

JOINT ANNUAL REPORT

OF THE

PARKING AND TRAFFIC ADJUDICATORS

TO

LONDON COUNCILS TRANSPORT AND

ENVIRONMENT COMMITTEE

2009-2010

Contents

1. Chief Adjudicator's Foreword	Page 3
2. Function of the Adjudicators	Page 6
3. Judicial Work Shadowing	Page 6
4. Training	Page 7
5. Maintaining Standards and Appraisal	Page 8
6. Workload	Page 10
7. Annual Report 2009 Update	Page 17
8. Case Digest	Page 21
9. Judicial Review	Page 23
10. The Parking and Traffic Appeal Service Team	Page 27

JOINT ANNUAL REPORT
OF THE
PARKING AND TRAFFIC ADJUDICATORS
TO
LONDON COUNCILS TRANSPORT AND ENVIRONMENT COMMITTEE
2009-2010

1. Chief Adjudicator's Foreword

I am pleased to present to the Committee, this joint report of the Parking and Traffic Adjudicators for the year 2009-2010, 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.

Martin Wood retired as Chief Adjudicator on 17th May 2010 after ten years service. Martin's period as Chief saw great changes, not least in terms of the volume of appeals received and the jurisdiction of the Adjudicators, the introduction of the new parking enforcement regime under the Traffic Management Act 2004 and our move from New Zealand House to our new hearing centre at Angel Square. Throughout this period Martin guided the tribunal with a calm and steady hand. We extend our sincere thanks to him and wish Martin a long and happy retirement, or at least a semi retirement, as he will remain working as an Adjudicator, allowing the tribunal to continue to benefit from his knowledge and experience.

I was appointed Interim Chief Parking and Traffic Adjudicator from 7th June 2010, just after the expiry of the period covered by this report. Before appointing a new Chief Adjudicator, the Committee is consulting more widely, including seeking guidance from the Administrative Justice and Tribunals Council on the exact nature and role of the office and the most appropriate procedure for making an appointment. Adjudicators look forward to welcoming a new Chief Adjudicator.

The year has been not only eventful but also challenging for the Adjudicators. The Adjudicators decided a total of 61,079 appeals in the reporting period, as well as reaching decisions on ancillary matters such as statutory declaration/witness

statements, out of time appeals and review applications (see 'workload' at page15). They have tackled this heavy caseload with skill and commitment for which both my predecessor and I are grateful.

We have now been in our new Hearing Centre at Angel for over a year. All such moves are likely to have teething problems but these are gradually being resolved. The Adjudicators continue to focus on the needs of our users and are disappointed to note that the move to Angel Square appears to have resulted in a fall in the selection of personal appeals by appellants and a reduction in the number of attendances by local authority representatives. Whilst Angel Square is not as central a location as our previous premises the Adjudicators would wish to take this opportunity to remind all users that the hearing centre is located directly next to Angel tube station and is only a short walk from King's Cross. The hearing centre has 13 well-equipped hearing rooms and we continue to offer a range of hearing times and days in order to accommodate our users. The hearing rooms are open to the public and we welcome all who wish to come and observe an appeal hearing.

The Adjudicators are also pleased to endorse proposals for remote hearings allowing the motorist to access a personal appeal hearing from a local centre. Provided that technological, legal and security issues are resolved, Adjudicators welcome any development that keeps our users central, giving appellants who wish to do so, the opportunity of putting their case orally. As experienced lawyers, Adjudicators know only too well that many people find it inherently easier just to 'explain what happened' rather than having to formulate written submissions, however informally that can be done. The Adjudicators remain committed to providing a user-friendly service that is efficient and readily accessible, and to using technology appropriate to promote both efficiency and access.

No aspect of public service can be immune from the consequences of the current national financial position and every aspect of expenditure of public money will, rightly, be the subject of intense scrutiny over the coming months and years. It is therefore important that money spent on public services is spent efficiently and is seen to be so. Judicial independence is not a shield behind which adjudicators can shelter themselves from criticism. Recognising the expectation that cases will be decided in a way that is timely and proportionate to the issue, the Adjudicators will strive to contribute to improving value for money. Despite the success of the parking adjudication system in London, as an adaptable and responsive tribunal, over the

next year we will be looking at the way in which we deal with appeals and their aftermath to ensure that the public continues to have a high level of service from the parking adjudication system as a whole (see Maintaining Standards and Appraisal at page11).

