

PATAS

ANNUAL REPORT

2013-2014

The annual report of the Parking and Traffic Appeals

Adjudicators to the Transport and Environment Committee of

London Councils.

Parking and Traffic Appeals Service

April 2013-2014

TABLE OF CONTENTS

	Page
Chief Adjudicator's foreword	3
1. Workload	5
Appeals	6
Recommendations	9
Costs	11
Case Report (ERAC)	15
Statutory Declarations/Witness Statements	19
2. Law update	21
Panel Hearing	22
3. Judicial Review	24
Decisions	25
Permissions	25
Applications	27
4. Training, Maintaining Standards and Appraisal	31
Training	31
Maintaining Standards	33
Appraisal	34
5. The Adjudicators	34
The Parking and Traffic Appeal Service	36
6. Appendix	37
Case Digest	



Chief Adjudicator's foreword

I am pleased to report that it has been another productive year for the London Adjudicators who have tackled their caseload with application and diligence. The Adjudicators determined in excess of 56,000 appeals in this reporting year as well as addressing the ancillary applications and referrals that such a large number of appeals and determinations inevitably attract (see workload page 5).

This year saw judgment in the judicial review of *R (on the application of Alexander) v The Parking Adjudicator [2014] EWHC 560 (Admin)*. The Adjudicators welcome decisions from the Courts that provide direction and clarity. This detailed judgment serves to confirm the processes adopted by our tribunal not only in convening panel hearings but in the Adjudicators' concise and clear approach to the review procedures set down under our regulations (see page 25). The decision itself will however have little impact on appeal outcomes at the Parking and Traffic Appeals Service, the High

Court having approved the interpretation of the no “u” turn sign already determined in the panel hearing of London *Borough of Hammersmith and Fulham v Azadegan (PATAS 2110041915)* and London *Borough of Haringey v Orphanides (PATAS 2110032583)* (see annual report 2011).

The decision in the Court of Appeal application *R (on the application of Eventech Limited) v The Parking Adjudicator and London Borough of Camden and Transport for London [CO/10424/2011]* is still outstanding. The Court is currently waiting for the outcome of a reference to the European Court of Justice. This decision will impact our lists, allowing us to dispose of over a thousand appeals that have been set aside pending the Court’s ruling on the use of bus lanes by private hire drivers (see page 25). We await this decision with interest.

The London Parking and Traffic Appeals Adjudicators are pleased to present their 2013-2014 annual report to the Transport and Environment Committee of London Councils and take this opportunity of expressing their thanks to the Parking and Traffic Appeals Service team for their committed administrative support over the course of another busy and challenging year.

Caroline Hamilton,

April 2014

Chief Adjudicator

Parking and Traffic Appeals Service.

1. WORKLOAD

We remain the busiest parking appeal tribunal in terms of numbers of cases considered and take pride in providing a tribunal service that is just, efficient, timely, proportionate and readily accessible. The Adjudicators are impartial, independent of both parties to an appeal. Their role is to decide appeals by identifying the issues that will be determinative, assessing the evidence that has been submitted by both parties, making the necessary factual findings and applying the relevant law. Although this reporting year has seen some controversy and publicity over parking enforcement, it must be remembered that the Adjudicators are not parking campaigners or activists and do not lobby or provide legal advice or opinion going beyond the boundaries of individual cases. It is in our view vital for a tribunal to be impartial, remaining removed from the political arena and providing both parties to an appeal with dispassionate well-considered decisions based on fact and law within the current framework. This tribunal is impartial and independent and proud to be recognised as such.

Appeals are either allowed or refused (or may, under the Traffic Management Act 2004, be refused with a recommendation made to the enforcement authority see page 9 below). The Adjudicators' workload includes reaching decisions on a number of ancillary matters that arise during the course of an appeal process, such as adjournments, applications for costs or review, as well as general enquiries that may need some judicial input. The tribunal also receives a large number of statutory declaration/witness statement referrals that require scrutiny and

decision making in order to identify the appropriate route for the outstanding matters to follow within the appeal procedures.

The Parking and Traffic Appeals Service computerised case management system not only monitors an appeal's progress through the stages of adjudication but also provides records of the workload during the reporting year.

The figures provided below include appeals lodged in the previous year that were listed for determination in the 2013-2014 year.

APPEALS

TOTAL of ALL:

54,129 appeals received

13,651 statutory declaration referrals

56,166 appeals were determined (this figure includes appeals lodged in the previous year but determined in the reporting year)

