



Annual Report 2005-2006
Road User Charging Adjudicators

Aims and objectives of the Road User Charging Adjudicators

- To provide all parties to road user charging appeals with independent, impartial and well-considered decisions based on clear findings of fact and proper application of law
- To have the appropriate knowledge, skills and integrity to make those decisions
- To ensure that all parties to road user charging appeals are treated equally and fairly regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion or disability
- To enhance the quality and integrity of the road user charging appeals process.

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| Chief Adjudicator's foreword

I am pleased to present to the Secretary of State the third Joint Report of the Road User Charging Adjudicators for the year 2005-2006.

The report sets out a record of our achievements for the past year and provides an overview of three years of the Congestion Charge appeals process.

17 February 2006 marked the third anniversary of the introduction of the Congestion Charge to Central London. It also marked a considerable decline in the number of appeals.

Between March 2003 and March 2004 we received 42,339 appeals. Between April 2004 and March 2005 this figure had dropped to 34,065. However, from this year, April 2005 to March 2006, there was a dramatic drop in the number of appeals and we received 16,583 appeals. I believe this is probably due to road users being familiar with how to pay the Congestion Charge and where a contravention has occurred Transport for London (TfL) applying the use of their discretion more generously.

There was no significant increase in the numbers of appeals following the increase from £5 to £8 since July 2005. What impact the expansion of the zone into Kensington and Chelsea will have on the number of appeals remains to be determined. But, as those road users who live in the zone will already be experienced in paying the Congestion Charge and will now benefit from the residents' discount, it is not anticipated that we will see a significant long term increase in the number of appeals.

In my last Annual Report I stated that "the length of time it takes to hear an appeal remains at an unacceptable level". I am pleased to report that we have achieved our standard of service target of 56 days of receipt of Notice of Appeal. This has been achieved by the hard work and long hours put in by the Adjudicators who agreed with me that justice delayed is justice denied. I take this opportunity to thank them for their outstanding achievement, either as postal or personal hearings.

Cases closed for 2003-2004	10,994
Cases closed for 2004-2005	28,029
Cases closed for 2005-2006	20,187

The number of cases TfL chose not to contest for 2005-2006 has also dropped significantly with the figures showing:

2003-2005	13,033
2004-2005	13,126
2005-2006	5,084

One unwelcome item for the year 2005-2006 was an increase in the cost per case:

2003-2004	£26.08
2004-2005	£27.93
2005-2006	£28.63

This was due to two main reasons. First, TfL are charged the cost of an appeal when the Notice of Appeal is received. This means that for years 2003-2004 and 2004-2005 we received a significant number of cases but in year 2005-2006 we had a significant drop in the number of appeals received, but a significant increase in the number of appeals heard.

Also, the evidential material for each appeal has increased resulting in most personal appeals lasting considerably longer than budgeted for. With the experience of the last three years I am confident that we will be able to budget more accurately for the future.

One remarkable achievement this year has been the introduction of Electronic Data Interchange (EDI). This means that TfL is now able to send the evidence pack for appeals electronically. This is very much in line with our policy of a “paper free tribunal”. The new process started on 14 November 2005 and has been a resounding success. We have also made available an e-mail address patas.team@tcfl.gov.uk which will enable us to receive e-mail correspondence from Appellants.

The last three years has been a very exciting period. We have helped to build a new tribunal, interpret regulations dealing with a new concept in traffic control, deal with an unhappy public quite often politically opposed to the Congestion Charge, interface with an unprepared Capita and generally be blamed by everyone for the problems of the Congestion Charge. Now, three years later, Congestion Charge is part of London life and the appeal process is operating efficiently.

During the year I visited the Hub Centre in London and Capita in Northampton. At the Hub Centre I was shown how the camera position is fixed and the means of checking to ensure the camera location is correct. All data is “hand written” meaning the data is incapable of being altered, added to or even deleted.