The Adjudicators, ably supported by the Parking and Traffic Appeals Service continue in our aim to keep appeals accessible fair and efficient, generating decisions that are concise clear and relevant. All the Adjudicators would wish to express thanks to the Parking and Traffic Appeals Service for their support during the period covered by this report.

Caroline Hamilton
Chief Adjudicator
July 2010

2. Functions of the Adjudicators

The Adjudicators appointed under Regulation 17(5) (a) (b) of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 are judicial office holders, barristers and solicitors independent of the parties to the appeals. They decide appeals from motorists against penalties imposed by the London Local Authorities and Transport for London for contraventions of parking, bus lane, moving traffic and lorry ban regulations.

The Adjudicators have the appropriate knowledge, skills and integrity to make well-considered impartial decisions based on fact and law. The Adjudicators have been recognised by the Judicial Appointments Commission as having valued judicial experience as a result of which over the years a number of Adjudicators have resigned in order to pursue full-time judicial appointments. In October 2009 our colleague Susan Pitt was appointed a Judge of the First-tier Tribunal of the Health Education and Social Care Chamber exercising the mental health jurisdiction within that Chamber. Many of the Adjudicators also hold other part-time or fee paid judicial appointments allowing the Parking and Traffic Appeals Service to continue to benefit from the experience and skills acquired in other jurisdictions.

A list of the Parking and Traffic Appeals Adjudicators appears on the final pages of this report.

3. Judicial Work Shadowing

The Adjudicators have taken part in the Judicial Work Shadowing Scheme. The Scheme, administered by Judicial Office was re-launched in October 2008 and attracted huge interest. The scheme allows lawyers with a minimum of two years post qualification legal experience considering a judicial appointment or preparing for the application process to sit with a judge for a short period. A shadower will spend up to three days observing a judge's main duties including, as appropriate, preparing for trial, case management, presiding over court proceedings, hearing actions, sentencing, determining applications and giving judgments. Our first 'shadower' attended over three days in March 2010, since when we have hosted a further three participants. Each visit has been a great success and has hopefully given prospective judicial office holders a flavour of the challenges a judicial appointment brings. The Adjudicators are pleased to have been included in the scheme and

believe that our Tribunal is an excellent example of a Tribunal adhering to the core values identified by the Administrative Justice and Tribunal Council:

1. Openness and transparency.
2. Fairness and proportionality.
3. Impartiality and independence.
4. Equality and access to justice.

4. Training

The Adjudicators attended two training meetings this year covering current issues of law and procedure. The objective of our training is to ensure that the Adjudicators continue to reach decisions that are concise, clear and well founded in law. In April 2009 a training meeting was held to update Adjudicators on current developments relevant to their role: new legislation, case law, operational and procedural matters. The aim of this training was to ensure that Adjudicators continued to be equipped to adjudicate upon the appeals, reaching legally sound decisions.

The objectives of this programme included:

- A presentation of Google Street view and consideration of its potential for use in adjudicating appeals;
- An update on progress of the Department for Transport's Signs Review;
- A report on the outcome of the judicial review application in Dawood v Camden and its implications for adjudication of appeals;
- A presentation on and discussion of the arrangements for the handling of ancillary and interlocutory work;
- Presentation on and discussion of a number of current legal and practice matters;
- An update to Adjudicators on the current workload

- Consideration of outstanding issues relating to the move to the new hearing centre at Angel, including the implications for the conduct of appeals.

In June 2009 training meetings were held to ensure that Adjudicators could address defective appeals, statutory declarations and witness statements. The objective of this programme was to give the Adjudicators an overview of the ancillary work of the tribunal, training on the law and practice as well as equipping them with the skills to use the features on the computerised adjudication system.

5. Maintaining Standards and Appraisal

Adjudicators are committed to dealing with all cases fairly and justly. That requires appeals to be dealt with in ways that are proportionate to the importance of the issues, the anticipated costs and the resources available to the parties. Unnecessary formality must be avoided. Delay is to be avoided so far as compatible with proper consideration of the issues. In these difficult financial times it is incumbent on every publicly funded organisation to ensure it is providing value for money. All Adjudicators are keenly aware of our duty to the public purse and we believe that we work hard and deliver value for money. The overwhelming view among Adjudicators is that our current system based on flexible working hours works well and facilitates the provision of an efficient user-friendly service.

