Association of London Government

ALG Transport and Environment Committee

Parking Adjudicators' Annual Report 2004/2005 — Item no: 12

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Summary: A joint Annual Report by the Parking Adjudicators for the year 2004/2005

Recommendations: That Members receive the report.

1. **Report**

1.1. In accordance with S73(17) of the Road Traffic Act 1991, the Parking Adjudicators have pleasure in presenting their Annual Report for the year 2004/2005. The report is attached.

Joint Annual Report of the Parking Adjudicators to The Association of London Government Transport and Environment Committee 2004-2005

Chief Adjudicator's Foreword

I am pleased to present to the Committee this joint report of the Parking Adjudicators for the year 2004-2005.

An important part of my responsibilities is to represent the Parking Adjudicators at a variety of events and this year has been no exception. In November 2004, with Charlotte Axelson, the Head of PATAS, I attended the Annual Conference of the Council on Tribunals. The main focus of the conference was once again the Government's Tribunals for Users Programme. Lord Falconer, the Secretary of State for Constitutional Affairs and Lord Chancellor, gave the keynote address. He spoke of the importance of the reform programme for providing accessible justice. He also placed emphasis on the fact that the creation of the new Tribunals Service will remove the present accountability of tribunals to the decision-making bodies whose cases they decide and so provide clear independence for tribunals. Another important aim, he said, is improvements in first tier decision making through feedback mechanisms so that departments get decisions right first time. Our recommendation in our last annual report about feedback mechanisms in Local Authorities is very much in tune with this thinking.

The conference was also addressed by Lord Justice Carnwarth, the Senior President Designate of Tribunals, and Peter Handcock, the Chief Executive Designate. It was interesting to hear from Lord Justice Carnwarth that whilst there are over 1 million tribunal cases a year, only 20 tribunals hear more than 500 cases annually. This places in the context of tribunals as a whole our annual caseload of around 60,000 cases. We continue to be one of the busiest tribunals in the country; indeed, as is explained below, our workload continues to increase.

The intention is that the first tranche of tribunals, the "top ten" central government tribunals, will join the Tribunals Service in 2006 – 2008. Peter Handcock said they were not at the stage of having formed views or plans as to what will happen to the remaining tribunals, including local government tribunals. They will, however, be looking at these in time.

Lord Newton spoke about the future of the Council on Tribunals, which as part of the reform programme will become the Administrative Justice Council. It will have a wider role encompassing its present supervisory function and, additionally, keeping the administrative justice system under review.

The conference was also addressed by Ann Abrahams, the Parliamentary Ombudsman, on the role of ombudsmen and where they fit in the administrative justice landscape; and by Mr Justice Sullivan, the Chairman of the Judicial Studies Board's Tribunals Committee, who launched three new JSB publications: the revised Training Handbook, the Equal Treatment Pack and the JSB Training Prospectus.

This conference is always an invaluable occasion both for its formal programme and for the opportunity to meet other tribunal heads informally, giving a wider perspective on the administrative justice system of which we form a part, enabling me to keep up to date with developments in the tribunal world.

I took part in a consultation exercise on automatic enforcement arranged for the Department for Transport by the Tomorrow Project, a charity undertaking a programme

of research about people's lives in Britain in the next twenty years. The aim of the consultation was to explore the benefits, risks and consumer issues associated with the extended use of automatic enforcement in relation to UK transport; and to consider the long term implications for the framing of legislation and the design of processes in ways that best serve the public interest and effectiveness. The results of the consultation will inform the Department's thinking on these issues.

I also attended a Department of Constitutional Affairs seminar on Improving the Judicial Appointments Process.

In March I spoke at the conference "Enforcement – Not Just the Ticket" organised by Transport for London. This conference considered a wide range of subjects relating to the operation of civil traffic enforcement in the light of ten years of experience since its first implementation in London. The conference was perhaps a timely one given the considerable focus there has recently been on the enforcement operations. We say more about this below.

But of course most of my time is spent on heading the tribunal in carrying out its day-to-day work of deciding appeals. As I foreshadowed last year, our workload has continued to grow. More detail on this is contained below.

Finally, may I express the Adjudicators' thanks to Charlotte Axelson and her staff for their support to the Adjudicators during the year.

Cases decided this year and referred to in the report are set out more fully in the Cases Digest of Cases (page 9).

Scrutiny of Parking Enforcement

The parking enforcement regime has been subject to scrutiny in a number of ways. There has, of course, been a certain amount of press interest, fuelled by perceived public dissatisfaction with the way enforcement is carried out. The extent of and justification for this are open to debate, but there is undoubtedly a measure of dissatisfaction, which is indeed from time to time expressed to Adjudicators by appellants. In this climate, some open examination of the enforcement regime addressing the areas of concern is to be welcomed.

In December 2004 the Local Government Ombudsmen issued a Special Report*, Parking Enforcement by local authorities.* This report examined the practice of local authorities in exercising their discretion to waive parking penalties. Authorities have the power as a matter of discretion to cancel a Penalty Charge Notice at any stage. In our Annual Report for 2001/2002 we recommended that Local Authorities should revise their Notice to Owner to explain their discretion relating to extenuating circumstances. This is because unless motorists are aware of the discretion, they are not in a position to make a fully informed decision whether to pay the penalty or make representations. The Ombudsmen's report endorsed the Adjudicators' views and commended Local Authorities to "look critically at their documentation, advice and procedures … to ensure that pleas of mitigation are not unreasonably deterred and are given proper consideration."

The issue of such pleas being given proper consideration is an important one. Adjudicators remain concerned that not all Local Authorities fully understand the nature of their discretion to waive penalties in appropriate circumstances. Cancellation as a matter of discretion is relevant where there has been a contravention and therefore liability in law for the penalty. The question for the exercise of discretion is whether the Penalty Charge Notice should be cancelled even though there is legal liability for the penalty. By contrast, where the motorist has put forward grounds establishing that there

is no legal liability, cancellation is not a matter of discretion, it is a matter of right. This important distinction does not seem to be understood in all Local Authorities. Adjudicators from time to time see “discretion” used in correspondence in a context where cancellation would be a matter of right; for example relating to exemptions such as loading.

