Environment and Traffic Adjudicators

ANNUAL REPORT

2015-2016

The Annual Report of the Environment and Traffic Adjudicators to the Transport and Environment Committee of London Councils.

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The Environment and Traffic Adjudicators
London Tribunals 2015-16

1. CHIEF ADJUDICATOR'S FOREWORD

This reporting year has seen a number of changes for the tribunal and the adjudicators. Firstly, our name has been altered to reflect the nature of the work that we now undertake; what were the London Parking Adjudicators are now known as the Environment and Traffic Adjudicators (ETA). This name encompasses the growing number of appeals that we now register arising from civil penalty charge notices issued for moving traffic contraventions, as well as the developing area of civil enforcement under the London Local Authorities Act 2007 relating to Waste and Litter. Secondly we have moved from our tribunal premises at Angel Square in Angel Islington to a smaller, but more central hearing centre at Chancery Exchange, Furnival Street, London EC4. This move into central London allows the adjudicators to offer a more accessible tribunal to our users and in particular to parties to an appeal who wish to attend a personal appeal hearing. Thirdly, we have been provided with new administrative support. The Proper Officer team, in place to support the adjudicators' work under the Traffic Management Act 2004, now carries out its function under the name "London Tribunals" with a new automated paperless case management system. The change to our case management system has proved to be the most challenging for adjudicators and the proper officer team, who have had to manage their usual heavy caseload without the streamlined computerised support that we had become accustomed to.

Despite these alterations, the adjudicators have remained focused on their workload, determining a large number of personal and postal appeals. Adjudicators have also taken the opportunity provided by a new case management system to review the processes and procedures applied

to the statutory declaration and witness statement referral lists to ensure a more efficient and timely resolution of this growing aspect of our caseload.

With a view to achieving consistency and certainty, our practice of grouping and consolidating cases has continued, resulting in determinations that provide clear guidance and assistance to prospective parties to an appeal. This year adjudicators promulgated a detailed and helpful analysis of the loading/ unloading exemption under the panel decision ***Alan Bosworth and others v. The London Borough of Tower Hamlets ETA (2015)*** *which has been added to our list of key cases (see report at page 13).*

The Environment and Traffic Adjudicators are pleased to present their 2015-2016 annual report to the Transport and Environment Committee of London Councils and take this opportunity of expressing thanks to the Proper Officer team for their continued commitment to the tribunal's work.

Caroline Hamilton
Chief Adjudicator
Environment and Traffic *London, April 2016*

2. WORKLOAD

It remains the case that only a very small proportion of Penalty Charge Notices issued by the enforcement authorities result in a contested appeal. The figures detailed below include appeals registered in the previous year that were scheduled for determination in the 2015-2016 reporting year. The total number of appeals and referrals received will not necessarily be reflected in the number of outcomes recorded, a number of appeals being withdrawn or discontinued for a variety of reasons. Discrepancies in the figures may also arise as a result of multiple penalty charge notices being registered for appeal under the umbrella of one appeal case number. It must also be remembered that a number of witness statement/statutory declaration referrals are listed for appeal on the direction of the adjudicator.

APPEALS

TOTAL of ALL:

37,934 appeals received

6,477 statutory declaration/witness statement referrals

Total: 44,411

35,828 appeals were determined (this figure includes appeals lodged in the previous year but determined in the reporting year)

17,213 appeals were allowed of which 7,302 were not contested

18,615 appeals were refused

The number of appeals has been broken down into contravention types (parking, bus lane, moving traffic, London lorry control, litter and waste) and the number of appeals received and decided.

Parking appeals received

28,693 appeals were received

5,821 referrals were made

TOTAL: 34,514

Parking appeals decided

27,696 appeals were determined

Allowed

13,572 appeals were allowed of which 5,803 were not contested

Refused

14,124 appeals were refused

Bus lane appeals received

1,483 appeals were received

146 referrals were made

TOTAL: 1,629

Bus lane appeals decided

1,292 appeals were determined

Allowed

587 appeals were allowed of which 185 were not contested

Refused

705 appeals were refused

Moving traffic appeals received

7,607 appeals were received

510 referrals were made

TOTAL: 8,117

Moving traffic appeals decided

6,693 appeals were determined

Allowed

2,970 appeals were allowed of which 1,256 were not contested

Refused

3,723 appeals were refused

London Lorry Control

126 appeals were received

London Lorry Control appeals decided

122 appeals were determined

Allowed

63 appeals were allowed of which 43 were not contested

Refused

59 appeals were refused

Litter appeals

1 appeal was received

1 appeal was refused

Waste appeals

24 appeals were received

24 appeals were determined

Allowed

21 appeals were allowed of which 15 were not contested.

Refused

3 appeals were refused.

PERSONAL/POSTAL APPEALS

Postal Hearings: 26,575 (2014-2015)

Personal Hearings: 16,600 (2014- 2015)

Our new system has been able to record the split of appeal types from 1st July 2015 to March 2016 only. Of the 24,769 appeals registered in that period, 15,297 were recorded as postal selections with 9,472 scheduled for personal hearings. We hope to be able to provide full details of the appeal type selection in our 2016-17 report.

