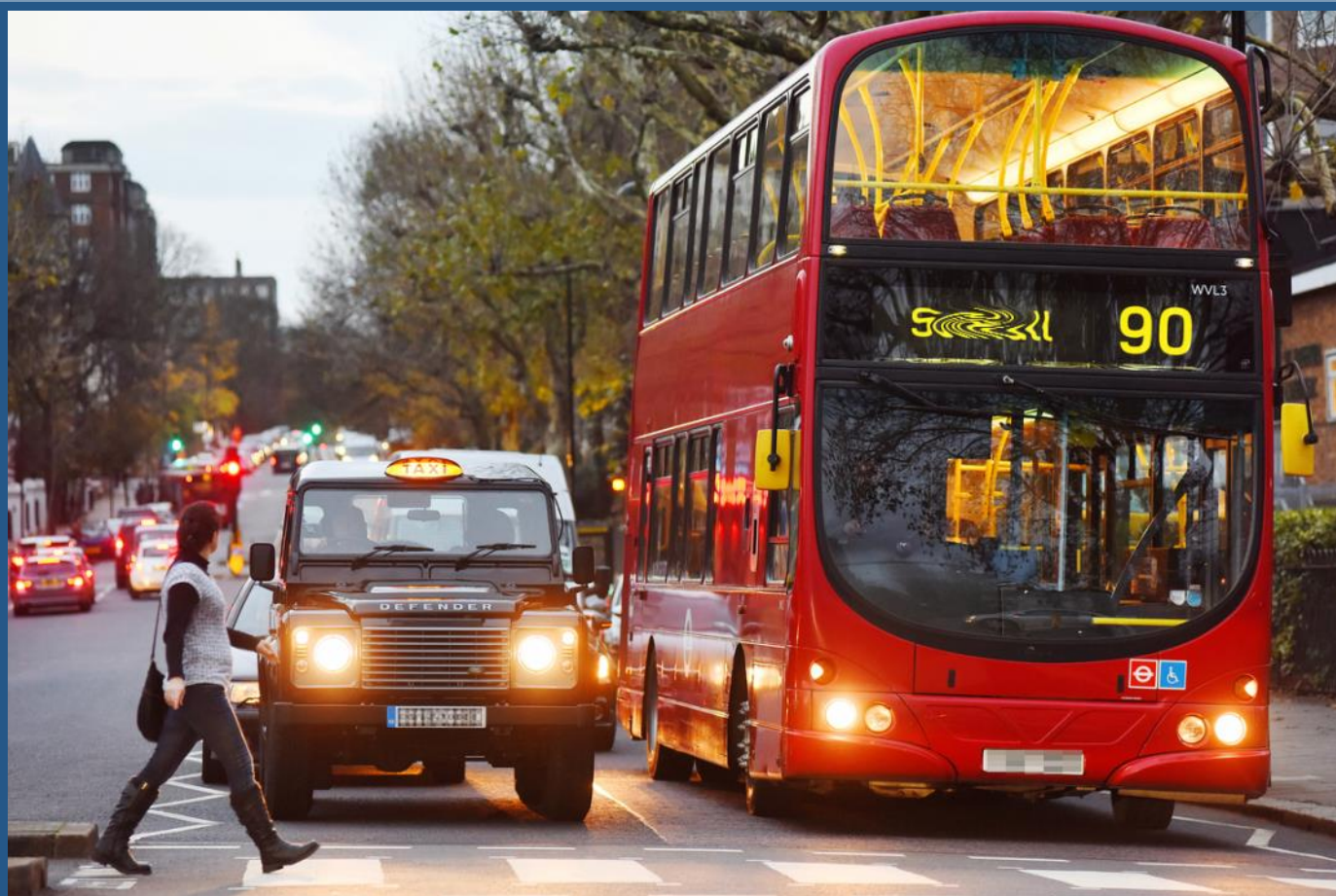


Road User Charging Adjudicators' Tribunal Annual Report 2015-16



The Road User Charging Adjudicators form an independent tribunal which decides appeals against Congestion Charging penalties and Low Emission Zone penalties in London.



Road User Charging Adjudicators' Tribunal

London Tribunals
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M33 0FP

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Aims and objectives of the Tribunal

- * To provide all parties to road user charging appeals with independent, impartial and well-considered decisions based on clear findings of fact and proper application of law.
- * To have the appropriate knowledge, skills and integrity to make those decisions.
- * To ensure that all parties to road user charging appeals are treated equally and fairly regardless of age, ethnic origin, gender, marital status, sexual orientation, political affiliation, religion or disability.
- * To enhance the quality and integrity of the road user charging appeals process.

Role of the Adjudicators

- * Adjudicators are appointed in accordance with Regulation 3 of the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended*.
- * Their role is set out by Regulations 11(2) and 16(2) of the same Regulations which states that an Adjudicator “shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in regulation 10(3) or regulation 13(3)”.
- * The Court of Appeal has made it clear, in the case of *R (on the application of Joan Margaret Walmsley) v Transport for London* [2005] EWHC 896 (Admin), that it is not part of an Adjudicator’s role to consider factors which fall outside of the grounds mentioned in regulations 10(3) or 13(3) and accordingly what might be described as ‘mitigating factors’ are matters for the Enforcing Authority to consider and are not matters for Road User Charging Adjudicators.

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FRONT COVER

Readers may have noticed that our front cover photo features a No. 90 red bus alongside a one-off Land Rover Defender taxi. Both vehicles appeared in London in December 2015 to take part in an advertisement to publicise the sale of the 2 millionth Land Rover Defender to be manufactured in the UK. The relevance of Land Rover to this report appears in Appendix 5.



Note: Clicking on the Congestion Charge symbol in the top corner on any page within this report will return you to this page.

Chief Adjudicators' foreword

I am pleased to present to the Secretary of State this joint report of the Road User (Congestion) Charging Adjudicators for the year 2015 – 2016.

This joint report is required by Regulation 8 of the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 (as amended)*.

As I reported last year the tribunal has moved from its former premises in Angel Square, Islington to a new hearing centre in Furnival Street near Chancery Lane. The tribunal has been at the new hearing centre since July 2015 and it has proved popular with appellants and staff alike. There are two dedicated rooms for hearing appeals which ensure that waiting times are kept to a minimum for appellants who appeal in person.

I also reported last year that the tribunal changed its IT service provider from Capita to Northgate Public Services. Northgate and the adjudicators have worked closely together to develop a workable system. I would like to thank Jane Anderson, adjudicator, who has taken the lead so successfully on the tribunal's side in liaising with Northgate over the IT system during the last year. I would also like to thank Sue Holloway from Northgate Public Services who devoted so much time and effort in the creation of the new system.

The tribunal enjoys a constructive relationship with the Greater London Authority (GLA) although of course we are a completely independent body. I would like to acknowledge the contribution made by Tim Steer from the GLA in this. At the end of 2016 Nick Lester-Davis from London Councils will retire. Nick played an enormously influential role in the development of this tribunal and we wish him well in his retirement. We would like to welcome Spencer Palmer who has stepped into this role.

I would like to thank the team of adjudicators who have regularly given their time and experience to this tribunal. A list of the adjudicators is given on page 4 of this report. The tribunal has now determined more than 167,000 appeals since 2002, and in the last year achieved an average time of 27 minutes to determine a personal appeal and 19 minutes for a postal appeal.

In February this year, we held a one day conference for adjudicators and we were very pleased to welcome guests from London Councils and Northgate Public Services.

The topics covered included:

- * Mindfulness in the judicial sphere
- * Justice and Court reform – delivering one nation justice in tribunals
- * Data Protection
- * The new IT system

Over the year the number of appeals received has continued to decline (5957 receipts over the year). The percentage of hearings begun within 15 minutes of their allotted time slot has remained high at 79%.

There have been no major initiatives or developments in the Congestion Charging Scheme itself over the past year. In June 2016 the Mayor of London announced that he had decided to introduce the Emissions Surcharge for older vehicles from 2017, while the Ultra Low Emission Zone in the Congestion Charging Zone of Central London may now be introduced earlier than the 7th September 2020 originally envisaged. We hope to discuss any such changes in next year's report when they are confirmed. This tribunal has in its history coped with huge fluctuations in work and has the capacity with its experienced adjudicators to adapt to any increase in workload that may result from these new schemes.

This report includes at Appendix 5 a decision on the status of Land Rovers within the Low Emission Zone. This is included as it may be of interest to registered keepers of Land Rovers who intend to use them within the Low Emission Zone. At section 6 of the report an adjudicator reports on his voluntary work with the Personal Support Unit, as an example of the varied work which adjudicators perform outside of the tribunal.

This tribunal continues to offer the opportunity for appellants to argue their appeals before an adjudicator face to face. The success of this tribunal will always be measured by the fairness of the hearing afforded to appellants, whether they win or lose their appeals.

