Analysis of Local Authority responses to "Metric Martyrs" ruling, as applied to parking enforcement

British Weights and Measures Association 2006

Introduction – the "Hierarchy of Acts"

In February 2002, Lord Justice Laws (LJL) of the High Court in London rejected the appeal of Steven Thoburn and his fellow traders against their criminal convictions for using pounds and ounces. The case revolved around two Acts; the Weights and Measures Act 1985 (W&M 1985) that allows the use of pounds and ounces, and the European Communities Act 1972 (ECA 1972) which compels the use of metric units.

Under British constitutional law, the traders' appeal would have been successful. This is because when two Acts conflict, the later Act prevails, i.e. W&M 1985. Instead, LJL gave precedence to ECA 1972 and set aside the right to use British weights and measures. This is because LJL ruled that there now existed a "hierarchy of Acts" consisting of "constitutional" and "ordinary" Acts. Ordinary Acts cannot amend or repeal constitutional Acts unless they make express reference to them in their text.

Lord Justice Laws said that ECA 1972 was a constitutional Act while W&M 1985 was ordinary. Since W&M 1985 did not refer to ECA 1972, LJL ruled that ECA 1972 must prevail. Thus, a more recent Act was deemed to give way to an older Act, in contrast to the previous application of British law which regards all Acts as equal and resolves conflict by applying the later Act. At no point during the appeal hearing did Lord Justice Laws say that he was considering the creation of a hierarchy of Acts, meaning that Mr Thoburn had no opportunity to address the constitutional reasoning on which he was convicted.

The Bill of Rights 1689 and the Road Traffic Act 1991

In 2004, constitution expert Robin de Crittenden observed that, among the Acts identified by Lord Justice Laws as constitutional was the Bill of Rights 1689 (BoR 1689). Like ECA 1972, BoR 1689 cannot be repealed or amended by anything other than express repeal. Mr de Crittenden noted that among the provisions of BoR 1689 is the right of citizens to a court hearing before the imposition of a fine or forfeit: "*That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void*".

Mr de Crittenden had been aware of progressive weakening of the Courts in Britain in recent times. For instance, whereas parking fines previously required conviction by a magistrate's court, the Road Traffic Act 1991 (RTA 1991) enables local authorities to remove the element of conviction and install an automatic penalty system. Local authorities that adopt this regime do not need to prove a parking offence in court before demanding a fine, nor may a motorist appeal the fine to a court. Motorists may appeal only to a civil tribunal (PATAS for London, NPAS for outside London) after the penalty has already been imposed.

Mr de Crittenden pointed out that RTA 1991 makes no reference to BoR 1689; since LJL specifically identified BoR 1689 as a constitutional Act, every automatic financial penalty imposed under RTA 1991 is, to quote the Bill of Rights, "illegal and void". The dilemma for the government is that it cannot have it both ways: either Lord Justice Laws is right and the government must repay millions of pounds in illegally obtained fines; or the February 2002 appeal hearing of Steven Thoburn is wrongly decided, in which case lb/oz are lawful and Steve Thoburn is entitled to a posthumous pardon.

BWMA has asked motorists with parking fines to remind their local authority of Lord Justice Laws' ruling, and to ask that local authorities act in accordance with the ruling by referring parking fines to court, as required by the constitutional Bill of Rights 1689. This paper summarises local authority replies and highlights the implications for the enforcement of metric regulations.

When is a fine not a fine; when it is a *penalty charge*

Councils' initial response to the Bill of Rights clause forbidding fines before conviction is to say that parking fines are not fines but *penalty charges*, for example:

- **Hammersmith and Fulham Borough**: "A penalty charge is not a fine or forfeit".
- **Barnet London Borough** does "...not recognise the penalty charge as a fine or forfeiture".
- **Luton Council**: "…parking attendants issue a Penalty Charge Notice, not a fine".
- **Richmond-upon-Thames Borough**: "… penalty charges are not fines or forfeitures".
- **Chorley Council:** "Your summation of the Bill of Rights [is correct] and no-one may issue fines except by judgement of a court. However, this Council does not issue fines, we issue penalty charge notices".