We have eight personal appeal hearing rooms at Chancery Exchange, as well as case management and adjudication systems available to adjudicators working on ancillary matters or postal determinations. Personal appeal hearings are usually scheduled with an allocated hearing time of half an hour. We aim to remain an accessible and user friendly tribunal and personal appeal hearings are listed at first instance to accommodate the appellant's preferred date and time selection. It is important that a motorist seeking to contest liability for a penalty is not prejudiced financially by having to take time off work in order to pursue an appeal. To that end adjudicators provide personal appeal hearing slots throughout the day, with early morning listings on Mondays from 8am and late listings on Thursday afternoons, with a final listing at 7.30pm. The hearing centre is also open on Saturday mornings to ensure that motorists who have work or other commitments during the week

are able to attend a hearing on a Saturday. Postal appeals are determined by the adjudicators on the evidence submitted by each party with no need for attendance. Enforcement authorities do not generally select personal appeal hearings or indeed send representatives to a personal appeal hearing selected by an appellant, preferring to rely on the evidence and written submissions, thereby keeping the cost of contesting the appeal at a proportionate level. Appellants who do not make a personal/postal selection are, as a precautionary measure, automatically granted a personal appeal listing. Appellants whose statutory declaration/witness statement referrals progress to an appeal may also select a personal hearing. When parties fail to attend a hearing the matter will usually be determined by the adjudicator on the evidence submitted.

COSTS

There is no tribunal fee to Appellants who decide to register an appeal and our Appeals Regulations make it clear that an award of costs is not the norm. Parties to an appeal should not be deterred from lodging an appeal through fear of a financial penalty or an escalating penalty amount. Once an appeal has been registered, the penalty amount (full not discounted) remains frozen until the determination of the appeal. However, under Paragraph 13 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 an adjudicator may make an order awarding costs and expenses against a party (including an Appellant who has withdrawn his appeal or an Enforcement Authority that has consented to an appeal being allowed) if the adjudicator is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or against an

enforcement authority where the adjudicator considers that the disputed decision was wholly unreasonable.

In the limited reporting period available on our current case management system, 6th July 2015 to 31st March 2016, 74 applications were listed for a determination by the adjudicator further to an application for costs; 67 from Appellants and 7 from Respondent enforcement authorities.
The applications for costs received within that period break down as follows:

Appellants	**Enforcement Authorities**
Parking 55	Parking 6
Bus Lane 3	Bus Lane 0
Moving Traffic 9	Moving Traffic 1
London Lorry Control 0	London Lorry Control 0
Litter and Waste 0	Litter and Waste 0
Total 67	**Total 7**

This small number of contested applications for costs reflects the intended restriction in the regulations. A number of applications are determined within the appeal hearing itself with no need for a separate costs listing. This would usually arise when the adjudicator has determined that the party applying for costs has failed to meet the required threshold of the regulations, without considering it necessary to adjourn the hearing for representations on the application from the opposing party. Other applications are misconceived, seeking large sums in compensation rather than a return of costs that have actually been incurred in lodging the appeal. A further number are not pursued once full particulars and supporting evidence are requested by the adjudicator. The thrust of the regulations remains reflected in the number of awards made; in our jurisdiction, costs are not the norm.

3. LAW AND PROCEDURE UPDATE

(a) Panel Hearings

Adjudicators generally sit alone to determine appeals, each adjudicator being an individual officer holder appointed under the terms of the Traffic Management Act 2004. Adjudicators are not obliged to follow a decision of a fellow adjudicator, even if it arises further to an appeal regarding a contravention, location or circumstance that may, on the face of it, appear very similar. Such decisions are persuasive but not binding on the

determining adjudicator. Each case can only be decided on the evidence submitted by the parties, as assessed by the adjudicator, for that particular appeal.

To that end, panel hearings are arranged sparingly, but are convened when it is considered proportionate to do so, with a view to determining an issue that has caused a level of uncertainty to arise for the parties or has generated a large number of appeals.

A panel hearing allows the parties to the appeal to present more detailed expert submissions on a point of law and in turn provides the adjudicators with the opportunity of analysing appeal points in some depth, with a view to providing firm guidance on the correct approach and application of the pertinent law to the issue in question.

To date, the adjudicators have generated only five panel decisions, each summarised below, with full determinations available on our website at www.londontribunals.gov.uk under key cases.

It is envisaged that panel decisions assist in promoting certainty of outcome and provide a source of information and advice to prospective appellants and respondents alike, with a view to discouraging the pursuit of appeals or enforcement where there is no legal merit, thereby saving public money.

1. ***London Borough of Hammersmith and Fulham v Azadegan PATAS (2011)***

***2110041915 and London Borough of Haringey v Orphanides PATAS (2011) 2110032583*.** This decision considers the definition of a U-turn further to the issue of penalty charge notices for performing a prohibited turn in contravention of the no U-turn roundel.

2. ***Peter Burness v City of London PATAS (2011) 2110325661 Pool Motors v City of London PATAS (2011) 2110534297***. A decision analysing the requirements for the use of CCTV camera enforcement and approved devices.

3. ***Gillingham v London Borough of Newham PATAS (2013) 2130193949 Essoo v London Borough of Enfield PATAS (2013) 2130232767 Khan v Transport for London PATAS (2013) 2130261437***. This decision concerns the required elements of the box junction infringement contravention.

4. ***Miller and Others v Transport for London PATAS (2014) 214015350A.*** This case focuses on technical challenges to the validity of a penalty charge notice and to the statutory documentation that the enforcement authorities are required to serve, namely the Notice to Owner and the Notice of Rejection. It also references the issues that can arise when unqualified representatives, who, having no duty to their "client" or the tribunal, create additional public cost and delay to the work of the tribunal.

