

JOINT ANNUAL REPORT

OF THE

PARKING AND TRAFFIC

ADJUDICATORS

2011-2012

PARKING AND TRAFFIC APPEALS SERVICE ADJUDICATORS' 2011-2012

ANNUAL REPORT

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JOINT ANNUAL REPORT
OF THE
PARKING AND TRAFFIC ADJUDICATORS
TO
THE TRANSPORT AND ENVIRONMENT COMMITTEE
OF LONDON COUNCILS
2011-2012

CHIEF ADJUDICATOR'S FOREWORD

I am pleased to present to the Committee the joint annual report of the Parking and Traffic Appeal Adjudicators for the year 2011-2012, pursuant to Regulation 17(6) of the *Civil Enforcement of Parking Contraventions (England) General Regulations 2007* and Regulation 12(6) of the *Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005*.

The Adjudicators have decided a total of 64,956 appeals in this reporting year as well as reaching decisions on ancillary matters such as statutory declaration/witness statements, out of time appeals and review applications (see Workload at page 6).

New procedures introduced over the course of the year have ensured that all Adjudicator time at the Angel Square hearing centre is spent efficiently and that cases are determined without delay. The new listing systems have proved effective, improving our service to the parties and leaving us with no backlog of outstanding cases.

Personal hearings

The new personal appeal listing system has proved to be both efficient and effective. Adjudicators are able to use their allocated time productively, with personal appeal cases being listed on the first available scheduling date. When Appellants fail to attend a personal appeal hearing (without excuse) the appeal is dealt with on the day rather than leaving the case to fall into the postal list to be decided beyond the scheduled decision date. This gives a truer picture of the schedule date/decision date records. There remains a delay for Appellants electing a Saturday hearing. This is due to our current flexible approach to date selection and in particular, for Saturday

hearings, time slot selection. It may be that in order to remedy the delay we will no longer be able to be quite so generous to Appellants who are currently able to select a specific narrow time slot within our Saturday scheduling timetable.

Postal hearings

Postal appeals are being determined on, or within a reasonable period of the first scheduled date.

I remain grateful to Adjudicators who have recognised the need to provide a cost effective service, whilst maintaining a high level of decision making at all times.

This year we have had the benefit of the Court of Appeal judgment in Neil Herron & Parking Appeals Ltd (on the application of) v The Parking Adjudicator and Sunderland City Council [2011] EWCA Civ 905, handed down in July 2011.

The Adjudicators always welcome direction and guidance from the Courts and this clear and detailed judgment can only assist by clarifying the correct approach to the consideration of Controlled Parking Zones, road markings and restriction signs. This decision will necessarily have an impact on the way that Adjudicators must now consider appeals that rely on irregularities of road markings or signs (see case report at page 15) and may well cause a reduction in the number of appeals lodged, in particular those lodged on behalf of motorists by professional representatives.

The latest amendments to the *Traffic Signs Regulations and General Directions 2002* and, in particular the more general availability of 'Restricted Parking Zones' (RPZ), which up until now have only been available as 'Restricted Zones' used under a Special Authorisation of the Secretary of State under Section 64 and 65 of the *Road Traffic Regulation Act 1984*, are likely to mean further developments in this area (see page 20).

This year also saw the promulgation of our first decision by a panel of Adjudicators (see page 16). The *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007* allows the Tribunal to consolidate proceedings where it appears to an Adjudicator that some common question of law or fact arises or for some other reason it is desirable to make an order for appeals to be considered together. Nothing in the regulations requires the Adjudicator to sit alone.

Whilst the Adjudicators' function is to decide appeals on a case by case basis, being aware of the need to have a consistent approach to decision making, Adjudicators are keen to share expertise and experience not only to inform the original administrative decision makers as to the correct approach but also for the purpose of achieving a united Adjudication team reaching consistent and just decisions.

Panel decisions will of course only be relevant to certain issues and it is anticipated that panels will be convened sparingly, at times when a decision will clarify and inform, with a view to achieving a consistent approach to certain issues that generate multiple appeals. A second panel hearing has been listed in May 2012 to consider issues arising further to tickets issued through closed circuit television enforcement.

The Adjudicators look forward to another year, continuing in our aim to decide appeals in a professional, fair and efficient manner, whilst ensuring that standards are maintained through review and appraisal.

We also take this opportunity to thank Richard Reeve our Tribunal Manager and the Parking and Traffic Appeals Service team for their continued support and efficiency.

Caroline Hamilton, May 2012.

Chief Parking and Road Traffic Adjudicator

1. WORKLOAD

Penalty Charge Notices issued

The number of Penalty Charge Notices issued resulting in appeals remains low in terms of percentage of the notices issued by London Enforcement Authorities.

The Penalty Charge Notices breakdown as follows:

4,131,738 (4,022,476 in 2010-11) penalty charge notices issued for **parking contraventions** in the reporting year period (2011-2012). In the same year, 52,864 (51,773 in 2010-11) appeals to the adjudicators relating to parking contraventions were registered, representing approximately 1.3% of the penalty charge notices issued (1.3% in 2010-11).

233,201 (216,495 in 2010-11) penalty charge notices were issued for **bus lane contraventions**, with 1,623 (1,396 in 2010-11) appeals registered, representing 0.7% of the penalty charge notices issued (0.6% in 2010-2011).

564,028 (571,590 in 2010-11) penalty charge notices were issued for **moving traffic contraventions**, with 6,671 (6,934 in 2010-11) appeals registered, representing 1.2% of the penalty charge notices issued (1.2% in 2010-2011).