25,959 appeals were allowed of which 10,915 were not contested

30,207 appeals were refused

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

Parking appeals received

45,393 appeals were received

12,019 Statutory declaration referrals were made

TOTAL: 57,412

Parking appeals decided

47,081 (47,456) appeals were determined

Allowed

22,531 (22,911) appeals were allowed of which 9,519 were not contested

Refused

24,550 appeals were refused

Bus lane appeals received

1,981 appeals were received

477 Statutory declarations referrals were made

TOTAL: 2,458

Bus lane appeals decided

1,579 appeals were determined

Allowed

656 appeals were allowed of which 212 were not contested

Refused

923 appeals were refused

Moving traffic appeals received

6,579 appeals were received

1,155 Statutory declarations referrals were made

TOTAL: 7,734

Moving traffic appeals decided

7,374 appeals were determined

Allowed

2,718 appeals were allowed of which 1,159 were not contested

Refused

4,656 appeals were refused

London Lorry Control Scheme

176 appeals were received

No Statutory declarations referrals were made

London Lorry Control appeals decided

132 appeals were determined

Allowed

54 appeals were allowed of which 25 were not contested

Refused

78 appeals were refused

PERSONAL/POSTAL APPEALS

Of the appeals received 34,547 Appellants selected a postal hearing and 19,582 selected a personal hearing. Appellants who neglect to make a selection on the appeal form provided are automatically scheduled for a personal appeal hearing. If Appellants do not attend the hearing of their appeal, and do not contact the hearing centre requesting an adjournment, the appeal is determined in their absence half an hour after the allocated hearing time slot has passed. If an Adjudicator directs that a statutory declaration/witness statement referral should be lodged as an appeal the Appellant is also given the opportunity of attending the hearing of the appeal in person.

RECOMMENDATIONS

At appeal level, the circumstances of each case that gives rise to an appeal have already been considered by the relevant enforcement authority. The authorities have a discretion and may decide to accept representations made, including mitigating circumstances relied on, or to continue to contest an appeal. It can occur, particularly during the course of a personal appeal hearing, that further information comes to light that gives a different complexion to evidence previously provided to the enforcement authority, or discloses circumstances or events that the authority has not had the opportunity of considering. Adjudicators have no discretion or power to allow an appeal as a result of pure mitigation or even if it is believed that there are compelling reasons for doing so. The Traffic Management Act 2004 and accompanying Regulations allow the Adjudicator, if it is considered that there are compelling reasons for doing

so, to refuse an appeal but return the case to the enforcement authority concerned with a recommendation that the notice be cancelled or a refund given.

On receipt of a recommendation the authority is obliged to consider cancellation, taking full account of the observations made by the Adjudicator. Within the period of 35 days the authority must notify the Appellant and the Adjudicator whether or not it accepts the recommendation. If the Adjudicator's recommendation is not accepted by the authority, the authority must provide reasons for not doing so. It should be noted that no appeal rights to the Adjudicator arise further to these reasons. If the authority does not respond to the Adjudicator's recommendation at all within 35 days, the authority is deemed to have accepted the recommendation made.

Appeals refused with a recommendation:

2013-2014: 1,184

2012-2013: 1,005

Appeals refused with a recommendation resulting in acceptance by the enforcement authority of that recommendation:

2013-2014: 333

2012-2013: 304

Appeals refused with a recommendation resulting in rejection by the enforcement authority of that recommendation:

2013-2014: 412

2012-2013: 244

Appeals refused with a recommendation resulting in a deemed acceptance by the enforcement authority having neglected to respond to the Adjudicator's recommendation:

2013-2014: 439

2012-2013: 457

COSTS

Paragraph 13 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007

states that the Adjudicator shall not normally make an order awarding costs and expenses but may, subject to sub-paragraph (2) make such an order:

- (a) against a party (including an Appellant who has withdrawn his appeal or an Enforcement Authority which has consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against an enforcement authority where he considers that the disputed decision was wholly unreasonable.

187 applications for costs were received in the reporting period; 162 from Appellants and 25 from Respondent enforcement authorities.

The Regulations make it clear that costs are not the norm in our jurisdiction. The Adjudicators have no power to award compensation and any award of costs must relate to the appeal process only.

The applications for costs received in the reporting year break down as follows

Appellants

Parking	145	(81)
Bus lane	10	(4)
Moving traffic	7	(6)
London Lorry Control	0	(0)
Total:	162	(91)

Enforcement Authorities

Parking	24	(2)
Bus lane	0	(0)
Moving traffic	1	(1)
London Lorry Control	0	(0)
Total:	25	(3)

A number of costs applications are determined (either allowed or refused) at the appeal hearing itself, without the need for a separate costs hearing. The case management system has recorded the applications for costs that progressed to a separate costs listing only.

Number of costs applications listed to Appellants and to Enforcement Authorities

Enforcement Authority	Appellant Applications	Amounts awarded to Appellants	EA Applications	Amounts awarded to EAs
Barking and Dagenham	1	£0	0	
Barnet	19	£286.89	0	
Bexley	5	£66.70	0	
Brent	1	£0	0	
Bromley	0			
Camden	8	£141.70		
City of London	1	£171.20	0	
Croydon	2	£100	0	
Ealing	3	£557	2	£0
Enfield	1	£0	0	
Greenwich	3	£185	0	
Hackney	2	£0	0	
Hammersmith & Fulham	2	£0	0	
Haringey	5	£121.50	2	£0
Harrow	4	£53.89	0	
Havering	0		0	
Hillingdon	1	£0	0	
Hounslow	3	£0	0	
Islington	0		1	£0
Kensington and Chelsea	4	£21.80	0	
Kingston Upon Thames	3	£0	0	
Lambeth	6	£245.63	0	
Lewisham	0		0	
Merton	1	£153	0	
Newham	16	£350.35	20	£334.03
Redbridge	3	£218	0	
Richmond Upon Thames	5	£0	0	
Southwark	5	£252	0	
Sutton	0		0	
Tower Hamlets	11	£354.60	0	

Transport for London	33	£1,001.75	0	
Waltham Forest	5	£268.05	0	
Wandsworth	4	£0	0	
Westminster	5	£0	0	
Totals :	162	£4,549.06	25	£334.03

The table reflects that costs are not the norm under the Regulations and demonstrates that costs are not usually awarded by the Adjudicator. With this in mind, the enforcement authorities apply for costs sparingly.

