



**Appeal number: NV/2019/0006**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(PROFESSIONAL REGULATION)**

**MOHINI BHAGALIA**

**Appellant**

**- and -**

**LEICESTER CITY COUNCIL**

**Respondent**

**TRIBUNAL: HER HONOUR JUDGE ANGELA MORRIS**

**Sitting in Chambers on 27<sup>th</sup> August 2019**

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## **Decision**

1. The Appeal is dismissed.
2. The Final Notice dated 16<sup>th</sup> July 2019 is confirmed.

## **Reasons**

### **Background**

3. The Appellant, Mohini Bhagalia, is a student. The Respondent (Leicester City Council) is the enforcement authority charged with the responsibility of waste collection in accordance with Section 45 of the Environmental Protection Act 1990 (the Act). As part of that duty, the Respondent has a responsibility to ensure the collection of waste on specific days and employs a Warden Service to ensure that the public highway is free from obstruction outside of collection times for waste.
4. Filbert Street in Leicester falls under the Respondent's area of responsibility. Filbert Street has been affected by wheelie bins being left on the street outside of normal collection times. The collection day for waste from wheelie bins associated with properties in Filbert Street is every Tuesday. This required the residents in Filbert Street to place bins which required emptying on the kerb no earlier than 7pm each Monday and removed no later than 7:00am each Wednesday. The Respondent also arranged for blue stickers to be placed prominently on the lids of the bins to make residents of properties in Filbert Street aware of this requirement.
5. On Wednesday 20<sup>th</sup> February 2019, City Warden Noel Cazley found the bin associated with number 15 Filbert Street was still on the public footpath. On 27<sup>th</sup> February 2019, the Respondent served by post a Notice in accordance with Section 46 of the Act on the Appellant informing her of her duties and the dates and time for collection. The Notice also provided information as to the consequences of her failure to comply with the Section 46 Notice, including a

fixed penalty in the sum of £80. The Respondent was only aware of one occupant of 15 Filbert Street.

6. On Wednesday 27<sup>th</sup> March 2019, the bin for 15 Filbert Street was again found on the footpath by the City Warden. On 27<sup>th</sup> March 2019, a Notice of Contravention of the Section 46 Notice was served by post on the Appellant. This Notice explained the reasons why compliance was necessary and repeated what the consequences for failing to comply without reasonable excuse might be.
7. On Friday 3<sup>rd</sup> May 2019, the bin for 15 Filbert Street was again observed on the footpath in contravention of the Section 46 and Section 46A Notices. On Friday 21<sup>st</sup> May 2019, a Notice of Intent to serve a Fixed Penalty Notice was posted to the Appellant at 15 Filbert Street.
8. On Tuesday 4<sup>th</sup> June 2019, an email dated 31<sup>st</sup> May 2019, was received from the Appellant appealing the notice on the grounds that she had been away for the Easter holiday period from 22<sup>nd</sup> April 2019 to 5<sup>th</sup> May 2019. The Respondent investigated the matter and responded to the Appellant's email on 18<sup>th</sup> June 2019, informing her the appeal was not upheld.
9. A Fixed Penalty Notice dated 25<sup>th</sup> June 2019 and a Notice of Opportunity to Pay the Fixed Penalty dated 26<sup>th</sup> June 2019 was served on the Appellant.
10. On 27<sup>th</sup> June 2019, an email was sent by the Appellant asking to speak to the Respondent. She stated that she had not received any of the letters or response to her earlier email. The issue of service of the Notices was explained to the Appellant and she was provided with a copy of the earlier email response by the Respondent.
11. On 16<sup>th</sup> July 2019, a Final Notice was posted to the Appellant at the same address.
12. By its Notice of Appeal dated 22<sup>nd</sup> July 2019, the Appellant appeals against the imposition of the Fixed Penalty Notice.
13. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

## **The Legal Framework**

14. Section 45 of the Environmental Protection Act 1990 places a duty on local authorities to ensure the timely collection of household waste from the occupiers of premises within its area of responsibility.
15. Section 46 of the Act sets out the framework by which the local authority may require the occupier of a premises to place waste for collection in specified receptacles (in this case wheelie bins). The local authority may set time frames within which the household waste may be collected. In order to ensure compliance with such a scheme, the local authority must serve a Notice in accordance with Section 46 of the Act upon the occupiers of premises to which it applies.
16. The responsibility to ensure that wheelie bins are removed from the pavement outside of waste collection times falls on the occupiers of the premises to which a Section 46 Notice has been served. A failure to comply with a Section 46 Notice, may result in a further Notice under section 46A of the Act being served upon the occupier of those premises, specifying the nature of the breach and the consequences of any further non-compliance.
17. Section 46C of the Act sets out the steps which a local authority must take before they can require the occupier of premises served with both the Section 46 and Section 46A Notices, to pay a fixed penalty. The local authority must first serve a Notice of Intent upon the occupier of the relevant premises setting out the grounds for requiring payment of a fixed penalty, the amount of the penalty and the right of the occupier to make representations as to why they should not be required to pay a fixed penalty. Any such representation must be made within 28 days of the service of the Notice of Intent and a Final Notice cannot be issued or served before the expiry of that time period.
18. In the event no representations are received, the local authority may issue a Final Notice setting out the grounds for requiring the payment of the fixed penalty, the amount and the period within which payment is required (namely not less than 28 days from the date of the Final Notice).

