Joint Annual Report of the Parking and Traffic Adjudicators to London Councils Transport and Environment Committee 2008-2009

Chief Adjudicator's Foreword

1. I am pleased to present to the Committee this joint report of the Parking and Traffic Adjudicators for the year 2008-2009, pursuant to regulation 12(6) of the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 and regulation 17(6) of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

2. This was the first year of parking enforcement under the Traffic Management Act 2004, which came into effect on 31 March 2008, replacing enforcement under the Road Traffic Act 1991. In our report last year we dealt in detail with the theoretical differences in the new regime, whilst highlighting the fact that the broad structure of enforcement remained the same. This year we report on our practical experience of our first year of dealing with appeals under the new scheme.

3. This year we received 76,476 appeals, setting another record and far exceeding the 64,072 received the previous year, which was itself the highest number ever received.

4. February 2009 saw us move from our Hearing Centre at New Zealand House to our new Hearing Centre at the Angel. We comment in detail on this move in this report.

5. There is another momentous event that I should record in this report, although it did not occur until June 2009, strictly outside the year in report. I refer to the retirement of our highly regarded Tribunal Secretary, Margaret Brown. Margaret has been with the tribunal since its formation in 1993. She takes with her a store of knowledge and experience of the practical day to day operation of the tribunal second to none. One of her major tasks has been ensuring that sufficient adjudicators were scheduled to sit, from a pool of entirely fee paid adjudicators, keeping a constant eye on a regularly shifting situation. That we have never failed to have sufficient adjudicators sitting is testament to the persuasiveness and patience with which she has carried out this task. We thank her for the selfless support she has given to me personally

and to all the adjudicators. We will all miss her and rather wonder how we will manage without her. We wish her a long and happy retirement.

6. Our colleague, Tanweer Ikram, resigned as an adjudicator in May 2008. I should record my thanks to him for the service he has given to the tribunal. We congratulate him on his appointment as a District Judge and wish him well for the future.

7. I record my thanks to all the adjudicators for the support they have given to the tribunal this year.

8. Finally, may I express the adjudicators' thanks to the staff of the Parking and Traffic Appeals Service for their considerable support to the adjudicators during the year.

Martin Wood

Who We Are and What We Do

9. Parking adjudicators are judicial office holders. They decide appeals from members of the public against penalties imposed by London local authorities, including Transport for London, for contraventions of traffic controls relating to
    - parking
    - bus lanes
    - moving traffic
    - the London lorry ban.

10. We will refer to the local authorities in this report as "enforcement authorities", adopting the terminology of the Traffic Management Act 2004.

Workload

11. We give here statistics relating to our overall workload during the year. Further details of these figures for individual enforcement authorities can be found in the statistics produced by London Councils.

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

Appeals Received

12. The following table shows the numbers of appeals received.

Appeals Received by Type	2008 - 2009	2007 - 2008	Increase (Decrease)	
			Number	%
Parking	68,090	57,851	10,239	17.7
Bus Lane	1,313	1,246	67	5.4
Moving Traffic	7,018	4,928	2,090	42.4
Lorry Ban	55	47	8	17
Total	**76,476**	**64,072**	**12,404**	**19.4**

Appeal Rates

13. The appeal rates by appeal type and overall are shown in the following table. The appeal rate is the percentage of penalty charge notices issued resulting in an appeal to the adjudicator.

Appeal Type	2008 - 2009	2007 - 2008	2006 – 2007
Parking	1.45	1.11	0.99
Bus Lane	0.56	0.30	0.43
Moving Traffic	1.29	1.18	0.84
Lorry Ban	2.00	1.58	2.91
Overall	**1.40**	**1.10**	**0.94**

14. The number of penalty charge notices issued by enforcement authorities in 2008-2009 was as follows.

- All contraventions 5,466,368, down 710,384 (11.5 per cent) from the previous year.
- Parking 4,689,399, down 578,983 (11 per cent)
- Bus lane 233,927, down 60,205 (20 per cent)
- Moving traffic 540,124, down 71,006 (11.6 per cent).

15. It might be expected that such a fall across the board in the number of penalty charge notices issued would result in a commensurate fall in the number of appeals. So far that is not reflected in our intake of appeals. However, there will of course be a time lag before a reduction in penalty charge notices issued will in itself feed through into the number of appeals. In any event, the number of appeals we receive is not fixed rigidly to the number of penalty charge notices issued; it is also dependant on the percentage appeal rate, which, as can be seen from the table above, has increased for all types. A relatively small percentage increase in appeals on the same number of penalty charge notices issued makes a large difference to our intake in terms of the number of appeals. However, the very latest intake figures do show a slight fall in the number of appeals for the same months the previous year. It remains to be seen whether this will become a consistent trend. The

variables that influence our intake are not within our control and make forecasting future intakes a difficult exercise.

Statutory Declarations and Witness Statements Received

16. Where a motorist receives notice of enforcement of a penalty charge from the County Court, in certain specified circumstances the motorist may lodge in the Court a statutory declaration or, in the case of enforcement under the Traffic Management Act 2004, a witness statement. The procedure is largely designed to deal with a failure of a document from one party to reach the other; for example, where a motorist says that he made representations to the authority but the authority says it did not receive them. The purpose of the procedure is to prevent a motorist being unfairly prejudiced by such failures in communication; primarily failures in the postal system. The effect of the procedure is essentially to wind the clock back in the enforcement process to the point at which the failure has occurred. Where the motorist says that he did not receive the notice to owner, the authority may then serve another notice to owner. In all other cases, the authority must refer the case to the adjudicator, who may then give such directions as they consider appropriate. Without derogating from the generality of this power to give directions, the legislation provides specifically that where no appeal has previously been made to the adjudicator, the adjudicator may schedule the case as an appeal.

17. We receive a large number of such references. The following table shows the number of statutory declarations and witness statements received and the action taken.

Statutory Declarations and Witness Statements Received by Type	2008 - 2009	2007 - 2008	Scheduled as Appeal		Other Direction	
			2008-09	2007-08	2008-09	2007-08
Parking	4,692	3,007	2,051	1,289	2,524	1,608
Bus Lane	158	113	74	64	96	95
Moving Traffic	348	152	132	79	179	104
Lorry Ban	0	0	0	0	0	0
Total	**5,198**	**3,272**	**2,257**	**1,432**	**2,799**	**1,807**

18. It will be seen that there has been a considerable increase in references. The procedure is one that has for some time given us cause for concern. Under the legislation, the County Court effectively has no power to scrutinise the veracity of the declaration or witness statement. It has been apparent to the adjudicators for some time that declarations and witness statements are made where the circumstances in fact do not fall within those for which the procedure is available. This may in many cases be because the motorist has not fully understood the procedure. Often the situation is simply that the motorist has failed to follow the statutory procedure and therefore no longer has the right to contest liability. It is not the purpose of the statutory declaration and witness statement procedure to enable a motorist to obtain an appeal by the back door in such circumstances. Adjudicators are therefore careful to scrutinise such cases and not to schedule for appeal those in which they conclude that the circumstances are not within those prescribed.

19. In our view, however, the legislation is flawed. The County Court should not be bound, as it currently is, to give effect to the declaration or witness statement without regard to its veracity. There are many cases where it is obvious from the available evidence that it cannot be true, yet as matters stand the County Court has no power to reject it. As a result, an additional burden is placed on this tribunal by the need to consider references of declarations and witness statements that, if the legislation was appropriately framed, should never have reached us.

20. We have also noted defects in the manner in which the new witness statement procedure under the Traffic Management Act 2004 has been implemented by the Court Service. The Chief Adjudicator has taken these up with the Ministry of Justice on our behalf.

