ALG TEC Executive Sub Committee

Parking Adjudicators' Annual Report 2005/2006

Item No:

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Summary: A joint annual report by the Parking Adjudicators for the year 2005/2006.

Recommendations:	That Members receive the report
Financial Implications for ALG	None
Is the report 'open' to the public?	Yes

Report

1.1 In accordance with S73(17) of the Road Traffic Act 1991, the Parking Adjudicators have pleasure in presenting to the Committee their Annual Report for the year 2005/2006 which is attached.

Joint Annual Report of the Parking Adjudicators to The Association of London Government Transport and Environment Committee 2005-2006

Chief Adjudicator's Foreword

I am pleased to present to the Committee this joint report of the Parking Adjudicators for the year 2005-2006.

As is apparent from this report, reform is very much in the air at every level. At the highest level, there are the constitutional reforms under the Constitutional Reform Act 2005, a major element of which is enhancing the independence of the judiciary. The Department for Constitutional Affairs reform of the tribunals' system has borne practical fruit with the launch of the Tribunals' Service.

Then there is the forthcoming implementation of the civil enforcement provisions of the Traffic Management Act 2004, which will touch us very directly. The introduction of this new legislation, which will probably take place in 2007, will be a significant challenge for both local authorities and the Parking Adjudicators in terms of training and familiarisation. We hope that those responsible for the implementation will take on board the messages from the House of Commons Transport Committee's report, which we mention below.

As to the work of the Parking Adjudicators, there are the important decisions of the Court of Appeal in *R (Walmsley) v Transport for London and others [2005] EWCA Civ 1540* and of the High Court *R (Barnet) v Parking Adjudicator.* The first clarified the powers of the Adjudicators; the second highlighted the importance of local authorities ensuring that their procedures are legally compliant, a matter that has been of continuing concern to the Adjudicators.

Amongst all these important issues, at the day to day level we continue to be one of the busiest tribunals in the country. Whilst our intake of appeals fell, it appears that the current trend is once again upwards.

I would wish to record my thanks to the Adjudicators for the support they have given to the tribunal this year. On a personal note, I would particularly thank those who have enthusiastically given assistance to me in various ways. Their support and advice has been invaluable.

We congratulate our colleague Usha Gupta on her appointment as a Circuit Judge. Sadly from our point of view, this has necessitated her resigning as a Parking Adjudicator. Usha was appointed in 1993 as one of the first three Parking Adjudicators, and so has been highly instrumental in the development of the tribunal. I would thank her for her 12 years of valuable service. We all wish her every success in her new appointment.

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

Council on Tribunals Annual Conference 2005

As in recent past years, the conference was largely concerned with the creation of the new Tribunals Service. Baroness Ashton of Upholland, the Parliamentary Under Secretary of State at the Department for Constitutional Affairs, giving the keynote address, referred to the forthcoming Tribunals Bill, which will give full effect to the programme of reform of tribunals.

Lord Justice Carnwath, the Senior President Designate of Tribunals, remarked that tribunals were not in the forefront of anyone's mind when the Constitutional Reform Act 2005 was drafted. He called for a "Tribunal concordat" because there are fundamental questions that need to be sorted out.

Peter Handcock CBE, the Chief Executive designate of the Tribunals Service, referred to the launch of the Tribunals Service on 1st April 2006, bringing together the largest tribunals under unified management. He said that there were agreements with other tribunals keen to join in 2008. What happens to the other tribunals is not yet known. This was the first significant reform of tribunals in 50 years involving 12,000 people. Changes would be driven by providing better access to justice and improved services.

The Rt. Hon. the Lord Newton of Braintree, the Chairman of the Council on Tribunals, spoke about the transformation of the Council into the Administrative Justice and Tribunal Council under the forthcoming legislation and the changes this would bring. These would include stronger emphasis on promoting and publishing research, a general look at tribunals from the point of view of the system user and a new group to provide advice to the Senior President.

The Hon. Mr Justice Jeremy Sullivan, chairman of the JSB Tribunals Committee, introduced two new documents: the Tribunals Training Prospectus 2006 and the Framework for Induction of New Chairmen and Members of Tribunals. The latter is to assist tribunals in providing effective induction training for new members.

Constitutional Reforms

We should note that the constitutional reforms contained in the Constitutional Reform Act 2005 were implemented in April 2006. The Lord Chancellor ceased to be the head of the Judiciary. The Lord Chief Justice is now head of the judiciary in England and Wales. The new arrangements include the establishment of the Directorate of Judicial Offices for England and Wales, to support the Lord Chief Justice and senior judiciary in their new roles; and the Judicial communications Office, to support the judiciary in its communications with the media, the public and individually.

Implementation of civil enforcement under the Traffic Management Act 2004

Part 6 of The Traffic Management Act 2004 makes provision for the introduction of a new, comprehensive, nationwide code for the civil enforcement of traffic contraventions, covering parking, bus lanes, moving traffic and the London lorry ban (but curiously, not congestion charging). This will replace the existing legislation that has grown up in a mixture of public and local Acts, including the Road Traffic Act 1991 and a number of London Local Authorities Acts. Parking attendants will become known as “civil enforcement officers”. The detail of the code will be largely set out in regulations made under the Act.

In the summer of 2005 the Department for Transport started the process of bringing the new regime into force. In June it commenced a review of the existing system of Decriminalised Parking enforcement by holding a stakeholder seminar attended by a wide group of interested parties, including the PATAS and NPAS Chief Parking Adjudicators. A wide range of issues was considered at this seminar. The Department also established a smaller Working Group, again including the two Chief Parking Adjudicators, to assist it in taking the review forward. This Working Group met a number of times between the summer of 2005 and the spring of 2006. Following on from the review, in July 2006 the Department issued its consultation package on the implementation of Part 6 in relation to parking. The package includes a consultation paper, draft regulations, draft statutory guidance and a partial regulatory assessment. The consultation period ends on 25 September 2006. It should be emphasised that whilst the Working Group assisted the Department, the package is the Department’s alone. We have submitted our response to the consultation.

We have in the past drawn attention to the lack of coherence in the overall civil enforcement scheme that has resulted from its piecemeal legislative history. There are a number of inconsistencies between the enforcement of the different types of contravention for which there is no obvious justification. For example, there is generally provision for the owner of a vehicle that is hired out to pass liability to the hirer – but not in the case of bus lanes in London. Such inconsistencies are liable to cause confusion to the motoring public and even to local authorities, and have the potential to bring civil enforcement into disrepute. We would reiterate our view that it is self-evident that all civil enforcement of traffic penalties should be enforced through a core set of principles and processes. Differences in detail may be necessary, but should be the result of need and planning, not accident. There is, for example, a justified difference in the case of the London lorry ban, which makes the operator and driver liable rather than the owner.

The implementation of the Traffic Management Act 2004 provides the opportunity for this coherent approach. We hope that the Department for Transport will grasp it. It is not entirely encouraging that the Department has chosen first to single out parking, rather than look at civil enforcement as a whole. We hope that this will not lead to a perpetuation of the current unsatisfactory position.

House of Commons Transport Committee Enquiry into Parking Policy and Enforcement

In parallel with the Department for Transport Review, the House of Commons Transport Committee initiated, in August 2005, an enquiry into the current effectiveness of parking provision and enforcement policy. The Chief Parking Adjudicators for both London and England and Wales were amongst the witnesses who gave evidence to the Committee. Members of the Committee also visited the Hearing Centre where they heard presentations from the Chief Parking Adjudicator and Nick Lester of the Association of London Government.

