**R (on the application of Bijan Dolatabadi) v TfL [2005] EWHC 1942 (Admin)**

**Issue: Judicial Review - Common law fairness, the exercise of discretion by Transport for London and legitimate expectation**

Mr Dolatabadi had applied to TfL to re-register a Blue Badge in order to qualify for a 100 per cent discount of the Congestion Charge under the Blue Badge parking concessions scheme for disabled drivers. The Blue Badge holder, an 88-year-old disabled man, had incorrectly completed the registration form. Mr Dolatabadi then spoke with a TfL call-centre operator who informed him that re-registration was not necessary, amended the details by telephone and informed him that he was now properly registered.

Around 15 Penalty Charge Notices (‘PCNs’) were issued. Mr Dolatabadi wrote numerous letters to TfL challenging the issue of the PCNs but without specifically referring to each Penalty Charge Notice number. TfL accepted representations in relation to three of the PCNs. In relation to the others, TfL submitted that the PCNs had not been challenged. A single Penalty Charge Notice went to appeal before an Adjudicator and the appeal was allowed. TfL maintained that as Mr Dolatabadi did not challenge the other PCNs, TfL were free to enforce them. TfL proceeded to seize Mr Dolatabadi’s vehicle and were about to proceed to sell it at auction.

Mr Dolatabadi applied to the High Court for an injunction and Judicial Review.

**Held:** Mr Justice Collins, finding in favour of Mr Dolatabadi, was highly critical of TfL. He referred to the case of Cooper v. Wandsworth Board of Works [1863] 14 C.B.N.S in which it was held that although a statute might create a power, the common law writes in the need for fairness.

The following summarises some of the comments and findings of Collins J:

* TfL were relying upon a technicality to deprive the Appellant from justice which was thoroughly unfair;
* Mr Dolatabadi acted on advice given by the TfL operator. TfL ‘did not bother to check’ what the Appellant had said in his representations regarding his conversation with the call centre operator. All the PCNs that followed this conversation were unlawful;
* Anyone reading the registration form should have realised that a mistake had been made in the form being completed. TfL chose to ‘hide behind bureaucratic form filling nonsense’. This was not fair. A sensible system would have checked the form. It is inevitable that some people will fill out a form wrongly, especially the elderly and the disabled;
* Mr Dolatabadi made it as clear as he could in correspondence that he was challenging all current and future PCNs;
* TfL’s Notice of Rejection was a standard, formal letter which failed to deal with the specific issues the Appellant had raised;
* The Appellant was entitled to a discount – he was not misusing the right to a discount;
* It was accepted by TfL that they had a discretion not to pursue the notices;
* The Congestion Charge Scheme is a statutory scheme which provides a route to appeal. Judicial Review is a matter of last resort;
* The Notice of Acceptance entitled the Appellant to believe that TfL had accepted the matters he had raised and that he had no need to challenge the other Notices;
* The Appellant had a legitimate expectation, operated by the misinformation given to him by TfL and the failure to respond properly to his letters, to his clear detriment. The Appellant ‘made the mistake of believing TfL would honour the word of its employee’;
* The case should never have reached the stage where the Appellant was required to appeal to an Adjudicator. The PCNs should have been cancelled;
* Having appealed, however, the Adjudicator, an independent third party, found the Appellant’s account to be true. The Adjudicator made findings of fact which the Appellant was entitled to rely upon. TfL could not go behind those findings of fact. The Adjudicator accepted that the Appellant had been misled. That should have been the end of the story;
* TfL should not have proceeded to instruct bailiffs when they knew the Adjudicator’s decision and should not have proceeded to impound the vehicle. To then hold on to the car once the Judicial Review issue was raised was ‘wholly unjustified, quite absurd and wrong’;
* TfL should have appreciated at an early stage that there was a mistake in completing the form, that Mr Dolatabadi qualified for a discount and that he believed on reasonable grounds that he would not be penalised Judgment was given in favour of Mr Dolatabadi. TfL were directed to return the vehicle forthwith and to refund all monies paid.