Appeals Disposed of

21. The following table shows the numbers of appeals disposed of.

Appeals Disposed of by Type	2008 - 2009	2007 - 2008	Increase (Decrease)	
			Number	%
Parking	63,232	53,018	10,214	19.3
Bus Lane	1,254	1,391	(137)	(9.8)
Moving Traffic	6,277	4,523	1,704	37.7
Lorry Ban	37	53	(16)	(30.2)
Total	**70,800**	**58,985**	**11,815**	**20**

22. Although the number of appeals disposed of was almost 12,000 more than the previous year, the record number of appeals received meant that appeals received still exceeded appeals disposed of by 5,676. This has resulted in a growth in the number of postal appeals awaiting a decision, which at the end of 2007 had fallen below 1,000, to over 7,000 by the end of the year of this report.

Appeals Not Contested by the Enforcement Authority

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

Appeals Not Contested By Type	2008 - 2009		2007 - 2008	
	Number	As % of Appeals Disposed of	Number	As % of Appeals Disposed of
Parking	28,776	46	22,564	42.6
Bus Lane	341	27	291	20.9
Moving Traffic	2,151	35	1,204	26.6
Lorry Ban	8	24	16	30.2
Total	**24,075**	**44**	**24,075**	**40.8**

24. The number of appeals not contested by enforcement authorities remains as much a concern as in previous years. It will be noted that the overall rate has risen again, as have the individual rates for all types of appeal except lorry ban, which accounts for very few appeals. There continues to be considerable variation between authorities in the percentage of appeals not contested, as can be seen from the detailed figures published by London Councils.

25. Authorities sometimes give the following reasons for not contesting appeals.

- A motorist presents further evidence at appeal which they did not present initially to the authority.

- When an appeal is lodged the original decision is looked at by a more senior person at the authority. They may decide that the case should not have been rejected in the first instance.

26. The first of these is entirely understandable. The second, however, is a concern since it suggests that in some cases representations may be rejected when in fact one of the statutory grounds for contesting liability applies. This presents a risk that some motorists may accept the rejection and not take the matter further to appeal, thus paying a penalty for which they should not have been liable. Authorities are under a statutory duty to consider representations and decide whether to accept or reject them. It is important for representations to be scrutinised by staff who are able to make the correct decision at that stage.

Appeals Allowed

27. The following table shows the numbers of appeals allowed, including appeals not contested by the enforcement authority. The increase in the percentage not contested by the authority is of course a major factor in the overall increases.

Appeals Allowed by Type	2008 - 2009		2007 - 2008	
	Number	%	Number	%
Parking	46,070	73	38,326	72
Bus Lane	735	59	677	49
Moving Traffic	4,028	64	2,707	60
Lorry Ban	17	46	38	72
Total	**50,850**	**72**	**41,748**	**71**

Applications for Review

28. The following table shows details of review applications received.

29. In this table:

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

Applications	Received		Accepted		Allowed	
	2008-2009	2007-2008	2008-2009	2007-2008	2008-2009	2007-2008
Appellant	1,633	1,279	420	323	113	134
Authority	97	232	57	183	17	69
Total	**1,730**	**1,511**	**477**	**506**	**130**	**203**

Applications for Costs

30. The following table shows details of costs applications received.

Applications	Received		Awarded		Total Amount £	
	2008-2009	2007-2008	2008-2009	2007-2008	2008-2009	2007-2008
Appellant	291	264	247	120	12,684.35	8,149.74
Authority	279	129	184	44	10,808.62	2,714.51
Total	**570**	**393**	**431**	**164**	**23,492.97**	**10,864.35**

31. The small number of applications and awards, and the low total figure in monetary terms, reflects the limits of the power to award costs under regulation 12 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 or paragraph 13 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007. The regulations provide, in summary, that the adjudicator may award costs only against a party that has acted frivolously, vexatiously or wholly unreasonably.

Ancillary work

32. Ancillary work includes reviews, costs, decisions on extending time for late appeals and making directions on statutory declarations and witness statements referred by enforcement authorities. It takes up a good deal of adjudicator time, equivalent this year to about 20,000 appeals. The time devoted to this work is rising, reflecting the increase in the amount of this work, particularly statutory declarations and witness statements.

New Hearing Centre, the Angel

33. The parking adjudicators sat at the Hearing Centre at New Zealand House for almost the whole time since the creation of the tribunal in 1993. It was an excellent location, with convenient transport links from all parts of London. The building itself was a prominent public building well suited to accommodating a tribunal.

34. However, in February 2008 the Committee took the decision to move the Hearing Centre to another location on expiry of the lease on the New Zealand House premises in February 2009.

35. As our business grew, the New Zealand House Hearing Centre had been reconfigured to meet our increased needs in a somewhat improvised fashion. By 2009 we had reached the stage of having outgrown it, so that the private area in particular had become overcrowded and inadequate for the needs of the tribunal. Moving to a new hearing centre therefore presented an opportunity to provide accommodation that would adequately serve the tribunal's requirements into the future. With this in mind the Chief Adjudicator submitted to London Councils on our behalf a paper setting out what we saw as the essential requirements for a new hearing centre to accommodate the current scale of the operation of the tribunal, having regard also to planning for future expansion.

36. The search for suitable premises proved difficult. Very few of the premises inspected would have been suitable as tribunal accommodation. It was therefore with some relief that, at the eleventh hour, premises at the Angel became available and were secured. These were in truth probably the only ones inspected that could really be considered to be suitable.

37. We moved into our new Hearing Centre at the Angel on 9 February 2009.

38. In the main, the Hearing Centre does meet the criteria we set out in our paper. In terms of location, it is not as central as New Zealand House. It is, however, adequately accessible. A particular merit is that, as it is immediately adjacent to Angel underground station, it is easy to find; users do not have the problem of having to search for an obscurely located building.

39. The accommodation itself represents a considerable improvement on New Zealand House, both in terms of space and facilities, and provides a pleasant, modern, working environment for both adjudicators and staff.

40. There are, however, some issues with the public area. In particular, the layout of the hearing rooms and the fact that the soundproofing between them is not up to the standard expected means that sound travels around the hearing room area, sometimes causing distraction. This is manageable with the current numbers of personal hearings, but would be a considerable problem with greater numbers of hearings taking place contemporaneously.

41. However, whilst the outcome has on the whole been satisfactory, we have some reservations about the process. We are disappointed that it was not conducted in a more collaborative fashion, rather than as a consultative exercise. Even seen as a consultative exercise, the smooth running of the project would have been considerably assisted by a greater flow of information to and consultation with the adjudicators. It needs to be remembered that the Committee provides the Hearing Centre under the statutory duty it owes to the adjudicators.

42. There were also difficulties with the move itself. The adjudicators were perturbed to be informed late in the day that it was intended to close the tribunal for over a week, when we had stressed from the beginning, and it had apparently been accepted, that there was to be no break in service. Such a closure would of course have meant a great deal of work not done. In the event, following our representations on the matter, the closure was limited to three days.

43. Further difficulties were caused by delay in installing the necessary link between the Hearing Centre and the computer servers at Chertsey. This resulted in the move

being put back a week and considerable disruption to the work of the tribunal in the weeks immediately after the move, including delay in resuming personal hearings.

44. However, these difficulties are behind us and we now look ahead with optimism to continuing to provide our service from our new home.

