



2024UT17

Ref: UTS/AP/23/0032

**DECISION NOTICE OF SHERIFF COLIN DUNIPACE,
JUDGE OF THE UPPER-TIER TRIBUNAL FOR SCOTLAND (GENERAL REGULATORY
CHAMBER)**

IN THE CASE OF

Martin Roberts

Appellant

- and -

North Lanarkshire Council

Respondent

FTS case reference NL00022-2309

20 February 2024

Decision

1. The Upper Tribunal allows the Appeal and remits consideration of same to a freshly constituted Tribunal.

Introduction

2. Mr Martin Roberts (hereinafter “the Appellant”) has submitted an Appeal against a decision of the First-tier Tribunal of the General Regulatory Chamber (hereinafter referred to as ‘the Tribunal’) dated 14 July 2023 refusing his appeal against the imposition of a Penalty Charge Notice (hereinafter referred to as the ‘PCN’) at 14.49 on 15 June 2023 in Academy Street, Coatbridge. In support of his Appeal the Appellant has submitted the following documents, namely:

- a. Form UTS-1
- b. Legal Member’s decision dated 20 October 2023
- c. Decision of First-tier Tribunal granting Permission to Appeal dated 7 November 2023

3. By way of background, the Appellant was issued with a PCN in relation to a parking contravention involving his motor vehicle registration number AV64VRW on 15 June 2023. The nature of the alleged contravention was that the Appellant was:

“Parked in a restricted street during the prescribed hours”

4. Neither the Appellant nor the Respondent elected to have a telephone or oral hearing and the original appeal was decided by the Legal Member of the Tribunal on the basis of the documentary evidence provided and submissions. The original appeal was refused by the Legal Member on 20 October 2023, and full written reasons for this decision were provided by the Legal Member in their decision of that date.

5. The written reasons given by the Legal Member for the refusal of the Appeal were as stated in paragraphs 6 to 8 of the Adjudicator’s Decision, as follows:

“6. Having considered the evidence, I make the following findings of fact:

- a. The appellant parked vehicle AV64VRW in Academy Street, Coatbridge on the 15 June 2023. The vehicle was already parked there at 14.32 when a parking attendant observed the vehicle and kept it under observation until 14.49 when the PCN was issued. No loading took place at the parked vehicle during the period of observation.*
- b. The appellant is the registered keeper of vehicle AV64VRW.*

c. The vehicle was parked on a street with a single yellow line road marking and signage confirming the restriction of No Waiting at any time Monday to Saturday. This is confirmed in photographs taken at the time of the alleged contravention by the parking attendant.

Information signage confirming this restriction was located on the same side of the road as the appellant's vehicle within close proximity to the appellant's parked vehicle. The appellant does not dispute that he was aware of the parking restriction at that location and that he would be allowed to park there if he displayed his valid disabled blue badge.

d. The PCN was issued and attached to the vehicle at the time of the alleged contravention.

e. The appellant is a man who is the holder of a valid disabled blue badge. The appellant suffers from a neurological condition with occasions of "brain fog" which result in him not remembering to carry out certain tasks. On this occasion the appellant did not display his disabled blue badge at the windscreen of his car or in a prominent position.

7. Applying the law to the facts, I conclude as follows:

a. The Council has produced the relevant Order giving authorisation for the parking restriction which applies at the location at Academy Street, Coatbridge at the time of the alleged contravention. The relevant Order is the North Lanarkshire Council, Coatbridge Area (Traffic Regulation) (Consolidation) Order 2018 ("the Order"). This Order at schedule 3 states that the location in Academy Street where the appellant's vehicle was parked has a restriction of No Waiting at any time Monday to Saturday.

b. Service of the PCN was by it being affixed to the appellant's vehicle as detailed in the Road Traffic Act 1991.

c. Appeal decisions are made on the civil standard of proof which is on the balance of probabilities. Mitigating circumstances cannot be taken into account. Initially the burden of proof rests with the Council to show that on the face of it a contravention had taken place. If this is evidenced, the burden of proof changes to the appellant for any matters he wishes to have considered.

d. The blue badge disabled parking scheme applies where the appellant parked. This is provided for in Articles 15, 17 and 19 of the Order. The Blue Badge scheme in Scotland provides that the Blue Badge must be displayed properly at all times to obtain parking concessions. This is specified as usually meaning placing the blue badge on top of the dashboard of the vehicle, where it can clearly be read through the front windscreen. If there is

no dashboard in the vehicle, the badge must be displayed in a place where it can be clearly seen and read from outside the vehicle. The issuing Parking Attendant noted in the record made when the PCN was issued that no disabled person's badge was displayed on the vehicle at that time.