I would like to express my lasting thanks to Richard Reeve, who left us to work for the Houses of Parliament during the year, and who contributed so significantly to the successful functioning of the tribunal during his time at London Councils. Finally I express, on behalf of myself and all the adjudicators, our thanks to the administrative, reception and IT staff at the tribunal for their continuing and vital contribution to the operation of the tribunal.

Ingrid Persadsingh
Chief Road User Charging Adjudicator

Adjudicators

Mercy Akman
Jane Anderson
Angela Black
Ian Coutts
Gordon Cropper
Jane Cryer
Leslie Cuthbert
Joanna Dickens
Fiona Dickie
George Dodd
Anthony Edie
Gillian Ekins
Andrew Harman
Fiona Henderson
Anitra Hussein
Ian Keates
Graham Keating
Maggie Kennedy
Sanjay Lal
John Lane
Francis Lloyd
Maura Lynch
Isaac Maka
David Malone
Paul Middleton-Roy
Ian Mohabir
Michael Nathan
Belinda Pearce
Martin Penrose
Ingrid Persadsingh
Annabel Pilling
Luthfur Rahman
Christopher Rayner
Anita Reece
Timothy Smith
Alison Spicer
Jan Verman
Anwen Walker
Christopher Woolley

Annual conference day

Professor Jeremy Cooper, former Director of Training (Tribunals) Judicial College gave a presentation on mindfulness. Although this topic is not usually associated with judicial training, Professor Cooper and Employment Judge Hannah Bright revealed surprising potential benefits to both decision making and judicial well-being through its use. Professor Cooper has now retired from his role at the Judicial College and we hope he has carried the benefits of mindfulness into his retirement.

Kevin Westall from the Ministry of Justice outlined the work being done within the Ministry on delivering one nation justice in tribunals. The conference day was completed by a further reminder on data protection issues and a very helpful presentation on the current IT processes in the tribunal.



Current issues in the tribunal

i) Electronic signatures

The practice of signing with electronic signatures has been approved by the courts and is now commonplace in legal and commercial life. This tribunal will often have to consider the effects of a signature (e.g. in a notice of appeal, or in a hiring agreement) and it will treat electronic signatures in exactly the same way as handwritten signatures.

ii) Appellants who fail to appear at a personal appeal

Appellants may have requested a personal appeal and then do not appear at the hearing. The adjudicator will wait for up to 30 minutes from the allotted time of the appeal and check with reception whether any message has been received from the appellant about their absence. At this stage the adjudicator may decide to proceed with the appeal in the absence of the appellant. The fact that an appellant did not attend will be recorded in the decision, as well as the time allowed for the appellant to attend. If the decision is subject to a review the adjudicator conducting the review will take this information into account.

iii) Appellants who are hearing or speech impaired

The tribunal, in furtherance of its duty to provide equal access to its services for all appellants, will engage signers to help appellants who are hearing or speech impaired. There is no charge for this service. Appellants who wish to benefit from this service are asked to alert the tribunal in good time before their hearing to allow the signer to be engaged.

iv) Provision of transcripts of the hearing

The tribunal does not provide any electronic recordings of the hearing but appellants can request a transcript of the hearing. This will be provided for a fee.

Reflections about the Personal Support Unit ('PSU') from an adjudicator

I have been an appeals adjudicator since the Congestion Charging Scheme was introduced in 2003. This was my first tribunal appointment and, at the time, I was a full-time commercial property solicitor in a major firm, although I retired from private practice in 2014.

After over 50 years in the law, and far from being over-the-hill, (although that view may not be shared by some of my colleagues!), I was looking for new challenges where I could put my skills to good use and, by chance, came across the PSU whilst attending an unrelated event at the Royal Courts of Justice ('RCJ'). After initial training, I became a volunteer at the RCJ and the



Central London Family Court ('CLFC') in early 2016.

As in my case, you may not have heard of the PSU before. Who are they you may ask?

Well, the PSU is a charity, established in 2001, that offers practical assistance and emotional support (but not legal advice) to the ever-increasing number of litigants in person ('LIPs') in civil and family courts and tribunals.

This free instant access service is provided by some 567 trained part-time volunteers who help LIPs, many of whom are vulnerable, to represent themselves better in cases that can have a dramatic impact on their lives.

The PSU is based in London at the RCJ and the CLFC, and also covers county courts and tribunals across Greater London, including the new West London Family Court, with an additional thirteen regional offices in England and Wales.



Widespread cut-backs in legal aid, combined with the closure of many locally funded advice centres, has led to staggering growth in the number of LIPs who the PSU is asked to help across England and Wales. workload, with two in three cases being about children.

In 2015-2016, the PSU supported people some 44,480 times, and this figure continues to increase, particularly in family cases which account for around half the workload, with two in three cases being about children.

Much of our support is accompanying the LIP into court, often with the other party being legally represented and, whilst having no right of audience, our presence often inspires people to engage more confidently, and better able to put their case across.

The presence of a volunteer is invariably welcomed by Judges and, only recently, I became involved in a case where a family judge insisted on PSU's presence before hearing a child contact case.

PSU volunteers also provide considerable support outside the courts, helping LIPs with writing letters, the preparation of their statements and assembling evidence, assisting with the completion of court forms and fee remissions, and accompanying them around the court offices to file documents.



We are always conscious that we are not a substitute for seeking legal advice, and so often assist in referring to the Citizens Advice Bureaux within the RCJ and CLFC, or one of the many agencies offering pro bono advice and free representation.

I would encourage any non-practising lawyer to consider becoming a PSU volunteer, and bringing their own experience, knowledge and skills to this essential organisation.

I can only speak for myself, but I suspect others will agree that helping our LIP clients is enormously rewarding work.



Useful information

The structure of the Road User Charging Adjudicators' Tribunal ('RUCAT')

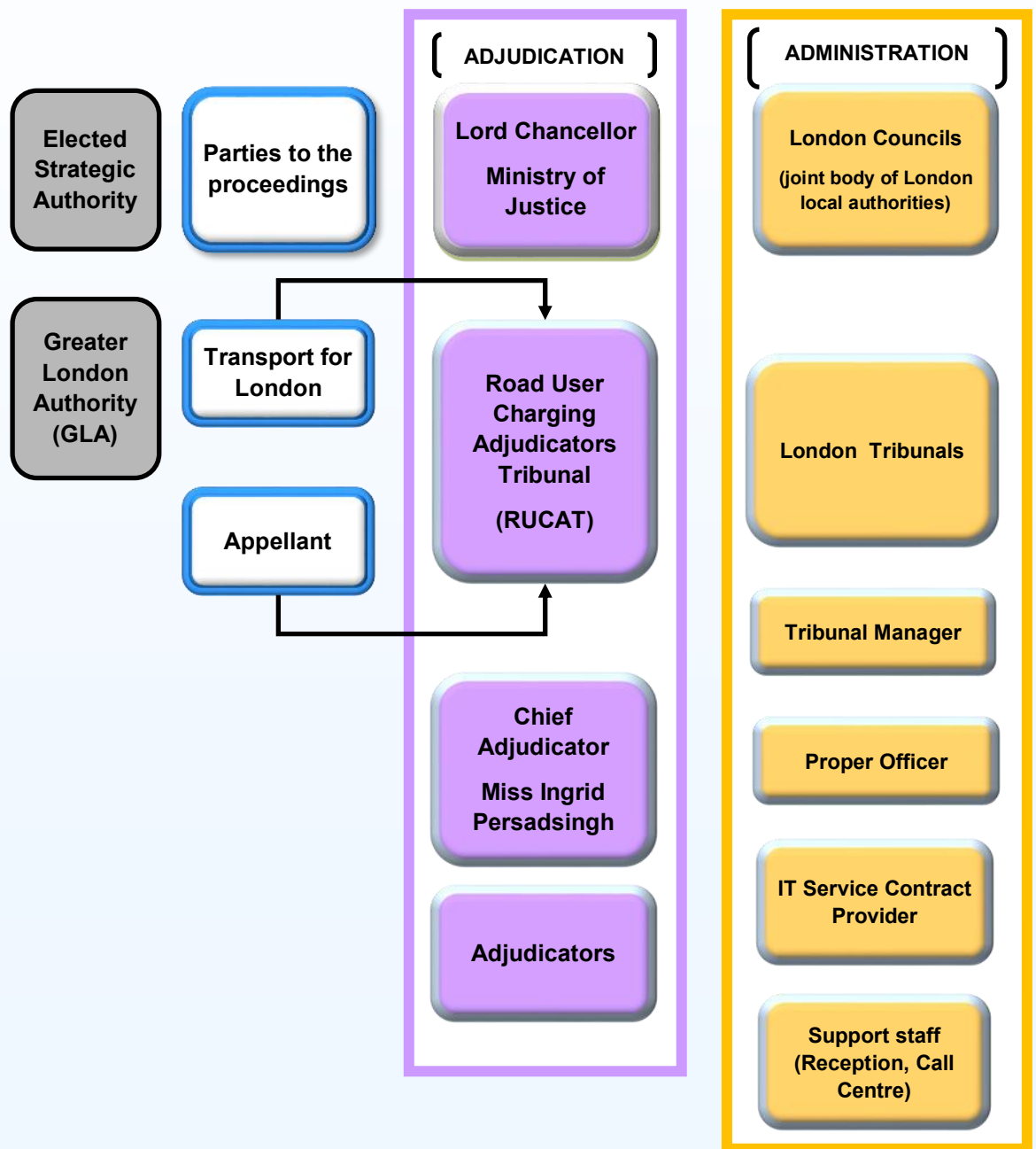
What is 'RUCAT'?

