Joint Annual Report of the Parking Adjudicators to The Association of London Government Transport and Environment Committee 2006-2007

Chief Adjudicator's Foreword

I am pleased to present to the Committee this joint report of the Parking Adjudicators for the year 2006-2007.

This year we received the second largest number of appeals ever, 57,040, exceeded only by 2004–2005. But we also disposed of a record 62,791 appeals, thus reducing our backlog of postal cases from over 5,000 at the beginning of the year to fewer than 1,200 by the end. As a result the waiting time for a postal case first coming before an Adjudicator is down from 12 weeks after its scheduled date at the beginning of the year to, at the time of writing, four weeks.

Sadly for us, our colleague Richard Crabb retired as an Adjudicator in April. Richard was appointed in 1994 in the early days of the tribunal, as one of the second tranche of Adjudicators to be appointed. When the first Chief Parking Adjudicator, Caroline Sheppard, left to take up her position as Chief Parking Adjudicator for England and Wales in 1999, Richard served as Acting Chief Parking Adjudicator until I took up post in April 2000. Richard also featured prominently in the documentary programme *Clampers*, which gave the public an insight into the workings of the Adjudicators as well as parking enforcement generally. I would thank Richard for his thirteen years valuable service and, on behalf of us all, wish him a long and happy retirement.

It is interesting to reflect that in 1994-1995 when Richard joined the tribunal, there were 16 Adjudicators and 4,869 parking appeals. Since then the Adjudicators' jurisdiction has widened to include bus lane, moving traffic and the London lorry ban appeals. There are now 50 Adjudicators and the number of appeals has grown over tenfold. In terms of cases received, we are the fifth busiest tribunal in the country.

I would wish to record my thanks to the Adjudicators for the support they have given to the tribunal this year.

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

Who We Are and What We Do

Parking Adjudicators are judicial office holders appointed under section 73(3) of the Road Traffic Act 1991. They decide appeals from members of the public against penalties imposed by London local authorities, including Transport for London, for contraventions of traffic controls relating to

- parking
- bus lanes
- moving traffic
- the London lorry ban.

Workload

We give here statistics relating to our overall workload during the year. Further details of these figures by local authority can be found in the statistics produced by London Councils.

Note. "Received" figures may not necessarily tally with figures for actions taken because of matters being carried forward from year to year.

Appeals Received

The following table shows the numbers of appeals received.

Appeals Received by Type	2006 - 2007	2005 - 2006	Increase (Decrease)	
			Number	%
Parking	51,484	48,227	3,257	6.8
Bus Lane	1,965	2,774	(809)	(29.2)
Moving Traffic	3,521	1,610	1,911	118.7
Lorry Ban	70	103	(33)	(32)
Total	**57,040**	**52,714**	4326	8.2

The fall in the number of bus lane appeals may well reflect greater compliance as motorists have become more aware of stricter enforcement.

The increase in moving traffic appeals is no doubt a reflection of more widespread enforcement as more local authorities have implemented moving traffic enforcement.

The overall appeal rate was 0.94% of all Penalty Charge Notices issued. There are considerable differences between the different types of appeal, for which the appeal rates are as follows.

- Parking 0.99%
- Bus lane 0.43%
- Moving traffic 0.84%
- Lorry ban 2.91%.

The parking rate has remained consistently stable at around 1%. The rate for bus lanes has always been lower, we believe because enforcement is invariably by camera. The pictorial evidence this produces leaves much less room for argument about the facts compared with many parking cases, where no pictorial evidence is available. However, it is now becoming more common for there to be pictorial evidence in parking cases, either because enforcement has been by CCTV or from photographs taken by the parking attendant. It will be interesting to see whether this trend results in a fall in the appeal rate. Another difference that may affect the appeal rate is that in bus lane cases there is only the one contravention – being in a bus lane when prohibited – compared with a large number of parking contraventions.

Given that moving traffic is also almost invariably enforced by camera, it is interesting that the appeal rate is closer to that for parking rather than bus lanes, as perhaps might have been expected. Moving traffic enforcement is relatively recent, so there may be an element of a bedding down period during which motorists are more inclined to appeal. In addition, whether or not a contravention has been committed is with some moving traffic contraventions perhaps rather more complex than with bus lanes. As can be seen from the table below, although the appeal rate was higher, so was the rate of appeals allowed. The higher appeal rate was therefore not the result of motorists making more unmeritorious appeals.

Statutory Declarations Received

The following table shows the number of statutory declarations received and the action taken. Comparative figures for 2005-2006 are not shown as they are not readily available.

Statutory Declarations Received by Type	2006 - 2007	Scheduled as Appeal	Other Direction
Parking	2,574	1,023	1,255
Bus Lane	321	123	179
Moving Traffic	247	119	113
Lorry Ban	0	0	0
Total	**3,142**	**1,265**	**1,547**

Appeals Disposed of

The following table shows the numbers of appeals disposed of.

Appeals Disposed of by Type	2006 - 2007	2005 - 2006	Increase (Decrease)	
			Number	%
Parking	56,350	50,614	5,736	11.3
Bus Lane	2,593	3,174	(581)	(18.3)
Moving Traffic	3,780	861	2,919	339
Lorry Ban	68	85	(17)	(20)
Total	**62,791**	**54,734**	**8,057**	**14.7**

The appeals disposed of exceeded appeals received by 5,751. As a result our backlog of postal cases at the end of the year was under 1,200.

Appeals Not Contested by the Local Authority

The following table shows the numbers of appeals not contested by the local authority.

Appeals Not Contested By Type	2006 - 2007		2005 - 2006	
	Number	As % of Appeals Disposed of	Number	As % of Appeals Disposed of
Parking	18,546	32.9	12,075	23.9
Bus Lane	402	15.5	520	16.4
Moving Traffic	1027	27.2	310	36.0
Lorry Ban	16	23.5	29	34.1
Total	**19,991**	**31.8**	**12,934**	**23.6**

The number of appeals not contested by local authorities remains a concern. However, the higher figure for parking includes a large number of cases not contested because the Penalty Charge Notice in question was not compliant, following the decision in *R (Barnet) v The Parking Adjudicator* on which we reported last year. Without these the parking figure would have been much lower, and the figures for all the other types of appeal were, in percentage terms, lower than for the previous year. Perhaps, therefore, there is some encouragement to be taken from the figures.

Appeals Allowed

The following table shows the numbers of appeals allowed, including appeals not contested by the local authority.

Appeals Allowed by Type	2006 - 2007		2005 - 2006	
	Number	%	Number	%
Parking	38,579	68	28,121	56
Bus Lane	1,182	46	1,285	40
Moving Traffic	2,143	57	479	56
Lorry Ban	49	72	74	87
Total	**41,953**	**67**	**30,627**	**55**

The higher percentage of parking appeals is no doubt again to a large extent accounted for by the effect of R *(Barnet) v The Parking Adjudicator.* In addition to the many cases expressly not contested by local authorities as a result, there were also many allowed because the local authority had effectively conceded the case by default by not submitting any evidence, and had done so apparently because the Penalty Charge Notice fell foul of the *Barnet* decision.