19. A local authority must act in accordance with these provisions of Section 46, 46A, 46B, 46C and 46D of the Act before a Fixed Penalty can be imposed. This ensures that an occupier is notified of their responsibility and the consequences of a failure to comply.
20. Over and above the duties encapsulated in Section 46, a local authority also has a duty to ensure that footpaths and the highway remain free of obstruction to avoid the risk of danger to the health and safety of members of the public using them. Wheelie bins are permitted to be left on the pavements within specified times in order to allow for the collection of waste. Outside of those permitted times, which the local authority is at liberty to set, wheelie bins cannot remain on the pavements and must be removed by the occupiers of the premises to which the bins are associated.
21. The responsibility to ensure that wheelie bins are removed from the pavement outside of waste collection times falls on the occupier of the premises to which a Section 46 Notice has been served. The local authority must act in accordance with the provisions of Section 46, 46A, 46B, 46C and 46D of the Act before a Fixed Penalty can be imposed. This ensures that an occupier is notified of their responsibility and the consequences of a failure to comply.
22. The service of Notices by postal delivery is deemed good service in accordance with Sections 160(2) and (4) of the Act.

### **Submissions and Evidence**

23. The Appellant submits that she is a student and was not always at the premises due to her academic commitments at various hospitals in Leicester, Kettering and Northampton. And different GP Practices. She states that she was away from the premises for a period of two weeks from 22<sup>nd</sup> April to 5<sup>th</sup> May 2019 and therefore she did not receive the Notice in a timely manner and was unaware of any notices or appeal until she returned to Leicester after 5<sup>th</sup> May.
24. The Respondent submits that the postal service of the Notices is deemed good service and that they have complied with the provisions of the Act. They

submit that the Appellant was given sent four separate notifications which allowed ample time for liaison with them regarding any difficulties she may have encountered regarding compliance and/or to inform them she was not an occupier of the premises.

## **Conclusions**

25. I conclude on the basis of the evidence before me and on the balance of probabilities that the Appellant has failed to demonstrate a reasonable excuse for failure to comply with the Notices sent to her. I note that the address stated on the Notice of Appeal is the same address to which the Section 46 Notices were posted. The Appellant was at the material time the (when the first Section 46 Notice was served) the occupier of 15 Filbert Street. She is the sole occupier of the premises and there is photographic evidence to show that the wheelie bin was on the pavement outside 15 Filbert Street on 20<sup>th</sup> February 2019 at a time when the Appellant asserts that she was in Kettering. It follows, from the photographic evidence that *someone* put the wheelie bin there and failed to remove it before 7am.
26. Furthermore, photographic evidence on 27<sup>th</sup> March 2019, shows the wheelie bin on the kerb and again on 3<sup>rd</sup> May 2019 when the Appellant asserts that she was, according to her appeal document, in London and according to the document provided at BW18 “across Leicester Academy”. These two documents cannot both be correct but in any event, *someone* left the wheelie bin on the kerb on 5<sup>th</sup> May 2019 in contravention of the Section 46 Notice.
27. In light of the fact that the Appellant does not dispute that she was the occupier of 15 Filbert Street at the material times, the responsibility to comply with the Notice falls upon her.
28. Being a student in occupation in premises for a period of time does not abrogate the responsibility to comply with the provisions of Section 46 of the Environmental Protection Act 1990. The Section 46 Notice (dated 27<sup>th</sup> February 2019) makes it abundantly clear that the responsibility to place and remove wheelie bins from the kerb within set time period lies with the **occupier** of the premises.

29. If the Appellant was, as she asserts, not in residence at 15 Filbert Street on the date and times when the wheelie bin was photographed, it begs the question who put it there and the onus is on the Appellant to demonstrate that it was not her; no such evidence has been forthcoming in this case.
30. If the Appellant allowed someone else to stay the premises whilst she was elsewhere, she still bears the responsibility to ensure that other person complies with the requirements which the Respondent had properly served upon her by way of the Notice dated 27<sup>th</sup> February 2019.
31. The documentary evidence supports the submission that the Respondent acted in accordance with the provisions of Section 46, 46A, 46B, 46C and 46D of the Act before the fixed penalty was imposed upon the Appellant and the service of the Notices is deemed good service.
32. Accordingly, the appeal is now dismissed and the Final Notice is confirmed.

**(Signed)**

**Her Honour Judge Angela Morris**

**Dated: 27<sup>th</sup> August 2019**

**Promulgation Date: 5 September 2019**