



Request for Review of Decision

(Pursuant to Rule 17 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020)
(the “Rules of Procedure”)

Appeal No: GP00290-2312

Miss G (the “applicant”)

1. Background

On 23 April 2024 the applicant requested the Tribunal to review a decision issued by Legal Member [] dated 23 March 2024 (the “Decision”). The Decision related to four Bus Lane Enforcement Charge Notices (GP72636861, GP72619625, GP72626303 & GP7263498) issued by Glasgow City Council (the “Council”)

2. The Applicant’s reasons for requesting the review

The applicant’s grounds for review are: the interests of justice require a review.

The applicant also states the following:

The council stated in their letter that I was in the bus lane from the start of this. The bus lane started before the lights at Hope Street and I didn’t enter the bus lane until after the lights.

The local authority advise I was in the bus lane from the start of the bus gate but this is incorrect.

3. Time Limit

Rule 17(3) of the Rules of Procedure provides that a request for review must be made within 14 days of the date on which the Decision was made or within 14 days of the date that the written reasons (if any) were sent to parties.

The request for review was made on 23 April 2024. This is more than 14 days of the date on which the Decision was made. The applicant's reasons for applying for a review beyond the time limit are that she submitted an appeal and complaint to Judicial Office for Scotland in regards to comments made by the legal member during the hearing. She says that the Judicial Office for Scotland responded on 19 April 2024 (stated as "last Friday") to say that they cannot deal with the appeal. These reasons are accepted for the following reasons. The applicant was mistaken in believing that the Judicial Office for Scotland could deal with both her complaint and the review request. The time limit for applying for a review is extended under Rule 4(3) of the Rules of Procedure. The request for review will be considered.

4. Grounds upon which a decision may be reviewed

Rule 17(2) of the Rules of Procedure sets out the grounds upon which the Decision may be reviewed. These are:

- the decision was wrongly made because of an error on the part of its administrative staff;
- the Appellant who had failed to appear or be represented at a hearing had good and sufficient reason for their failure to appear;
- where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not have been reasonably known about or foreseen by the parties,

- where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known about or foreseen; or
- the interests of justice require such a review.

5. Review request wholly without merit

Rule 17(4) of the Rules of Procedure provides that if the Tribunal considers the request for review is wholly without merit, it must refuse the request and inform the party of its reasons for refusal.

The decision in **Ross v London Borough of Enfield (LPAS)** provides some useful guidance on the application of the review process. However, it was issued at a time when there was no right of appeal and, consequently, not all of what is said in that decision is relevant. With that caveat in mind, **Ross** provides some useful relevant guidance. Looking at the Rules of Procedure, it can be seen that the grounds for review are very restricted in scope. When the general adjudication scheme was set up by the Road Traffic Act 1991, it was intended to provide a relatively cheap and expeditious appeal from an authority to accept a vehicle owner's representations against a penalty. In **Ross**, the adjudicator said:

Whilst I do not underestimate the high levels of feeling amongst motorists which parking "tickets" can engender-and of course the sums of money involved are not negligible, particularly when clamping or towing away is involved-the appeal procedure was designed to be appropriate and proportional to the subject matter involved. An inherent part of the scheme is to ensure that the adjudicator's decision is final and conclusive save in very exceptional cases. It is clear from the narrow grounds set out in Regulation 11 [i.e. the precursor to the Rules of Procedure] (and the general scheme of the Act) that reviews will be rare.

A party cannot simply ask for a review of the decision because they think it is wrong. Each review request will depend on its own facts. The fact that there may be inconsistency of decisions does not mean that either decision is wrong and is not grounds for review. It should not be taken to mean that in every case where a litigant is unsuccessful, they are automatically entitled to a review because virtually every unsuccessful litigant thinks that the interests of justice require the detailed outcome to be reconsidered. The ground only

applies where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order.

Whether the interests of justice require a review depends upon the circumstances of any specific case. If a party had misled a Legal Member, the interests of justice may require a review of the decision. Each case depends on its own facts.

Even where one of the grounds of review set out in Rule 17 of the Rules of Procedure is established, this merely gives the Legal Member a discretion on whether or not to review the decision. Even if a ground is proved, the Legal Member is not bound to exercise discretion to review the decision.

The Tribunal considers that the request for review is wholly without merit for the following reasons:

- Entering an operational bus lane in an unauthorized vehicle attracts strict liability. Under Scots law there is no de minimis principle excusing liability for driving into a bus lane. In incurring liability it is irrelevant if a vehicle was only momentarily in the bus lane. For the purposes of triggering liability, the driver's motive or reason for entering a bus lane is also irrelevant. That is a mitigating circumstance which the Tribunal cannot consider. It has no power to do so in deciding this type of appeal. Only the Council can consider mitigating circumstances (e.g. looking for somewhere to park). The case law referred to by the Legal Member in the Decision is not binding on the Tribunal as it relates to different legal provisions that do not apply in Scotland. Furthermore, the decision was not issued by a court of record whose decisions are binding (e.g. the Upper Tribunal for Scotland or the Inner House of the Court of Session).
- The Legal Member considered the evidence, made findings of fact that were open to him on the evidence and correctly applied the law to the facts.

A Green

A.M.S. Green, Chamber President

24 April 2024