Applications for Review

The following table shows details of review applications received.

In this table:

- "Accepted" means that the Adjudicator proceeded to conduct a review
- "Allowed" means that the Adjudicator reversed the original decision to allow or refuse the appeal.

It should be noted that the figures for 2005-2006 do not include any applications for moving traffic or lorry ban appeals, for which statistics are not readily available.

Applications	Received		Accepted		Allowed	
	2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	2005-2006
Appellant	1352	1891	449	491	172	448
Authority	92	74	75	42	28	10
Total	**1444**	**1965**	**524**	**533**	**200**	**458**

Applications for Costs

The following table shows details of costs applications received.

Applications	Received		Awarded		Total Amount £	
	2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	2005-2006
Appellant	199	226	82	80	5,871.47	5,929.16
Authority	32	41	30	37	1,927.27	2,696.21
Total	**1444**	**1965**	**524**	**533**	**7,798.74**	**8,625.37**

The small number of applications and awards, and the low total figure in monetary terms, reflects the limits of the power under regulation 12 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 to award costs. The regulation provides, in summary, that the Adjudicator may award costs only against a party that has acted frivolously, vexatiously or wholly unreasonably.

It should be noted that ancillary work - which includes reviews, costs, decisions on extending time for late appeals and making directions on statutory declarations referred by local authorities – takes up a good deal of adjudicator time, broadly equivalent to 1,000 appeal decisions a month.

Council on Tribunals Annual Conference 2006

The theme of the conference was: *"Right first time" – stimulating improvements in decision making through feedback.* This is a central plank of the Government's continuing reform of the tribunal system. It echoes our recommendation in our 2003-2004 annual report "*that all local authorities should have in place arrangements for addressing feedback received from the Adjudicators and taking such action on it as may be appropriate".*

Lord Falconer, the Lord Chancellor and Secretary of State for Constitutional Affairs, referred to the importance of the tribunal reform programme and identified the characteristics of tribunals as:

- Easily accessible
- Simple
- Speedy
- Inexpensive
- Proportionate
- Justice exercised by those with expert knowledge.

We believe that we measure up well against these standards.

Lord Justice Carnwarth, the Senior President of Tribunals designate, addressed the conference theme, saying that a main aim is to reduce tribunal caseloads by improving first time decision making. He said that Martin Partington of the Law Commission had prepared a paper on feedback which provided some helpful pointers:

- The need for mechanisms for feedback
- That cases are often prepared by people who have never seen the tribunal in action
- Decisions are often delivered back without comment
- The task of a tribunal is not just to make individual decisions, but to draw attention to ways in which decision making can be improved.

We do provide feedback to local authorities in a variety of ways: in decisions, by the Chief Adjudicator drawing attention to issues, at user groups and in these annual reports. We are encouraged that local authorities increasingly respond to such feedback, and do so in a constructive manner. *National Grid v Camden* (Cases Digest, page 35) is an example of this. Feedback should be seen as a positive force for improvement, to the benefit of all, not least to local authorities through improved public perception and the reduction in appeals that should follow from higher standards.

The conference heard an interesting presentation from His Honour Judge Michael Harris, President of the Appeals Service, which deals with social security appeals. His annual report is required by law to report on the standards achieved in departmental decision making. He reported that 40% of benefit appeals were allowed, and asked why? He said that in 50%-70% of cases, this was due to additional evidence being produced. Other major reasons were:

- The tribunal accepted evidence that the department had not
- The department had attached the incorrect weight to appellant evidence
- Lack of consideration brought to the issue at appeal.

Had these reports had any effect? Judge Harris said that

- they are a constant reminder there is room for improvement
- their conclusions are readily accepted by Ministers, senior officials
- but lack of resources prevents action at the coal face
- there has nevertheless been an overall improvement in departmental decision making in the last 5 years.

The issues addressed by Judge Harris will perhaps strike a chord with many readers of this report.

The conference also heard from Mr Justice Hodge, President of the Asylum and Immigration Tribunal, who emphasised that the tribunal decision is the starting point for feedback; and from Tony Redmond, Local Government Ombudsman, on the role of the ombudsmen in the development of good administration.

Tribunals Service

We should note that the Tribunals Service was launched in April 2006 as an executive agency of the Ministry of Justice. Its function is to provide a unified administration for the tribunals system. Its role in providing administrative support to tribunals is essentially the same as the Committee's role in providing such support to the Parking Adjudicators. It currently provides common administrative support to 27 central government tribunals and organisations. There are plans for more existing tribunals to join the Service from other government departs in the future. In addition, all new, non-devolved, central government tribunals will be established as part of the Tribunals Service. Local government tribunals, including ourselves, have, for now, been excluded from the remit of the new Service because of the need for separate and fuller consideration of their different funding and sponsorship arrangements.

Tribunals, Courts and Enforcement Act 2007

As its title suggests, this Act covers a range of matters, including the following that are of interest to us.

A Unified Tribunal

The Act contains provisions that complement the creation of the Tribunals Service, by providing for the bringing together of the tribunals themselves into a unified tribunal structure. It also provides for Tribunal Procedure Rules for the new tribunals structure to be made by a Tribunal Procedure Committee, whose members will be drawn from the judiciary and tribunal practitioners. We will refer to this later in this report.

Administrative Justice and Tribunals Council

The Act replaces the Council on Tribunals with the Administrative Justice and Tribunals Council, with a wider remit. As well as wide powers to keep under review and report on tribunals individually and in general, the AJTC is also required to keep under review the administrative justice system as a whole. "The administrative justice system" is defined as:

the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including-
(a) the procedures for making such decisions,
(b) the law under which such decisions are made, and
(c) the systems for resolving disputes and airing grievances in relation to such decisions.
It would seem that this would empower the AJTC to look not just into the operation of the Parking Adjudicators as a tribunal, but also into the operation of the traffic enforcement system more generally.

The AJTC is also empowered to scrutinise and comment on legislation relating to tribunals.

Judicial Review
The Act empowers the High Court, on quashing a decision of a court or tribunal, to substitute its own decision for the decision quashed. It may exercise this power only if:

- the decision is quashed on the ground that there has been an error of law, and
- without the error, there would have been only one decision which the court or tribunal could have reached.

Unless the High Court otherwise directs, such a substituted decision has effect as a decision of the relevant court or tribunal.

Whilst this may seem to be a somewhat esoteric legal matter, it effects a fundamental change in the manner in which judicial review operates. Previously, the High Court had power only to quash a decision and the matter would then go back to the relevant court or tribunal to decide it afresh. For the High Court to be able to make its own decision is therefore at one level a radical departure. At a more practical level, it merely short-circuits the previous need for a fresh decision by the original tribunal in circumstances where the decision it would make is inevitable. It will be interesting to see the extent to which the High Court uses this power.