One of our aims over the coming year is to put in place systems that allow us to demonstrate that we operate to an efficient standard and enable us to maintain and improve the service we provide. There are two key areas where we feel improvements can be made which will have the additional benefit of providing data on how we are performing.

The first area relates to the statistical feedback we receive from our IT support. At the moment this is detailed but limited to our core work of determining appeals. In addition to this work Adjudicators undertake a significant amount of other casework known as 'duty work'. At the moment our data on this type of work is limited. Our aim is to put in place systems that enable us to see how much of our time is taken up by Duty Work and if possible provide us with statistical data about the nature of this work. This will be extremely helpful in identifying what issues generate 'duty work'

and whether improvements are needed in the way this work is processed in order to increase the efficiency of the system as a whole.

The second area is the introduction of an appraisal system. Because of our competing priorities we have not as yet introduced an appraisal scheme. We are now in a position to do so and are in the process of introducing appraisals. A robust appraisal system is an invaluable tool that will enable us to maintain the high standard we believe we have achieved. It will provide feedback that will assist individuals to reflect on their own working practices and enable those of us with an administrative role to identify any problems or training needs at the earliest opportunity.

To be effective an appraisal scheme must be comprehensive and include all adjudicators. Appraisal must take place on a regular basis. The core competencies expected of Adjudicators will need to be identified and understood by those being appraised ("the appraisee"). Broadly speaking these will be based on the core competencies applicable to all tribunals (knowledge and values, communication, conduct of hearings, evidence and decision making). Every appraisal will also include self-assessment and an assessment of the appraisee's awareness of diversity and his or her ability to ensure fair treatment for all those who use the Tribunal.

Appraisals will include observation of the appraisee conducting a hearing, a review of the appraisee's written decisions in particular any decisions where reviews have been granted.

There will be clear outcome standards and any perceived training or developmental needs will be identified and notified to the appraisee at the earliest possible opportunity. The appraisal is also a collaborative process where it is hoped the appraiser and the appraisee can set mutually agreed achievement targets to be met by the next appraisal.

An appraisal report will be confidential to the appraiser, the appraisee and to those to whom the relevant responsibilities for overseeing appraisals and addressing training or developmental needs have been delegated by the Chief Parking Adjudicator. Good practice identified during appraisals will be shared through training with all adjudicators to help enhance both individual and jurisdictional performance. Statistical data on the outcome of appraisals will be available in an anonymised form.

The overall objectives for the appraisal scheme are to:

- Ensure the maintenance of the Tribunal's standards and consistency of its practices.
- Ensure training programmes are informed by the identification of particular needs.
- Maintain public confidence in adjudicators' performance as a result of regular monitoring.
- Ensure that all adjudicators endeavour to demonstrate the appropriate qualities and abilities for effective performance of their role.
- Enable individual performance to be measured against the tribunal competences and standards.
- Identify individual training and development needs.
- Create opportunities for adjudicators to raise issues relating to their own experience in determining appeals, training and tribunal procedures.

Our aim is to use our existing resources to ensure sufficient administrative arrangements are in place to support the efficient management of an effective and continuing appraisal scheme.

The first steps have already been taken towards instituting and initiating an appraisal scheme. A number of experienced Adjudicators are undertaking the Judicial Studies Board "Appraiser Standards and Appraiser Competencies in Tribunals" course. When they have completed their training, with the assistance of the Chief Adjudicator they will have the responsibility for drafting and implementing our appraisal scheme. We all thank them for taking on this extra responsibility and look forward to the launch of the scheme.

6. Workload

Penalty Charge Notices issued

The number of Penalty Charge Notices issued resulting in appeals remains low as a percentage of the notices issued. London Enforcement Authorities issued 4,152,345 penalty charge notices for parking contraventions in the reporting year period (2009-

2010). This resulted in 50,185 appeals to the adjudicators. Representing 1.2% of the penalty charge notices issued (*1.45% in 2008-9*). 213,592 penalty charge notices were issued for bus lane contraventions resulting in 1,443 appeals. Representing 0.7% of the penalty charge notices issued (0.56% in 2008-2009). 486,559 penalty charge notices were issued for moving traffic contraventions resulting in 5,259 appeals. Representing 1.1% of the penalty charge notices issued (1.3% in 2008-2009). 3,105 lorry ban penalty charge notices were issued resulting in 98 lorry ban appeals. Representing 3.2% of all penalty charge notices issued (1.9% in 2008-2009).