The Ombudsmen’s report concerned a specific aspect of enforcement. During the year there have been three other studies that have carried out wide ranging reviews of the enforcement regime. These are:

- The London Assembly Transport Committee (LATC) investigation into parking controls and their enforcement in London. The starting point for this investigation was to examine whether the right balance had been achieved between the need for parking controls and, at the same time, ensuring that the process was operated fairly and effectively.
- A research project by The Institute of Local Government Studies at the University of Birmingham to investigate the nature of quality in local authority parking enforcement, financially supported by National Car Parks Ltd
- A review of decriminalised parking enforcement by Richard Childs, former Chief Constable of Lincolnshire, commissioned by the British Parking Association.

The Chief Parking Adjudicator gave evidence at the second evidentiary hearing held by LATC in February 2005, and was consulted by the Birmingham University researchers and Mr Childs.

The reports of each of these studies have now been published. This is not the place for an extensive examination of the many recommendations and conclusions they contain. Each of them makes a valuable contribution to the consideration of how decriminalised parking enforcement has operated and how it might develop in the future. The common theme that underlies much of the content of the reports is the need for enforcement to be carried out to high standards of quality. That two of the reports were sponsored by the parking industry demonstrates a recognition of the public concern (whether justified or not) and a desire to ensure that enforcement is carried out fairly and to those high standards.

The Chief Parking Adjudicator also gave evidence to the Camden Council’s Parking in Camden Scrutiny Panel, whose report, making 45 recommendations, was published in August 2005.

This process now moves on a further stage. The Traffic Management Act 2004 provides for the existing legislation relating to civil traffic enforcement to be replaced by regulations, and for the Secretary of State to publish guidance to local authorities about any matter relating to their functions in connection with the civil enforcement of traffic contraventions. In exercising those functions a local authority will have to have regard to any such guidance. The Department for Transport has established a steering group to assist it in drafting the regulations and guidance. The Chief Parking Adjudicators for both London and England and Wales are members of the steering group, which also includes representation from motoring groups, local government and the parking industry.

Training

The twelve new Adjudicators received their induction training. This is a three-day course covering the law relating to the jurisdiction, general legal skills including equal treatment and decision writing, and technical training on our computerised adjudication system. They also spend time observing experienced Adjudicators conducting hearings. After they have been sitting for a suitable period, the Chief Adjudicator conducts a progress review with each new Adjudicator to discuss their progress and any issues that may arise.

We held two further training meetings for all Adjudicators covering current issues of law and practice, including our new red route, moving traffic and lorry ban jurisdictions.

Competence Framework

We have completed the drawing up of our Competence Framework for Parking Adjudicators. This framework is based on the Competence Framework for Chairmen and Members of Tribunals published by the Judicial Studies Board in October 2002. It adopts and adapts the competencies in the JSB Framework so far as applicable to the Parking Adjudicators. It also adds to them, particularly in relation to IT skills. It thus sets out the skills, knowledge and behavioural attributes needed to perform the Parking Adjudicators' function.

The framework

- provides a self-development aid for individuals
- assists in the design of training programmes, which ensure that adjudicators acquire the skills and knowledge necessary to undertake their role.
- sets out the criteria against which to conduct appraisal, enabling individual needs to be accurately identified and met through training where appropriate
- assists in settling the criteria for the recruitment of new adjudicators.

Seminars for Local Authority Staff

During the year we held two seminars for local authority staff covering practice issues on a number of topics, including ancillary applications to the tribunal, CCTV enforcement and moving traffic enforcement.

Workload

The number of appeals received was as follows, with 2003-4 figures in brackets.

Parking	54,526	(44,280)
Bus Lane	3,602	(3,158)
Moving Traffic	365	
Lorry Ban	152	
Total	**58,645**	**(47,438)**

This represents a 23% increase in our intake overall, a substantial increase from one year to the next. Even so, at the beginning of 2005 the increase looked likely to be greater still. At that point the number of parking appeals received in each of the first nine

months of the financial year was well above the same month for the previous year, and the overall increase was running at over 30%. However, in each of the final three months ending with March 2005 the intake was below that for 2004, although still above the 2003 intakes. As a result, the overall increase in parking appeals was 23%, still a considerable rise and perhaps a surprising one, given that civil parking enforcement has applied across London for many years. The decriminalisation of red routes, which took place in November 2004, had little impact on the figures; to the end of the year only 50 appeals were received. We do not know the reasons for the increase. However, the fall in the last three months and intakes since suggest that the peak may have been passed.

The number of moving traffic and lorry ban appeals has so far been small, although the former, in particular, has the potential to increase considerably, depending on the amount of enforcement undertaken by local authorities.

61,033 appeals were disposed of, compared with 45,278 in 2003-4, an increase of 35%. 2,166 more cases were disposed off than were received.

The considerable increase in our intake, which had commenced at the beginning of 2004, inevitably put a strain on our resources. As a result the backlog of postal cases waiting to be decided rose from 4,700 in April 2004 to over 9,000 by October. In the autumn of 2004 the twelve new adjudicators started to sit. This extra resource enabled us greatly to increase our output and so reduce the postal backlog to about 6,000 by the end of the year. 21,561 (37%) of appeals were decided at a personal hearing, a substantial rise on the 20% of the previous year. This increase in the proportion of personal appeals decided meant that the postal backlog was still greater at the end of the year than the beginning even though more appeals were disposed of than were received. The postal backlog is continuing to fall from its October 2004 peak.

Judicial Reviews

Two appellants commenced judicial review proceedings to challenge the Adjudicator's decision in their appeal. In both cases, the High Court refused to grant permission for the application to proceed.

Extended Jurisdiction

The extent of our jurisdiction has increased in two ways.