Implementation of civil enforcement under the Traffic Management Act 2004

We reported last year that the Department for Transport had started the process of making regulations to bring into force the new regime of civil traffic enforcement under Part 6 of The Traffic Management Act 2004, which 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. The new regulations will replace the existing legislation contained in a mixture of public and local Acts.

We think it unfortunate that the Department chose to implement the Act initially in relation to parking only, rather than civil enforcement as a whole. As we understood it, the Act was intended, and certainly presented the opportunity, to introduce a single coherent regime for civil enforcement. We are not clear why the Department apparently regards parking as somehow intrinsically different from the other contraventions. In truth, all are minor traffic infractions. Although parking is a static infraction whilst the others are committed on the move, this does not mean that the practical operational differences this necessarily causes to enforcement cannot be accommodated within a single enforcement regime. The Department has now moved on to implementation in relation to the remaining contraventions. We expressed the hope last year that implementation would not lead to a perpetuation of the current unsatisfactory, incoherent position. As implementation has proceeded so far there is regrettably a risk that our hope will not be realised, or at least that the opportunity implementation presents will not be fully realised. There is still the opportunity through the second stage in the process to bring all contraventions together into a single regime. We hope the Department will take it.

As matters stand, there is even a danger that the regime will be more fragmented rather than less, and in a way that is of direct concern to us. At present a single set of regulations, The Road Traffic (Parking Adjudicators) (London) Regulations1993, apply to proceedings before us irrespective of the type of contravention. It seems that the result of the Department's present approach may be that there will be separate procedural regulations for parking and for the other contraventions. This will only increase complication to no-one's benefit. We hope this will be avoided.

Indeed, the preparation of the new regulations governing our procedures has been a difficult exercise altogether. The current procedures are contained mainly in the 1993 regulations and to some extent in the primary legislation. We have operated these procedures for over 13 years. One might therefore have thought that the sensible way for the Department to proceed in preparing new procedural regulations would be, before putting pen to paper, to consult us about the practical operation of the procedures, whether we had any suggestions for change and to seek our views on any ideas of their

own for change. The exercise therefore got off on the wrong foot by the Department presenting to us draft regulations that contained substantial changes to the existing regulations without prior consultation and without any explanation of the rationale for the changes. The reason for many of the changes was difficult to divine. Some appeared to be mere drafting taste; others were matters of substance effecting unnecessary changes to our present procedures without any benefit. Some of the changes would have caused unnecessary operational disruption, with the attendant costs.

The proposed regulations therefore caused us a great deal of concern. We are sorry to say that when we raised our concerns with the Department we were not met with a receptive response. As a result it took a great deal of effort and many months to obtain the changes that we regarded as the minimum to put them into an acceptable, if still less than ideal, form. Regrettably, though, the regulations preserve the current statutory declaration procedure substantially unaltered. This procedure is abused by a minority of motorists who make manifestly false declarations to hinder the recovery of penalties by local authorities. In our view the procedure needed to be reformed to address this.

In our view Government needs to learn the lessons from this unsatisfactory episode. Parking control policy is, of course, a matter for Government. Our concerns, however, related to our procedures and practices. These are not matters of parking control policy; they relate to the administration of justice. In that connection we note that under the 2004 Act, the regulations relating to appeals are made by the Lord Chancellor. We are therefore not clear why in relation to these regulations the Department for Transport was taking the lead. Indeed, there was at times a lack of clarity about whether the initiative for the content of the regulations had come from the Department for Transport or the Department for Constitutional Affairs (as then was; now the Ministry of Justice), and confusion about this between the two Departments. It seemed that Departmental sensitivities and protocols may have played a part in this. if this is so, it is not acceptable for them to get in the way of what should be the common goal of all parties: well-drafted regulations that serve the proper administration of justice.

It is also most surprising that Government was apparently so unwilling to consult and listen to those with the practical experience of the tribunal's procedures and practices, the adjudicators. By the creation of the Tribunal Procedure Committee to which we refer above, Government has accepted what is, we would suggest, the good sense of the principle that procedural rules are best determined by those with practical experience.

We would urge that in future it apply this principle to tribunals that are for the present outside the unified tribunals structure.

Managed Services Contract Re-let

The process for re-letting the outsourcing contract for the provision of much of the administrative support provided for the Parking Adjudicators by the Committee, most importantly the development and management of our computerised adjudication system, continued through the year. We were represented on the Project Board by the Chief Parking Adjudicator. The process has now been completed and the new contract awarded to the incumbent operator, Sungard Vivista Limited.

The computerised adjudication system is undoubtedly an enormous asset to the tribunal and without question contributes greatly to the efficiency of its operation. It has many advantages over working with paper and is much appreciated by the adjudicators. But nothing is perfect and one area of concern there has been in the past has been the difficulty in obtaining changes to the system and the time they have taken. This has resulted in the need for manual “work-arounds” in the meantime, which defeats the object of having a computerised system. We hope that under the new contract there will be an improvement in this respect.

Communications

We have continued the development of our website, which underwent a comprehensive overhaul the previous year.

We issued four 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.

In November 2006 we held a well attended seminar for local authority staff. The seminar considered topical issues including Electronic Data Interchange of evidence, system enhancements, and the overhaul of our website.

Training

We held one Adjudicators’ training meeting covering current issues of law and practice.

Judicial Reviews

Four appellants commenced judicial review proceedings to challenge the Adjudicator's decision in their appeal. In each case the High Court refused to grant permission for the application to proceed.

One Appellant commenced proceedings in the County Court to challenge the decision of the Adjudicator. The County Court has no jurisdiction to entertain such a claim. The proceedings were ultimately concluded by the County Court making an order dismissing the proceedings, with the consent of the parties.

One claim for judicial review commenced in 2005 remains outstanding. Permission to proceed has been refused by the High Court. The Court of Appeal has refused permission to appeal against that decision. The claimant has petitioned the House of Lords for leave to appeal. The decision is awaited.

***R (Transport for London) v Parking Adjudicator (Defendant) and Ademolake (Interested Party) [2007] EWHC 1172 Admin*.**

This judicial review, brought by Transport for London, related to so-called 'drive-aways', where a motorist drives away from the scene before the parking attendant is able to serve a Penalty Charge Notice under section 66(1) of the Road Traffic Act 1991 by fixing it to the vehicle or giving it to the person in charge of the vehicle. Section 5 of the London Local Authorities Act 2000 provides that a local authority may serve a Penalty Charge Notice by post on the owner of the vehicle where "*a parking attendant attempts to issue a penalty charge notice in accordance with section 66(1) of the Act of 1991 but is prevented from doing so by any person"*. The Parking Adjudicators had interpreted "attempt to issue" as requiring the parking attendant to be in the act of serving the Penalty Charge Notice and "prevention" as requiring violence or the threat of violence, not merely driving away.

The High Court endorsed the Adjudicators' view. Mr Justice Calvert-Smith held as follows.

