



NCN: [2023] UKFTT 516 (GRC)

First-tier Tribunal
(General Regulatory Chamber)
Household Waste Collection

Appeal Numbers: NV/2022/0049
NV/2022/0050

Considered on the papers

Decision issued to the parties on: 10 May 2023

Before

JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY

Between

**ROBERT MARKOVIC
MARTINA PRISCAKOVA**

Appellant

and

Leicester City Council

Respondent

DECISION

1. The appeals are allowed.
2. The requirement in respect of each of the appellants to pay a fixed penalty of £80 pursuant to section 46A(4) of the Environmental Protection Act 1990 is withdrawn.

REASONS

Background

3. The appellants each appeal against the imposition of a fixed penalty by the respondent in relation to an alleged failure to comply with a notice served under section 46 of the Environmental Protection Act 1990 (the Act).

The law

4. Section 46 of the Act provides that a waste collection authority may serve a notice (a section 46 notice) requiring an occupier to place waste for collection in receptacles of a kind and number specified. It may also impose requirements as to the placing of receptacles and steps to be taken by the occupier to facilitate waste collection.
5. Section 46A of the Act provides that where a waste collection authority is satisfied that a person has without reasonable excuse failed to comply with a section 46 notice and the person's failure to comply has caused or is likely to cause a nuisance or has been or is likely to be detrimental to any amenities of the locality, they may give a written warning to the occupier of the relevant property. Subsection (3) makes provision as to the content of the written warning.
6. Subsection (4) provides that where a written warning has been served, the waste collection authority may require the person to pay a fixed penalty to the authority if satisfied that the person has failed to comply with the section 46 requirement identified in the warning within the period specified. Subsection (7) provides that where a written warning has been given a requirement to pay a fixed penalty may be imposed if within one year of the date the written warning was given, the person has again failed without reasonable excuse to comply with the section 46 requirement identified in the warning and the failure to comply has had or is likely to have the consequences described.
7. Section 46C of the Act requires that before a requirement to pay a fixed penalty can be issued, a notice of intent must be served. This must set out the grounds for requiring payment of a fixed penalty; the amount that would be required to be paid; and the right to make representations as to why payment of a fixed penalty should not be required. It provides that a final notice must be served not before 28 days after the notice of intent. The final notice must contain the grounds for requiring payment of a fixed penalty; the amount of the fixed penalty; details of how payment should be made; notice of the right of appeal; and the consequences of not paying the fixed penalty.
8. Pursuant to section 46D a person served with a fixed penalty final notice may appeal to the First-tier Tribunal. On appeal the tribunal may withdraw or confirm the requirement to pay a fixed penalty. The requirement to pay the fixed penalty is suspended pending determination of any appeal.
9. It is for the respondent to show on the balance of probabilities that subsection 46A(1) is satisfied. If so, the appellant may raise a reasonable excuse. If one is shown, it is then for the respondent to show that the excuse is not reasonable or should not be accepted.

Chronology of events

10. On Tuesday 3 May 2022 a city warden found the appellants' bin on the public footpath after collection day, which is Friday. The warden applied a sticker to the appellants' bin which advises of the risk of a fine if the bin is left on the street after collection day. The sticker reminds residents to put their bin away after collection day and advises that leaving a bin on the street after collection day could result in a fine.
11. On 19 May 2022 the respondent issued a notice (a section 46 notice) requiring that:
 - (i) Bins must be placed on the kerb by no later than 7:00 pm on each Friday.
 - (ii) Bins must be moved off the kerb by no later than 7:00 am after the day of collection.