Total PCNs issued by LEAs: 4,855,601

Number of appeals: 56,985

This represents 1.2% of all PCNs issued (*1.4% in 2008-9*)

Appeals Received

The number of appeals received in the reporting year fell significantly. Adjudicators have noted that more local authorities are re-offering the discount penalty amount at a later stage in the process, even including an offer in the Notice of Rejection. This flexible approach may have had an impact on the reduction in appeals lodged.

	Appeals received	Postal	Personal
2008-09	76476	54803	21673
2009-10	56985	41525	15460

The rate of Appellants electing to attend a personal appeal fell.

	% Cases decided via personal hearing
2008-09	28.34%
2009-10	27.13%

Appeals Decided

Parking: 53,806

Bus lane: 1,409

Moving traffic: 5,787

London Lorry Control Scheme: 77

Total: 61,079

Personal/Postal Appeals

Of the decided appeals, 19,507 followed personal appeal hearings and 41,495 were postal decisions. In addition there were 77 London Lorry Control Scheme decisions made where the differentiation between personal and postal is not recorded in our statistics.

Of the decided appeals 15,822 were allowed following personal hearings. 8,898 of these personal appeals were not contested by the Respondent authority.

22,912 appeals were allowed further to a postal hearing. 11,523 of these postal hearings were not contested by the Respondent authority.

56 London Lorry Control Scheme appeals were allowed. The differentiation between personal and postal appeal hearings is not recorded in our statistics.

Reviews

In the reporting year the Adjudicators received a total of 1,463 applications for review under Paragraph 12 of the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

Number of reviews applications received

Appellants	Parking	1,460
	Bus lane	51
	Moving traffic	21
	London Lorry Control Scheme	0
	Total	1,532

EA	Parking	108
	Bus lane	2
	Moving traffic	21
	London Lorry Control Scheme	0
	Total:	131

Number of review applications granted

Appellants	Parking	307
	Bus lane	12
	Moving traffic	41
	Total	360

EA	Parking	55
	Bus lane	1
	Moving traffic	10
	Total:	66

Number of review applications resulting in a different outcome

Appellants	Parking	95
	Bus lane	1
	Moving traffic	12
	Total	108
EA	Parking	20
	Bus lane	0
	Moving traffic	7
	Total:	27

Whilst the number of review applications represents only a small percentage of the number of appeals completed, the grounds for review are limited and it should be noted by all that simply disagreeing with an Adjudicator's decision is not a ground for review.

Costs

Under Paragraph 13 of the Schedule under 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 subparagraphs (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.

Number of costs applications received

Appellants	Parking	223
	Bus lane	6
	Moving traffic	27

	Total	256
EA	Parking	96
	Bus lane	0
	Moving traffic	2
	Total:	98

Number of costs applications granted to Appellants and to Enforcement Authorities

EA	No. of awards to Appellants	Amounts awarded to Appellants	No. of awards to EAs	Amounts awarded to EAs
Barking and Dagenham	1	£ 29.75	0	£ -
Barnet	4	£ 522.31	0	£ -
Bexley	1	£ 348.00	0	£ -
Brent	1	£ 118.05	0	£ -
Bromley	1	£ 145.79	0	£ -
Camden	5	£ 246.20	1	£ 50.00
Corporation of London	0	£ -	9	£ 635.40
Croydon	1	£ 37.00	0	£ -
Ealing	10	£ 487.03	1	£ 64.00
Enfield	0	£ -	5	£ 280.00

Greenwich	0	£ -	0	£ -
Hackney	4	£ 288.85	0	£ -
Hammersmith & Fulham	1	£ 95.02	1	£ 64.23
Haringey	8	£ 531.72	1	£ 108.73
Harrow	0	£ -	0	£ -
Havering	1	£ 16.80	0	£ -
Hillingdon	0	£ -	0	£ -
Hounslow	6	£ 649.17	0	£ -
Islington	1	£ 28.12	2	£ 133.59
Kensington and Chelsea	0	£ -	0	£ -
Kingston Upon Thames	0	£ -	2	£ 100.00
Lambeth	21	£ 1,276.77	0	£ -
Lewisham	0	£ -	0	£ -
Merton	0	£ -	0	£ -
Newham	4	£ 369.55	0	£ -
Redbridge	2	£ 67.84	1	£ 50.90
Richmond Upon Thames	1	£ 10.80	18	£ 1,093.68
Southwark	4	£ 338.38	0	£ -
Sutton	0	£ -	0	£ -
Tower Hamlets	3	£ 205.56	0	£ -
Transport for London	23	£ 1,604.15	0	£ -

Waltham Forest	1	£ 32.80	0	£ -
Wandsworth	0	£ -	0	£ -
Westminster	26	£ 1,338.24	6	£ 575.10
Totals :	130	£ 8,787.90	47	£ 3,155.63

7. Annual Report 2009 update

CCTV Enforcement

Last year we reported on issues arising from the enforcement of parking contraventions by way of CCTV. We suggested that camera enforcement needs to be carried out with sensitivity and discretion and reminded the Enforcement Authorities of the Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, February 2008, which states at paragraph 48:

'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'.

