and its employees in deliberately setting a policy of parking in such a way that the appellant rendered itself liable to the fines which it receives. For that reason the payment of the PCNs is not a commercial loss connected with and
15 did not arise out of the trade, but out of the breach of the relevant parking statutes.

207. Further,

(a) The fines resulting from the PCNs were indeed intended to punish the owner or driver of a vehicle for parking illegally and to act as a deterrent against such behaviour.

20 (b) The fact that the issue and enforcement of PCNs is conducted principally by civil local authorities does not alter the character of the fine imposed as a punishment.

(c) Although each fine may be of relatively low value, they are ordinarily many times greater than the amount of parking charges that would have been payable
25 if a vehicle had parked legally and were not intended as compensation for lost parking charges.

(d) The public policy underpinning the non-deductibility of fines and penalties is on the basis that permitting those deductions from the calculation of corporation tax profits would dilute the legislative policy under which the fines
30 and penalties were imposed. They are imposed with the intention of punishing the owner or driver of the vehicle for parking illegally and as a deterrent against such behaviour.

Discussion

209. Counsel for the appellant argued that there was no black or white in this matter
35 and with that we wholeheartedly agree. In our view, the palette is many shades of muted grey.

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[5] (1996) 71 TC 419

210. We wholeheartedly agree with Lightman J in the Chancery Division in *McKnight* where he states: '*The authorities reveal what a fine line may need to be drawn between what is within and what is outside the trader's profit earning activities and there are to be found subtle distinctions not immediately obvious to minds of mere ordinary intelligence.'*

5 211. We looked first at the PCNs. There is no doubt that PCNs are a civil matter, however they are imposed in terms of statute. The civil enforcement of parking offences does not alter the character of the statutory regime. That regime imposes a penalty, which is graded by severity and 80% of the PCNs with which we are concerned are those defined as "more serious".

10

212. Mr Sewell confirmed that a PCN is primarily a deterrent and it operates by punishing the appellant if it breaches a parking restriction. Counsel for the appellant argued that to deny the appellant a deduction would be to "punish us" because it was a real cost for them. Of course, we accept, that it is a real cost. That does not, however, 15 make it deductible. There are other costs incurred by traders which are not deductible which are either absorbed by a business or passed on to their customers. In our view, the fact that an item may not be deductible does not make it a punishment. It simply makes it a higher commercial burden than a tax deductible expense.

213. As we indicate above the Explanatory notes - Traffic Management Act 2004, 20 make it explicit that the reason for the change in regime was because the police were not able to give sufficient priority to effective enforcement of traffic contraventions because of their core responsibilities. We agree that the change in enforcement procedures did not affect the underlying purpose of the restrictions or indicate that the parking fines were no longer intended as a punishment for parking illegally.

25 214. We agree with HMRC that a PCN is a punishment; that is precisely why it is called a "penalty charge notice". We adopt Judge Bishopp's definition of penalty in *Bedford v The Financial Services Authority*[6] *"The imposition of any penalty has two principal purposes: punishment and deterrence…"* The statutory intention, which is confirmed in the various Guidance etc. provided for by Statute, is that PCNs should act as a deterrent. 30 That is not in dispute but it does not stop them being punitive even when pitched at a comparatively low level and not being means tested or incremental.

215. It has been argued for the appellant, relying on *Herald and Weekly Times Ltd v Federal Commissioner of Taxation*[7] that the PCNs are *"…merely compensation to local* 35 *authorities for car park charges foregone"* and that was rejected by HMRC in the statutory review letter dated 9 November 2012. The argument was reiterated in the Skeleton Argument where it was accepted that PCNs are not expressly compensatory in nature but because any surplus is to be used in the same way as a surplus from on street parking it offsets the loss of revenue for lawful parking and therefore is not punitive 40 in nature. The various Guidance makes it explicit that the parking charges are not to be used as a means of raising revenue. Clearly a PCN is penal in nature. In our view a

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[6] UKUT re FS/2010/0015 (TCC)

[7] (1932) 48 CLR 113 (High Court of Australia)

PCN is punishment for a breach of parking regulations; we agree with HMRC that the purpose of punishment is reflected in the differential level of penalty charges. The fact that there is no escalation because of repetition does not change the character of the penalty itself.