The Council has shown sufficient evidence to conclude that a contravention took place and the procedure was correctly followed by the Council.

e. The burden of proof for anything that might support that an exemption is applicable then rests with the appellant. The grounds of appeal where representations can be made against the issue of a notice to owner are contained in the Road Traffic Act 1991 Schedule 6(2)(4).

The appellant has not established an exemption applies. The appellant's medical condition has resulted in the issuing of a disabled blue badge, which allows him to park in various locations restricted to other drivers because of an increased requirement for parking close to locations to which he requires access. The points the appellant raises of not displaying the disabled blue badge because of a symptom of his medical condition and his concerns around permanently displaying the blue badge are mitigating circumstances. However, only the Council can decide to take mitigating circumstances into account and cancel the PCN. The Council has not agreed to do so in this case.

8. The appeal is dismissed."

6. On 21 October 2023 the Appellant thereafter timeously sought permission to appeal against the original decision of the Legal Member in terms of section 46 of the Tribunals (Scotland) Act 2014, and in terms of Rule 18 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Rules of Procedure 2020 (contained in the Schedule of the Chamber Procedure Regulations 2020 (SSI No 98) ("the Procedure Rules"). The ground of appeal as stated was that:

"In her decision the Legal Member failed to cite the Equality Act 2010 and has not applied it properly – this is an error in law."

7. The application for leave to appeal was considered by another Legal Member of the First-tier Tribunal on 7 November 2023, and leave to appeal was granted on the foregoing ground. The terms of section 46(1) the Tribunals (Scotland) Act 2014 ("the 2014 Act")

provide that the Upper Tribunal for Scotland may only hear Appeals in cases where permission to Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the Appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal which he wishes to Appeal. In the present case the Legal Member concluded that:

“In her decision the Legal Member failed to cite the Equality Act 2010 and has not applied it properly – this is an error in law.

The ground of appeal raises an arguable point of law. Leave to appeal is granted.”

The Upper-tier Tribunal therefore can deal only with those aspects of this appeal which have been allowed permission to appeal.

Discussion

8. The Parking and Bus Lane jurisdiction was brought within the integrated structure of Scottish Tribunals within the General Regulatory Chamber of the First-tier Tribunal for Scotland as part of its rolling programme of reform on 1 April 2020. Prior to that date there was no statutory right to seek permission to Appeal decisions of adjudicators to the Upper Tribunal for Scotland. On that date the Adjudicators of the Parking and Bus-Lane Tribunal for Scotland became Legal Members of the General Regulatory Chamber of the First-tier Tribunal for Scotland.

9. This appeal is brought by the Appellant under the provisions of section 46 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”) and the procedural rules contained within The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (“the 2016 Regulations”). Permission to appeal on restricted grounds has been granted in accordance with the decision of the First-tier Tribunal for Scotland (General Regulatory Chamber) (“the Tribunal”) dated 21 August 2023. The Tribunal reference is NL00022-2309.

10. The terms of section 46(1) the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provide that the Upper Tribunal for Scotland may only hear Appeals in cases where permission to

Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the Appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal

Conclusion

11. The procedural history of this appeal, is as above narrated. Neither party has indicated that they wished a full oral hearing in relation to this matter. No further written submissions have been received.

12. In terms of the relevant law, Section 46 of the Tribunals (Scotland) Act 2014 (hereinafter referred to as “the 2014 Act”) provides:

46. Appeal from the Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be Appealed to the Upper Tribunal.

(2) An Appeal under this section is to be made—

(a) by a party in the case,

(b) on a point of law only.

(3) An Appeal under this section requires the permission of—

(a) the First-tier Tribunal, or

(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

13. The grounds upon which leave to appeal were granted are as stated at paragraph 7 above. In support of his Appeal the Appellant has made the following submissions.

1. *On the 15th June 2023 it is alleged by the Respondent that the Applicant parked in a restricted street during prescribed hours.*
2. *The Applicant was a holder of a valid Blue Badge covering the date in question.*
3. *On the 15th June 2023, the Applicant parked up on Academy Street to attend an office where they were a volunteer at the time. In the AM of this day the Blue Badge was displayed correctly. The Applicant then had to return home due to leaving their mobile phone which was needed to fulfil their duties.*
4. *On the 15th June 2023 on the return visit, the Applicant had failed to ensure the Blue Badge was visible for any parking attendant to see. If the Blue Badge was visible, then no Parking Charge Notice would have been issued.*
5. *The Applicant suffers from multiple health conditions, which cause cognitive impairment and brain fog. These include Ehlers Danlos Syndrome Type 3, Fibromyalgia Syndrome, and Borderline Personality Disorder. All of these conditions also include a symptom known as brain fog, and when conditions flare up this can result in missing out simple tasks including taking medication, missing appointments and failing to be able to process certain other tasks including displaying of a Blue Badge where appropriate.*
6. *On the day in question, there was a flare up of conditions resulting in increase in pain levels and restricted cognitive impairment meaning that simple tasks were skipped due to failing to mentally process. This condition does not have an impact on driving ability, although can result in easily being unable to follow a journey and ending up in the wrong place.*