Motorists are becoming more aware of camera enforcement and are less likely to contest a Penalty Charge Notice if it includes a photograph of the vehicle stopped in contravention. However, motorists do continue to appeal on facts unlikely to succeed – stopping to look at a map, to ask for directions, to answer a mobile phone or to go to the lavatory.

The National Parking Adjudication Service (NPAS) case of Johnson v Wirral (2009) in which the Adjudicator allowed the appeal in part because there were no warning signs of camera enforcement has resulted in a number of unsuccessful appeals to us. We consider that the legislation does not require warning signs of camera

enforcement, nor will it always be possible or practical for warning signs to be erected – for example when the camera is mounted on a vehicle. Nonetheless the authorities should continue to follow the Secretary of State's operational guidance to put up warning signs where possible. This is particularly so where an authority has suggested in its own codes of practice that warning signs will be erected.

We are concerned to note that some authorities have continued to use camera enforcement where permits or concessions (such as resident permits or blue badges) not visible to the equipment, may apply. One such appeal was Kimpton v Enfield (PATAS Case No. 20902 40675). The Adjudicator accepted the appellant's evidence that his blue badge and clock were on display and in allowing the appeal expressed his concern: 'It is unacceptable for lawfully parked motorists to receive Penalty Charge Notices that they have to contest through the statutory process' (see Case Digest at page 33). Enfield Council has now changed their internal procedures to make sure that this does not happen again. A similar difficulty can arise with private hire vehicles where the private hire stickers cannot always be seen on the CCTV footage.

It is of course essential for Enforcement Authorities to ensure that cameras are sited so as to give a fair and accurate view of the location and restrictions in place. In Tofik v Transport for London (PATAS Case No. 209008481A) the Adjudicator found that the effect of the still photographs from the CCTV footage was extremely misleading as it looked as though the appellant was parked on double red lines whilst in fact he was legitimately parked in a bay.

The Traffic Management Act 2004 The Civil Enforcement of Parking Contravention (England) General Regulations 2007 and The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007

As previously reported (Annual Report 2009), The Traffic Management Act 2004 and accompanying Regulations provided new grounds of appeal for contesting liability for a penalty charge notice namely: 'that there has been a procedural impropriety on the part of the enforcement authority'. Under the regulations, where the Adjudicator finds that ground established they are required to allow the appeal. In this reporting year we have received 2,655 appeals in which the appellant relied on claimed 'procedural impropriety' as one of the grounds of appeal.

Of the appeals decided in the reporting period 1,637 appeals were allowed (540 personal, 1097 postal) and 1,500 appeals were refused (124 personal and 1,376 postal) where 'procedural impropriety' was one of the grounds relied upon. The main ground of appeal remains 'the contravention did not occur'.

The Traffic Management Act 2004 and supporting Regulations also gave 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.

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

	Refused with recommendation	Recommendation accepted	Recommendation deemed accepted	Recommendation refused
2008-09	79	23	27	29
2009-10	263	43	184	36

The number of 'recommendations deemed accepted' results from an enforcement authority simply not responding to an Adjudicator's recommendation within the given timescale. It is however important that enforcement authority Respondents are seen to engage in the appeal process. The Adjudicators hope that the increase in 'deemed acceptances' illustrated in the table above will be considered by enforcement authorities with a view to ensuring that the figure is reduced over the next reporting period.

Statutory Declarations/Witness Statements

Number of Statutory declarations/witness statements received

Parking	6,796
Bus lane	156
Moving traffic	517
London Lorry Control Scheme	0

Total: 7,469

The number of statutory declarations and witness statements received remains high and continues to give the Adjudicators concern, in particular repeated and clearly unfounded declarations (see Annual Report 2009). Statutory declarations and witness statements made on false premises will be considered and addressed over the coming year. The Adjudicators will continue to reject such declarations or witness statements, and will make awards of costs in appropriate cases. Authorities are urged to seek to enforce such orders and to pursue such other action as may be open to them as a result of false declarations having been made (see case digest Case No 2080335458 at page 29).

