

Case Name: Glasgow City Council v Allan Hamilton

Case Ref No: XA38/24

Date of Hearing: 11 December 2024 (1 day)

Division and Senators: Second; LJC Lord Malcolm, Lord Pentland

Livestreamed Hearing?: Yes No**Agents and Counsel (if known):**

Appellant Crawford KC, Blair; Harper Macleod LLP

Welsh: *amicus curiae*, Faculty Services Limited**Link to Judgment Reclaimed / Appealed (if available):**[Microsoft Word - 240504 Decision \(Appeal\) 23.0984 REV \(002\).docx](#)**Case Description:**

Glasgow City Council sent a motorist, Mr Allan Hamilton, a penalty charge notice for infringing the low emission zone. The legislation provides that they should have sent it to him by registered post or recorded delivery. Due to a mistake they sent it to him in the ordinary post. Mr Hamilton does not dispute that he received the notice. He objected to it on the ground that he drove into the zone inadvertently, having got lost. The Council rejected Mr Hamilton's explanation. He appealed to the First-tier tribunal.

The adjudicator in the tribunal identified what he described as a preliminary point.

Was the notice valid in view of the fact that it had not been served in the prescribed way? The Council said that the notice was effective. Mr Hamilton disagreed. The

adjudicator held that the rules on service were mandatory, that they had not been followed by the Council and so the notice was unenforceable. The adjudicator allowed Mr Hamilton's appeal.

The Council took the case to the Upper Tribunal. The judge, Lord Lake, refused the appeal. It was irrelevant that there had been no substantive unfairness to Mr Hamilton. For the notice to be effective and to create a liability to pay the charge it had to be served in the way laid down in the legislation. This must have been what Parliament intended.

The Council now asks the Inner House of the Court of Session to overturn the decision of the Upper Tribunal. It argues that Parliament cannot be taken to have intended a technical failure to comply with the prescribed method of service to invalidate the notice. In any event, there has been substantial compliance and no prejudice to the recipient. Mr Hamilton has chosen not to take part in the appeal. The court has therefore appointed Mr David Welsh, Advocate, to act as an *amicus curiae*.

The Second Division of the Inner House will hear the appeal on Wednesday 11 December 2024.