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# England and Wales High Court (Administrative Court) Decisions

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**Neutral Citation Number: [2005] EWHC 1942 (Admin)**

CO/3411/2005

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London WC2  
25th August 2005

B e f o r e :

**MR JUSTICE COLLINS**

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**THE QUEEN ON THE APPLICATION OF  
BIJAN DOLATABADI**

**(CLAIMANT)**

**-v-**

**TRANSPORT FOR LONDON**

**(DEFENDANT)**

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(Official Shorthand Writers to the Court)**

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**THE APPLICANT APPEARED IN PERSON  
MISS G WARD (instructed by Transport for London, Legal Services, London SW1H 0TL)  
appeared on behalf of the DEFENDANT**

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## HTML VERSION OF JUDGMENT

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1. MR JUSTICE COLLINS: This is a claim for judicial review of the action by Transport for London in seizing the claimant's car as a result of a number of penalty charge notices, which had been issued against him, and also to return a significant sum of money which the bailiffs had removed from his account. There is an issue, which I am not in a position to resolve, as to whether Mr Dolatabadi agreed that those sums, amounting to some £3000, should be taken from the account, or whether it was done, as he asserts, as a result of dishonest behaviour by the bailiffs.
2. As I say, that is not a matter which is for this court to deal with on this claim. If further action is to be taken it will have to be taken by the appropriate private law claim relating to any action by the bailiffs.
3. The background is as follows Mr Dolatabadi had used his car for some time in order to assist a Mr Melville, who was an 80 year old disabled person and who was entitled, as a result, to what is called a Blue Badge discount from the congestion charging. That discount can cover two cars to enable carers or helpers to assist a disabled person. Mr Melville had two helpers, one of whom was the claimant.
4. The expiry date of the relevant discount was 18th March and we are concerned with 2004. Mr Melville received the relevant form in which it was indicated that he should check the details to ensure that they were correct in order to enable the discount to be extended. That form did not, on its face, include the details of the two motorcars, but it merely referred to the details of the serial number and the issue number of the existing form. Accordingly, Mr Melville put a cross in the wrong box.
5. The two relevant boxes read as follows:

"Carefully check the details shown to ensure they are correct. If they are not we will send you a full registration form for completion."

They were correct. It goes on:

"By signing this form, I confirm I am in possession of a valid Blue Badge which has not expired since my last registration for Central London congestion charging. I also confirm that I fully understand the conditions of the Blue Badge Discount scheme and I remain eligible to claim a discount.

OR

The details on this form are incorrect, please send me a registration form.  
[Changes to name and/or address only should be made using this form

-- see overleaf)."

That box he wrongly crossed.

6. He noted, at the end:

"the 2 cars used have the following details"

and he then named them, one as before and the other being new. That he filled in on 19th February and sent to Transport for London. He received a proforma from a lady calling herself the Customer Services Manager on 5th March. That simply said:

"As you have ticked the box requesting a new registration form, we have enclosed a new Blue Badge discount application form which you will need to complete and return together with A4 photocopies of the required documents as soon as possible, allowing for post and up to 10 working days for processing."

7. There was a warning that it was his responsibility to check and that if he did not get confirmation of the successful re-registration he would be liable to the congestion charge. That was wholly inappropriate because, as I have said in the form he filled out, he had mistakenly put the cross in the wrong box. Miss Ward has said it is a large organisation. All that is done is the form is checked to see which box is crossed, or ticked and if the relevant one is then a new form is to be sent out and the letter, to which I have referred, is automatically sent. It is apparently beyond the competence of the organisation to get anyone to look at the form to see whether it has been incorrectly filled out.
8. Renewal should, as I have said, have been automatic. However, before the 18th March Mr Dolatabadi appreciated perhaps that things had gone wrong since no further form had apparently been received by Mr Melville. Miss Ward tells me that one was sent out and I am quite happy to accept that it was, but it appears that it did not reach Mr Melville.
9. Be that as it may, Mr Dolatabadi spoke, on 11th March, to an employee of Transport for London. He names him as someone called Carlvin. Carlvin, according to a letter which Mr Dolatabadi later wrote to TFL, said that the change, that is the change of the number of the car, could be effected on the phone but when he checked the computer the new car number was already on it. No further action was necessary.
10. Mr Dolatabadi assumed from that that there was no need for a further form to be filled in, particularly as one had not been received by Mr Melville. He, acting on the advice given as he believed by Carlvin, did not think it necessary to take any further action and he continued to use his car to assist Mr Melville in accordance with the discount scheme.
11. He received penalty notices. On 27th March, having received three such notices, he wrote to Congestion Charging in Coventry, which is where apparently Capita, who were responsible, operate, in these terms:

"Please refer to your notices..."

I am writing to inform you that all these notices, or any other that you have recently sent or are about to dispatch are erroneously issued."

