



**DECISION ON PRELIMINARY ISSUE NO. 2:
JURISDICTION OF THE FIRST-TIER AND UPPER TRIBUNALS FOR SCOTLAND IN
PARKING APPEALS**

SHERIFF GEORGE JAMIESON

IN THE CASE OF

Mr William Laughlan, Flat 1 2, 64 Lynedoch Street, GREENOCK, PA15 4AE

Appellant

- and -

Inverclyde Council, PO Box 597, Northampton, NN4 7XN

Respondent

FtT case reference IC00003-2102

Paisley, 28 November 2022

Decision

The Upper Tribunal for Scotland:

1. Finds that neither the First-tier Tribunal for Scotland nor the Upper Tribunal for Scotland have jurisdiction to consider the appeal on the ground that the outsourcing agreement between Inverclyde Council and Open Parking may not have been legal.
2. Restricts the appeal to the Upper Tribunal for Scotland to the single issue of whether the alleged parking contravention occurred.



Representation in the Appeal before the Upper Tribunal for Scotland

The Appellant is self-represented in this appeal.

The Respondents are represented by Roisin Dillon, Team Leader of the Respondent's Parking Enforcement Unit.

REASONS FOR DECISION

Introduction

[1] By decision dated 22 July 2021, the adjudicator refused the Appellant's appeal against the issuing of a Parking Charge Notice (PCN) to the Appellant by Inverclyde Council on 27 October 2020 at 12:16 hours in respect of the Appellant parking his vehicle in Cardwell Road, Gourock.

Factual Background

[2] The Appellant was friendly with a man aged 82 at the time the PCN was issued. This individual was housebound. On the day in question, the individual required the Appellant's immediate assistance as his heating was not working and he was without heating or hot water. The Appellant straight away attended the man's home in Gourock to fix his boiler. This was a small task which the Appellant completed in five minutes. He left the man's flat after a brief period of conversation with him to find the PCN attached to the windscreen of his motor vehicle.

Preliminary Issue 2

[3] Procedure in this further appeal to the Upper Tribunal for Scotland included a hearing on 12 September 2022 to determine two preliminary issues.



[4] This Decision is concerned only with the second of those issues, namely whether the First-tier Tribunal and the Upper Tribunal have jurisdiction to consider the appeal on the ground that the outsourcing agreement between Inverclyde Council and Open Parking may not have been legal.

Grounds of Appeal before the Adjudicator

[5] The Appellant had four grounds of appeal before the adjudicator.

[6] Those four grounds of appeal were:

1. Parking enforcement in Inverclyde was suspended on the date the PCN was issued.
2. Proper procedure was not followed (parking enforcement was suspended in Inverclyde on the date the PCN was issued).
3. There were mitigating circumstances in play at the time the alleged contravention took place.
4. In rejecting his appeal, Open Parking lied and misrepresented themselves as officials of Inverclyde Council.

Grounds of Appeal to the Upper Tribunal for Scotland

[7] The Appellant had three grounds of appeal against the decision of the adjudicator:

1. The adjudicator made findings in fact for which there was no evidence or which were inconsistent with the evidence and contradictory of the evidence.
2. The adjudicator made fundamental errors in his approach to the case, Inverclyde Council did not attend the hearing and no questions could be put to them, no reason was given for their non-attendance.
3. The adjudicator arrived at a decision no reasonable tribunal would properly reach.



Permission to Appeal

[8] On 20 May 2022, the Upper Tribunal for Scotland held a reconsideration hearing to determine whether to grant the Appellant permission to appeal to the Tribunal against the decision of the adjudicator.

[9] By decision dated 23 May 2020, I granted permission to the Appellant to appeal to the Upper Tribunal for Scotland on all three of his grounds of appeal against the decision of the adjudicator. However, I granted permission to appeal only insofar as those grounds of appeal related to grounds of appeal 1 and 2 before the adjudicator.

Law

[10] A person to whom a PCN is issued and who does not pay the penalty charge within 28 days receives a “notice to owner” which allows him to make representations to the parking authority which, if successful, allows the authority to cancel the notice to owner. If those representations are unsuccessful, then the owner may appeal to the First-tier Tribunal (previously an adjudicator) against the decision of the parking authority not to accept a ground for cancellation of the notice to owner.

[11] The grounds of cancellation, and therefore the grounds of appeal which may be considered by the First-tier Tribunal for Scotland, are set out in paragraph 2(4) of schedule 6 to the Road Traffic Act 1991. There are six grounds of appeal, (a) – (f). The full grounds of appeal as they apply in Inverclyde are:



- a) that the recipient of the PCN: (i) never was the owner of the vehicle in question; (ii) had ceased to be its owner before the date on which the alleged contravention occurred; (iii) became its owner after that date;
- b) that the alleged contravention did not occur;
- c) that the vehicle had been permitted to remain at rest in the parking area by a person who was in control of the vehicle without the consent of the owner;
- d) that the relevant designation order is invalid;
- e) that the recipient is a vehicle-hire firm and: (i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice fixed to the vehicle during the currency of the hiring agreement; and
- f) that the penalty charge exceeded the amount applicable.

Adjudicator's Decision

[12] The adjudicator's Decision does not directly engage with the issue of whether the First-tier Tribunal and the Upper Tribunal have jurisdiction to consider the appeal on the ground that the outsourcing agreement between Inverclyde Council and Open Parking may not have been legal.