Appeals without merit

Adjudicators have noticed an increasing number of cases where Appellants have clearly based their appeal on information gleaned from websites offering varying degrees of assistance with appeals. In some cases this takes the form of a long list of points or demands for information from the Enforcement Authority apparently downloaded en bloc from a website with very little regard to the reality of the basis for challenge in the particular case.

Whilst an Appellant is fully entitled to take a well founded technical point on such matters as defective signage or failure to follow the statutory procedures correctly (which often succeed before Adjudicators) the impression is sometimes given that the Appellant is attempting to find a straw to clutch at to avoid payment of a perfectly valid PCN. Presenting an Enforcement Authority or Adjudicator with pages of irrelevant material or requests for information does little to assist the impression formed of an Appellant's case and may indeed have the effect of drawing the Authority's or the Adjudicator's attention away from relevant grounds on which the appeal might succeed.

A further difficulty is that unfortunately the information available on the web is of very variable quality ranging from the accurate and helpful through the incomplete to the wholly misleading. For example on one website the following appears :

“All single and double yellow lines have to be continuous, unbroken and must end in a 'T-bar'. If there are breaks in the line, or the line does not end in a T-bar (except where the line is broken with other road markings), this can invalidate any ticket given anywhere on the line.”

Although the word “can” is used, this perpetuates the widely believed myth that all yellow lines without T-bars are unenforceable – a view not shared by Adjudicators and which takes no account of the case law on when it is permissible to overlook minor defects under the principle of de minimis.

Some aspects of parking law (e.g what is “loading”, what is and is not a “road”) are surprisingly complex, and it is not an easy task, even for Enforcement Authorities, to provide guidance that is both comprehensible and useful to the public and also legally accurate. Nevertheless putting out material that is simply wrong cannot be condoned and members of the public should treat website information with a degree of caution. The same unfortunately can also apply to newspaper articles that often report on ‘facts’ that are not accurate and purport to give guidance on parking regulations leaving a motorist with the false impression that he or she has a valid ground of appeal.

8. Case Digest

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

1. Procedural Impropriety

BFS Group Ltd v Enfield PATAS 208071805A (2009) : This was one of a number of cases where the Appellants argued that the council could not contract out consideration of representations; and it was implicit in the submission that even if the Council does not in fact do so, the PCN gives the impression that it does and is therefore defective. The question for the Adjudicator was whether the council had contracted out or delegated its statutory function to consider representations and, if not, whether it nevertheless stated on the PCN that it had. The Adjudicator found no evidence beyond the mere fact of the address to suggest that NCP staff were

considering the formal representations and was satisfied that the Penalty Charge Notice made it clear that representations were to the Enforcement Authority and the NCP address simply a compliance with the requirement to provide an address. The appeal was refused.

Geddes v Camden PATAS 2090085313 (2009) : A Civil Enforcement Officer issued a Penalty Charge Notice to the vehicle at the time of the contravention, on 14 January. On 19 January the Council issued by post a second Penalty Charge Notice for the same contravention based on observation by a CCTV operator. The Penalty Charge Notice already having been issued on 14 January, the Council had no power to issue this second Penalty Charge Notice. The second Penalty Charge Notice was a nullity and unenforceable. The fact that the Council cancelled the first Penalty Charge Notice (rather than the second) did not affect this.

2. Engaging With Appeal Procedure.

Keystone Distribution Ltd v City of Westminster PATAS 2090063252 (2009) : The local authority applied for a review of the Adjudicator's decision. The Adjudicator had carried out a site visit and concluded that the required CPZ signs were not in place. The local authority had not responded to two requests for representations on the issue. The local authority applied for the review but did not respond to a further request for representations and did not attend the hearing. This left the reviewing adjudicator with no clarification and no option but to allow the appeal.

3. Statutory Declaration/Witness Statements

Clockwork Budget v City of Westminster PATAS 2080335458 (2010) : Four statutory declarations were made on behalf of the Appellant company stating that representations had been made to the Enforcement Authority against the Notice to Owner regarding a Penalty Charge Notice issued in Belgrave Square but no Notice of Rejection had been served. The company failed to respond to the Adjudicator's request for a copy of the representations. The Adjudicator found the declarations to be untrue and an abuse of the scheme. The Adjudicator directed the appellant to pay the penalty charge notice and the amount shown on the charge certificate as well as costs of £183.45. The Adjudicator also directed the local authority to investigate whether an offence had been committed by the making of a false declaration and for the authority to apply to the County Court for an injunction.