He was making it as clear as it could be that he was challenging all existing and future notices.

He goes on:

"My car number S165 A NH has been exempt from congestion charging payment from 18.3.2003, as I regularly help Mr E Melville, who is aged 80 and disabled. Your own reference regarding this exemption is 107324283.

The reason you have been sending me notices recently could have been that the original registration needed renewing by 18.3.2004. Mr Melville wrote to you on

February 19th 2004 to inform that while my own car was still used by him, the number of the other car had changed and asked for the appropriate form to be sent to him to be filled in.

When a reminder was sent to you instead of the form asked for, Mr Melville, who is himself unable to deal with such matters, asked me to follow the matter up and I rang you on March 11 2004 and spoke to a Mr Carlvin. He said that the change could be effected on the phone, but when he checked the computer he himself gave me a number of the new car and said no further action was necessary as both cars were registered. At my request, he then gave me his future number for future reference (Mr Melville also has copies of his previous correspondence with you making the situation quite clear).

Kindly confirm in writing to Mr Melville that there has been a mistake on your part, the tickets have been cancelled and you shall refrain from sending any more notices."

12. The response was in the form of what is called a Notice of Rejection thanking him for his recent representations. It is a standard letter informing him that the grounds for representation have not been established and requiring the relevant payments. Nothing was said to deal with the matters that were raised. This was purely a standard formal letter, again signed by the so-called Customer Services Manager.
13. Mr Dolatabadi replied to that on 13th April saying that he was of the opinion, and a very understandable opinion, that the lady in question had not properly read or understood the contents of his representation and he set out the reasons. He said that Mr Melville received a renewal form. He did not receive a registration form:

"When this document [registration form] did not arrive, Mr Melville asked me to follow up and I rang on his behalf on March 11 2004, still a week before the expiry of the original permit, to inform you that the requested form had not come and ask what is to be done. Your employee Mr Carlvin who spoke to me checked with a computer and stated that there was no need for Mr Melville to fill in any more forms as action has been taken on his last correspondence (the attached form) and the new car has been registered. He then gave me the registration number of the new car himself. I specifically asked him to confirm once more that this was the end of the matter and he did so, giving his name for future reference if there was any problem.

The only thing I can think of as the reason for your insistence that my car is not registered with you is that you have changed the wrong registration number..."

14. The claimant asked for confirmation in writing that a mistake had been made and that the matter was ended. He received a somewhat formal letter on 21st April which repeated the requirement to complete a registration form, which is hardly material, and then went on:

"We can confirm that on this occasion your representation has been accepted and the Penalty Charge Notice(s) have been cancelled. To avoid incurring further Penalty Charge Notices in similar circumstances, which we will not be able to cancel, please ensure you register for the discount or pay the appropriate charge."

15. As I say, that was a purely formal letter. It was in standard language and it simply did not deal with the points that Mr Dolatabadi had raised, but it entitled him to believe that Transport for

London had accepted those matters. Unfortunately they had not. Not only did they continue to issue notices, but also they refused to cancel or accept that they should not have issued the notices between 27th March and 21st April when the letter was written, despite what Mr Dolatabadi had quite clearly indicated. He wrote back on the 29th in these terms:

"I am glad to be informed that my representation has been accepted and all Penalty Charge Notices issued to me have been cancelled."

That is, of course, not what the letter had done on close reading but it is clear that that is what Mr Dolatabadi, and for understandable reasons, thought had been done.

That is, of course, not what the letter had done on close reading but it is clear that that is what Mr Dolatabadi, and for understandable reasons, thought had been done.

Then he goes on:

"Your letter however asks me to ensure to register, so that no Notices are issued in the future. To avoid further confusion, especially since I have received Notices subsequent to the date of your letter, please clarify if I need to register now or before the expiry of the present permit on 18/3/2005. In the case of the former, please mail the appropriate form to my address to be submitted to Mr Melville to be signed and returned."

That got a letter back on 14th May:

"Thank you for your recent correspondence regarding above mentioned Penalty Charge Notice TL 18302015. You have asked us to clarify whether you need to register before or after of the date of expiry 18.03.2005. We have checked our system and found you registered from 16/12/2003 to 18/03/2004. We must inform you that you need to get in touch with our Call Centre .. or visit our website ... to register with us."

16. He notes that he had spoken to someone on 20th May and was told that the badge holder would need to fill in the form again and re-register. As a result Mr Melville, at the claimant's behest, wrote a letter on 21st May stating:

"Despite the fact that you had not indicated in the above-mentioned letter [that is the letter of 26th April] that there is any need for me to do anything, and your letter to Mr Dolatabadi, who helps me on a regular basis, to confirm that his representation has been accepted and all notices issued to him have been cancelled, he keeps receiving tickets and in his last conversation with your office earlier this week he has been told that my permit has been cancelled (without my knowledge) and needs to be reinstated.