5. 2016 PANEL HEARING: ***Alan Bosworth and others v. The London Borough of Tower Hamlets ETA (2015).***

On 14 September 2015, a specially convened Panel of Adjudicators (Mr Edward Houghton and Mr Alastair McFarlane) heard seven appeals consolidated under the provisions of Paragraph 14 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 on the ground that common questions of law or fact arose in the appeals and that it was desirable for the issues to be determined together. None of the parties objected to the consolidation. The factual/legal connection between the cases was that all of them raised issues as to loading or unloading. The adjudicators considered that the consolidation of the appeals would provide an appropriate opportunity to revisit the law on this topic – the lead decision from this tribunal having been decided nearly 20 years ago in the case of Westminster ***City Council v. Jane Packer Flowers*** **PATAS (1997)**

The Approach of the Panel A large number of appeals that come before the Tribunal concern the issue of what constitutes the exemption of "loading and unloading" or "delivering or collecting" goods or what constitutes proper use of a loading bay. The standard form of exemption found in Traffic Management Orders is that:

"No person shall cause or permit any vehicle to wait during prescribed hours in a restricted street except…. For so long as may be necessary for delivering or collecting goods or loading or unloading the vehicle at premises adjacent to the street"

In the case of loading bays, Traffic Management Orders commonly provide that a vehicle may wait or be left in the bay for the purposes of loading or unloading goods. The Panel is satisfied that the term “loading” carries the

same meaning and the same principles apply for loading/unloading exemptions and for loading bays. The meaning and extent of the term loading/unloading was set out in Mr Houghton's decision in **Westminster City Council v. Jane Packer Flowers PATAS (1997)** where the extensive case law was considered. Although this decision is no more than the view of an individual adjudicator, it was arrived at following full legal argument from Counsel representing three parties, none of whom applied for review of the decision; and it has since been widely applied by adjudicators, Enforcement Authorities and Appellants.

Since the decision in ***Westminster City Council v. Jane Packer Flowers,*** many Councils and adjudicators have taken the view that any form of commercial or business context would remove the necessity to consider the bulk or weight of the items, no matter how small they might be. They have also taken the view that, unless goods have been pre-ordered, the process of going into a shop to make a purchase must be viewed as shopping rather than loading. Both these views require reconsideration in the light of the case of ***Marsh v Thompson [1985] QBD (Unreported).***

The Panel's Conclusion The Panel concluded that although much of the adjudicator's decision in **Westminster City Council v Jane Packer Flowers** remained good law, in the light of the authority of ***Marsh v Thompson***, some modification and elucidation of its conclusions was required. The Panel concluded that the key points to be drawn from the case law as explained in ***Marsh v Thompson*** were as follows:-

a. Loading and unloading primarily means loading or unloading something heavy or bulky i.e. a **"load"**.

b. The underlying principle when considering whether the exemption applies is whether it can fairly be said that what was taking place was the sort of activity the exemption was intended to cover. (***Sprake v Tester***)

c. Loading and unloading is essentially the movement of something heavy or bulky from premises to a vehicle and vice versa. The key test as to whether something is heavy or bulky enough to qualify, is whether the use of a vehicle was reasonably necessary for its transport. (***Richards v McKnight***)

d. It is not automatically the case that merely because items are being moved in a commercial context loading will be established, whether or not the goods are heavy or bulky (***Marsh v Thompson***).

e. However, in the case of couriers or professional deliverers of goods on a delivery round, this commercial context leads the Panel to conclude that this is certainly the sort of activity for which the exemption is designed - even if an individual item being delivered at any one point, is small and easily carried in the hand. In the Panel's judgment it would be wholly unrealistic to expect, for example, a DHL courier to ask himself every time he parked whether his next parcel was big enough to qualify; or to require the milkman to find a parking bay every time he stopped to deliver a bottle of milk. The exemption to waiting restrictions and the provision of loading bays are, in the Panel's view, designed exactly to allow the carrying on of essential commercial activity of this kind.

f. In the Panel's judgment different considerations may well apply to, for example, the greengrocer taking, say, a bag of lemons to his shop or the

estate agent dropping off keys or the solicitor collecting a light file from his offices. As a one-off delivery of a small item, such cases are likely to fail, despite the commercial context. The case of ***Kenny PATAS (2013) 2130636755,*** where a gas engineer collecting paperwork was not found to be loading, provides an example of Adjudicators applying this approach.

g. The process of shopping is not loading. Most supermarket shoppers undertaking their weekly shop have heavy and bulky items to carry from the shop - normally because a large number of individual small items are heavy in total. In our view, such a motorist would not be entitled to use a loading bay while the items were selected and then paid for. Were it otherwise yellow lines and loading bays would effectively be turned into shoppers' car parks - something which, in the Panel's judgement, was not what the bays and lines were intended for. However, once the goods have been selected and paid for, it would, in the panel's view, be within the purposes of the bay or the exemption for a vehicle to be brought round and parked whilst moving the purchased items into the vehicle.

h. Nonetheless, there may be circumstances, when the payment for a heavy and bulky item may be merely ancillary to the collection. For example, the motorist who has pre-selected a heavy chair and parked in a loading bay to collect it. The fact that he had not pre-paid for it would not, be fatal to a correct use of the loading bay. Each case must turn on its own merits and is a question of fact and degree for the individual Adjudicator. However it is the Panel's view that going round the shop and selecting items - even if they are heavy and bulky - cannot fall to be treated as loading.

Summary of the Panel's conclusions on the law

The Panel considered it might be helpful for both Councils and motorists to have a summary of the Panel's conclusions in the light of the entirety of the case law. It has to be borne in mind that it is impossible to define "loading" so precisely that it will cover every factual situation and that there will inevitably be marginal cases and grey areas. Subject to that, the principles to be applied are as follows:-

- Loading is all about the movement of loads i.e. heavy or bulky items from premises to vehicles, items which necessitate the use of a vehicle for their transport.
- The overarching question is whether the activity that was taking place can fairly be said to be one which the exemption was intended to cover.
- Motorists – whether acting in a commercial or private capacity - should ask themselves:
- whether the items can reasonably be transported by hand, as opposed to needing the vehicle to transport them. Slynn J gave the examples of the motorist collecting their shoes or a fountain pen just having been repaired as cases falling the wrong side of line. Lord Goddard CJ gave the examples of the piece or two of furniture inside the vehicle or half a dozen pictures to be reframed or even a heavy laundry basket as items that would be covered. The issue may be affected by the physical characteristics of the driver, such as age or disability.
- A commercial context may be relevant to deciding whether the activity falls within the exemption, especially in the case of couriers and other

professional deliverers. However, it is not the case that moving an item, no matter how small, is covered merely because it is in the course of trade or business. The smaller the item the more difficult it will be for the motorist to persuade the Council or an adjudicator that an exemption applies.