In their report, published in June 2006, the Committee strongly supported the principle of civil enforcement. They said that transferring responsibility for parking enforcement from the police to local government had succeeded in raising the levels of enforcement and compliance and that to retain two parallel parking systems, criminal and civil, was irrational. It was high time, they said, to move to a single country-wide system of civil parking enforcement.

However, they considered that, despite its success, serious flaws remained in the civil system, and concluded that in addition to the main task of introducing a unified system, the following action was required:

- Clear performance standards in applying parking restrictions must be established
- It must be made clearer to drivers what regulations are in force and how compliance is to be achieved
- Appropriate recruitment, remuneration and training is needed to ensure a professional parking service throughout the country
- The process for challenging penalty charge notices must be made much more transparent
- The impact of the parking adjudication service must be increased and its profile heightened
- Scrutiny of local authority parking departments is woefully inadequate and needs to be strengthened
- Local authorities must develop parking strategies which meet local objectives fully, focusing particularly on congestion, road safety and accessibility.

They said that detailed, not generalised, guidance from the Department was necessary to address the key shortcomings of the system. Using this guidance as a basis, they expected the Department vigorously to encourage improved standards in all local authorities.

This report is timely, given the moves to implement the Traffic Management Act. Clearly everyone involved in civil parking enforcement needs to take on board the messages from this report in planning for the future, both in terms of the preparation of the regulations and guidance and of the day to day enforcement operation.

In terms of the raising of the profile of the adjudication service, whilst the Notice to Owner is required to inform the recipient of the ultimate right of appeal to a Parking

Adjudicator, the Penalty Charge Notice, the first document in the enforcement process, is not required to do so. It seems to us that it would be appropriate that it should.

Managed Services Contract Re-let

Much of the administrative support provided for the Parking Adjudicators by the Committee is provided by SunGard Vivista Limited under an outsourced managed services contract, most notably the development and management of the computerised adjudication process that is central to our operation. The contract also includes other services provided by the Committee, not connected with the Parking Adjudicators. The current contract expires in July 2007. In the autumn of 2005 a Project Board was established to aid the Committee in the procurement exercise for the re-letting of the contract. We are represented on the Board by the Chief Parking Adjudicator. At the time of writing, the process is on schedule. It is of course a matter for the Committee to whom the contract is let. Our interest is that the appropriate administrative support should be provided for the Adjudicators and that the transition to the new contract is a smooth one.

Operational Developments

Since February 2006, Moving Traffic Violation cases have been dealt with through the computerised adjudication system. Until then they had been dealt with through paper files. Adding them to the computerised system has brought them into the mainstream of the adjudication process. They are presented automatically to Adjudicators, who are able to adjudicate them using the, to them, familiar computerised process. There is no need for manual tracking, scheduling or allocation of these cases by the administrative staff. These appeals are now included in the automated management and statistical reporting. All of this assists our operational efficiency.

Only Lorry Ban cases are now dealt with through paper files. Their very small numbers has to date not justified the cost of their being added to the computerised system. However, it is to be hoped that the re-letting of the contract may present an opportunity for this to be done.

Evidence from Transport for London to the Road User Charging Adjudicators for congestion charging appeals is now transmitted electronically by Electronic Data Interchange (EDI), rather than as paper. A similar development for appeals to the Parking Adjudicators has been under consideration for some time, but efforts to introduce it have proved difficult. This is partly because unlike congestion charging where Transport for London is the only enforcing authority, there are 34 authorities that fall under our jurisdiction, using a variety of computer systems of their own. However, progress is now being made and it is hoped that the first wave of authorities will be submitting evidence to us electronically by the end of the year.

EDI has a number of advantages.

- Reduced operating costs such as postal charges.
- Reduced staff costs depending on the processes employed.
- Dispenses with the need for the local authority to produce paper copies of appeal related documents to send to PATAS.
- Dispenses with the need for PATAS to produce paper copies of reports and correspondence to send to the local authorities.
- Provides the local authority with a secure and reliable mechanism to send appeal related documents to PATAS.
- Provides PATAS with a secure and reliable mechanism to send reports and correspondence to the local authority.
- Reduces the need for scanning of evidence at PATAS.
- Provides a more reliable quality of image for viewing on the computer screen, thus reducing the need for unscannable evidence to be made available for the adjudicator to examine.
- Facilitates the more efficient disposal of appeals by reducing the need for adjudicators to adjourn cases to obtain the originals of poorly scanned evidence.

We strongly support the efforts to introduce EDI into our jurisdiction.

Considerable work has also been done on improvements to the computerised system, mainly relating to ancillary matters such as statutory declarations. These changes will enable Adjudicators to deal with these matters more efficiently.

The increasing number of bus lane and moving traffic violation appeals, as well as the greater use of cameras for enforcing parking controls, has lead to a considerable increase in the number of video recordings submitted in evidence by local authorities. There has been an insufficiency of equipment for viewing these. We are therefore pleased that all our hearing rooms have now been equipped with video/DVD players.

Communications Strategy

We have conducted a comprehensive review of our website and have launched a new version, which we hope will provide improved information for both appellants and local authorities. It includes comprehensive information about the overall process for challenging penalties, details of the appeals process, key decisions and annual reports and newsletters.

Appellants already receive a leaflet with their decision explaining *What Happens Next.* We have also now prepared a pre-appeal leaflet for issuing to personal appellants giving general guidance about preparing for an appeal, providing information about the Hearing Centre and explaining what they can expect at the hearing. For many people, attending before an Adjudicator will be their first experience of any court or tribunal. It is natural for some appellants to feel nervous at the prospect. We hope that this will help to make the experience less intimidating.

We issued three of our regular Newsletters to local authorities. These include appeal statistics and items of interest, ranging from staff and organisational changes to recent key decisions.

Introduction of Practice Notes

From time to time PATAS writes to Local Authorities drawing to their attention matters of practice or concern that have arisen. In September 2005 we formalised these arrangements somewhat by introducing “Practice Notes for Local Authorities” for the dissemination of this information. This format is intended to be more effective in drawing the importance of the information to local authorities and so to assist them in taking any necessary action on it. Four such Practice Notes were issued in 2005/2006.

Seminars for Local Authority Staff

During the year we held two seminars for local authority staff. The first looked at communication between PATAS and local authorities, including the procedures for submitting evidence. The second considered EDI and heard presentations from Tony Presland of SunGard Vivista, who explained how EDI would operate, and Paul Cowperthwaite of Transport for London, who spoke of the advantages EDI had brought for Transport for London in relation to congestion charging appeals.

Training

We held two training meetings for all Adjudicators covering current issues of law and practice.

Four of the more recently appointed Adjudicators attended the Judicial Studies Board Tribunal Skills Development Course. All the Parking Adjudicators have now attended this course. This is a valuable addition to the internal induction training they receive as it allows them to meet members of other tribunals and provides them with a wider perspective on their role.

Workload

The number of appeals received was as follows, with 2004-5 figures in brackets.

Parking	48,277	(54,526)
Bus Lane	2,774	(3,602)
Moving Traffic	1,610	(365)
Lorry Ban	102	(152)
Total	**52,764**	**(58,645)**

This represents a reduction of 10% in our total intake. All types of appeal showed a decrease apart from Moving Traffic. This increased by over 300%, no doubt reflecting an increase in enforcement, although the total appeals still represent a small proportion of all appeals received. It is likely the number of such appeals will continue to grow.

Whilst less than 2004-2005, the intake of appeals was still well above the intake for 2003-2004. If current trends continue the intake for 2006-2007 will return to near the 2004-2005 level.

54,734 appeals were disposed of, 1,970 more than the intake.

Judicial Reviews

Eleven appellants commenced judicial review proceedings to challenge the Adjudicator's decision in their appeal.