216. We have difficulty with the assertion for the appellant that it is questionable whether the PCNs should be imposed at all in the particular facts of their trade and indeed many authorities do not impose them. The fact is that the appellant had, and has, the right to appeal to the Parking and Traffic Adjudicators Tribunal (in respect of London) and the Traffic Penalty Tribunal elsewhere in England and Wales. Whether or not the PCNs should be imposed is not a matter for us; the fact is that certain authorities do impose them.

217. The Upper Tribunal in *HMRC v McLaren Racing Limited*[8] analysed most of the authorities to which we were referred, explaining the different answers given by the Courts. We do not intend to quote from that Judgment at length but it is extremely helpful. That Tribunal also considered section 74 ICTA and in particular whether or not the payment of a penalty should be regarded as either (i) a disbursement expense or (ii) a loss, and opined that they agreed with the views expressed by Lightman J in *McKnight* to the effect that payment of a penalty is more properly to be seen as a disbursement or expense. We agree with that analysis and of course that decision is binding upon us.

218. We are supported in that view by the obiter, but very persuasive, observations of Lord Sterndale in *Von Glehn* namely:

> "*Were these fines made or paid for the purpose of earning the profits? The answer seems to me obvious that they were not, they were unfortunate incidents which followed after the profits had been earned.*"

> "*It is perhaps a little difficult to put the distinction into very exact language, but there seems to me to be a difference between a commercial loss in trading and a penalty imposed upon a person or company for breach of the law which they have committed in that trading.*"

219. In the Skeleton Argument for the appellant it was argued that "Whether the fines are an expense or a loss matters not, firstly because the tests seem to be materially the same and secondly because both are satisfied here." In closing submissions, it was reiterated that it didn't really matter which it might be but that on balance it was probably a loss type of case. In their reply on the law they asserted that they had suffered a loss in their trade.

220. HMRC simply state that the payments fall within neither category.

221. The Upper Tribunal in *McLaren* decided that the rule in section 74(1)(a) raises the following questions:

(1) what were the purposes of the appellant's trade;
(2) was the penalty paid for the purposes of that trade; and

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[8] [2014] UKUT 0269 (TCC)

(3) was the penalty paid wholly and exclusively for the purposes of that trade.

The rule in section 74(1)(e) raises the following questions:

5 (1) was the loss connected with the appellant's trade
(2) did the loss of rise out of the trade?

The Trade

10 222. We have no difficulty in finding that cash transportation is an essential part of modern economic life and that those companies, such as the appellant, engaged in that trade do everything possible to ensure "secure" transportation minimising the risk of robbery and thereby in turn (as well as minimising the possible economic loss for clients) making the cash transportation as safe as possible for the employees, the 15 customer's employees and the general public. The key point in that regard is that the ATP phase is the most vulnerable in Health and Safety terms.

223. We have set out at considerable length in the preceding paragraphs our many findings in respect of the appellant's trade. The aspect not therein addressed is their alleged unique role.

20 224. It is accepted that the appellant is a large company and part of a much larger commercial organisation, which specialises in the security industry. It has a significant place in the CViT market. In the event of shortage or disaster, it, with other such providers, has a role that is akin in some ways to that of an emergency service. In peacetime, thankfully, that is an exceptionally rare occurrence.

25 225. On a day to day basis the appellant and others provide a routine commercial service, albeit it is an essential service. However, we do not accept, as we are requested to do, that the appellant has a unique role because it holds a significant share of the market. HMRC are quite clear that the appellant's dominance of the market neither places it in a unique role or entitles it to separate tax treatment and that 30 it simply cannot be the only company in the UK that would be entitled to deduct fines incurred for breach of the law; that would be inequitable. The Oxford English Dictionary defines unique as "*of which there is only one; unequalled having no like, unusual or remarkable*." Although it may be larger than its competitors, they appear to provide a broadly similar service other than in terms of scale.

35 226. We do not find that the appellant fulfils a unique role when conducting its trade. We do not accept that no one else can do the job; undoubtedly their competitors would wish a larger market share!