2,849, (3,304 in 2010-11) **London Lorry Control Scheme** penalty charge notices were issued 591 to drivers, 2,258 to operators with 68 (110 in 2010-11) appeals registered, representing 2.4 % of all penalty charge notices issued (3.3% in 2010-2011).

Total PCNs issued by LEA: 4,931,816 (4,813,865 in 2010-2011)

Number of appeals: 64,956 (60,213 in 2010-11).

Whilst the delay between a PCN being issued and an appeal being registered means that there is not a precise comparison, this represents overall about 1.3% of all PCNs issued (1.25% in 2010-11) resulting in an appeal.

Appeals Received

The number of appeals received in the reporting year increased only slightly in terms of percentage of the Penalty Charge Notices issued but still represents only a very small proportion of motorists receiving PCNs. Each appeal form may include a number of penalty charge notices hence the discrepancy in the number of appeals considered and appeals received statistics.

	Appeals Received	Postal Determinations	Personal Hearings
2010-11	60,213	39,924	19,930
2011-12	60,726	36,932	23,778

	% cases decided via personal hearing	
2010-11	24.24%	<u>Appeals Decided</u>
2011-12	39.2%	

Parking : 56,327 (60,165)
 Bus lane: 1,493 (1,613)
 Moving traffic: 7,083 (7,354)
 London Lorry Control Scheme: 53 (108)

Total: 64,956 (69,240)

Personal/Postal Appeals

Of the decided appeals, 23,566 (16,787) followed personal appeal hearings and 41,390 (52,453) were postal decisions. This increase in the number of personal appeals is only perceived. When Appellants fail to attend a personal appeal hearing appeals are decided in their absence on the day rather than allowing the case to fall into the postal list as was our previous procedure. This causes less delay and provides a more accurate picture of the number of Appellants requesting personal appeal hearings.

13,809 (12,416) of the personal appeals were allowed. 7,769 (6,356) of these appeals were allowed by the Adjudicators following personal hearings, and 6,040 (6,060) were not contested by the Respondent authority. Of the contested personal appeals 9,385 (4,149) were refused 482 (285) with recommendations.

17,080 (22,429) appeals were allowed further to a postal appeal. 9,093 (13,738) of these postal appeals were allowed by the Adjudicators, and 7,987 (8,691) of these postal appeals were not contested by the Respondent authority. Of the contested postal appeals 24,069 (29,697) were refused 303 (280) with recommendations (see below).

The above includes 24 (55) London Lorry Control Scheme appeals that were allowed; of these 10 (32) were allowed by the Adjudicators and 14 (23) were not contested by the Respondent Authority. 29 (53) appeals were refused by the Adjudicators.

Total appeals allowed by the Adjudicators **16,872 (20,126)**

Total appeals refused by the Adjudicators **33,454 (33,846)**

Total appeals not contested by the Respondent authority **14,027 (14,751)**

Recommendations

The Traffic Management Act 2004 and accompanying Regulations give the Adjudicator the ability to return cases to Enforcement Authorities with a recommendation that the notice be cancelled or a refund given. The recommendation can only be exercised by an Adjudicator when compelling reasons apply. As before, the Adjudicators have no power to allow an appeal on the basis of mitigating circumstances.

Number of recommendations made to EA by Adjudicators, number of recommendations accepted/rejected

	Refused with Recommendation	Recommendation accepted	Recommendation deemed accepted	Recommendation refused
2010-11	565	130	328	107
2011-12	785	220	308	257

Once again the number of recommendations 'deemed accepted' is a higher figure than it should be. In not responding to recommendations within the given timescale the Adjudicators and the motorist are left with a poor impression of the authorities' commitment to the appeal process and/or a distorted view as to the nature of recommendations that will be accepted.

Costs

Under Paragraph 13 of the Schedule to The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 the Adjudicator shall not normally make an order awarding costs and expenses but may, subject to sub-paragraphs (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.

It should be noted that the Adjudicators have no power to award compensation.

Number of costs applications received

<u>Appellants</u>	Parking	260 (188)
	Bus lane	7 (13)
	Moving traffic	11 (22)
	Total:	278 (223)
<u>Enforcement Authorities</u>	Parking	54 (49)
	Bus lane	1 (0)
	Moving traffic	9 (0)
	Total:	64 (49)