The Administrative Justice & Tribunals Council

45. The Chief Parking and Traffic Adjudicator attended what was the first full conference of the AJTC, the successor body to the Council on Tribunals. Lord Justice Carnwath, the Senior President of Tribunals, spoke about the progress of the new tribunal structure, which brings together an increasing number of, currently, central government tribunals into a single tribunal. The conference also received presentations on progress on tribunal reform in Scotland, Wales and Northern Ireland; and on broader administrative justice issues, including proportionate dispute resolution and general principles of administrative justice.

46. This event is also valuable in providing an opportunity to meet members of other tribunals and share experiences and discuss common issues. It is important not to forget that we are part of a wider tribunals world that is increasingly being brought together into a more coherent and cohesive structure.

Department for Transport Traffic Signs Policy Review

47. In late 2008 the Department for Transport initiated a wide ranging review of traffic signs policy to ensure that the Traffic Signs Regulations and General Directions and the traffic signs system continue to clearly deliver messages to the road user. It covers the provision of traffic signs, road markings and traffic signals.

48. Three Working Groups have been established to take the study forward. These are:
    - Group 1 – signs and road user information
    - Group 2 - signs and law enforcement
    - Group 3 – signs and the environment.

49. We are represented on Group 2 by the Chief Adjudicator. Its remit is to consider the way in which traffic regulation is defined in law and the legal requirements for

communicating traffic law via traffic signing. It first met in January. It will be some time before the outcome of the review is known.

Communications

50. In November 2008 we issued a new *Practice Manual for London Enforcement Authorities,* to replace the *Guide to the Parking Appeals Service*, which was published in 1996. We had been conscious for some time that the *Guide* was overdue for substantial revision or replacement. The introduction on 31 March 2008 of parking enforcement under the Traffic Management Act 2004 was the catalyst that spurred us into translating this into reality.

51. The first important decision to be taken was whether we would revise the existing *Guide* or replace it. We took the view that replacement was the better option. The *Guide* contained some material that was more appropriate for a time when civil enforcement was new and everyone involved in it was to some extent feeling their way. It also covered parking only. We therefore felt that a clean slate was the right approach.

52. Thus the *Practice Manual* was born. We commend it to enforcement authorities. It is intended both as a training tool and a continuing source of reference. We hope that it will succeed in these aims and prove to be a helpful guide on the practice of the tribunal. Understanding and following the practices set out in it will assist the efficient management of appeals, to the benefit of all. We are pleased to say that feedback on the *Manual* has been extremely positive.

53. The *Manual* is published in loose leaf form to allow amendments to be made by the issue of replacement pages. It is also available on the PATAS website.

54. A great deal of work has gone into this project. We thank the many who have contributed. We should, however, particularly mention adjudicators Verity Jones and Joanne Oxlade, who bore the brunt of the drafting; and Mark Smith of the PATAS staff who provided invaluable help in the practicalities of the production of the manual and the technicalities of creating the website version.
55. We issued three of our regular Newsletters to enforcement authorities. These include appeal statistics and items of interest, including information about our move to the new Hearing Centre and recent key decisions.

Training

56. We held one adjudicators' training meeting covering current issues of law and practice, including progress in enforcement and appeals under the Traffic Management Act 2004. We also held a seminar on the ancillary work of the tribunal.

Judicial Reviews

57. Appellants commenced judicial review proceedings to challenge the adjudicator's decision in their appeal in seven cases. In each case the High Court refused to grant permission for the application to proceed. In one of those cases the appellant has applied for permission to appeal against the refusal of permission. The outcome of that application is awaited.

58. One enforcement authority commenced proceedings to contest an interlocutory decision by an adjudicator to conduct a review of the appeal decision. That application was withdrawn with the consent of all parties.

59. In addition, permission was refused by the High Court in three cases where the application for permission was made in the previous reporting year. One of these cases, *R (Culligan) v Parking Appeals Service [2008] EWHC 2141 (Admin)*, concerned important questions relating to the adjudicators' power to review decisions and warrants a detailed report.

R (Culligan) v Parking and Traffic Appeals Service (PATAS) [2008] EWHC 2141 (Admin)

60. In this case the penalty charge notice in question was issued on 16th November 2004. The claimant appealed to the adjudicator in May 2005. The appeal adjudicator refused the appeal on 1st August 2005.

61. The claimant applied under regulation 11 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993, as amended, for a review of that decision. Regulation 11(4) provides that an application for review *"shall be made to the proper officer within 14 days after the date on which the decision was sent to the parties …"* The application was made within that time. On that application, a different adjudicator on 24th August 2005 rejected the application for review. There was then

correspondence about whether or not the claimant should have been given a personal hearing. That led to a letter before claim to PATAS in December 2005, to which PATAS responded on 29th December 2005 reiterating that the matter was closed.

62. Then, in 2006, there followed the decision in *R (on the application of the London Borough of Barnet) v The Parking Adjudicator [2006] EWHC 2357 (Admin)*, a decision we reported in our annual report for 2005-2006. In that case Jackson J decided on 2nd August 2006 that section 66 of the Road Traffic Act 1991 required two dates to be stated on a parking contravention notice; both the date of contravention and the date of the notice. It was apparent on the face of the notice that was issued in respect of the claimant that it did not contain the two dates. Thus, the legal argument that succeeded before Jackson J was an argument that was open to the claimant, had he wished to pursue it, at the time of his appeal in 2005.

63. What he did was to raise the matter in March 2006 when he paid the penalty charge but only under protest. Following Jackson J's decision he sought to pursue the matter further and commenced a civil claim in the County Court for restitution against the enforcement authority. The District Judge in that claim said that the validity or otherwise of the parking contravention notice was not a matter for him and was a matter for the statutory appeal process and/or for judicial review. The claimant then applied to the adjudicator for a further review. This was more than two years after the rejection of the earlier application for review. It was the refusal of that application on 23rd November 2007 that the claimant challenged in this claim for judicial review.

64. The judge, Sullivan J, said that there were two points of principle which came into play. The first was the need for finality in litigation. It was well established that merely because it was subsequently discovered that the law was different from that which it was assumed to be by a judge giving an earlier decision, that was not a sufficient ground of itself for a litigant coming along many years later and pointing out, with the benefit of hindsight, the error in the original decision and asking either for permission to appeal or for a decision to be reopened. There was an interest in finality in litigation and if a point which could have been taken at the time was not taken, then even though it was subsequently discovered with the benefit of hindsight that had the point been taken the outcome might have been different, that was not a sufficient reason for reopening a decision some years after the event.

65. The criteria adopted by the Court of Appeal were that it would only reopen a decision if it was necessary to do so in order to avoid real injustice and where the circumstances were exceptional. The reasoning was obvious: there was a need for finality in litigation. If, with the benefit of hindsight, decisions turned out to have been wrongly made, that did not, of itself, mean that it was appropriate to reopen the process years after the event on appeal and/or review.

66. The second principle which came into play was proportionality. As originally imposed, the penalty was £100. Subsequently it went up to £155 because it was not paid expeditiously. So what the case concerned was a sum of £155 in respect of a penalty charge notice that was issued over three and a half years earlier in November 2004. It could not on any reasonably objective view be said that this was the kind of case where it would be reasonable to grant permission to apply for judicial review of what was essentially a discretionary decision whether or not to allow a review very much out of time.

67. There was no error of principle in the discretion that was exercised. There was no good reason why a second review should have been allowed many years after the first review had been refused. Moreover, there was certainly no good reason for allowing a challenge in respect of such a relatively small sum of money in respect of a notice that was issued some years ago. For those two reasons -- the need for finality of litigation and also the need for an element of proportionality in any judicial review claim – Sullivan J refused permission for judicial review.