227. It was also argued for the appellants that it was in an "entirely exceptional situation" likened to an emergency service roadside assistance service. In point of 40 fact, those vehicles have been granted dispensations. We have already found that the appellant's allocation of resource and the timing of the resource for negotiating dispensations and similar was not as great as it could have been. That is yet another commercial and strategic decision.

228. No doubt it was viewed as being proportionate in the appellant's strategic thinking but it does not mean that for the lack of so doing the public, through their taxes should share the burden of the cost of the PCNs. It is incumbent on the appellant to endeavour to comply with the provisions of legislation.

229. We do not find that the appellant, in the periods with which we are concerned and specifically the relevant period, only claimed deductions for PCNs which were unavoidable because of a safety imperative. Specifically, we do not find that that there was what Counsel described as 'non volition' in the incurring of the PCNs.

230. We have found that a number of PCNs were incurred because the appellant does not wish to lose to its competitors a customer with premises which are difficult to access safely without breaching parking restrictions or limited time windows where that particular branch is part of a larger NFC. That is a commercial and strategic decision and the consequential PCNs are inevitable for that reason. The same issues arise where for operational reasons the appellant wishes to make multiple deliveries from the same parking "spot". It is choosing to take on contracts and breach parking restrictions in so doing in order to maximise profit.

231. Looking to the sample fines, we do not consider that the appellant's definition of driver fault, or not, is robust. The burden of proof lies with the appellant and Mr Sewell was wholly unable to enlighten us as to the detail of the rigour, if any, of the review process. TfL have very publicly broadcast that the appellant's drivers thought that they could park anywhere, at least until 2012.

232. The remaining issue is the possible case where a dispensation is sought but not granted and there is no available "safe parking". HMRC pointed out that there are a range of options open to the appellant and its customers to enable deliveries to be made more safely albeit it is accepted that none of the steps suggested could remove entirely the risk of attack inherent in transporting large quantities of money; they might assist. However undoubtedly there would be costs attached thereto and solutions might be less than attractive to either the customers or the appellant. We were given no examples.

233. TfL also suggested, before and after the appellant's case study, a number of actions, which could and should be taken to minimise the incidence of PCNs. We have very limited evidence in relation to what the appellant has done; simply a reliance on the assertion that the cost of not one PCN would have been claimed unless there had been a safety imperative. Mr Sewell was unable to assist with any detail.

234. HMRC argue that the Tribunal has no reliable evidence upon which it could conclude that so far as practically possible reimbursement from drivers is sought and no deduction is taken when there is an unnecessary infringement. The appellant has the burden of proof. Mr Sewell honestly stated "I don't know" in regard to whether the only deductions sought were entirely necessary on safety grounds.

235. Nor could Mr Kelly assist us. We do not accept his statement in the course of his opinion that he considers that certain types of contravention should be avoided by

companies unless safety dictates otherwise, such as parking on a footpath, zig-zag lines at a pedestrian crossing, parking in a dangerous position but *"Nevertheless, it might accord with best practice to breach even those parking restrictions in certain circumstances."* We find that extraordinary and would not consider that best practice. It does not sit well to say, on the one hand, that one should breach the parking legislation on safety grounds but then on the other hand advocate parking dangerously.

236. Lastly, in this regard, we considered the appellant's concession that it did not wish to breach service contracts with its customers by rescheduling a delivery, where that had been done before, and was therefore 'driven' to incur parking fines in some circumstances. This is not consistent with arguing that parking in a way that contravenes parking restrictions is always a last resort and is only done if it is necessary to ensure the safety of its employees and the public. It indicates another commercially driven decision.

237. It is well established law as set out by Lord Brightman in *Mallalieu*[9] where he states: "*If it appears that the object of the taxpayer at the time of the expenditure was to serve two purposes, the purposes of his business and other purposes, it is immaterial to the application of section...that the business purposes are the predominant purposes intended to be served. The object of the taxpayer in making the expenditure must be distinguished from the effect of the expenditure.*" The predominant object in the example given in the preceding paragraph is to honour the service contract.

238. Is the PCN paid for the purpose of the trade? No. It is paid because the appellant has a statutory liability to pay it. The underlying factors relate to the trade, not the PCN; the appellant could possibly have rescheduled the delivery, gone around the block, as suggested by Mr Sewell, or contacted the customer to negotiate alternative arrangements. If the potential issue had been addressed sooner with a parking site survey and a dispensation sought the problem might not even have arisen.