Dispute:

1. *The Respondent argues that as a result of the Blue Badge not being displayed, there was a violation in the Road Traffic Act (as amended) 1991.*
2. *The Respondent fails to read the legislation and guidance documentation in line with the Equality Act 2010, and cited that this is not applicable in this case.*
3. *The Respondent is a public body, carrying out a public function and is therefore subjected to the Public Sector Equality Duty. Carrying out such public functions mean that the public body is compelled to act in accordance with the Equality Act 2010 as per Section 1 of the Act*

4. Section 6 of the Act sets out the definition of Disability, of which the conditions the Applicant suffers from meets. This is further confirmed by the UK Government in their decision making to award Personal Independence Payment alongside Limited Capability for Work and Work related Activity status which are both tests based on Schedule 1 of the Act.

5. The Respondent was provided with a copy of the Applicants Blue badge, as evidence that they had a legal entitlement to park on the single yellow line of Academy Street. As this was the closest legal parking facilities to the office this was a requirement due to the impact of the health conditions on the Applicants mobility.

6. The Respondent failed to consider the appeals, and quoted that "forgetting" to display the Blue Badge is not grounds for appeal and the Parking Charge Notice was applied correctly.

The term forgetting implies a disregard to the cognitive impairment, and fails to consider on a case by case basis. This forms direct discrimination, and the blanket policy to uphold the Parking Charge Notices in this way is incompatible with the Equality Act 2010.

7. Upholding a Parking Charge Notice in this way puts further financial pressure on people with a Disability, where their cost of living is already higher than normal. Failing to consider the reasons for a Blue Badge not being displayed is applying a policy without discretion, and can be seen as a blanket policy which puts Disabled people at a disadvantage. The Respondents policy is therefore discriminatory to Disabled people.

8. The Respondent is profiting from Disabled people, where they would otherwise have no entitlement to gain. Parking with a Blue Badge provides the Disabled person closer proximity to where they need to get to, and in these circumstances also free parking facilities. The Respondent had no entitlement to payment, except by issuing a Parking Charge Notice.

9. Upholding the Parking Charge Notice is therefore unjust to any Disabled person, where they have been unable to carry out the function of displaying the badge as a result of a cognitive impairment. This is enabling the Respondent to make financial gain out of the misfortune of a Disabled and vulnerable person.

10. In the case of The City of Edinburgh and Mr Chris Sanderson, the local authority argued that the ticket had been correctly issued but failed to consider the individual circumstances of the case. In this case the Respondent had entered 0 rather than O which resulted in the car

showing as not paying even though they had. Due to how similar the two looked, it was deemed impossible to notice the difference, and the local authority had received payment for parking. It was decided that upholding the Parking Charge Notice [14] would be unjust.

11. The case cited in 10 above is similar to the case before this UTT in that like working out the difference of O and 0, when having a flare up of a cognitive condition to the point that a person brain fog is severe, it also becomes impossible to carry out all necessary basic tasks of the day. This would include having the capacity to ensure the Blue Badge is displayed correctly.

12. For these reasons, it is argued by the Applicant that the decision made by the First Tier Tribunal be quashed and the Parking Charge Notice be cancelled. The legal member in the First Tier Tribunal erred in their decision making by failing to considered or cite the Equality Act 2010. This act was clearly referred to in the Applicants original submission.

14. No further submissions were received from the Council in respect of this matter.

15. In their decision, the Legal Member stated at the outset that they considered that the Council have established that the contravention took place. In support of this proposition the Legal Member pointed to the terms of the relevant Order, being the North Lanarkshire Council, Coatbridge Area (Traffic Regulation) (Consolidation) Order 2018, and specifically to Schedule 3 which states that the location in Academy Street, Coatbridge where the appellant's vehicle was parked has a restriction of No Waiting at any time from Monday to Saturday. I do not understand that the appellant challenges this assertion.

16. The Legal Member thereafter proceeded to state that service of the PCN had been effected by it being affixed to the appellant's vehicle as required by the Road Traffic Act 1991, again a proposition which I do not understand to be disputed. The Legal Member stated that Appeal decisions are made on a balance of probabilities, and that whilst it is for the Council to establish the initial contravention on that basis, that it is thereafter for a party who wishes any other matters to be considered to satisfy a similar burden of proof. The Legal Member has therefore effectively stated that the appellant has been required to establish the position in relation to their submissions on a balance of probabilities. The Legal Member has also specifically stated that the appellant has not established to the requisite standard that an exemption applies in relation to the displaying of a disabled badge on the

basis of his medical condition on the basis that this would only constitute a mitigating circumstance, such mitigating circumstances being matters which can only be taken into account by the Council, and cannot be taken into account by the Tribunal.