However this year a number of costs orders were made after a consolidated hearing, the first joint hearing between the Traffic Penalty Tribunal (TPT) and the Parking and Traffic Appeals Service. The Traffic Penalty Tribunal is the parking tribunal charged with considering appeals relating to penalty charge notices issued out of London in England and Wales. Although an entirely separate tribunal with different pressures of work and exigencies, from time to time we do of course fall to determine similar issues.

This consolidated and joint hearing demonstrates how the two parking and traffic appeals tribunals are able to work together should it be appropriate to do so, consolidating a large number of appeals and addressing issues at one hearing. This joint hearing avoided the need for evidence to be rehearsed on several occasions by the parties to the appeals and ensured a consistent approach and an effective and cost efficient outcome.

The evidence provided at the hearing also gave an insight into the difficulties faced by authorities who have received some criticism for failing to pursue penalty charge notices that have reached appeal level.

The outcome of the hearing resulted in a number of costs orders against the Appellant, Enterprise Rent a Car Limited (ERAC). These orders made after 5th April 2014 have not been included in the table above.

CASE REPORT by Adjudicator Jane Anderson

Enterprise Rent a car (ERAC) v The City of Westminster and Others (PATAS 2130573043)

Under the applicable Regulations the adjudicator may make an order awarding costs and expenses against a party if there is evidence demonstrating that the party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable.

The Parking and Traffic Appeals Service adjudicators (the London adjudicators) held their first joint hearing with the Traffic Penalty Tribunal (outside London adjudicators).

For a period of time each tribunal had been receiving a large number of appeals from ERAC UK Ltd raising similar issues. The two tribunals took the view that it would be in the interests of efficiency and consistency for the tribunals to consider the appeals at a joint hearing. The appeals at each tribunal were first consolidated under the Regulations, the adjudicators at each tribunal having determined that there was some common question of law or fact and that it was desirable

for the appeals to be heard together. The hearing was held at the Parking and Traffic Appeals Service hearing centre at Angel Square, London on 18 February 2014.

The London Borough of Camden and the City of Westminster were represented at the appeal hearing and made representations to the London adjudicator. Representatives from the London boroughs of Brent, Ealing, Enfield, Haringey, Hounslow and Waltham Forest attended as observers. Representatives from Oxfordshire and Nottingham County Council attended the hearing and made representations to the Traffic Penalty Tribunal adjudicator.

The adjudicators had issued a number of directions to consolidate and facilitate the joint hearing. The Appellant registered keeper company, ERAC did not respond or comply with those directions but did send a representative to the hearing of the appeals.

ERAC UK Ltd is a hire company and typically, as is usual practice for hire companies, seeks to transfer liability for the penalty charge notice issued during the currency of a hire period to the hirer of the vehicle at that time. In all of the cases under appeal ERAC had failed to provide a copy of the original hire agreement until the company had lodged a notice of appeal or after the company had filed a statutory declaration/witness statement. On occasion the company did not provide an agreement at all.

Under the Regulations the owner of a vehicle is liable for penalty charges and the owner of the vehicle is presumed to be the DVLA registered keeper. In the cases under consideration the registered keeper was ERAC UK Ltd. Liability for penalty charge notices can be transferred under a

hiring agreement if particular conditions are met or if the registered keeper shows that ownership has been transferred, for example, under a long term lease. In such circumstances, the burden rests with the registered keeper to demonstrate that liability for penalty charge notices has been transferred to a hirer. If a hiring agreement is not provided an Enforcement Authority is not in a position to transfer liability for a penalty charge notice.

Mr Darren Montague who represented the City of Westminster explained that, in all of the appeals before the London Adjudicator ERAC requested a transfer of liability to the hirer of the vehicle but failed in each case to supply the necessary supporting evidence, namely a valid hire agreement, with their representations. A copy of the full hiring agreement was not provided at the right time. Mr Montague submitted that ERAC's conduct in not providing the full hire agreement when first making a representation caused an unnecessary appeal to have to be registered at a cost to the City Council; plus, in many of the cases being considered, debts to be registered at a further cost of £7.00 for each case.

Mr Robert Perrin who represented the London Borough of Camden explained that despite a large number of cases progressing through the enforcement process followed by the appeal process at PATAS, during which time the enforcement authority routinely informed ERAC of the requirements under the legislation for the transfer of liability, ERAC continued to make standard representations on each occasion using a computer generated print out rather than an agreement entered into at the point of hire which was only supplied once the case has been lodged as an appeal with PATAS. Mr Perrin submitted that the implicit refusal of ERAC to modify their practices and produce a hire agreement at the

representations stage caused the Enforcement Authority to incur additional costs. He submitted that the actions of ERAC were particularly frivolous bearing in mind the size of the company, the number of appeals involved and the company's apparent lack of appetite for addressing the issue.