12. The notice also advised of the consequences of the failure to comply. It was posted to the appellants' address together with a leaflet explaining the council's free bulky waste collection service.
13. The appellants' bin was found on the public footpath on Tuesday 7 June 2022. As a result, on 28 June 2022, the respondent served a written warning of a contravention of the section 46 notice. The notice states that the failure to remove the bin has had or is likely to have the effect of causing nuisance or detriment to the local amenity in various ways specified in the notice. The notice advises the appellants that they are required to remove their bin from the public highway and store it within the confines of their property. It also advises that they are required to put their bin out for collection no earlier than 7:00 pm on the day before collection and remove it by no later than 7:00 am on the day after collection. The notice warns the appellants of the consequences of any failure to comply with its requirements including the issue of a fixed penalty of £80.
14. The respondent observed the appellants' bin on the public footpath on Tuesday 2 August 2022.
15. On 11 August 2022 the respondent issued the each of the appellants with a notice of intent to serve a fixed penalty notice. The notices advise the appellants that they had failed to remove their wheelie bin from the public footpath contrary to a legal notice served on 24 May 2022 (I take this to be the notice that was dated 19 May 2022) because their wheelie bin was observed left out on the public footpath on 2 August 2022. The notice advises that the appellant may make representations as to why payment of a fixed penalty should not be required and gives a deadline of 28 days from the date of service of the notice.
16. The appellants contacted the respondent by email on 16 August and apologised for leaving their bin out, but according to the respondent, gave no reason as to why they could not remove it. The respondent replied on 17 August 2022 noting the lack of reasons as to why the bin had not been removed and provided contact details in case there were any issues such as a blocked alleyway or not having a key to an alley gate. The notices of intent were maintained.
17. The appellants responded on 17 August 2022 stating that first appellant has a cataract and has poor English. No reason was given as to why the second appellant could not remove the bin or did not understand the requirement to do so.
18. The respondent maintained the notices of intent on 2 September 2022. The respondent notes that on 17 August 2021 and 29 April 2022 multi-lingual booklets in English, Latvian, Lithuanian, Polish and Romanian were sent to properties in Bosworth Street as part of education work about waste, recycling and fly-tipping.

The respondent's decision

19. The respondent issued fixed penalty final notices on 16 September 2022. They contained advice about the consequences of failure to pay the fixed penalty; the right of appeal; and the fact that the requirement to pay will be suspended pending the outcome of any appeal.
20. The appellants originally lodged appeals on 20 August 2022 and 30 August 2022. When the appeals came up for consideration on 26 January 2023, it was noted that they had been lodged against the notices of *intent* to issue a fixed penalty notice and that the tribunal did not appear

to have jurisdiction. By the time the appeals were considered, fixed penalty notices had been issued and given it had not identified the jurisdiction point at an earlier stage, the tribunal considered it was in the interests of justice to give the appellants 28 days within which to lodge fresh notices of appeal against the final fixed penalty notices.

21. The appellants lodged appeals on 3 February 2023.

The appellants' case

22. The appellants state that they were not aware that they could not leave their bin because other properties in the street do so and those residents had not received fixed penalty notices. They state that now they are aware of the requirement to remove the bin after collection, they do so every week. The first appellant stated that he has a problem with his vision.

The respondent's response to the appeal

23. The respondent provided a response to the appeals on 27 February 2023.

Findings and reasons

24. It is not in dispute that the appellant's bin was left on the public footpath on 3 May 2022 and I find that it was. I find that the respondent was entitled to serve the section 46 notice. I find that it was served and that it complied with the relevant requirements as to its contents.
25. I find that the appellant's bin was again left on the public footpath on 7 June 2022. Again, this is not disputed. I am satisfied that this was a contravention of the section 46 notice.
26. The respondent complied with the requirement to serve on each of the appellants a notice of intent to require payment of a fixed penalty. I am satisfied that the notice of intent contains the relevant information required by section 46C of the Act. I am also satisfied that the fixed penalty final notice satisfies the requirements as to its contents.
27. The first appellant claims that he has a cataract and problems with his vision. I had no evidence of this, but I accept on the balance of probabilities that it is the case. He also claims to have poor English skills. It appears that the notices of appeal were both completed by the same person. I find that it was the second appellant who completed them because the handwriting of the signature in her notice is the same throughout both forms whereas the signature on the first appellant's form is different. I accept on the balance of probabilities that the first appellant does not read and/or write English fluently and that the second appellant completed his form on his behalf.
28. Based on the content of the notices of appeal I find that the second appellant speaks English as a second language and that her skills are also relatively basic.
29. I note the respondent's evidence that a multi-lingual leaflet was sent to properties in the appellants' street. I place no weight on this, as the appellants state that their first language is Slovakian, which was not identified as one of the languages used in the leaflet.
30. The significance of the first appellant's cataract is unclear. If it affects his ability to read, then it may be material. I have already found that he does not read English, so it adds little. If it affects his ability to move the bin, then it is not material, as no reason has been given as to why the first appellant cannot move it. I place little weight on this factor.

31. The respondent has not disputed that since becoming aware of the requirement to move their bin promptly after collection day the appellants have in fact complied with it.
32. The appellants state that they were not aware that bins could not be left on the street because it was the practice of other properties in the street to do the same. I would ordinarily attach little weight to this, as it is the responsibility of residents to understand their obligations; however combined with their accepted lack of English language skills, I am satisfied that in combination, the appellants' reasons given for not removing their bin amount to a reasonable excuse for their failure to comply with the section 46 notice.

Signed J K Swaney

Date 10 May 2023

Judge J K Swaney
Judge of the First-tier Tribunal