

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

### Appeal Details

Case number:	PO00021-2305	Appeal Raised:	17/05/2023
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	23/06/2023
Number of PCNs:	1	Adjudicator:	Annie Hockaday

Decision - PCN PO84397988

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

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

Penalty Charge Amount: £50.00

Issued: 13/03/2023

Contravention: 13/03/2023 17:02

Walmer Road

30 - Parked for longer than permitted

Please see the next page for the Adjudicator's Reasons

## Adjudicator's Reasons

1. The Penalty Charge Notice (PCN) is for parking for longer than the permitted time in a bay on Walmer Road. I have considered all the evidence and I make my determinations of fact on the balance of probabilities.
2. The Council rely on the computer notes and photos of the officer. The officer logged the vehicle at 14:21 and returned and logged it again at 17:02. On both visits the wheel valve positions were logged as 4 and 2. The photos at 17:02 show the car in the bay next to the sign '2 hours, no return to zone within 4 hours, GA Zone Permit Holders exempt'.
3. The Council did not receive a challenge in response to the PCN that was served to the windscreen. After a Notice to Owner was posted to Mr K [REDACTED], he wrote to explain that he left his car with its key with [REDACTED]'s Car Wash at [REDACTED] Road (receipt 13 April 2023 for full valet and polish), with an instruction for them to leave the car with the next door mechanic when they finished cleaning and he also gave them his mobile if there was an issue. He says that he did not get a call, so went to collect his car at about 6pm and was told that it was on Walmer Road and they had not passed it to the mechanic. He found the PCN on the car and took the PCN to [REDACTED]'s Car Wash and they said they would pay, but they have not done so. He argues that liability should transfer to them.
4. I accept Mr K [REDACTED]'s account that he left the car with its keys with the car wash and about what happened next, but I do not find that he has shown a reason under the law to transfer liability to pay away from himself as owner.
5. Liability for a parking contravention, which is enforced under the civil law, is not decided by identifying the driver but depends on ownership of the vehicle at the time. The starting point is that the 'owner' at the date of the contravention is liable. The law presumes that the 'owner' is the person in whose name the car is registered at the DVLA, unless the contrary is proved. I refer to section 92(1) Traffic Management Act 2004 and regulation 6(4) of The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022.
6. The law does recognise an exception to owner liability if '*the vehicle in question was under the control of a person who did not have the consent of the owner*' which can be abbreviated to 'TWOC' (regulation 5(4)(c) of The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022).
7. Mr K [REDACTED]'s car was not stolen but had been placed in the care of the car wash with the keys. I accept that Mr K [REDACTED] did not know that they parked it on Walmer Road, but I am not satisfied that he has shown that the circumstances amount to 'taken without consent' to trigger this exception.
8. The contravention is proved. I understand that it is annoying for Mr K [REDACTED] to receive a PCN for the actions of the car wash, but I find that Mr K [REDACTED] is liable as owner to pay £50. It is a private matter between him and the car wash whether he asks them to repay him.

Annie Hockaday

Adjudicator

23/06/2023