ERAC's representative explained that the original hire agreements are paper documents created in the company's branch offices. He indicated that the procedures for scanning the documents, the volume handled and the pressure on resources were reasons for not providing the hire agreement at the representation stage of the appeal process. He informed the hearing that there was no immediate plan to introduce electronic contracts.

Neither adjudicator was satisfied, on the evidence provided, that ERAC was taking its obligations under the relevant regulations sufficiently seriously. They were not providing the right information at the right time and their conduct prevented the Enforcement Authorities from pursuing legitimate penalty charge notices against a hirer in a timely manner. ERAC habitually provided late evidence, or no evidence, which caused increased costs to be incurred. The adjudicators found that the conditions for making an order for costs under the regulations were met and an order was made for ERAC to pay costs in each of the appeal cases to the London Borough of Camden and the City of Westminster. An order was made for ERAC to pay £71.38 per case to The City of Westminster and £58.38 per case to the London Borough of Camden. In addition, an order was made for ERAC to pay the costs of the consolidated hearing of £100 each to the London Borough of Camden and the City of Westminster.

An order was made in similar terms by the TPT adjudicator for ERAC to pay costs to the outside London Enforcement Authorities.

Further orders for costs will be considered if fresh appeals are lodged with PATAS in the same circumstances.



STATUTORY DECLARATIONS AND WITNESS STATEMENTS

The tribunal continues to receive a large number of referrals from enforcement authorities who have been served with County Court Orders resulting from statutory declarations or witness statements made by motorists at the Traffic Enforcement Centre of Northampton County Court.

Under The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 on receipt of referrals, Adjudicators may give such directions as are considered appropriate and the parties ‘shall comply with those directions’.

The grounds for making a declaration are limited and only one ground may be relied on:

- (a) That the person making it did not receive the Penalty Charge Notice/Notice to Owner/Enforcement Notice in question.

- (b) That he made representations to the enforcement authority within 28 days of the service of the Notice to Owner/Penalty Charge Notice but did not receive a rejection notice.
- (c) That he appealed to an adjudicator against the local authority's decision to reject the representations within 28 days of service of the rejection notice but has had no response to the appeal; or
- (d) That he has paid the penalty charge to which the charge certificate relates.

Declarants still frequently fail to appreciate that the County Court Order does not cancel the Penalty Charge Notice itself. The order simply revokes the order for recovery of unpaid penalty charges and cancels the charge certificate and the notice to owner or enforcement notice. The original penalty charge notice is not cancelled and the enforcement authority remains entitled to proceed with the enforcement of the penalty charge notice.

The statutory declaration/witness statement process is in place to ensure that genuine cases of lost correspondence or administrative error can be put back before an Adjudicator when the need arises. As advised on the face of the declaration form, proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in an application verified by a statement of truth without an honest belief in its truth. The Adjudicators regularly have no option but to make immediate payment directions when it is clear that Declarants have made declarations that do not correspond with the true history of the case.

In Vernon *De Maynard v Transport for London (PATAS 2120235893)* the final payment order made by the adjudicator amounted to £332. This payment direction was upheld by the High Court (*The Queen on the Application of Vernon De Maynard -v- The Parking Adjudicator [CO/355/2014]*), the Court finding that the amount claimed was legally liable as a penalty and sums that had been lawfully calculated. The Court also concluded that the challenge to the payment order and to the penalty charge notice itself had no legal basis (see page 27).

2. LAW UPDATE

Each Parking and Traffic Adjudicator appointed under the terms of the Traffic Management Act 2004 is independent and is not bound to follow or apply a decision made by another Adjudicator. On occasion this might give rise to some uncertainty when, for example, there are different firmly held views as to the proper interpretation of a statute or regulation, or when the evidence under scrutiny can properly result in a range of decisions, each reasonable and open to the decision maker. When a point of law gives rise to a number of appeals and appears to Adjudicators to be unsettled, this tribunal has convened a number of panel hearings in order to consolidate appeals raising similar grounds and provide determinative decisions that analyse issues in more depth and provide what is hoped will be helpful guidance to all.

In this reporting year a panel was convened to promote consistency on issues that had arisen regarding box junction contraventions. The panel

Adjudicator noted: “Three Adjudicators are hearing these applications for review because the Parking and Traffic Appeals Adjudicators have agreed that when issues of complexity, or those giving rise to conflicting decisions arise in the tribunal, they will arrange for a hearing to be conducted by a panel of three Adjudicators. Such hearings allow for a breadth of experience and views to be brought to the issues by having more than one Adjudicator - and provide guidance for Adjudicators and for interested parties in other cases involving these issues.”

The panel hearing determination aims to clarify issues once and for all providing guidance to parties as to the likely outcome of appeals lodged that rely on similar grounds. These determinations encourage a consistent approach and allow prospective parties to an appeal to have a better overview of the contravention in question and a better understanding of the likely outcome, reducing the number of appeals that have no merit on the one hand and resulting in an acceptance of representations where applicable by the enforcement authorities on the other.

Panel Hearing 2013

Gillingham –v- L.B. of Newham (2130193949)

This appeal was allowed on 29th May 2013 by Adjudicator Ms Brennan and the London Borough of Newham applied for a review of that decision on 10th June 2013.