First, parking on red routes has been decriminalised and is being enforced by Transport for London. Whilst this is a widening of our parking jurisdiction, the contraventions are different: the general position is that stopping is prohibited on red routes, rather than waiting as is mainly the case in relation to other parking contraventions. This means that unlike on ordinary yellow line restrictions loading and unloading and the picking up and setting down of passengers are not allowed. There are however, red and white boxes that make varying provision for loading and unloading and short-term parking, the exact conditions of which are shown on the signs for the particular box.

Secondly, the London Local Authorities and Transport for London Act 2003 decriminalised the London lorry ban and a wide range of moving traffic offences. We look at each of these in more detail below.

Lorry Ban

The London lorry ban is contained in the Greater London (Restriction of Goods Vehicles) Traffic Order 1985 made by the Greater London Council under section 6 of the Act of 1984, as amended. In substance, this prohibits large goods vehicles from using the prescribed restricted streets in London during the prescribed hours: 9 pm to 7 am during the week, 1 pm to 7 am on Saturday nights and at any time on Sundays. There is, however, provision for permit holders who may use the restricted roads subject to certain conditions. The decriminalised scheme under the London Local Authorities and Transport for London Act 2003 makes both the operator and the person in control of the vehicle liable for a penalty charge for a contravention of the lorry ban. The operator is defined as the holder of any operator's licence under section 2 of the Goods Vehicles (Licensing of Operators) Act 1995. The fixed penalties are £500 for the operator and £100 for the person in control. Enforcement is carried out on behalf of the local authorities by the Association of London Government Transport and Environment Committee.

Early appeals have revealed difficulties with the enforcement process prescribed by the 2003 Act, particularly in the case of permit holders. *Gilder's Transport v ALGTEC* is set out in detail in the Cases Digest. The key point in the decision is that the mere fact that a vehicle with a permit is seen on a restricted road is not of itself sufficient to support a belief that it is in contravention of the lorry ban, since it may well be acting in conformity with the permit. ALGTEC must therefore obtain further information from the operator, as it has power to do, in order to form a proper view as to whether there has been a contravention. However, subject to certain exceptions, a Penalty Charge Notice must be served within 28 days of the contravention. Any necessary additional information must therefore be gathered in time to allow compliance with this time limit.

Moving Traffic Violations

The 2003 Act made provision for local authorities to adopt civil enforcement of twenty-one moving traffic contraventions relating to failing to comply with specified traffic signs. These include, for example, yellow box junctions, entry to a pedestrian zone, and prohibited turns. A full list is set out in the Appendix to this report.

A number of local authorities have commenced enforcement under these powers. Most appeals have related to the enforcement of yellow box junctions. The basic prohibition is that no person shall cause a vehicle to enter the box so that it has to stop within the box due to the presence of stationary vehicles. So if the vehicle has to stop for other reasons, there will be no contravention. A vehicle, however, that enters the box to turn right (other than one at a roundabout) may stop within the box for so long as it is prevented from completing the right turn by oncoming vehicles or other vehicles that are stationary whilst waiting to complete a right turn. *Place Invaders Ltd v TFL* concerned this exception to the prohibition.

A particular issue that has arisen is that Adjudicators have seen numbers of appeals where it has transpired that the box has not complied with the detailed specification specified on diagram 1043 to the Traffic Signs Regulations and General Directions 2002. Non-compliant road markings mean that the prohibition cannot be enforced.

There have been some appeals relating to other contraventions. *Bancroft-Hendricks v Croydon* concerned blue directional arrows. The Adjudicator found that the signage was unlawful.

It seems likely that there will be other cases where the Adjudicator will be required to examine the lawfulness of the signage. In this respect moving traffic contraventions differ

from parking contraventions in that the motorist will commonly be in the position of having to observe and decipher signs rapidly whilst on the move. It is therefore all the more important for the signage to be readily comprehensible.

Kennedy v Camden is an example of an appeal relating to a no right turn sign.

A number of procedural issues have come to our attention. In *Kasap v TFL* the evidence was insufficient to prove the contravention. It is important for the local authority to think carefully about what evidence is required to prove any particular case. The Penalty Charge Notice in that case was also defective in giving for the location of the contravention the location of the camera that had been used to observe the incident rather than the location of the incident. This has been a frequent defect. There have been other defects in documentation, such as incorrect dates being given and one local authority issuing a document described as an “enforcement notice” when no such document is provided for under the moving traffic enforcement scheme; it was plainly intended to be a charge certificate. These perhaps suggest that computer systems designed for one enforcement regime are being applied to this scheme without adequate adaptation.

Adjudicator’s Powers

In *Lavall v Hammersmith & Fulham*, the local authority sought to exclude the Adjudicator from considering the validity of the Penalty Charge Notice by arguing that this was not within his jurisdiction. The local authority contended that its validity could only be challenged by judicial review in the High Court. The Adjudicator rejected this argument.

This is not the first time such an argument has been put forward. We reported last year on a case in which Transport for London brought judicial review proceedings alleging that the Adjudicator did not have the power to consider the adequacy of signage, although the proceedings were later withdrawn, with Transport for London accepting the Adjudicator could consider the signage.

We do not believe Parliament can have intended the powers of the Adjudicators to be limited in this way. They are there to provide an economical and proportionate means of determining liability for penalty charges. That purpose would be defeated if they did not have the power to adjudicate upon all the issues relevant to that liability. It would in our view be unfortunate, and in the interests neither of local authorities nor, plainly, appellants, if this were the case.

Faber v Westminster, on the other hand, illustrates that the Adjudicator is concerned with matters of legality. Council policy is therefore not a matter for the Adjudicator, unless it is unlawful according to general legal principles.

Costs

Under regulation 12 of the *Road Traffic (Parking Adjudicators) (London) Regulations 1993,* the Adjudicator has power to award costs and expenses against a party who, broadly, has acted vexatiously, frivolously or wholly unreasonably. There is no limit on the amount of costs the Adjudicator may award. *Selby v Westminster* illustrates the general approach adopted by the Adjudicators. However, *Briggs v Westminster* shows that in an appropriate case, such as a clear instance of fraud, the Adjudicator may well be prepared to award costs at a much higher level.