- "Issue" means the act of fixing the Penalty Charge Notice to the vehicle or giving it to the person in charge.

- The “attempt” to issue only commences when the parking attendant starts to approach the driver or the vehicle with the prepared Penalty Charge Notice. Steps preparatory to that do not constitute an “attempt to issue”.

- It is a well-established understanding that driving away without inflicting violence or the threat of violence on the parking attendant does not amount to “prevention”. The local authorities’ own Code of Practice, adopted at the meeting of the ALG Transport and Environment Committee on 15 June 2006, said as much. The Court would not reverse such a well-established understanding.

Visits

We were pleased to receive a visit from Gerard O’Neill, a Justice of the Peace from Alberta, Canada. Mr O’Neill sits in The Provincial Court of Alberta, where his jurisdiction includes traffic offences.

Issues

Bill of Rights 1689

We referred last year to 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. The issue came before the High Court in *R (De Crittenden) v National Parking Adjudication Service [2006] EWHC 2170 (Admin)*, an application for judicial review of a Parking Adjudicator in our sister tribunal, which deals with appeals in England and Wales outside London. Mr Justice Collins dismissed the argument that the Adjudicators are not independent. He said that they are an independent tribunal which Parliament has brought into being under the Road Traffic Act 1991 to act instead of a court to deal with parking enforcement appeals. There is, he said, nothing strange in our system of law in a tribunal being established to deal with matters which otherwise would have to be dealt with through the courts. The Adjudicators are subject to the control of the courts through judicial review. If there have been errors of law by the Adjudicator in a given case the court is there to deal with them.

He went on to say that the argument that the Bill of Rights applied was completely baseless. A parking penalty is not a fine or forfeiture within the Bill of Rights. The Bill of Rights reference to fines or forfeitures before conviction or judgment means that what cannot prevail is a fine or forfeiture in respect of which there is no right of appeal, whether ultimately to a court or through a system equivalent to a court. That system has

been set up. Thus, even if these were fines or forfeitures, the Bill of Rights could not be said to have been breached.

As to the suggestion that Parliament could not amend the Bill of Rights, he said that Parliament is supreme and can amend any provision of our law at any time. If it passes an Act which is clearly contrary to a previous Act, the later Act will prevail. However, this principle was not needed as there was no breach of the Bill of Rights.

This decision confirmed the view that the Adjudicators had taken.

The issue also arose in *Henney v Camden* (page 19). In that case, the Appellant argued that the clamping regime was unlawful for a number of reasons, including that it was contrary to the Bill of Rights because the penalties had to be paid before the right to appeal could be exercised. The Adjudicator rejected the argument, holding that, in enacting the clamping regime in the 1991 Act, Parliament must have intended to repeal the Bill of Rights so far as necessary to give effect to that regime.

This decision was made before the decision in *De Crittenden*. However, the Appellant applied for review of the decision. In rejecting the application the Adjudicator referred to the decision in *De Crittenden*, which had by that time been made, in particular the Court's finding that the parking penalties were not fines or forfeitures within the Bill of Rights.

Human Rights Act 1998

The application of the Act was considered in *Henney v Camden* and in *De Florio v Kensington & Chelsea* (page 22). In both cases, the Appellant contended that the supplementary enforcement action, clamping or removal, was disproportionate and so in breach of Article 1 of the First Protocol to the European Convention on Human Rights. The Adjudicator in each case found that the temporary loss of control caused by clamping or removal was a proportionate response to legitimate traffic management aims.

Both *Henney* and *De Florio* deal more generally with **the lawfulness of clamping and removal**.

In *Strauss v Kensington & Chelsea* (page 23), the Appellant contended that the law allowed him to pay the reduced penalty within the 14 days permitted and then still contest the penalty, ultimately by appealing to the Adjudicator. In dismissing this claim, the Adjudicator rejected his argument that otherwise there would be a breach of the requirement under Article 6 of the European Convention of Human Rights for there to be an effective right of access to the tribunal. The provision for the reduced penalty was an entirely proportionate measure in relation to the legitimate aim it sought to achieve: providing an incentive for motorists to pay penalties promptly.

Review

Under regulation 11 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993, an adjudicator may review an appeal decision, a costs decision or any interlocutory decision, but only on the limited grounds specified. The regulation provides that the application shall be made within 14 days after the date on which the decision was sent to the parties. However, the Adjudicator has power under regulation 14 to extend that time. In *Rubin v Barnet* (page 24), the Adjudicator considered the exercise of that power, saying that Adjudicators would extend the time limit only in exceptional circumstances.

In *Rowe v Hammersmith & Fulham* (page 25), the Adjudicator considered the nature of the power to review. He said it was not the purpose of the review procedure for a party to shop a case around the Adjudicators in the hope of obtaining a favourable decision.

Signs and Lines

Many appeals continue to turn on whether the signage of the restrictions is lawful. *Rowe v Hammersmith & Fulham* concerned the signage relating to unusual and complex restrictions, and highlighted the need for consistency between information on plates and on pay & display machines.

Carey v Transport for London (page 27) concerned the signs for a prohibited right turn and emphasised the different considerations that apply to signs which must be read by motorists on the move and signs for parking, which in general cater for motorists who have parked their vehicle and are able to seek out the signs.

Exemptions

Many appeals depend on whether one or other of the exemptions applicable to the restrictions applied in the particular case. The most common exemption is probably that for loading and unloading. The Cases Digest includes five cases (pages 30 - 31) where other exemptions applied. What is disturbing is that in four of the cases - *Stegers v Transport for London, GSL Ltd v Kensington & Chelsea, Cox v Hackney, Lee v Transport for London* – the local authority appeared either to be unaware of the terms of the Traffic management Orders they were enforcing or had applied them incorrectly, and consequently had rejected the Appellant's representations. This suggests a continuing failure to train staff adequately, an issue to which we have drawn attention in previous reports.

Pay-by-phone parking

Bawor v Wandsworth (page 34) is an early example of the relatively recently introduced facility allowing payment of parking charges by phone.

Utilities: Dispensation Procedures

Last year we suggested that 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 relating to utilities' vehicles parked to carry out emergency works. We are therefore pleased to note that London Councils has introduced a standard form for utilities to use when making representations for the cancellation of a Penalty Charge Notice. We hope that this will enable more such cases to be settled at the stage of representations to the local authority and so reduce the number of appeals to us.

Description of contravention in PCN

Adamou v Haringey (page 33) draws attention to the need to adequately identify on the Penalty Charge Notice the location of the alleged contravention. Imprecision in this respect may lead to appeals being allowed for this reason.

CASES DIGEST

This Digest contains cases decided during the year on topics of interest.

Clamping: lawfulness; Bill of Rights; Human Rights Act
Henney v Camden (PATAS Case No. 2060037355)

The Appellant's vehicle was clamped for being parked in a residents' parking space without displaying a resident's permit.

The Appellant accepted that he was liable for the basic penalty. He challenged the lawfulness of the clamping.