Essoo –v- L.B. of Enfield (2130232767)

This appeal was refused on 15th July 2013 by Adjudicator Mr Harman and Mr Essoo applied for a review of that decision on 24th July 2013.

Khan –v- Transport for London (2130261437)

This appeal was refused on 2nd July 2013 by Adjudicator Mr Aslangul and Mr Khan applied for a review on 24th July 2013.

The panel considered a number of issues flowing from the appeals that each related to a box junction contravention recorded by CCTV enforcement cameras with penalty charge notices served by post. The panel considered previous appeal decisions (*Sheikh v London Borough of Newham (PATAS MV0071NE02 2006)*) and the Traffic Signs Regulations and General Directions 2002 in light of the decision in *R (Herron) v The Parking Adjudicator (2011) EWCA Civ 905* but focussed on the elements of the contravention, finding as follows: “The relevant Regulation is, in our view, drafted so as to place upon the driver the duty of exercising a judgment at the point of entry as to whether s/he can proceed into the box without the consequence that the vehicle will have to stop due to the presence of stationary vehicles. The “prohibition” is that of “causing a vehicle to enter...” followed by the consequence. It is the entering into the box junction which constitutes the contravention, once the vehicle has had to stop. We regard it, therefore, as axiomatic that, in determining whether or not the Regulation has been breached, the essence of the case is crystallised in the choices and judgments made by the driver at the point of entry: the judgment to proceed, the choice of exit lane he directed his vehicle towards and the state of the traffic at that exit which could have been predicted by him at the point of entry. However as we have previously stated it is our view that if moving traffic becomes stationary after a driver has entered the box then this is his risk and the contravention does occur.”

The panel applied the findings to the particular facts of each case:

- (i) allowing the review in Gillingham and refusing the appeal.

- (ii) allowing the review in Essoo and allowing the appeal.
- (iii) refusing the review in Khan, the appeal therefore remaining refused.

The full determination can be viewed on our website under key cases at www.parkingandtrafficappeals.gov.uk

3. JUDICIAL REVIEW

Decisions, Permission Refused and Pending Permission

Either party to an appeal, not being satisfied with the outcome, may contest the matter further by making an application to the High Court for permission to seek a judicial review of the Adjudicator's decision.

Judicial review in the Administrative Courts is a court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

During this reporting period the 56,000 plus appeal decisions made by Adjudicators generated 9 applications for permission to seek Judicial Review. Four applications were from the same Claimant (of which one result remains outstanding the other three having been refused). Parties who decide to make such applications are encouraged to take independent legal advice first.

Judicial Review Decisions

1. ***The Queen on the Application of Alexander -v- The Parking Adjudicator [CO/2890/2013] (Alexander -v- London Borough of Hammersmith and Fulham PATAS 212047824A (2012))***. The adjudicator found that the no U turn prohibition was clearly signed and that there was no requirement for the U turn manoeuvre to be completed in one sweep. An application for the review of that decision was rejected, with reference to the panel hearing in *London Borough of Hammersmith and Fulham v Azadegan (PATAS 2110041915) and London Borough of Haringey v Orphanides (PATAS 2110032583)*, the adjudicator finding no error of law. The High Court agreed. The Court's full judgment in this Key Case can be found on our website at www.parkingandtrafficappeals.gov.uk .

Permission to seek Judicial Review - update from 2012-2013 report

1. ***The Queen on the Application of Eventech Limited v The Parking Adjudicator [CO/10424/2011] (Eventech Limited v London Borough of Camden PATAS 2110086039 and 211008604A)***: This matter was heard on 24th and 25th April 2013 and is currently awaiting the response from a reference by the Court of Appeal to the European Court of Justice.
2. ***The Queen on the Application of Hakeem -v- The Parking Adjudicator [CO/15773/2009] (Hakeem -v- London Borough***

of Enfield PATAS 209009607A (2010)): An appeal on the ground that the Appellant was not the owner of the vehicle at the material time was refused. Permission to seek Judicial Review was refused by the High Court at an oral hearing. The Appellant sought permission to take the matter to the Court of Appeal but the Court refused the application ruling that no further appeal of that decision could be made.

3. *The Queen on the Application of Fouad Tawfiq -v- The Parking Adjudicator [CO/8460/2011] (Tawfiq -v- City of Westminster PATAS 2110259024 (2011))*: An appeal against a Penalty Charge Notice issued to the motorist parked in the restricted street whilst he collected a prescription from a chemist having left his engine running and passengers in the vehicle. Permission to seek Judicial Review was refused by the High Court on 11th November 2011 and an oral renewal was rejected on 9th February 2012. The Appellant applied to the Court of Appeal but the application was rejected and found to be totally without merit the Court noting : ‘the Applicant may not request the decision to be reconsidered at an oral hearing... sufficient public resources have now been devoted to this matter which must not proceed further.’
4. *The Queen on the Application of Thomas -v- The Parking Adjudicator [CO/2698/2013] (Thomas -v- London Borough of Lambeth PATAS 2120454285 (2012))*. The adjudicator having considered the CCTV evidence found that the motorist had entered the marked box junction prior to her exit being clear and had become trapped in the junction in contravention.

