CO/10617/2005

Neutral Citation Number: [2006] EWHC 2170 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Wednesday, 5th July 2006

B E F O R E:

MR JUSTICE COLLINS

- - - - - - -

THE QUEEN ON THE APPLICATION OF ROGER DE CRITTENDEN

Claimant

-v-

NATIONAL PARKING ADJUDICATION SERVICE

Defendant

- - - - - - -

(Computer-Aided Transcript of the Palantype Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- - - - - - -

The Claimant appeared on his own behalf
The Defendant did not appear and was not represented

- - - - - - -

JUDGMENT
(As approved by the Court)

- - - - - - -

1. MR JUSTICE COLLINS: This is a renewed application by Mr De Crittenden to seek permission to apply for judicial review of a decision of a Parking Adjudicator given on 21st November 2005, which in fact allowed his appeal against the issue by the Worcester City Council of a penalty charge notice in relation to alleged unlawful parking, and the decision of another Parking Adjudicator on 7th December refusing his application for review of that decision.

2. It may be somewhat surprising that the claimant is seeking to pursue judicial review of a decision which was in his favour. But the point he is seeking to make is that the whole system of Parking Adjudicators, the whole system indeed of penalty charges set up by the Road Traffic Act 1991, is unlawful because it is contrary to the Bill of Rights. It is contrary to the Bill of Rights because it breaches the prohibition against fines and forfeitures before conviction or judgment against the persons upon whom the fines and forfeitures are to be levied.

3. I know that this point has been raised before a number of adjudicators, and for some reason it appears to have concerned a number of local authorities. That in itself is of course no good reason why this claim, which is totally academic so far as Mr De Crittenden is concerned, should proceed. But his main complaint, as I understand it, is that the Parking Adjudicators are not independent, they are not a court, and what is required, before any sum of money is taken from a member of the public, is the right to a trial. In the circumstances of this sort of case, it is the right to criminal proceedings.

4. Whatever may have been the position before 1991, parking under that Act was dealt with in a particular fashion. It was done in a slightly curious way because the 1991 Act in its main provisions deals with parking in London. But the Third Schedule applies those provisions generally across the country if local authorities wish to impose them by a particular Order. The 1991 Act has been repealed and replaced by the Traffic Management Act 2004, which explicitly refers to penalty charges as civil penalty notices. It sets up a similar system to that which can be applied under the 1991 Act across the country. That Act is not yet in force; at least when I looked at the latest volume of Halsbury's which indicated whether Acts were in force, it appeared not to be. Why that is I do not know. But it makes explicit what was implicit in the 1991 Act, namely that this is a civil penalty (for want of a better word). It is not a question of a criminal offence. Indeed, the whole purpose behind the 1991 Act was to take enforcement of parking out of the criminal law. There was a need for regulation. Without regulation there would obviously be chaos in our towns and cities. Parliament took the view that the right way of dealing with it was to create civil enforcement. Indeed, at the end of the line the enforcement of parking penalties is through a county court order. But the way in which a challenge can be made to a particular penalty notice is through the Parking Adjudicators, who were set up by the 1991 Act.

5. Mr De Crittenden complains that they are not independent. That complaint is totally ill founded. They are independent. They are an independent tribunal which Parliament has brought into being to act instead of a court to deal with these issues. There is nothing strange in our system of law in a tribunal being established to deal with matters which otherwise would have to be dealt with through the courts. Social security is a

good example. Virtually everything that arises out of social security payments or whether payments are due is dealt with through the tribunals, but there are many others. The system in being is that the tribunal is there to deal with the factual issue. It is controlled by the courts through judicial review or sometimes through a right of appeal. In this case the control is through judicial review. In that way the citizen is protected and has the right to go to an independent body, and ultimately the court, to ensure that his rights are respected.

6. Mr De Crittenden complains that the adjudicators were not carrying out their functions properly, because they were not requiring the local authorities to establish through the necessary paperwork that particular regulations or controls on parking existed. Obviously if there is a challenge to the penalty, it is for the authority to establish the right to make that charge. The burden is not, so far as I am aware under the statutory provisions, placed upon the motorist to establish that he was not liable. However, the motorist must produce some material -- there is clearly an evidential burden -- to establish that his claim has some merit.

