Neutral Citation Number: [2023] EWHC 621 (Admin)

Case No: CO/369/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Tuesday, 21st March 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

THE KING (on the application of KEVIN CHARLES GODIN- PRIOR)	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR TRANSPORT **(2) CHIEF CONSTABLE OF NORTH YORKSHIRE POLICE**	**Defendants**

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The **Claimant** did not appear and was not represented
Michael Fry (instructed by GLD) for the **First Defendant**
Ian Mullarkey (instructed by North Yorkshire Police) for the **Second Defendant**

- -

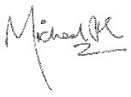
Hearing date: 21.3.23

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

Introduction

1. This claim for judicial review was commenced on 2 February 2022. Its target is the revocation on 22 April 2021 by DVLA for the Secretary of State for Transport of the Claimant's driving licence. That impugned decision was the subject of a statutory appeal by way of complaint to the magistrates' court, which Stockport Magistrates' Court dismissed on 5 November 2021. Revocation "because of disability or prospective disability" of a driving licence is pursuant to section 93 of the Road Traffic Act 1988. The statutory right of appeal arises by virtue of section 100. Permission for judicial review was refused on the papers by UTJ Plimmer by an order stamped 10 June 2022. She refused permission on the basis firstly of delay; secondly of alternative remedy; and thirdly of lack of arguability. She ordered that the Claimant pay £1,800 of the £4,610.60 claimed in the Secretary of State for Transport ("the Secretary of State")'s costs schedule. She made "no order as to costs" in relation to the North Yorkshire Police ("the Police") who had filed an acknowledgement of service with a pleaded costs claim but had filed no costs schedule. She gave the Claimant permission to file any objections in relation to the adverse costs order against him.

Proceeding in the Claimant's Absence

2. There has been no attendance today by the Claimant who acts in person. I am satisfied that it is appropriate to proceed. The notice of hearing provided to all the parties by an email on 4 January 2023 was sent to the email address used by the Claimant. That notice of hearing email gives the location and the 10:30am start time for today's hearing. It also explains that this was the only date available to the Court accommodating everyone's availability and judicial availability. I am aware that the Claimant sent an email to a large number of recipients from that same email address on 26 January 2023. The Court sent subsequent emails to the Claimant on 3 March 2023 and 7 March 2023. No papers were filed by the Claimant for this hearing. Bundles were filed on 15 and 20 March 2023 by the two Defendants. The skeleton was filed on behalf of the Secretary of State on 14 March 2023. GLD sent emails to the Claimant on 15 and 20 March 2023 serving the Secretary of State's skeleton argument and then the Secretary of State's bundle. The Police's legal representatives emailed the Claimant on 10 March 2023 sending him the bundle prepared by them. On 16 March 2023 the Administrative Court Office staff member dealing with the case had a telephone conversation with the Claimant in which the Claimant said he had recently undergone some hospital treatment and would be filing an application for "an extension of time" either that day or the following day. That was in circumstances where any skeleton argument or bundle was required by 14 March 2023, a deadline which had passed. Any further documentation from the Claimant would have needed an "extension of time". No application for an extension of time for filing any document was received from the Claimant. No other application was received. Email inboxes have been checked this morning. I am quite satisfied that the Claimant is fully aware of this hearing. Having regard to the interests of justice, the public interest and the overriding objective, I have decided in all the circumstances to proceed with the hearing in the Claimant's absence.

3. It was suggested that that absence means that there is "no application before me" today. I am unpersuaded by that suggestion. The Claimant filed a notice of renewal of permission. That is the application which, in my judgment, is before the Court. I have read all the papers including everything that the Claimant has written in his grounds for judicial review and renewal grounds, and the other materials which he has provided including his objection to the adverse costs order. I will consider afresh the viability of the claim for judicial review.