The motorist made an application to the court on the basis that the decision was perverse. The Court found no error of law in the adjudicator's decision and noted that the motorist's belief that she would be able to exit the box without stopping proved to be wrong. The Court concluded that the application was totally without merit.

5. *The Queen on the Application of V Ahilathirunavagram -v- The Parking Adjudicator [CO/2749/2013] (Ahilathirunavagram -v- London Borough of Hammersmith and Fulham PATAS 2130007308 (201))*. The Adjudicator was satisfied that the vehicle stopped in the yellow box junction in contravention and the appeal was refused. No application for a review was received prior to the application for relief from the High Court. On receipt of the claim form the matter was listed for a personal review application (the tribunal's usual procedure). The application for a judicial review was refused by the High Court who noted that the tribunal review application was pending. The application for a review of the appeal decision was rejected by the reviewing adjudicator who could find no ground for review. The Claimant made an oral application for permission to apply for judicial review but permission was refused on 14th November 2013.

Judicial Review Applications 2013-2014

- 1 *The Queen on the Application of Vernon De Maynard -v- The Parking Adjudicator [CO/355/2014] (Vernon De Maynard v*

Transport for London PATAS 2120235893(2013)) This case relates to a vehicle entering and stopping in a box junction when prohibited. The appeal was refused by an adjudicator in 2012. Thereafter the Appellant made three statutory declarations resulting in a final payment direction by an adjudicator of £332. The Court, on considering the application for judicial review, found it to be misconceived with no legal flaw in the adjudicator's decision and the increased amount being a sum that was lawfully calculated. Permission for judicial review was refused.

2 *The Queen on the Application of Oliver Wheble -v- The Parking Adjudicator [CO/198/2014] Oliver Wheble v Transport for London PATAS 2130297412 (2013)*). This appeal related to a penalty charge notice issued to a vehicle stopped on a red route clearway. The appeal was refused further to a personal hearing where the appellant attended and was represented by Mr St Claire Nelson. An application for the review of the appeal adjudicator's decision was rejected by the independent adjudicator who found no ground for review. The application before the High Court was found to be totally without merit.

3 *The Queen on the Application of Tiamiyu Bello -v- The Parking Adjudicator [CO/854/2014] (Tiamiyu-v- London Borough of Merton PATAS 2130501916 2014)*). The motorist was issued with four penalty charge notices for parking without a permit and explained that he had paid for the permit but had not received it. The permit is however not valid unless it is

displayed in the vehicle. The appeals were refused and the application for a review was rejected by a second adjudicator for being out of time. The outcome of this application is pending.

4 ***The Queen on the Application of Robert Gordon Humphreys -v- The Parking Adjudicator [CO/1069/2014] (Robert Gordon Humphreys -v- London Borough of Camden PATAS 2130558549 (2013))***. The adjudicator was satisfied that the motorist had parked in contravention in a suspended bay but made a recommendation to the authority to cancel the penalty in the particular circumstances of the case (the motorist had left his motor bike in a bay and did not return to it for over ten days, the bay was suspended during this period). The authority rejected the recommendation stating that in congested areas the motorist had an obligation to check for upcoming suspensions. The application is outstanding.

5 ***The Queen on the Application of Joseph Carroll -v- The Parking Adjudicator [CO/4415/2013] (Joseph Carroll -v- London Borough of Ealing PATAS 2120437322 (2012))***. The adjudicator was satisfied that the enforcement authority had had regard to the Secretary of State's guidance regarding the introduction of CCTV enforcement of parking regulations at the location and noted that there was no requirement on the authority to erect CCTV warning signs. The adjudicator was also satisfied that the camera in use by the authority was certified. No application for the review of that decision was made. The Court refused the application finding no arguable

basis for a judicial review and observing amongst other matters (i) that it could not be argued that the CCTV evidence showing the parking contravention was inadmissible (ii) the absence or poor siting of a warning sign did not invalidate the penalty charge notice (iii) the claimant had the right to seek, within 14 days, a review of the adjudicator's decision but failed to do so thus there was an alternative remedy to Judicial Review at the time.

- 6 *The Queen on the Application of Muhammad Ali -v- The Parking Adjudicator [CO/5925/2013] (Ali -v- Transport for London PATAS 2120429765 (2012))*. The adjudicator was satisfied that the vehicle stopped on the red route. The Court could identify no arguable public law error in the adjudicator's findings and reasons in dismissing the appeal or in refusing the application for review.

- 7 *The Queen on the Application of Muhammad Ali -v- The Parking Adjudicator [CO/5929/2012] (Ali -v- London Borough of Hounslow PATAS 2120374867 (2012))*. The adjudicator was satisfied that the vehicle had parked with wheels on the footway. This application is outstanding.

- 8 *The Queen on the Application of Muhammad Ali -v- The Parking Adjudicator [CO/16144/2013] (Ali -v- London Borough of Hounslow PATAS 2130251116 (2013))*. The adjudicator, having considered the evidence, was not satisfied that the boarding/ alighting exemption applied on this occasion.

The Court found that ‘the decision of the adjudicator is plainly correct’.