7. Obviously, if the motorist asserts that there was no indication that any regulations applied and he did not believe any regulations applied, the authority has to show that that is not correct. Indeed, in this particular case the adjudicator directed the local authority to produce the necessary paperwork, and it did not do so. It was for that reason that Mr De Crittenden's appeal was allowed. This, Mr De Crittenden tells me, was a most unusual state of affairs in his experience. Maybe it was. But perhaps one advantage of this case will be that it is no longer a most unusual state of affairs, because if there is a challenge then the matter must be established. It is very easy for the local authority to establish it, at least it should be, if indeed the regulations that they are seeking to enforce apply, because they will have the necessary Order and they will be able to show the Order applies to the street in question. That should be all too easy. If they cannot do that, then they have no business imposing penalty charges. That is, I would have thought, elementary. If there have been any errors of law in the carrying out of the adjudication by Parking Adjudicators, then this court is there to deal with them if they arise in a given case.

8. The fact is, of course, that most who park know perfectly well, because there are notices and signs, that they are not doing what they should, and recognise that if they are caught they must pay. That is, frankly, hardly surprising. Sometimes, as we know from reading the papers, there are false tickets issued. The system breaks down. Sometimes local authorities impose restrictions when they have no power to do so. That does sometimes happen. It is of course necessary that if that does happen it should be identified and should be able to be identified, and it is so far as the system is concerned. But this is not a fine or forfeiture within the meaning of the Bill of Rights. The suggestion that the Bill of Rights applies is, I am afraid, nonsense. It does not. The only surprise I have is that this argument has been produced on a number of occasions and seems to have worried local authorities, and possibly even adjudicators. All I can say is that they should cease to worry. It is, as I have said, a completely baseless argument. The Bill of Rights' reference to fines and forfeitures before conviction or judgment means that what cannot prevail is a fine or a forfeiture in respect of which there is no right of appeal, whether ultimately to a court or through a

system which is set up which is equivalent to a court. That system has been set up. Thus, even if these were fines or forfeitures (and they are not), the Bill of Rights cannot be said to have been breached.

9. Mr De Crittenden suggested, as I understood his argument, that Parliament was not able to amend or change the Bill of Rights. It certainly is not able to do so except explicitly, but it is able to do so. Parliament is supreme and can amend any Act or any provision of our law at any time. If it passes an Act which clearly states something which could arguably be said to be contrary to a previous Act, then if it is clear and if there is no argument that can be raised against its clear meaning, it will prevail. But, as I say, we do not need that in this case because there is no contravention of the Bill of Rights.

10. In those circumstances, this claim, I am afraid -- quite apart from being academic because Mr De Crittenden has succeeded before the Parking Adjudication Service -- has no merit whatever, and the reliance on the Bill of Rights is utterly hopeless.

11. This application must therefore be refused.

12. MR DE CRITTENDEN: May I ask a question, sir?

13. MR JUSTICE COLLINS: Yes, of course.

14. MR DE CRITTENDEN: Just to clarify a point. You have said in part of what you said, not in the judgment, the earlier part, that I have the ability to go to a County Court at Northampton to require --

15. MR JUSTICE COLLINS: I think that was wrong. Of course, for example, if someone does not know of a penalty charge because for whatever reason they have not been served and the first they know about it is a County Court order, then of course they have the right to go to the County Court and say, "Oi". What would then normally happen, I suspect, is the County Court would be persuaded that the order should not stand, revoke it and say go to the Parking Adjudicators, because that is the system whereby the facts are established. Okay.

16. MR DE CRITTENDEN: Thank you, sir.

17. MR JUSTICE COLLINS: I am sorry to disappoint you.

18. MR DE CRITTENDEN: Ultimately, sir, I will not be disappointed I assure you.

19. MR JUSTICE COLLINS: All right.

20. MR DE CRITTENDEN: Thank you for your time.

21. MR JUSTICE COLLINS: Not at all.