- Going round a shop or supermarket selecting goods is not “loading” but “shopping”, even if the items individually or cumulatively when purchased are heavy or bulky. Bringing a vehicle round to collect the items, once selected and paid for, would usually fall within the exemption.

- The one-off purchase of a large item may be covered even if payment is made for it before it is moved to the vehicle. The payment must be merely ancillary to the collection. If items have been pre-ordered, parking whist collecting them will normally be covered, even if payment is made, (provided they are sufficiently weighty or bulky to necessitate the use of a vehicle).
- The completion of necessary paperwork will normally be viewed as part and parcel of the loading process (even if it means a return to the premises once the goods are in the vehicle).
- Unexpected short delays in locating the goods will not normally remove the vehicle from the benefit of the exemption.
- If a vehicle is parked in the reasonable expectation that goods will be available to load, and it transpires that they are not, the benefit of the exemption will not be lost provided the driver then removes the vehicle promptly.

- Unloading includes taking the items to that part of the premises where they are required to go; however it would not normally include further unpacking or arrangement of the items
- Councils should not automatically assume that because no sign of loading was seen during a five minute or other observation period, loading cannot have been taking place. However, the longer the time during which no items enter or leave the vehicle the greater the evidential burden on the motorist to provide an explanation and demonstrate that something amounting to loading was in progress out of sight.

(b) Waste

The tribunal is charged with determining a variety of civil penalty appeals in a just and cost efficient manner. Waste and litter appeals are a new and developing area of our jurisdiction. This appeal sets out the law and regulations regarding a waste appeal, detailing the relevant regulations and demonstrating the adjudicators' approach in the application of the regulations.

REPORT by Adjudicator Michael Greenslade

Photo Asmara Ltd – T/A Snappy Snaps Tooting v London Borough of Wandsworth (ETA) 2015 2150349814)

The Penalty Charge Notice, dated 24 August 2015, states that the Enforcement Authority believe a penalty charge is payable by the Appellant company on the sole ground that, on 20 August 2015 at 10:11, waste on the public footway was not adjacent to the premises' street entrance. The

Enforcement Authority have produced a witness statement from an enforcement officer who states that, at the above date and time, he was on duty in Tooting High Street, London SW17, when he observed two large grey sacks with 'Biffa' written on them. He states that the sacks were propped up against the railings opposite Snappy Snaps at 54 Tooting High Street. The officer continues that he checked the sacks and found them to be from Snappy Snaps. The officer took photographs/digital images which are produced. The officer confirms that the sacks were there within the permitted times but were not placed adjacent to the premises.

None of this appears to be in dispute.

In their Notice of Rejection to the Appellant Company, the Enforcement Authority state that 'a review of the evidence shows that you breached the time band regulations.' This is clearly not correct. However, it continues 'Leaving your waste in the street and away from your own properly (not against the building line near your entrance) is not acceptable.'

The Enforcement Authority's case is that there was a failure to comply with the *London Borough of Wandsworth Waste Receptacle Regulations 2009* (as amended).

Regulation 27 is one of several that deals with the placing of receptacles for trade waste for the purpose of facilitating the emptying of them and provides:

"The collection point for general refuse or recycling from premises producing trade waste which is stored in dustbins or wheelie bins or waste sacks may be on the street immediately adjacent to a street entrance to the originating

premises."

Regulation 56 provides:

"Where a sign specifying periods during which receptacles should be placed on the highway is displayed on the same side of a public highway as any premise producing trade waste then the occupier of that premise shall only place receptacles on the public highway during the periods prescribed by the sign."

Clearly the times shown must be complied with. However, as to where exactly the sacks are placed on the street, Regulation 27 does not say 'shall' but rather 'may'.

In any event, the 2009 Regulations were made under the *London Local Authorities Act 2007*. It is a fundamental principle of delegated legislation that it is clear, intra vires and communicated. For example, the sign in the street states 'Trade waste may only be left on the Highway for collection between: 10.00 am to Noon. 10.00 pm to Midnight daily'. This may be taken to have been communicated. However, there is no reference as to where trade waste may be left. The sign states nothing on the matter.

In his witness statement the officer says "I had previously explained to the staff that they had to present their waste for collection adjacent to their entrance, next to their door." However, in the original representations to the Enforcement Authority, the Appellant company state 'we left our rubbish within the allocated time'. Mr Berake, on behalf of the Appellant company, states in the Notice of Appeal that "I was told by the council enforcement

officer to leave my rubbish out between 10 am -12 am..." Mr Berake then goes on to explain that it was left at 10:11 am and therefore within the permitted hours.

It is by no means clear that the Appellant company was aware of exactly where it was required to leave the refuse sacks on the highway, or even whether the company accept that the location requirement was communicated to them.

Considering all the evidence before me carefully, on a balance of probabilities I cannot find that any requirement to leave the sacks adjacent to the premises was communicated to the Appellant company.

Accordingly I cannot find as a fact that, on this particular occasion, a contravention did occur and this appeal must therefore be allowed.

(c) Statutory Declaration and Witness Statement referrals

The inception of decriminalised parking enforcement over two decades ago started with the *Road Traffic Act 1991*. Under the Act, Paragraph 8 of Schedule 6 made provisions relating to 'Invalid notices'. The provisions provide for circumstances when an order for recovery has been made by the County Court in favour of the enforcement authority and the person against whom it has been made (the respondent to the claim) files a statutory declaration on one of three grounds, namely that he (a) did not receive the notice to owner; (b) made representations to the authority but did not receive a rejection notice from that authority; or (c) has appealed to a parking adjudicator against the rejection by that authority but has

received no response to the appeal. When a statutory declaration is made in response to a Recovery Order, an order granted by the Traffic Enforcement Centre at the Northampton County Court revokes the recovery order previously granted and cancels the charge certificate issued. However, the further Order does not cancel the original penalty charge notice. Following service of the order made at the Traffic Enforcement Centre, the authority must refer the case to the parking adjudicator 'who may give such direction as he considers appropriate'.