In eight cases, the High Court refused to grant permission for the application to proceed.

In one case the High Court quashed the decision of the Adjudicator and remitted the case for reconsideration. On further review by an Adjudicator, the appeal was allowed.

In two cases, the proceedings were settled on the basis that an Adjudicator would conduct a further review. In each case, on further review, the appeal was allowed.

Adjudicator's Powers

R (Walmsley) v Transport for London and others [2005] EWCA Civ 1540

This judicial review concerned the powers of the Road User Charging Adjudicators, who decide appeals against London congestion charging penalties. They also sit at the PATAS hearing centre.

The issue was whether a Road User Charging Adjudicator could allow an appeal on the basis of mitigation. The issue was therefore the same as that in *R (Westminster) v The Parking Adjudicator [2002] EWHC 107 (Admin)*, in which Mr Justice Elias considered the true construction of ground (f) in paragraph 2(4) of Schedule 6 to the *Road Traffic Act 1991* "that the penalty exceeded the amount applicable in the circumstances of the case". He held that a Parking Adjudicator did not have power to take extenuating circumstances into account when determining the amount payable for a parking penalty and did not have discretion as to the amount of the penalty payable.

The *Walmsley* case concerned the proper interpretation of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, which govern appeals to the Road User Charging Adjudicators and are worded similarly. The Court of Appeal approved the judgment of Mr Justice Elias in *Westminster* and held that Road User Charging Adjudicators did not have power to give directions that go beyond such directions as are necessary to give effect to a determination whether one or other of the statutory grounds of appeal has been established. This case therefore confirms the position established in the *Westminster* case.

Validity of Penalty Charge Notices

R (Barnet) v Parking Adjudicator

Mr Moses appealed against two Penalty Charge Notices issued by Barnet Council. The adjudicator allowed both appeals on the facts. However, he also held in each case that the Penalty Charge Notice did not comply with the requirements as to form prescribed by section 66(3) of the *Road Traffic Act 1991*; in particular, they did not specify the date of the notice. In doing so, he followed the decision of a Parking Adjudicator of the National Parking Adjudication Service in *McArthur v Bury (NPAS Case No. BC 188),* itself following the decision in *Al's Bar & Restaurant v Wandsworth (PATAS Case No. 2020106430).* Barnet Council applied under regulation 11 of the *Road Traffic (Parking Adjudicators) (London) Regulations 1993* for a review of those decisions, contesting the decision on the compliance issue but not the decisions on the facts. The reviewing adjudicator upheld the decisions of the first adjudicator and rejected the applications for review. Barnet then applied to the High Court for judicial review of the decisions of the reviewing adjudicator. It sought a declaration that the Penalty Charge Notices complied wholly or substantially with the requirements of section 66(3).

On 2 August 2006 Mr Justice Jackson dismissed the claim. In upholding the decisions of the reviewing adjudicator, he held:

1. that on its proper construction or by necessary implication, section 66(3) requires a Penalty Charge Notice to state the date of the notice;
2. that if a Penalty Charge Notice does not do so, it is invalid and unenforceable;
3. that prejudice to the motorist is irrelevant;
4. that the date of the contravention included within the statement of the reasons why the parking attendant believed a penalty charge to be payable does not satisfy the requirement to state the date of the notice.

He cited with approval the reasoning of the adjudicators in the *Al's Bar* and *McArthur* cases.

Procedural Compliance

The *Barnet* case illustrates the critical importance of local authorities carrying out enforcement in strict compliance with the procedural requirements of the statutory scheme. This is an issue that has caused the Adjudicators concern for some time and to which we have drawn attention before in our annual reports. Yet we continue to see cases where local authorities have failed to comply with the requirements.

The *Barnet* case concerned the issue of the required content of a Penalty Charge Notice. But it should be understood that local authorities need to ensure that the notices they issue at all stages of the process are compliant as to form.

Compliance also includes complying with the prescribed time scales. In this connection, it is apparent that some local authorities have still not grasped the distinction between the date of despatch of a document and the date of its service. A document is not served on the date it is posted. Section 7 of the Interpretation Act 1978 provides that service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, *to have been effected at the time at which the letter would be delivered in the ordinary course of post.* So where the next stage of the enforcement process is timed from the service of a document, local authorities must build into their administrative processes sufficient time to allow for service to be effected. For example, the periods after which a Charge Certificate may be served under paragraph 6(2) of Schedule 6 to the *Road Traffic Act 1991* are calculated from service, not despatch. We are aware of cases where a Charge Certificate has been despatched 28 days after the date of posting of a Notice to Owner. This is serious, as the local authority is purporting to increase the penalty by 50% several days before it is empowered to do so.

It is to be hoped that the *Barnet* case will bring home to all local authorities the consequences of failing to ensure that their administrative procedures comply in every respect with the statutory scheme.

Moving Traffic Violations

A number of Authorities are increasing enforcement in this area, some using mobile video cameras from Smart cars parked temporarily near a sign. Certain locations appear to generate exceptionally high levels of appeals. The signs with which the motorists have failed to comply in these cases may themselves be compliant with the requirements of the Traffic Signs Regulations and General Directions 2002. However the apparent degree of non-compliance by motorists does give rise to an anxiety among Adjudicators that the signing schemes as a whole at such locations are inadequate. This may be because of other confusing or even contradictory signs, or simply the road layout, combined in one case with large scale building and road works in the vicinity.

It is entirely proper to enforce penalty charges against motorists who knowingly breach the regulations; but where there is consistent non-compliance by large numbers of motorists, authorities need to look at how a motorist, who by definition is in a moving vehicle, can take in all the information necessary to know which way to turn or which route to follow. An authority that simply issues large numbers of Penalty Charge Notices in such cases without improving the signing or road layout is liable to be perceived by the public as being more interested in raising revenue than in maintaining public safety and traffic flow.

Yellow Box contravention

The case of *Jennings v Transport for London* (see Cases Digest) demonstrates the importance of understanding the precise nature of the contravention, as defined in legislation or regulations. A contravention does not occur simply because a vehicle stops in a yellow box; it only occurs when it does so due to the presence of stationary vehicles. Authorities need to assess if this has occurred before they issue a Penalty Charge Notice, and should also ensure that the wording on the Penalty Charge Notice reflects this second element of the contravention.

Lorry Ban

The London-wide lorry ban prohibits vehicles of 18 tonnes or more from using restricted roads during restricted hours without a permit. Where a permit is issued, the conditions attached to the permit must be met. The purpose of the scheme is to alleviate the effects of heavy vehicles on London residential roads, at night and at weekends.

The Parking Adjudicators acquired jurisdiction to hear cases of alleged contraventions of the ban in April 2004 when the scheme was decriminalised. Enforcement is carried out by ALGTEC on behalf of the participating London local authorities.

In the last year the Adjudicators have identified two main themes: appeals alleging a breach of condition 5 by permit holders, namely a failure to minimise use of restricted roads; and those where the Operators/Drivers claim a general ignorance of the London-wide lorry ban.

Minimising Use

Drivers and Operators holding permits are required to minimise use of restricted routes. This condition is frequently misinterpreted by Operators/Drivers as entitling permit holders to minimise the length of their journey, but without having regard to the need to minimise the use of restricted roads. There appears to be a lack of understanding amongst those who have a permit as to the practical effect of the conditions.

ALGTEC, on the other hand, has failed to prove in many cases that a vehicle has failed to minimise use of restricted roads by, for example, comparing the distance

which the vehicle did travel to the distance which could have been travelled had the vehicle minimised use. The Adjudicators have indicated that ALGTEC should be able to give specific evidence that the route which should have been taken was [x] miles longer than the route that was taken, taking into account the height and weight restrictions on certain routes, which make some impassable for larger vehicles. The Adjudicators have received comparisons as percentages, fractions, and sometime simply a bare statement that the suggested route is shorter – without specific comparable evidence.

