

## Mr [REDACTED] K [REDACTED] - v - Birmingham City Council

### Appeal Details

Case number:	KW01986-2305	Appeal Raised:	10/05/2023
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	31/05/2023
Number of PCNs:	15	Adjudicator:	Belinda Pearce

### Decision - PCN KW24803826

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.  
Penalty Charge Amount: £120.00

Issued: 29/03/2023

Entered: 14/03/2023 12:15

Birmingham Clean Air Zone

### Decision - PCN KW24840935

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.  
Penalty Charge Amount: £120.00

Issued: 31/03/2023

Entered: 16/03/2023 10:30

Birmingham Clean Air Zone

### Decision - PCN KW24694243

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 23/03/2023

Entered: 07/03/2023 11:56

Birmingham Clean Air Zone

Decision - PCN KW24788551

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 28/03/2023

Entered: 13/03/2023 12:13

Birmingham Clean Air Zone

Decision - PCN KW24884227

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 04/04/2023

Entered: 18/03/2023 21:52

Birmingham Clean Air Zone

Decision - PCN KW24045874

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 14/02/2023

Entered: 26/01/2023 11:59

Birmingham Clean Air Zone

## Decision - PCN KW2434678A

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 03/03/2023

Entered: 14/02/2023 12:32

Birmingham Clean Air Zone

## Decision - PCN KW24122807

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 17/02/2023

Entered: 31/01/2023 12:16

Birmingham Clean Air Zone

## Decision - PCN KW24029550

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 10/02/2023

Entered: 25/01/2023 14:22

Birmingham Clean Air Zone

## Decision - PCN KW22132785

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 01/11/2022

Entered: 14/10/2022 11:34

Birmingham Clean Air Zone

## Decision - PCN KW22190034

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 02/11/2022

Entered: 17/10/2022 08:21

Birmingham Clean Air Zone

## Decision - PCN KW22334203

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 10/11/2022

Entered: 24/10/2022 12:00

Birmingham Clean Air Zone

## Decision - PCN KW22414095

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 14/11/2022

Entered: 28/10/2022 17:18

Birmingham Clean Air Zone

## Decision - PCN KW22497241

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 17/11/2022

Entered: 01/11/2022 11:45

Birmingham Clean Air Zone

Decision - PCN KW23805688

**Mr [REDACTED] K [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Birmingham City Council.

Penalty Charge Amount: £120.00

Issued: 26/01/2023

Entered: 11/01/2023 12:25

Birmingham Clean Air Zone

Please see the next page for the Adjudicator's Reasons

## Adjudicator's Reasons

This Decision relates to the contest of 15 alleged transgressions by the said vehicle of the Birmingham City Council Clean Air Zone Scheme, on dates between 14th October 2022 and 18th March 2023.

1. The Charging Authority assert that the said vehicle, being of a class requiring payment of a CAZ daily charge, was used within the Birmingham City Council Clean Air Zone [CAZ] on the material dates and that no daily CAZ Charge payment was received in respect of each occasion.

As a result of non-receipt of such CAZ daily charges, the Penalty Charge Notices issued.

2. The Appellant (registered keeper of the said vehicle) denies liability for the ensuing Penalty Charge Notices on the basis of the prevailing circumstances and challenge as comprehensively stated in his submitted handwritten representations, together with supporting documentation including result of Data Subject Access Report.

3. The Charging Authority who assert the contraventions is obliged to adduce evidence to the requisite standard to substantiate each assertion:-

The Charging Authority confirm that the said vehicle is of a 'relevant' class for which a CAZ daily charge is payable.

The evidence adduced by the Charging Authority comprises, in each instance, a copy Penalty Charge Notice, Traffic Regulation Order and Signage Authorization, composite map/plan, photographic capture of the said vehicle in situ, together with confirmation of non-receipt of the CAZ daily charge due.

Further evidence presented by the Charging Authority includes map/plans and corresponding images demonstrating the positions of, and signage in, the vicinity of each location in question notifying motorists of the CAZ.

4. Liability for such CAZ daily charge payment rests with the 'registered keeper', which means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994 at the Driver and Vehicle Licensing Agency (DVLA).

The Charging Authority established from DVLA that the registered keepership of the said vehicle was with the Appellant.

That liability is strict: mistake/unintentional error does not negate liability.

5. The evidence adduced by the Charging Authority was examined to evaluate the allegation in conjunction with the Appellant's representations.

6. The Appellant indicated the nature of the business for whom the said vehicle was driven, the Appellant's initial belief that an exemption applied to the said vehicle, and his endeavours thereafter to obtain such exemption.

The Appellant informs as to both written and telephone endeavours, and indicates the protracted process.

7. The Birmingham City Council Clean Air Zone [CAZ], implemented in 2021, is a scheme of strict liability.

Unless notified as qualifying for an exemption/exception, all relevant vehicles subject to payment of a CAZ daily charge driving within the Zone are obliged to pay the relevant CAZ daily charge by 11:59 p.m. on the

sixth day after the date of the vehicle's use within the Zone.

Non-payment results in the issue of a Penalty Charge Notice; unless and until notification of a vehicle's exception/exemption status is confirmed the motorist should continue to make daily charge payments.

The prudent course for the Appellant would have been to make daily charge payments until assured that the said vehicle was exempt or otherwise excepted.

8. The Appellant describes a sequence of events, and I have no reason to doubt the veracity of the same; the explanation offered by the Appellant amounts to mitigation.

I have no discretion to take mitigation into account when deciding an Appeal, nor do the Regulations provide for a defence to a contravention on such a basis.

Whilst I accept that the Appellant had no intention to avoid paying the charges, as the registered keeper, he remains liable. As mentioned above, the CAZ is a civil enforcement Scheme which operates under strict liability.

9. As regards the penalty amount, the law is that the Appellant is now liable for the full Penalty Charges as an entitlement to pay at the reduced rate ends 14 days after service of the Penalty Charge Notice, thereafter the Charging Authority alone is afforded the ability to exercise discretion to offer/accept payment at a discount and/or over an extended period.

The Charging Authority has expressed that it is not exercising discretion in this matter.

The penalty amount/s payable and time criterias for making payment/s are set by the governing Charging Order, my remit does not extend to altering penalty amounts or payment periods.

10. From the evidence before me I am satisfied that the contraventions occurred, in that the said vehicle was used within the CAZ, no daily charges having been paid for that vehicle on the dates in question.

The Appellant's representations amount to mitigating circumstances; the Court of Appeal Held in 2005 that no Adjudicator is entitled to take mitigation into consideration in reaching a determination, I am obliged to abide by that Decision.

**Evidentially I am satisfied that the contraventions occurred, accordingly I Dismiss this Appeal.**

Belinda Pearce  
Adjudicator  
31/05/2023