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ANNUAL REPORT 2004-2005  
ROAD USER CHARGING ADJUDICATORS







## PROCEDURAL ISSUES

### Review of Adjudicator's Decision

Paragraph 12 of the Schedule to the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 provides a right for either party to the appeal to seek to apply to the Adjudicator to review and revoke or vary any decision to dismiss or allow an appeal or decision as to costs.

A party to an appeal may not be granted a review of the Adjudicator's decision simply because the party does not agree with the decision. There are limited grounds for a party to seek a Review of an Adjudicator's decision, namely that:

1. The decision was wrongly made because of an error on the part of the Tribunal's administrative staff;
2. A party failed to appear or be represented at a hearing for some good reason;
3. There is new evidence which has become available since the conclusion of the hearing, the existence of which could not have been reasonably known or foreseen; or
4. The interests of justice require a review.

Hundreds of applications for review are received monthly. The very large majority of applications for review are refused as no grounds for review have been established. On average over the 12-month period from April 2004 to April 2005, 29 review applications per month have resulted in a hearing before an Adjudicator (349 in total for the year).

The Regulation applies equally to Appellants and Transport for London. In the year 2004 to 2005, there has been a significant increase in the number of review applications received from Transport for London.

There has been a conscious effort by the Adjudicators to give fuller and more detailed reasons for allowing or refusing an appeal and to focus on improving judicial decision writing so that the parties to the appeal may better understand why the appeal was won or lost.

### Statutory Declarations

Following the service by Transport for London of a Penalty Charge Notice for an alleged contravention of the Congestion Charge Scheme, the recipient has a right to make representations contesting liability. If those representations are rejected by Transport for London, a right of appeal exists to the independent Adjudicator. This in its simplest form is the appeals process. Time limits apply to each step in the process and inevitably there is the potential for things to go wrong.

The Penalty Charge Notice may not be received by the recipient. The recipient's representations may not be received by Transport for London. Transport for London's Notice of Rejection may not be received by the recipient and the Notice of Appeal may not be received by the Tribunal. The system relies heavily on the postal service and the appeals process may be derailed by any of these events with the consequence of the amount of the penalty increasing and with Transport for London taking enforcement action by issuing a Charge Certificate, obtaining an Order for Recovery from the County Court and ultimately enforcing the Order for Recovery by instructing Bailiffs.

Where a Charge Certificate has been issued and a County Court has ordered enforcement proceedings, the recipient may swear a Statutory Declaration, a formal statement made before a person who has authority to administer it, such as a solicitor. The Declaration is then filed with the County Court Traffic Enforcement Centre. The County Court invariably makes an Order cancelling the Charge Certificate and Order for recovery, but not the original Penalty Charge Notice, which will remain outstanding. Regulation 19 of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 sets out the provisions relating to Statutory Declarations so far as they relate to the Congestion Charge Scheme.

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# AIMS AND OBJECTIVES OF THE ROAD USER CHARGING ADJUDICATORS



- 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 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.



## CHIEF ADJUDICATOR'S FOREWORD

I am pleased to present to the Secretary of State this Joint Report of the Road User (Congestion) Charging Adjudicators for the year 2004-2005.

17th February 2005 marked the second anniversary of the introduction of the Congestion Charge to Central London and while the numbers of appeals have dropped gradually, life for the Road User Charging Appeals Adjudicators continues at a brisk pace. Between March 2003 and March 2004 we received 42,339 appeals. Between April 2004 and March 2005 this figure was down to 34,065 appeals. There was also a considerable decrease in the number of appellants opting for a personal appeal.

To hear the unprecedented numbers of appeals we continue to receive, a further 21 Adjudicators were appointed and as a result of their input the backlog of postal appeals is now down to 6,000. They have also adjudicated on 5,000 statutory declarations. However the length of time it is taking to hear an appeal remains at an unacceptable level.

The original target was that an appeal should be heard within 56 days of receipt of the notice of appeal. This target is unfortunately only being achieved in 13.23% of cases. It is hoped that with the decrease in the backlog, particularly of the statutory declarations, this target will have been achieved by the next annual report. While this delay is unacceptable, as it is accepted that justice delayed is justice denied, regard must be had to the actual numbers of appeals closed.

At the end of March 2004 there were 9,383 postal cases ready for hearing. Between April 2004 and March 2005 we received 34,065 appeals. By the end of March 2005 40,448 cases had been closed of which 13,160 were not contested by Transport for London. The Tribunal has in effect heard 27,288 appeals. The unprecedented number of appeals received in 2003-2004 resulted in the Tribunal concentrating on hearing appeals.

In 2004-2005 time was found to develop the structure and procedures of the appeal process. To ensure Adjudicators were kept informed of developments a bi-monthly newsletter from the Chief Adjudicator was set up. Adjudicators also contribute to a monthly case bulletin where details of interesting cases are shared. A special workshop was held to look at decision writing. Not only were Adjudicators provided with a structure, but helpful precedents were recommended. This workshop was extremely useful as we were able to bring to it the experience we had gained from that first intense year. It also provided us with an opportunity to look back and see where improvements could be made with the current procedures. We also discussed the trends in appeals so where originally the majority of appeals related to the grounds that the charge had been paid or the contravention did not occur we are now seeing an increase under the grounds no charge is payable under the Scheme or in relation to vehicle hire firms.

As part of the development of the Tribunal and to ensure that Adjudicators maintain the necessary key skills an appraisal Scheme has been formulated and all Adjudicators will be appraised during this current year.

