

Mr [REDACTED] A [REDACTED] - v - Birmingham City Council

Appeal Details

Case number:	KW03291-2411	Appeal Raised:	15/11/2024
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	04/12/2024
Number of PCNs:	1	Adjudicator:	Adjudicator Fantinic

Decision - PCN KW3317764A

Mr [REDACTED] A [REDACTED], you have lost this appeal.

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

Penalty Charge Amount: £120.00

Issued: 20/09/2024

Entered: 01/09/2024 00:18

Birmingham Clean Air Zone

1000 - DEFAULTRUC

Please see the next page for the Adjudicator's Reasons

Adjudicator's Reasons

1. This matter is determined without a hearing as neither party has requested one. I have considered the evidence that has been presented and the written representations that have been made in this matter.
2. In his written submissions, the Appellant explains that the vehicle entered the Clean Air Zone (CAZ) on 31 August 2024. The road user charge was paid for an entry on that date. The vehicle remained in the CAZ beyond midnight due to heavy traffic on exit from the CAZ. The failure to pay the road user charge for 1 September 2024 was not intentional. The Appellant assumed that the payment on 31 August would cover a 24 hour period of entry. The Appellant was not aware that a separate charge needed to be paid for each specific day, as the signage does not make this distinction clear. The Appellant comments that the website used to make the payment did not provide any indication of a separate charge being needed for the following day, or allow him to easily check or adjust the payment made for the hours spent in the CAZ after midnight. The Appellant also submits that there are mitigating circumstances, as the vehicle was only in the CAZ for 18 minutes on 1 September and due to heavy traffic, so this overstay was unintentional. The Appellant would have paid the additional road user charge, had they realised it was necessary.
3. The Birmingham Clean Air Zone Charging Order 2021, which applies to the CAZ, sets out at Article 1(h) of the Schedule to the Order that: *“charging day” means the period of twenty four hours from midnight to midnight*”.
4. The CAZ signaged used has been approved by the Department for Transport. The entry and exit signs states “Charges apply Pay online”. This puts the responsibility onto the driver to look online and ascertain whether the charge would apply to their vehicle.
5. At Evidence 16, the Authority has provided screenshots from the Gov.uk website showing the payment process for the road user charge:
 - a. At page 4 of the document under the heading *“Pay a daily Birmingham Clean Air Zone charge”* it states *“The daily charge for your vehicle is: £8.00 The charge period runs from midnight to midnight. Payment can be made 6 days before, on the day of travel or by 11:59pm on the 6th day after driving in the zone otherwise you may receive a penalty charge notice (PCN).”*
 - b. At page 5 of the document there is the heading *“Which days do you want to pay for?”*, below which it states *“A daily charge period runs from midnight to midnight.”* Below this, is a list of boxes which the motorist can tick to select the dates that they wish to pay for.
6. On the basis of this information, I find that a motorist is put on adequate notice that the charge period runs from midnight to midnight.
7. I accept that the contravention occurred as the result of a genuine mistake, and that the Appellant would have paid the road user charge for 1 September had they realised that they needed to pay it as they had been in the CAZ after 11:59 pm on 31 August. I note that the vehicle only remained in the CAZ due to heavy traffic and for 18 minutes. However, these are mitigating circumstances. The Adjudicator is unable to allow an appeal on the basis of mitigating circumstances only. It is only the Authority that can cancel a Penalty Charge Notice on the basis of mitigation, and they have decided not to do so on this occasion.

8. On the evidence before me, I find that the contravention occurred. The Appellant has not established a statutory ground of appeal. This appeal is therefore refused.

Adjudicator Fantinic

Adjudicator

04/12/2024