4. CCTV Enforcement

Kimpton v Enfield PATAS 2090240675 (2009): The issue was whether the Appellant's blue badge and clock were on display further to CCTV enforcement. The Adjudicator concluded that it was impossible to tell from the CCTV evidence whether the badge and clock were on display. The Adjudicator considered it disturbing that the Council had taken enforcement action on the basis of such evidence and allowed the appeal.

Roberts v Tower Hamlets PATAS 2080489688 (2009) : The Adjudicator considered it reasonable for the motorist to have parked, read the time plate and moved away, noting : 'a motorist is permitted sufficient time to read the time plate to see whether they are allowed to park. This is just the sort of overzealous enforcement, somewhat encouraged and facilitated by camera enforcement, that brings the enforcement regime into disrepute. I find that the contravention did not occur. I allow this appeal'. The vehicle was at the location for 23 seconds, the adjudicator accepted that during this short period the parking sign was being considered.

9. Judicial Review

As with any public body or tribunal exercising power over the citizen, decisions of Adjudicators are subject to supervision by the High Court. An Adjudicator's decision can be challenged, in a procedure called Judicial Review. A decision may be unlawful where there was no power to make it; the decision was irrational; the procedure followed was unfair or biased or the decision was taken in breach of the European Convention on Human Rights in a way made unlawful by The Human Rights Act 1998.

Of the tens of thousands of appeals that are considered by Adjudicators every year, only a very small number are subject to an application for Judicial Review. Since the procedure is open to both authorities and appellants, this compares extremely well with many other tribunals.

During the period covered by this report there were only twelve applications for Judicial Review, out of more than sixty-one thousand appeal decisions made. Of these, four applications had permission to apply for Judicial Review refused. Two

applications had permission for hearing granted with dates pending. Six applications for permission are currently awaiting a decision by the High Court. As it takes time for an application to be heard, and a decision of the High Court handed down, it is often in the period of a subsequent report that a final outcome is known. During the period covered by this report a number of such decisions became known.

Judicial Review decisions

The Queen on the Application of Warner v The Parking Adjudicator (Warner v Ealing PATAS 2090123638 (2009)) : Issues were raised regarding the contravention location. The High Court remitted the appeal for redetermination. A different Adjudicator then considered the matter and found that, amongst other grounds, the local authority had not complied with Regulation 3(5) of the *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007*. The regulation provides that the recipient of a penalty charge notice served under Regulation 10(1)(a) of the *Civil Enforcement of Parking Contraventions (England) General Regulations 2007* may, by notice in writing to the enforcement authority, request it (a) make available at one of its offices specified by him, free of charge and at a time during normal office hours so specified, for viewing by him or by his representative, the record of the contravention produced by the approved device pursuant to which the penalty charge was imposed; or (b) provide him, free of charge, with such still images from that record as, in the authority's opinion, establish the contravention. Paragraph (6) provides that where the recipient makes such a request, the enforcement authority shall comply with the request within a reasonable time. The Appellant had said that he wrote to the Authority after receiving the Penalty Charge Notice, indicating that he wished to view the recorded evidence relied upon by them. The Adjudicator found that there had been a procedural impropriety on the part of the Enforcement Authority and the appeal was allowed.

The Queen on the Application of Dawood v The Parking Adjudicator (Dawood v Camden PATAS 2080396281(2008)): a previous decision of the High Court was considered by the Court of Appeal. The case concerned what is commonly called 'footway parking'. Section 15(1) of the Greater London Council (General Powers) Act 1974 originally made it an offence for any vehicle to be parked with one or more of its wheels resting on any footway, land between carriageways, or on any grass verge, garden or space. This has been amended over time and was further amended subsequently but, at the material time, the position was that a contravention occurred

if a vehicle was parked with one or more wheels on any part of an urban road other than a carriageway. The live issue was simply whether the place where the Appellant had habitually parked his motor scooter was, whatever the ownership of the land, one to which the public had access. The Appellant's case was that the scooter was parked on his private property, which was adjacent to the highway. The Adjudicator found as a fact that the vehicle was on part of an urban road other than a carriageway. The High Court, in refusing permission to apply for Judicial Review, held that private ownership of land, and notices restricting its use to the owner, do not prevent the public having access as part of a road. The Court of Appeal, after a hearing, refused permission to appeal the decision.