There has also been established a rota of duty Adjudicators who not only deputise in my absence but also act as mentors to the other Adjudicators. This ensures that there is continuing monitoring of the adjudication process and problems can be addressed quickly.

I made a number of recommendations in the Annual Report for 2003/2004. Transport for London accepted these recommendations and responded positively to them. Hardly have we had time to bed down this new Tribunal than we have to prepare for enormous changes.

On 4 July 2005 the charge was increased from £5 to £8. What effect this will have on appeal numbers remains to be seen.

The next very significant change could be the expansion of the charging Zone which is predicted for 2007. Should this expansion occur I believe the lessons we have learned and the procedures we have established will prepare us for any dramatic increase in numbers.

Finally I would like to thank all the Adjudicators, administrative staff and support staff for their continuing dedication to the Tribunal.

As the regulations require each Adjudicator to make an annual report to the Secretary of State for Transport on the discharge of his functions the next section of this report is allocated to contributions by various Adjudicators.



## JUDICIAL REVIEW

### **Regina (on the application of Joan Margaret Walmsley) –v- PATAS**

On 14 April 2005 Mr Justice Burnton sitting at the Royal Courts of Justice heard the first ever application for Judicial Review relating to a Congestion Charge appeal.

Baroness Walmsley, Liberal Democrat Education Spokesperson in the House of Lords, brought the proceedings following the refusal by an Adjudicator of her appeal against two Penalty Charge Notices.

The Baroness was the registered keeper of a Ford Puma bearing the vehicle registration mark W616 OJC. On 29 and 30 October 2003 she drove her vehicle within the Congestion Charge Zone. She paid a £5.00 Congestion Charge on both days via the internet, but mistakenly keyed in the first four digits of the registration number of the vehicle (W616) and the last three digits of the registration number of her previous vehicle (JBF) rather than the correct registration mark of the vehicle she was driving.

Transport for London served two £80 Penalty Charge Notices and in response, the Baroness submitted a Notice of Appeal, producing copies of receipts showing that she had paid the Congestion Charge on each of the days in question for an incorrect vehicle registration mark. The appeal was refused, the Adjudicator determining that liability was strict and that the Congestion Charge Regulations afforded no discretion in this type of situation.

Upon delivering judgment on 18 May 2005, Mr Justice Burnton held that the Baroness had not established a ground of appeal and had not paid for the correct vehicle registration mark. The Judge held that:

*"Sensibly construed, the Scheme requires that when purchasing a licence, the purchaser must specify the registration mark of the vehicle to which it relates...it seems to me that any other interpretation of....the Scheme is liable to render the Scheme unworkable."*

Mr Justice Burnton went on to hold that the Regulations were confusing, that the purpose of the Scheme was that:

*"Charges are paid for cars that enter the Zone and that those who fail to pay are penalised."*

The Judge held that to reconcile the provisions of the Scheme as a whole with its purpose, the Adjudicator had the power to:

*"Give the charging authority such directions as he considers appropriate" and that the Adjudicator "might reasonably consider it appropriate to direct that the penalty charge notice be cancelled, even though the ground of appeal had not formally been established."*

The Judge held that it did not follow that it would be appropriate to cancel the penalty imposed on someone who repeatedly made an error as to the registration number of his or her vehicle, nor did it follow that someone who had more than one vehicle and entered the registration number of one and then used another within the Congestion Charge Zone should be relieved from the normal penalty.

The Adjudicator's decision was quashed and the appeal was remitted back to the Adjudicator for further consideration.

**Regina (Ex parte, Graham) –v- PATAS**

In a second Judicial Review application, Miss Graham sought permission from the High Court to judicially review a decision by an Adjudicator to refuse her Congestion Charge appeal.

Miss Graham had informed the Adjudicator that she was dyslexic and that her dyslexia affected her understanding. She claimed that she had lived in the Congestion Charge Zone for many years and did not understand the Scheme or even know about it. She claimed that she only found out about the Scheme when she received the Penalty Charge Notices.

The Adjudicator adjourned the appeal and directed Transport for London to reconsider its power to apply its discretion to the circumstances of the case. Transport for London maintained its decision to contest the appeal and the appeal was refused.

Mr Justice Davis sitting in the High Court refused Miss Graham permission to apply for Judicial Review, commenting:

*"The Adjudicator was justified in finding that none of the statutory exemptions was made out and accordingly was justified in dismissing the appeal...the claim for judicial review only seeks to challenge that decision of the Adjudicator and therefore cannot succeed. I note that the Adjudicator invited Transport for London to consider exercising its discretion...Transport for London took a strict view on that; but it cannot be said that it was not entitled to exercise its discretion as it did...although it is possible to have some sympathy for the Claimant, permission must be refused."*



## ISSUES COMING FROM APPEALS

### **The Charge has already been paid**

The Appellant appealed on the ground that the Congestion Charge had already been paid. She said that she had telephoned Transport for London's Call Centre and paid the charge by debit card. She had been given a receipt number but had not written it down as she did not have pen and paper to hand. The Appellant provided her account number and could not understand why Transport for London could not trace her payment.

Transport for London contested the appeal, and produced evidence from its systems that no charge had been purchased for the vehicle registration mark and date in question. It said that it could not trace a payment from the account number of the Appellant, but it could do if it had the 16-digit number of the card used to make the purchase.