239. The appellant argues that it had a "straight choice" to opt to park safely or to break the parking laws, but the appellant has not established on the facts available to us, and we have considered them exhaustively, that the claimed payments for the PCNs are inevitably and only triggered by safety concerns. We do not accept the appellant's core argument that the trade cannot be conducted without incurring PCNs solely caused by safety imperatives and that therefore the PCNs arise out of the trade itself. The appellant had the opportunity to minimise its exposure in a number of ways and although some mitigation was undertaken over a period, especially latterly, in our view it did not render the PCNs unavoidable and that for the reasons stated.

240. The appellant further argues that the distinction between it and other traders and also between it and the various authorities to which we were referred is that for it, almost uniquely, PCNs are entirely to be expected whereas in the course of a normal trade the expectation is that one would not be breaking the law. The TfL publication was not solely directed at the security industry and indeed one of the other case studies was Virgin. There are many industries where parking tickets are simply an

[9] [1983] 2 AC 861

overhead and entirely expected. It is an identifiable, anticipated, not necessarily desirable, but often encountered commercial reality. It is sometimes reported that some companies, and individuals, make a strategic decision not to park legitimately and pay for parking but take "their chances" with incurring PCNs all on the basis of convenience and a possible overall saving in cost. We are not suggesting at all that that is the case for the appellant, but are simply highlighting the differing attitudes to PCNs in the marketplace. For some taxpayers it is simply a non-deductible but commercially acceptable expense.

241. In our view, the cost of a PCN is paid in connection with the trade, obviously, but the crucial words are: "*wholly and exclusively for ... the trade*". The rule is only satisfied if the taxpayer's **sole** purpose for incurring the expense is for the purpose of the trade. If there is a non-trade purpose then the expenditure is not allowable even if there are also one or more business benefits in making the expenditure. The trade is not that of breaking the law. The breach of the law is a deliberate activity, which is undoubtedly for commercial gain and comes about as a result of activity in the course of the trade, but it is no more a part of the appellant's trade than that of e.g. Virgin one of the other case studies for TfL. The payment was at least in part to meet the legal obligations.

242. In our view it falls squarely within what Lord Sterndale M.R. said in *Von Glehn: "...it has been connected with the trade, because if the trade has not been carried on the penalty would not have been incurred...but...they committed a breach of the law, and for that breach of the law they were fined...".*

243. The payment for PCNs was a disbursement or expense but it was not money wholly and exclusively laid out or expended for the purpose of the appellant's trade and nor was it a loss connected with the trade. We agree with the dicta in *Warnes* that: "*....but I do not think it is possible to say that when a fine, which is what it comes to, has been inflicted upon the trading body, it can be said that that is "a loss connected with or arising out of" the trade within the meaning of this Rule*."

244. Accordingly, in our view it was not an allowable deduction for computing the profits to be charged to corporation tax.

245. Even if we are wrong in that there is still an elephant in the room.

246. On the facts it has not been established that any PCN has been incurred where all possible relevant alternatives have been canvassed such as dispensations, alternative hours or methods of delivery etc. and nothing has proved possible. Tribunals do not usually deal in hypothetical situations and we are reluctant to do so. We have had due regard to Rule 2 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and considerable expense has been incurred by both parties in litigating about public policy, dilution and deductibility.

247. We have been asked to make a decision in principle covering the periods before and after the relevant period, regardless of quantum. Although the appellant has not produced evidence of such an example, we take the view, and it seems HMRC do not overtly disagree, that there is a possible scenario where a dispensation has been

refused, every opportunity has taken to arrange safe delivery and it is not possible to park safely within the parameters of the legislation…what then?

248. We have found that the legislative policy is that of punishment and deterrent.

249. The appellant argued that the *McLaren* decision is not comparable on the facts, and we agree that it is not, as indeed are almost none of the other authorities. Nevertheless, it is an excellent exposition of the law.