The Adjudicator said that parking attendants were empowered by section 69(1) of the Road Traffic Act 1991 ("the 1991 Act") to clamp vehicles. Section 69(4) provided for the vehicle to be released on payment of the penalty charge and the prescribed release charge. The person who obtained the release of the vehicle was then entitled to challenge liability for the penalty and release charges, ultimately by appealing to the Parking Adjudicator.

The Appellant's vehicle was parked unlawfully and the immobilisation power applied. The Appellant nevertheless put forward several grounds for contesting the lawfulness of the clamping.

The clamping regime was incompatible with the Bill of Rights 1688.

The Appellant referred to this passage in the Bill of Rights.

> *That all Grants and Promises of Fines and Forfeitures of particular persons before Conviction are illegall and void.*

The Bill of Rights had been categorised by the Courts as a constitutional statute. In Thoburn v Sunderland City Council [2002] EWHC 195 (Admin), Laws LJ said that constitutional statutes may not be impliedly repealed, but only by express words or by words so specific that the inference of an actual determination to effect the repeal was irresistible.

In the 1991 Act, Parliament had provided for a very specific and detailed regime for the immobilisation of vehicles. In doing so it must have intended to repeal the Bill of Rights if and so far as necessary to give effect to that regime.

The application of a clamp did not afford a fair hearing, as required by administrative law and Article 6 of the European Convention on Human Rights (ECHR).

The clamping regime was provided for by Parliament in primary legislation and could not be overridden by general administrative law.

The Appellant's submissions on Article 6 confused substantive rights with procedure. Article 6 was not concerned with the substantive law; it was designed to ensure that there were proper procedural safeguards wherever civil or criminal questions were being determined, to ensure a fair and just outcome*: R (Westminster) v Parking Adjudicator [2003] RTR 1*. The Appellant's submissions were directed at the rights he contended the motorist should have under the substantive law. For example, in referring to mitigating circumstances he argued that the substantive law should provide for the tribunal to be able to allow appeals on the basis of mitigation. But the substantive law did not make any such provision, and therefore there was no breach of Article 6 because there was no substantive right for it to engage.

The Appellant contended that the clamping regime was not compliant with Article 6 because payment of the penalty and release charges was required before a hearing of the motorist's liability for those moneys. There was nothing in Article 6 that prohibited such a regime.

Clamping did not achieve traffic management objectives

The 1991 Act provided for the clamping of vehicles contravening parking restrictions. That did not mean there was complete carte blanche in exercising the power. The power must be exercised lawfully; and its exercise was subject to judicial control. However, it was not the function of that judicial control to dictate policy or practice to the local authority. Those were matters for the local authority, subject only to the limited judicial control of scrutinising whether the policies and practices were lawful under general public law principles.

The local authority's position was that clamping was intended to deter the owner of a vehicle against contravening in the future and as a visual deterrent to others who might consider parking unlawfully. It considered that it was effective as a deterrent and it was its policy to use it for that purpose. It had contracted with NCP to carry out clamping on its behalf. The contract set a "clamp achievement level" as a Key Performance Indicator (KPI). This was reviewed from time to time, and in 2005/2006 was set at just over 27,000. NCP agreed to risk a proportion of its management fee to achieve all KPIs.

There was no basis for contesting the policy or practice on public law grounds. The local authority was entitled to come to the view that clamping was a deterrent. It was not for the Adjudicator to enter into a debate about how effective the local authority's policy and practice were. His concern was whether they were lawful.

To give effect to the policy the local authority would have to clamp vehicles in sufficient numbers to present the desired deterrent. In that context, to set NCP the task of clamping 27,000 vehicles a year was entirely rational.

Clamping was indiscriminate

The Appellant argued that clamping was indiscriminate and that NCP "blitzed" areas. The fact that the threat of clamping was a random one was an essential element in its effectiveness as a deterrent, which would be diminished or negated completely if it were predictable. Concentrating enforcement on a particular area was in itself not unlawful.

The Appellant also argued that clamping his vehicle was self-defeating in that it resulted in his vehicle occupying the residents' space for longer than would otherwise have been the case. That might be so, but was an argument for the wider debate about the merits of clamping; it did not render the clamping unlawful.

Clamping was disproportionate

On proportionality, the Appellant relied on Article One of the First Protocol to the ECHR. He argued that clamping was in breach of that provision as its objective could be achieved by less restrictive means: putting up warning signs. But signs warning of the threat of clamping would be useless unless the threat were real. So they would not be an alternative to actual clamping, merely an additional element in a clamping regime. The general question was whether clamping achieved a fair balance between the general interest of the community and the requirements of the protection of the individual's rights.

There was a clear public interest in encouraging compliance with parking controls, and the use of clamping as a deterrent to non-compliance, with the temporary loss of use of the vehicle that was the point of the sanction, passed the "fair balance" test.

Accordingly, the general clamping regime applied by the local authority was lawful, as was the particular clamping of the Appellant's vehicle carried out in conformity with it.

Appeal refused

Removal; Proportionality; Human Rights Act 1998

De Florio v Kensington & Chelsea (PATAS Case No. 2060072389)

The Appellant contested the lawfulness of the removal of the vehicle.

The Council had a policy of prioritising the removal of vehicles. The vehicle was parked in contravention in the 4th category of priority. The Appellant submitted to me that the Council had conducted itself unlawfully by not following this policy, nor the Central Government guidelines.

The Adjudicator said that the applicable principle of law was that propounded in the case of *Provincial Picture Houses -v- Wednesbury Corporation (1948*): had the Council conducted itself in a manner so unreasonable and perverse that no reasonable enforcing authority would have conducted itself in that way?

The Council had not breached that test. The vehicle was unlawfully parked on a fairly busy thoroughfare. The Appellant’s assertions that the Council had not complied with a removal priority suggested some requirement upon a parking attendant, leading a vehicle removal team, to record having travelled the immediate neighbourhood looking for vehicles with a higher priority and should only have removed this vehicle after an alternative search for more badly parked vehicles had been exhausted. It was entirely understandable that a council might establish a priority criteria for the purpose of the effective use of resources, but that could not be evolved so as to be used as a benchmark of reasonable activity.

Proportionality was a principle of law which fell to be considered in judicial proceedings if there was a finding of engagement of any of the articles of the European Convention on Human Rights.

The removal of a vehicle in the circumstances of this case did not breach Article 1 of the First Protocol. The removal action did not deprive the Appellant of his property rights in the vehicle; it merely restricted the right of possession by a control over the vehicle for a few hours subject to a release payment of £200. Such an action was in pursuance of a legitimate aim, i.e. controlling the use of vehicles and traffic management in the general interest, and was proportionate in achieving that aim. It was not a matter of deprivation of property, but of temporary control.

The removal was therefore lawful.

Appeal refused

Appealing after payment of penalty

Strauss v Kensington & Chelsea (PATAS Case No. 2050448466)

The Appellant contended that a motorist could pay the reduced penalty charge and still go on to contest the penalty, ultimately by appealing to the parking adjudicator.