The Adjudicator adjourned the case, with a request to the Appellant to provide the 16-digit card number. She did that, and Transport for London traced the payment. Their records showed the charge had been paid, but one digit of the vehicle registration mark was wrongly entered. Transport for London decided not to contest the appeal and it was allowed.

### **Not the person liable**

The Regulations place primary liability to pay the Congestion Charge and any penalty charge on the registered keeper. The DVLA keeps a record of the registered keeper of a vehicle. The registered keeper might not necessarily be the person who owns the vehicle.

There are only certain specified circumstances in which it will not be the registered keeper who is responsible for payment, such as where there has been a change of ownership of the vehicle and the DVLA has been correctly notified before the contravention (usually by sending off the V5) (Regulation 6(5) of the Road User Charging (Charges and Penalty Charges) (London) Regulations 2001). Liability for penalty charges therefore remains with the registered keeper until the DVLA has been notified.

In one case, Transport for London had issued a Penalty Charge Notice on M, the person shown on the DVLA's records as the registered keeper. M wrote to Transport for London and said he had previously sold the car for cash to P, a friend of his cousin. He gave P's name and mobile phone number. Transport for London rejected M's representation, as he had not provided enough proof to enable it to transfer liability. It asked for further proof such as a letter from the DVLA.

M appealed to the Adjudicator, saying that he did not have any more information about P other than his phone number, and that he did not understand why he was being pestered about something he had not done. He did not provide any evidence of the sale and notification to the DVLA. Whilst the registered keeper, M, may have sold the vehicle, the Adjudicator was satisfied that the DVLA had not been informed of this. M therefore remained the registered keeper and the person liable for the penalty charge. The appeal was refused.

### **Vehicle Cloning**

Occasionally Appellants have claimed that the vehicle captured on camera within the Zone is not theirs, but another one bearing the same registration mark. In one case an Appellant produced evidence that the dealer who sold him his new car had mistakenly attached the same licence plate to 2 vehicles.



More commonly, Appellants suggest that their vehicle has been illegally cloned – often the vehicle pictured in the Zone in such cases is the same make, model and colour as that of the Appellant who has received the Penalty Charge Notice.

In such cases non-photographic evidence is usually very important – such as correspondence with the DVLA and a police crime reference. However, careful examination of photographic evidence can be crucial to the outcome of the appeal.

In one such case the Appellant produced letters from colleagues placing his vehicle in Liverpool on the contravention date. However, he also produced photographs of his own vehicle taken from the same angle as the one pictured within the Zone. The Adjudicator, using the facility to zoom in on the images on the screen in the hearing room, noted several differences between the vehicle pictured in the 2 sets of photographs: the writing underneath the digits of the registration mark was different. The fixings on the licence plate were also in a different position and of a different colour. Markings on the headlights on the Appellant's vehicle were not present on the contravention vehicle. The appeal was allowed as the Adjudicator was satisfied that the pictures did indeed show different vehicles and that the Appellant was not the registered keeper of the one which drove into the Zone.

Conversely, in another case the Appellant made the same claim – that his vehicle had been illegally cloned. He said he had received a number of fines for parking and bus lane contraventions as well. However, he provided no police crime reference or evidence from the DVLA. Neither did he provide any photographic evidence. The standard of proof in Congestion Charge appeals is the balance of probabilities. The Adjudicator was not satisfied on the evidence that his car had been cloned and the appeal was refused.

In one appeal the Appellant was convinced that his car had not entered the charging area. He believed it had been cloned and came to a personal hearing with photographs of his vehicle in an attempt to prove it. However, on enlarging the images in Transport for London's evidence the Adjudicator was able to observe, and point out to the Appellant, that there were numerous remarkable similarities between the vehicles in the photographs – marks on the bumper, stickers in the window and scratches on the headlights were all identical. The Adjudicator was quite satisfied that the Appellant was the registered keeper of the vehicle captured within the Zone, and indeed by the end of the hearing the Appellant accepted that he had been mistaken and the vehicle must be his. The appeal was refused.

*"The Adjudicator, using the facility to zoom in on the images on the screen in the hearing room, noted several differences between the vehicle pictured in the 2 sets of photographs"*

### **Identifying the driver**

Occasionally an Appellant will argue that if it were possible to see the driver of the vehicle pictured in Transport for London's evidence (as it sometimes is) then it would be evidence that they were not driving and so should not have to pay the penalty charge. However, the Charging Scheme places primary liability for Congestion Charges and penalty charges on the registered keeper, where the vehicle is being driven by someone who is in possession of it with the registered keeper's consent

### **Vehicles registered outside of the UK**

The Regulations provide that where a Congestion Charge is payable but no Congestion Charge was actually purchased, a Penalty Charge is incurred.

There appears to be a distinction in the Regulations between a Penalty Charge and a Penalty Charge Notice. A Penalty Charge is incurred automatically when a Congestion Charge has not been purchased by midnight on the date the vehicle was used on a road within the Congestion Charge Zone.



## ISSUES COMING FROM APPEALS CONT...

Where a Penalty Charge has been incurred, the Regulations provide that Transport for London may serve a notice ("a Penalty Charge Notice").

Where a Penalty Charge Notice is issued, the Regulations provide that the notice shall be served on the registered keeper of the vehicle or the person liable.

A number of appeals have come before the Adjudicators concerning contraventions which involve vehicles registered outside the UK. In many of these cases, several contraventions have taken place and many Penalty Charges have been incurred but Transport for London have not served any Penalty Charge Notices. In each case, Transport for London suggested that it could not serve a Penalty Charge Notice as the UK Driver and Vehicle Licensing Agency held no details of the contravening vehicle.