Parking Adjacent to a Dropped Kerb

Section 14 of the London Local Authorities and Transport for London Act 2003 introduced a new parking contravention of parking adjacent to a dropped kerb. This is defined as any part of the footway or verge where it has been lowered to meet the level of the carriageway for a road for the purpose of (a) assisting pedestrians to cross or (b) assisting vehicle to enter or leave the road across the footway or verge. Clearly, the purpose is to stop vehicles blocking these lowered kerbs and preventing them being used for their intended purpose.

In the case of residential premises with a driveway not shared with other premises, where the purpose of the dropped footway is to assist vehicles to enter or leave the road from or to the driveway, a Penalty Charge Notice may not be issued unless requested by the occupier of the premises. Without this, a Penalty Charge Notice might be issued to the occupier's own vehicle.

A number of exemptions apply to this prohibition; for example, for boarding and alighting and loading and unloading.

Davis v Waltham Forest was a case in which a Penalty Charge Notice was issued to a vehicle, and the vehicle removed, where in fact there was no dropped kerb within the statutory definition.

Taxis and Private Hire Vehicles

An issue the Adjudicators have had to consider on a number of occasions in recent years is the status of private hire vehicles and whether they are allowed to use bus lanes that can be used by "taxis". An Adjudicator had already found that London private hire vehicles could not use bus lanes: *TFL v Faw (Case Number 203013556A)*. In *Collins v Transport for London*, the Adjudicator found that private hire vehicles licensed outside London could not use bus lanes in London. As the Adjudicator said, it would have been a curious anomaly if they had been permitted to do so.

The issue in *Ehsani v Hammersmith & Fulham* was whether local authorities could issue a Penalty Charge Notice under the civil enforcement regime to a taxi parked in a taxi rank to enforce the conditions under which taxis use such ranks. The Adjudicator found they could not do so since breaches of those conditions had not been decriminalised.

Training of Local Authority Staff

Regrettably we still see numbers of cases where it appears that the local authority staff considering representations from the public are not conversant with relevant basic law. *ERAC v Ealing* and *Shahzad v Waltham Forest* are examples of such cases. It would seem that the training such staff receive is still not universally adequate. *Davis v Waltham Forest* would appear to be a case of inadequate training of a parking attendant. We continue to have concerns in this area. We are pleased to note that all three of the reports referred to under Scrutiny of Parking Enforcement above address the issue of adequacy of training and recognise that there is room for improvement.

Posting Delays

In *Pena v Hounslow* the Adjudicator criticised the local authority for delay in posting a letter setting a time limit. As he said, it is particularly important for such letters to be posted the day they are dated.

CASES DIGEST

Lorry Ban

Gilders Transport Ltd V ALGTEC (PATAS Case No. LB65)

The vehicle was seen on a restricted street during prescribed hours. A permit under the Greater London (Restriction of Goods Vehicles) Traffic Order 1985 had been granted for the vehicle, allowing it to use restricted streets subject to the permit conditions.

ALGTEC issued a Penalty Charge Notice (PCN/1) to the Appellant requiring the haulier of the vehicle to produce documentary evidence to substantiate the journey in compliance with permit condition 6. No such evidence was supplied. In addition as no driver details were supplied, a further Penalty Charge Notice was issued (PCN/2). PCN/1 was an Operator's Notice and PCN/2 a Driver's Notice. Both were directed at the Appellant and alleged that the vehicle was used on a restricted street during prescribed hours in breach of permit conditions.

The Appellant responded to PCN/2, indicating that no contravention occurred. The Notice of Rejection issued by ALGTEC said that these representations were rejected because no journey documents had been supplied and no driver details had been supplied.

The Appellant's Notice of Appeal to the Adjudicator named the driver and indicated what he was doing on the road and his destination.

The Adjudicator said she was not satisfied that PCN/1 was valid. The London Local Authority and Transport Act 2003 ("the Act") section 4(1), provided that where the issuing Authority "have reason to believe" that a penalty charge was payable, they may serve a Penalty Charge Notice on the operator and/or driver. Section 4(8) provided that a Penalty Charge Notice must state "the grounds on which [ALGTEC] believe that the Penalty Charge Notice is payable".

The language of the statute required that ALGTEC shall not issue a Penalty Charge Notice until it had a belief that a contravention might have occurred. The Adjudicator said she could not conclude that ALGTEC could have had any cause to believe that a contravention occurred at the date of issue of the Penalty Charge Notice. That a vehicle is seen on a restricted road, during restricted hours, and displaying a permit, does not of itself suggest that a contravention has occurred. ALGTEC did not have sufficient information to lead them to believe a contravention had occurred. The better course would be for it to require the information to be supplied, as required by condition 6, and then decide whether any contravention had occurred.

The Penalty Charge Notice was also defective for lack of particularity, in that it failed to specify what condition was alleged to have been broken. This was perhaps an inevitable consequence of the Penalty Charge Notice being issued before the contravention was identified. However, there were 16 conditions attached to the permit. How was the Recipient of the Penalty Charge Notice to know specifically what was alleged? How did

he decide what detail should be given in the representations? How was he to decide whether to pay the Penalty Charge Notice or to contest?

ALGTEC's complaint was that the haulier failed to provide the information as to the planned stopping places – but the failure depended on a request being made and received. It was doubtful whether a request for such information could be appropriately made in the Penalty Charge Notice.

PCN/2 was a "Driver's Notice", but had been issued to the Operator. Section 4(17) of the 2003 Act defined a "driver's notice" as one served on the person appearing to have been in control of the vehicle at the time of the alleged contravention. There **may** be circumstances in which the operator could also be the driver. However, PCN/2 was in any event defective as it suffered the same lack of particularity as PCN/1.

The Notice of Rejection rejected the representations for two reasons.