The view that a fine is not a penalty charge is contradicted by councils' own websites and literature. Research by Derek Coltman shows that over a hundred councils describe parking penalties as fines. These account for over two-thirds of the 142 councils that have adopted powers under RTA 1991, and include councils that say in correspondence that a fine is not a penalty. For instance:

- **Hammersmith and Fulham**: "If you are not parked legally, you may be issued with a Penalty Charge Notice. This is a fine imposed by the Local Authority under the Road Traffic Act 1991".
- **Barnet** urges motorists to "…pay parking fines online".
- **Luton**: "Your parking fine will cost £60, however if you pay your fine within 14 days of issue the cost it is reduced to £30".
- **Richmond-upon-Thames**: "The fines are £100, although if payment is received by the council within 14 days of the penalty charge notice being posted to the registered keeper then £50 will be accepted".
- **Chorley**: "This category [of the Chorley Borough Council website] contains information and services relating to parking fines … car parking fines, now pay online".

Given the interchangeable nature of the terms fine and penalty[1], some councils get confused in their replies. Alan Lott of Reading received a letter from **Reading Council's** Head of Legal Services which both confirmed and denied that a penalty was a fine: "If after the NPAS appeal hearing **the fine is still payable** recovery takes place through the County Court … In my view there is no conflict between the passage you quote from the Bill of Rights 1689 and the decriminalised parking scheme … There is **no fine imposed in these cases"**. Mr Lott asked the Head of Legal Services for a clarification and received the reply, "I apologise for using the word 'fine' on the first page of my letter … it should have read penalty charge …"

Understanding Councils' view of the Road Traffic Act 1991 *vis-a-vis* the Bill of Rights 1689

Councils' claim that a fine is not a penalty charge is confusing but there is a rationale behind it. Local authorities use the word "fine" to refer to financial penalties imposed by the courts following conviction (i.e. the arrangement that existed prior to RTA 1991), whereas "penalty charge" is used to mean penalties imposed automatically under RTA 1991. Thus, the distinction councils seek to make when using the term "penalty charge" is not the payment itself but the process of enforcement. Councils say that, since RTA 1991 is designed to eliminate the need for conviction, the applicable clause in the Bill of Rights is no longer relevant:

- **Birmingham**: "The Road Traffic Act 1991 [established] an independent tribunal process … As the matter is of a civil nature **there is no "conviction"** and any decisions made by NPAS are deemed to be final on all parties".
- **Essex**: "The issue you raise is very interesting but relates to criminal offences. Parking has been decriminalized; therefore the penalty charge notice is a debt. Payment becomes due once a penalty charge notice has been given out; **the issue of conviction therefore never taken place**".
- **Preston**:"…the penalty charge is neither a fine nor a forfeiture requiring conviction".
- **Reading**: "A liability to pay a PCN arises if the regulations in force are contravened … That liability can be challenged by making representations to the Council and in the event of those representa-

[1] The Collins Standard Reference Dictionary includes the following definition of the word penalty: "The handicap, fine, forfeit, etc imposed upon an offender or one who does not fulfill a contract or obligation".

tions being rejected an appeal can be made to an independent adjudicator … **the term conviction is not relevant"**.

- **Trafford**: The RTA 1991 brought about a key change in that parking regulations enforced by Councils were decriminalized and brought within the civil system. Parking legislation therefore is not subject to the provision in the Bill of Rights … therefore **not liable to conviction**.
- **Transport for London**: "The Road Traffic Act 1991 decriminalised parking offences into parking contraventions … **no conviction is made** against those persons found to have contravened the regulations".