RUCAT is an independent tribunal which decides appeals against Congestion Charge and Low Emission Zone penalties in London.

What is London Tribunals?

London Tribunals provides administrative support to the Road User Charging Adjudicators. Under the Road Traffic Act 1991 and the Traffic Management Act 2004, London Councils is required to provide this service to the Parking and Traffic Adjudicators and provides the same service for the Road User Charging Adjudicators under contract to the GLA.

The following diagram explains the structure of RUCAT and London Tribunals:



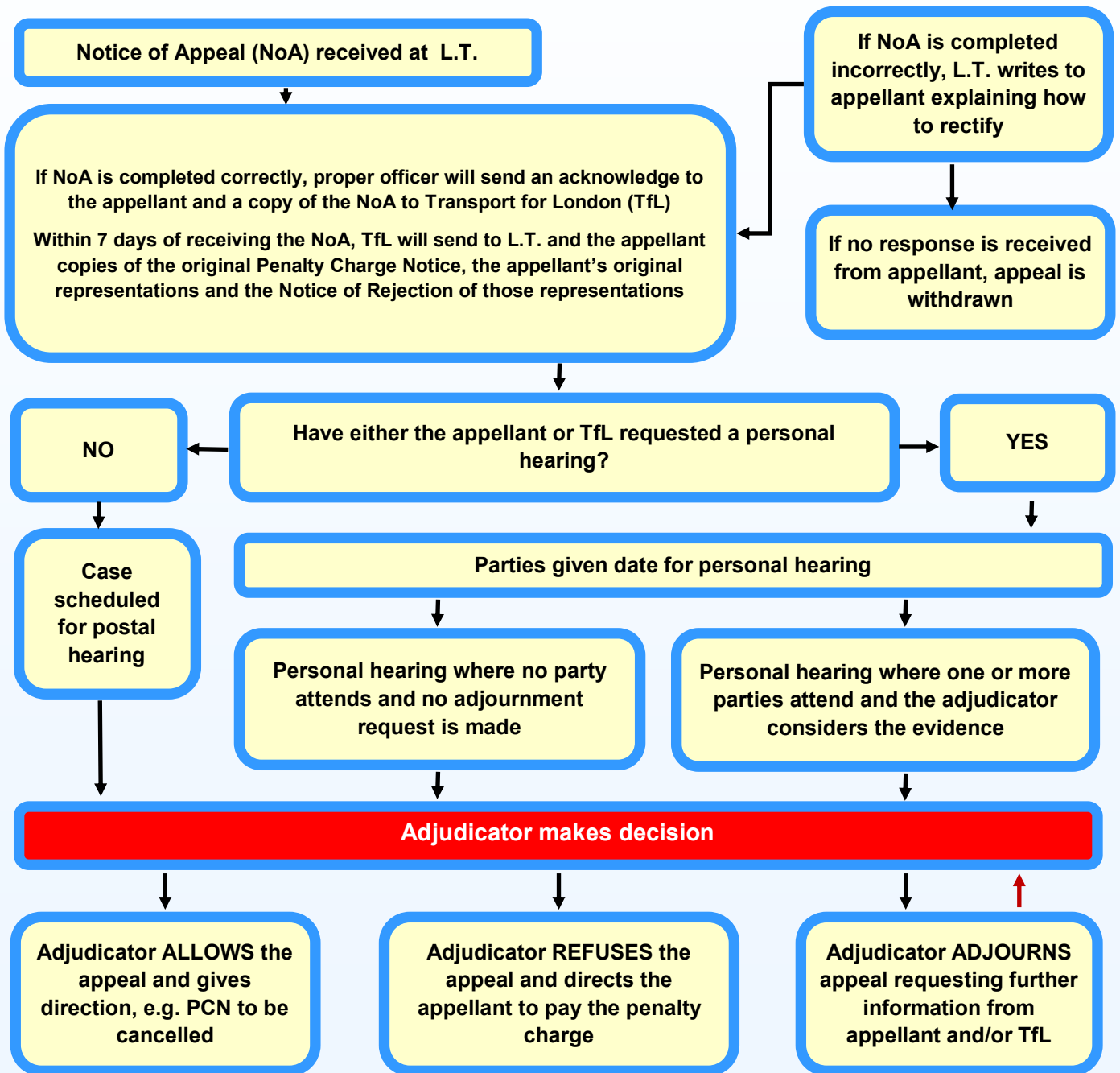
The appeal process

If Transport for London ('TfL') serves a Penalty Charge Notice arising from an alleged Congestion Charge or Low Emission Zone contravention, the registered keeper of the vehicle is entitled to contest the penalty charge by making written representations to TfL.

If TfL accepts those representations, then the PCN will be cancelled.

If TfL rejects the representations, the registered keeper of the vehicle may APPEAL to the Road User Charging Adjudicator. The APPEAL is an appeal against TfL's decision to reject the written representations.

The following diagram explains the process of an appeal after it is received by London Tribunals ('L.T.').



Grounds of appeal

Initially the responsibility is on Transport for London ('TfL') to demonstrate that a contravention has occurred.

This means that TfL must produce evidence to the adjudicator to prove that:

- 1) A relevant vehicle;
- 2) was used or kept within the congestion charge area or low emission zone;
- 3) during the designated hours of a particular date; and
- 4) that the appellant is the registered keeper of the vehicle; and
- 5) that the correct payment for that vehicle for that date has not been received by TfL or that the vehicle was not subject to an exemption.

If TfL produces this evidence, the onus will shift to the appellant to satisfy the adjudicator that, on the balance of probabilities, one or more of the six statutory grounds of appeal applies.

These grounds are:

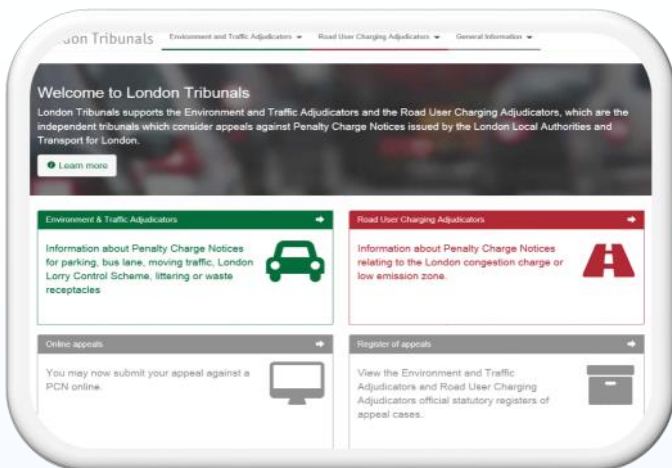
- (a) that the recipient -
 - (i) never was the registered keeper in relation to the vehicle in question; or
 - (ii) had ceased to be the person liable before the date on which the vehicle was used or kept on a road in a charging area;or
 - (iii) became the person liable after that date.
- (b) that the charge payable for the use or keeping of the vehicle on a road on the occasion in question was paid at the time and in the manner required by the charging scheme.
- (c) that no penalty charge is payable under the charging scheme.
- (d) that the vehicle had been used or kept, or permitted to be used or kept on a road by a person who was in control of the vehicle without the consent of the registered keeper.
- (e) that the penalty charge exceeded the amount applicable in the circumstances of the case.
- (f) that the recipient is a vehicle hire-firm and;
 - (i) the vehicle in question was at the material time hired from that firm under a hiring agreement; and
 - (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice imposed in relation to the vehicle during the currency of the hiring agreement.

Please note:

These grounds apply to both alleged congestion charge and low emission zone contraventions.

The Adjudicator CANNOT consider mitigating factors. This has been upheld by the High Court.

London Tribunals' web site



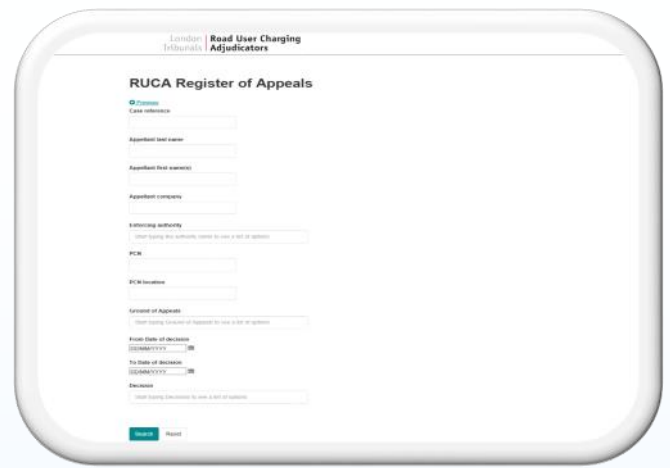
London Tribunals maintains a website (www.londontribunals.gov.uk) with the aim of providing information, guidance and assistance to anyone intending to appeal to the tribunal.