Background

4. The background is as follows. By a D751 Notice dated 7 February 2021 the Police notified the DVLA of a "possible medical condition" relating to the Claimant following an incident in the early hours of 2 February 2021. I interpose that there were subsequently disclosed in criminal proceedings Police reports relating to that incident. The D751 Notice was exhibited to a witness statement dated 25 October 2021 by the DVLA's agency doctor who had considered the case on 26 February 2021. The "details of medical condition" in the D751 Notice recorded that the Claimant had "exhibited confusion"; and that he "was very confused about how he had got to York". It also said that the "initial report" to the Police was that he had been "slumped at the wheel". The Claimant is aged 69 and had been found on 2 February 2021 in charge of a minibus which he had then driven on the York bypass. A prosecution ensued relating to an expired MOT certificate and the vehicle not being roadworthy. That led to a conviction in the Harrogate Magistrates' Court in August 2021 resulting in three penalty points and a £550 fine. Those are the criminal proceedings to which I have referred.

5. The DVLA issued a letter on 1 March 2021 ("the Notification Letter"). That letter explained that the DVLA had received information from the Police which suggested that the Claimant had a medical condition affecting his ability to drive safely and that as a result the DVLA needed to make enquiries into his fitness to drive, which enquiries could include asking him to attend an examination with an independent doctor or a driving assessment or a driving appraisal. Before the DVLA started those enquiries he was given two options. The first was to surrender his driving licence with a view to resuming driving if medical evidence confirmed that he was well enough to drive. The other option was a confidential medical investigation into fitness to drive which would first require from him (a) a signed declaration and (b) a completed questionnaire. Both documents needed to be returned to the DVLA. The Notification Letter gave 14 days for that and warned that in the absence of a response the driving licence stood to be revoked. The DVLA then issued a further letter on 23 March 2021 ("the Warning Letter"). That letter explained that the DVLA had previously written on 1 March 2021 and a further copy of the Notification Letter was enclosed. The Warning Letter said this: if the DVLA did not receive the information requested within 21 days of the date of the Warning Letter, the DVLA would have no choice other than to close the Claimant's case, explaining that that may mean cancellation of the driving licence. The 21 days expired on 13 April 2021.

6. The DVLA then issued a third letter on 21 April 2021 ("the Revocation Letter"). These actions followed a decision by an agency doctor, described later in a witness statement filed in the Stockport Magistrates' Court appeal proceedings. That witness statement exhibited certain documents including the D751 Notice. The Revocation Letter stated that having not received the requested information, the DVLA was

revoking the Claimant's licence the following day. It explained that the Claimant could reapply for his driving licence by sending a completed D1 application form filling in the appropriate medical questionnaire. That position was repeated in a subsequent DVLA letter of 17 June 2021. The Revocation Letter also explained that if he disagreed with the decision to revoke the licence, the Claimant had a statutory right of appeal to the magistrates' court. The Claimant took that latter course. The reasons of the Chair of the Magistrates Court for refusing the appeal recorded that the Claimant had failed to respond to the Notification Letter and Warning Letter; and that the Claimant confirmed that he had not responded with the completed documents within the time frame. The Magistrates referred to a letter from the Claimant's GP about his good health. That letter was dated 13 May 2021. The Magistrates explained that he would have to reapply for his driving licence.

The Issues Discussed

7. There are really, as it seems to me, two sets of issues raised in the claim for judicial review. The first set of issues concerns excusability and default. The Claimant says that he did not receive the Notification Letter. He accepts that he did receive the Warning Letter (with its attached copy of the Notification Letter). He says he then mislaid them, which he attributes to what he calls wrongful arrest on the part of the Police. He says that the notice period was unreasonable and unjust. He also says that the DVLA were unresponsive during the notice period, pointing to a detailed email which he wrote on 13 April 2021.