Implied Repeal and the Hierarchy of Acts

Under implied repeal, Councils would be right to apply RTA 1991. This is because it is Parliament's most recent Act and its intention to remove conviction is clear. The point that Local Authorities need to address, however, is that LJL has ruled that implied repeal cannot apply to constitutional Acts. The conditions for the amendment or "abrogation" of a constitutional Act were provided in paragraph 63 of his ruling (salient points underlined):

> For the repeal of a constitutional Act or the abrogation of a fundamental right to be effected by statute, the court would apply this test: is it shown that the legislature's actual – not imputed, constructive or presumed – intention was to effect the repeal or abrogation? I think the test could only be met by express words in the later statute, or by words so specific that the inference of an actual determination to effect the result contended for was irresistible. The ordinary rule of implied repeal does not satisfy this test. Accordingly, it has no application to constitutional statutes. I should add that in my judgment general words could not be supplemented, so as to effect a repeal or significant amendment to a constitutional statute, by reference to what was said in Parliament by the minister promoting the Bill pursuant to Pepper v Hart [1993] AC 593. A constitutional statute can only be repealed, or amended in a way which significantly affects its provisions touching fundamental rights or otherwise the relation between citizen and State, by unambiguous words on the face of the later statute.

In other words, to affect the provisions of a constitutional Act, it is not sufficient for Parliament to simply pass an Act stating that conviction is no longer necessary, or that fines are being replaced with automatic penalties, or that the courts are being replaced by a civil appeals system. What Parliament must do is to refer to the constitutional Act by name, or to provide an express recognition that it intends to remove or amend the fundamental right provided for by the constitutional Act. If Parliament does not meet these conditions, the later Act must give way. To say, as Camden Council does, that BoR 1689 "… does not apply in this instance since people cannot be convicted for contravening parking regulations", is to woefully misunderstand the LJL ruling.

On this basis, Lord Justice Laws struck down the right to use British measurements. There was certainly no doubt as to Parliament's intention in passing the Weights and Measures Act 1985: LJL acknowledged in his judgement that W&M 1985 "*…confirms the continuing legality of the use of the yard and the pound alongside that of the metre and kilogram, without predominance of either system*" (paragraph 25). The point he made was that W&M 1985 did not refer to ECA 1972.

BWMA has examined the Road Traffic Act 1991 for any reference to the Bill of Rights 1689 or fundamental rights, and has found none. A number of councils have been asked whether they can identify any reference within RTA 1991 to BoR 1689. With one exception, all failed to respond, the implication being that they also could find no such mention. Only Birmingham City Council answered this question, in a letter to Mr J Croll: "… **the RTA 1991 and other such legislation does not make any reference to the Bill of Rights 1689**".

Conclusion 1: The Road Traffic Act 1991 does not meet Lord Justice Laws' test for "abrogating" or affecting the Bill of Rights 1689. The question for local authorities can therefore be reduced to this: do they take constitutional Acts as their starting point in the application of legislation, or do they look to the later Act?

Council views on the Hierarchy of Acts

All councils were asked to consider Lord Justice Laws' ruling in relation to the Road Traffic Act 1991 and all were supplied with extracts from the ruling, including paragraph 63 quoted above, and the relevant part of Bill of Rights 1689. Replies from 48 councils were received between February and November 2005. Here are some of the responses:

- **Enfield Council**: "The [Road Traffic Act] 1991 Act sets the terms of the borough enforcement powers and **repeals any legislation that contradicts these powers**".

- **Birmingham City Council**: "In answer to your comments regarding the Bill of Rights Act 1689, I would explain that the Bill of Rights does not affect the statutory powers of local authority to issue Penalty Charge Notices. Under the Road Traffic Act 1991, local authorities posses powers as defined in statute, to enforce its statutory provisions, including the issuing of Penalty Charge Notices. This and previous Road Traffic Acts of Parliament have been passed, **regardless of the existence of the Bill of Rights Act 1689**".

- **Cambridge**: "… the relevant provisions in the RTA 1991 are specifically directed at the issue of parking and its enforcement. **As the 1689 Act was clearly in force when the 1991 Act was considered and passed by Parliament**, and that they have given clear direction though the 1991 Act on how the Council is to manage parking enforcement, **the Council has to follow the 1991 Act**".

- **Islington:** "…you appear to be questioning the validity of the Road Traffic Act, or at least the relevant sections from which the penalty charge notice was issued. You will, of course, be aware that **this Act is a piece of primary legislation, enacted by Parliament**".