1. That no journey documents had been supplied. However, when was the request made for documents to substantiate the journey? They were not asked of the driver at the roadside – and the driver had no other obligation to provide them. So to reject representations on that basis was not rational where the rejection was made in response to a Driver's Notice.

2. That no driver details were supplied. How could ALGTEC proceed against the driver by issuing a Driver's Notice, alleging that no driver's details had been supplied? The rejection was totally illogical. If no driver's details had been supplied, ALGTEC would have no person to issue a driver's notice against.

ALGTEC had an obligation to follow the statutory process. This involved considering representations made in response to PCN/2. In this case it was patently obvious that the Notice of Rejection was aimed at rejecting an operator's representations. ALGTEC had failed to appreciate the difference between the status of the two legal people (operator and driver) to whom separate and different Penalty Charge Notices were issued.

Appeal allowed.

Moving Traffic

Place Invaders Ltd v Transport for London (PATAS Case No. MV0001GT01)

The contravention alleged was causing a vehicle to enter a yellow box junction so that the vehicle had to stop within the box due to the presence of stationary vehicles. The appellant had entered the box to turn right. TFL said that in its view one factor was that it considered the vehicle was causing an obstruction to the flow of traffic. The Adjudicator said that that was irrelevant as the terms of the prohibition made no mention of it and it was therefore not an element in the contravention. On the evidence TFL had not proved the contravention.

Appeal allowed.

Bancroft-Hendricks v Croydon (PATAS Case. No. MV0008CR01)

The contravention alleged was failure to comply with blue direction arrows directing all traffic, (except buses in the left hand bus lane), to turn right.

The Adjudicator said that the junction was controlled by 4 sets of traffic lights. All 4 sets had a blue directional arrow pointing to the right. Both sets of left hand lights also had a sign saying "local buses only". The first left hand set did not give any indication as to

what that meant and, at first glance, suggested that local buses only should turn right. The second left hand set looked exactly the same, until the lights changed, when ordinary green lights showed for three sets and the second left hand set showed a green arrow pointing ahead only.

The totality of the signage was such that, with the benefit of unhurried observation, the Council's intention was ascertainable: all traffic except local buses was to turn right. However, this was by no means clear and unambiguous to a driver approaching the junction without previous knowledge of it and with only a few seconds to think whilst negotiating Croydon centre. The mandatory blue signs were lawful but were hidden by the haystack of other signs and inconstant lights around them. The traffic lights needed to be re-designed so that it was plain which set applied either to a dedicated traffic lane or specific traffic.

Appeal allowed.

Kennedy v Camden (PATAS Case. No. MV0005CD01)

The contravention alleged was failing to comply with a no right turn sign prohibiting turning right from Malet Place into Byng Square.

The vehicle was driven along Malet Place across the junction in question, stopped, reversed around the corner into Torrington Place, then driven across the junction into Byng Square.

The Adjudicator found that this manoeuvre, whilst potentially dangerous, did not constitute a failure to comply with the sign. The term "turn" suggested a change of direction directly from the prohibited place, in broadly one sweeping motion, as opposed to a series of individual movements in which direction is changed.

Appeal allowed.

Kasap v TFL (PATAS Case. No. MV0008GT01)

The contravention alleged was causing a vehicle to enter a yellow box junction so that the vehicle had to stop within the box due to the presence of stationary vehicles. The Penalty Charge Notice described the location of the contravention as "Upper Street/Islington Green".

The Adjudicator said that the three still images put in evidence by TFL were not sufficient to establish that the contravention occurred, since they did not show that the vehicle was stationary at any point. It was not sufficient that they showed the vehicle in "roughly the same positions", as TFL submitted.

Furthermore, contrary to the Penalty Charge Notice, the vehicle was in fact seen at the junction between Upper Street and Berners Road. The London Local Authorities and Transport for London Act 2003 required the Penalty Charge Notice to state the grounds on which Transport for London believed a penalty charge was payable. The location of the yellow box was an essential part of those grounds.

Appeal allowed.

Adjudicator's Powers
Form and purpose of PCN: duplicity

Lavall v Hammersmith & Fulham (PATAS Case No. 2040135996)

This was an application for review by the local authority of the original Adjudicator's decision that the Penalty Charge Notice was bad for duplicity. The local authority also contended that in any event the Adjudicator did not have power to consider the validity of the Penalty Charge Notice.

The original Adjudicator had found that the Penalty Charge Notice was bad for duplicity because it stated that the vehicle was seen *"at 11.17 and 11.22"* and so effectively alleged two contraventions.

The Adjudicator's Powers

The local authority argued that the Adjudicator had no power to consider the validity of the Penalty Charge Notice as a challenge to the validity of the Penalty Charge Notice did not fall within any of the grounds on which representations can be made by the recipient of a Notice to Owner specified in paragraph 2(4) of Schedule 6 to the Road Traffic Act 1991. It contended that a challenge to the validity of the Penalty Charge Notice could only be made by judicial review in the High Court.

The reviewing Adjudicator said that prior to decriminalisation, parking contraventions were a criminal offence dealt with in the Magistrates' Courts. Indeed, that remained the case in many parts of England and Wales.

In a criminal case the defendant would be entitled to raise the validity of the summons in his defence. A defendant in criminal proceedings may raise public law issues in his defence and is not obliged to resort to judicial review: *Boddington v British Transport Police [1998] 2 All ER 203.* As Lord Slynn of Hadley said in that case:

For magistrates to be required to convict when they are satisfied that an administrative act is unlawful is unacceptable. It is not a realistic or satisfactory riposte that defendants can always go by way of a judicial review.

It would be an absurdity if in the decriminalised regime the judicial body charged with deciding appeals against liability did not have the power to decide on the validity of the Penalty Charge Notice, thus putting motorists in a different and less favourable position than in the Magistrates' Court.