The Adjudicator said that the enforcement scheme prescribed by the Road Traffic Act 1991 was comprehensive and its interpretation straightforward. Section 66(3)(c) prescribed a period of 28 days for payment of the penalty charge. If the penalty was not paid within that time, paragraph 1 of Schedule 6 empowered the local authority to pursue enforcement by serving a Notice to Owner. There was then a mechanism for the recipient of the Notice to Owner to contest liability, ultimately by appealing to the parking adjudicator.

If the penalty charge was paid within the 28 days that was an end of the matter. There was then no power to serve a Notice to Owner, because there was nothing to pursue enforcement of. It was only through the enforcement process starting with the Notice to Owner that the right to challenge the penalty and ultimately the right to appeal to the parking adjudicator arose. If the penalty was paid within the 28 days prescribed, those rights never arose. Nor could the motorist require the local authority to serve a Notice to Owner where the penalty had been paid. There was no power to serve a Notice to Owner unless the penalty had not been paid.

There was no distinction in this respect between paying the full penalty or taking advantage of the reduced penalty available under section 66(3)(d). The Appellant's

argument relied on interpreting "paid" differently in sections 66(3)(d) and (e). There was no justification for so doing. It was generally presumed that the same word meant the same thing if used in different provisions in the same statute. Here, the same word was used in successive paragraphs of a sub-section. There was no reason for departing from the usual presumption. The natural interpretation did not lead to an unreasonable or irrational result. Furthermore, paragraph (c) alone dealt with the requirement to pay the penalty. Paragraph (d) merely set out a particular consequence if the payment were made within the first 14 days.

This scheme did not breach the requirement under Article 6 of the European Convention of Human Rights for there to be an effective right of access to the tribunal. The provision for the reduced penalty served the clear public interest in providing an incentive to motorists to settle their parking penalties promptly and so minimise the need for the Council having to pursue enforcement through further action. To allow motorists to pay at the reduced rate but still go on to contest the penalty would plainly undermine that legitimate aim. The provision for the reduced penalty was an entirely proportionate measure in relation to the legitimate aim it sought to achieve.

Appeal refused

Review: extension of time limit

Rubin v Barnet (PATAS Case No. 2050255881) and 11 others

The Appellant applied under regulation 11 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993.for review of 12 cases.

Regulation 11(3) provided that an application "shall be made ... within 14 days after the date on which the decision was sent to the parties ...” All the applications were made substantially out of time, ranging between 11 months and over four months. The Appellant requested the Adjudicator to exercise his power under regulation 14(1) to extend the time for making an application.

The Adjudicator said that the time limit was there for a good reason. It reflected the principle that there was a public interest in the finality of proceedings. It also accorded with the principle of proportionality; the penalties in question were relatively small, and the proceedings relating to them needed to be proportionate to what was at stake. It was not desirable for such proceedings to be unduly time consuming or protracted. The time

limit served these aims. If Adjudicators were freely to extend the time limit, this would undermine the purposes for which it was in place. Adjudicators were therefore slow to extend the time limit and would only do so in exceptional circumstances.

The Appellant had put forward no good reason for the very long delay in making these applications. The applications amounted in substance to no more than "I have belatedly thought of new arguments that I wish I had put forward at the time of the appeal". That was not a good reason for extending the time for making an application. Indeed, even if the applications had been made within time, it was very doubtful whether any of the grounds for review would have been satisfied. New arguments were not new evidence, of which there was none relevant to the issues in the appeals. Nor did the interests of justice generally require that an Appellant should be allowed to re-argue his appeal putting forward fresh arguments that he could perfectly well have put in the first place.

But in any event, even if the Appellant might have had good grounds for a review if he had applied within time, that was not a reason for extending time so long after the appeals were refused. If it were, it was difficult to see why any Appellant would not be able to seek to reopen their appeal at any time, thus effectively rendering redundant the time limit prescribed by the 1993 regulations and completely undermining the public interest in the finality of proceedings.

Applications rejected

Review, nature of jurisdiction; adequacy of signage

Rowe v Hammersmith & Fulham (PATAS Case No. 2050138505) and others

All the appeals concerned bays in which during certain hours parking was permitted with either a permit or a pay & display ticket and at other times with a permit only. The unusual feature of the restrictions was that permit parking included parking with a visitor's permit but only if coupled with a pay & display ticket. The time plates made no reference to the need for a pay & display ticket to be displayed with a visitor's permit. The pay & display ticket machine stated "Controlled Hours Monday – Saturday 09.00 – 20.00" followed by the parking charges, without drawing any distinction between the permit and pay & display hours on the one hand and the permit only hours on the other. The fact that during the permit hours parking with a pay & display ticket alone was not allowed was referred to only amongst the "Conditions of Use", which were in much smaller typeface.

The Appellants contended that the instructions on the pay & display machine were unclear and had misled them into thinking that during permit only hours they could park with a pay & display ticket only. The potential for this had been identified in a letter from the Department for Transport.

The Adjudicator said that the signage failed to bring the key provisions of the restrictions to the motorist's attention and was confusing. It was not asking a great deal of the Council to ensure that the time plate more fully reflected the restrictions (permit *and* P&D ticket); and for the machine to have a prominent instruction to the like effect. He allowed all but one of the appeals.

The Council applied for review of those decisions on the ground that "the interests of justice required a review". The Adjudicator who heard the application rejected it. He said that a review was conducted by a peer Adjudicator and was granted only if one of the limited grounds for review was established. It was not the purpose of the review procedure for a party to shop a case around the Adjudicators in the hope of obtaining a favourable decision. The decision was detailed and thorough following comprehensive argument. There was no manifest error of law and the decision was plainly one the Adjudicator was entitled to come to. The interests of justice did not require a review. On the contrary, those interests, including the interest in the efficient administration of justice achieved by the saving of time and cost from not conducting a review in the circumstances, required that if the Council wished to contest the decision its appropriate course was to apply to the High Court for judicial review.

As to the merits of the application, he observed that the substance of the instructions on the machine was that Monday to Saturday 09.00 to 20.00 the bays were pay & display bays. They were not. The instructions on the machine were both inconsistent with the signs and did not correctly state the restrictions that applied. As a minimum the machine should mirror the information on the signs, not be inconsistent with them, so making clear that at certain times the bays were both pay & display and permit and at others permit only. This then made clear that at permit only times the primary requirement was to have a permit. The conditions that attached to the use of the visitor's permit needed to be set out on it, and the face of the permit ought to draw attention very prominently to the condition requiring the display of a pay & display ticket with it.

Applications rejected

Signs and Lines

Brine v Wandsworth (PATAS Case No. 2060074679)

The Appellant parked in St Cyprian's Street in a pay & display bay. He bought a pay & display ticket from the nearest machine, which happened to be round the corner in Totterdown Street. Tickets from this machine were not valid for parking in St Cyprian's Street. The issue was whether the signage made this clear.