As the scope and type of penalty charge notices increased, new provisions were added. Penalty charge notices issued under the Civil *Enforcement of Parking Contraventions (England) General Regulations 2007* ('the General Regulations') have a procedure for the filing of a witness statement. A new declaration ground, that the charge in question has already been paid, was also added. More recent types of penalty charge notice, such as those for moving traffic contraventions, are still governed by the 1993 Regulations, using the original statutory declaration procedures.

The introduction of one procedure and then another, although similar, meant that the tribunal's system for considering witness statements and statutory declaration referrals developed piecemeal. It also became clear that in a small, yet time consuming minority of cases, parties were filing repeated witness statements and statutory declarations regarding the same matter. For the more efficient dispatch of tribunal business a unified procedure has now been adopted.

The current position is that Paragraph 20(1)(a) of the Schedule to the *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007*, (for witness statements referred under the General Regulations), and Regulation 19(1)(b) of the *Road Traffic (Parking Adjudicators) (London) Regulations 1993*, (for statutory declaration referrals made under all the other statutory provisions), provide that in respect of cases referred to the adjudicator, without prejudice to other powers in this regard, the adjudicator may give directions as to the conduct of proceedings.

Where the witness statement or statutory declaration has been made on ground 2 (did not receive notice of rejection) or 3 (did not receive the appeal decision), or the witness statement on ground 4 (penalty charge has already been paid), the relevant provision provides that the enforcement authority must refer the case to the adjudicator who may give such directions as he considers appropriate. The parties are required to comply with those directions. The obligation on the enforcement authority under the relevant Regulations is to refer the witness statement or statutory declaration to the adjudicator. It is a matter for the enforcement authority as to what action, if any, it wishes to take in any particular case. However, none of the Regulations prescribe when referral should happen or prevent any resolution between the parties prior to referral. Accordingly, the first limb of the new procedure is that the enforcement authority is encouraged to give consideration of cases before the adjudicator has to make any

substantive finding. This has advantages for both parties, not least in possible cost savings. Whatever stage the matter may previously have reached, if either party, on considering the evidence decides that they do not wish to proceed further (for example, an appellant decides to pay the penalty charge or an enforcement authority accepts the evidence now submitted by an appellant) there is nothing to be gained by the matter then being considered by an adjudicator. Accordingly, if the matter is resolved between the parties, the case is simply referred to the adjudicator with no further action required, with a consequent saving of public funds.

Where the matter is referred to the adjudicator for a Direction, the next stage of the new procedure is the 'for mention' hearing. A 'for mention' hearing is a listing procedure used in courts and tribunals to address preliminary issues with a view to resolving matters, thereby avoiding unnecessary/ lengthier hearings.

Parties are informed that the referred matter is to be listed for mention on a specified date and time at the Environment and Traffic Adjudicators' main hearing centre at Chancery Exchange. The appellant will be advised that they should attend before the adjudicator and bring copies of their original representations or appeal, as the case may be, and all documents relevant to this issue. Alternatively, they can make written submissions enclosing copies of the documentary evidence that substantiates the declaration or statement put before the Traffic Enforcement Centre. This listing allows the adjudicator to explain the procedure, in particular that

the penalty charge notice has not been cancelled by the Traffic Enforcement Centre Order and to consider any documents produced to substantiate the claims set out in the witness statement or statutory declaration. The adjudicator will determine if the claim is made out on the evidence, so that the matter may be listed as an appeal for all parties to put their case fully, or whether an immediate Payment Direction should be made. Once this first issue has been determined, both parties will receive the adjudicator's direction in writing. If the appellant does not attend or does not make written submissions in time, the adjudicator may proceed to make an immediate Payment Direction.

Of the witness statements and statutory declarations referred to the adjudicator for action, the majority are made under ground 2, which is that representations were made to the Enforcement Authority but no response was received. Referrals made regarding an appeal having been made but no response received are addressed, if an appeal has indeed been registered, by serving a copy of the statutory register with a certified copy of the relevant appeal decision. No further right of appeal arises. Where a previous appeal in that same case has been rejected out of time, the appellant will be advised accordingly.

If the directions adjudicator decides that the matter should be listed for hearing, the process is explained fully to the appellant and, when they receive notification in writing, they will have a further 14 days to submit

their perfected appeal. The Enforcement Authority then have the usual 28 days to submit evidence before the matter is heard in the usual way.

This new procedure removes the need for repeated and costly attempts to correspond or communicate with the declarant, allowing for a swifter outcome that is proving to be just, proportionate, efficient and cost efficient.

4. JUDICIAL REVIEW

This year the 35,000 plus decisions generated by adjudicators resulted in a very small number of applications to the High Court seeking permission to make an application for a judicial review. The adjudicator, whilst necessarily a named party to the application will, in the majority of cases remain impartial and neutral, leaving the original parties to the appeal to make submissions to the Court.

(a) Update from 2014-2015

1. ***The Queen on the Application of Robert Gordon Humphreys -v- The Parking Adjudicator [CO/1069/2014] (Robert Gordon Humphreys -v- London Borough of Camden PATAS 2130558549 (2013)).*** This matter is currently listed as a floating case before the Court of Appeal on 13 and 14 December 2016.

2. ***The Queen on the Application of Eventech Limited –v- The Parking Adjudicator [CO/10424/2011] (Eventech Limited –v- London Borough of Camden PATAS 2110086039 and 211008604A (2011)***): This case remains at the Court of Appeal (Civil Division) currently stood out pending alternative dispute resolution.

