



Legal Member's Decision

Mr Liam Lochrane - v - Aberdeen City Council

Appeal Details

Case number:	AL00001-2501	Appeal Raised:	16/01/2025
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	30/01/2025
Number of PCNs:	1	Legal Member:	Alexander Green

Decision - PCN AL10277240

Mr [REDACTED] Lochrane, you have won this appeal.

There is nothing to pay and the authority will cancel the penalty charge

Issued: 05/11/2024

Entered: 24/10/2024 19:30

Alford Place - Victoria Street

13 -

Please see the next page for the Legal Member's Reasons



Legal Member's Decision

Legal Member's Reasons

1. The appellant, Mr [REDACTED] Lochrane, is appealing a Low Emission Zone Penalty Charge Notice ("LEZCN") issued by Aberdeen City Council (the "Council"). Mr Lochrane has requested a decision without a hearing.
2. The LEZCN was issued on 7 November 2024 in respect of a contravention that was alleged to have taken place on 24 October 2024 at 19:30 hours (the "detection date"). It is alleged that the vehicle (registration number [REDACTED]) was being driven in a Low Emissions Zone ("LEZ") in Alford Place – Victoria Street. The Council alleges that the vehicle did not meet the specified emission standard of the low emission zone and that the vehicle was not exempt by virtue of the Transport (Scotland) Act 2019, section 17 (4). A scheme surcharge means that the penalty charge amount will double with each subsequent contravention by the same vehicle with the 90 days of the previous contravention. This was the first contravention.
3. The LEZCN was sent by Royal Mail Tracked 24 service and was delivered to Mr Lochrane on 8 November 2024.
4. On 8 November 2024, Mr Lochrane submitted formal representations to the Council. He contended that he did not enter the LEZ and argued that the images provided only indicate his vehicle's presence on the road, not that he passed through the zone. He states that he stopped at the traffic lights and turned right towards Kincorth, rather than continuing into the LEZ. He further asserted that footage from a police station camera around the corner would confirm his vehicle's location. Additionally, he highlighted that an X5 vehicle in front of him, which was also non-LEZ compliant, was not fined, suggesting inconsistent enforcement. As a result of this alleged unfairness and distress caused, he indicated that his solicitor will be taking action.
5. The Council considered and rejected Mr Lochrane's representations setting out their reasons for doing so in a notice of rejection dated 8 January 2025. The Council stated that after investigating Mr Lochrane's representations, it decided not to cancel the LEZCN. It confirmed that a review of the evidence showed Mr Lochrane's vehicle fully entered the LEZ. As the vehicle does not meet the emissions criteria and was recorded travelling through the LEZ, the Council maintained that the LEZCN was correctly issued.
6. The Council must establish the contravention on a balance of probabilities.

The law

7. The Transport (Scotland) Act 2019, sections 7(1) and (2) provide:
 - (1) *The fact that a person was driving a vehicle on a road within a low emission zone may be established only on the basis of a record produced by an approved device.*
 - (2) *A record obtained from the Secretary of State or from another source as specified in regulations by the Scottish Ministers, certifying a vehicle's emission standard as at the date and time of the record produced by an approved device, is determinative of whether the vehicle meets the specified emission standard.*



Legal Member's Decision

Findings

8. The Council has not established the contravention for the following reasons:
- The requirement under section 7(1) of the Transport (Scotland) Act 2019 is that a vehicle's presence in an LEZ must be established solely based on a record produced by an approved device. The LEZCN states that the alleged contravention was recorded using video and still images captured by an enforcement camera. A letter from Transport Scotland, dated 28 May 2024, confirms that the Council's enforcement system, the Videalert RDS system (Low Emission Zone variant), was certified as an approved device under Certification Number SLEZM058, effective from 1 June 2024. This suggests that the legal requirement under section 7(1) is met.
 - Under section 7(2) of the Transport (Scotland) Act 2019, a vehicle's compliance with the LEZ emission standards must be determined based on a record obtained from the Secretary of State or another approved source specified by the Scottish Ministers. The DVLA return provided includes details of Mr Lochrane's vehicle, such as its make, model, fuel type (diesel), and tax class, but it does not explicitly certify the vehicle's emissions standard or confirm whether it meets or fails the LEZ criteria. Without a specific record certifying the emissions standard at the relevant date and time, the requirement under section 7(2) is not fully met. To comply with the legislation, the Council must provide clear evidence from an authorised emissions database or another approved source confirming that the vehicle did not meet the required standard at the time of the alleged contravention.
9. In conclusion, while the requirement under section 7(1) of the Transport (Scotland) Act 2019 have been met, given that the Council's enforcement system, the Videalert RDS system, is a certified approved device. However, the requirement under section 7(2) is not clearly met, as the DVLA return provided does not explicitly certify the vehicle's emissions standard. Without a formal record from an authorised emissions database or other approved source confirming non-compliance, the legal basis for enforcing the penalty remains questionable. Therefore, while the vehicle's presence in the LEZ is supported by an approved device, the evidence regarding its emissions does not meet the statutory standard, undermining the validity of the LEZCN.
10. The appeal is allowed.

A.M.S. Green, Chamber President

30 January 2025

Appeals

If you are aggrieved by the decision of the First-tier Tribunal you may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, you must first seek permission to appeal from the First-tier Tribunal. You must seek permission to appeal within 30 days of the date the decision was sent to you.



Legal Member's Decision

The Upper Tribunal may uphold or quash the decision on a point of law in question. If the Upper Tribunal quashes the decision, it may:

- re-make the decision;
- remit the case to the First-tier Tribunal;
- make such other order as the Upper Tribunal considers appropriate.

The application **must**:

- identify the decision of the First-Tier Tribunal to which it relates;
- identify the alleged point or points of law on which the party making the application wishes to appeal; and
- state the result the party making the application is seeking (e.g. quash and re-make the decision).

Reviews

You may ask the First-tier Tribunal to, or the First-tier Tribunal may on its own initiative, review the decision.

If you want the First-tier Tribunal to review the decision you must apply in writing and send a copy of your application to the other party/parties. You must make your application within 14 days of the date on which the decision was made or within 14 days of the date that the written reasons were sent to you. You must also explain why a review of the decision is necessary. The grounds on which a decision may be reviewed are that:



Legal Member's Decision

- 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

Alexander Green
Legal member
30/01/2025