9 *The Queen on the Application of Muhammad Ali -v- The Parking Adjudicator [CO/354/2014] (Ali -v- London Borough of Hounslow PATAS 2130465313 (2013))*. The adjudicator was satisfied that the motorist had stopped in contravention outside a school and did not accept that the stopping was purely to avoid an accident, a passenger having alighted the vehicle during the stop. The Court found that the adjudicator had fully considered the representations and noted that the motorist should have waited somewhere else for a space to become free beyond the prohibited area. The application was renewed at an oral hearing but permission remained refused.



4. TRAINING, MAINTAINING STANDARDS AND APPRAISAL

TRAINING

The rolling training programme provided allows for continued professional development and reflects the need for adjudicators to keep abreast of relevant case law and appeal trends. As well as ensuring that all adjudicators are appraised of any fresh legal issues or challenges it allows the adjudicators who are, it must be remembered, all part-time

office holders (other than the chief adjudicator who has separate administrative functions), the opportunity of discussing and sharing issues that have arisen, comparing experiences and exchanging views on best practice. A number of the adjudicators sit on First Tier tribunals within the Tribunal and Court system and training allows us to compare procedures and practices, adopting or modifying those that work to the benefit of this tribunal.

In the reporting year the adjudicators attended one training meeting in May 2013. The programme included amongst other matters, presentations on time limits and procedures for the service of each separate type of penalty charge notice and notice of rejection as well as introducing a table for each adjudicator to access the information readily during an appeal hearing.

The session also included a presentation on equality and diversity and an introduction to map-based traffic orders.

The adjudicators discussed the implications of the outcome of the out of London Judicial Review decision in *R (Hackney Drivers' Association Ltd) v The Parking Adjudicator [2012] EWNC3394*. This decision has repercussions on the way the content of the Penalty Charge Notice should be assessed. The learned judge, having considering the information provided by the enforcement authority on a penalty charge notice and notice to owner, concluded: **'In my view, the motorist, reading the document as a whole, as I have said, will fairly understand that he may make representations against the charge, both before and after the service of the Notice to Owner, but that representations made after service of the Notice to Owner must comply with the**

instructions on the document, and as I have said already, that in my view is the information which the regulations, read as a whole, requires to be conveyed’. The application of this decision was illustrated at PATAS appeal level under *N Bhattarni v London Borough of Hammersmith & Fulham (PATAS 2120604446)*.

Adjudicators were also given an update on the London Lorry Control Scheme appeals which have now been uploaded onto the PATAS case management system. The adjudicators were given a demonstration as to how evidence would be presented, with the case of *Devereux Developments Ltd v London Councils (PATAS LB723)* shown on screen as an example.

Bay suspension signs under the case of *JJ Food Service Limited v City of Westminster (PATAS 2120269625)* were also considered.

MAINTAINING STANDARDS

The adjudicators at the Parking and Traffic Appeals Service are a mature specialist tribunal with a great deal of experience in determining appeals where both parties are unrepresented, Appellants often appearing in person. The tribunal strives to ensure that all parties to an appeal have the ability to participate effectively in the appeal process in order to achieve just outcomes. We are fortunate to benefit from the judicial skills and experience that a number of adjudicators who sit as tribunal judges in other courts and first tier tribunals are able to bring.

APPRAISAL

Although the current corps of adjudicators is an experienced tribunal, peer appraisal is a valuable method of assessing tribunal skills and reminding adjudicators of best practices. The appraisal scheme also gives the adjudicators the opportunity of reflecting on and discussing current issues, sharing ideas or methods that may be of benefit to the tribunal and refreshing practices that assist further in managing an effective appeal hearing.

The current round of appraisals is on-going having started as planned in the first quarter of 2014.



5. THE ADJUDICATORS AND THE PARKING AND TRAFFIC APPEAL SERVICE

THE CHIEF ADJUDICATOR

Caroline Hamilton

THE PARKING AND TRAFFIC ADJUDICATORS

Jane Anderson

Michel Aslangul

Angela Black

Teresa Brennan

Michael Burke
Anthony Chan
Hugh Cooper
Anthony Edie
Mark Eldridge
Henry Michael Greenslade
John Hamilton
Andrew Harman
Neeti Haria
Monica Hillen
Edward Houghton
Anju Kaler
John Lane
Michael Lawrence
Francis Lloyd
Alastair McFarlane
Kevin Moore
Michael Nathan
Ronald Norman
Joanne Oxlade
Mamta Parekh
Belinda Pearce
Neena Rach
Christopher Rayner
Jennifer Shepherd
Caroline Sheppard
Sean Stanton-Dunne
Gerald Styles
Carl Teper

Timothy Thorne
Susan Turquet
Austin Wilkinson
Martin Wood
Paul Wright

THE PARKING AND TRAFFIC APPEALS SERVICE

Richard Reeve - Tribunal Manager

Garry Hoy- Contracts Manager

Dedray Marie - Senior Tribunal Assistant

Ada Amuta - Tribunal Assistant

Tom Caulfield – Tribunal Assistant

Peter Hollamby - Tribunal Assistant

6. APPENDIX

CASE DIGEST

This year our Key Case selection was updated on our website in order to bring it up to date, removing cases that no longer reflect the law or that covered issues that are no longer relevant to the tribunal. New cases have been included (see below) with a view to assisting parties to an appeal to have a better understanding of the current law.