The Queen on Application of Barnes v The Parking Adjudicator (Barnes v Harrow PATAS 2060446048 (2007)): a motorist parked on a single yellow line when restrictions were in force, in reliance of the blue badge concession. The Appellant's contention was that the hot weather has caused the Badge to become dislodged. The Adjudicator had found that at the material time neither the Badge nor the required clock was correctly displayed. Permission to seek Judicial Review was refused.

In three appeals, applications for permission to seek Judicial Review were considered together and refused in all three cases :

The Queen on the Application of Amure v The Parking Adjudicator (Amure v City of Westminster PATAS 2080558066 (2008)): the Appellant had submitted that he was being 'required' to carry a mobile phone in order to use a local authority's pay by phone parking bays and this was a breach of his rights under the European Convention on Human Rights.

The Queen on the Application of Amure v The Parking Adjudicator (Amure v City of Westminster PATAS 2080335913 (2008)): a case based on the exemption for picking up of passengers by a licensed private hire vehicle driver, the original appeal had been refused where the Appellant produced no evidence to support the contention.

The Queen on the Application of Amure v The Parking Adjudicator (Amure v Islington PATAS Case No 2080461984 (2008)): the Adjudicator held that there was no 'period of grace' after the expiry of paid for parking time in an on-street pay and display bay.

One application was discontinued :

The Queen on the Application of Keystone Distribution v The Parking Adjudicator (Keystone Distribution v City of Westminster PATAS Case No 2080274557 (2009)), the local authority sought permission to seek Judicial Review arising of an Adjudicator's determination relating to signage of a controlled parking zone. This application was however discontinued by consent of the parties.

Pending Judicial Reviews

One application, The Queen on the Application of London General Transport Services Ltd v The Parking Adjudicator (London General Transport Services v Camden PATAS 2090198127 (2009)) arises out of the decision by a number of authorities to impose a credit card surcharge for payment of penalty charges. This received widespread publicity at the time. The Adjudicator found that there was no authority for the imposition of this sum. The matter has now been listed for hearing by the High Court.

Permission has also been granted in the application for judicial review in The Queen on the Application of Makda v The Parking Adjudicator CO/4743/2009 (Makda v City of Westminster PATAS 208050093A (2009)) and we await with interest the guidance of the High Court. The judicial review relates to two refused appeals relating to City of Westminster penalty charge notices. The Appellant was a private hire driver. In each case the evidence showed the vehicle parked without any boarding actually taking place or any customers being at or approaching the vehicle. In each case the footage in evidence lasted for just less than 1 minute 30 seconds. The Claimant argues that the Adjudicator was wrong to say that the exemption does not extend to waiting for passengers to arrive. He contends that if the evidence shows that he stopped "*for the purpose of*" picking up a passenger, then on the plain meaning of the words he fell within the exemption. He further argues that if the exemption is limited to the immediate pick up of a passenger, as opposed to waiting for a passenger to arrive, the former includes any time required for the passenger to note the presence of the vehicle or approach it; and in cases where the boarding is frustrated or abortive, a brief period to determine that is the case.

10. THE ADJUDICATORS AND THE PARKING AND TRAFFIC APPEAL SERVICE SUPPORT TEAM

Chief Adjudicator

Caroline Hamilton (June 2010)

Parking and Road Traffic Adjudicators

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
John Hamilton
Andrew Harman
Angela Hedegard
Monica Hillen
Keith Hotten
Edward Houghton
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
Sue Pitt
Neena Rach
Christopher Rayner
Jennifer Shepherd
Caroline Sheppard
Sean Stanton-Dunne
Gerald Styles
Carl Teper
Timothy Thorne
Susan Turquet
Andrew Wallis
Austin Wilkinson
Martin Wood
Paul Wright

PARKING AND TRAFFIC APPEAL SERVICE SUPPORT TEAM

Charlotte Axelson - Head of Parking and Traffic Appeals Service

Richard Reeve - Tribunal Manager

Garry Hoy- Business Delivery and Project Manager

Mark Smith- Principal Business and Information Officer

Ada Amuta - Acting Senior Tribunal Assistant

Peter Hollamby - Divisional Support Officer

Hazel Kings - Tribunal Assistant