My visit to Capita in Coventry showed how Capita had noted the criticisms made, particularly in the first Annual Report, and had taken the necessary steps to improve its operations. *The visit comprised a demonstration of:*

- How representations are processed and the representations system functionality
- The quality measures in place for checking the responses to both representations and appeals
- How appeals are processed and the system’s functionality in relation to sending appeals via EDI
- How the exercise of discretion is considered.

Plans are already in hand for the future. The most immediate impact will be the expansion of the charging zone to include parts of Kensington and Chelsea on 19 February 2007. It is hoped that with 36 experienced Adjudicators we now have the capacity to deal with any significant increase in the number of appeals. There is also in reserve six recently appointed adjudicators who will supplement the existing 36. We propose to have ready for then a users’ guide which we hope will help the public in the appeal process.

From early 2008, it is proposed that emission standards are to be introduced in London for certain heavy goods vehicles (not cars). Operators driving vehicles in the Low Emissions Zone (LEZ) which do not meet the emission standards will be required to pay a substantial charge for each day of use. Non-payment will incur a penalty charge and appeals against these charges will be to the Road User Charging Adjudicators.

As the regulations require each Adjudicator to make an annual report to the Secretary of State for Transport on the discharge of their functions, the next section of this report is allocated to contributions by various Adjudicators.

The Road User Charging Adjudicators make the following recommendations to the Secretary of State.

- That TfL should publish their policy on discretion following the indication given by the Court of Appeal in Walmsley
- That TfL should exercise their discretion generously in the expanded zone to those road users who incur a congestion charging penalty charge notice for the first time
- That the experience and knowledge gained from the introduction and development of the Congestion Charge will be applied to the introduction of the Low Emission Zone Charge.

Ingrid Persadsingh
Chief Adjudicator

| The Road User Charging Adjudicators

Mercy Akman	Maura Lynch
Jane Anderson	Joanna Lyons
Ian Coutts	Isaac Maka
Gordon Cropper	David Malone
Jane Cryer	Paul Middleton-Roy
Leslie Cuthbert	Ian Mohabir
Fiona Dickie	Michael Nathan
George Dodd	Belinda Pearce
Tony Edie	Martin Penrose
Francis Lloyd	Ingrid Persadsingh
Gillian Ekins	Annabel Pilling
Anthony Engel	Luthfur Rahman
Andrew Harman	Christopher Rayner
Angela Black Hedegard	Anita Reece
Fiona Henderson	Fiona Ryans
Anitra Hussein	Timothy Smith
Ian Keates	Alison Spicer
Graham Keating	Jan Verman
Maggie Kennedy	Anwen Walker
Sanjay Lal	Martyn Waygood
John Lane	Christopher Woolley

