

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 February 2009

Before:

CHRISTOPHER SYMONS QC
Sitting as a Deputy Judge of the High Court

Between:

STOCKTON-ON-TEES BOROUGH COUNCIL

Appellant

- and -

ORANGZABE LATIF

Respondent

Ms E. Joan Smith (instructed by **Stockton-on-Tees Borough Council**) for the Appellant
Mr Scott Smith (instructed by **Paul Watson & Co.**) for the Respondent

Hearing dates: 20th January 2009

Judgment

CHRISTOPHER SYMONS QC :

1. This matter comes before this Court on a Case Stated from Teesside Crown Court (HHJ Armstrong sitting with two of Her Majesty's Justices for the Justice Area of Teesside). On the 14th February 2008 the Crown Court allowed the Respondent's appeal, from the decision of the Teesside Magistrates Court of the 18th December 2007 and decided that there was jurisdiction to extend the time for appealing the refusal of the Appellants' decision to revoke the Respondent's Hackney Carriage and Private Hire Vehicle licence beyond the statutory time limit of 21 days laid down.
2. The Appellant, Stockton-on-Tees Borough Council ("the Council"), now comes before this Court and argues that the Crown Court was wrong and that there was no such jurisdiction. The Appellant sought an extension of time for lodging this appeal and in the light of my decision on that matter I will return to this at the end of this judgment.
3. The questions which are posed for the opinion of this court are:
 - i) Whether the Court was wrong in law to allow an extension of the time for appealing from the licensing committee to the Magistrates' Court when the Public Health Act 1936 and the Local Government (Miscellaneous Provisions)

Act 1976 do not provide for any statutory extension of the 21 day appeal period

- ii) Whether the Court was wrong in law to apply the Civil Procedure Rules, Rule 3,1(2)(a) and Rule 52 in extending the statutory time for the appeal.
- iii) Whether the Magistrates' Court, and/or the Crown Court on appeal from the Magistrates' Court have power to extend the 21 day time for appealing under section 300 of the Public Health Act 1936.

The Facts

4. Mr Latif, the Respondent in this matter, was the holder of a combined Hackney Carriage and Private Hire Vehicle licence from the Appellant. On 17th November 2006 the Respondent received a police caution for possession of a Class C drug namely cannabis. The Council was notified of the caution on 4th December 2006. The Respondent was interviewed and referred to the Council's licensing committee.
5. The committee eventually heard the matter on 23rd October 2007 and resolved to revoke the Respondent's licence. Notice of the committee's decision, by way of a letter was hand delivered to the Respondent's wife at the Respondent's home address on 24th October 2007. The letter, as it was obliged by statute to do, advised the Respondent that the time limit for an appeal to the Magistrate's Court against the committee's decision was 21 days, namely until 15th November 2007.
6. The Respondent, for arguably good reason, failed to lodge his appeal within the 21 days but instead lodged an appeal on the 30th November 2007. On 18th December 2007 the magistrates declined to entertain the appeal as the notice was outside the designated 21 day period. The "Final Disposal Sheet" from the Magistrate's Court under "Other Disposal" was completed with the words – "Leave to Appeal Refused – Documents served therefore Appeal must be made within 21 days".
7. The Respondent appealed to the Crown Court, which on the 14th February 2008, allowed the appeal on the basis that there was power to extend the time and that it was reasonable to do so and that Court remitted the matter for a hearing on the merits by the Magistrates.
8. For reasons that are not apparent to me the Crown Court assumed that the Magistrates Court decision was based on a refusal to extend time on the basis of discretion rather than lack of jurisdiction. The Crown Court appeal was by way of rehearing and having set out the relevant statutory provisions, to which I shall turn below, decided (and here I quote from the Case Stated):

“20. The Court found that it was common ground that the CPR applied to the proceedings.

21. The Court decided that CPR Rule 3.1 empowered the Court to extend the appeal time limit, taking into account the length of the delay, the reason for the late appeal, the chances of success and the degree of prejudice to the Council and all the circumstances of the case.”

The Statutory Provisions

9. The power to grant licences to hackney carriage drivers and private hire drivers are contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”). Section 51 and 59 of the 1976 Act requires the district council granting licences to be satisfied that the person applying is a fit and proper person.
10. Section 61 of the 1976 Act provides:
- “(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (...) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds-
- (a) that he has since the grant of the licence
- (i) been convicted of an offence involving dishonesty, indecency or violence; or
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Act: or
- (b) any other reasonable cause .”
11. Section 77 of the 1976 Act provides that section 300 to 302 of the Public Health Act 1936 have effect as if part of the 1976 Act. Section 300 in part provides:
- “(2) The time within which any such appeal may be brought shall be twenty-one days from the date on which notice of the council’s requirement, refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.
- (3) In any case where such an appeal lies, the documentation notifying to the person concerned the decision of the council in the matter shall state the right of appeal to the a court of summary jurisdiction and the time within which such an appeal may be brought.” It is to be noted that there is no provision providing for time to be extended as there is for example in section 18(3) of the Criminal Appeal Act 1968 which provides for time to be extended by the Court of Appeal.”
12. Since reliance was placed by the Respondent on the Civil Procedure Rules (CPR) it is convenient if I set out here the part relied on:

“3.1 The Court’s General Powers of Management

(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may-

(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension of time is made after the time for compliance has expired.)”