The daily lists of each day's cases before the tribunal can be viewed, as well as maps and travel advice on getting to the hearing centre.

The website offers a useful guide to each stage of the enforcement process, explaining the options available to the appellant at each stage.

The Statutory Register (see right) can also be accessed through this website.

Statutory register



This is the official register of cases at the Road User Charging Tribunal, kept under Section 21 of the Schedule to the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001* (as amended).

It is a register of all appeals and the decisions made on them.

The Register can be viewed online and can be browsed for one day of appeals at a time, or a more specific search (looking, for instance, at the appellant's name) can be made.

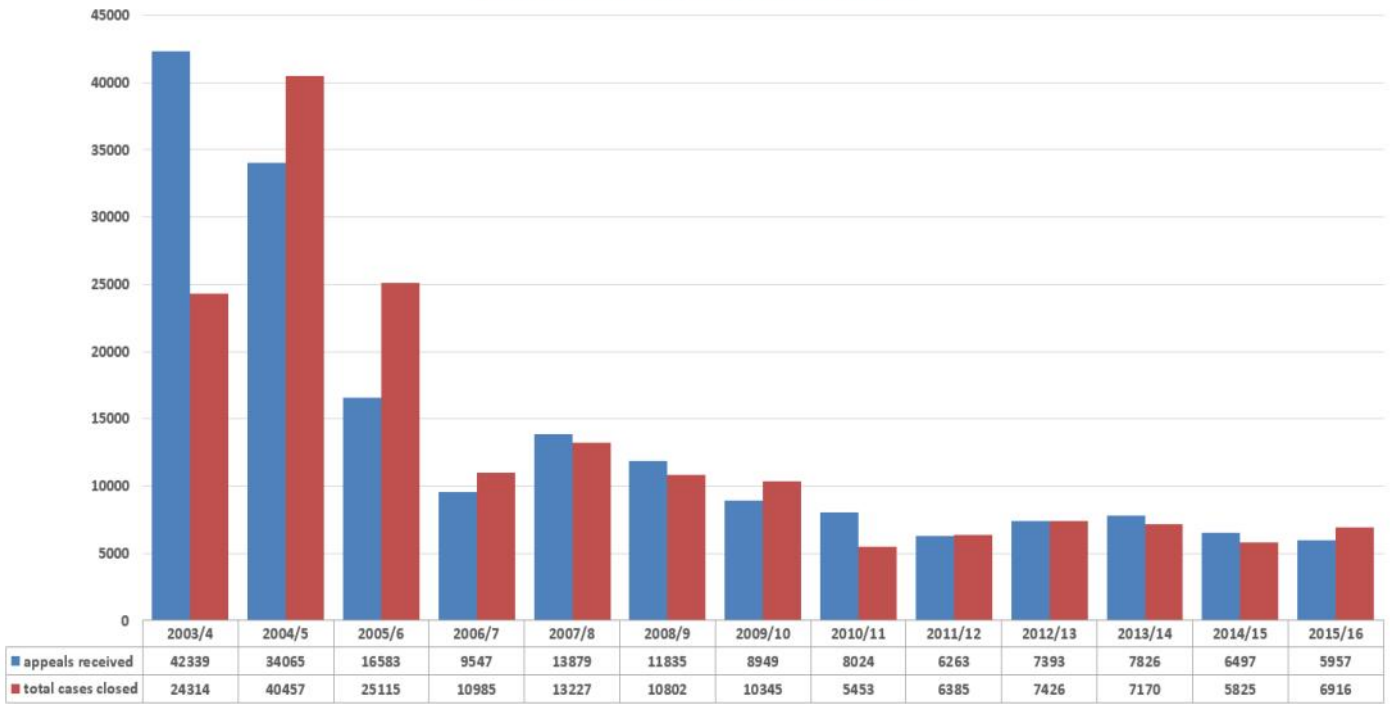
The Register can also be examined at the hearing centre.

Previous annual reports (click on image to open report)