As to the statutory grounds of challenge, the circumstances fell within ground (f): that the penalty charge exceeded the amount applicable in the circumstances of the case. If the PCN were not valid, the penalty payable would be nil and therefore that claimed would exceed that payable. In any event, in *R v Parking Adjudicator Ex p. Bexley [1998] RTR 128*, the Court rejected the argument that challenges on collateral matters of law could only be brought by way of judicial review and held that parking adjudicators had the power to consider issues of collateral challenge.

The Adjudicator therefore did have the power to consider the validity of the Penalty Charge Notice and whether it was bad for duplicity.

The Adjudicator added that on the face of it this was an attempt by a public body having the power to impose penalties on the public to fetter the ability of the public to protect itself against unlawful use of those powers and to limit the extent of judicial control of them. That seemed to him to be a highly unattractive position for it to adopt.

The Duplicity Issue

Under section 66 (3) of the Road Traffic Act 1991, a Penalty Charge Notice must state "the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle". It must do so in a way that is not bad for duplicity.

The rule against duplicity meant that a Penalty Charge Notice must not allege more than one contravention.

Blackstone's Criminal Practice 2005 summarised the rule as follows.

"...a count is not to be held bad on its face for duplicity merely because its words are logically capable of being construed as alleging more than one criminal act ... if the particulars of a count can sensibly be interpreted as alleging a single activity, it will not be bad for duplicity, even if a number of distinct criminal acts are implied. Thus, the rule ... rests ultimately on common sense and pragmatic considerations of what is fair in all the circumstances."

This was not a criminal matter, but the proper approach was the same.

The Adjudicator referred to the local authority's argument that:

"A PCN is a multi-purpose document; it makes an allegation; it records evidence in support of the allegation; it notifies the recipient that a penalty is due; it specifies the penalty, the deadline by which it must be paid, and the address to which it must be sent. The description of the contravention relates to the allegation. The record of observation times [the two times recorded on the Penalty Charge Notice] relates to evidence in support of the allegation."

He said that this passage was accurate except in one important respect. It is not the purpose of the Penalty Charge Notice to record evidence. Of course, the statement of the allegation was bound in a sense to contain evidence in support of the allegation, since the fact that it would contain details of the vehicle showed that the parking attendant was in possession of those details. But this was a by-product of the fundamental purpose of the Penalty Charge Notice to state the allegation, rather than the recording of evidence being one of the purposes of the Penalty Charge Notice.

As the original Adjudicator said, the inclusion of two times would not necessarily render the Penalty Charge Notice bad for duplicity; and the local authority conceded that the inclusion of two times might in some cases render the Penalty Charge Notice bad for duplicity. So there was agreement on the general principle. The question in this appeal, therefore, was a narrow one: was *this* Penalty Charge Notice bad for duplicity?

The two times recorded on the Penalty Charge Notice were only five minutes apart. The Penalty Charge Notice was doing no more than stating as a fact that the parking attendant saw the vehicle at these two times, close together, and having done so concluded that as no pay & display ticket was clearly displayed the vehicle was unlawfully parked. Applying the test as set out in Blackstone, this interpretation seemed to the Adjudicator to be entirely fair and sensible, and to lead to the conclusion that it was not to be read as alleging two contraventions. It was not bad for duplicity.

Original decision set aside. Appeal refused.

Lawfulness of Council policy

Faber v Westminster (PATAS Case No. 2040125777)

This was an application by the local authority for review of the original decision to allow the appeal.

The Appellant parked in a pay and display bay the controlled hours for which were Monday to Saturday 08.30 to 18.30. He bought a pay & display ticket at 08.23, outside the controlled hours, paying £4.50, for 68 minutes parking. The pay & display machine issued a ticket commencing at 08.23 and so expiring at 09.31. The Penalty Charge Notice was issued at 09.36.

The Appellant contended that the time he had paid for should have been timed from 08.30, when the controlled hours started, and therefore expired at 09.38. He argued that a pay & display ticket bought outside the controlled hours should commence at 08.30, not the time it is bought since until the controlled hours start parking is free.

The local authority said that it was their policy not to encourage overnight parking, mainly to address the shortfall in residents' spaces. The Adjudicator said it was difficult to see how the present arrangement did discourage overnight parking, given that parking overnight was free. What it did do was inconvenience motorists who wished to arrive early in the morning, park before 08.30 and leave their vehicle until into the controlled hours. At present they either had to buy a ticket when they arrived, meaning that they paid for free time and that the free time bought ate into the period of parking allowed; or return to their vehicle at 08.30 to buy a ticket. Other local authorities did provide advance payment arrangements. No doubt the local authority will take these points into account in its review of parking policies it was conducting.

The Adjudicator said, however, that in making these remarks he was not saying the local authority should change its policy. No doubt there were factors other than those he had identified that might influence the policy. In any event, policy was a matter for the local authority, not for him. The question for him was whether the present arrangements were unlawful; and he would only be concerned with the local authority's policy if that itself were unlawful according to general public law principles.

There could be no doubting that the restrictions created by the Traffic Management Order were valid. In any event, even if there were grounds for challenging the Traffic Management Order, the statutory six-week period for doing so, prescribed by the Road Traffic Regulation Act 1984 Schedule 9 Part VI paragraph 35, had long passed. So the issue was whether the practical payment arrangements were unlawful.

Whilst the arrangements were inconvenient for some motorists, he did not consider that was sufficient to render them unlawful. To find that, he would have to find that they were irrational, illegal or that there was procedural irregularity. He did not consider any of these was the case, either as to the policy or the practical arrangements.

The other question was whether the information provided was adequate to convey the arrangements to the motorist. The controlled hours for which payment had to be made were clearly stated on both the signs and the pay & display machines. The machine displayed the expiry time of the ticket before the ticket was issued and before the motorist was irrevocably committed to buying a ticket; and the instructions stated "See display for fee paid and expiry time". So a motorist who inserted money outside the controlled hours and followed the instructions on the machine would be aware that the machine did not accept advance payment. The information given was adequate and lawful.

Accordingly the parking arrangements were lawful.

Original decision set aside. Appeal refused.