68. This case accordingly approved the adjudicators' existing approach to late or successive review applications.

Commencement of parking enforcement under the Traffic Management Act 2004

69. We reported last year on the coming into force on the last day of the reporting year, 31 March 2008, of the enforcement of parking controls under the Traffic Management Act 2004, replacing enforcement under the Road Traffic Act 1991. The new regime is contained in the relevant provisions of the 2004 Act itself and in regulations made under the Act, the main ones being the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and the Civil

Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

70. We would reiterate that the broad structure of the regime is similar to that under the Road Traffic Act 1991. Nevertheless, there are important changes and we drew attention to these last year. We will now revisit some of these new elements to report on our experience of them in the first year of parking enforcement under the new regime.

Procedural impropriety: a new ground of representation

71. We drew attention last year to the fact that the new regime provides a new ground for contesting liability for a penalty: that there has been a procedural impropriety on the part of the enforcement authority. Procedural impropriety is defined as a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Regulations or by the Representations and Appeals Regulations. This new ground thus put the issue of procedural compliance on a statutory basis.

72. As we said last year, compliance with the procedural requirements of the enforcement regime has received a deal of attention in the past. Adjudicators have from time to time been called upon to consider whether there was a failure to comply with the procedural requirements of the regime and to determine the consequences of any such failure. Authorities' procedures have from time to time been found wanting and adjudicators have on more than one occasion drawn attention to the need for and importance of compliance with the statutory procedural requirements. We expressed the hope that enforcement authorities would take the opportunity offered by the introduction of the new regime to put the compliance difficulties of the past behind them and ensure that their procedures under the 2004 Act were fully compliant.

73. Unfortunately this hope has not been fully realised. There have been a number of cases during the year where adjudicators have found that statutory enforcement documents issued by enforcement authorities failed to comply with the requirements as to form prescribed by the legislation, and accordingly that the "procedural impropriety" ground was established.

74. As we explained last year, if this ground is established, the regulations provide that the adjudicator 'shall' allow the appeal. Accordingly, where adjudicators find the

ground established, they will allow the appeal, since the regulation requires them to do so; there is no question of any discretion as to whether to allow or refuse the appeal.

75. Another type of procedural impropriety is where the authority produces in evidence a document that is purportedly a true copy of an original document but turns out not to be. Adjudicators continue to see such cases, where the copy of, say, the penalty charge notice or notice to owner produced is not an accurate copy of the original. No doubt such failures are accidental, but that does not affect the fact that, as we have said before, it is a most serious matter to produce such inaccurate copies in evidence. The adjudicators must be able to rely on and have confidence in the accuracy of the evidence presented to them. If they base their decisions on evidence that, unbeknown to them, is inaccurate, they are liable to be misled and miscarriages of justice may result. Some of these issues appear to derive from problems with enforcement authorities' computer systems, but these cannot, of course, excuse placing inaccurate evidence before the adjudicator. Given the potential consequences of such failures, adjudicators take a very serious view of them.

76. The following case, although governed by the old law, is an illustration of the need for careful consideration of the circumstances when an allegation that the authority has acted outside the prescribed procedures is made.

BFS Group Ltd t/a 3663 v Camden (PATAS Case No. 2070540086)

The appellant contended that the authority wrongly issued a charge certificate and that this invalidated the whole enforcement process. He cited in support the case of *Miah v. Westminster (PATAS Case number 2050339777)*.

The chronology of events was as follows.

- 7 September 2007 - the notice to owner was issued.
- 16 October 2007 – representations, dated 7 October 2007, in response to the notice to owner were received by the authority.
- 17 October 2007 - the charge certificate was issued by the authority

- 30 October 2007 - a notice of rejection was issued by the authority. In this Notice, the authority indicated that the charge certificate had been withdrawn and could be disregarded.

- 7 November 2007 - the Notice of Appeal was received by the tribunal.

The adjudicator said that where the authority does not receive representations in response to the notice to owner within 28 days from the date of service of the notice to owner, the authority may issue a charge certificate. It may disregard representations received by them after the end of the period of 28 days beginning with the date on which the notice to owner was served.

On the basis of the above chronology, and applying the presumption, as the authority was entitled to do, that the notice to owner was delivered in the ordinary course of post, the authority did not receive any representations within the 28 day period. The authority could have certainly issued a charge certificate by 12 October 2007, and it was entitled to disregard the representations not received until 16 October 2007.

The authority issued a charge certificate on 17 October 2007. Given that it had not received representations within the 28 day period, it was lawfully entitled to do so. There was therefore no question of the charge certificate being unlawfully issued.

In fact, the authority did later consider the representations and issued the notice of rejection in which it also withdrew the charge certificate. It seemed that as the representations were only received the day before the issue of the charge certificate, they were not actioned before the issue the charge certificate. But even if they had been, the authority would have been perfectly entitled to disregard them and issue the charge certificate anyway. In fact, it chose to consider them. It might be that it chose not to disregard them because they were dated 7 October and it seemed there might have been delay in the post delivering them. The authority was to be commended, not criticised, for the action it took in considering the late representations, issuing a notice of rejection and withdrawing the charge certificate, and so affording the appellant the opportunity to appeal to the adjudicator, when it could have chosen to disregard the representations and simply pursue enforcement.

Therefore this was not a case analogous to the default in the case of *Miah v. Westminster*, where the charge certificate was issued when an appeal was pending and there was clear culpability on the part of the authority. On the contrary, the authority in this case had dealt very fairly with the appellant.

Appeal refused

Compelling Reasons

77. In addition to prescribing the grounds on which the motorist may contest legal liability for the penalty charge, the new regime makes additional provision for the motorist to submit representations that there are 'compelling reasons' why, in the particular circumstances the enforcement authority should cancel the penalty charge and refund any sum paid to it on account of the penalty charge, or, in the case of an immobilisation or removal, refund some or all of the amount paid to secure the release of the vehicle. Such representations may be made whether or not any of the grounds for contesting liability applies. If the enforcement authority accepts that there are such reasons, it must take the appropriate action. In the case of a simple penalty charge notice case, it must cancel the notice to owner and refund any monies paid; in immobilisation and removal cases it must make an appropriate refund of the release fees.

78. The adjudicator may also consider compelling reasons on appeal. If the adjudicator does not allow the appeal but is satisfied there are such compelling reasons he may recommend the enforcement authority to cancel the notice to owner or, in an immobilisation or removal case, to refund some or all of the monies paid for the release of the vehicle. The authority must then inform the adjudicator and the appellant within 35 days whether it accepts the recommendation. If it does not, it must give reasons. If it does not give its decision within the 35 days, it is deemed to have accepted the recommendation. It should be understood that the adjudicator has no power to allow an appeal for compelling reasons, and it is entirely a matter for the authority whether to accept any recommendation made under this power.

79. These provisions give statutory force to the adjudicators' long established practice of referring back to authorities cases where they took the view that there was

compelling mitigation, with a request that the authority consider exercising its discretion to cancel the penalty.

80. The following table shows the number of appeals refused with a recommendation and the response from the enforcement authority.

Appeals Refused with Recommendation	Accepted	Deemed Accepted	Not Accepted
79	23	27	29

81. It can be seen that this new power has been used very sparingly by adjudicators.

82. The following are examples of circumstances where recommendations were made.

- A minicab driver had been called to pick up a person with a disability who, as a result of that disability, was refusing to leave the shop, thereby causing a substantial unexpected delay.
- A doctor parked to make an emergency home call to a patient at the request of the London Ambulance Service.
- The appellant's father-in-law was seriously ill in hospital. She had provided the hospital with her mobile number. She stopped to take a call that she anticipated, correctly, was from the hospital. They told her that her father-in- law was close to death. She had whilst stopped telephoned others to inform them what she had been told. She had been very distressed.
- The appellant had parked his vehicle the evening before, intending to move it the following morning before the restrictions came into force. The following morning he had been unable to repark his vehicle legally because he had been unable to move owing to disabling back pain.