Number of costs applications granted to Appellants and to Enforcement

Authorities

Enforcement Authority	No. of awards to Appellants	Amounts awarded to Appellants	No. of awards to EAs	Amounts awarded to EAs
Barking and Dagenham	2 (2)	£74.50 (£41.60)	0 (0)	£0 (0)
Barnet	0 (4)	£0 (£244.03)	2 (0)	£152.38 (0)
Bexley	2 (1)	£110 (£39.86)	2 (0)	£65.50 (0)
Brent	0 (2)	£0 (£167.85)	0 (0)	£0 (0)
Bromley	4 (1)	£327.24 (£108.50)	2 (1)	£178.84 (£100)
Camden	6 (11)	£1,421.68 (£715.73)	0 (1)	£0 (£50)
Corporation of London	8 (0)	£284.68 (£0)	0 (0)	£0 (£0)
Croydon	0 (1)	£0 (£14.40)	0 (0)	£0 (0)
Ealing	4 (10)	£223.50 (£833.16)	4 (1)	£262 (£190)
Enfield	0 (0)	£0 (£0)	2 (0)	£140 (0)
Greenwich	0 (1)	£0 (£117.95)	0 (1)	£0 (£87.71)
Hackney	2 (3)	£175.30 (£253.71)	0 (0)	£0 (0)
Hammersmith & Fulham	3 (0)	£60.50 (£0)	0 (1)	£0 (£78.63)
Haringey	12 (3)	£378.80 (£200.50)	0 (0)	£0 (£0)
Harrow	2 (0)	£109.50 (£0)	0 (0)	£0 (£0)
Havering	0 (1)	£0 (£83.55)	0 (0)	£0 (£0)
Hillingdon	0 (1)	£0 (£34.81)	0 (0)	£0 (£0)
Hounslow	8 (4)	£542 (£292.09)	0 (4)	£0 (£100)
Islington	0 (0)	£0 (£0)	2 (1)	£278 (£93.09)
Kensington and Chelsea	2 (1)	£100 (£22.78)	2 (1)	£80 (£62.23)
Kingston Upon Thames	0 (0)	£0 (£0)	0 (0)	£0 (£0)
Lambeth	12 (30)	£712.36 (£2065.57)	0 (0)	£0 (0)
Lewisham	2 (0)	£60 (£0)	0 (0)	£0 (0)
Merton	0 (0)	£0 (£0)	2 (0)	£118.20 (0)
Newham	21 (5)	£1672.85 (£320.20)	0 (0)	£0 (0)
Redbridge	2 (0)	£74 (£0)	0 (0)	£0 (£0)
Richmond Upon Thames	0 (1)	£0 (£12.66)	2 (3)	£231.32 (£179.19)
Southwark	6 (5)	£306.20 (£494.75)	0 (0)	£0 (0)
Sutton	0 (1)	£0 (£20)	0 (0)	£0 (0)

Tower Hamlets	2 (2)	£166.50 (£98.87)	0 (0)	£0 (0)
Transport for London	6 (5)	£256.50 (£451.30)	0 (1)	£0 (£67.75)
Waltham Forest	2 (2)	£561.60 (£174)	0 (1)	£0 (£113.18)
Wandsworth	1 (1)	£65.50 (£60)	0 (2)	£0 (£178.48)
Westminster	16 (6)	£1979.48 (£390)	5 (3)	£320 (£192)
Totals :	125 (104)	£9,662.94 (£7,258)	25(21)	£1,656.42 (£1,492)

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2. ANNUAL REPORT 2010-11 UPDATE

Statutory Declarations/Witness Statements

Some Appellants continue to use the statutory declaration/witness statement procedure as a mechanism for turning back the clock after having failed to engage with the enforcement authority further to the receipt of a Notice to Owner or to having failed to follow the statutory appeal procedures.

Motorists still hold the mistaken belief that a sworn declaration cancels a penalty charge notice even though the certified orders issued by the Courts declare in terms that the original penalty charge notice has not been cancelled : “this order does not cancel the original penalty charge notice. The local authority may well take further action on it...”. Despite this many Appellants start their post declaration representations claiming that the penalty charge notice has been cancelled by the Court.

Whilst there is a need for procedures to be available giving the motoring public confidence and support to the enforcement and appeal schemes it remains the case that much time is spent on considering referred orders that are without merit.

The motoring public must accept that enforcement authorities will pursue lawfully issued Penalty Charge Notices and that delaying engagement in the procedure results only in an increased penalty and an increased cost to the public purse.

Although the Adjudicators' powers to award costs are limited Enforcement Authorities should recognize their duty to pursue an application robustly where appropriate.

Number of Statutory Declarations/Witness Statements received

Parking	8,760 (6,796)
Bus lane	133 (156)
Moving traffic	584 (517)
London Lorry Control Scheme	0 (0)
Total:	9,477 (7,469)

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3. LAW UPDATE

Herron v The Parking Adjudicator [2011] EWHCA Civ 905

Although this decision results from an appeal decided by Adjudicator Mr Andrew Keenan sitting as an out of London Parking and Road Traffic Adjudicator at the Traffic Penalty Tribunal, the decision is applicable to our jurisdiction.

The question under consideration was whether the Adjudicator erred in law in rejecting the Appellant's contention that proven irregularities in signage within the Sunderland Controlled Parking Zone rendered the Controlled Parking Zone unenforceable.

The Court of Appeal held that the proper approach to the Traffic Signs Regulations and General Directions is purposive. The Court clarified that in respect of parking, restrictions are imposed by the applicable Traffic Regulation Order/Traffic Management Order, not by the signage and markings: and the purpose of the signage and/or markings required by Traffic Signs Regulations and General Directions (TSRGD) is merely to convey adequate information to motorists as to the relevant parking restriction. The Court concluded that substantial compliance with the statutory specifications in the TSRGD suffices – so long as the signage adequately informs motorists of the restriction, and (of course) does not mislead.

The Court also made it clear that substantial compliance is a very different thing from exact compliance subject to the principle of *de minimis*.

The decision is significant and alters the way that Adjudicators must approach evidence that challenges the compliance of signs and lines.

Adjudicators will, in appropriate cases, still have to determine whether the signage does adequately inform motorists of the restriction imposed by the Order.

However, an Appellant will not be able to rely upon a defect in signage or markings, perhaps some way away from where he or she parked or on a defect that is insignificant in terms of conveying information about the restriction in force. If the signage and markings in place reasonably notified the motorist of the restriction a penalty issued can be enforced even if the exact terms of the TSRGD have not been followed.

PANEL HEARING

London Borough of Hammersmith and Fulham v Azadegan (2011) PATAS 2110041915 and London Borough of Haringey v Orphanides (2011) PATAS 2110032583.

The panel of Adjudicators convened to consider an application for the review of two decisions, made by each respective authority, further to appeal decisions concerning Penalty Charge Notices issued for 'performing a prohibited turn – no U-turn'.