Costs

Selby v Westminster (PATAS Case No. 2040111014)

In allowing the appeal the Adjudicator was critical of the council's failure to carry out a site inspection to check what signage was in place.

The Appellant subsequently applied for costs against the council. It acknowledged that an award of costs was justified, saying that it should not have contested the appeal. However, it disputed the amount of £392.98 claimed, which it described as excessive. This sum comprised £243 loss of earnings, £21 for train tickets, £8 for 2 films, £5 for one DV tape and £100 miscellaneous expenses, such as phone calls.

Under Regulation 12 of the *Road Traffic (Parking Adjudicators)(London) Regulations 1993,* the Adjudicator shall not normally make an order awarding costs and expenses but may make such an order against a party if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making or pursuing or resisting an appeal was wholly unreasonable.

It is therefore only in exceptional circumstances that an award may be made - and in the vast majority of cases an award will not be made.

In this case the Adjudicator agreed with the council that an award of costs would be appropriate. The decision to pursue the appeal in the teeth of the evidence produced by the appellant was wholly unreasonable. It was to the council's credit that it had agreed to an order being made.

As to quantum, the Regulations did not contain any provisions as to the rate to be awarded. However Adjudicators take as their guidance the Civil Procedure Rules as applied to Small Claims in the County Court. The Adjudicator accordingly awarded £50 for a day's loss of earnings for attending the hearing, £30 travelling expenses and £10 for the photos produced.

Costs and expenses awarded: £90

Briggs v Westminster (PATAS Case No. 2040330437)

The allegation was that the vehicle was re-parked in the same parking place within 1 hour of leaving. On its face the Parking Attendant's record looked full and impressive. It showed the vehicle at 10.36 parked at meter bay M1385 where the meter showed 3 minutes unexpired time. The Parking Attendant then recorded that at 10.54 the vehicle was parked at meter bay M1386 where the meter showed 63 minutes penalty. The notebook extract then shows a diagram depicting the 2 adjacent meter bays.

The Appellant was represented by solicitors. He produced in evidence CCTV footage from a camera operated by a business in the road. This showed the vehicle parked initially on the far side of the road from the camera. The vehicle is seen to drive off and shortly afterwards to park on the near side of the road to the camera. The Parking Attendant is seen to attend the vehicle and to go through the process of issuing the PCN. During this he walks away towards the meter bay the vehicle was initially parked in. He then returns and issues the PCN.

The Adjudicator said that on the face of it the CCTV footage showed the fraudulent issue of a PCN. He was satisfied that the contravention did not occur and allowed the appeal.

The Appellant subsequently applied for an order against the local authority for his solicitors' costs and disbursements of £3,772.56.

The Adjudicator said this was a proper case for an award of costs.

As to quantum, he was satisfied that the Appellant's case could have been conducted by a Grade 3 fee earner. He awarded costs at the rate of £13 per 10-minute unit as follows.

1. £247 for 19 units of correspondence and telephone attendance.
2. £130 for 10 units of pre-hearing preparation.
3. £520 for 40 units for travel to and conduct of the hearing.
4. £65 for 5 units for preparation of the costs schedule.
4. £78.88 for disbursements.

Costs and expenses awarded: £1,040.88.

Dropped kerb

Davis v Waltham Forest (PATAS Case No. 2040204556)

The local authority alleged that the vehicle was parked adjacent to a dropped kerb.

Section 14 of the London Local Authorities and Transport for London Act 2003 prohibits parking adjacent to a dropped kerb. This is defined as "any part of the footway or verge where it has been lowered to meet the level of the carriageway for a road for the purpose of assisting pedestrians to cross or assisting vehicle to enter or leave the road across the footway or verge."

The Adjudicator said that the local authority had not adduced any evidence to show that the area underwent work to lower it. The photographs submitted by the Appellant showed that the area in question was a pavement, with a brick wall running parallel - so it was not a kerb dropped to enable vehicular access. Further, it showed the kerb appeared to have been poorly maintained and damaged - probably as a result of the work done by a utilities company, who had reinstated the pavement next to it. This was supported by the appearance of the road, which had a dip in it. The appearance of the kerb did not suggest that it had been intentionally dropped.

On the evidence the Adjudicator was satisfied that the kerb could not be said to be a "dropped kerb" within the meaning of the statute.

The Adjudicator said she was satisfied that the Penalty Charge Notice should not have been issued, that the enforcement by way of removal should not have taken place, and that the local authority should have accepted the Appellant's representations at an earlier stage - when her detailed representations were made (accompanied by photographs). She said that on its face the appeal was one in which a costs order could be made.

Appeal allowed

Private Hire Vehicles: bus lanes

Collins v Transport for London (PATAS Case No. 2040149458)

The question was whether a Private Hire Vehicle (PHV) from outside London was a "taxi" for the purposes of bus lane control. If it was, it could be driven in those bus lanes that "taxis" were allowed to use.

In *TFL v Faw (Case Number 203013556A)* the Adjudicator found that a London PHV was not a "taxi" and therefore could not use bus lanes. The Adjudicator said it would be a curious anomaly if London PHVs could not use bus lanes in London but PHVs from outside London could. In fact there was no such anomaly.

A vehicle was a taxi if licensed under section 37 of the Town Police Clauses Act 1847, section 6 of the Metropolitan Public Carriages Act 1868, or under any similar enactment. This vehicle was licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976. The question therefore was whether the vehicle was a hackney carriage, the distinguishing feature of which was that it could ply for hire in the street. To do so, it had to be positively licensed to do so under one of the relevant enactments.

The vehicle in this case was a PHV. It was a fundamental feature of the relevant legislation that it distinguished between hackney carriages, which could ply for hire in the street, and PHVs, which could not: see *Brentwood BC v Gladen (The Times 1 November 2004).* Section 80(1) of the 1976 Act expressly excluded hackney carriages from the definition of a PHV. The vehicle in this case was a PHV. It therefore was not a hackney carriage and could not ply for hire in the street. Accordingly it was not a "taxi" for the purposes of the use of bus lanes.