Postal service of the Penalty Charge Notice

83. We noted last year that the new legislation provides for service of a penalty charge notice by post on the owner in a new case in addition to the existing two circumstances. This new case is that a civil enforcement officer had begun to prepare a penalty charge notice for service on the street but the vehicle concerned was driven away before the civil enforcement officer had finished preparing the penalty charge notice or had served it.

84. This is clearly designed to allow postal service in the case of so-called 'drive-aways', where the driver returns to the vehicle and drives away before a penalty charge notice is served.

85. Our experience so far is that enforcement authorities appear to be using this new power only moderately.

86. In appeals relating to this new case that we have received, the issue that has commonly arisen is whether the civil enforcement officer 'had begun to prepare' a penalty charge notice. The legislation provides that a civil enforcement officer who observes conduct which appears to constitute a parking contravention shall not thereby be taken to have begun to prepare a penalty charge notice. In many cases, the evidence produced by the enforcement authority has not been sufficient to satisfy the adjudicator that the civil enforcement officer had begun to prepare a penalty charge notice, as the following case illustrates.

Nestle Water v Merton (PATAS Case No. 2080718027)
The authority produced in evidence the civil enforcement officer's manuscript notebook, in which the vehicle had been logged at the location. The adjudicator said that this was not part of the preparation of the penalty charge notice itself; accordingly there was no evidence that the civil enforcement officer had begun to prepare the penalty charge notice.

Appeal allowed

87. It should also be understood that where a penalty charge notice is sent by post it must be served on the addressee.

Peat v Transport for London (PATAS Case No. 2080145204)

The appellant said he had not received the penalty charge notice, which was properly addressed. In the notice of rejection the authority stated 'We cannot be held responsible for Royal Mail delivery after the charge leaves our office.'

The adjudicator said that this was not a correct statement of the law. Section 7 of the Interpretation Act 1978 provided that where an Act authorised or required any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appeared, the service was deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and unless the contrary was proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. This was a presumption which a party to proceedings may rely upon but was rebuttable by evidence for or on behalf of the intended recipient.

Appeal allowed

88. Whilst this was a decision on a parking case governed by the pre-Traffic Management Act 2004 law, the same applies under the new regime. The possibility of non-delivery is a risk inherent in a postal service scheme. Whether or not the presumption of service is rebutted will be a matter of fact for the adjudicator in each case.

The effect of the 2004 Act on Traffic Management Orders

89. In the following case, the issue before the adjudicator was whether the introduction of enforcement under the 2004 Act rendered the restrictions created by earlier Traffic Management Orders unenforceable without amendment of the Orders.

Organic Planet v Camden (PATAS Case No. 2080637945)

The appellant contended that, as the Traffic Management Order had not been amended in light of the Traffic Management Act 2004, it did not apply at the date of the alleged contravention.

The appellant argued:

- that, because there was reference in the Order to a number of enactments, including the Road Traffic Act 1991, which had been repealed, the Order was invalid
- that the enforcement authority should have amended their Traffic Management Orders regarding references to parking attendants.

The adjudicator said that the function of a Traffic Management Order was to create restrictions and controls on the parking of vehicles in particular areas at specified times. It was not the function of such an order to provide for the enforcement of any restriction or control so created. Enforcement was provided for in the Traffic Management Act 2004 and the Regulations created under it.

The adjudicator referred to a number of provisions within and arising from the Traffic Management Act 2004, the combined effect of which was that, within the Greater London area, parking contraventions were enforceable by penalty charge notices issued in accordance with The Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

The power to issue penalty charge notices and the enforcement thereof being derived from the 2004 Act and the Regulations issued under it, it followed that any references there might be in Traffic Management Orders to parking attendants, traffic wardens or anyone else as regards actual enforcement of the provisions were purely superfluous.

The adjudicator was satisfied that a lawful penalty charge notice was validly issued.

Appeal refused

Other Issues

Camera Enforcement

90. Camera enforcement has been in operation in London for a number of years. Adjudicators see many appeals where enforcement was carried out by camera. Many such appeals concern private hire vehicles collecting passengers. The following are three examples.

Ali v Westminster (PATAS Case No. 208034004A)

The appellant was a private hire driver and was collecting a fare. He had been asked to collect a passenger from an address in Upper St Martins Lane at 01.45 am. He arrived a little earlier than this and waited on a double yellow line for his passenger. The penalty charge notice gave the time of contravention as 01.36.

The adjudicator said he had considerable sympathy for the appellant. There was little traffic at that time of night, and equally, there were very few places where a vehicle could park legally. Had this penalty charge notice been issued by a parking attendant, the appellant could have driven off, or perhaps asked for a little more time while awaiting his fare. As the penalty charge notice was issued after the contravention had been seen on camera, there was no chance for any negotiation or compromise.

The adjudicator said that the contravention was clearly made out and the appeal therefore had to be refused. He observed, however, that if the authority were to issue increasing numbers of penalty charge notices in this manner, he suspected a number of private hire drivers like the appellant would be driven out of business, to the detriment of many who live and work in London. However, although the implications of increasing numbers of camera-issued penalty charge notices might well have to be considered by this and other local authorities, this was not a matter which he was empowered to take into consideration when deciding whether to order the cancellation of a penalty charge notice. With some reluctance, therefore, the appeal was refused.

Ogie v Westminster (PATAS Case No. 2080308466)

The appellant, a private hire driver, had been told to pick up four persons together with their business samples from 91 New Cavendish Street. As he arrived at the pick up point he pressed a button on his communication system and this automatically routed a call to the customers to tell them to come to the vehicle. They came and he drove away.

The local authority relied on still shots from a camera showing the vehicle in place for 1 minute and 11 seconds.

The adjudicator rejected the local authority's asserted definition of the boarding exemption. There was no legal requirement that the passenger must be standing, as it were, on the kerb edge as the vehicle arrives. Whether a vehicle is stopped only for the time necessary to board or alight a passenger is a question of fact and degree in each case. The obvious issue is whether the appellant had crossed the line from stopping to board passengers to stopping to wait for passengers.

The adjudicator said he had not crossed that line. He had taken account of the fact that the passengers were not visible over the 1 minute of the authority's evidence. Nevertheless all of the evidence suggested that the vehicle was indeed stopped only for the time needed to board these four passengers and their packages. The adjudicator accepted the appellant's evidence that the whole process of calling them out of the premises and into the vehicle was no more than a few minutes.

In this culture of CCTV reliance, when the local authorities are not putting enforcement officers onto the streets for cab drivers to see and talk to, the authorities must be careful not to conduct enforcement in a manner which is oppressive to cab and minicab drivers who, when all is said and done, perform a necessary function in London. At the very least, where a vehicle is plainly displaying a cab plate or permit, the authority should be observing it for several minutes before assuming that an exempt activity is not occurring.

Appeal allowed

91. These cases reflect the fact that camera enforcement does change the nature of parking enforcement and the concerns this brings with it. Clearly these are difficult issues.

92. We note that the *Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, February 2008,* states at paragraph 48 as follows.

> 'The Secretary of State recommends that approved devices are used only where enforcement is difficult or sensitive and CEO enforcement is not practical. Approved devices should not be used where permits or exemptions (such as resident permits or Blue Badges) not visible to the equipment may apply.'