The Regulations give power to Transport for London to fix an immobilisation device (a clamp) to a stationary vehicle and thereafter to remove that vehicle, where there is reason to believe that there are at least 3 penalty charges outstanding in relation to that vehicle. A Penalty Charge is 'outstanding' under the Regulations if 'it has either not been paid....or it has not been cancelled...and it is not the subject of an outstanding appeal'.

In the cases before the Adjudicators, vehicles have been clamped and removed and the owner of the vehicle has been required to pay often thousands of pounds to release the vehicle, including the outstanding Penalty Charges and the clamping and removal fees. In each case, the Appellant claimed to be completely unaware that a Penalty Charge had been incurred as no Penalty Charge Notice had ever been served.

The Driver and Vehicle Licensing Agency states that a vehicle which is permanently imported for use in Great Britain must be registered and taxed as soon as possible after it arrives in the country. There appears to be no such requirement for foreign registered vehicles which are not permanently imported for use in the UK.

The Regulations in this regard are clear. However, whilst there may be occasions where there are persistent evaders who purposefully fail to register a vehicle and use that vehicle within the Congestion Charge Zone deliberately attempting to avoid paying a Congestion Charge, honest drivers of vehicles registered outside of the UK whom it is alleged have contravened the Regulations are likely to be put at a considerable disadvantage if no Penalty Charge Notice is served.

### **Photographic Evidence in Appeals**

Transport for London has a highly sophisticated network of cameras capable of providing clear photographic images of vehicles and their number plates within the charging area. There are 625 cameras at 202 locations, both static and in mobile vans which patrol the Zone.

After midnight on each charging day computers used by Transport for London isolate and recognize the number plates of vehicles which have been used or kept in the Zone during charging hours. These images are compared to the database of vehicles that are exempt or for which the proper charge has been paid for that day, and where a match is found the photograph is deleted. Penalty Charge Notices are issued to the registered keepers of vehicles in the remaining photographs following a manual check to verify the details.

Since 21 June 2004 Transport for London has amended the layout of the Penalty Charge Notice to include the plate patch (an enlarged image of the vehicle number plate). This is to assist registered keepers who may want proof that their vehicle was in the Zone without having to request it from Transport for London.



In addition, however, when an appeal is brought Transport for London produces the monochrome and colour contextual images of the vehicle and its immediate surroundings. It verifies this evidence with a statement by an authorized officer that the camera equipment was in working order at the relevant time. This is helpful in establishing that the vehicle was within the Zone, when it was there and often in what circumstances.

The computer software used by Congestion Charge Adjudicators in considering both postal and personal appeals enables us to zoom in on any aspect of the evidence. This allows us to examine photographs in detail. We can also print them out to enable examination of photographs from related appeals side by side if necessary.

The photographic evidence of a vehicle within the Zone produced by Transport for London is generally the most clear-cut evidence that a contravention has occurred. In some cases this year the photographic evidence, its absence or the image quality, has been crucial in the decision to allow the appeal.

#### *Capabilities of the Photographic Evidence*

On some occasions Appellants have misunderstood the capabilities of the photographic evidence. For example, the system cannot, as one motorist believed, be used by Transport for London to identify a pedestrian near the vehicle who might have been able to give evidence that the Appellant was diverted into the Zone by a traffic incident. Nor is it used to monitor crime in Central London.

#### *Night and Day*

Transport for London can adjust the contrast of an image taken by the Congestion Charge cameras up or down to ensure a legible image of the number is obtained. Thus, for example, a photograph taken of a contravention in the daylight may appear as if it has been taken in the evening. This misinterpretation of the appearance of the photographic evidence has occasioned one or two Appellants unsuccessfully to dispute that they were in the Zone at the time alleged.

### **Proving the Contravention**

It is not unknown for an Appellant to argue that, because the vehicle is shown leaving and not entering the Zone that a contravention did not occur. This argument is based on a misunderstanding of the Congestion Charge Scheme, which requires payment of the charge for keeping or using a non-exempt vehicle within the Zone, not simply for entering it.

The cameras take still images only, and not video footage. Several Appellants, not realizing this, have asked to see images taken just before or just after those showing the contravention, arguing that these would prove their mitigation – for example that they did a U-turn and drove straight out of the Zone, or that they had to enter rather than take their intended route to avoid waiting behind a traffic jam in a box junction. However, the distance traveled within the Zone, or the driver's intention to enter it are not relevant to the obligation under the Scheme to pay the charge.

*"There are 625 cameras at 202 locations, both static and in mobile vans which patrol the Zone."*





There are three grounds for making a Statutory Declaration. It is clear however that many Appellants make mistakes as to which is the applicable ground in their case.

In summary, the three grounds are, that :

- 1) the Penalty Charge Notice was not received by the Appellant;
- 2) the Appellant made representations about the penalty charge to Transport for London but did not receive a rejection notice;
- 3) the Appellant appealed to the Adjudicator against Transport for London's decision to reject the representation but the Appellant did not receive a response to the appeal.

If the declaration is made on Ground 1, then the matter is referred to Transport for London resulting in the re-issue of the Penalty Charge Notice. The process reverts back to the starting point allowing the registered keeper to make representations directly to Transport for London.

If the Declaration is made either on grounds 2 or 3, following the making of the County Court Order canceling the Order for Recovery, Transport for London prepare papers and forward the matter for consideration by an Adjudicator.