8. The problem with all of this is that excusability of default was part of the appeal considered by the Magistrates on the appeal. A section 100 appellant could point to any evidence concerning the position as it was at or before the time of the decision to revoke. So, for example, if an appellant says they never received a notification or a warning, they could explain this. They could also explain to the magistrates what they would have been able to say, at the time, if they had not been 'unfairly hampered'. Parliament has provided a statutory right of appeal to the magistrates on the merits. Here, the Stockport Magistrates straightforwardly found that the revocation was not wrong on the merits. The reasons recorded that the Claimant had failed to respond within the allocated timeframe by providing the completed documents. The Magistrates straightforwardly found that that default, in the circumstances, was sufficient to justify on its merits the revocation decision, and that the Claimant's recourse was to reapply for his licence. The Claimant then had a statutory rights of appeal on the merits to the crown court, as well as the opportunity to request the magistrates court to state a case for appeal on a point of law to this Court. Neither of those avenues was taken. Judicial review is inappropriate given the alternative remedies made available by the statutory schemes. But nor is there any arguable basis for impugning the revocation decision, in the circumstances of the present case, on any of the grounds and arguments sought to be put forward relating to the default and questions of excusability.

9. The second set of issues concerns the underlying exchange of information between the Police and the DVLA. The Claimant says that the original D751 Notice was incorrect and unfair. He says there was a non-disclosure which 'hampered' him. I understand the Claimant also to criticise the contents of the underlying police reports which were not provided to the DVLA but which were relied on (and disclosed) in the criminal proceedings in the Harrogate Magistrates' Court. The Claimant says that this

second set of issues was treated as beyond the scope or ambit of the appeal to the Stockport Magistrates, leaving judicial review as the sole route of challenge.

10. I am quite satisfied that there is nothing in this from a public law perspective. The DVLA, entirely properly, and acting in the public interest, provided an established avenue for the evaluation of whether or not there was a medical problem. The appropriate notice period was allowed. The Claimant understood what he needed to do. He was not 'hampered', still less by anything done or not done by the DVLA. In the event, he did not provide the requested documents until after the deadline had passed and the revocation decision had been taken. He did not provide the GP letter until on or after 13 May 2021. He now has the opportunity to reapply for his licence. He was told several times by the DVLA that that was what he should do and he was told it again by the Stockport Magistrates when the appeal by way of complaint was dismissed. Nor, in any event, can I see any arguable legal merit or materiality in his complaints whether about substance or process. The fact that Parliament has provided the statutory mechanism of an appeal on the merits, and the fact that the Claimant was able to pursue that mechanism, protected him appropriately if the revocation decision was wrong.

11. I have considered the 13 April 2021 email. The Claimant says this email evidences the DVLA unresponsiveness and that it supports his case that he was being 'hampered'. But in my judgment, beyond argument, the email does not help him. It expresses frustrations, it raises complaints about calls, about a £20 road tax amount, about the removal of the vehicle and about arrangements relating to a bank. It is not an email about the requested documents, or the deadline of 21 days. It is not an email about a possible medical condition. Nothing in its contents begin to explain or justify the failure to provide the documents requested, which were due on that same day (13 April 2021). Further – and in any event – all of this was for consideration on the facts and merits by the Magistrates.

12. It follows that none of these grounds are viable, either in arguability terms, or as appropriate for pursuit in light of the statutory scheme of the used alternative remedy (appeal to the magistrates) and the unused further alternative remedies.

13. Finally, I also agree with UTJ Plimmer on the question of delay. Even on the most generous basis possible, treating judicial review as a remedy of last resort, and treating the pursuit of an alternative remedy as capable of excusing the passage of time, the fact is this. The impugned decision is the revocation (22 April 2021). The appeal was dismissed on 5 November 2021. Judicial review procedure does not allow a period of three months after that time (November 2021) to then challenge the revocation (of April 2021). The judicial review claim is not a challenge to the Magistrates Court's decision. Nor could it be, given that there are the alternative remedy avenues of appeal against that decision on fact, merits and law. The judicial review challenge is squarely to the revocation. Even if the passage of time were excusable up to 5 November 2021, a full three months thereafter is not. I have left this delay point until the end so that I can consider the issues in the round. In all the circumstances, there is no justification for an extension of time.