- **Colchester**: "As you are aware the Bill of Rights 1688 is enshrined in English law, as is the Road Traffic Act 1991 … **The Bill of Rights is not relevant in this instance, as the Borough Council is acting pursuant to its statutory powers granted by Parliament; namely the Road Traffic Act 1991** ... I am fully aware of the judge's comments regarding constitutional statutes and in particular the Bill of Rights 1689 [However] … The fact is, as mentioned to you previously, that Parliament has enacted the Road Traffic Act 1991".

- **Hillingdon: "**I note with interest your assertions concerning the lawfulness of issuing Penalty Charge Notices. I would however respectfully disagree with the conclusions you reach … Since the passing of the Bill of Rights Act 1689 it has come to be accepted that Parliament is the principal body for the enactment of legislation and that **if a piece of legislation has been passed by Parliament it is lawful**".

- **Bath and NW Somerset**: "Your comments [regarding constitutional Acts] have been noted; however the Council will continue with the enforcement of this PCN under the above Act (RTA 1991)".

- **Windsor:** "RTA 1991 was drafted by Parliament in full awareness of the Bill [of Rights 1689]. As the UK is not subject to a written constitution, Parliament is the supreme law making body and the Acts it creates should not be called into question … Halsbury Statutes state that **if there is 'repugnancy or incompatibility between one statute and another the latter will prevail'. Therefore, the Road Traffic Act would take precedence".**

Conclusion 2: None of the 48 councils questioned indicated that they were willing to apply the LJL ruling in relation to parking enforcement. None was willing to implement the Hierarchy of Acts. All indicated that they would apply RTA 1991.

These responses contradict the position taken by councils in relation to weights and measures where the Hierarchy of Acts is applied universally. Indeed, the above responses bear an uncanny resemblance to the arguments presented in defence of Steve Thoburn at his appeal. Councils are therefore acting inconsistently; they apply the constitutional Act in regards to metric conversion, but the later Act in relation to parking fines.

Manoeuvring by the National Parking Adjudication Service

In August 2005, the National Parking Adjudication Service, the body created up by RTA 1991 to hear parking appeals outside of London, issued the following circular to local authorities and motorists' associations.

NPAS CIRCULAR 05/05 **ISSUED AUGUST 2005**

Higgins v Sefton Borough Council (Case No SF 272)

This circular informs you about a recent decision on an issue which has already attracted coverage in the national press and is potentially relevant to all DPE (decriminalised parking enforcement) councils.

In this case the main ground of appeal relied upon by Mr Higgins was that the PCN issued by Sefton Borough Council and the whole of the decriminalised parking enforcement scheme brought in by the Road Traffic Act 1991 is illegal because it is in breach of the Bill of Rights Act 1689. Mr Higgins argued that the Bill of Rights Act 1689 is still in force and makes it illegal for a Penalty Charge to be imposed before the recipient has been convicted in a court of law. The particular provision relied on is that "all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void." The argument was made against a PCN issued by Sefton Borough Council, but could be raised by any appellant against any DPE council in any case as it concerns the underlying legality of decriminalised parking enforcement and PCNs.

The Adjudicator rejected this argument and dismissed the appeal. His decision is attached in full. However, we have summarised the key points made by the Adjudicator in arriving at this decision.

(i) The 1689 Act is relevant, but there is no conflict between it and the decriminalised parking scheme brought in by the Road Traffic Act 1991.
(ii) The intention of the 1689 Act was to ensure a person has a right of challenge to any financial penalty imposed on him or her.
(iii) When a PCN is issued the RTA 1991 imposes a statutory duty on DPE councils to consider and respond to representations against the issue of a Notice to Owner which must be issued before a PCN can be enforced, and a right of appeal to an independent tribunal against the issue of the PCN if the council rejects those representations.
(iv) The Road Traffic Act 1991 does, therefore, provide a right of challenge to the imposition of a Penalty Charge and is consistent with the 1689 Act.
(v) The High Court has considered the Road Traffic Act 1991 and the powers of Parking Adjudicators and did not raise any issue in relation to the 1689 Act.