On being referred a Statutory Declaration the Adjudicator may then 'give such direction as he considers appropriate.' – Reg.19(7).

The Appellant has only three limited options and often it is apparent that the declaration is made on the wrong ground. The Adjudicator must therefore evaluate the paperwork and decide what the effect of the Statutory Declaration is before giving appropriate directions.

Where the Declaration is made on Ground 2, the Adjudicator may:

- (a) adjourn for evidence of the representations made, if none are apparent from the paperwork;
- (b) schedule an appeal hearing if there is evidence that representations were made but not received by Transport for London;
- (c) refuse the appeal if the representations made to Transport for London were outside the statutory period for doing so; or
- (d) allow the appeal if the representations were received by Transport for London within the statutory period but Transport for London failed to reply by means of a Notice of Rejection.

Where the Declaration is made on Ground 3, the Adjudicator may:

- (a) adjourn for evidence that the appeal was sent, if there is no evidence of the appeal being received;
- (b) schedule an appeal hearing if there is evidence that an appeal was made but not received by the Tribunal;
- (c) refuse the appeal if the appeal was made outside the statutory period for doing so without good cause; or
- (d) where the appeal has already been decided but the decision was not received by the Appellant, send a copy of the decision to the Appellant and if appropriate, direct that the case proceed as an application for review.

The Statutory Declaration procedure can be a vital means of getting an appeal back on track where through no fault of either party but often due to a simple failure of the postal service, an appeal becomes derailed. It has resulted in over 6000 Statutory Declarations being made to the Tribunal in the year 2004-2005.

In the experience of the Adjudicators however, it seems that the system is little understood by Appellants when often an incorrect ground has been declared. Further, the procedure, whilst vital, appears in practice to be cumbersome and overly restrictive in its grounds. Revision of the procedure might be of benefit to all the parties concerned and assist in speeding up the appeals process.



## INTERNAL ISSUES

### New Website

The current website of the Parking and Traffic Appeals Service ("PATAS") was designed prior to the introduction of congestion charging. Its present layout combines within the same framework the enforcement and appeals processes for parking and traffic as well congestion charging penalties. Although reports and newsletters are added regularly, the website design and function has not been updated for some time.

Committed to providing a modern and efficient service, PATAS is in the process of developing better online resources for users of the service. By the end of 2005, PATAS aims to have in place an enhanced website, using up-to-date technology. The current PATAS website will be transformed into a "Gateway", which will be linked to new separate areas for the Road User Charging Adjudicators Tribunal, and Parking and Traffic Adjudicators Tribunal.

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Apple





## Training

During the past year a programme for the provision of training and discussion for Adjudicators has been set up.

On Saturday 20 November 2004, the first session was held at New Zealand House. This was an opportunity for Adjudicators to receive training on current issues and to be updated on recent events.

The day's programme included three presentations by senior Adjudicators on statutory declarations, reviews of Adjudicators' decisions and claims for costs by parties to an appeal.

The intention was that, following this training, all Adjudicators would be able to deal not only with routine appeals but ancillary issues arising from such appeals, including statutory declarations, requests for review of decisions and applications for costs.

On 29 January 2005 a second meeting took place. This was run along the lines of a training workshop, enabling participants to address and discuss matters which had been identified in advance by Adjudicators as raising particular concerns for Transport for London and/or Adjudicators. It was recognised that there should be a degree of consistency in the decision-making of Adjudicators without their independence being fettered. This workshop had been designed to enable Adjudicators to hear how their colleagues addressed particular issues in their decision-making process.

Throughout the course of the day presentations were given by Duty Adjudicators with full participation from the floor.

Prior to the workshop, Adjudicators had been provided with a questionnaire containing various scenarios. Those scenarios formed the basis for discussion. Topics addressed included the following:

- Payment for an incorrect VRM: Transport for London raises the query as to whether the vehicle entered the Zone;
- The relevance of evidence as to the outstanding penalty amount;
- Whether the Registered Keeper is a vehicle hire firm;
- The nature and extent of the detail required in a hire agreement;
- The hours of operation of the Congestion Charge Scheme (The '2 minute issue');
- Evidence required where an Appellant alleges his vehicle was forced into the Zone to prevent an accident;
- Issues relating to payment of the Congestion Charge at a paypoint; the law of agency;
- Issues arising from payment via Transport for London's Call Centre;
- The Notice of Rejection not addressing the Appellant's specific representations;
- What constitutes evidence of payment;
- Police vehicles;
- Suitability of signage;
- Issues relating to registration of vehicles with the Public Carriage Office;
- Lack of signed statement accompanying Transport for London photographs;

Both training sessions were recognised by Adjudicators as a useful forum for the exchange of information in a learning environment. Such workshops will become a fixture in Adjudicators' calendars in the future.

## MY YEAR

I was appointed as an Adjudicator in September 2004. This was my first judicial appointment and it has been for me a very interesting and rewarding experience.

In particular it has given me a real insight into managing a relatively informal judicial process with Appellants who are largely unrepresented by lawyers and where the issues need to be clearly defined in order to be resolved. This valuable experience has allowed me to develop my skills of listening, analysing and decision making.