All appeal decisions can be viewed on our statutory register with key cases available for viewing under 'Key Cases' on our website at www.parkingandtrafficappeals.gov.uk.

The statutory register can be accessed online or by visiting our hearing centre at Angel Square, Upper Ground Floor, Block 2 London EC1V 1NY.

The following case digest gives examples of the types of cases the Adjudicators have addressed over the reporting period.

1. Sebastian Housden v London Borough of Hammersmith and Fulham (PATAS 2130435560).

This appeal concerned issues relied on by an appellant appealing a penalty charge notice issued for stopping in the marked junction.

The determination not only analyses the elements of the contravention, but also clarifies common misapprehensions regarding the penalty charge notice itself, (following the decision

in *R (Hackney Drivers Association Limited) v The Parking Adjudicator and Lancashire County Council [2012] EW HC 3394 (Admin)* and the road markings and the requirements under the Traffic Signs Regulations and General Directions 2002 (further to the Court of Appeal decision in *The Parking Adjudicator and Sunderland City Council on the application of Herron [2010] EW HC 1161 (Admin)*). The decision also examined the requirements relating to CCTV camera enforcement and warning signs. The determination provides parties with an analysis of the law and responds to detailed technical arguments often put forward by Appellants taking advice from internet sites. The adjudicator having concluded that the contravention was in essence simple, the appeal was refused. This is a key case on our website.

2. *Stephen William Des Bank v London Borough of Hammersmith and Fulham (PATAS 21304836413)*.

This determination examines the interpretation and extent of the statutory contravention relating to the stopping of vehicles in box junctions. The adjudicator determined that the authority had to prove three elements : (i) That the driver caused the vehicle to enter the junction (i.e. that it was not pushed by another vehicle) (ii) That it then stopped within the junction (iii) That the reason it stopped was the presence of vehicles and that those vehicles were stationary vehicles.

3. **Gabriel Ikyemtu v London Borough of Barking and Dagenham (PATAS 2130166695).**

This case concerns a penalty charge issued to a vehicle that had parked with wheels on a footway. The adjudicator explained as follows: “Parking on or over a footpath or any part of a road other than a carriageway is not allowed anywhere in Greater London unless an exemption applies. There is no such exemption at this location. The restriction applies twenty four hours a day seven days a week. It includes crossovers/driveways which give vehicle access from the road to adjoining premises. There is no requirement for any signs and the vehicle need not be causing any obstruction or be preventing an obstruction. This has been the law since 1974 when it was a criminal offence see section 15 of the Greater London (General Powers) Act 1974 (as amended); it is now a civil matter. The Appellant is referred to paragraph 244 of the current Highway Code which states ‘you MUST NOT park partially or wholly on the pavement in London, and should not do so elsewhere unless signs permit it’”.

4. **Salman v London Borough of Camden (PATAS 2140063870).**

This appeal considered the definition of footway with regard to a penalty charge notice issued for parking with one or more wheels on or over a footpath or any part of a road other than a carriageway. The adjudicator noted :

“a road is defined by section 142 of the Road Traffic Regulation Act 1984 as any length of highway or of any other road to which the public has access. That is the general public. This can include a

private road or even private land. In the case of *Harrison v Hill (1932)* it was held that access means, not right of access but ingress in fact without any physical hindrance and without any wilful intrusion. A highway is a free route for all persons. A footway has been held in law to be a road. In *Sadhu v DPP (2000)* Tuckey LJ said ‘I think the definition of a ‘road’ as a definable way between two points as helpful but not exhaustive.’”

The adjudicator also noted that parking on the pavement can obstruct and seriously inconvenience pedestrians, people in wheelchairs or with visual impairments and people with prams or pushchairs.

5. *Sharon v Stark v Royal Borough of Greenwich (PATAS 2130162661)*.

The adjudicator found that a number of mitigating circumstances arose regarding two penalty charge notices issued to a vehicle parked in contravention only as a result of temporary parking restrictions that had been put in place for the Olympics. The adjudicator returned the appeal to the enforcement authority listing the different factors that caused him to refuse the appeal with a recommendation that either the tickets be cancelled or not enforced. The effect of a recommendation is that within 35 days beginning with the date of the referral document the Enforcement Authority must notify the appellant and the adjudicator whether or not it accepts the recommendation. If the authority accepts the recommendation or fails to notify the appellant of its decision within 35 days it must cancel the notice and refund forthwith any payments made in respect of the penalty charge. If the

enforcement authority rejects the recommendation it must set out its reasons for doing so and the appellant will then have 28 days, beginning with the date the enforcement authority notified the appellant of its decision, to pay the full penalty amount. In this case, the recommendation was accepted and the penalties were cancelled.

6. Alfa Cars UK Limited v London Borough of Hillingdon (PATAS 2120591843).

The adjudicator applying the principles set out in *R (on the application of Makda) v The Parking Adjudicator [2010] EW HC 3392 (Admin)* was satisfied that the private hire driver had parked his vehicle on the double yellow lines marked with two kerb chevrons only in order to collect passengers and noted that a vehicle may park for only so long as necessary to allow a passenger to board and /or alight, but there was no requirement for passengers to be waiting on the footway for the driver to arrive.