The time plate in St Cyprian's Street said "Pay at machine" and had an arrow pointing down the street to the correct machine. The time plate also showed the times of restriction, the maximum stay of 4 hours' parking and the zone, E2. The instructions on the machine in Totterdown Street showed times of restriction (which were different from those on the time plate in St Cyprian's Street), the maximum stay of 1 hour, the tariff and other detailed instructions. There was, however, nothing expressly saying that the machine was limited to use for certain bays and identifying which bays. Tickets it issued bore the zone number, E2 – the same zone as for St Cyprian's Street. Without more, therefore, the ticket was likely to reinforce a mistaken view that it was valid for the bays in St Cyprian's Street.

The Adjudicator said that the arrow on the time plate did not convey, nor was meant to convey, the message that the machine in that direction was the only one that could be used. It was merely intended to assist the motorist in locating a machine. A very astute motorist might conclude from the difference in restriction and maximum stay times that the tickets from the Totterdown Street machine were not valid for St Cyprian's Street, but that was setting too high a standard for the ordinary motorist. The instructions on the machine should expressly state the geographical limits of the machine.

Accordingly the signage was inadequate.

Appeal allowed

Carey v Transport for London (PATAS Case No. 2060537813)

Two Penalty Charge Notices were served on Miss Carey for alleged contraventions of 'no right turn' signs.

Miss Carey said that because of the dense foliage that had grown around each of the two 'no right turn' signs, she was unable to see them before turning.

The Adjudicator referred to *Coombes v Director of Public Prosecutions, DC, 14 December 2006* in which Mr Justice Walker found that a motorist was not liable for disobeying signs indicating a speed limit which only became visible at the point at which the motorist drove past them because until that point they were obscured by overgrown hedgerows.

The case related to a conviction under the Road Traffic Regulation Act 1984, for driving a motor vehicle on a road at a speed exceeding the prescribed maximum. The motorist relied on the defence set out in Section 85(1), which provided that a person should not be convicted of such an offence unless the limit was indicated by a prescribed sign.

The Court held that two tests had to be met before a conviction. The first was that the prescribed signs were there at the material time. The second was that those signs indicated the relevant speed limit. The Court further held that, at the very least, the second test involved a requirement that, at the geographical point where the motorist exceeded the limit, the signs could reasonably have been expected to have conveyed the limit to an approaching motorist in sufficient time for him to reduce from a previous lawful speed to a speed within the new limit.

The objective of Section 85(1), it was held, was plainly that motorists should not be convicted in the absence of adequate guidance. In the case then before the Court, the requirement described was not met.

Section 85 of the 1984 Act did not specifically pertain, as Penalty Charge Notices are issued for contraventions not criminal offences.

Many Penalty Charge Notices were issued because a vehicle was permitted to remain at rest in circumstances where that was not allowed. It was the responsibility of the motorist to check carefully on each occasion before leaving their vehicle, so as to ensure that they left it only as permitted and that this would remain the position for as long as the vehicle would be there.

However, the present Penalty Charge Notice was issued for what was often called a

'moving contravention'. The sign indicating the prohibition on turning right at this point in New Cross Road was directly analogous to a sign indicating a reduction in the maximum speed. In both cases the motorist clearly had to be able see the sign whilst driving, in order to be aware of it.

Besides the contemporaneous images produced by Transport for London, they had also produced some location shots of the signs. These were taken some two months earlier. Miss Carey had also produced her own photographs, taken a few days after the incident.

Miss Carey's images and those taken from the recording of the alleged contravention contrasted sharply with the earlier location shots in that, over the space of a couple of months, the foliage around the signs had increased surprisingly rapidly. The signs were somewhat lost in the growth, certainly from the position of a motorist approaching the signs on the carriageway.

The Adjudicator was not satisfied that the signs, as they were at the material time, could reasonably have been expected to have conveyed the prohibition to an approaching motorist in sufficient time for them to see it before executing the prohibited manoeuvre.

Accordingly the contravention had not occurred.

Appeal allowed

Multiple exemptions

Luther v Wandsworth (PATAS Case No. 2060042435)

The Appellant stopped to set down a passenger. He was then prevented from moving off by a traffic jam that formed because of an altercation between a cyclist and a motorist. He got out of his car to investigate and spoke to the cyclist and motorist to explain he needed to get somewhere urgently. As the jam began to clear he returned to his car to find he was being issued with a Penalty Charge Notice.

The Adjudicator found that stopping to set down the passenger was within the alighting exemption and that the subsequent inability to move off because of the traffic conditions was within the exemption for vehicles being prevented from moving by circumstances beyond the driver’s control.

Appeal allowed

Exemption: stopping for an emergency

Stegers v Transport for London (PATAS Case No. 2060522995)

The Appellant stopped to allow his mother to get out of the car and walk around. This was because she had had a knee replacement and was in considerable and increasing discomfort. She had been warned that it was potentially dangerous for her to be sitting in one position. They were stopped for no more than a couple of minutes.

Transport for London had written to the Appellant "there are no exemptions in the red route loading and disabled bay outside the permitted times". This was not the case; there were a number of exemptions in the Traffic Management Order. It was a matter of concern that Transport for London's staff were apparently unaware of the terms of the Orders they were enforcing.

One exemption was stopping for an emergency. These circumstances fell within that exemption, given the increasing discomfort that the Appellant's mother was in. The potential risk to her health was plainly an emergency and rather more important than a restriction against stopping. No contravention had occurred.

Appeal allowed

Vehicle unable to move because of circumstances beyond driver's control

GSL Ltd v Kensington & Chelsea (PATAS Case No. 2060175326)

The local authority did not dispute that the vehicle had a faulty alternator cable. It said, however, that the vehicle being unable to move for this reason did not constitute a reason beyond the driver's control. The Adjudicator said he failed to see why it was not. It was not equivalent, as the local authority suggested, to running out of petrol.

Appeal allowed

Boarding/alighting where loading restricted

Cox v Hackney (PATAS Case No. 2060238630)

The Appellant said he stopped to pick up a passenger. The Adjudicator said it appeared from the local authority's correspondence and representations that it did not realise that the boarding/alighting exemption applied even where there were loading restrictions. As a result it had completely failed to address whether the exemption applied. The stills it had produced tended to support the conclusion that it did; boarding activity could be clearly seen.

It was extremely disturbing that the local authority apparently did not know the relevant law. This raised the possibility that it had rejected other representations where in fact the exemption applied.

Appeal allowed

Exemptions; expiry of temporary order

Lee v Transport for London (PATAS Case No. 2060426608)

The Traffic Management Order that Transport for London produced was an experimental order that came into force on 26 June 2003. Under section 9 of the Road Traffic regulation Act 1984, such orders have a limited life, usually a maximum of 18 months. Transport for London had produced no evidence that the Order was still in force and by what mechanism, if indeed it was. On the evidence, there was no traffic regulation in force that the Appellant had breached.