Secretary of State's Costs

14. There is, in my judgment, no basis for overturning the costs order which UTJ Plimmer made in support of the Secretary of State. A notice of objection was provided by the Claimant (5 July 2022), but was on its face sent to the DVLA rather than GLD. I have it and was able to show it to Mr Fry. He was able to confirm that GLD had received it from the DVLA. I have considered its contents. Its essence is to argue that there were 'defaults' and 'maladministration' by the DVLA which would have avoided the judicial review proceedings. Reference is also made to the fact that there was no order as to costs in the Magistrates' Court, to human rights, and to the Claimant's means. None of that provides a justification for disturbing the Judge's order for what constituted a portion of the Secretary of State's Acknowledgement of Service costs.

Police's Costs

15. The Police belatedly provided a costs schedule on 6 July 2022 and wrote letters to the Court and the Claimant. They invited the Court to make a costs order in their favour. Mr Mullarkey has maintained that position before me today. He invites an order for costs, limited to the Police's costs of their Acknowledgement of Service, now evidenced in the cost schedule. That is in the sum of £2,369.10 which he invites me summarily to assess. The July 2022 letter that was written, warning the Claimant that costs would be sought, made reference to that part of UTJ Plimmer's order which had set out a mechanism for submissions on costs. However, that was the mechanism which was concerned with the adverse costs order against the Claimant and in favour of the Secretary of State. In my judgment, the reference that was made in the letter was inapt. That same mechanism is described in the Administrative Court Office Judicial Review Guide 2022 §25.4.4. Mr Mullarkey submits that reading that paragraph with the following paragraph §25.4.5, what they reflect is a power in this court to reconsider the question of costs of the Acknowledgement of Service in favour of the Police. He submits that the July 2022 letter that was written to the Claimant, when read as a whole, was a fair warning as to what this Court would be invited to do. He is not inviting any costs order in relation to today's hearing, notwithstanding that the Police have incurred costs of attending. He submits that the appropriate course in all the circumstances, is the limited costs order which he now seeks.

16. I will proceed, in the Police's favour, on the basis that I have the power to make the costs order which is now sought. I am also prepared to accept that the letter written in July 2022 gave a sufficient warning, as did the fact that the Police's costs schedule itself was provided. But, in all the circumstances of this case, I am not prepared to make a second costs order. I therefore refuse the Police's application. UTJ Plimmer's order was carefully considered on the question of costs. She plainly had regard to the position 'in the round' when making the order that she did. As to the Police's costs, she was not persuaded that it was appropriate to make any order, including any direction to allow a costs schedule belatedly to be supplied. She made clear that she had decided that there should be "no order" as to these costs. That was in circumstances where she was considering what would have been a second costs order. In my judgment, there is no justification for me – in all the circumstances – now disturbing that order and visiting the Claimant (a litigant in person) with a second costs order relating to an Acknowledgement of Service which had been provided prior to UTJ Plimmer's order, and in circumstances where there was no costs schedule for her to consider.

17. One of the features that weighs with me is this. Had there been no application to renew permission into open court, as it seems to me, the Police would have been in difficulty as to the costs of the Acknowledgement of Service. There was no provision for them to make any application. What they did was to file with the Court a letter of "request" that the costs position be 'reconsidered', after the default in not providing a costs schedule. I do not know what the Judge would have done had there been a Police costs schedule. It is possible there would have been an overall adjustment of the order that was made in favour of the Secretary of State, viewed 'in the round', even had there been a second order. In any event, I am concerned that the Claimant should be disadvantaged – by comparison with the position absent a renewal – by the fact that he has renewed his application for permission into open court. It is rightly recognised by both Defendants that there is no basis (or at least no application is pursued) for any costs of or associated with this renewal hearing. Be all of that as it may, I am not persuaded in the circumstances that it is appropriate that I make a second order as to costs. The question of its level as a matter of summary assessment does not therefore arise.

My Order

18. The Order that the Claimant pay the Secretary of State's costs summarily assessed at £1,800 will stand. The Police's application for costs is refused. There will be no order as to costs in relation to today. The Claimant's renewed application for permission for judicial review is dismissed.

21.3.23