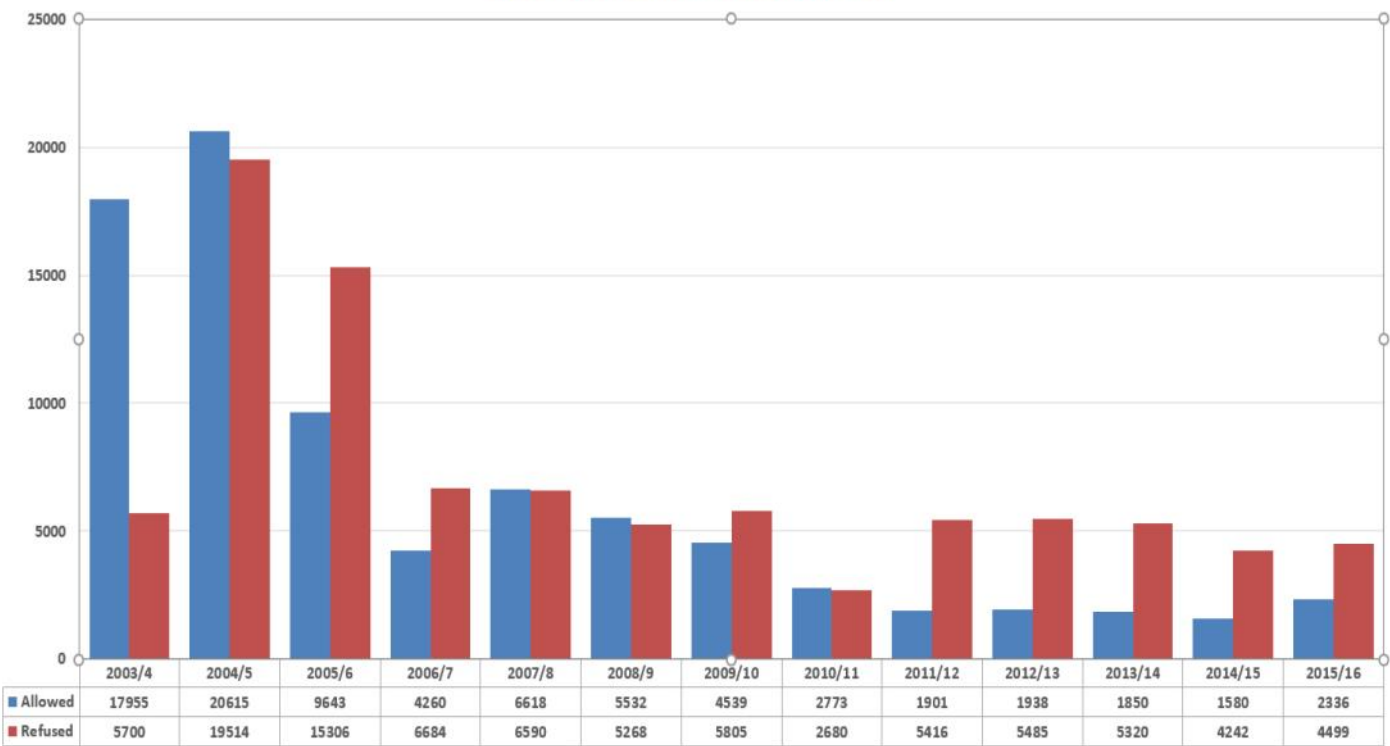


Appendix 1 - Appeals 2006-16

Appeals received and cases closed 2006 - 2016

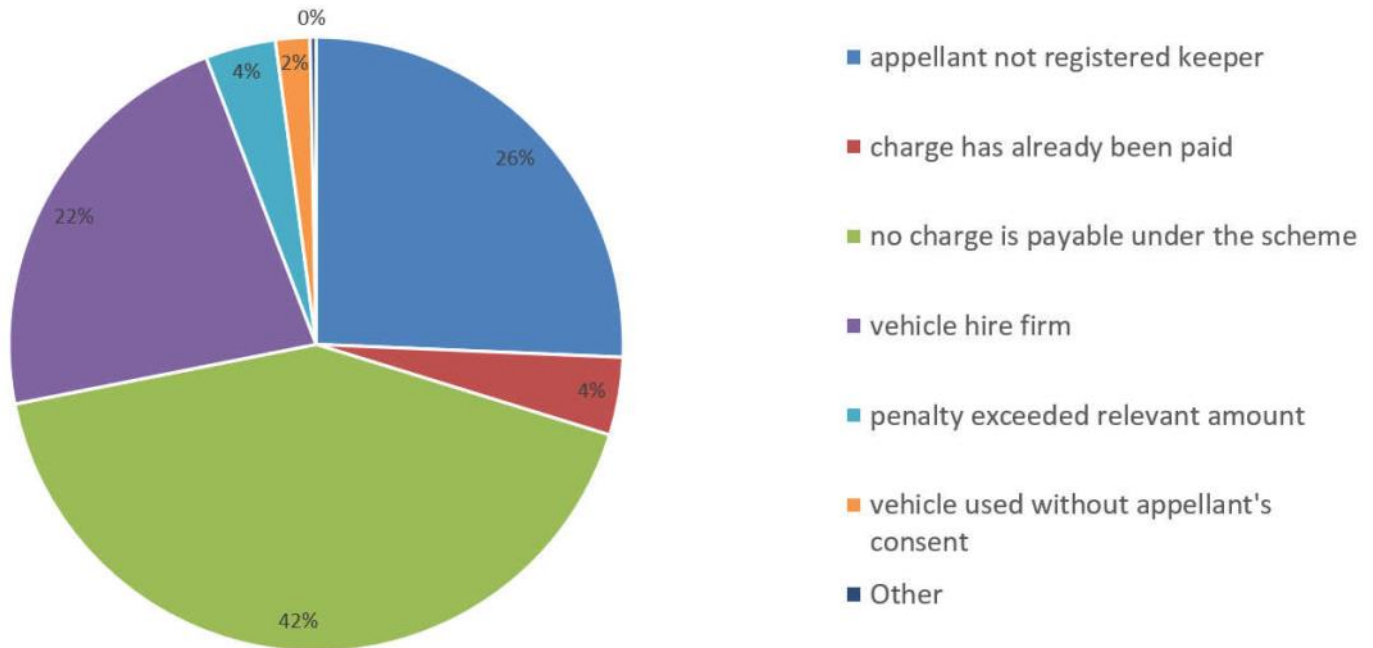


Appeals Allowed and Refused 2006 - 2016

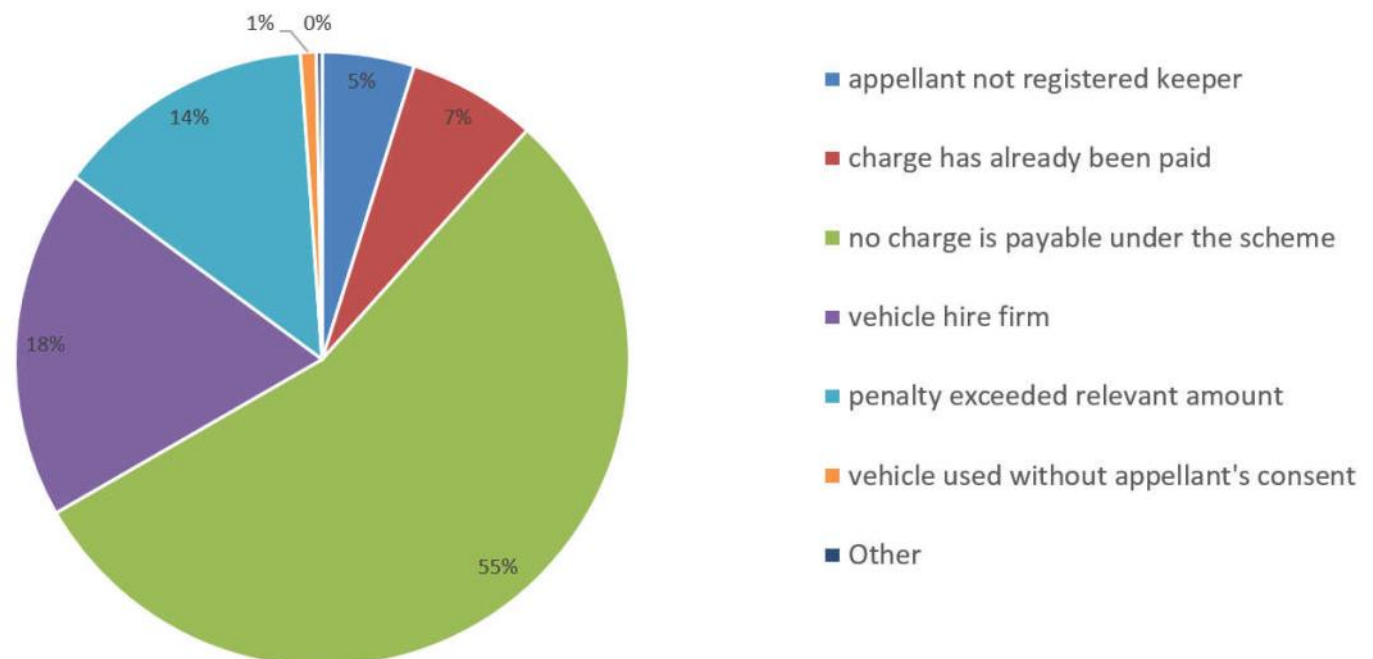


Appendix 2 - Appeal decisions (by ground) 2015-16

Summary of decisions by ground of appeal (allowed) 2015-16



Summary of decisions by ground of appeal (refused) 2015-16



Appendix 3 - Congestion charging statistics 2010-16

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
appeals received	8024	7536	7393	7826	6497	5957
Total cases closed	5453	7317	7426	7170	5825	6916
appeals withdrawn by appellants	113	108	103	248	188	205
appeals not contested by TfL	2481	1568	1313	1589	1382	1066
appeals refused postal*	2236	4869	4311	3873	3255	3560
appeals allowed postal*	1936	1321	1141	1195	1117	1199
appeals refused personal*	444	547	1174	1447	987	734
appeals allowed personal*	837	580	797	655	463	71
closed administratively	0	0	3	0	3	81
appeals adjourned	225	407	299	92	129	146
review decisions	49	83	64	93	114	74
costs decisions	18	4	10	33	73	24
postal cases ready for adjudication at end of year	889	568	229	351	591	956
personal hearings scheduled this year	895	871	1170	1133	922	508

% withdrawn by appellants	2.07%	1.48%	1.39%	3.46%	3.23%	2.96%
%not contested by TfL	45.50%	21.43%	17.68%	22.16%	23.73%	15.41%
% refused postal**	41.00%	66.54%	58.05%	54.02%	55.88%	51.47%
%allowed postal*	35.50%	18.05%	15.36%	16.67%	19.18%	17.34%
%refused personal**	8.14%	7.48%	15.81%	20.18%	16.94%	10.61%
%allowed personal*	15.35%	7.93%	10.73%	9.14%	7.95%	1.03%
% closed administratively	0.00%	0.00%	0.04%	0.00%	0.05%	1.17%
% of cases allowed	50.85%	25.98%	26.10%	25.80%	27.12%	33.78%

average postal hearing (mins)^	33.79	35.18	27.22	24.67	25.84	19.16
average personal hearing (mins)^	49.98	49.95	43.98	34.08	30.70	26.68
% of cases 1st considered within 56 days	58.91%	26.78%	34.32%	41.92%	36.10%	n/a
average days delay	n/a	n/a	n/a	n/a	n/a	54
% hearings within 15 mins	72.00%	71.83%	83.08%	80.97%	79.08%	78.75%

summary of decisions by ground of appeal (allowed)						
appellant not registered keeper	30	65	23	40	59	326
charge has already been paid	43	44	147	25	7	52
no charge is payable under the scheme	163	162	378	245	133	535
vehicle hire firm	24	29	37	11	15	283
penalty exceeded relevant amount	33	40	36	29	10	47
vehicle used without appellant's consent	11	20	4	15	13	23
Other^						4