The Adjudicators considered that, there being a common question of fact in the two cases, it was appropriate to consolidate the hearings and found that, since the issue to be determined was a matter of some importance to motorists and enforcement authorities, the interests of justice merited a review.

The issue before the panel was to determine exactly what prohibition was indicated by the sign prescribed by diagram 614 in Schedule 2 to Part 1 of the *Traffic Signs Regulations and General Directions 2002* commonly referred to as a 'no U turn' sign.

The Adjudicators noted that the 2002 Regulations themselves describe the sign as indicating 'No U-turns for vehicular traffic'. The current edition of the *Official Highway Code* illustrates the sign with the simpler description of 'No U-turns'. The *Know Your Signs* booklet from the Department for Transport goes a little further. Besides the legend 'No U turn', this sign and the ones for 'No right turn' and 'No left turn' are grouped together. The heading for this group reads 'Where changes of direction are prohibited a red bar across the sign face is used in addition to the red circle.' Both the latter two publications have words to the effect that signs with red circles are mostly prohibitive. It is also perhaps worth noting at this stage that the arrow for this and the other two prohibited change of direction signs has an outward point towards the banned direction and an inward point from the direction travelled.

The Adjudicators noted that a U-turn could be such as involves a continuous forward motion and that there appears to be no doubt that such a manoeuvre would amount to a U-turn. However, they also noted that frequently a vehicle is manoeuvred so as to face the direction from whence it has just travelled by use of the forward and reverse gears. This is sometimes called a 'three point turn' but could involve stopping the vehicle three or more times. The Enforcement Authorities submitted that these would all also constitute a U-turn.

Traffic Management Orders variously define the prohibition, for example: 'no person shall cause or permit a vehicle to turn at any point in the road so as to face the opposite direction to that in which it was proceeding'; 'no person shall cause or permit any vehicle to make a U-turn in the road' or 'no person shall cause or permit any vehicle to make a U-turn, so as to proceed in the opposite direction'.

The Adjudicators were referred to numerous dictionary and other definitions of 'U-turn' and, perhaps surprisingly, found that there is no statutory definition but that the nearest thing to a legal definition of a U-turn, if it be so, is to be found in Schedule 8A of the *Motor Vehicles (Driving Licences) Regulations 1999*. This inserted by Regulation 31 of the *Motor Vehicles (Driving Licences) (Amendment) Regulations 2009* but relates solely to motorcycles during the conduct of a test.

The Department for Transport, whilst not wishing to make formal submissions, referred the Adjudicators to this as the only such provision they were aware of. It appears that there is no equivalent requirement as regards motor cars.

One of the parties produced evidence from the Driving Standards Agency that ‘there is no definition of a U-turn in the Highway Code, presumably because there is no definition of it in law. Basically, it’s called a U-turn because you are able to turn your vehicle round to face the other way in one movement without using a three-point turn manoeuvre. Hence its name because you are using the shape of a U in order to face the other way.’ However, they then continue ‘A U-turn can generally not be accomplished on a narrow road without the forwards and backwards manoeuvres but in a wider road it is possible to do it in one movement. There are some roads on which the manoeuvre is prohibited because it would be dangerous, for example on a two-way road where a national speed limit applies and traffic is likely to be moving fast, or obviously on dual carriageways and motorways with central reservations separating traffic.’

The Adjudicators considered the various types of manoeuvre that could be made by a vehicle so as to end up facing the opposite direction, including leaving the road to make the turn wholly on land adjoining the road or in another road altogether and, in such case, where the boundary between the two roads was.

The Adjudicators found that a sign prescribed by Diagram 614, to indicate no U-turns for vehicular traffic, complies with the requirement of Regulation 18(1)(a) of the *Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996*, to secure that adequate information as to the effect of the traffic order is made available to persons using the road, so as to indicate that traffic shall not turn so as to travel in the direction from whence it had just come, whether or not “U-turn” actually appears in the article of the Traffic Management Order.

The Adjudicators also found it to be irrelevant that the reverse gear may be utilised but that once a vehicle had left the road, the Traffic Management Order did not apply. It therefore followed that even in the event of an immediate return to the road by the vehicle, the contravention cannot occur whatever direction the vehicle then travels in. However the Adjudicator reaffirmed that, as always, each case will turn on its own facts and that the road is generally all land from the building line on one side to the building line on the other. It typically has a carriageway in the middle with footways on either side. A footway may include ‘crossovers’ which give access from the carriageway to adjoining premises. They may all be part of the road, as may grass verges, flower beds or paved areas. The Adjudicators then applied this to the facts of the particular cases

AMENDMENTS TO THE TRAFFIC SIGNS REGULATIONS

The Traffic Signs (Amendment) (No. 2) Regulations and General Directions 2011 came into force on the 30th January 2012. They contain a large number of miscellaneous amendments to the 2002 Regulations and General Directions, many of which either have no bearing on the work dealt with by this Tribunal or are of a rather technical nature. Pre-existing signage is generally preserved by the amendments and remains lawful.