Initially, the Adjudicators heard cases where ALGTEC apparently believed that the mere presence of a vehicle on a road proved a failure to minimise, and so issued a Penalty Charge Notice. Following the decision in *Gilders v ALGTEC (PATAS Case number LB65),* reported last year, ALGTEC appears to have adapted its procedure: requiring the Operator (as soon as the vehicle is seen) to specify the journey travelled, and once the route has been disclosed in response, then determining whether a vehicle failed to minimise use.

Signage

Many Operators/Drivers assert ignorance of the London wide lorry ban, and it is not clear how much information is disseminated by the various haulage associations, or to prospective drivers when passing their HGV tests. Others assert inadequate signage.

It was clear from a review of four cases that the signage in London was far from adequate. This has an obvious impact on public knowledge and understanding of the scheme. A summary of the decision in *Carboclass v ALGTEC* is included in the cases digest.

Cases Digest

The **Cases Digest** below contains cases decided during the year on the following topics of interest.

Bill of Rights 1689

There has been some publicity in the press about claims that the civil enforcement of traffic contraventions was in breach of the Bill of Rights and was consequently unlawful. This argument was dismissed in *Townsend v Transport for London*.

Removal

Under the Removal and Disposal of Vehicles Regulations 1986, local authorities have the power to remove vehicles parked in contravention of parking controls. This power was considered in the cases below.

Schouwenburg v Hammersmith & Fulham and *Holder v Westminster* concerned the lawfulness of the exercise of the power and the extent of judicial control over it. In *Bennet v Kensington and Chelsea,* the Adjudicator expressed concerns about the inadequacy of the arrangements for notifying TRACE, the central facility enabling motorists to find the location of their vehicle. It is plainly imperative for TRACE to be notified without delay, so that they are in a position to give motorists accurate information.

Signs

Regulation 18(1) of the Local Authorities' Traffic Orders (Procedure) (England & Wales) Regulations 1996 requires local authorities to place and maintain adequate traffic signs of restrictions. Traffic signs must either comply with the Traffic Signs Regulations and General Directions 2002 or have been specially authorised by the Secretary of State under sections 64 and 65 of the Road Traffic Regulation Act 1984.

Adjudicators often have to consider cases where the basis of the appeal is that the signs, including road markings, were unlawful. The cases in the Case Digest are examples of such cases. In *Cukier v Barnet* the Adjudicator considered the effect of a Controlled Parking Zone entry sign not being in place. In *Thornburn v Camden,* the Adjudicator rejected the local authority's argument that certain signs were for information only and that any defect in them did not matter.

Where authorisation by the Secretary of State is relied on, the local authorities need to be aware that they may need to produce the authorisation: *Carboclass v ALGTEC* and *Aidiniantz v Westminster.*

Procedures for Issuing Permits

The three cases cited illustrate the need for local authorities to ensure that their procedures for issuing permits are carefully thought through, both from the point of view of lawfulness and administrative adequacy.

Paying for Parking

Appeals relating to difficulties experienced by motorists in paying for parking are common. A motorist is allowed a reasonable time to obtain a pay & display ticket or voucher. *Callaghan v Waltham Forest* considered the application of this principle to a voucher scheme. *Pope v Wandsworth* was an interesting case about an unusual scheme for allowing holders of a resident's permit a discount on pay and display parking.

Ownership

The owner of the vehicle, not the driver, is normally liable for civil traffic penalties (although different rules apply to the London lorry ban). The registered keeper is presumed to be the owner. However, the registered keeper may rebut this presumption by showing that they were not the owner at the time of the contravention. This most commonly applies where the registered keeper sold the vehicle before the contravention occurred. There continues to be misunderstanding in some local authorities about what is required for the registered keeper to rebut the presumption. The registered keeper must provide the name and address of the buyer or seller if they have it. It seems, however, that some local authorities refuse to accept a rebuttal of the presumption where the registered keeper fails to provide the purchaser's details because they do not have them. There is also unjustified rigidity in relation to the evidence of a sale that local authorities require. *Liverpool Motor Auction v Ealing* is an example of such a case.

There are no hard and fast requirements. Local authorities should simply consider any evidence the registered keeper produces on its merits.

Another common misunderstanding arises where a registered keeper provides details of a sale to a third party and the local authority seek to enforce a penalty charge against that person. Whilst the registered keeper has to rebut a statutory presumption that he is the owner of the vehicle, the nominated purchaser does not. The burden of proving, on the balance of probabilities, that the nominated purchaser is actually the owner falls back onto the local authority. However some authorities proceed as if the burden still lay on the nominated purchaser to prove that he was not the owner. If the nominated purchaser denies ownership, the authority can often be in difficulties in proving the contrary if their only evidence is the word of the registered keeper.

Procedural Defects

We have discussed this issue earlier in our report. The two cases in the digest are examples of defective procedures. *Miah v Westminster* was a particularly serious case.

Utilities: Dispensation Procedures

Assetco Vehicles Ltd v Kensington and Chelsea concerned a gas utility vehicle, the issue being whether it was parked to deal with an emergency. It seems regrettable that the time of the tribunal should be taken up with such cases. We would have thought it ought to be possible for standard arrangements to be agreed between the major utilities and local authorities, rather along the lines of the Health Emergency Badge, to minimise the number of disputed cases.

Evidence

Many appeals turn on conflicts of evidence. It is the Adjudicator's role to resolve such conflicts by making findings of fact on which to base the decision. We have commented in previous reports on the value of photographic evidence in reducing the potential for such conflicts and assisting the Adjudicator in resolving them. *Gorman v Wandsworth* is an example of such a case.

Taxis in Bus Lanes

We have dealt in previous reports with the use of bus lanes by taxis. The general position is that a hackney carriage is a "taxi" for the purposes of the relevant law and is permitted to use bus lanes open to taxis, whereas a private hire vehicle is not a "taxi". *Thorpe v Transport for London* confirms that a taxi may use bus lanes outside its home area: that is, the area in which it can ply for hire.

CASES DIGEST

Yellow Box Contravention

Jennings v Transport for London (PATAS Case no. MV0285GT01)

The local authority issued a Penalty Charge Notice, asserting that the vehicle entered and stopped in a yellow box junction when prohibited.

The local authority relied on contemporaneous videotape, which did show the vehicle approaching the box junction and substantially crossing it, so that the vehicle could draw up at the lights beyond the box as the first vehicle in the queue. However, because of the length of the vehicle, part of it was left in the yellow box.

The Regulations provided that "no person shall cause a vehicle to enter the box junction so that the vehicle has to stop within the box junction due to the presence of stationary vehicles". The contravention is only established when the subject vehicle stops due to the presence of stationary vehicles. In this case the vehicle stopped in order to comply with a red light. The contravention was therefore not established.

The Adjudicator was not satisfied that the local authority had accurately asserted in the Penalty Charge Notice the contravention. The function of a Penalty Charge Notice was to make an allegation so that the recipient was aware of the allegation against them and in a position to deny or accept it. Here the local authority failed to assert an essential element of the allegation, namely that the vehicle stopped due to the presence of stationary vehicles. Where there are other reasons for stopping (as here) the allegation was not made out. It was vital that an allegation was correctly stated – otherwise a recipient might well concede an allegation where an essential element was not made out.

Appeal allowed.