We anticipate that, in light of national press coverage about this issue being raised by other individuals in relation to other DPE councils, we will see further cases where this argument is pursued. If you are in any doubt as to how this issue may affect your council you should consult your legal department. In any event you may want to provide a copy of this circular and the Higgins decision to your legal department.

Andrew Barfoot Tribunal Manager

This circular contains two statements that differ from those of local councils:

- Point (i) states, "**The 1689 Act is relevant**". This conflicts with the view of councils that BoR 1689 is rendered irrelevant or non-applicable by RTA 1991.
- Point (ii) refers to "… **any financial penalty**…" This removes the purported distinction between penalties and fines.

To see the variance between the reasoning of NPAS and councils, compare the NPAS circular to a letter by **Newham Council** written the same month:

Newham Council, 26 August 2005	**National Parking Adjudication Service, August 2005**
"The historic laws which you persist in quoting are not relevant to the current case, since parking matters were decriminalized in 1995 and London Borough of Newham, in keeping with all other local authorities, levies parking charges, not fines".	"The 1689 Act is relevant … The intention of the 1689 Act was to ensure a person has a right of challenge to any financial penalty imposed on him or her".

What could have caused the issuing of this circular by NPAS? BWMA speculates that NPAS has realised the consequences of the LJL ruling on RTA 1991; so, instead of saying that BoR 1689 is superceded by RTA 1991, which Laws says cannot be, NPAS is seeking to reconcile the two Acts. Thus, point (iv) says: "**The Road Traffic Act 1991 … is consistent with the 1689 Act**". Following the distribution of the circular, some councils have adopted its wording, resulting in them doing a *volte face*. Compare, for example, letters by Birmingham City Council to two different motorists - before and after the NPAS circular:

Birmingham City Council, pre-Circular, July 2005	**Birmingham City Council, post-Circular, October 2005**
"Under RTA 1991, local authorities posses powers as defined in statute, to enforce its statutory provisions, including the issuing of Penalty Charge Notices. This and previous Road Traffic Acts of Parliament have been passed, regardless of the existence of the Bill of Rights Act 1689. Therefore, the BoR 1689 has no bearing on the enforcement of Penalty Charge Notices …"	"The intention of the 1689 Act was to ensure a person has a right of challenge to any financial penalty imposed on him or her … When a Penalty Charge Notice is issued, the Road Traffic Act 1991 imposes … a right of appeal to an independent tribunal … The Road Traffic Act 1991 does, therefore, provide a right of challenge to the imposition of a Penalty Charge Notice and is consistent with the 1689 Act".

Thus, Birmingham City Council concludes in its October letter, to Mr S Hall, that Lord Justice Laws' ruling, "…does not have the effect of removing RTA 1991 from the statute books".

This reasoning is very convenient, but is the NPAS circular on which it is based accurately representing the Bill of Rights 1689? The part of the circular that requires scrutiny is point (ii) that says the intention of BoR 1689 is to ensure a person has a "**right of challenge**". The Bill of Rights does not say this; the relevant clause says all fines "**before conviction are illegal and void**". The words "right of challenge" do not appear anywhere in BoR 1689. The NPAS circular is not an accurate presentation of the Bill of Rights 1689.

To understand the difference between "right of challenge" and "before conviction", one must recall that the whole purpose of RTA 1991 is to remove the element of conviction. Councils are agreed on this (see sample quotes commencing foot of page 2). In its place, RTA 1991 introduces an automatic financial penalty for which no conviction is necessary. Unless the fine is appealed to NPAS or PATAS, it is assumed to have been correctly issued, as illustrated by a letter from **Tendring Council** to Mr R Caspell: "Your formal representation makes no reference to any dispute regarding your reason for being parked in contravention … I conclude that the PCN has been correctly issued".