Those changes that are likely to affect more directly the motoring public include the following

New Prescribed Signs

New signs are prescribed for car club and electric vehicle bays with provision made for them to be used with necessary bay markings. Examples of both types of sign have previously appeared in London but on the basis of specific authorisation by the Department for Transport – which is now no longer necessary. New bus lane signs allow the motorcycle symbol to be included to indicate those bus lanes where this type of vehicle is permitted

New Restricted Parking Zones

A Restricted Parking zone is essentially similar to a Controlled Zone for waiting (and sometimes loading) restrictions but where there are no yellow lines on the carriageway. Instead, the presence of the restrictions within the zone is indicated by signs placed at intervals along the roadside. Restricted Zones (as they were formerly called) are not unknown in London but have hitherto been comparatively rare, Councils clearly preferring to rely on the more familiar Controlled Zone. Prior to the new amendments all Restricted Zones required specific authorisation from the Department for Transport. It will be interesting to see whether the removal of this requirement results in restricted parking zones becoming more common. The experience of Adjudicators is that many motorists already seem to have some difficulty in understanding, or noticing the entry signs for Controlled Zones where there is at least a yellow line visible on parking to alert them that some form of

waiting restriction is present. The motorist who misses the RPZ signs (now prescribed by the Regulations) will have only the repeater signs to rely on for this warning.

New Permit Parking Areas

Signs are now prescribed to allow Councils to sign a road or area where permit holders only may park, without the need to put bay markings on the carriageway. The area in question is signed at the entry point with a newly prescribed white sign mounted facing oncoming traffic “permit holders parking only beyond this point” (or similar permitted variants). Once the motorist passes this sign the only further notification that parking is restricted to permit holders is the small time plates, hitherto required to be accompanied by bay markings, but with that requirement now removed by the amending Directions. Arrangements of this kind are rare in London, and authorisation was previously required. Where they are in place (certain parts of the event day zone surrounding Wembley stadium being one example) they have on occasion given rise to appeals by motorists who, having missed the entry sign (which is much smaller and of a less familiar design than the Controlled/restricted parking zone sign), found themselves parking on an entirely unmarked stretch of road with no other signs readily visible and giving the impression of unrestricted parking.

Adjudicators’ preliminary view is that Councils using this form of signage should be particularly careful to ensure the entrance signs are very clearly positioned, and that the signs along the edge of the road thereafter are also plainly visible and erected in sufficient numbers to make their presence obvious to the motorist making a reasonable check on parking the vehicle.

It is perhaps worth noting that within a Permit Parking Area no other bay markings (for example disabled or loading bays) are permitted, presumably on the basis that the presence of marked bays could add to the motorist’s impression that the unmarked carriageway outside the bays was an area where he/she could park freely. Yellow lines, however, are permitted.

Adjudicators would hope that examples of the new signage are included in the Highway Code at the earliest opportunity.

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4. JUDICIAL REVIEW

Decisions, Permission Refused and Pending Permission

Judicial Review is, in principle, a remedy of last resort. Relief in the Administrative Court is discretionary and the Court will not usually grant relief in a judicial review until the Claimant has exhausted all alternative remedies (See Emezie below). Any challenge to the decision of an Adjudicator by way of a Judicial Review should be made against the Adjudicator and not the Parking and Traffic Appeals Service, the Tribunal's administrative arm. The Adjudicators exercise judicial functions and as such they do not usually take an active part in any challenges by way of judicial review to one of their decisions. In any action by a motorist, the relevant enforcement authority should be joined as an interested party. They will make their own decision as to whether to oppose the claim or not. Many motorists act without legal representation but it is of course imperative that claims are served to the Parking and Traffic Appeals Service so that the correct procedures can be followed (See Dikir and Islam below). Failing to do this causes an unwarranted and avoidable expense to the public purse.

During the period covered by this report there were 15 applications for Judicial Review, out of all the appeal decisions made (64,956). One application has been listed for a contested hearing (The Queen on the Application of Eventech Limited v The Parking Adjudicator [CO/10424/2011] see below).

Judicial Review Decisions

There were no Judicial Review Decisions this year.

Permission to seek Judicial Review - update from 2010-2011 report

1. ***The Queen on the Application of Marks -v- The Parking Adjudicator [CO/12434/2010] (Marks -v- City of Westminster PATAS 2100396095 (2011))***: An appeal regarding the use of a disabled person's parking permit in the City of Westminster. The appeal was refused as the Blue Badge scheme does not generally extend to the City of Westminster, City of London, Royal Borough of Kensington and Chelsea and parts of the London Borough of Camden as well as Heathrow Airport, including its perimeter roads. The application for permission was refused.

2. ***The Queen on the Application of Patel -v- The Parking Adjudicator [CO/345/2011] (Patel -v- London Borough of Hammersmith and Fulham 2100235788 (2011))***: an appeal by a driver who parked on the footway in order to pick up his children from school, for which there is no exemption. The application for permission was refused the Court noting that the decision of the defendant was rational and coherent and that the application was without merit.
3. ***The Queen on the Application of Patel -v- The Parking Adjudicator [CO/351/2011] (Patel -v- Transport for London 2090643977 (2010))***: an appeal in respect of a Penalty Charge Notice which was issued to a vehicle parked on a red route. The Court found no error of law in the decision.
4. ***The Queen on the Application of Idigbe -v- The Parking Adjudicator [CO/682/2011] (Idigbe -v- Transport for London PATAS 2100235788(2011))***: an appeal by a licensed private hire vehicle driver which was refused as the driver was observed by the civil enforcement officer going to a takeaway food shop and thus falling outside the exemption for picking up and setting down passengers. This application was dismissed on 7th November 2011 but is currently waiting the outcome of an oral renewal.
5. ***The Queen on the Application of Ahmed Makda (No2) -v- The Parking Adjudicator [CO/2480/2011] (Makda -v- City of Westminster PATAS 2100229253 (2011))***: an appeal by a licensed private hire vehicle driver which was refused as the driver was observed waiting longer than permitted by the exemption for picking up and setting down passengers. This application was not pursued.
6. ***The Queen on the Application of Brian Johnson -v- The Parking Adjudicator [CO/9957/2011] (Johnson -v- London Borough of Camden PATAS 2110003199 (2011))***: An appeal against a Penalty Charge Notice for parking on a footway where the motorist relied on the loading/unloading exemption. Permission to seek Judicial Review was refused by the High Court on 23rd November 2011. An oral renewal application was refused on

13th February 2012. The case is currently waiting the outcome of an application to the Court of Appeal.