Lorry Ban Signage

Carboclass v ALGTEC (PATAS Case No. LB47)

Lorries over a specified weight are banned from entering certain restricted roads in Greater London at weekends and overnight. An exception applied for vehicles displaying a permit. One condition of using the permit was a requirement to minimise use of the restricted roads.

A number of Appellants raised as an issue the adequacy of signage, the essential nature of their complaint being that either there was no signage in place at all to warn of the existence of the prohibition, or that the signage was partial, or contradictory in nature.

The Enforcing Authority's (ALGTEC) initial position had been that although there was 98% coverage, there was no obligation to provide any signage at all. One Appellant adduced in evidence a map published by the enforcing authority which advised that the maps could not be relied on to be up to date, and so the driver of the vehicle should check for signs on the road. The information given was manifestly contradictory to the Enforcing Authority's position.

At the adjourned hearing, the Enforcing Authority conceded the requirement to provide adequate signs, and asserted that there was (in effect) signage in place that created a ring around Greater London. It argued that the Secretary of State had authorised such an arrangement and adduced in evidence two authorisations made by the Secretary of State. These provided for erection of signs at specific places.

The Adjudicator held that in principle such a scheme might adequately sign the restrictions, but that the Authority had not adduced all of the approvals necessary to show that a zone had in fact been created.

Further, the Adjudicator expressed some concern that as the Enforcing Authority had conceded only "98% coverage" of signage - without defining what that actually meant - the zone was in all likelihood incomplete. Therefore, it remained open to an Adjudicator when considering any appeal in future, to consider whether signage was adequate. The Adjudicator reminded the Enforcing Authority that the burden of proving adequacy remained on it. In view of the concession of only 98% coverage, any future Adjudicator might well require evidence that works had been done to remedy the incomplete signage, require a map and all other authorisations to be adduced, to show that the zone had been created. Further, although the Enforcing Authority might show that the signs were placed in the spot authorised by the Secretary of State, this would not absolve the Enforcing Authority of showing that each and every sign was adequate. The Adjudicator noted that the Enforcing Authority had made no reference to signing the exit points to show the commencement of the unrestricted roads.

Finally the Adjudicator indicated that as drivers and operators are required to plan their routes in advance, and as the Enforcing Authority had not adduced in evidence any source of public information to enable advanced planning, the Adjudicator may be reluctant for the Enforcing Authority to enforce a Penalty Charge Notice based on a failure to plan a route where such information is not publicly available.

The appeals were allowed: the Enforcing Authority conceding that signage was not adequate in two of the four appeals; in respect of the remaining two the Adjudicator was not satisfied that the Enforcing Authority had shown the signage to be adequate.

Bill of Rights

Townsend v Transport for London (PATAS Case No. 2050330626)

The Appellant argued that the penalty charge was a "fine" and that he could not be fined without having first been convicted. He referred to the Bill of Rights 1689 and the declarations constituting the preamble, including that:

"All grants and promises of fines and forfeitures of particular persons before conviction are illegal and void"

The Adjudicator said that the Bill of Rights Act needed to be understood in the light of the contemporary language and the meaning of the context. The preamble declarations were very plainly addressing the limitation of the Crown prerogative and the imposition of law only by consent of Parliament. The Appellant argued that the use of the word "conviction" must mean that the Act was denying entitlement by any authority to impose any financial sanction without a criminal conviction, and that any subsequent legislation so creating an imposition breached the entrenched nature of the constitutional statute without a provision for express repeal.

The Adjudicator said that this narrow interpretation was not sustainable. What the declaration was doing was describing a general intent that the Crown had no power to impose fine or forfeiture without the consent of Parliament and the Rule of Law by the courts.

There have, in this country, been many situations where a financial sanction can be imposed by law without the situation being a criminal one.

The Adjudicator agreed with the view of the Adjudicator in *Higgins-v- Sefton (NPAS Case No.SF272*):

" The intention of the 1689 Act was to provide the citizen with certain rights and to prevent the imposition of any financial penalty without there being a right of challenge, which certainly in the areas of criminal law, is one purpose of the more modern European Convention on Human Rights. ...To that end the Road Traffic Act 1991 provides for a system of challenge and, if appropriate, appeal to this tribunal against the issue of the Penalty Charge Notice.

It is clear therefore that the 1991 Act does clearly establish a right of challenge to the Penalty Charge Notice which, it must be recognised, is to be regarded as a civil debt and not a fine."

The Adjudicator was not persuaded that the 1689 Act imposed any entrenched prohibition upon the imposition of a financial penalty for breaches of Traffic Management Orders or other laws relating to traffic. They were subject to a legal regime of independent judicial scrutiny created by statute and compatible with the European Convention on Human Rights.

The question of repeal, therefore, was irrelevant. The intention of the Bill of Rights was applied by the current law.

As to whether the scheme was a criminal one for the purposes of the European Convention on Human Rights, the Adjudicator agreed with the view of the Adjudicator in *Williams -v-City of Stoke on Trent (NPAS Case No. SK690*):

" The fact of decriminalisation means that the penalty charge is neither a fine nor a forfeiture requiring conviction. It is a civil penalty, with the penalty going to the council rather than to the Crown and it lacks many of the features of a criminal sanction. For instance, a penalty charge cannot result in imprisonment even if not paid."

Moreover an understanding of the nature of a penalty charge must have regard for the realities of modern life. London citizens in 1689 would have had no concept of the essential need for traffic management to the extent required today. It was appropriate to look to more modern constitutional principles. In the leading Human Rights case of Engel-*v- Netherlands (1980 1 EHRR 706*) the European Court of Human Rights considered that the question of whether or not a person was facing a "criminal charge" would be assessed by reference to three criteria:

1 the classification of the proceedings in the law of the country concerned,

2 the nature of the offence or conduct in question,

3 the severity of the penalty.

In the instant case, the Appellant had driven in a bus lane in contravention of a bye-law and the enforcement of the bye-law was expressed by Statute to be by the imposition of a fixed penalty (currently £100) enforceable by civil means.

It was instructive to compare this scenario with that in the case of *Air Canada -v- U.K (1995 20 EHTR 150*) where the Court determined that the impounding of an aircraft of several million pounds value, (in a Customs and Excise drug smuggling action) was not evidence of criminal proceedings. The criminal courts were not involved and there was no criminal charge.

Accordingly, the imposition of the penalty was not a criminal charge and liability arose other than by a conviction.

Removal

Schouwenburg v Hammersmith & Fulham (PATAS Case no. 2050483682)

A Penalty Charge Notice (PCN) was fixed to the vehicle for being unlawfully parked in a loading gap marked by a single yellow line. The Parking Attendant recorded that a resident's permit was displayed, but that the vehicle was "parked on SYL (single yellow line) causing obstruction to others vehicle *(sic)*". The car was then removed to the pound.

The Appellant did not contest the legitimacy of the PCN, but challenged the removal of his vehicle. The Appellant maintained that the Council's photographs demonstrated that there was "no obstruction to speak of", as there was still ample room behind the car for any person wishing to load and unload. He pointed out that the restrictions had less than half an hour to run. He also complained that the Parking Attendant had only seen his vehicle parked in contravention five minutes before it was towed away, implying that it was only because he admitted the car had been there since the previous evening that the Council could point to the period it had been parked in contravention. He contended that removal was disproportionate, as no obstruction was taking place.

The Adjudicator said that paragraph 5A of the *Removal and Disposal of Vehicles Regulations 1986* empowered a Local Authority Parking Attendant to arrange for the removal of a vehicle which has been permitted to remain at rest on a road in Greater London in contravention of a prohibition or restriction.