The effect of RTA 1991 is therefore to *reverse* the enforcement process by placing the onus upon the motorist to challenge an automatic penalty, rather than on the local authority to prove the offence. Thus, the NPAS assertion that BoR 1689 is intended to provide a "right of challenge" is not only incorrect but a distortion. There can be no logical need for a "right of challenge" to a financial penalty that BoR 1689 has rendered "illegal and void".

Conclusion 3: On one hand, councils say that the Bill of Rights refers to conviction. On the other, NPAS says it does not. Since the NPAS view of BoR 1689 is based on a misrepresentation, the original interpretation by councils must be the right one. Councils that have subsequently adopted the circular's wording must therefore be concealing a realisation that RTA 1991 and the metric provisions of ECA 1972 cannot be lawful simultaneously.

Is NPAS a Court of Law?

The removal of conviction also means the removal of the Courts. Not content with rewriting BoR 1689, NPAS presents itself as a "court of law". In a letter to Neil Herron dated 15 September 2005, NPAS accepted that tribunals lay "outside the hierarchy of the ordinary courts of law", but then tried to blur the distinction:

> "The National Parking Adjudication Service is specified as a tribunal in Schedule 1 to the Tribunals and Inquiries Act 1992, and so is under the supervision of the Council on Tribunals. As with all the tribunals specified in Schedule 1 to that Act … it exists outside the hierarchy of the ordinary courts of law. **Nevertheless, all such tribunals are under the same duty to act judicially as ordinary courts of law. Indeed, the natural and ordinary meanings of the words "tribunal" and "court" are the same. In a general sense any type of court can be called a tribunal and vice versa".**

On this basis, NPAS has refused to remove a video clip on its website that features an adjudicator saying:

> "My name is Shan Cole and I am an adjudicator ... I am completely independent. I have no connection whatsoever with the Local Authority … **Although these surroundings are fairly informal, this is in fact a Court of Law** and as such I expect you to tell the truth..."

NPAS is not a court; it is a civil tribunal, as is its London equivalent PATAS which states on its website: "A motorist who disputes liability for a penalty may appeal to us - **they no longer have the option of going to court**". The removal of courts from the process is also made clear by councils:

- **Sandwell**: "I understand Mr de Crittenden is demanding his day in court but the simple matter is this is not possible … A hearing, decided by NPAS, is the legal means of appealing".
- **Enfield**: "PCNs are **not processed through a Court of law** but through an independent tribunal …"
- **Transport for London** (congestion): "… the enforcement of Congestion Charging … is **not dealt with via the courts** but by an independent tribunal".
- **Transport for London** (parking): "… **no court is involved** in the processing of PCNs".
- **Richmond**: "…**the magistrates court has no jurisdiction** to hear these matters. Instead, if you wish to dispute the penalty charge notice, you have the right to a hearing before an independent Parking Adjudicator".

The Mystery High Court ruling

A further aspect of the NPAS circular that requires examination is point (v) that says: "**The High Court has considered the Road Traffic Act 1991 and the powers of Parking Adjudicators and did not raise any issue in relation to the 1689 Act**". Since receiving this circular, a number of councils have referred to this in letters to motorists. Brian O'Hara asked **Watford Council** to identify this high court ruling and received the following reply from Linda Baker, Parking Service Manager: "It is not for me to help you with this and I therefore suggest that you contact [NPAS] direct who I am sure will be able to provide this information". Mr O'Hara asked: "Why is Watford Council relying on NPAS circulars quoting rulings that Watford Council is unable to identify when asked? Does Watford Council know anything about the ruling?" Ms Baker replied, "I have nothing further to add". Denied an answer from his own council, Mr O'Hara wrote to NPAS:

1 October 2005

To NPAS:

I have been in correspondence with Watford Borough Council with regard to a PCN issued in May 2005. Included in the correspondence received from Watford Council was a copy of [NPAS Circular 05/05, August 2005]. On page one of the circular … is a reference to a High Court that had considered RTA 1991 and the powers of Parking Adjudicators. When I asked Watford Council to supply me with the case reference, they replied, "It is not for me to help you with this and I therefore suggest that you contact NPAS direct, who I am sure will be able to provide this information, on request". I would be most grateful, therefore, if you would do just that.