7. ***The Queen on the Application of Dikir -v- The Parking Adjudicator [CO/2360/2011] (Dikir -v- City of Westminster PATAS 2110028892 (2011))***: *The Appellant in this case did not apply for the appeal decision to be reviewed but applied directly for a judicial review. The application was not pursued by the Claimant further to a consent order.*

Judicial Review Applications 2011-2012

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)***: An application by Eventech Limited regarding private hire drivers' use of bus lanes. Permission was granted on 27th February 2012 and the matter is listed for a contested hearing on 19th June 2012. The Adjudicators await the Court's decision with interest.
2. ***The Queen on the Application of Goreing -v- (1) The Parking Adjudicator (2) The London Borough of Bexley [CO/12003/2011] (Goreing v London Borough of Bexley PATAS 2110549272 (2011))***: An application concerning the consideration of mitigation. The Court found the parking adjudicator's decision to be legally sound. The application was granted with respect to the second Defendant only.
3. ***The Queen on the Application of Islam -v- (1) The Parking Adjudicator [CO/12003/2011] (Islam v Transport for London PATAS (2011))***: This application was not served on the Parking and Traffic Appeal Service or the enforcement authority concerned. The application was subsequently withdrawn.
4. ***The Queen on the Application of Mehmet Metin Moustafa -v- The Parking Adjudicator [CO/4865/2011] (Moustafa v -v- London Borough of Camden PATAS 211001146A (2011))***: An appeal regarding an exemption for emergency works and service of the penalty charge notice. Although the

Court considered the application to be arguable the claim was not pursued before the court.

5. ***The Queen on the Application of Babar -v- The Parking Adjudicator [CO/5409/2011] (Babar -v- Royal Borough of Kingston upon Thames PATAS 2100609742 (2011))***: A case concerning mitigation. The Court considered the Adjudicator's decision to be unarguably correct.
6. ***The Queen on the Application of Muschett -v- The Parking Adjudicator [CO/5355/2011] (Muschett -v- Royal Borough of Kingston PATAS 2100396095 (2011))***: *In this case the Adjudicator explained : "The Civil Enforcement Officer's photographs show clearly enough that the vehicle was parked in a "loading gap" i.e. (in law) a short length of restricted street located between two designated parking places. The Appellant displayed his blue badge, apparently unaware that in Westminster and certain other parts of Central London the normal blue badge exemptions do not apply. The position is, however, clearly set out in the Department for Transport booklet issued to Badge holders who are under a duty to familiarise themselves with the extent and the limitations of the exemptions afforded by the badge. The vehicle was clearly in contravention and it cannot be said the PCN was issued other than lawfully". The application was refused.*
7. ***The Queen on the Application of Sahi -v- The Parking Adjudicator [CO/8476/2011] (Sahi -v- London Borough of Merton PATAS 211007152A (2011))***: *a case concerning going for change whilst parked at a pay and display bay. The Court confirmed that going for change was not a defence and found no error of law in the decision.*
8. ***The Queen on the Application of Vickeal Limited (T/A Marco's Trimmings) -v- The Parking Adjudicator [CO/10888/2011] (Trimmings -v- London Borough of Tower Hamlets PATAS 2110396342 (2011))***: An appeal concerning a loading/unloading activity. The Court considered the Adjudicator's findings to be findings that she was entitled to make on the evidence before her, showing no error of law.
9. ***The Queen on the Application of Kabir Jami -v- The Parking Adjudicator [CO/10990/2011] (Jami -v- London Borough of Hounslow PATAS***

211029350A (2011)): a case concerning parking adjacent to a dropped kerb. The Court found no basis for the application.

10. **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. Application to the Court of Appeal is pending.
11. **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 an oral renewal was rejected on 9th February 2012. The case is currently waiting the outcome of an application to the Court of Appeal.
12. **The Queen on the Application of Emezie -v- The Parking Adjudicator [CO/393/2011] (Loson -v- London Borough of Camden PATAS 2100423416 (2010))**: An appeal on the ground that the vehicle was not parked in a part of a bay that was suspended was refused. Permission to seek Judicial Review was refused by the High Court at an oral hearing. The learned Deputy High Court Judge found : 'There is not the slightest perceivable public law ground for intervention. This was a dispute of fact which the defendant (the Adjudicator) was charged with resolving; the grounds amount in substance merely to a restatement of the Claimant's claim and selective reference to evidence. Nothing in the grounds or elsewhere in the papers could lead to a view that the bays were not properly suspended or even that there was any reason to suppose that they were not. Nor is there any evidential basis to the claim that the defendant was biased.....In any event there was an alternative remedy of requesting a review of the decision, which has not been sought'.
13. **The Queen on the Application of Whyms -v- The Parking Adjudicator [CO/194/2012] (Whyms -v- Transport for London PATAS 2110638995**

(2011)): A case concerning a motorist stopping on a red route for a period of two minutes. The Court found no arguable basis for the application.

14. **The Queen on the Application of Lavi -v- The Parking Adjudicator [CO/1071421/2011] (Lavi -v- Transport for London PATAS 2110259024 (2011))**: An appeal against a Penalty Charge Notice for parking on a red route. The motorist stating that he had parked within a marked bay at a time when parking was permitted. Permission to seek Judicial Review was refused by the High Court on 30th December 2011.