The Council had demonstrated that they had a policy in respect of removal of vehicles. They had highlighted criterion No 14, "Vehicle parked in a loading gap, causing obstruction, during controlled hours" as the one under which they acted in this case. They pointed out that on the Appellant’s own admission the car had been parked in the same position since the previous evening. The vehicle had therefore been in contravention for over 7 hours by the time the PCN was issued and the vehicle removed.

The Appellant cited the decision made by an Adjudicator in the National Parking Adjudication Service (NPAS), *Kembery v Bristol City Council*. That appeal was allowed on its own facts, the Adjudicator concluding that she could not be satisfied that the Pay & Display (P & D) ticket which the Appellant had bought was not in fact properly displayed. However the Adjudicator went on to make certain observations about the implementation by that Council of their removals policy. The Appellant sought to rely on those observations in support of his contention that the removal of his car in this case was a disproportionate enforcement measure. However, what was notable was that both the Appellant and the Adjudicator in that case acknowledged either expressly or implicitly that a car parked in contravention of waiting restrictions and/or causing an obstruction could be a legitimate subject for removal.

The Appellant's car was parked almost entirely on a single yellow line. When laying out the parking places and yellow lines in this street the Council would no doubt have assessed what they considered an appropriate length for a loading gap. Whilst the Appellant was correct in stating that there was room behind his car where a person (presumably in a vehicle) could load or unload, the space would not necessarily be long enough to fit a large commercial delivery vehicle. Even if it were, the Council were entitled to take the view that the car was causing an obstruction in that, by definition, a vehicle occupying part of the loading gap is causing an obstruction within it.

The fact that the nature of the parking was only No 14 in the list of criteria for removal was immaterial. The Council had shown that they had a policy for prioritising removals, and that this type of parking fell within it. To include this type of breach as meriting removal could not be considered to be a policy which no reasonable Council could adopt, i.e. it could not be said to be "*Wednesbury* unreasonable". Nor was it material that the length of time the car was parked in contravention only became known because the Appellant told the Council when he had parked it. The Council were entitled to remove the vehicle in any event; the length of time it transpired it had in fact been parked in the offending position simply made it more difficult for the Appellant to argue that removal was disproportionate.

If it were the case that Article 1 of the First Protocol to the European Convention on Human Rights was engaged in this case, the degree to which the Appellant was deprived of his entitlement to peaceful enjoyment of his property was "necessary to control the use of property in accordance with the general interest", and therefore a proportionate interference with that entitlement.

Appeal refused.

Holder v Westminster (PATAS Case no. 2050371510)

The vehicle was unlawfully parked in a resident's bay and a Penalty Charge Notice was issued to it. The vehicle was subsequently removed at a time when parking in the bay was not restricted to residents.

The Adjudicator said that the local authority had a legitimate policy of keeping residents' bays clear for residents. However, removing the vehicle at a time when parking was not restricted to residents could not be said to be an application the policy and therefore was not lawful.

Appeal allowed to the extent of the challenge to the lawfulness of the removal.

Bennett v Kensington and Chelsea (PATAS Case no.: 205005216A)

The Appellant's vehicle had been removed. The Adjudicator refused her appeal against the penalty charge.

As to the removal, there was a considerable delay before the removal of the car was notified to the TRACE system, and hence before the Appellant was able to ascertain that it had in fact been removed rather than stolen. It appeared that details of removed vehicles were not entered onto a database system until the vehicle arrived at the pound, and the period that elapsed before this occurred depended on the distance of the contravention location from the pound, traffic delays or "unforeseen circumstances".

The Code of Practice on Parking Enforcement issued by the (then) Parking Committee for London stated (Chapter 7 Paragraph 16.2), "To provide a good service to the public, information about the removal of a vehicle should be known centrally as soon as possible; the only way to do this is directly from the removal trucks". At paragraph 17.2 the Code stated with regard to the Communications Centre, "This service to the public is very sensitive, and must provide a good, consistent source of information". Under "The Vehicle Pound", paragraph 18.5 stated, "Unnecessary delays and inconvenience should not be part of the process of recovering a vehicle'.

The Adjudicator said the local authority had failed to explain why they had not adopted a system of immediately reporting the removal of a vehicle. In the light of the anxiety and distress caused to the Appellant on this occasion, the Adjudicator informed the local authority that in the absence of a response the Adjudicator would assume that the local authority agreed it was appropriate for the release fees to be refunded. The local authority having not responded, the Adjudicator directed the local authority to refund the release fees.

Signs

Cukier v Barnet (PATAS Case No. 2050056386)

On an application for review, the Appellant argued that if Controlled Parking Zone (CPZ) entry signs were not in place as required, that rendered all the controls within the CPZ unenforceable.

The Adjudicator said that Direction 25(1) of the Traffic Signs Regulations and General Directions 2002 provided that the road markings specified in column (2) to the direction may be placed on a road only in conjunction with, and on the same side of the road as, a sign in column (3). In other words, the general position was that where there was a road marking there must also be a sign. However, Direction 25(2) provided that this did not apply in a CPZ where the required CPZ entry signs were in place, except where the road marking indicated restrictions different from the restrictions on the entry signs. The effect of Direction 25(2) was permissive and

limited. If both a sign and a road marking were in place in accordance with Direction 25(1), it mattered not whether the location was in a CPZ or whether the entry signs were in place. It was only necessary to consider whether the relaxation prescribed by Direction 25(2) applied if there was a road marking without the sign that would normally be required by Direction 25(1). So far as this parking place was concerned Direction 25(1) had been complied with; there were both the road marking and the sign. Accordingly the controls to which they applied were enforceable.

Application for review rejected. Original decision to refuse the appeal confirmed.

Aidiniantz v Westminster (PATAS Case no. 2050185210)

The issue was whether the sign at the bus stop in question was a lawful sign.

The photographs produced by the local authority showed that the sign, whilst apparently purporting to be that prescribed by Diagram 974 in Schedule 6 to Part I of the *Traffic Signs Regulations and General Directions 2002*, did not appear to be a true representation of the Diagram or a permitted variant thereof.

The local authority said that they had dispensation for the sign but had been unable to obtain a copy of it.

The Adjudicator found that the sign was not in prescribed form and thus this contravention was not enforceable.

Appeal allowed.

Thornburn v Camden (PATAS Case no. 205027945A)

The Appellant turned right out of Buckley Road into a bus lane on Kilburn High Road. The issue was whether the signage was adequate. The advance warning sign in Buckley Road was parallel to the kerb, not facing the traffic. It therefore could not be read by motorists approaching the junction with Kilburn High Road.

In its Notice of Rejection, the local authority said "the signs in Buckley Road are for information purposes and it is the main sign on the bus lane itself which provides the main notification".

The Adjudicator said this statement was misconceived. All the signs were for information; none was different from another in that respect. The implication that the signs in Buckley Road were less important than those in Kilburn High Road and that any deficiency in them did not matter was wrong. The signage was manifestly inadequate.

Appeal allowed.

Procedures for Issuing Permits

Putney Removals v Wandsworth (PATAS Case no. 2050076124)

Putney Removals was the trading name of a company run by a Mr White. A Penalty Charge Notice (PCN) was issued to the vehicle because it was parked in a residents' bay without a resident's permit.

Mr White argued that the only reason the vehicle did not have a permit was because the Council unreasonably refused to issue him with one, despite the fact that he had produced all the required documentation to qualify for the issue of a permit.

The Council stated that it was their policy that if a motorist had 3 or more outstanding PCNs a resident permit would not be issued until all outstanding penalties were resolved. They produced what they described as the relevant pages of a committee report establishing this policy. In fact, these related to a proposal put before the Regeneration and Transport Committee, which proposal had not been adopted.