(b) Decisions 2015-2016

1. ***The Queen on the Application of Brian Johnson-v- The Parking Adjudicator [CO/2018/2015] (Brian Johnson -v- London Borough of Enfield PATAS 2140389346 (2015)).***

The adjudicator had found as follows: "The Appellant attended a personal hearing today. He had appealed on the ground that the contravention did not occur. It is claimed that the Appellant had stopped in a restricted area outside a school, a hospital, or a fire, police or ambulance station when prohibited. The alleged contravention occurred at 08:26 on Friday 13 June 2014 at Eastfield road, and a Penalty Charge Notice was issued by post after camera observation for some three minutes. I viewed the camera footage with the Appellant. It was clear that the Appellant's car had been parked on a yellow zig-zag outside a school. This is not in dispute, and the Appellant explained to me that the location was close to his home and that he had unintentionally overslept, having parked the night before when there were no other spaces available, and at a time when controls did not apply. However, when he returned to his car, a Penalty Charge Notice had been issued. The Appellant did not therefore seek to dispute the alleged contravention as such, but has raised a number of issues in his evidence

and at the hearing today which he believes should invalidate the Penalty Charge Notice. These may be conveniently summarised as (i) the absence of a signature on the Penalty Charge Notice and of photographs with it rendered it invalid; (ii) the Enforcement Authority's camera car was parked otherwise than on the carriageway thus invalidating enforcement and (iii) the issue of two Charge Certificates on 28 August 2014 was premature in view of the submission of the appeal and also invalidated enforcement. I do not find any merit in any of the arguments raised by the Appellant for the reasons that (i) I am satisfied that the Penalty Charge Notice is substantially compliant with the requirements of the *Civil Enforcement of Parking Contraventions (England) General Regulations 2007* and the *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007*; (ii) the location of the Enforcement Authority's camera vehicle is not relevant to enforceability of a Penalty Charge Notice and (iii) the Charge Certificate was cancelled on 1 September 2014 shortly after the Enforcement Authority had received notification from PATAS of the registration of the appeal. I find that the Appellant's vehicle had been stopped on the restricted area in breach of the controls in force and that no exemption applied. An Adjudicator is only able to decide an appeal by making findings of fact on the basis of the evidence produced by the parties and applying the relevant law, and has no power to consider mitigating circumstances of any description. Considering carefully all the evidence before me, I must find as a fact that, on this particular occasion, a contravention did occur and thus the Penalty Charge Notice was properly issued. The appeal is refused."

The application for judicial review was refused on the papers. An oral renewal of the application was refused by the learned judge on 15 October 2015.

2. ***The Queen on the Application of Paul Mulvey v Hammersmith and Fulham Council [CO/2014/2015] (Jane Mulvey -v- London Borough of Hammersmith and Fulham PATAS 2140516567 (2015))***

The adjudicator found as follows: "The Appellant was visiting her brother in law. She usually parks her vehicle in an enclosed drive off Felgate Mews. On the day in question, the drive was inaccessible because of building work in Felgate Mews. While the Authority does not challenge the Appellant's account that the building work had taken up more place than allowed, it is not a legitimate reason to park the Appellant's vehicle in a shared use bay on Felgate Mews. I would observe that the PCN could have been avoided by paying for the parking. The contravention has occurred. I am refusing the appeal."

The Court found that the council's decision to pursue the penalty charge notice could not be impugned in light of the decision of the parking adjudicator and the application for permission to judicially review the defendant was found to be without merit.

3. ***The Queen on the Application of Bahruz Aliyev -v- The Traffic Adjudicator [CO/1509/2016] (Bahruz Aliyev -v- London Borough of Richmond ETA 2160004998 (2016))***

The adjudicator had found as follows: "A contravention can occur if a vehicle is parked in an off-street pay and display car park, after the expiry of time paid for. There appears to be no dispute that at 16:27 on 2 November 2015 a vehicle with the registration mark KY11 PZS was parked in York House car park, Twickenham, or that the Penalty Charge Notice was issued to it, as shown in the photographs/digital images produced by the Enforcement Authority. The Appellant's case is that he was attending a meeting at the council offices which took longer than expected as they had to find an empty room. I accept this evidence but it does not amount to a valid ground of appeal. It does remain the responsibility of the motorist to check carefully on each occasion before leaving their vehicle, so as to ensure that they park only as permitted and that this will remain the position for as long as the vehicle will be there. This includes making sure that any payment made covers the whole of the parking time required. When attending appointments, whether medical, legal or any other, it must be accepted that these can easily overrun and thus payment to cover beyond the expected finishing time can be made to avoid parking beyond time paid for. The adjudicator is only able decide an appeal by making findings of fact and applying the law as it now stands. The Court of Appeal has affirmed that the adjudicator has no power to consider mitigating circumstances of any description and there are no compelling reasons for making a recommendation to the Enforcement Authority. Whether or not

the Enforcement Authority have, in their discretion, cancelled a previous Penalty Charge Notice is a matter for them, the adjudicator has no such power. Considering all the evidence before me carefully I must find as a fact that, on this particular occasion, a contravention did occur and thus the Penalty Charge Notice was properly issued. Accordingly this appeal must be refused."

The Court refused permission for judicial review on the papers. The application was renewed by Mr Aliyev and the learned judge found that there were no arguable errors of public law in the decision under challenge as there was evidence that the claimant's car was parked in an off street pay and display car park after the period for which payment was required had elapsed. The penalty charge was validly issued and the mitigating factors were not relevant.