[13] On granting permission to appeal, I therefore reserved my position as to the relevance of this issue to the appeal to the Upper Tribunal for Scotland, taking the view, however, that it might have had some relevance to the question whether the parking contravention occurred, and accordingly that it should potentially be considered by the Upper Tribunal for Scotland in connection with the Appellant's permitted grounds of appeal to the Upper Tribunal for Scotland.



Respondent's Position in Respect of this Issue

[14] The Respondent's position is that it has at no time illegally delegated decisions on receiving and making representations on cancelling PCNs to Open Parking. This is both a factual issue and a legal issue: was there any such delegation; and, if so, was it illegal (*ultra vires*) the powers of Inverclyde Council?

Do the First-tier Tribunal or the Upper Tribunal for Scotland have Jurisdiction to Consider this Issue?

[15] I raised this as a preliminary issue because I was not convinced this was not a matter which, in law, either Tribunal could consider. If the First-tier Tribunal had no jurisdiction to do so, then neither did the Upper Tribunal for Scotland (see section 47(3)(a) of the Tribunals (Scotland) Act 2014).

Law on Outsourcing of Functions under the Road Traffic Act 1991

[16] The Respondent claims that its outsourcing agreement with Imperial Civil Enforcement Solutions Ltd trading as Open Parking is a permitted delegation of statutory functions under section 69 of the Local Government (Scotland) Act 1973. This section confers power on the Respondent to do any thing calculated to facilitate the discharge of its functions.

[17] Its contract with Open Parking therefore delegates a number of functions to Open Parking including the "processing of challenges and appeals against PCNs". The Respondent maintains, however, that in compliance with statutory guidance, it has not contracted out its statutory function of "considering representations from recipients of notices to owners" (paragraph 2(7), schedule 6 to the Road Traffic Act 1991; The Department of Transport and The Welsh Office, *Guidance on Decriminalised Parking Enforcement Outside London*, paragraph 14.20).



Parties' Submissions

[18] Parties' submissions at the hearing on preliminary issues focused on the factual issue of whether the Respondent had, in fact, delegated its duty to consider the Appellant's representations against the notice to owner issued to him.

[19] The Appellant noted the decision letter, rejecting his representations, had been generated by Open Parking, leading to the inference Open Parking, rather than the Respondent, had made this decision. The Respondent's position was the decision had been made in house by Ms Dillon, and not by Open Parking.

[20] These are questions of fact which would require to be determined by either this or, on remit to it, by the First-tier Tribunal. The issue for consideration at the hearing on preliminary issues on 12 September 2022 was a jurisdictional one: whether either Tribunal had power to hear and determine this matter.

Discussion

[21] A statutory tribunal is limited to the jurisdiction conferred on it by the enactment under which it is established. Accordingly, in *R (Westminster City Council) v Parking Adjudicator* [2002] EWHC Admin 1007; [2003] RTR 1, Elias J. held that a parking adjudicator had no jurisdiction to allow an appeal under schedule 6 to the Road Traffic Act 1991 on the ground of mitigating circumstances as such a ground was not listed in paragraph 2(4) of the schedule.

[22] The grounds on which an enforcement authority in England or Wales, and on appeal therefrom, a parking adjudicator, may cancel a notice to owner are now set out in regulations made under sections 80 and 89 of the Traffic Management Act 2004.



[23] The grounds are similar to those in Scotland under paragraph 2(4) of schedule 6 to the Road Traffic Act 1991. The grounds include the contravention not having occurred, but also, a ground not applicable in Scotland, *that there has been a procedural impropriety on the part of the enforcement authority* (regulations 4(4)(a) and (f), Civil Enforcement of Road Traffic Contraventions (Representation and Appeals) (Wales) Regulations 2013 (SI 2013/359); regulations 5(4)(a) and (f), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 (SI 2022/576)).

[24] “Procedural impropriety” is defined in these regulations as meaning a failure by the enforcement authority to observe any requirement imposed on it by the Traffic Management Act 2004, by the General Provisions Regulations, or by the Enforcement Regulations, in relation to the imposition or recovery of a penalty charge (regulation 4(5), Civil Enforcement of Road Traffic Contraventions (Representation and Appeals) (Wales) Regulations 2013 (SI 2013/359); regulation 2(2), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 (SI 2022/576)).

[25] I drew parties’ attention to these authorities in advance of the hearing on preliminary issues on 12 September 2022. Neither party sought to argue these authorities were irrelevant to my decision on jurisdiction. I have therefore concluded that neither the First-tier Tribunal nor the Upper Tribunal for Scotland have jurisdiction to consider the appeal on the ground of any procedural impropriety involving the outsourcing of certain parking enforcement functions to Open Parking, on the basis no such ground is set out for consideration of the Tribunal in paragraph 2(4) of schedule 6 to the Road Traffic Act 1991.



Further Appeal

[26] 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 for Scotland within 30 days of the date on which this decision was sent to that party. Any such request for permission must be in writing and must: (a) identify the decision of the Upper Tribunal for Scotland 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 by a second appeal or what other compelling reason there is that shows the appeal should be allowed to proceed.

George Jamieson
Sheriff of North Strathclyde
Member of the Upper Tribunal for Scotland