250. We totally agree with the findings in *McLaren* and in particular at a number of paragraphs, where having reviewed the authorities, the Tribunal found:

(a) Paragraph 68: that when looking at the broad general principles of what counts as an allowable deduction, or why an expense is not, the reason for that relates to the particular character of the penalty and where the purpose is to punish the taxpayer the *"…dilution of the legislative policy is a (strong) example of a special circumstance in the nature of the expense which made it non deductible"*

(b) Paragraph 69: to allow a tax deduction where the policy is one of punishment would be dilution of policy.

(c) Paragraph 75: "*We do not detect in the cases any requirement for a serious public interest in the conduct before the dilution policy can apply",* and

(d) Paragraph 76: "*We reject the conclusion that a …penalty imposed to punish a taxpayer would only be non deductible if deduction would be contrary to a serious public interest in the conduct that gave rise to the penalty."*

(e) Paragraph 77: *"Even if the sole purpose of the payment had been to preserve McLaren's trade, it still would not satisfy the statutory requirement because the nature of the payment was such as to prevent its deductibility, namely that it was designed to punish McLaren for an egregious breach."*

251. We do not for a moment suggest that the appellant's behaviour was egregious. It would have been unfair to have omitted that wording but the crucial point is the word "punishment". In its own context, the appellant's breaches are almost all at the more serious end of the spectrum. However, the degree of seriousness, as was articulated by Ormiston J in *Mayne Nickless Ltd v Commissioners of Taxation*[10], is not a factor that impacts on the application of the relevant principles.

252. The key point is that the PCN's were incurred by the appellant, through its employees, in its character as a legal person that consciously and deliberately decided to infringe parking restrictions for commercial gain.

253. Accordingly, the expenditure could not, and did not, qualify as deductible expenditure because it fell squarely within the provisions of section 74 ICTA, and latterly Section 54 CTA, viewed through the prism of all the relevant authorities.

[10] [1984] Vic Rp 71 (Supreme Court of Victoria)

254. For all these reasons the appeal cannot succeed.

255. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ANNE SCOTT

TRIBUNAL JUDGE
RELEASE DATE: 7 APRIL 2016

Appendix 1

Commissioners of Inland Revenue v Alexander von Glehn (1919) 12 TC 233

5 *Commissioners of Inland Revenue v E C Warnes & Co Ltd* (1919) 12 TC 227

Cattermole v Borax & Chemicals Ltd (1949) 31 TC 202

McKnight v Sheppard (1996) 71 TC 419

10

McLaren Racing Ltd v The Commissioners for Her Majesty's Revenue & Customs [2012] UKFTT 601 (TC)

McLaren Racing Ltd v The Commissioners for Her Majesty's Revenue & Customs
15 [2014] UKUT 0269 (TCC)

Strong & Co, of Romsey, Ltd v Woodifield (1906) 5 TC 215

Golder v Great Boulder Proprietary Gold Mines Ltd (1952) 33 TC 75

20

Mallalieu v Drummond [1983] 2 AC 861

David John Bedford v Financial Services Authority FS/2010/0015

25 Case No D99/01 (Inland Revenue Board of Review, Hong Kong)

British Columbia Ltd v Canada (1999) 3 SCR 804 (Supreme Court of Canada)

MayneNickless Ltd v Commissioners of Taxation [1984] VicRp 71 (Supreme Court of
30 Victoria)

Herald & Weekly Times Ltd v Federal Commissioner of Taxation (1932) 48 CLR 113 (High Court of Australia)

35 *Robinson v CIR* [1965] NZLR 246

Madad Pty Ltd v Federal Commissioner of Taxation [1984] FCA 287

Nicholas Nathan Ltd v CIR [1989] 3 NZLR 103

40

Peterson v Denmark (1999) 27 EHRR CD96

Appendix 2

Parking Regulations and legislative Framework

1. Throughout the period since 2004, parking restriction enforcement has been a civil matter administered by TfL and local authorities. The Road Traffic Act 1991 ("RTA") removed responsibility for enforcement of certain traffic contraventions from law enforcement agencies and criminal courts and instead decriminalised parking enforcement became the responsibility of local government agencies and the civil courts (sections 65 and 76 RTA).

2. Section 77(2) RTA provided that a penalty charge is payable in respect of any decriminalised parking contravention and sections 77(3) and 66(1) RTA provided for penalty charges to be enforced by "parking attendants" by the issue of PCNs.