17. In their Note of Appeal the appellant specifically referred to the application of the Equality Act 2010. Leave to Appeal was granted on the basis that the application of this Act had not been specifically addressed in the Appeal process.

18. Specifically the terms of section 29(6) of the Equality Act state that a public body in the exercise of its functions must not:

“do anything which might constitute discrimination, harassment or victimisation.”

19. The Equality Act 2010 also outlines in section 13 and 19 the two types of discrimination prohibited, namely:

a) Direct Discrimination which exists when a person, because of a protected characteristic, is treated another less favourably than they would be treated without that characteristic. (Section 13)

b) Indirect discrimination which occurs when a person applies a “provision, criterion or practice” which, although applied to persons with different protected characteristics. (Section 19).

20. The question of whether the implementation or otherwise of parking restrictions and the presence or otherwise of any concessions or allocated spaces for disabled people are capable of constituting either form of discrimination is a matter which would fall to be considered according to the facts and circumstances in each individual case. It would not be appropriate for a body to impose a blanket policy which must apply in every case, Rather the facts and circumstances of each individual case should be carefully considered.

21. Further the terms of section 149 of the Equality Act 2010 impose upon a public authority what is referred to as the “Public sector equality duty”. Beyond the question of discrimination is the public sector equality duty set out in section 149 of the Act. This provides that a public authority must, in the exercise of its functions have due regard to the need to, among other things, “advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it” (section 149(1)). Further

the body must remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (section 149(3) (a)). In so doing the public authority must have due regard to the fact that the steps involved in meeting the needs of disabled persons which are different from the needs of persons who are not disabled, and to take steps to take account of disabled persons' disabilities (section 149(4)).

22. In the present appeal the appellant has quite clearly made repeated references to his disability, and stated that as result of this disability that he was unable to comply with the terms of the Blue Badge Scheme on the date in question. If this was the case then this would not simply be a mitigating circumstance, but might in fact be a reason why the appeal should be upheld.

23. The appellant has made reference to the application of the Equality Act 2010 throughout this process. However in neither the Council's original responses to the appeal, nor in the decision of the Legal Member does it specifically address the matters placed forward by the appellant in relation to his inability to comply with the requirements of the Blue Badge Scheme. Instead, certainly on the part of the Council they appear to simply state that it was the responsibility of a disabled person to display a Disabled Person's Badge and that as this was not done so then there were no grounds to cancel the PCN. The only reference to the matters raised by the appellant was to suggest that he had simply "forgotten" to display his badge, and thereafter to simply disregard his suggestion that he suffered from cognitive impairment. The Council state that they "appreciated" that he may have suffered from such impairment, but then simply disregarded this without any explanation as to why they did so, other than to re-iterate the requirements of the Blue Badge Scheme in relation to display of the Badge. This was an unfortunate simplification of the medical matters put forward by the appellant, and suggests that the circumstances of the appellant were not fully considered on a case by case basis. Similarly in the decision of the Legal Member there was again simply a reference to the appellant's medical condition as being a mitigating circumstance, rather than a consideration that it might have been a valid reason why the PCN might be cancelled. Again this might give the appearance that the

terms of the Equality Act 2010 had not been considered, even if they had in fact been considered by the Tribunal.

24. It may well be the case that the appellant is unable to establish that he does have a valid medical defence in relation to this contravention, or that further evidence in this regard might require to be submitted. However at this stage it is not clear that the matters put forward by the appellant have been fully considered in terms of the Equality Act 2010 and as such the appeal should be upheld to the extent that the original decision should be quashed and the matter referred back to the First-tier Tribunal to specifically address the application of the Equality Act 2010.

25. For the avoidance of doubt had this appeal simply been on the basis that the display of the Blue Badge would have made his car a potential target for theft, then on the basis that this would, at best, have been a mitigating circumstance this appeal would have been refused.

Decision

26. The decision of the Upper-tier Tribunal therefore is to quash the original decision of the First-tier Tribunal of 20 October 2023 in terms of section 47(1) of the Tribunals (Scotland) Act 2014, and to remit the appeal back to the First-tier Tribunal for re-consideration in terms of section 47(2) of the aforementioned Act.

Parties Aggrieved by Decision

27. A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the

Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff Colin Dunipace

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Sheriff of South Strathclyde Dumfries and Galloway at Hamilton