The Adjudicator drew the following conclusions from the evidence:

- As at 8 July 2003 Mr White had produced all the necessary documentation to demonstrate his entitlement to a resident's permit.
- The Council refused to issue him a permit because there were 12 PCNs outstanding at that time.
- Their refusal was based on a practice (described inappropriately as a "policy") to refuse permits to applicants who had more than 3 PCNs outstanding at the time of the application.
- It had been *proposed* that such a policy be incorporated in Traffic Management Orders, but that proposal had been rejected.
- Council officers purported to have a "discretion" in operating the so-called policy, yet there were no Council guidelines as to how Council staff should apply such discretion.
- There was nothing in or with the application forms issued to prospective permit applicants to advise them of the existence of the practice.

The Adjudicator concluded therefore that, save for the "outstanding PCNs policy" a permit should have been issued to Mr White on 8 July 2003. Had such a permit been issued it was reasonable to assume that Mr White would have displayed it as required in his vehicle, and therefore that this PCN would not have been issued.

There was no legal basis on the Council's evidence for the operation of the practice of refusing to issue a permit because of outstanding PCNs. Where a residents' parking scheme existed, a resident with a vehicle must be entitled to a permit subject to proper documentation being provided. The issue of outstanding PCNs was an entirely separate matter, where there were effective mechanisms established by the *Road Traffic Act 1991* for representations against liability, appeals to Adjudicators

and enforcement if necessary through the court system. Whilst it is proper for Councils to have the right to withdraw or refuse to issue permits where there has been abuse of the permit as such, it is not proper to use the power to withhold a permit as a lever to extract payment of outstanding penalty charges, for which there is already an effective and lawful enforcement system in place.

The Adjudicator concluded that the Council had no legal basis for refusing to issue a resident's permit to Mr White. He found that had they not refused the permit, the contravention would not have occurred. The Council could not benefit, by way of receipt of a penalty charge, from their own unlawful act. In these circumstances they could not enforce this PCN.

Appeal allowed.

Weah v Hammersmith & Fulham (PATAS Case no. 2050146729)

The appeal concerned the local authority's scheme for market traders' bays and the issue of permits for parking in the bays under the 1994 Market Traders' Parking Places Order.

The Appellant had been issued with a permit for parking in the bays. He had, however, used it to park in a business permit holder's bay, believing that the permit allowed him to do so. A Penalty Charge Notice was issued to his vehicle for parking in the business bay without displaying a business permit.

The Adjudicator found that the factual position regarding the issue of market traders' permits appeared to be as follows. The application form used for the Appellant's application for his permit was in fact that for a business permit. The explanatory letter apparently issued when such permits were issued said "Please find attached your New Resident Parking Permit …". The local authority said that because this letter gave no information specific to market traders, when such permits were issued the permit office staff told the applicant that the permit could only be used in market trader bays. The permit itself was in fact described on its face as "Business Parking Permit". The term "Market Trader" appeared in the box intended for vehicle registration number; and its tenor was merely descriptive of the holder of the permit rather than designating the permit as one issued under the 1994 Order. Furthermore, it did not bear the street trader's licence number, as required by article 21(a) of the Order.

The Adjudicator took the view that the use of documents intended for other permits was plainly undesirable and likely to mislead the applicant. There could be no guarantee that in any specific case the required information has been given to the applicant orally; and even if it was, to give it orally only was undesirable. The terms for the use of the permit ought to be provided in writing. It was entirely possible and would not be surprising for people to whom these permits were issued to be unclear as to their permitted use.

In any event, the Order for the location in question stated that at the time of the alleged contravention parking was permitted with a zone F resident's or business parking permit. The permit issued to the Appellant was described on its face as a business parking permit. This permit was displayed on the vehicle and therefore the Appellant was legally parked.

In the light of these views expressed by the Adjudicator the local authority decided not to contest the appeal. It accepted that the informal administration of the market trader's scheme was poor and needed revision.

Appeal allowed.

Christie v Lewisham (PATAS Case no. 2050483809)

When the Appellant purchased a new vehicle at the start of July 2005, the vendor in accordance with DVLA regulations sent the registration documents directly to the DVLA. The Appellant received the registration documents back from the DVLA on 14 July. He needed these to get a new resident's permit from the Council. Meanwhile he continued to display his resident's permit, which bore the registration mark of his old vehicle. The vehicle was issued with a Penalty Charge Notice on 15 July for being parked in a residents' space without a permit - the day he went to the Parking Shop with the new registration documents to get a replacement permit for his new vehicle.

The Appellant produced the letter dated 1 June 2005 he received from the Council when his original permit was renewed. There was no instruction in this letter that he should get a temporary permit to cover the period while awaiting registration documents from the DVLA if he were to change his vehicle. The implication of the letter was that provided the motorist follows the instructions in the letter on changing his vehicle, he would not be penalised. The Council's procedures did not appear to take account of the inevitable gap by providing for a free, temporary permit.

The Appellant had a legitimate expectation that if he followed the instructions in the letter of 1 June 2005 he would not be penalised. He did follow those instructions.

Appeal allowed.

Paying for Parking

Callaghan v Waltham Forest (PATAS Case No. 2050413235)

The Appellant parked in a voucher-parking place to visit a shop, Pamphillon, across the road. He saw a sign that said vouchers could be purchased from any shop participating in the scheme. He went to Pamphillon and saw a "P" in the window, indicating that it did participate in the scheme. The shop assistants were attending to customers. After a short time the Appellant interjected and said he needed a

voucher. One of the shop assistants got a voucher and completed it for the Appellant by scratching the relevant details. The time scratched was 2.55. The Appellant then returned to his vehicle to find the parking attendant next to it, apparently taking notes. The Appellant showed him the voucher. The parking attendant said it was too late. The Appellant said he had done everything you are supposed to do and the parking attendant said you are allowed 5 minutes. The Appellant said he had been in the shop about 3 minutes. The parking attendant said he had not. The Appellant returned to the shop to ask them for a witness statement. The shop assistant agreed and they had a discussion about how long the Appellant had been in the shop. He then returned to the vehicle to find the Penalty Charge Notice on the windscreen and the parking attendant gone.

The Adjudicator said that where there is a voucher scheme, the motorist is allowed a reasonable time to obtain a voucher. There is no precise provision as to the maximum time allowed. In obtaining the voucher the motorist must do only that and not engage in any other activity. It is inherent in such a scheme that a motorist may be delayed somewhat by the fact that the shop assistants are engaged with other customers, as was the case here. In this respect the time taken to get a voucher is likely to be more variable than where tickets are purchased from a pay and display machine.

In its Case Summary the local authority said that although signs indicated that vouchers might be purchased from shops displaying the P, it was expected that a supply of vouchers be kept in the vehicle. This expectation had no justification in law. The scheme was that vouchers were sold by shops and that was the source of them for motorists.

The Adjudicator was satisfied that the Appellant acted within the requirements of the scheme; he went to the shop to obtain a voucher and returned to his vehicle with it as soon as he had obtained it. In the context the time taken to do so was entirely legitimate. He considered it more likely the time was about the 3 minutes stated by the Appellant, bearing in mind that the Penalty Charge Notice was issued and fixed to the vehicle after the Appellant had returned with the voucher. So the 5 minutes given in the parking attendant's notes between the first observation and the issue of

the Penalty Charge Notice included time after the Appellant had returned with the voucher. This was corroborated by the time scratched out - 2.55. The Appellant plainly would have only then taken a short time to return to the vehicle and must have been there before 2.57, the time at which the Penalty Charge Notice was issued. In any event, whatever the precise time, the Appellant had complied with the requirements of the scheme.