13. Although Rule 52 is referred to in the questions posed to the Court it was not submitted to me that that Rule had any bearing on the issues before me.

The Arguments

14. On behalf of the Council it was argued, shortly and succinctly, that there is no power to extend the time limit of 21 days as the Public Health Act section 300 which is read into the 1976 Act is quite clear. The requirement to appeal within 21 days is mandatory and there is no provision for granting an extension.

15. Reliance was placed on two extradition cases where similar arguments as are now raised in this application were rejected. The first was *The District Court of Vilnius City v. Barcys* [2007] EWHC 615 (Admin). The statutory provision under consideration as the Extradition Act 2003 which by section 28 provided that:

“Notice of appeal under this section must be given in accordance with rules of court before the end of the permitted period which is 7 days starting with the day on which the order for the person’s discharge is made”.

The notice of appeal was not filed (or served) within seven days. It was argued that by reference to the powers of the court and the CPR time could be extended.

16. In answer to that argument Latham LJ said:

“11. I acknowledge the force of this argument. But it begs the question as to what power the court does have to extend time in the circumstances where there is an express statutory time limit. Section 28 does not in itself provide any power to extend time. And no other general provision in the 2003 Act giving such power was drawn to our attention. In so far as it brings into play rules of court, it only does so in the context of defining how a notice of appeal is “given”. The rules (...) make it plain in paragraph (3(a) (a reference to CPR Part 52 paragraph 22.6A) that this is to be done by way of filing and serving the relevant notice. No power is given to extend the statutory time limit. Further as with the provision of the CPR Rule 3.9 the court’s general powers of management in Rule 3.1(2)(a) only give power to the court to extend time for compliance with a rule, practice direction or court order. It follows in my view,

that there is no power to extend the statutory time limit in section 28(5).”

17. That case was followed in the case of *Gercans v. The Government of Latvia* [2008] EWHC 884 (Admin) and indeed has been followed in other cases as is apparent from the judgments in that case.
18. Faced with this argument Mr Smith on behalf of Mr Latif relied on the House of Lords case of *R v. Soneji* [2005] UKHL 49 where Lord Steyn in the course of his speech referred to the Australian Case of *Project Blue Sky Inc v. Australian Broadcasting Authority* (1998) 194 CLR 355 and approved the dicta in the judgment of the Court:

“... a court, determining the validity of an act done in breach of a statutory provision, may easily focus on the wrong factors if it asks itself whether compliance with the provision is mandatory or directory and, if directory, whether there has been substantial compliance with the provision. A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid... In determining the question of purpose regard must be had to “the language of the relevant provision and the scope and object of the whole statute.”
19. Thus Mr Smith asks me to apply a purposive approach and submits that it cannot have been the intention of Parliament that everybody, regardless of the merits of their case, was cut off without a remedy once the 21 days has elapsed. He submits Parliament’s intent was to do justice and having no right of extending the time, whatever the excuse might be, does not do justice.

Conclusions

20. The terms of the section 300 of the Public Health Act 1936 are, in my view clear. A fixed period of 21 days is given to bring an appeal. Parliament did not provide for an extension of time which it clearly could have done if that had been the intention. In addition Parliament made it mandatory that the document notifying the person of the decision should state the right of appeal and the time within which such an appeal might be brought. That, it seems to me, is a pointer to the importance of compliance with the time limit and would militate against any implied right of extending the time.
21. Similarly applying a purposive approach there does not seem to me to be any good reason not to apply the clear meaning of the words. I have mentioned the requirement to tell the applicant of the time limit. But the failure to comply is not all that draconian. It is open to the former licence holder to apply for a new licence which is likely to be granted or rejected on similar grounds as before and an appeal can if necessary follow. It does not therefore seem to me there is any compelling reason to reach the conclusion that Parliament could not have intended a strict time limit as the words suggest.

22. It does not seem to me that the rules of court can assist here. CPR 3.1(2)(a) refers to “any rule, practice direction or court order” none of which apply here and I respectfully adopt the views of Latham L.J. in *Barcys* set out above.
23. It follows that in my opinion the Crown Court was wrong to extend the time limit in this case since there was no jurisdiction to do so. I should point out that the Court did not have the benefit of the Extradition cases which were placed before me.
24. The answer to the questions posed in paragraph 3 above is therefore:
 - i) Yes.
 - ii) Yes.
 - iii) No.
25. After the end of the hearing Counsel for the Appellant sought an extension of time for lodging this appeal. This was opposed by Mr Smith on the basis that no good reason was given for the lateness and that given the nature of this appeal it would be unjust to grant the extension. I have seen the email exchanges between the Appellant Council and the Court and I am satisfied that any delay was not the fault of the Council. In any event since there has been no prejudice caused by this lateness I consider that it would be wrong not to grant the extension notwithstanding the submissions of Mr Smith on the part of the Respondent and I extend the time accordingly. The mere fact that this appeal relates to extending time for late service of a notice does not seem to me to be a good reason not to extend time as requested.
26. Having invited submissions on costs Ms Smith on behalf of Stockton sought costs in the sum of £3,505. Mr Smith makes no submissions on the amount but points out that his client was not responsible for the error made by the Crown Court and is also impecunious. This seems to me to be a case where the Respondent should make a contribution to the costs but should not pay the whole amount claimed. In the exercise of my discretion Mr. Latif will pay £2,000 towards the costs.