Yours sincerely, Brian O'Hara

4 Oct 2005

Dear Mr O' Hara,

Thank you for your e-mail dated 1st October 2005 … You will appreciate that, as the decision-making body, NPAS must remain impartial, and that this precludes NPAS from offering advice or assistance to one party in relation to an appeal that will then have to be decided by the tribunal. You will need to seek your own legal advice on this question ... I cannot, therefore, be of assistance in relation to your questions.

Yours sincerely,

Andrew Barfoot

5 October 2005

7 Oct 2005

Dear Mr Barfoot

Thank you for your email of 4 October 2005. You say that NPAS must remain impartial and that this precludes NPAS from offering advice or assistance to one party. However, you appear to already have done so by issuing advice to Watford Council. All I am asking in my first question is that you identify for me the High Court ruling. I think this is entirely reasonable.

Yours sincerely,

Brian O'Hara

Dear Mr O' Hara

NPAS has not offered any specific advice to Watford Borough Council. The Circular to which you refer was circulated to all councils which operate civil parking enforcement within our jurisdiction, to various bodies which represent the interests of drivers (and so appellants) as well as being made available under our Freedom of Information Act Publication Scheme … This is a common practice of tribunals. The Circular simply records the decision that was made. If you require more information than is contained in the body of the decision about the law on the issue with which the decision was concerned, as you do, you must seek your own legal advice. NPAS cannot perform this role as it is not an advisory body, and so I am unable to answer your question.

Yours sincerely, Andrew Barfoot

9 October

Dear Mr Barfoot

Thank you for your email of 7 Oct. If your circular, having been sent to all Councils, does not constitute specific advice to Watford, then I can see no reason why you should not identify the date and reference of the High Court ruling.

If, when sending out the circular, you were not willing to identify the ruling, then you should not have referred to it. In the event, you did refer to it and so there is an obligation to name it.

Yours sincerely, Brian O'Hara

11 Oct 2005

Dear Mr O'Hara

The position remains as stated in the final three sentences of the first paragraph of my email dated 7th October 2005.

Yours sincerely,

Andrew Barfoot

Following Mr Barfoot's refusal to name the high court ruling, BWMA wrote to **Andrew Knapp**, the NPAS adjudicator on whose adjudication the circular was based. Mr Barfoot replied, saying that Mr Knapp, "…is not prepared to enter into post-decision correspondence in relation to this decision". BWMA also wrote to the **High Court** itself to see if they could identify the ruling. The High Court replied that the information in the circular was "very limited" and that they were "not able to effectively carry out a search". Seemingly, there is no way to identify this ruling, even though the suggestion of its existence has been made to every local authority in the country via the NPAS circular.

Conclusion 4: Certainty and the law

Both traders and trading standards authorities need certainty in the law to carry out their functions; so too do motorists and parking authorities. It has been abundantly clear since February 2002 that there is an absence of certainty in Britain as to which laws apply: Acts that are more recent, or Acts that are considered more important.

If people are entitled to choose which laws to follow, they will choose the laws that suit their interests. The people most like to benefit from this are those in government, since the government is in a position of power to exploit uncertainty. In the context of weights and measures, it is in the government's interests to adopt the Hierarchy of Acts so it will not fall foul of EC metric directives. In relation to parking fines, it is in the interests of government to adopt implied repeal, because it relies on fines for revenue. Thus, two government departments in the same building can be applying conflicting constitutional processes for choosing laws. This is not law, but lawlessness.

The British government claims that the certainty of compulsory metric regulations is now beyond doubt. They are wrong; the government cannot claim a special constitutional rule by which ECA 1972 can override W&M 1985 when local councils and other government institutions are denying this same constitutional rule by applying automatic financial penalties. As long as the government says that RTA 1991 is lawful, then so too must be the Weights and Measures Act 1985: "***the yard or the metre shall be the unit of measure of length and the pound or the kilogram shall be the unit of measurement mass***"