I am attaching a new form duly completed ... "

17. That was indeed attached. On 24th May, the matter was registered but Mr Dolatabadi received Congestion Penalty Notices which had effect between 18th March and 24th May. Of course once one adds the various charges and increased amounts the sum of money in question is now very considerable.
18. It is, in my judgment, quite apparent that Transport for London totally failed to deal with the matters which Mr Dolatabadi had raised indicating why he had believed that he was entitled to

the discount. That he was entitled to the discount, if only Mr Melville had not crossed the wrong box in that initial form, is clear. There is no suggestion that he had been misusing the right to a discount in any way at all. The point made now on behalf of Transport for London is that his remedy was to make the necessary representations within 28 days of the receipt of the notices, and in the absence of having done that there is nothing that can be done to assist, at this stage, because that is the route that he should have taken.

19. It is accepted that there is a discretion, but it is said that the discretion could not be exercised in the absence of any knowledge as to whether the penalty charge notices were in fact attached, although Mr Dolatabadi made it as clear, as he could, in the initial letter, that he was challenging the existence of all notices which were to be issued when he ought properly to have been regarded as entitled to a discount. Nonetheless, the submission is that there is a statutory scheme and that provides the necessary route for appeal and since judicial review is a remedy of last resort, and since Mr Dolatabadi has not followed that route, I should not grant him any relief.
20. I should add that he did appeal one of the notices to an adjudicator. The adjudicator's hearing was not until earlier this year. The adjudicator accepted that Mr Dolatabadi's account was correct, that he had been misled by the employee of TFL and that he had reasonably believed that he was entitled not to pay the congestion charge when using his car to assist Mr Melville.
21. Miss Ward submits, correctly as a matter of technicality, that that decision by the adjudicator relates only to that one notice and that there is no appeal against the others and it cannot be assumed that that finding of fact will have any wider effect. I find that surprising in the light of the discretion that undoubtedly exists in TFL not to pursue a particular notice.
22. An independent third party has accepted the account given as true. TFL did not bother to attend the hearing and did not bother to put in any positive evidence and, as I understand it, disputed the account given by Mr Dolatabadi. That was a matter for them. Accordingly that finding of fact was something which Mr Dolatabadi was entitled to rely on as well.
23. In the meantime, the bailiffs descended upon him and as a result his car has been impounded and has been kept for some time. Quite why that has happened, I do not know. It is said that it was taken in order to be sold to cover the charges. However, once it was known that this matter was very much in issue it seems to me quite remarkable that it was decided that it was appropriate to hold on to the car. It was not returned, once permission was granted for judicial review, as it was on 3rd June of this year. I am told by Miss Ward that TFL have never received the notice granting permission. They are not aware that that had happened. However, they were aware that judicial review was threatened and it seems to me that it may well be that it was an overreaction on their part to hold on to the car in the circumstances. That is not a matter which I go into or need to deal with on this hearing.
24. I am entirely satisfied that TFL should, in the light of the history which I have set out, have appreciated at the early stage that there was a mistake on the form filled in by Mr Melville and that quite clearly Mr Dolatabadi qualified for the discount. It was equally clear, from the letter they received on 27th March, that he believed, and he believed on reasonable grounds, that he was not to be penalised for using his car in the congestion charge area to assist Mr Melville.
25. They then failed to respond properly to his explicit request to indicate the matter was at an end, but they agreed to cancel the charges which were specifically put to them, that is the first three charges that were in issue. In those circumstances, in my judgment, they quite clearly led Mr Dolatabadi to believe that he would not be penalised and that there was nothing that he needed

to do specifically to challenge the individual notices in order to avoid being penalised. There was, if one puts it in public law terms, a legitimate expectation created by the misinformation given to Mr Dolatabadi, coupled with the failure to respond properly to the letters he had written that the situation was, as I have indicated. He clearly acted to his detriment in the result.