4. ***The Queen on the Application of Tiamiyu Bello -v- The Parking Adjudicator [CO/3541/2015] (Tiamiyu Bello -v- London Borough of Merton ETA 2140395677(2015) and 213060026A (2014)***

Mr Bello sought permission to apply for the judicial review of three further penalty charge notices issued to his vehicle further to the decision of the Court under case number CO/854/2014. On this occasion the learned judge refused the application finding it to be without merit and refusing to allow the permission application to be renewed at an oral hearing.

5. TRAINING AND APPRAISAL

TRAINING

The adjudicators are all part-time individual office holders and do not all sit at the same time or frequency. The training sessions give the adjudicators the opportunity to meet and share experiences, review trends and consider best practices. This year adjudicators held one training meeting in the Chancery Exchange meeting room on 16 March 2016. The following items were considered:

1. Section 23 of the London Local Authorities Act 2007

   Failure to comply with regulations relating to receptacles for waste ***Photo Asmara Ltd – T/A Snappy Snaps Tooting v London Borough of Wandsworth (ETA 2150349814 (2015))***. Currently PCNs are being issued by Wandsworth, with Hackney and Redbridge due to start enforcement. Littering appeals remain limited with none currently scheduled according to the case management system search carried out in March 2016. (See report at page 19).

2. ***Alan Bosworth and others v London Borough of Tower Hamlets and others ETA (2016)*** Loading/unloading panel decision. In this panel decision, adjudicators Mr Houghton and Mr McFarlane revisited Jane Packer and others, in order to review adjudicators' approach to the loading/unloading exemption. (See panel decision report at page 13).

3. ***Dawson v London Borough of Lambeth ETA 2150367452 (2015)*** Clapham Park Road bus lane – Alastair McFarlane

   Photographs were presented that showed the initial tapering and road markings as motorists approached the bus lane, giving a fuller picture of the markings and signs in place. Adjudicator Mr McFarlane explained that since the date of his decision the white arrowed marking on the road surface had been re-painted and that whilst signage could be improved it was not currently thought to be ambiguous.

4. Witness statement / statutory declaration referral procedures

   New guidelines have been issued to Enforcement Authorities to promote a more efficient and just referral procedure. (See witness statement report at page 21).

5. Review applications

   The Enforcement Authority applications are currently relating mainly to administrative errors arising due to the new case management system – ie appeals being allowed for no evidence when the evidence had in fact been submitted.

(a)APPRAISAL

All Adjudicators are required to participate in the tribunal's Appraisal Scheme which is based on the scheme developed for tribunal judiciary by the Judicial Studies Board (now Judicial College). The objectives for the appraisal scheme are to:

- ensure the maintenance of the tribunal's standards and consistency of practices,
- ensure that the tribunal's training programme is informed by the identification of particular needs,
- maintain public confidence in judicial performance as a result of regular monitoring,
- ensure that all adjudicators demonstrate the competences necessary for their role,
- measure individual performances against the tribunal's standards,
- identify individual and general training and development needs,
- use the collected experience of adjudicators to identify ways of improving the service that the tribunal provides to appellants and the overall efficiency of the tribunal, and
- provide an opportunity for adjudicators to raise issues relating to their experience in sitting, training and tribunal procedures.

The next tranche of appraisals is due to commence in the first quarter of 2018.

6. THE ADJUDICATORS

The Environment and Traffic Adjudicators

Jane Anderson
Michel Aslangul
Angela Black
Teresa Brennan
Michael Burke
Anthony Chan
Hugh Cooper
Anthony Edie
Mark Eldridge
Henry Michael Greenslade
Caroline Hamilton
John Hamilton
Andrew Harman
Neeti Haria
Monica Hillen
Edward Houghton
Anju Kaler
John Lane
Michael Lawrence
Francis Lloyd
Alastair McFarlane
Kevin Moore
Michael Nathan
Joanne Oxlade
Mamta Parekh
Belinda Pearce
Neena Rach
Christopher Rayner
Jennifer Shepherd
Caroline Sheppard
Sean Stanton-Dunne
Gerald Styles
Carl Teper
Timothy Thorne
Austin Wilkinson
Paul Wright

This reporting year saw the retirement of adjudicators Austin Wilkinson and Michael Nathan both of whom have been valuable and highly regarded members of the adjudication team. Adjudicators joined together in November 2015 to wish them well in their future pursuits. Our adjudicator recruitment exercise is scheduled to take place in late 2016 to early 2017.

7. APPENDIX

APPEAL THEMES

Our websites, key cases and panel decisions serve to promote clarity, so that parties to an appeal have an understanding of the law prior to completing an appeal form and an awareness of the evidence that they will need to submit to support their case. It remains clear from our statutory register however that a large number of appeals are made on similar grounds with regular themes arising demonstrating that some aspects of enforcement remain unclear to motorists. The details provided below clarify circumstances that regularly give rise to an appeal. Whilst the adjudicators are not charged with providing legal advice, our aim is to ensure that parties are equipped with clear guidance and information on the procedures, regulations and legal requirements, before decisions are made to progress cases to appeal.

Most appeal decisions can be viewed on our statutory register at www.londontribunals.gov.uk and all can be viewed by visiting our hearing centre at Chancery Exchange 10 Furnival Street, London EC4A 1AB, a very short walk from Chancery Lane underground station.

1. Definition of a goods vehicle

Sovereign Recovery UK Ltd v Sovereign Recovery UK Ltd ***LT ETA (2016) 2160109985 2160109216*** The adjudicator's decision was given in these

terms: “The Authority alleges that the Appellant company's driver failed to comply with a prohibition on goods vehicle exceeding 7.5 tonnes (maximum gross weight).

The Appellant submits that the vehicle is not a goods vehicle because it is a recovery vehicle. No issue is taken on the maximum gross weight. The Authority's response is that it matters not whether it is a goods vehicle because the Traffic Management Order restricts all vehicles over 7.5 tonnes. The Appellant points out that while this may be the case, the restriction sign only refers to goods vehicles. The Authority has not addressed this point. I should say that there is a further point, in that the PCN alleges that the contravention refers to a goods vehicle and it can be argued that the contravention as alleged did not occur.