93. The first limb is clearly a matter of judgement. We have, however, certainly seen cases where camera enforcement has been carried out other than in accordance with the second limb of this guidance. We are also concerned about the use of vehicles fitted with cameras to carry out parking enforcement on site. It is difficult to see why, if someone is to be sent to the site, an ordinary civil enforcement officer, who would present a visible presence able to engage with motorists, could not be sent. It should not be forgotten that the purpose of parking enforcement is traffic management.

94. What we think is clear is that camera enforcement needs to be carried out with sensitivity and discretion.

95. Of course, these issues do not relate so much to the enforcement of bus lane and moving traffic contraventions, for which camera enforcement is plainly the most practical option.

Differential penalties: residents' visitors

96. Higher and lower penalties for what were perceived as more and less serious contraventions were introduced on 1 July 2007. The penalties payable are linked to the standard list of contravention codes issued by London Councils; the codes are divided into higher level and lower level contraventions.

97. Two of these codes are as follows.

- **Code 12:** *Parked in a residents' or shared use parking place or zone without clearly displaying either a permit or voucher or pay and display ticket issued for that place.*
- **Code 19:** *Parked in a residents' or shared use parking place or zone displaying an invalid permit, an invalid voucher or an invalid pay & display ticket.*

98. The distinction between the two, as expressed in London Council's Circular on implementing differential penalties issued in April 2007, is that Code 19 is designed for cases where the motorist has made some attempt to park lawfully but what is displayed in the vehicle is incorrect; whereas Code 12 is for circumstances where a vehicle has nothing on display at all that would allow it to be parked in the particular parking space.

99. However, under a commitment made to the Mayor of London on him approving the scheme for differential penalties, the driver/owner of a vehicle to which a code 12 penalty charge notice is issued because there was nothing displayed on the vehicle will be expected to pay only the lower penalty if they provide evidence that they were visiting a local resident. Under this commitment, authorities are required to publicise widely the ability to pay at the lower rate.

100. It is of concern, therefore, that adjudicators have seen cases where this concession has not been applied although it has been clear from the representations made to the authority that the circumstances were within the concession. Indeed, in one case the tenor of the authority's Case Summary submitted on appeal was that the fact that the motorist was visiting a resident was immaterial. We cannot say from the few cases we have seen how widespread is the failure to apply the concession. It may well be that these cases were exceptions. However, we draw attention to the issue as it suggests the possibility of the need for further training of some staff dealing with representations and appeals. Clearly the concession needs to be applied consistently.

DVDs and videos

101. We would draw attention to paragraph 7.7 of the *Practice Manual for London Enforcement Authorities* and remind authorities that when submitting moving images in evidence DVDs are strongly preferred to videotapes. They take up far less storage room and when paused for viewing the image is stable. Authorities should also bear in mind that many people no longer own a video machine and will be unable to play a videotape; adjudicators have seen many appellants who have made this point. Authorities should therefore preferably send a DVD to the appellant, or better still offer them the choice of a DVD or videotape. Nor should authorities use Super VHS videotapes since these cannot be played on many video players.

Enforcement authority accountability

102. We are concerned that on occasions enforcement authorities appear not to understand the role of the tribunal or their responsibilities to it. In one case, the adjudicator adjourned the appeal for the authority to explain, amongst other things, on what basis the signing in question was authorised. It failed to respond. The adjudicator adjourned the case again requesting the authority to attend the hearing to explain the matter. It failed to respond or attend.

103. The adjudicator commented that this tribunal is the forum in which enforcement authorities are publicly accountable for their enforcement actions. The tribunal represents the rule of law. Adjudicators only request the attendance of the authority where they consider it necessary to do so. Where they do, the authority has a responsibility, in recognition of the tribunal's role, to accede to that request.

104. He said that the authority's failure to respond or attend the hearing appeared to reveal a disturbing state of affairs. Either it had an attitude of contempt for the tribunal and accordingly for the rule of law; or its failures in this case were the result of incompetence.

105. Whilst in the event he accepted that its failures were the result of incompetence rather than anything more serious, that was, he said, bad enough.

106. In another case, the Adjudicator made an order for costs against the enforcement authority. The costs were not received by the appellant until 47 days after the order

was made. Such a delay in complying with the order of an adjudicator is unacceptable. The authority's dilatoriness in complying with this order contrasts with the timely fashion in which authorities pursue the enforcement process. This is by no means the first occasion on which authorities have failed to comply with adjudicators' orders in a timely manner.

107. Enforcement authorities need to understand that as a public authority with the power to impose penalties on the public, they have an obligation to participate in the judicial process that is in place to ensure that liability for penalties is determined by an independent and impartial tribunal.

108. However, it is right to record that the authority in the costs case referred to above recognised its shortcomings and sent a letter of apology to both the tribunal and the appellant, including an explanation of the steps it had taken to improve its performance.

109. In another case, the authority had received representations in response to the notice to owner. It did not respond as it formed the view, wrongly, that the representations were not from the registered keeper. The adjudicator said that If the authority chose not to consider the representations because it took the view that they were not from the registered keeper, its proper course was to respond promptly to that effect, so that the registered keeper could be alerted and given the opportunity to put in representations. To simply not reply was a quite unacceptable course of conduct for a public authority. The authority responded by explaining that the failure to respond to the representations was the result of an unfortunate set of errors by members of staff, who had been given extra tuition to avoid a repetition. It acknowledged that the failure to reply was unacceptable.

110. The sort of positive action in both these cases in response to feedback from adjudicators is welcome and shows that authorities are willing to take on board lessons to be learnt from appeals. It is very much in tune with a main plank of the Government's tribunal reform programme: stimulating improvements in decision making through feedback from tribunals.

Equivocal Notices of Rejection

111. We continue to see notices of rejection that are not an unequivocal rejection of the representations. For example, a notice of rejection, whilst saying the representations are rejected, may invite the recipient to submit further evidence for the authority to reconsider its position.

112. We entirely sympathise with the motive behind such an approach, which is plainly intended to be helpful and to resolve cases as soon as possible, and avoid the need for an appeal. The difficulty with it, however, is that it unwittingly puts motorists in a quandary. If they take up the authority's invitation, the time taken up by this extra correspondence eats into the 28 days they have to appeal to the adjudicator; indeed, it may result in that time expiring and cause them to lose the right to appeal.

113. The purpose of a notice of rejection is to draw a line in the sand and to establish unequivocally that if from thereon the motorist wishes to continue to contest liability, their remedy is to appeal to the adjudicator. It is important that the notice does not equivocate about that in any way.

114. We do of course approve of authorities seeking to resolve cases as economically and as soon as possible and would not wish to discourage them from giving the motorist the opportunity to provide further information to enable the authority to make a fully informed decision whether to reject the representations. However, this needs to be done by a separate enquiry before taking the decision whether to accept or reject the representations and issue the notice of acceptance or rejection. The problem lies in conflating these two steps.

Reliance on advice published by an enforcement authority

115. From time to time adjudicators have to consider appeals where the appellant claims to have relied on advice given by an enforcement authority or its representative. For example, appellants sometimes claim to have relied when parking on oral advice given by a civil enforcement officer. These cases present the difficulty of deciding precisely what advice, if any, was given and if so what its effect was.

116. The following case, however, was unusual in concerning enforcement by one authority where the appellant had relied on advice published by another.