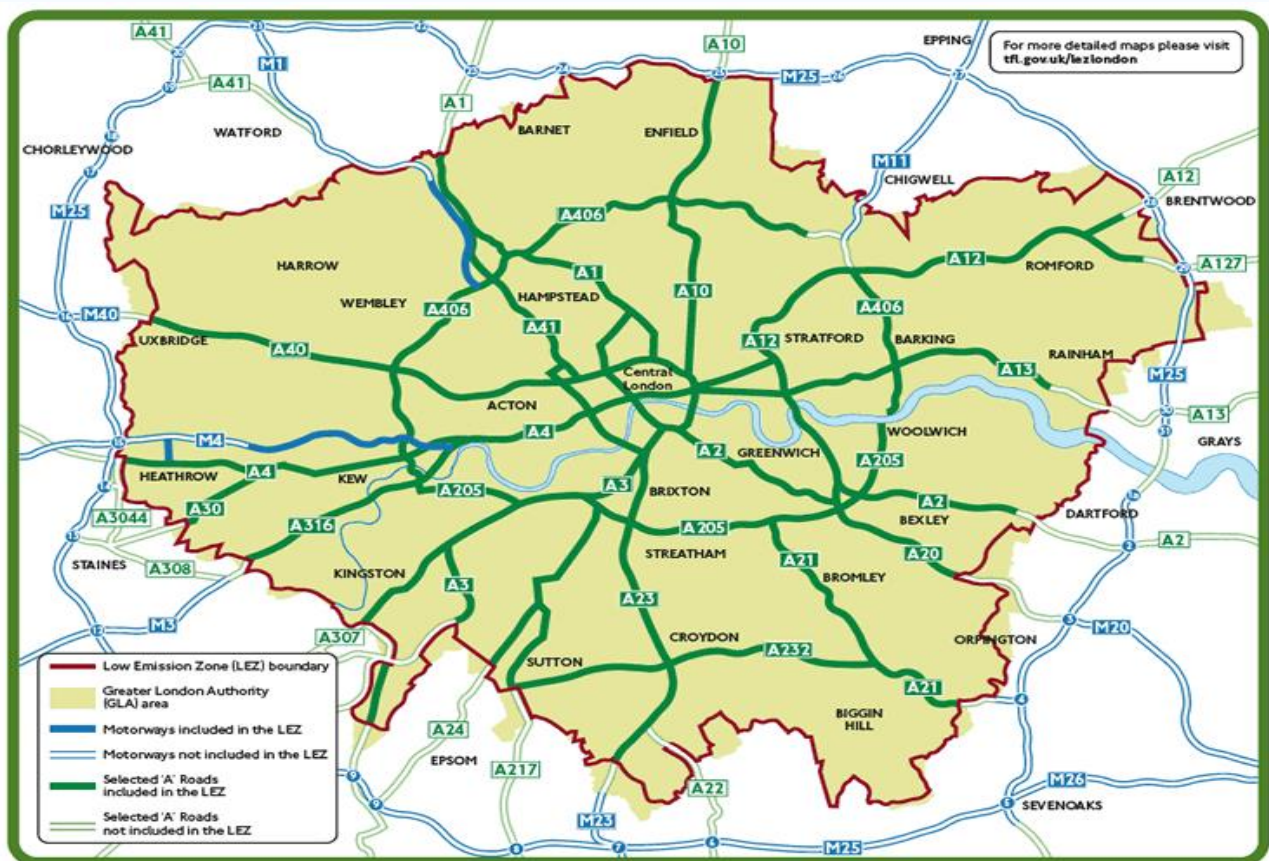
summary of decisions by ground of appeal (refused)						
appellant not registered keeper	140	243	196	206	240	208
charge has already been paid	295	660	585	548	319	291
no charge is payable under the scheme	1051	2844	3030	2956	2009	2364
vehicle hire firm	621	830	859	642	656	792
penalty exceeded relevant amount	444	793	753	645	688	590
vehicle used without appellant's consent	54	80	81	62	42	36
Other^						13

* 2015/16 figures exclude DNCs and Withdrawals.

^ Cases where the ground of appeal is not recorded

^^ The way in which this time is recorded changed in 2015/16.

Appendix 4 - Congestion charge and Low emission zone maps



Appendix 5 - The decision of the adjudicator in Stanley v Transport for London

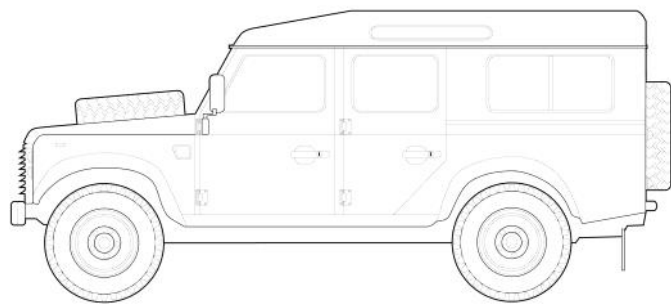
Date: 08 November 2016 **Case no:** 9160111805
Decision date: 08 Nov 2016 **Adjudicator:** Christopher Rayner
Previous decision: **PCN appeal refused**
Review decision: **PCN appeal refused**

Note: images used in this item are for illustration only and do not depict the subject vehicle itself.

Adjudicator's decision

I heard this application on 30 August 2016. I would usually have issued a decision on the same day, but the review raised issues of some importance, and I had extensive documentation to read, which is why the decision is delayed. On 30 August Mr. Stanley, the appellant, attended the Tribunal as did Mr. Garrett on behalf of Transport for London (TfL). I am grateful that both presented their arguments in a considered and fair manner.

The issue in essence appears straightforward: whether a 1984 Land Rover 110 or Defender is captured by the provisions of the London Low Emission Zone (LEZ) Scheme, such that it requires modification to be compliant with that scheme, or whether the motorist has to pay a daily fee to use it within the zone. Before dealing with that substantive matter I recite briefly how the matter has come before the Tribunal.



History of appeal

Mr. Stanley lives in London. He is the owner of a 1984 Land Rover Defender. He purchased it on 6 February 2015. I deal with its appearance and use below.

His vehicle was first captured being used in the LEZ on 14 February 2015. TfL sent a "Low Emission Zone Warning Letter" advising that the vehicle came within the terms of the LEZ and captured by the requirements of the LEZ, so that his use of the vehicle on 14 February 2015 was in breach of the scheme.

This is a standard form letter and TfL advised Mr. Stanley that if he used the vehicle in the LEZ 28 days after that letter he would be liable to receive a PCN.

Mr. Stanley did subsequently use the vehicle on three occasions on roads in the LEZ:

- a) at 13:34 on 7 November 2015 on the A206;
- b) 12:54 on 8 November 0215 on Woolwich Common Road (both Case no 9160111805); and
- c) 16:01 on 31 December 2015 on Woolwich Common Road (Case no. 916011532)

On each occasion the vehicle was captured by TfL cameras. TfL served postal penalty charge notices (PCN) on Mr. Stanley, as the registered keeper, alleging breaches of the London LEZ scheme.

Mr. Stanley appealed all three PCNs, and attended the Tribunal on 13 April 2016 when the adjudicator adjourned the appeal to request further representations from TfL. Having received those representations the adjudicator refused the appeals on 6 July 2016. Mr. Stanley requested a review of that refusal on 20 July 2016, which application was listed before me on 30 August 2016.

Reviews are a two stage process. In the first instance the Tribunal must determine whether there are grounds to review a decision. If there are such grounds, the Tribunal may rehear the appeal and remake the decision. The Tribunal Rules stipulate stringent grounds on which one adjudicator may review the decision of another adjudicator. However Mr. Garrett did not oppose the application to review the decision of 6 July 2016. Indeed, given the uncertainty around these vehicles, and that adjudicators have given conflicting decisions on essentially the same facts he accepted that it was "in the interests of justice" to clarify the matter: Paragraph 12(1)(d) of the 2001 Regulations was satisfied. I therefore allow Mr. Stanley's application to review the decision of 6 July 2016, and heard the appeal afresh, considering the evidence already provided as well as the representations and evidence provided by the parties at the hearing.



Appendix 5 - The decision of the adjudicator in Stanley v Transport for London [continued]



The Low Emission Scheme

The Low Emission Scheme was set up to reduce air pollution throughout London. Its statutory basis is The Greater London Low Emission Zone Charging Order 2006. The Scheme Order uses European definitions well known in the manufacturing world to classify vehicles. In general, vehicles classified 'M' under the scheme are passenger carrying vehicles; and those classified as 'N' are commercial type vehicles. Depending on the classification, the vehicles are required to comply with Euro 3 or Euro 4 levels of emission.

Mr. Garrett described the chronology of the scheme. There was an initial consultation process before the Scheme Order was drafted and approved. The scheme was implemented in stages to enable those affected by it to become compliant. From February 2008 the scheme initially applied to larger vehicles, trucks and lorries etc. In July 2008 it was extended to a wider group of vehicles, passenger carrying and smaller commercial vehicles. These were all required to achieve Euro 3 emission standards.

In January 2012, the scheme was changed in two ways: vehicles within the scheme had to achieve Euro 4 levels of emission and new, smaller vehicles were introduced into the scheme.

The relevant classification for this appeal is the introduction of vehicles classified as N1(iii), which were included in the scheme from January 2012. By reason of paragraph 2(f) of Annex 2 to the Scheme Order, the N1 (iii) category comprises, "... vehicles designed and constructed for the carriage of goods, ... powered by compression-ignition engine and having a reference mass exceeding 1,760 Kilograms and a maximum mass not exceeding 3,500 kilograms".

For clarity, "cars" are not within the scheme. Mr. Garrett and Mr. Stanley referred to cars as M1 vehicles. In fact the term 'M1 vehicle' does not appear in the Scheme Order. Passenger carrying vehicles with more than eight seats in addition to the driver's seat are class M2 (vehicles with a maximum mass not exceeding 5,000 kilograms); or M3 (vehicles with a maximum mass exceeding 5,000 kilograms), and are within the Scheme. Passenger carrying vehicles with eight or fewer seats (in addition to the driver's seat) are not within the scheme. By deduction, the term M1 is applied to "Vehicles designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat".

The sole issue for the appeal is whether a 1984 Land Rover 110 (later or alternatively known as a Defender) is a vehicle "designed and constructed for the carriage of goods" and therefore in the N1(iii) category or a passenger carrying vehicle of eight or fewer seats in addition to the driver's seat, in which case it is an M1 vehicle and not within the scheme.