In truth it has been an eventful year. I make notes of each case I adjudicate upon and I have reflected upon these together with the more general aspects of my role. Putting these two together I can say the following:-

- **Judicial Training** – this was a mix of a traditional seminar type approach of going through the statutory regulations together with worked examples to assist with the decision making process. This was an essential first step to ensure that a sound framework was in place before starting to hear appeals. However there really was nothing like actually doing the adjudicating and dealing with the issues;
- **Mentoring scheme** – the Tribunal has developed a mentoring scheme in which a number of experienced existing Adjudicators assist the newly appointed ones. This I felt worked very well and I found this to be a valuable support in my first few weeks. In particular it helped me understand more fully the decision making process and how it was important to narrow down the points in issue within an appeal. However, this process also extended to understanding the Tribunal's IT system and the sophisticated case management software that we use in the appeal process;
- **First sittings** – our sittings are divided between postal ones and personal hearings with parties in our hearing centre. I initially started off by adjudicating postal appeals in order to gain experience of the procedure, rules and evidential issues. These take place at a private part of our hearing centre which is not open to the public. We log on to a computer terminal with a secure password which takes us into an adjudication queue. We click onto this and hear the next case in the queue. After about three weeks of postal appeals and having sat in on a number of personal cases to observe a more experienced Adjudicator I began hearing personal appeals. These also take place in our hearing centre which is situated in central London near Trafalgar Square but in an area open to the public. There are a number of hearing rooms set aside for us to use and Appellants attend by way of an appointments system. I learned the importance of dealing with cases efficiently and, as far as possible, within the time allocated;
- **Equal treatment** – this I have found to be one of the most important and in practice challenging parts of my role. When parties are represented by an advocate, in many respects the appeal process is more straightforward as there is, to a degree, a presumption that the procedures are already understood by the advocates. With parties that are unrepresented my task as an Adjudicator is to set out clearly at the start of the hearing what the procedure is, what my role as Adjudicator entails, and what can be expected from the process. With a Scheme that carries strict liability, the management of expectations is vital.



## VIEW FROM A PARKING AND TRAFFIC ADJUDICATOR

Due to the volume of appeals received, the Lord Chancellor assisted the Road User Adjudicators by appointing several of the Parking and Traffic Adjudicators to temporary jurisdiction in Road User Charging Appeals. This was for a 12-month period ending on 31st March 2005.

The Parking and Traffic Adjudicators are appointed under the provisions of the Road Traffic Act 1991 and subsequent legislation. We handle appeals relating to parking, bus lanes and, more recently, appeals concerning allegations of failure to obey certain traffic signs, box junctions and the use, by lorries, of restricted streets in Greater London. Appeals are contested by the 33 London Local Authorities and also Transport for London.

It was, therefore, a most interesting experience for the Traffic Adjudicators to be involved in matters concerning the Congestion Charge; an appeals process involving a single Respondent Authority.

This 12 month sojourn has led us into new heights of appreciation for our Road User colleagues whom we discovered were endeavouring, with skill and patience, to do justice within the confines of the Regulations.

An interesting comparison may be made between the differing issues raised in these appeals. Consider, for example, the law relating to ownership of vehicles and liability for penalties for parking, bus lane and moving traffic contraventions. Apart from the thorny problem of hired vehicles, there is a degree of consistency in the various Acts of Parliament which hold the owner of a vehicle to be liable for penalties. The owner is taken to be the person by whom the vehicle is kept. Although there is a presumption of accuracy in the records of the Driver and Vehicle Licensing Agency, this is not the end of the matter if the Adjudicator has satisfactory evidence showing that the true owner is someone other than the Registered Keeper.

But in Road User Charging Appeals, the Adjudicator is, in most situations, confined to the assumption that the DVLA records are accurate, up to date and reflect ownership at the date of the contravention. Someone who sells a vehicle, therefore, and delays notification to Swansea or who forgets to send in the form is, it would seem, liable for any Road User Charging Penalty caused by the actions of the new keeper. Conversely, someone who buys a vehicle and does not comply with the legal duty of notifying the DVLA might not receive a Penalty Charge Notice.

There have been issues in which the experience of the Parking and Traffic Adjudicators of over a decade of de-criminalised traffic penalties has been directly relevant, such as with regard to statutory declarations, reviews and costs orders. We hope that the assistance provided by the Parking and Traffic Adjudicators has been of support to our Road User Charging colleagues.

We wish the Road User Charging Adjudicators every success in their ongoing task of providing an independent judicial process with care and integrity.

## RECOMMENDATIONS

The Road User Charging Adjudicators make the following recommendations to the Secretary of State.

- 01 Transport for London should consider whether in some cases the statutory declaration process is abused by potential appellants.
- 02 In cases where a contravention has taken place involving a foreign registered vehicle Transport for London should consider wider checks of the database in the registered country to enable a Penalty Charge Notice to be served.
- 03 With the benefit of this year's experience and having identified and addressed the start-up problems, Transport for London should be planning to ensure that the problems encountered when the Scheme was introduced do not reoccur if and when the Zone is expanded.

In my first annual report I made a number of recommendations to the Secretary of State. Transport for London responded to my recommendations and I have the following update.

- **"Transport for London should improve customer care service, giving the front line staff the correct knowledge to deal with callers"** There have been substantial improvements in customer care at Coventry: calls are being answered in seconds rather than minutes. The knowledge of the call-centre staff has been improved. This is regularly tested by random calls from Transport for London staff to the call-centre ("mystery shopping trips").

VRM checks have been improved, including an on-line link to the DVLA.

There are two call centres in Coventry for Congestion Charging calls at two separate locations. The second call centre handles the overflow from the first. Delays have been reduced in responding to correspondence and in making refunds following decisions from the Adjudicators. The Transport for London website has been enhanced to make access easier and they are constantly working to make the information easier to understand.