UK Travel Services Ltd v Transport for London (PATAS Case No. 2080221991)
The appellant relied on Westminster Council's "Park Right" booklet as confirming he could drive in bus lanes. This publication stated, incorrectly, that "vehicles with a capacity of eight or more passengers" may use bus lanes. In fact, the Traffic Signs Regulations 2002 define a bus as a motor vehicle constructed or adapted to carry "more than 8 passengers (exclusive of the driver)".

The adjudicator adjourned the case, informing Transport for London that whilst "Park Right" was not a Transport for London publication, he considered it would be manifestly unjust for a motorist who had been misled by a publication issued by an enforcement authority then to be subject to a penalty. He invited Transport for London's observations and informed them that in the absence of a response by the adjournment date, he would assume it no longer contested this case. It did not respond.

Appeal allowed

Signs

117. Many appeals continue to turn on the adequacy of the signs. The following is but one example.

Franks v Transport for London (PATAS Case No. 2080158705)
This case concerned the adequacy of an "Ahead Only" sign in Whitechapel Road near its junction with Osborn Street.

The adjudicator said that the "Ahead Only" signs used in respect of the junction with Osborn Street did not reflect the actual wording of the Traffic Management Order, which prohibited a right turn. The more appropriate sign would have been the prohibitive "no right turn" sign. He was not persuaded that the authority had properly explained their choice of sign or provided any justification for its use over the "no right turn sign". He considered that such blue signs as the one in this case, tended to give a "softer" message to the motorist than a red circle prohibition sign.

Accordingly, he was not satisfied that the restriction was correctly signed.

Appeal allowed

118. The more vigorous enforcement of yellow box junctions by enforcement authorities under civil enforcement has caused the issue of the legal compliance of box markings to come under close scrutiny. The adjudicators have dealt with many cases where this has been the issue. The box markings are prescribed in diagrams 1043 and 1044 of the Traffic Signs Regulations 2002. Those diagrams are quite prescriptive and there are many yellow boxes that do not comply with them. The issue then will be whether the Secretary of State has given special authorisation for the box under section 64 of the Road Traffic Regulation Act 1984.

119. The following are two such cases.

Newman v Transport for London (PATAS Case No. 2080084744)

The appellant argued that the yellow box junction road marking did not comply with diagram 1043 in the Traffic Signs Regulations 2002 in two respects.

First, he said that the diagram prescribed that the cross-hatched markings had to be marked at 90 degrees to each other. The adjudicator rejected this submission. He said that to the naked eye it might be that the markings in the diagram were at 90 degrees to each other, although he had not applied a protractor to the angles nor did he consider it appropriate to do so. If the draftsman had wished to prescribe that the angle had to be 90 degrees, he would have expressly indicated as much by marking that angle on the diagram. There were other dimensions marked on the diagram, including angles; and throughout the Regulations dimensions were expressly marked on many of the diagrams.

It was true that the Traffic Signs Manual Chapter 5 2003 at page 79, in providing an illustration to assist local authorities in setting out the marking, showed an angle of 90 degrees. The Traffic Signs Manual, however, was not the law; it was merely advice to assist local authorities in the correct use of signs and road markings. The legal position was that the Regulations did not prescribe 90 degrees.

The marking in this case plainly presented as a cross-hatched area. The appellant argued that the marking was confusing. The adjudicator disagreed. No one could be in any doubt that the marking was of a box junction, and he did not believe that the appellant was.

The appellant's second point was that the marking was incomplete. The adjudicator took him to be referring to what appeared to be a short break in one of the cross-hatch lines where there was a manhole cover and surrounding making good. This did not affect the overall picture of the box and could not possibly mislead anyone.

The adjudicator was accordingly satisfied that the marking complied with the statutory requirements.

Appeal refused

Plaha v Ealing ((PATAS Case No. 2080239829)

The basis of the appeal was that the box junction was not compliant as the use of a full box at a T junction was not authorised by the Traffic Signs Regulations and General Directions 2002. The adjudicator referred to two previous appeals relating to T junctions in Ealing where this was the point in issue. In both those cases, *Uteene v Ealing (PATAS Case No. 207049423A)* decided on 27 November 2007 and *Wilinski v Ealing (PATAS Case No. 2070502983)* decided on 6 December 2007, the adjudicator had held that the Traffic Signs Regulations and General Directions did not allow diagram 1043, a full box, to be used at a T junction. The adjudicator saw no reason to differ from the adjudicators in those appeals and adopted their reasoning.

He added one further point. The Traffic Signs Manual Chapter 5 2003, page 78, referring to the yellow box markings, stated as follows.

*"(iv) opposing roads at a junction should normally be in line with each other. The markings may, however, be used exceptionally at staggered junctions, particularly where the minor roads have a right hand stagger, provided the maximum box length is not exceeded, and irregular shapes can be avoided. T*wo *half-boxes may be a practical substitute for a single large box in such circumstances.*"

Paragraph 12.10 on that page then referred to the use of half-boxes at T junctions.

The tenor of paragraph (iv) was plainly that the understanding of the author was that full boxes were for use only at cross roads and not at T junctions.

The adjudicator accordingly found that the box was not compliant.

He added that the authority had already had at least two decisions to this effect on T junctions. This was another. It should take heed of these decisions. If it did not do so, it was putting itself at risk of having costs awarded against it.

Appeal allowed

120. The authority was later the subject of a costs order (PATAS Case No. 2080378337) in favour of another appellant for £750. This costs order was made as the authority had disregarded the earlier adjudicator's warning about costs and thereafter persisted in claiming some fifteen further penalty charges against a bus company despite the succession of unequivocal adjudicator decisions regarding particular full boxes which had been ruled unlawful.

121. The following case concerned the need for authorities to give reasonable notice of the suspension of parking bays and contains observations by the adjudicator on compliance with this requirement. Plainly, it is important for reasonable notice to be given to avoid so far as possible the risk of motorists being penalised because they were not aware of the forthcoming suspension.

Robottom v Wandsworth (PATAS Case No. 2080163443)

The adjudicator said it was clear that the authority had thought carefully about its practice in effecting suspensions and did go to considerable lengths to give notice to those who might be affected by a suspension.

The adjudicator said that there was no perfect answer to the difficulties inherent in a suspension and giving notice of it. In this case, three days notice was given. The adjudicator found that was too short. But however long the notice given, there would always be the possibility that someone would not see it because they were away for a prolonged period. The authority recognised this and were to be commended for their approach of being ready to cancel penalty charge notices where the motorist

produced evidence of being away.

Given the inherent difficulties, the approach the adjudicators had consistently taken was that reasonable notice of a suspension must be given. Of course, there would be instances where there was an urgent need for a suspension and little notice could be given. What was reasonable would depend on the circumstances.

The difficulty with the authority's practice, however, was that it appeared to have a rigid policy of giving only three days notice of a suspension. There was a link between this and the instructions it gave for applying for a suspension, which stated: "Please apply for the suspension at least five full working days prior to the proposed commencement date". The instructions therefore encouraged people to apply for a suspension only five working days ahead. That was what happened in this case. The three-day period for putting up the notices clearly fitted in with a situation where the authority only received applications five days in advance. But from the motorist's point of view, three days really is not very long notice. With such a short period, it was very likely to arise in some cases that some motorists would not see the notice because they were away.

It was likely, then, that in some cases, and depending on the circumstances, the three-day period would not comply with the requirement to give reasonable notice. It seemed to the adjudicator that the authority needed to reconsider its practice and encourage people to apply for a suspension as soon as possible. This would enable the authority then to give a longer period of notice in many, perhaps most, cases. Of course, there was a balance to be drawn, and the adjudicator did not suggest that several months' notice would ever be necessary, but certainly longer than three days would generally be desirable and possible.