Land Rovers

The difficulty arises from the fact that over many years a whole range of Land Rover vehicles were manufactured in different configurations, and, as durable and versatile vehicles, many have



been adapted and changed in their history. The initial diversity in manufacture is demonstrated by the helpful promotional document that Mr. Stanley received from the National Heritage Trust. That document is undated, but Mr. Stanley believes it to date from 1984, and that nothing of significance changed in the manufacture and use of the vehicle from 1947 until 1998 or indeed beyond. I quote, for example, from the literature about the 110, "With more than 35 years of operating experience, Land Rover have developed a tremendously wide range of standard bodies for commercial, utility and private use ... They include Full Length Soft Tops, Hard Tops, a High Capacity Pick Up and Station Wagons." It is clear from the literature that the carrying capacity of the vehicles is emphasised. "Its One Ten counterpart can handle 1.25 tonnes with ease. Every Ninety and One Ten can tow at least 4 tonnes. The One Ten High Capacity Pick up swallows 1.6 m (cubed) (56.5 ft. (cubed)) and will accept metre-pallets flat on the load platform between the wheel arches".

The literature shows that that Land Rover also configured some vehicles as "station wagon" alternatives, with options of 9 or 10 (or indeed others numbers) of seats.

Appendix 5 - The decision of the adjudicator in Stanley v Transport for London [continued]

Mr. Garrett readily acknowledged that these vehicles were always seen as likely to cause difficulty on the introduction of the LEZ scheme.

Mr. Stanley's vehicle

Mr. Stanley's vehicle contains a number of seats that gives the impression that its primary (or even sole) use is as a passenger vehicle. It has two seats in the front, one of which is the driver's, three behind, and four "bench" seats in the rear at right angles to the other seats.

In short, in his appeal notice, Mr. Stanley describes the vehicle as having "fixed seats in the rear, windows all round and a total of nine seats".

It appears that one seat may have been removed from the front of the vehicle, so that it is currently has eight seats plus a driver, (which would make it an M1 passenger carrying vehicle and outside of the LEZ) but at one time may have had nine seats plus a driver (which would have made it M2 and within the scheme as a passenger vehicle).

While this information relates to whether the vehicle would be within the scheme as a "passenger-carrying vehicle", that is a peripheral matter as far as TfL is concerned as Mr. Garrett submits that it is within the scheme not because it falls within category M2, but because it is a commercial vehicle within category N1(iii).

It is however central to Mr. Stanley's case, as he submits it should be categorised as an M1 vehicle.



Representations

Against that background both Mr. Stanley and Mr. Garrett made straightforward and compelling arguments.

Mr. Garrett submitted that it was clear from the inception of the scheme that Land Rovers would form a difficult group of vehicles. By reason of their engine size and their particulate emission they would fall within the scheme. However they had a variety of uses, and public perception of them varied, so clarity was required both for motorists and for TfL in administering the scheme.

Because of this likely confusion, Mr. Garrett explained that TfL entered into negotiations with Land Rover to ascertain how their vehicles were designed and constructed. The results of those discussion are reproduced on the TfL website. I append the relevant section of the website to this decision. It is both short and comprehensive so I need not precis it.

Mr. Garrett started with the DVLA classification for Mr. Stanley's vehicle, which is a "light utility 4 x 4". DVLA categorisation is based on the information provided by Land Rover at the time of first registration. That is an important starting point when looking at the vehicle, because this is a "commercial" rather than a passenger classification. There are, as TfL acknowledge, some Land Rovers that were "designed and constructed" (and mostly registered as such with DVLA) as "Estates". They are not within the scheme. According to the TfL website (see below) these are, "Defender, 88, 90, 109 and 110 station wagon variants up to nine seats Inc. the drivers". Mr. Garrett submitted however that all those Land Rovers classified by DVLA as "Light Utility 4x4" vehicles, on the advice of Land Rover at the time of manufacture, are within the scheme, subject to limited exemptions explained below.

Mr. Garrett submitted that Mr. Stanley's vehicle is within the LEZ scheme, for the following reasons:

- Land Rover told TfL that all Land Rover 110s built before 1998 (and therefore Mr. Stanley's vehicle) were constructed as "commercial" and not "passenger" vehicles. Land Rover told TfL that despite the appearance of some Land Rovers, they did not design, construct or have tested any passenger vehicles before 1998. All their vehicles before that date were designed, constructed and tested as commercial load carrying vehicles and categorised at DVLA as such. That, Mr. Garrett submitted, immediately puts them within "N" rather than "M" class, and therefore within the LEZ scheme.

Appendix 5 - The decision of the adjudicator in Stanley v Transport for London [continued]

Mr. Garrett acknowledges that there are vehicles built after 1998 that are passenger vehicles and registered as such and that they look very much the same as those manufactured before 1998, (such as Mr. Stanley's), but which, according to Land Rover are not passenger vehicles but are commercial.

- Because of the difficulty that issue was likely to cause, TfL had confirmed that point with Land Rover on a number of occasions.

- There is a limited exception to that classification in relation to 'station wagons', and these are contained to in the promotional literature provided by Mr. Stanley. Based on the information given to TfL by Land Rover, how they were treated by DVLA and for the LEZ depended on whether they were manufactured before or after 1998.

- For vehicles registered before 1998, (such as Mr. Stanley's) TfL state that in order to gain exemption from the scheme, owners are advised to "register your vehicle with TfL with suitable photographic proofs showing all sides of the vehicles with all doors open which clearly shows the entire internal seating arrangements." If TfL is satisfied with that information against the criteria they provide on their website they will "exempt" the vehicle.

- I mention that for owners of station wagon vehicles registered after 1998 there is a separate process for securing exemption, which requires owners to contact DVLA rather than TfL. I need not elaborate on that, as this does not relate to Mr. Stanley's vehicle.

Mr. Garrett therefore submitted that whatever the appearance of Mr. Stanley's vehicle, it was "designed and constructed" as a commercial vehicle for the carriage of goods, based on what Land Rover told initially DVLA and now TfL. It was registered at DVLA as "light utility 4x4", which is not a passenger-carrying classification. Mr. Stanley has not managed to persuade TfL that his vehicle should be exempt, and therefore it is captured by the LEZ scheme.

Mr. Stanley relies primarily on the appearance of his vehicle, which he submits is plainly for the carriage of passengers. It is clear, Mr. Stanley submits, that contrary to what Land Rover may have told TfL, they did design and construct vehicles before 1998 that were intended for passenger carrying. His is within that class of vehicle. There is no way that it could be described as being "commercial", much less for the carriage of goods.

Land Rover has refused to enter into correspondence with Mr. Stanley about why they have given that advice to TfL.

When these vehicles were registered as "light utility 4x4" at DVLA. Mr. Stanley submitted that it was long before the importance of that registration would be understood for this scheme. It was wrong, he submitted, with hindsight, to allocate these vehicles to a category that attracts a penalty for a scheme that was not even contemplated at the time the vehicle was produced.

The importance of the registration class could not have been known to Land Rover, or indeed DVLA, at the time of registration.



In any event, Mr. Stanley submits, there are elements of the advice that Land Rover have given for which no objective justification can be found. For example, it is clear that they did produce what were plainly passenger vehicles before 1998.

Further, there is nothing in public records to indicate a change in manufacturing that would justify treating pre-1998 models differently from post-1998 models when looking to exempt vehicles, as described on TfL's website.

Appendix 5 - The decision of the adjudicator in Stanley v Transport for London [continued]

Mr. Stanley's primary submission is that he should not need a discretionary exemption from TfL as his vehicle doesn't fall within a category captured by the scheme. However, if he did need an exemption, he submits that his car falls within the description of vehicles TfL state they will exempt on their website. Mr. Stanley had been in correspondence with TfL, providing photographs and documents, to secure exemption from the scheme for his vehicle, in accordance with the information on their website about pre-1998 Land Rovers. He complains that TfL give conflicting advice, change the goalposts and act unreasonably in failing to exempt his vehicle. He is adamant that he satisfies all the conditions stipulated by TfL. Mr. Garrett was candid that because of the strict criteria that TfL has set, they grant exemption for very few vehicles under this scheme. He could not say why Mr. Stanley's vehicle had not been accepted within this scheme.

Decisions and Reasons

Both arguments have their attractions. Mr. Stanley's is essentially, "Look at my vehicle. It is plainly for passenger carrying. It is highly likely it was produced that way. It makes no sense to call it a commercial much less "designed and constructed for the carriage of goods", particularly given the windows and seating arrangement. Although TfL are not attempting to classify it as an M2 vehicle, it would not fall into that category either because it has nine seats including the driver's. It is an M1 vehicle and outside of the scheme. Even if it were, for some technical reason an N1(iii) vehicle, it falls within the general description of exempt vehicles on TfL's website."

In essence Mr. Garrett's argument is, "It does not matter what the vehicle looks like. It is the purpose for which it was "designed and constructed" that fixes its classification. TfL must, for Land Rovers, (as they do for all vehicles) rely on what the manufacturers tell them. Land Rover tell TfL that this class of vehicle was a commercial goods carrying vehicle when it was "designed and constructed". That puts it into category N1(iii). However it looks and however, or indeed whether or not it has been subsequently adapted, is irrelevant. It is how it was "designed and constructed" that determines the category."