as at 1 April 2006

The Structure of the Road User Charging Adjudicators' Tribunal

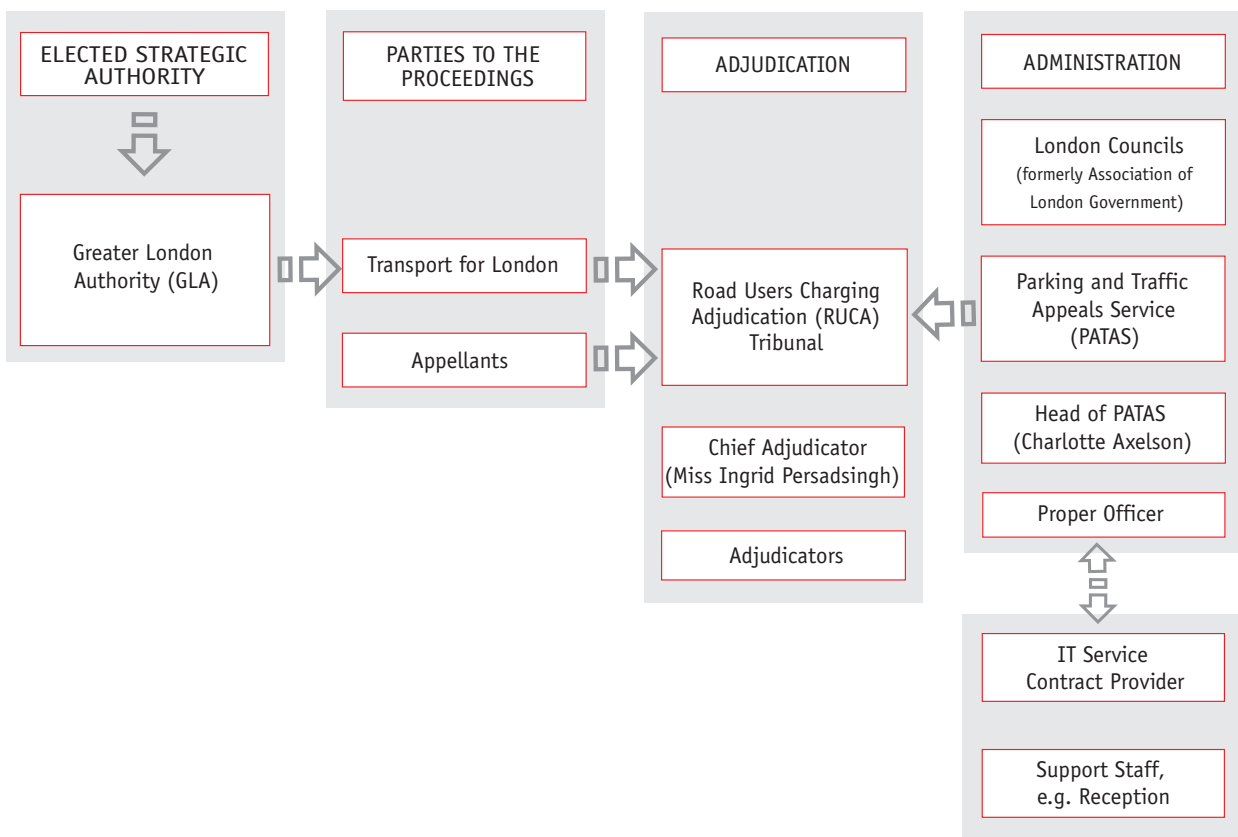
What is 'RUCAT'?

'RUCAT' is the 'Road User Charging Adjudicators' Tribunal'. It is an independent tribunal which decides appeals against Congestion Charge penalties in London.

What is 'PATAS'?

PATAS is 'The Parking and Traffic Appeals Service'. It was established by the Road Traffic Act 1991 and provides the administrative support to the Road User Charging Adjudicators and to the London Parking Adjudicators.

The following diagram explains the structure of RUCAT and PATAS:



