

London Borough of Lambeth v Mr A Wilde

Case Reference: 2020409421

PCN: LH92033534

Jurisdiction

Regulation 12 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 states: -

(1) The Adjudicator shall not normally make an order awarding costs and expenses, but may subject to paragraph (2) make such an order -

(a) against a party (including an appellant who has withdrawn an appeal or a local authority that has consented to an appeal being allowed) if he is of the opinion that the party has acted frivolously or vexatiously or that his conduct in making pursuing or resisting an appeal was wholly unreasonable; or

(b) against the local authority, where it considers that the disputed decision was wholly unreasonable.

(2) An order shall not be made under paragraph (1) against a party unless that party has been given an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) shall require the party against whom it is made to pay the other party a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings.

In this case Mr Wilde attended the Hearing Centre for a personal appeal, which I allowed. Although I accepted his account of the incident, and allowed the appeal on the facts, I made clear that I would have allowed the appeal in any event on the basis of the unconscionable delay that had occurred between the receipt by the Council of Mr Wilde's representations against the Notice to Owner (NTO) and their service of the Notice of Rejection.

Mr Wilde has now applied for an order for costs and expenses to be made against the Council. The basis of his application is that he did not park on the pavement, that he felt that this was proven with the Adjudicator, and that he did not therefore think that he should lose out.

The Council resist the application in their letter of 4 April 2003, which they have copied to Mr Wilde. I accept their contention that the grounds expressed by Mr Wilde would not be sufficient to found a claim for costs. However the Council have correctly inferred that I was prepared to consider a claim for costs on the basis of the delay referred to above. They have therefore sought to address that issue in their letter.

The Council acknowledge the guidelines set out regarding delay in the case of *Davis - v - Kensington & Chelsea*. In that case the Adjudicator stated (at p. 48) "...for my own part I consider that in the usual case representations in respect of an NTO should be considered by an authority within 2 - 3 months from receipt." The Adjudicator went on to say, "However, again, thereafter, it would still be open to the authority to show that the delay in considering

the representations was not unreasonable in all of the circumstances. That may be a difficult task, as the consideration of representations is likely to be entirely within their own hands: but, for example...a particular case may require further investigation (into the facts and/or legal issues) and such investigation may mean that a period of over 2 - 3 months would be quite reasonable."

It is notable in this case that at no stage have the Council produced any explanation for the delay (nor indeed expressed any regret that it occurred.)

However the Council argue that the delay, "on the facts, was not 'wholly unreasonable' and did not prejudice the Appellant's right to receive a fair hearing." They say, "The Appellant very clearly states his recollections of the matter both in his Notice to Owner Representations and also in his Appeal to PATAS. In neither case does the Appellant contest his ability, for example, to recall events had been lessened by the passage of time."

At p.40 of *Davis* the Adjudicator referred to a suggestion from the Council representative in that case, "...that delay alone - without prejudice to the owner of the vehicle - could never be sufficient to deny an authority the right to pursue a penalty..." but went on to say, "...I consider that analysis to be wrong. The extent to which the owner has been prejudiced by the delay is, in my view, just one factor that has to be taken into account in assessing whether delay has been reasonable. It is neither necessary nor determinative: and there is no burden falling on the owner to prove that delay is prejudicial to him before delay can be held to be so unreasonable that the Council are denied from pursuing the penalty (although of course evidence of prejudice in a specific case may be compelling)."

In summarising his conclusions, the Adjudicator in *Davis* stated, "If an authority fails to take a step to enforce a parking penalty within a reasonable time, it breaches its obligation to act fairly. Where an Adjudicator finds that an authority has acted *ultra vires* in failing to comply with its duty to act fairly (for example, by failing to act with reasonable timeliness), it is open to him to uphold a collateral challenge and find that the authority cannot pursue a penalty based upon its own unlawful act, with the result that he must allow the Appellant's appeal".

In this case I made clear that even if there had not been other grounds for doing so, I would have allowed the appeal on the basis set out in this summary, and I will deal with this costs application as if I had done so.

This means, therefore, that I took the view that the Council had acted unlawfully in seeking to enforce this penalty charge after such a delay by serving a Notice of Rejection on Mr Wilde. The issue of potential prejudice to Mr Wilde did not, in my view, arise at the stage when the Notice of Rejection was served, since the Council would not have known when they served the Notice of Rejection whether or not Mr Wilde would have been prejudiced as to his subsequent conduct; i.e. they could not say whether or not he would have a clear recollection of events or whether relevant documentary evidence might have been lost or discarded on the assumption that the representations had been accepted.

In acting unlawfully, the Council were also acting wholly unreasonably, since no reasonable Council would so act. I therefore find that Mr Wilde is entitled in principle to an order for costs and expenses in this case.

Mr Wilde's claim consists of two parts:

Travelling expenses: I allow the total of £41 claimed in respect of fuel, parking and Congestion charges.

Loss of earnings: These are not normally awarded. However I accept that Mr Wilde had to take most if not all of the day off to attend the Hearing Centre. He has not provided any documentary evidence to support his claim, but I accept that he is self-employed, and that he is likely to have lost earnings on this day.

There is no definition of "costs and expenses" in the above regulations. However Adjudicators look to the Civil Procedure Rules for Small Claims in the County Court for guidelines. The amount of the penalty charge in this case (£80) would bring the case within the Small Claims category were it in the County Court. Those rules allow an award of a sum not exceeding £50 per day for any loss of earnings by a party to the proceedings.

Accordingly, whilst I acknowledge that Mr Wilde has asked for £180, I make an award in respect of his loss of earnings in the sum of £50.

I therefore direct the Council to pay Mr Wilde the sum of £91 forthwith.