I was not referred to any legal authority on the matter. Mr. Stanley submitted that there had been a House of Lords case in 1956 where it had been decided that that a Land Rover was a car and not a commercial vehicle in the context of a speeding contravention.

I advised Mr. Stanley that I could not consider the matter unless he provided a reference for the case. He has not done so. In the absence of any authority I must consider the appeal on basic principles and interpretation primarily of the Scheme Order.

The crucial issue is the phrase "designed and constructed", used throughout the Scheme Order. That term is not further defined in the Scheme Order. By way of an example of why that is important, I pause to consider the configuration of Mr. Stanley's own vehicle having eight seats plus a driver's. It is clear from Mr. Stanley's promotional literature that there were Land Rover Station Wagon vehicles "designed and constructed" with 10 or more seats. If these were "passenger carrying" vehicles, they would now be Class M2 and within the scheme. However, a motorist who wanted to take such a vehicle outside of the scheme might remove a seat and say, "Now it has only nine seats, it is class M1 and outside the scheme". Plainly, because of the definition in the scheme of "designed and constructed", that argument would not work. The vehicle had been "designed and constructed" with 10 seats. Removal of a seat would not affect that design and construction; the vehicle would remain within the scheme as an M2 vehicle, even with nine seats. It does not matter how easy or complicated such an amendment to the vehicle is, it would not change the purpose for which it had been "designed and constructed". I cite this as an example not relating it to Mr. Stanley's vehicle, but to emphasise the importance of the phrase "designed and constructed", rather than relying exclusively on the appearance of the vehicle at any particular time.

The issue therefore is who is the arbiter of how a vehicle is "designed and constructed"? Is it the owner, DVLA, TfL, the manufacturer, the Tribunal or some other body? I have given this matter careful thought. I conclude ultimately that it must be the manufacturer.

The manufacturer's view is then reflected in how they classify it at DVLA on first registration. Certainly the Tribunal has no access to the design and manufacturing information. Adjudicators, owners and others may well be able to look at a vehicle and say, "that vehicle looks like a car, or van, or bus and ambulance or whatever". However that is not the test for the purpose of the LEZ. The test is, "For what was this vehicle 'designed and constructed'?" The best, indeed the only body that can answer that, is the manufacturer. They uniquely have the record and details of the design, construction manufacturing and indeed initial registration process.

Appendix 5 - The decision of the adjudicator in Stanley v Transport for London [continued]

TfL may have to interpret that information in classifying a model, but ultimately if the manufacturer gives them and DVLA the information that must be highly persuasive, if not conclusive, of the class to which the vehicle the class of vehicle and indeed the individual vehicle, is allocated. If TfL place a particular class of vehicles or an individual vehicle in the wrong category, I am not sure this Tribunal would have any jurisdiction in correcting that. It would be a matter which the motorist would have to challenge with the manufacturer, DVLA, TfL and ultimately in a different legal forum.

For modern vehicles that are built to exact and demanding specifications that have Europe or worldwide standards, with detailed records, allocating models to a specific category is a straightforward matter. It may be more difficult for older vehicles, and this class of Land Rover plainly creates its own issues as identified in this appeal and review. It is unfortunate that neither Land Rover nor TfL feel able to disclose the discussions that caused TfL to be able to state with certainty that Land Rovers of this class, description and age were all commercial vehicles. However, DVLA has classified the vehicles in the manner as notified by Land Rover, and I am satisfied that is binding upon me.

It follows that I accept that what is on the TfL website is an accurate representation of what Land Rover told them about the design and construction of their vehicles. This Tribunal has no role in going behind the manufacturer's, DVLA's and, ultimately, TfL's classification under the LEZ scheme. For that reason, I accept that Mr. Stanley's Land Rover, in common with all Land Rovers of this era and description, whatever their appearance when they left the production line and however they appear today, are commercial vehicles "designed and constructed for the carriage of goods" and within Class N1(iii) of Annex 2 to the LEZ Scheme Order.

I finally mention the issue of TfL refusing to give Mr. Stanley's vehicle exemption from the zone requirements under the "exemption scheme" on the website. Mr. Stanley believes that it satisfies all the criteria for exemption on TfL's website, and Mr. Garrett is unable to explain today why it does not. I understand Mr. Stanley's frustration over this issue, particularly when the correspondence from TfL is somewhat ambivalent as to why they won't exempt his vehicle, or explain what, if anything, he could do to secure an exemption.

However, I have found that his vehicle is within the N1(iii) category so is liable to the LEZ scheme.

There is no statutory exemption within the scheme itself for a vehicle that satisfies certain criteria.

TfL run what can best be described as a "discretionary" exemption scheme. It is not a statutory scheme nor an exemption from a contravention. The Tribunal has no jurisdiction or authority over that "informal" exemption. Even if I were to take a different view from TfL as to whether this vehicle ought to fall within that exemption, I could not cancel the penalty or direct TfL to exempt the vehicle. If Mr. Stanley believes that TfL are not applying their own criteria and policy on the matter, again he may have a remedy in an alternative forum, but not in this Tribunal.

That being the case, although I have allowed the review application, I find the contravention proved and no exemption applies. I dismiss the appeal on its merits. Mr. Garrett has indicated that although the contravention is proved, he does not pursue a penalty in this case.



Postscript - TfL website

I have concentrated on Mr. Stanley's vehicle. However, as noted above, there are many Land Rover vehicles and models about which TfL has negotiated with Land Rover. TfL have passed the wording on their website to Land Rover to approve, which they have done. That no doubt is why Land Rover refer enquirers, such as Mr. Stanley, to that website. As I place much reliance on the manufacturer's view of the correct classification for vehicles, and because I accept that TfL has accurately recorded the information passed to them by TfL, I find that for owners of vehicles affected and for appellants to this Tribunal, reliance can be placed on the information in that website as to the appropriate classification of the models and vehicles involved.

Appendix 5 - The decision of the adjudicator in Stanley v Transport for London [continued]

Land Rovers

We have worked with Land Rover to establish which vehicles with the body type of 'Light 4x4 Utility Vehicle' are subject to the LEZ. Vehicles manufactured before 1973 are considered to be 'historic' vehicles and are exempt from the LEZ.

The vehicles listed below are subject to the LEZ standards:

- All Defenders; 88s, 90s, 109s, 110s, 127 and 130s (except station wagon variants see below);
- All Defenders manufactured with 10 or more seats including the driver's seat;
- Freelander Commercial;
- Discovery or Discovery Series 2 Commercial;
- Conversions (e.g. ambulance, motor home).

The vehicles listed below are subject to the LEZ standards:

- All Defenders; 88s, 90s, 109s, 110s, 127 and 130s (except station wagon variants see below);
- All Defenders manufactured with 10 or more seats including the driver's seat;
- Freelander Commercial;
- Discovery or Discovery Series 2 Commercial;
- Conversions (e.g. ambulance, motor home).

The following vehicles are not subject to LEZ as they are classed as 'estates':

- Defender, 88, 90, 109 and 110 station wagon variants up to nine seats Inc. the drivers;

A small number of Defenders 90s and 110s may be a 'station wagon' but may not be classified as such by the DVLA.

This means vehicles with side and rear windows manufactured with fixed seating throughout the vehicle including the area accessed via the back door and there are nine seats or less including the driver's seat.

Please note that vehicles without fixed seating throughout will not be treated as an estate and will be subject to LEZ. Fixed seating means individual seats with seat belts. It does not include benches or homemade seating variants.

Please note that vehicles without fixed seating throughout will not be treated as an estate and will be subject to LEZ. Fixed seating means individual seats with seat belts. It does not include benches or homemade seating variants.

If your vehicle meets this criterion it will not be subject to the LEZ. In these circumstances if you intend to use the vehicle in the LEZ you need to:

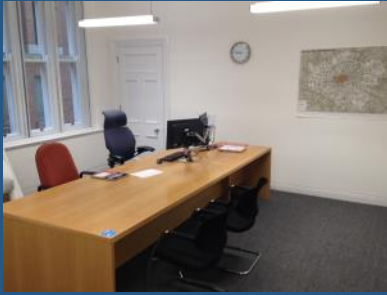
- For models registered from 1998 - correct the body type description, vehicle model details and/or number of seats with the DVLA and provide photographic proof;
- For models registered before 1998 - register your vehicle with TfL with suitable photographic proofs showing all sides of the vehicles with all doors open which clearly shows the entire internal seating arrangements.

Certain vehicles meet the Euro 3 standard because they are early adopters:

- All Defenders, 90s, 110s, 127s and 130s manufactured after 6 August 2001;
- Freelander Commercial manufactured after 14 September 2000;
- Discovery or Discovery Series 2 Commercial manufactured after 2 July 2001;
- Conversions (e.g. ambulance, motor home) manufactured after 2 January 2002.

We've updated our database to reflect these vehicles' emissions standards.





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