15. **The Queen on the Application of Abdul Aziz Maki -v- The Parking Adjudicator [CO/10592/2011] (Maki -v- Transport for London PATAS 2110453785 (2011))**: An appeal regarding the markings of a yellow box junction. The Court dismissed the application on 25th February 2012 finding that although the junction markings were faded the Claimant had no realistic prospect of persuading the Court that the Adjudicator's conclusion was incorrect.

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5. TRAINING MAINTAINING STANDARDS AND APPRAISAL

In the reporting year the Adjudicators attended one training meeting. The programme included :

1. A case law update following the Court of Appeal decision in Herron v Parking Adjudicators [2010] EWHC 1161 (Admin) (see page 15).
2. Guidance on procedure and the correct and proportionate approach to adjournments Deeds v The Parking Adjudicator [2011] EWHC 1921 (Admin) (see page 33).
3. A presentation on the persistent evader legislation
4. A report on our first panel hearing Azadegan v Hammersmith and Fulham and London Borough of Hackney v Orphanides (see page 16).
5. A presentation and discussion on inconsistent decisions and the correct approach to review applications.
6. A paper and discussion on the correct approach to blue badge fraud.
7. A presentation on map based traffic orders.

The training session was well attended and attracted Continued Professional Development Points required by practising barristers and solicitors.

In November 2011 three Adjudicators attended the Advance Judicial Skills course organised by the Judicial College.

The residential course gave Adjudicators the opportunity to develop their judicial skills to an advanced level. The course allowed Adjudicators to work with colleagues from other jurisdictions, sharing experiences and identifying solutions to common but complex judicial problems.

The busy programme included sessions on decision writing and hearing and case management.

The Adjudicators' feedback from the course was very positive and the skills and experiences will be shared with all Adjudicators at future training meetings.

Maintaining Standards : Dealing with cases justly

In our last annual report we recognised the expectation that cases would be addressed in an efficient manner with decision reached being just and proportionate. We concluded that there was no doubt that the public was entitled to expect Adjudicators to work efficiently and provide value for money.

The tribunal's own conclusions have been supported by the Administrative Court in R v Deeds and The Parking Adjudicator [2011] EWHC 1921 (Admin). In this refusal of permission further to an application for a Judicial Review of a Parking Adjudicator's decision, some guidance was given regarding the correct approach to appeals and adjournments. It was confirmed that in dealing with cases justly, there was a requirement to determine cases fairly, effectively (including cost effectively) and proportionately. Proportionality demanding that a case is allotted its appropriate share and no more of the tribunal's resources.

In March 2012 a member of the Administrative Justice and Tribunals Council (AJTC) visited our hearing centre in order to assess the service provided by the Tribunal. The AJTC member reported that the hearings were focussed and efficient and found the tribunal to be very well organised with highly efficient and friendly staff. The

member summarised as follows : “The Parking Tribunal is very well organised with a Chief Adjudicator, Manager and Duty Adjudicator contributing to a collegiate and efficient way of working”.

Appraisal

As reported in our 2010-11 report after our first round of appraisals we determined that the appraisal scheme adopted should be reviewed to make it simpler and more relevant to the needs of this Tribunal.

To this end our scheme was refined to reflect feedback received from Adjudicators and appraisers in order to become more relevant and focused to the Adjudicator requirements of this particular Tribunal.

In 2011, two Adjudicators attended the Advance Skills Appraisal Seminar run by the Tribunal Training Team of the Judicial College and the second phase of our appraisal scheme was implemented in March 2012.

Our revised scheme has the following objectives :

- ❑ ensure the maintenance of the tribunal’s standards and consistency of practices,
- ❑ ensure that the tribunal’s training programme is informed by the identification of particular needs,
- ❑ maintain public confidence in judicial performance as a result of regular monitoring,
- ❑ ensure that all Adjudicators demonstrate the competences necessary for their role,
- ❑ measure individual performances against the tribunal’s standards,
- ❑ identify individual and general training and development needs,
- ❑ use the collected experience of Adjudicators to identify ways of improving the service that the tribunal provides to Appellants and the overall efficiency of the tribunal, and
- ❑ provide an opportunity for Adjudicators to raise issues relating to their experience in sitting, training and tribunal procedures.

The appraisal process not only assists in maintaining and improving standards but also allows us to build a team spirit through inclusion and communication. Our next round of appraisals is due to commence in April 2014.

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6. THE ADJUDICATORS AND THE PARKING AND TRAFFIC APPEAL SERVICE

THE ADJUDICATORS

Our pool of Adjudicators has reduced over the year, a number of Adjudicators, due to increased demands in other areas of their working lives having elected to step down. This reduction in numbers has allowed us to remain focused on developing a team of specialists who are able to keep up their skills through regular sittings at the tribunal.

We are proud that the Judicial Appointments Commission continues to recognise the tribunal skills and abilities of our Adjudicators. In December 2011 our much valued colleague Verity Jones was appointed a Judge of the First-tier Tribunal of the Appeals Chamber exercising the Social Entitlement jurisdiction within that Chamber. Verity Jones was called to the Bar in 1986 and appointed as a fee paid Parking Adjudicator in 1996. Her contribution and commitment to the Tribunal will be greatly missed. We not only thank her for all her hard work but extend our warm congratulations to Tribunal Judge Verity Jones, wishing her well in an extremely busy jurisdiction.