26. In those circumstances, it seems to me that although this is a remedy of last resort, it is an appropriate remedy in this particular case. The alternative is applications out of time to seek to challenge all the notices which have been issued and since, in my judgment, the only conceivable and proper outcome of such a challenge would be to cancel them all in the light of the history I have indicated, it is a pointless exercise to require that that be done. This court has ample jurisdiction.
27. Miss Ward points out that the bailiffs act as a result of orders made by the County Court. Those orders can be rescinded on the application of TFL if it is accepted that an error has been made. As a result of my decision, those orders must be rescinded because I propose to quash the notices and to indicate that no enforcement proceedings should follow as a result of them. That means that the sum of money which has been taken from Mr Dolatabadi must be repaid to him by Transport for London with interest. I understand that it is somewhere in the order of £3,300. It just shows how costs can increase if one does not pay the congestion charge and gets involved in the system, which incidentally is a system that, as I think, Burnton Stanley J indicated a few months ago, has its own unfairnesses in the requirement that if you do challenge you find yourself liable for the increased charge. I do not know whether that has been amended. I think that probably is all the relief.
28. THE APPLICANT: It is not. Two other matters, firstly, I shall have to be informed when I shall have my car delivered.
29. MR JUSTICE COLLINS: They must forthwith return the car.
30. THE APPLICANT: Secondly, a matter of costs. All along the way I have told them that there were--
31. MR JUSTICE COLLINS: You are entitled to your costs.
32. THE APPLICANT: Only about £300 of the court costs.
33. MR JUSTICE COLLINS: Do not worry you will get your costs. Have you indicated.
34. THE APPLICANT: I have said £1,000 just as a figure, but I go to all the expenses. It will probably come to more than that.
35. MR JUSTICE COLLINS: There is a limit to what I am empowered to grant. You have, of course, all the expenses involved in court fees and so on. That goes without saying. You are entitled to an amount per hour for dealing with documents for considering the matter and so on. I cannot remember what the amount is.
36. MISS WARD: It is £9 something.
37. THE APPLICANT: My Lord, I have also consulted three firms of solicitors and I have received advice from them. I can get receipts from them. I have not paid them yet.
38. MR JUSTICE COLLINS: The difficulty is that I have power to make a summary assessment

of costs but I cannot obviously do that unless I have some indication of the detail. I think I should have asked you, Miss Ward, whether you felt you could resist an order for costs. I do not think you can.

39. MISS WARD: Not in principle, no. I would ask you summarily to assess them. I think otherwise it is likely, given the correspondence, it will end up back before the court to have them assessed.
40. MR JUSTICE COLLINS: I think it is desirable that I should. How much are the court fees?
41. THE APPLICANT: I am not sure, my Lord, because I went to a couple of courts which refused to deal with the matter.
42. MR JUSTICE COLLINS: It is only this court that I can--
43. THE APPLICANT: Yes, but I have been to other courts.
44. MR JUSTICE COLLINS: That, I am afraid, you cannot recover.
45. THE APPLICANT: I think it was £50 and £150.
46. MR JUSTICE COLLINS: I cannot remember how much we charge.
47. THE APPLICANT: £50 and £180, my Lord.
48. MR JUSTICE COLLINS: I think £180.
49. THE APPLICANT: It is £50 for the injunction and £180 for this court.
50. MISS WARD: I am hearing £180.
51. MR JUSTICE COLLINS: That is £230 for the court fees. You have today, obviously. You have three hours or so today, including travelling.
52. THE APPLICANT: What about the correspondence and the bundles?
53. MR JUSTICE COLLINS: Yes, preparing the bundles, correspondence, and so on, you are entitled to. As I said, I think about £9 something an hour is the amount. That is the maximum I am entitled to allow for a litigant in person. Can you give me an estimate of how many hours? Remember it is limited to proceedings before this court. I cannot give you any costs relating to whatever else you may have.
54. THE APPLICANT: This court not long, ten hours.
55. MR JUSTICE COLLINS: That is entirely reasonable.
56. MISS WARD: I could not resist that, my Lord.
57. MR JUSTICE COLLINS: Let us see. £230, copying charges and so on.
58. THE APPLICANT: The bundles that the solicitors have received they came to £90. The first bundle I have also sent to the adjudicator and to the counsel in the court.
59. MR JUSTICE COLLINS: You have served?



60. THE APPLICANT: Yes, I served all the copies of the bundles.
61. MR JUSTICE COLLINS: That is not unreasonable.
62. THE APPLICANT: They have responded to the copy that I sent. They said, 'You can make out of date applications.'
63. MR JUSTICE COLLINS: I follow that. It is very difficult to broad brush. You will not get as much as you think.
64. THE APPLICANT: I am not so much bothered. If I had the opportunity I will not let this matter rest. Anything that you say would be completely acceptable to me. Give me nothing, I do not mind.
65. MR JUSTICE COLLINS: If I were to say in all £500, would that sound too much?
66. MISS WARD: That would be £230 for the court fee. You are talking about 13-hours, £120 for copying and serving. I included the 3-hours today in the 13-hours.
67. MR JUSTICE COLLINS: Also today.
68. MISS WARD: I would say it was reasonably generous on the basis, but--
69. MR JUSTICE COLLINS: You think it is too generous?
70. MISS WARD: I could not oppose it.
71. MR JUSTICE COLLINS: I say £500.
72. THE APPLICANT: Anything is acceptable. Thank you, my Lord.
73. MISS WARD: Could I confirm a matter that my instructing solicitors be served with a copy of the order giving permission. I did not think any permission was granted.
74. MR JUSTICE COLLINS: I do not know how that arose. Take this. Get a copy of it and bring it back to the court, if you would.
75. MISS WARD: I will. I am very grateful.