Appeal allowed

Signs: the Wembley Protected Parking Scheme

122. In September 2008 an adjudicator considered 20 consolidated appeals all relating to the scheme known as the Wembley Protected Parking Scheme (the "PPS"). This scheme imposed parking restrictions in the area of the new Wembley Stadium and was designed in particular to make special provision for parking in the area surrounding the stadium on days when an event was taking place at the

stadium. The decision is long and, like the scheme itself, complex, and the following represents only a brief summary.

Mohamed and Others v Brent (Patas Case No. 2070504195 and 19 others)

The adjudicator said that the PPS regime was, taken as a whole, the most complex set of restrictions he had ever encountered. It consisted of three different types of Zone which were intermingled. Each Zone had its own set of sign authorisations from the Secretary of State.

At various points around the perimeter of the PPS area there were electronic signs informing motorists either that it was an event day or of the date of the next event day. In addition the three different types of signs at the entrances to the three Zones all had a variable flip-over message sign which could be set to read "event day" or left blank, but nothing to indicate the date of the next event. The adjudicator said that the authority's submission that "*it is the motorist's responsibility to check the Wembley event days"* was misconceived; it was the authority's duty to give clear notification of event days to the motorist.

The adjudicator said that a motorist was faced with a plethora of non-standard signage, some of it authorised by the Secretary of State, some of it simply non-compliant, and a mixture of the three entirely different Zones. On being driven round the area himself, even armed with the authority's map, there were occasions when the adjudicator could not confidently state what Zone he was in. In considering any question of signage it was legitimate to take into account the general context, which was complex and often confusing.

On the effect of authorisation by the Secretary of State, the adjudicator said that authorisation meant that the sign if used in accordance with the terms of the authorisation was technically compliant and gave it the same status as a sign prescribed by the Traffic Signs Regulations. Although he would be slow to say that an authorised sign was unclear in terms of wording or design alone, the effect of the sign in relation to its location and other signage was a very different matter. The mere fact that a sign was authorised did not put the question of clarity beyond the jurisdiction of an adjudicator (following *Shannahan v Croydon (2001) PATAS Case No. CR01/0044).*

The adjudicator went on to consider in detail the signage for each of the three types of Zone and the perimeter advance warning signs, making findings as to compliance or non-compliance as to the various signs.

123. There are, we believe, important lessons to be learnt from this scheme and this case. What marks out the PPS is its complexity in the variety of ways devised to sign similar restrictions. For example, sometimes there were bay markings to show where permit holders could park, sometimes not; sometimes restricted streets were shown by the presence of yellow lines, sometimes not; sometimes when a motorist faced a sign indicating a residents' parking zone he was within that Zone, but sometimes in another type of Zone entirely.

124. We understand that areas posing particular parking problems will require special provision that will require special signs, Wembley Stadium no doubt being one such case. However, the starting point should be to use standard signs wherever possible, and for any variations from the norm to be as limited as possible, staying as close as possible to the consistent, standard pattern of signage with which motorists are familiar. Those devising these schemes need to remember that the ordinary motorist is not steeped in the lore of signage. Driving and parking is merely one part of their daily lives. Whilst they can be expected to be versed in the standard scheme of signage, anything outside that familiar experience is understandably likely to confuse them. In a scheme of the complexity of the PPS, it would, as the adjudicator said, be very easy for the ordinarily competent and prudent motorist to fall foul of the restrictions despite their best efforts to comply. Those devising such schemes need to put themselves in the shoes of the ordinary motorist and ask themselves how they would cope if faced with a particular scheme.

125. The sort of misguided thinking that apparently failed to understand the difficulties the ordinary motorist would be likely to have with the PPS is evidenced in a letter from the Department of Transport to the authority stating that "*it is not feasible to lay down road markings, in particular yellow lines, for a situation prevailing only 35 days a year.*" We endorse the adjudicator's comments on this:

> *"… in the absence of any reason given for this view I cannot see why not. It is not uncommon to find yellow lines laid to indicate restrictions that operate only one hour in 24. If what the Department meant to say was that it was not desirable, or*

simply not worth the effort, one can only say that motorists caught out by the absence of the usual yellow lines might take a different view."

126. We would urge the Department for Transport to heed these lessons in its Signs Policy Review.

Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited: contravention code 18

127. This is a rarely used contravention. Indeed, it does not appear that until this year we had received a single appeal relating to it. This year we received a number of appeals, mainly relating to motorists who had parked in Barnet with a "For Sale" sign displayed in a window of the vehicle. These cases raised an interesting point of interpretation of the Traffic Management Order: was parking a vehicle that happened to have a "For Sale" sign displayed within the contravention? The following decisions illustrate the approach that has been taken by Adjudicators to this question.

Dunne v Barnet (PATAS Case No. 2080497813)

The appellant had parked her vehicle in a pay and display bay to go shopping. She paid for and properly displayed in the vehicle a pay and display ticket.

The parking attendant noted 'advertising car for sale', although the photographs taken by the attendant were unclear as to whether there was a 'For Sale' sign on display.

The adjudicator was not satisfied on the evidence that a 'For Sale' sign was on display. However, he went on to consider the terms of the prohibition in the Traffic Management Order.

He said it would be surprising if someone who parked lawfully with a parking ticket clearly displayed could be penalised in this way. Article 24 section 1 of Traffic Management Order 1997 no. 43 stated:-

'During the permitted hours no person shall use any parking place or any vehicle while it is in a parking place in connection with the sale or offering or exposing for sale of any goods to any person in or near the parking place or in connection with the selling or offering for sale of his skill in handicraft or his services in any other capacity.'

The object of the legislation was to prevent street trading from a vehicle. The mischief envisaged included nuisance to residents and other road users from traders and customers and the avoidance of payment to the local authority for the relevant licence. For a vehicle with a 'For Sale' sign to be included the contravention would have to be established in legislation which used the clearest possible language. The adjudicator was therefore not satisfied that the facts of this case fell within the ambit of the prohibition.

Appeal allowed

Patel v Barnet (PATAS Case No. 2080606522)

In this case the adjudicator said she did not accept the proposition that an ordinary member of the public who parked for the purpose of visiting the area and who just happened to have a "for sale" notice in their vehicle, had committed a contravention. This was merely a one off sale of her own vehicle by a private individual, and she had not expressly parked for the purpose of selling the vehicle.

Appeal allowed

128. That concludes our report.

Parking and Traffic Adjudicators 2008/2009

Martin Wood (Chief Parking and Traffic Adjudicator)

Robin Allen
Jane Anderson
Michel Aslangul
Teresa Brennan
Michael Burke
Anthony Chan
Hugh Cooper
Neeti Dhanani
Anthony Edie
Mark Eldridge
Susan Elson
Anthony Engel
Christine Glenn
Henry Michael Greenslade
Caroline Hamilton
John Hamilton
Andrew Harman
Angela Black
Monica Hillen
Keith Hotten
Edward Houghton
Tanweer Ikram *(resigned 19 May 2008)*
Verity Jones
Anju Kaler
Therese Kamara
Andrew Keenan
John Lane
Michael Lawrence
Francis Lloyd
Paul Mallender
Alastair McFarlane
Kevin Moore
Michael Nathan
Ronald Norman
Joanne Oxlade
Mamta Parekh
Belinda Pearce
Susan Pitt
Neena Rach
Christopher Rayner
Jennifer Shepherd
Caroline Sheppard
Sean Stanton-Dunne
Gerald Styles
Carl Teper
Timothy Thorne
Susan Turquet
Andrew Wallis
Austin Wilkinson
Paul Wright

September 2009