3. Section 74 RTA (as amended by section 284 of the Greater London Authority Act 1999 ("GLA")) provided that in relation to penalty charges:

(a) the levels of penalty charges to apply in London were to be fixed by TfL, so far as relating to trunk roads or GLA roads and the relevant London Local Authority so far as relating to other roads,

(b) the functions conferred on the local authorities were required to be exercised by those authorities jointly by means of a single Joint Committee,

(c) any proposal by the Joint Committee regarding the level of charges to be imposed in London requires the approval of the Mayor of London, and if (s)he did not approve, later could set the level of charges,

(d) all final proposals in regard to charges must be submitted to the Secretary of State for final approval.

4. With a view to achieving co-ordinated action in relation to parking in London, Section 63 RTA requires the Secretary of State to issue guidance to the London authorities with respect to the appropriate level for penalty charges and similar matters. In implement thereof, in February 1998, the Government Office for London (GOL) published the Traffic Management and Parking Guidance for London, which states that it was "*intended to provide a framework for traffic management and parking controls throughout Greater London which serves a wider set of environmental, social and economic objectives.*" It sets out the policy imperatives (see paragraph 14 below).

5. On 8 December 2006, following public consultation, which had detailed a full review of amongst other matters PCNs, the Joint Committee decided that with effect from 1 July 2007, there should be two differential levels of parking penalties that related to the seriousness of the contravention within each of the three levels (A-C) of banded contraventions. Contraventions designated as "more serious" and therefore warranting the higher penalties included:-

02 Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force

46 Stopped where prohibited (on a red route or clearway)

47 Parked on a restricted bus stop or stand

62 Parked with one or more wheels on or over a footpath or any part of a road other than a carriageway.

The list of those "Standard PCN Codes v6.5" was published in November 2007. We note that v6.6.1 published in April 2012 was in identical terms as far as those codes are concerned.

6. Schedule 12 of the Traffic Management Act 2004 (in conjunction with several Statutory Instruments) repealed the relevant provisions of RTA in England and Wales with effect from 31 March 2008 but in substance the new legislation is not dissimilar to the previous legislation. Since that date PCNs have been issued in England and Wales pursuant to the Traffic Management Act 2004 (Section 72 being headed "Civil penalties for road traffic contraventions") and, in England, the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. These statutory provisions provide for the notification, adjudication and enforcement of parking contraventions by local authorities and specifically for the imposition of penalty charges in respect of road traffic contraventions that are subject to civil enforcement. Those are specified in Schedule 7 of the Traffic Management Act 2004. PCNs may be issued within Greater London in respect of designated parking spaces and both inside Greater London and elsewhere in respect of specified "offences" committed whilst a vehicle is stationary.

7. In summary, the contraventions 02, 46, 47 and 62 described in paragraph 69 remained unaltered.

8. In broad terms Schedule 9 of the Traffic Management Act 2004 restated the provisions identified in paragraphs 67 and 68 above. The revised Operational Guidelines issued by the Secretary of State (albeit not statutory in terms of section 87 of the Traffic Management Act 2004) were issued in November 2010 (see paragraph 20 below). The differential penalties were restated and codes 02, 46, 47 and 62 remained unchanged at the higher level.

9. On 9 December 2010, the Joint Committee decided that the three band system should be reduced to two but the system of differential penalties distinguishing between more and less serious penalties was confirmed.

10. It is a criminal offence to remove or interfere with a PCN, trialable summarily with anyone guilty of that offence being liable to a fine not exceeding £500. If fines imposed by PCNs are not paid, a local authority can recover the fine as if it were payable under a County Court Order.

11. The Civil Enforcement of Parking Contraventions (England) Representations Appeals Regulations 2007 provide that where a person has received a PCN they must be given the opportunity to make representation to the enforcement authority against the penalty charge and the enforcement authority must consider those representations.

5 12. Any surplus rising out of the imposition of PCNs must be applied for specific purposes connected with the provision of transport services by the relevant local authority.