The Adjudicator in any event accepted her evidence that she had just started to suffer an asthma attack and went into the bus lane to turn left into York Way so that she could stop. That was clearly an emergency that would fall within the exemption in paragraph 5(2)(c) of the Order. The Adjudicator said it was unacceptable that Transport for London had completely failed to address that point and gave the impression of being unaware of the terms of the order.

Appeal allowed

Invalid Order

Wright v Wandsworth (PATAS Case No. 2060298982)

The Council had purported to impose a temporary prohibition on the waiting of vehicles under s.9 London Local Authorities Act 1995. However there was only power to do so in

connection with a "special event" as defined in s.9 (8). A household removal was not a "special event" and it followed that the Council had no power to make the Order. It would seem that this was a case where one would simply expect there to be an ordinary suspension of a parking place (which was, significantly, what was asked for on the form provided and how the "prohibition" was described). As the Order relied on was legally ineffective the vehicle was not in contravention.

Appeal allowed

Heavy commercial vehicles

Reynolds v Havering (PATAS Case No. 2060188962)

The contravention alleged on the Penalty Charge Notice was “heavy commercial vehicle parked …partly on footway”, which is a contravention under section 19 of the Road Traffic Act 1988. That Act defines a heavy commercial vehicle as any goods vehicle which has an operating weight exceeding 7.5 tonnes. The Appellant produced evidence to show that the operating weight of the vehicle was less than 7.5 tonnes. The parking attendant had noted that the vehicle’s tax disc showed that it was an HGV (heavy goods vehicle). The Adjudicator said that the term heavy goods vehicle should not be confused with heavy commercial vehicle. An HGV can be a vehicle over 3.5 tonnes, and may therefore not be a heavy commercial vehicle.

Appeal allowed

Parking adjacent to dropped footway

Chergui v Waltham Forest (PATAS Case No. 2060172565)

Section 14 of the London Local Authorities and Transport for London Act 2003 prohibits parking on the carriageway adjacent to a dropped footway. "Dropped footway" is defined as any part of the footway or verge where it has been lowered to meet the level of the carriageway of a road for the purpose of assisting pedestrians crossing the road or assisting vehicles to enter or leave the road across the footway or verge. A Penalty Charge Notice was issued to the vehicle for parking next to a dropped footway. However, the vehicle was parked not on the carriageway but on the lowered part of the footway. It was therefore not in breach of this contravention.

Appeal allowed

Inadequate description of contravention in PCN: location insufficiently identified
Adamou v Haringey (PATAS Case No. 2060381000)
The contravention alleged was entering and stopping in a box junction when prohibited. The Penalty Charge Notice alleged that the contravention occurred "in High Road N22".

Mrs Adamou telephoned the Council on receipt of the PCN and asked them about this contravention. She was told that it had taken place at the junction of Ewart Grove and High Road N22. She pointed out to the person she spoke to that there was no box junction at that location. When the Council served photographs with their Notice of Rejection they made no mention of Ewart Grove.

The Council finally stated in their Case Summary that the box junction was actually at the junction of High Road and Bounds Green Road; the junction with Ewart Grove was simply where the camera was located.

The Council had no fewer than 9 cameras in High Road N22, 6 of which were located at junctions. High Road was a long road with a considerable number of junctions. It was evident from Mrs Adamou's case that she did not know on receipt of the PCN where the contravention was alleged to have occurred.

Had the PCN specified "High Road N22 at its junction with Bounds Green Road" Mrs Adamou would have known where to look. As it was, by simply stating "in High Road N22", the PCN did not comply with the requirements of Section 4(8)(a)(i) of the London Authorities and Transport for London Act 2003, that the PCN "must...state...the grounds on which the council... believe that the penalty charge is payable". Those grounds must be expressed in terms that allowed the recipient of a PCN to know not just the nature of the alleged contravention, but where it was said to have occurred.

No valid PCN was served on Mrs Adamou, and so the Council could not enforce the penalty.

Appeal allowed

Pay-by-phone parking

Bawor v Wandsworth (PATAS Case No. 2060177682)

Two appeals relating to the use of pay-by-phone parking. The Council's pay-by-phone system allowed payment of parking charges by mobile phone. The system maintained electronic records of payments. It was run on behalf of the Council by a company, Parkmobile.

Drivers had to register on the system beforehand and were given instructions how to use it. An electronic transponder card was displayed on the windscreen. To commence parking the driver activated the system by telephoning a number and giving details to the automated system as to location (by inputting a code number displayed at the location) and received an acknowledgement. At the end of the parking the user telephoned to deactivate the system. Parking attendants checked whether the system had been activated by pointing a bar code reader at the transponder card. Parkmobile calculated the fees, which were billed for payment.

Condition 2.9 of the conditions of use stated:
"You can only assume that the beginning or end of your parking transaction has been validly accepted by the Parkmobile system when you have received a confirmation of this via your mobile telephone. You are responsible for ensuring that you have properly activated the system for the relevant parking zone before you leave your vehicle unattended ..."

Condition 2.10 said that if the user cannot access the system then the parking must be paid for in the alternative way of purchasing a P&D voucher.

The Adjudicator said that Miss Bawor was a regular user and he had seen records showing an example period of how often she had activated and deactivated the system. Miss Bawor was not sure of her recollection as to what happened on the dates concerned. However she described sometimes having difficulty getting through on the phone and may have walked away from the vehicle to get a signal. She had used the Parkmobile system at this car park almost every day since Sept 2005 whilst walking her dog in the park.

The records of the system showed that on 1 November 2005 the Appellant had

activated the system at 11:06 and deactivated it at 13:05. The PCN was issued at 10:51.

On 8 December 2005 the Appellant had activated the system at 16:06 and deactivated it at 18:47. The PCN was issued at 15:32.

The Adjudicator said he regarded her testimony as entirely honest and showing her use. However he had less confidence in her specific recollection of the 2 days in question. The likelihood was that on both of these occasions Miss Bawor left her vehicle unattended without either activating the system or receiving any acknowledgement. Judging by her testimony, she either forgot to activate until a little later or she could not immediately get through and decided to walk away and re-try later.

Appeals refused

Exercise of discretion

National Grid v Camden (PATAS Case No. 2060169800)

Whilst the vehicle was parked in contravention, it was there to attend to an emergency gas leak in a property. The local authority nevertheless declined to exercise its discretion to cancel the Penalty Charge Notice. The Adjudicator referred the matter back to the local authority as the local authority's approach seemed to him to have implications for public safety. As a result the local authority reviewed its policy on matters of this kind and said that this case would now be one where they would exercise their discretion to cancel the Penalty Charge Notice. It accordingly decided not to contest this appeal. The Adjudicator commended the local authority for its approach, which was an excellent example of a receptive and constructive approach by a local authority to feedback received from the tribunal.

Appeal allowed

Martin Wood
Chief Parking Adjudicator
September 2007