However, as it was the principle of the decision that TFL were interested in, not the individual case, the Adjudicator did not consider it in the interests of justice to review the original decision and set it aside, and so place the Appellant in the position of being liable to pay the penalty after receiving a favourable decision in the first place. The Appellant could, however, be in no doubt that he could not drive a PHV in a bus lane.

Original Decision to Allow the Appeal Confirmed

Taxi Rank

Ehsani v Hammersmith & Fulham (PATAS Case No. 2040065857)

The Appellant's vehicle was a licensed hackney carriage. It was parked in a taxi rank. The Penalty Charge Notice stated that it was issued for the contravention of parking in a taxi rank. The Appellant responded that as his vehicle was a taxi he was permitted to park there.

The local authority alleged that the vehicle was parked in breach of the terms and conditions of use of the taxi rank. It stated that the evidence from the CCTV camera showed that the Appellant was not actively plying for hire as the vehicle was parked at 11:19 and was still parked at 11:52, and that during this time the driver was seen to leave the vehicle and return.

The rank was created under the provisions of the *London Hackney Carriages Act 1850*. The Licensed Taxi Regulations referring to the conditions of use stated, in essence, that the rank was for the purposes of allowing a taxi to ply for hire. These regulations referred to the penalty in each case as level 3 which, the Adjudicator said, related to the level of fines in the magistrates court rather than a penalty charge for a parking contravention.

The local authority had not provided any Traffic Management Order that referred to the specific terms of the contravention.

The issue therefore was whether the local authority was entitled to issue a Penalty Charge Notice to the vehicle for being parked in breach of the regulations prescribing the conditions of use of the taxi rank.

Parking enforcement in London was decriminalised by the *Road Traffic Act 1991*. Section 76 of that Act did not refer to the *London Hackney Carriages Act 1850* in setting out the various provisions that relate to decriminalisation of provisions that had previously been offences enforceable in the magistrates' courts. The local authority was therefore not authorised to enforce a contravention against a taxi driver for breaching the conditions of use of the taxi rank.

Appeal allowed

Hire Vehicles

ERAC v Ealing (PATAS Case No. 2040466938)

This case concerned a hire vehicle. Whilst the general rule is that the owner of a vehicle is liable for penalty charges, a vehicle hire firm may transfer liability to the hirer provided certain conditions are satisfied, including as to the form of the hiring agreement.

The Appellant, a vehicle hire firm, produced the hiring agreement to the council. The council's Notice of Rejection of the Appellant’s representations stated that the hiring agreement contained "insufficient information to pass liability for any Penalty Charge Notice incurred on to the hirer". The Adjudicator commented that they did not seem to consider it necessary to identify the respect in which the agreement was said to have been defective.

In the appeal to the Adjudicator, the council finally stated that their objection to the agreement as follows: "The Council is unwilling to transfer liability for the PCN to the named driver on the hire agreement supplied by the Appellant due to the fact that the named driver's home address is outside the United Kingdom".

The Adjudicator said that the council's objection was wholly misconceived. The regulations required that the hirer's *permanent* address be provided. The only qualification or extension to that requirement was that the address at the time of the hiring must also be provided, if different from the permanent address, *and the hirer's stay was likely to be more than two months from date of hiring*. There was no evidence from either party as to the actual or likely duration of the hirer's stay in this case, and consequently no basis for the council to require that any address other than the hirer's permanent address be provided.

The fact that the hirer's address was outside the United Kingdom was wholly immaterial to the issue of compliance with the regulations, and hence to the issue of transfer of liability. That this might present practical problems of enforcement for the council was also completely irrelevant; they did not have a choice to accept or reject a hiring agreement simply because it might be easier to enforce against the hire firm than the hirer.

Appeal allowed. Council directed to cancel the Notice to Owner.

Loading/unloading

Shahzad v Waltham Forest (PATAS Case No. 2040304379)

The Appellant was delivering 2 missing doors for a kitchen installation to a customer. The Council's Notice of Rejection gave the following reasons for rejecting the representations.

"Loading is when a vehicle stops briefly to unload bulky or heavy goods. The goods must be of a type that cannot be carried by one person in one trip ... Picking up items that can be carried does not constitute a loading operation. Therefore the item being carried by you does not fall into the loading category."

The Adjudicator said this was incorrect it several respects. First, since this was a commercial delivery, the requirement that the goods should be bulky or heavy did not apply; this applied only to private deliveries. Secondly, there was no requirement that the goods must be of a type that could not be carried in one trip. Thirdly, picking up items that could be carried plainly could be within the exemption, provided all the requirements of the exemption were satisfied. In so far as this statement appeared to draw a distinction between loading and unloading it was misconceived.

The unloading exemption applied.

Appeal allowed.

Practice on posting

Pena v Hounslow (PATAS Case No. 2040093105)

The issue was whether the council was bound to accept payment of the penalty at the reduced rate. The Penalty Charge Notice was issued on 17 January 2004. The statutory entitlement to pay at the reduced rate therefore expired on 30 January. However, in its reply to informal representations received from the Appellant, the council very fairly, as a non-statutory concession, allowed the Appellant a further 14 days from the date of the letter to pay at the reduced rate. The Adjudicator said that the council was not obliged to do this, and commended it for doing so.

The council's letter was dated 23 January. Unfortunately, it was not posted until 27 January and even then was posted 2nd class. As a result, the Appellant did not receive it until 30 January. It was not good practice to post letters that impose time limits from the date of the letter 2nd class, since the delivery time would eat substantially into the time. What was of even greater concern was that the letter was not posted for 4 days. This was quite unacceptable. For very obvious reasons, letters should be posted the day they were dated. This was even more crucial when they imposed time limits.

Nevertheless, despite these inadequacies, the Appellant still had ample time to pay the penalty within the time limit. In fact, she did not post the payment until 9 February and the council did not receive it until after the time limit had expired. The council was therefore not obliged to accept payment at the reduced rate.

Appeal refused.