13. Relevant Authorities can choose not to issue a PCN or to cancel a PCN once issued. The most recent Statutory Guidance makes that explicit. The Authorities
10 have a wide discretion. An example of a published "non-enforcement" policy is that issued by the City of Westminster Parking Services in December 2011 which reads: "*Cash collection vehicles actively involved in the delivery/collection of cash to be given 40 mins casual observation. As long as necessary up to 11 am with 40 mins max thereafter. CCTV camera operators should not issue PCNs to cash delivery/collection vehicles unless concession clearly being abused".*

15 **Public Policy in regard to PCNs**

14. Section 63 Road Traffic Act 1991 (RTA) stipulated that the Secretary of State issue guidance with respect to the appropriate level for penalty charges and pursuant to that section GOL published the Traffic Management and Parking Guidance in February 1998 which stated at paragraph 9.3 "*The purpose of penalty charges is to achieve*
20 *compliance with the parking controls ... penalty charges should therefore be set at levels which achieve a high degree of compliance with the controls."*

15. That Guidance indicated in the introduction that the Secretary of State believed that it was important to set out the policy objectives and concerns so that authorities and agencies in London could begin to take forward a new approach to traffic
25 management and parking controls. One of the contexts identified was the need to "*facilitate the development of transport systems which are safe and efficient, and which contribute to the achievement of competitiveness, regeneration and environmental quality."* Road safety was identified as a high priority.

16. More pertinently to this appeal at 2.2 it was identified that: "*it is important that freight*
30 *deliveries and servicing activities are taken into account; parking controls, for example, should have regard to loading, particularly in commercial areas. A cooperative approach involving local authorities, freight operators, business, and residents will assist the identification of the delivery times, routing and access arrangements that balance commercial considerations with environmental and social considerations."*

35 17. Section 16 of the Traffic Management Act 2004 sets out the Local Authorities' duties relating network management. That reads:

> *"(1) It is the duty of a local traffic authority to manage the road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives-*
>
40 *(a) securing the expeditious movement of traffic on the authority's road network; and*

(b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority…"

18. Section 18 refers to Statutory Guidance issued by the Secretary of State. That Statutory Guidance was issued on 28 February 2008 which explicitly states in the introduction that it *"…sets out the policy framework for Civil Parking Enforcement... It attempts to strike the balance between*:

- as much national consistency is possible, while allowing parking policies to suit local circumstances; and
- a system that is fair to the motorist, but also effective in enforcing parking regulations."

19. Other particularly relevant paragraphs read:

(a) Paragraph 12: "enforcement authorities should aim to increase compliance with parking restrictions through clear, well designed, legal and enforced parking controls. CPE provides a means by which an authority can effectively deliver wider transport strategies and objectives. Enforcement authorities should not view CPE in isolation or as a way of raising revenue."

(b) Paragraph 13: "Enforcement authorities should design the parking policies with particular regard to:

- managing the traffic network to insure expeditious movement of traffic…
- improving road safety;
- improving the local environment;
- improving the quality and accessibility of public transport;
- meeting the needs of people with disabilities…
- managing and reconciling competing demands return of space

(c) Paragraph 15: "*The purpose of penalty charges is to dissuade motorists from breaking parking restrictions. The objective of CPE should be for 100 per cent compliance, with no penalty charges."*

(d) Paragraph 21 "*The primary purpose of penalty charges is to encourage compliance with parking restrictions. In pursuit of this, enforcement authorities should adopt the lowest charge level consistent with a high level of public acceptability and compliance"*.

(e) Paragraph 22: "*Parking in a place where it is always prohibited (such as on a red route, on double yellow lines, or in a disabled bay...) Is considered more serious then overstaying or parking is permitted...For this reason enforcement authorities must apply different parking penalties to different contraventions."*

20. The revised edition of the Operational Guidance issued in November 2010 (see paragraph 8 above), extending to 180 pages, again specifically stated that it set out the policy framework. It is more detailed than the previous guidance but the core

principles are not altered in any material manner. It does indicate at 4.20 that Authorities should implement a code of practice that states that ….“:

- *….highquality parking enforcement is delivered fairly and in accordance with the law;*

5

- *parking restrictions are there for good reasons - to improve safety, prevent congestion, ensure a fair distribution of parking spaces, and help reduce pollution; and*

- *parking restrictions should be enforced efficiently, fairly and with proper regard to the rights of the motorist”*

At 4.23 it states: “*Contractors should be rewarded for their contribution to transport objectives-safety and network management in particular.*

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