Appeal allowed.

Pope v Wandsworth (PATAS Case no. 2050167208)

The issue was whether the appellant parked without clearly displaying a valid pay and display ticket.

The local authority operated a Residents' Parking Discount Card scheme under which a holder of such a card could purchase a pay & display ticket at a discount. Such tickets bore the word “RES” and had to be displayed with a valid residents’ permit.

The appellant had displayed a pay and display ticket. However, the local authority submitted that since the word "RES" (i.e. resident) appeared in the top right hand corner of the ticket, it inevitably meant that the appellant must have inserted into the machine a Residents' Parking Discount Card prior to the issue of the ticket. No residents’ permit was displayed.

However, the Adjudicator was satisfied, having considered the appellant's submissions, that as a resident of Gloucestershire she had no knowledge of the Discount Cards. He had received no evidence that the machine was checked for faults either immediately before or after the alleged contravention, but notwithstanding this omission, he was satisfied that the appellant genuinely inserted sufficient coins into the machine to allow her to park for an appropriate period which covered the time that the PCN was issued. There was no need for a permit to be displayed since he was not satisfied that the pay and display ticket was purchased with a Discount Card.

Appeal allowed.

Ownership

Liverpool Motor Auction v Ealing (PATAS Case No. 2050194266)

The Appellant was the registered keeper of the vehicle at the time of the contravention. It produced a printed Credit Slip on which the details of a sale were handwritten. The local authority rejected the Appellant’s representations, saying they would only accept proof if the following was contained in a sales invoice.

- The purchaser’s full name and address including the postcode and sale date.
- Registration mark and model of the vehicle.
- Signature of purchaser.
- Sales agreement must be on printed paper and not handwritten, with the company name, address and telephone number and company registration number.

The Adjudicator adjourned the case, expressing concern at the terms of the Notice of Rejection, which was misconceived and did not comply with the law for the following reasons.

> (a) Paragraph 2(5) and (6) of Schedule 6 to the Road Traffic Act 1991 requires the person making the representations to supply the name and address of the purchaser "if that information is in his possession". Accordingly if there has been a sale but the person making the representations does not have the information, the local authority cannot decline to accept the representations because they have not supplied it.
>
> (b)The postcode is not an essential part of the address.
>
> (c) There is no requirement for a contract for sale to be in writing at all, still less in the particular form apparently required by the local authority.

In response the local authority said it no longer contested the appeal and was conducting a complete review of procedures relating to ownership.

Appeal allowed.

McCabe v Kensington and Chelsea (PATAS Case no.: 2050119103)

The Appellant produced a sales invoice showing that he sold the vehicle on 21 October 2004. He was therefore not the owner on the date of this contravention. The Adjudicator allowed the appeal.

The curious feature of this case was that the local authority stated that it had received the sale invoice and payment of the penalty from the buyer, yet still opposed the appeal. It contended that liability remained with the Appellant as the registered keeper, despite the fact that the legislation provides for the rebuttal of the presumption that the registered keeper is the owner.

Procedural Defects

Miah v Westminster (PATAS Case no. 2050339777)

The Appellant produced a Charge Certificate that was issued to him on 10 October. At that time this appeal was pending. The Charge Certificate informed the Appellant that the penalty was increased to £150, threatened enforcement action through the courts if it was not paid, and stated that it was then too late to challenge the issue of the Penalty Charge Notice.

The Adjudicator said that issued as it was whilst the appeal was pending, this was an entirely unlawful demand for money, coupled with the threat of court action. For a public authority to issue such a document was utterly unacceptable. But this was not an isolated case. He was aware of other instances of this happening over a period of

time. His understanding was that such unlawful Charge Certificates were being issued because of a problem with the local authority's computer system. That might be the explanation, but it did not make it any the less unacceptable. Nor did it seem that in the meantime the local authority had put in place steps for a manual scrutiny of the documents it issued to intercept any unlawful Charge Certificates to prevent them being despatched.

That the local authority continued to issue such documents, knowing full well that it was happening and that they were unlawful, and that this had persisted for some time, appeared to suggest a lack of appreciation by the local authority of the seriousness of the situation and a lack of urgency in resolving it.

The procedural impropriety in the issuing of the unlawful demand fundamentally undermined the lawfulness of the enforcement process in this case, and undermined the authority and jurisdiction of the tribunal. This unlawful act debarred the local authority from pursuing further enforcement of this penalty.

Appeal allowed.

Proud v Westminster (PATAS Case no. 2050188081)

The parking attendant noted "I just dropped the PCN on the windshield as she was driving". The Adjudicator said that the Penalty Charge Notice must be fixed to the vehicle. Merely dropping it on to the windshield did not constitute fixing. The Penalty Charge Notice was not properly served.

Appeal allowed.

Utilities: Dispensation procedures

Assetco Vehicles Ltd v Kensington and Chelsea (PATAS Case no.: 2050044376)

The vehicle was parked on a double yellow line where loading/unloading was prohibited. The Appellant contested liability on the basis that it claimed the vehicle was attending a gas emergency.

There was not apparently an exemption from the parking controls in those circumstances. Nevertheless, the tenor of the correspondence from the local authority was that it would be prepared, as a matter of discretion, to cancel the Penalty Charge Notice if the Appellant could show that the vehicle was attending an emergency. It was not, however, so satisfied on the evidence produced to it by the Appellant, which it said differed from that produced in similar cases on previous occasions - a copy of Transco's Emergencies and Meter work form. The Appellant, on the other hand, said that the evidence it produced - the "Whereabouts Sheet" - had been accepted as sufficient evidence before.

The Appellant also produced in evidence a computer print out, but not the Transco Emergencies and Meter work form. There was inconsistency between this computer record and the Whereabouts Sheet. The Adjudicator said that the explanation it had provided of the inconsistency did not persuade him that the vehicle was parked in circumstances constituting an emergency.

The Adjudicator expressed concern that the matter had got as far as an appeal. He found it surprising that there appeared not to be in place agreed arrangements to cover this sort of situation so that the Appellant knew what was required of it to satisfy the local authority that the vehicle was attending an emergency involving public safety. Such arrangements would avoid the need for the time of both the parties and the tribunal being taken up on appeals of this kind. Indeed, he would have thought it ought to be possible for standard arrangements to be negotiated on a London wide basis. He accordingly referred his decision to the Association of London Government as the body likely to be best placed to take this matter forward.

Photographic Evidence

Gorman v Wandsworth (PATAS Case no.: 2050132906)

The issue was whether the visitor's permit that was on the dashboard was clearly displayed. The local authority produced a photograph taken by the parking attendant clearly showing the bottom of the permit folded over, obscuring the zone and permit number. The Adjudicator found that the permit was not clearly displayed.

Appeal refused.

Taxis in Bus Lanes

Thorpe v Transport for London (PATAS Case No. 2050111757)

The vehicle was licensed as a hackney carriage by Thanet District Council. The question was whether when in London it was a “taxi” and so could be driven in bus lanes permitted to taxis.
The reviewing Adjudicator said that regulation 4 of the Traffic Signs Regulations and General Directions 2002 required only that the vehicle was licensed under section 37 of the Town Police Clauses Act 1847, section 6 of the Metropolitan Public Carriage Act 1869 or under any similar enactment. This vehicle was so licensed and was therefore a "taxi" as so defined. The fact that it could not ply for hire in London was irrelevant; it did not cease to be a licensed hackney carriage when it was outside the area in which it could ply for hire. It was common for hackney carriages to pick up a passenger within the area that they could ply for hire and take them to a destination outside that area.

Appeal allowed.

Martin Wood

Chief Parking Adjudicator

August 2006