THE CHIEF ADJUDICATOR

Caroline Hamilton

THE PARKING AND ROAD TRAFFIC ADJUDICATORS

Jane Anderson
Michel Aslangul
Angela Black
Teresa Brennan
Michael Burke
Anthony Chan
Hugh Cooper
Neeti Dhanani

Anthony Edie
Mark Eldridge
Anthony Engel
Henry Michael Greenslade
John Hamilton
Andrew Harman
Monica Hillen
Keith Hotten
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- Business Delivery and Project Manager

Dedray Marie - Senior Tribunal Assistant

Ada Amuta - Tribunal Assistant

Peter Hollamby - Tribunal Assistant

Emma Groombridge – Tribunal Assistant

APPENDIX

CASE DIGEST

The case digest serves to give examples of the types of issues the Adjudicators have addressed over the reporting period. All the Adjudicators' decisions can be viewed on the statutory register.

CCTV Observation

Menzies v City of Westminster PATAS 2100362435 (2010).

In this case concern was expressed by the Adjudicator that at the end of an observation period of just over 2 minutes the driver was seen to exit his vehicle (possibly to assist a passenger). At that point the camera panned away. It was not possible to see where the driver had gone because the observation ceased. As with on street enforcement, without a meaningful observation of the vehicle, the Enforcement Authority is in a far weaker position should it wish to make representations disputing that an exempt activity is underway; a lack of observation leaves the authority with no evidence to counter an exemption raised by a motorist. A fuller observation can only serve to assist the original decision maker and the appeal Adjudicator in assessing the evidence of any exempt activity relied on.

Review applications

Greene v London Borough of Lewisham PATAS 2110301448 (2011).

The appeal concerned a penalty charge notice issued under contravention code 48 'stopped in a restricted area outside a school'. The appeal was allowed, the Adjudicator having made findings of fact further to a personal appeal hearing, namely that the school had been demolished and that an Enforcement Officer had confirmed that the motorist could park at the location. The Enforcement Authority's application for the review of that decision was rejected, the reviewing Adjudicator stating : 'The Adjudicator Mr Houghton made a finding of fact having heard evidence from the Appellant in person, that she had been advised by a Civil Enforcement Officer that she could park there as the school had been demolished. That was a finding of fact that he was entitled to make upon the evidence before him. One Adjudicator will not overturn the findings of fact of another unless there are compelling reasons for doing so, such as where the findings are not compatible with the evidence before the original Adjudicator. In this case it plainly was compatible with the evidence and was a finding the Adjudicator was entitled to come to'. The reviewing Adjudicator also noted 'Miss Greene was parked on zigzag markings but

she was not stopped outside a school as the school had been demolished. The road markings and signs should have been removed in November 2010 but they were still in place on 7th January 2011 when this penalty charge notice was issued’.

Snowdon v London Borough of Ealing PATAS 2110194858 (2011).

The issue in this case was service of a postal Penalty Charge Notice. The appeal Adjudicator, having heard evidence from the Appellant, was not satisfied that postal service had been achieved of a penalty charge notice issued under the London Local Authorities Act 1996 (as amended) code 34, being in a bus lane.

On an application for the review of the decision in the interests of justice, the enforcement authority stated: ‘The Adjudicator has not taken into account the severity of the contravention and we must assume that the Adjudicator feels the contravention committed is of little importance. The authority continues to feel quite the opposite. The authority has clearly established that a contravention was committed and believes that it is imperative for the Adjudicator to re-think their position in this case’. The reviewing Adjudicator found no grounds for a review explaining: ‘the severity of the contravention is irrelevant. The Adjudicator’s feelings about the contravention are irrelevant. The role of the judge or adjudicator is to make findings of fact and apply the law.’ The reviewing Adjudicator concluded that the findings of fact were compatible with the evidence, findings the Adjudicator was entitled to reach disclosing no error of law.

Removal/Consideration of representations.

Sugarwhite v London Borough of Hackney PATAS 2110405341 (2011).

This case concerned a vehicle parked in contravention on double yellow lines. The vehicle was ticketed and removed. Issues were raised by the motorist regarding the requirement to pay the penalty prior to the release of the vehicle and the enforcements authority’s obligations to address representations relied on. The Adjudicator considered enforcement authorities’ obligations to consider representations made further to Regulation 12 of the Civil Enforcement of Parking Regulations 2007. The appeal Adjudicator found that an authority would not be required to answer each and every point raised by an Appellant however complex, unmeritorious or irrelevant. A general explanation would suffice. With regards to the demand for the penalty and release fee the Adjudicator was satisfied that a straightforward interpretation of the relevant regulations allowed payment to be taken prior to the release of the vehicle. The determination sets out in detail the regulations and powers that apply and is a key case on the PATAS website.

Penalty Amount

Hussain v London Borough of Newham PATAS 2110670670 (2011).

In this case the penalty amount was £130. The Adjudicator explained that the amount of the penalty charge is set by the Joint Transport, Environment and Planning Committee of London Councils and Transport for London, and approved by the Mayor of London with the authority of the Secretary of State. The local authority must accept the reduced penalty of £65 if paid within 21 days of service of the Penalty Charge Notice (this was a postal Penalty Charge Notice issued under the Traffic Management Act). Once this period has expired and, for whatever reason including appealing to the Adjudicator and/or making representations to the Enforcement Authority, the charge remains unpaid then the full penalty becomes due. If, as in this case, the Enforcement Authority extend the period for payment of the reduced penalty, that is a matter for their discretion. The Adjudicator has no power to reduce the full penalty charge. Applications for time to pay must be addressed to the London Borough of Newham.

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