Transport for London are also looking into the possibility of recording all calls to the call-centre.

- **"The Charging Authority should aim to ensure all evidence is lodged with the appeal service in time"** Transport for London now impose a financial penalty on Capita if service levels are not met on submitting evidence and eliminating errors from that evidence. Capita have no allowance on this financial penalty and the measure is currently only recording 1.9% errors.

- **"Transport for London should work towards effective implementation of the statutory declaration procedure"** The procedures at Capita have been improved and better information is being provided to appellants. In Transport for London's view the Statutory Declaration procedure as a whole is not ideal. Significantly the three grounds that statutory declarations can be issued under are too restricting and the Traffic Enforcement Centre do not consider the validity of the grounds when they issue the statutory declaration, only whether it has been completed correctly.



- **"Transport for London should work with hire agreement firms to encourage compliance with the relevant Regulations"** It was confirmed that Transport for London are constantly liaising with hire firms to improve procedures, particularly with a view to amending the Regulations relating to hire firms. Transport for London distribute leaflets to hire firms on how to pay the Congestion Charge which they are encouraged to make available to all their customers/ hirers. One hire firm actually has a Pay Point machine at their offices.
- **"Transport for London should immediately cease proceeding with enforcement whilst an appeal is pending"** It was agreed that this was now being done.
- **"Transport for London should allow appellants, where their vehicles have been clamped or removed, the opportunity to pay part of the charges and appeal"** Transport for London abide by the Regulations which state that all fees must be paid before representations can be made and to give concessions to persistent evaders would not work as they would simply continue to abscond. The earliest Transport for London would clamp/remove a foreign registered vehicle would be 28 days after the third PCN is issued, ie when the charge certificate would have been issued on the third PCN and wasn't because the DVLA was unable to provide details. Transport for London remove 20-30 vehicles per week, and Transport for London can dispose of the vehicle after 56 days.
- **"Transport for London should provide better evidence from the DVLA"** Evidence from the DVLA is not provided in hard copy. The Web Enabled Interface between the DVLA and Transport for London enables the DVLA to respond to Transport for London's requests within 5 hours. (Transport for London provide the requests to DVLA at 2am and they are returned by 7am.) We expressed concern that if Transport for London had previously requested details on a vehicle from the DVLA this information would be relied upon again rather than re-requesting more up-to-date information. We also expressed concern that where a case is adjourned to request a full break-down of registered keeper details from Transport for London it was often found that there was some overlap between the vehicle changing owners, so that two keepers are shown as owning the vehicle at the same time. Therefore, requesting this information gives the Adjudicator a more accurate picture. It was acknowledged that this was a failing of the DVLA rather than Capita. Capita are now trying to produce a full audit trail in each case. Transport for London are in constant liaison with the DVLA to improve and develop their systems.
- **"Transport for London should give better information on all signs, in particular the call-centre contact details"** The Department for Transport policy prevented Transport for London from putting telephone details on the entrance/ exit signs to the CC Zone for health and safety reasons. However, Transport for London have tried putting stickers on the back of Congestion Charging signs, petrol pump advertising and radio advertising.
- **"Transport for London should produce more specific camera evidence"** Adjudicators were invited to visit the "hub" where all the cameras in London are monitored.
- **"Transport for London should consider wider exercise of their discretion"** This was being done much more frequently and where appropriate more cases were not contested. It was confirmed that Capita/Transport for London business rules have been changed leading to fewer appeals to PATAS and greater information being provided.

Information was also provided that there has been a change in the Scheme Order requiring that residents produce more detail/evidence before they are granted resident status for the purposes of the Congestion Charge. In particular, residents must now have their vehicle registered at their address in London with the DVLA and that this could mean more applications for resident discounts being rejected.

*"The Web Enabled Interface between the DVLA and Transport for London enables the DVLA to respond to Transport for London's requests within 5 hours."*

**ANNEX ONE:**  
Adjudicators as  
at 31 March 2005

**CHIEF ROAD USER CHARGING ADJUDICATOR**

- Ingrid Persadsingh

<sup>10</sup> Adjudicators are qualified Lawyers, appointed by the Lord Chancellor and are Independent.



## ROAD USER CHARGING ADJUDICATORS as at 31 March 2005

- Mercy Akman
- Jane Anderson
- Ian Coutts
- Gordon Cropper
- Jane Cryer
- Leslie Cuthbert
- Fiona Dickie
- George Dodd
- Tony Edie
- Gillian Ekins
- Anthony Engel
- Andrew Harman
- Angela Black Hedegard
- Fiona Henderson
- Ian Keates
- Maggie Kennedy
- Sanjay Lal
- John Lane
- Francis Lloyd
- Joanna Lyons
- Isaac Maka
- David Malone
- Paul Middleton-Roy
- Ian Mohabir
- Michael Nathan
- Belinda Pearce
- Annabel Pilling
- Luthfur Rahman
- Christopher Rayner
- Timothy Smith
- Alison Spicer
- Jan Verman
- Anwen Walker
- Martyn Waygood
- Christopher Woolley

## ANNEX TWO: Grounds of Appeal

The only grounds of appeal are one or more of the following:



- (a) That the recipient
  - (i) never was the registered keeper of 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 the 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.