I think that both parties have missed a fundamental point. The Appellant's submissions that a recovery vehicle is not a goods vehicle is seemingly based on a reference to the Goods Vehicles (Licensing of Operators) Regulations 1995 and the Vehicle and Excise and Registration Act 1994. The former exempts recovery vehicles from the requirement for an operator's licence. The 1974 Act deals with taxation classes. Neither affects the status as to whether the vehicle is a goods vehicle.

“Goods vehicle” is defined by the Traffic Signs Regulations and General Directions 2002 as a motor vehicle or trailer constructed or adapted for use for the carriage or haulage of goods or burden of any description.

Furthermore, in ***DPP v Holtham [1991] RTR 5***, the High Court held that a broken down vehicle towed by the arm of a recovery vehicle was a trailer to the recovery vehicle because a substantial part of its weight was taken by the recovery vehicle. The recovery vehicle was therefore deemed to be a vehicle constructed to carry a load. It seems quite clear to me therefore that a recovery vehicle which can carry a broken down vehicle on board and a recovery vehicle which has a boom to assist in the lifting and moving of vehicles (as in the present case) are both vehicles within the definition of a goods vehicle.

The situation is therefore this. The TMO places a weight restriction on the road and the restrictions applies to all vehicles. The Authority may have inadvertently limited the restriction to goods vehicles by the use of a sign which refers to goods vehicles only. It may also have limited enforcement to goods vehicle because of the wording of the PCN. However, the vehicle is in fact a goods vehicle so there should be no doubt in the driver's mind, when he sees the sign, that he should not go down Watson's Road. Equally, the Appellant company can have no complaint about the wording of the PCN.

Even if I limit the effect of the TMO to goods vehicles only and I do so in this case, I am satisfied that the contravention occurred because I am satisfied that the Appellant's vehicle is a goods vehicle. I refuse the appeal."

2. I was entitled to park for 20 minutes to unload.

   The exemption can only apply when the motorist is engaged in a continuous loading or unloading activity. The motorist has up to 20 minutes to unload not 20 minutes to park having unloaded. (See key case ***Alan Bosworth and others v The London Borough of Tower Hamlets and others ETA (2015)***).

3. Parking restrictions in London do not apply after 1pm on Saturday or on Sundays. The motorist must not assume the extent of parking restrictions and is expected to read the times displayed on the controlled parking zone entry sign or attached to the stretch of road marking in order to ascertain the periods of control at the time of parking. It is not uncommon for restrictions to be in force 7 days a week and beyond 6.30pm.

4. Other vehicles were parked and I was told by a local that parking was permitted. Motorists should always check signs and road markings for themselves. That other vehicles appear to be parked at a location is not a reason for following suit – those motorists may have permits, or may be engaged in activities that cause an exemption to the parking restrictions to arise.

5. There was no T-bar on the yellow line, the bay markings were faded, the sign was bent. Lines and signs serve to advise the motorist

of a restriction and must not mislead. Trifling omissions however do not render a sign or line unenforceable. So long as the sign or marking does not mislead and remains substantially compliant with the requirements of the regulations the restriction is enforceable. See key case ***R (on the application of Herron and Parking Appeals Limited) v The Parking Adjudicator and others (2010)*** and ***Letts v London Borough of Lambeth PATAS 1980151656 (1980).***

6. Traffic was moving when I drove into the junction. I only became trapped in the yellow box junction because lights ahead of me changed to red and the traffic came to a halt. Motorists should not enter the marked junction until there is a space available for the vehicle to leave the junction. Motorists following a flow of traffic crossing a junction that comes to a halt before the driver is able to leave the marked area are in contravention. See key case ***Des Banks v London Borough of Hammersmith and Fulham PATAS 2130483643 (2013).***

7. I was not driving at the time. The owner of the vehicle is responsible for the penalty issued even when the owner was not the motorist at the time of the contravention. This applies to parking and moving traffic contraventions. See key case ***Francis v Wandsworth, R v The Parking Adjudicator ex parte the Mayor and the Burgesses of the London Borough of Wandsworth (1996).***

8. I sold the vehicle before the ticket was issued. Whilst this is a valid ground of appeal it must be remembered that the burden of proof rests with the appellant (who has been identified by the DVLA as the registered keeper at the date of contravention and therefore presumed owner of the vehicle) to demonstrate that a sale has taken place. A bare assertion will rarely be sufficient evidence to transfer liability.

9. The vehicle had broken down. This can be a valid ground of appeal but full details of the circumstances of the breakdown should be provided as well as evidence of the recovery and/or repair of the vehicle. It is for the appellant to prove that the vehicle could not be moved due to a mechanical failure. Again a bare assertion is unlikely to be sufficient.

10. I/ my passenger felt unwell and I pulled over to get some air, to use a lavatory, to buy some water. Restrictions are not lifted in such circumstances, motorists are expected to find an appropriate parking space. A medical emergency is however a separate issue that, with supporting evidence could amount to a valid ground of appeal.

11. I had not parked, I remained in the vehicle with the engine running. The review decision of ***Schwarz v Camden (2001) PATAS 2110000692*** considers the definition of 'parking' with reference to the Road Traffic Regulations Act 1984 and ***Strong v Dawtry (1961)1 WLR 841*** confirming that as a matter of law waiting in the vehicle and parking are synonymous.

12. The penalty amount should only be £65 as I wrote to the council promptly. The enforcement authority is only obliged to accept a reduced penalty amount when the payment is received by the authority within the discount period, as stated on the face of the penalty charge notice. Writing to the enforcement authority does not automatically cause an extension to the discount period to arise. The adjudicator has no power to direct an enforcement authority to accept a discounted penalty amount out of time.