# APPEALS: APRIL 2004 TO MARCH 2005



	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05	Mar-05
appeals received ■	5140	4476	2938	3215	2783	2791	2487	2334	1918	1756	2220	2007
cases closed ■	3776	3831	4205	3244	2917	2914	3903	4728	2949	2807	2397	2786



**CONGESTION  
CHARGING  
STATISTICS  
2003-2005**

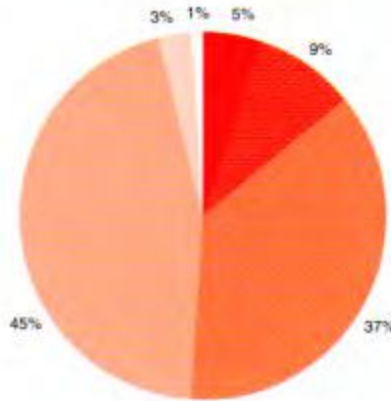
	<b>2003/4 Total</b>	<b>2004/5 Total</b>
appeals received	42339	34065
total cases closed	24314	40457
appeals withdrawn by appellants	287	268
appeals not contested by TfL	13033	13160
appeals refused postal	4770	17838
appeals allowed postal	2806	5443
appeals refused personal	643	1408
appeals allowed personal	2116	2012
closed administratively	659	328
appeals adjourned	1518	6085
no. of postal cases ready for adjudication		
at end of year	9383	7528
review decisions	121	349
costs decisions	10	140

	<b>Average</b>	<b>Average</b>
% withdrawn by appellants	1.20	0.69%
%not contested by TfL	56.90%	32.30%
% refused postal	21.51%	44.13%
%allowed postal	12.78%	13.55%
%refused personal	2.71%	3.57%
%allowed personal	9.29%	4.93%
% closed administratively	2.41%	0.82%
% of cases allowed	73.49%	50.78%
average postal hearing mins	20	23
average personal hearing mins	23	35
% of cases 1st heard within 56 days	24.37%	34.88%
average days delay	88	212
% hearings within 15 mins	75.92%	84.17%

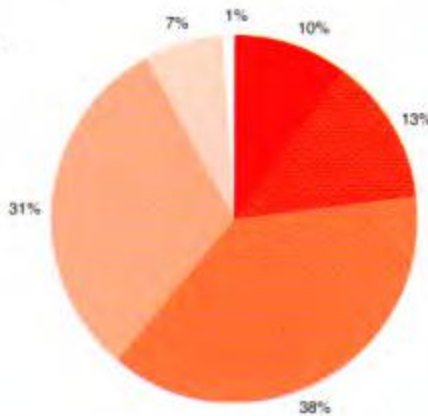
**Summary of decisions by ground of appeal (allowed)**

	2003/4 Total	2004/5 Total
vehicle hire firm	255	798
appellant not the owner	440	995
charge has already been paid	1902	3014
contravention did not occur	2284	2359
penalty exceeded relevant amount	175	520
vehicle used without appellant's consent	28	42

2003/4



2004/5

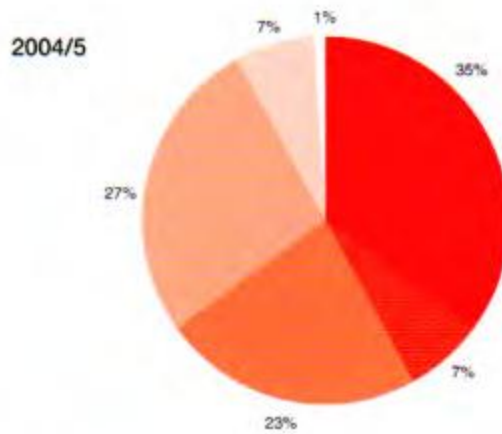
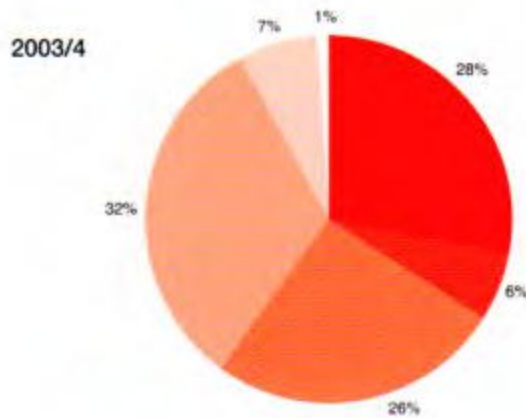


- vehicle hire firm
- appellant not the owner
- charge has already been paid
- contravention did not occur
- penalty exceeded relevant amount
- vehicle used without appellant's consent



**Summary of decisions by ground of appeal (refused)**

	2003/4 Total	2004/5 Total
vehicle hire firm	1619	6840
appellant not the owner	346	1421
charge has already been paid	1495	4463
contravention did not occur	1787	5288
penalty exceeded relevant amount	415	1270
vehicle used without appellant's consent	42	159



- vehicle hire firm
- appellant not the owner
- charge has already been paid
- contravention did not occur
- penalty exceeded relevant amount
- vehicle used without appellant's consent

# MAP OF CC AREA

Location of Congestion Charging Zone within Greater London







- Central London congestion charging Zone
- Congestion Zone boundary
- Road within charging Zone
- Road outside charging Zone
- Underground, DLR or National Rail station

**Parking and Traffic Appeals Service**

New Zealand House  
80 Haymarket  
London  
SW1Y 4TE

Tel: 020 7747 4777  
[www.patas.gov.uk](http://www.patas.gov.uk)

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