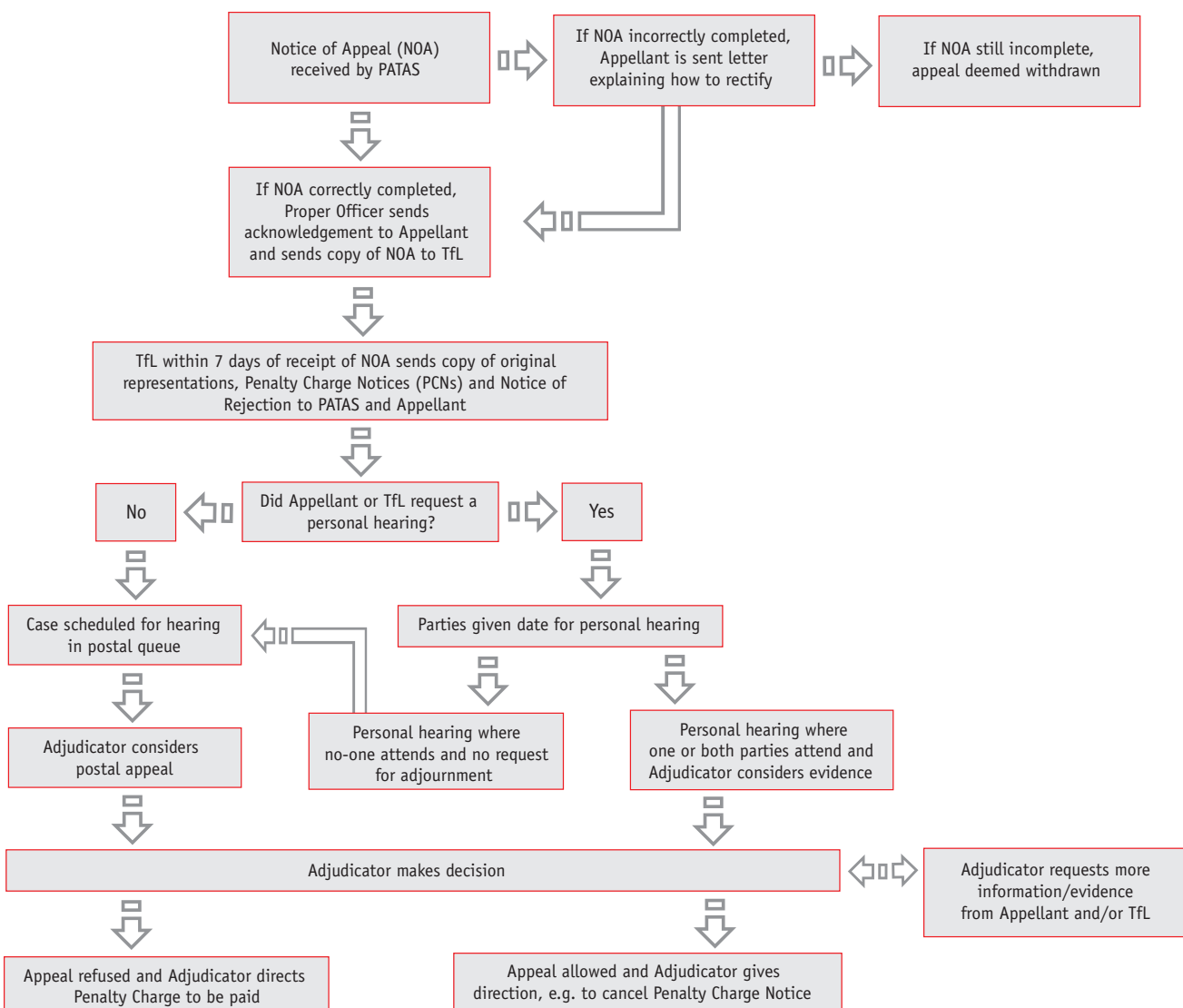
What is an appeal?

If TfL serves a Penalty Charge Notice arising from an alleged Congestion Charge contravention, the registered keeper of the vehicle is entitled to contest the Penalty Charge by making written representations to TfL.

If TfL accepts those representations, then the Penalty Charge Notice will be cancelled.

If TfL rejects the representations, the registered keeper of the vehicle may appeal to the Road User Charging Adjudicator. The appeal is an appeal against TfL's decision to reject the written representations.

The following diagram explains the process of an appeal after a Notice of Appeal is received by PATAS.





What qualifications do Adjudicators have?

All Road User Charging Adjudicators must be a qualified lawyer (a solicitor or barrister) and have been qualified for five or more years. They are independent of TfL and will reach an objective decision based upon the evidence presented to them and applying the relevant law.

Who appoints Adjudicators?

All Road User Charging Adjudicators are appointed through open competition run by the Lord Chancellor/ the Department for Constitutional Affairs.

Who pays Adjudicators?

London Councils (formerly the Association of London Government) pays the Adjudicators. The funds are provided by the Greater London Authority as required by Regulation 4 of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 as amended.

Are Road User Charging Adjudicators independent?

Yes. All persons appointed as Adjudicators by the Department for Constitutional Affairs were judged to satisfy the competencies and have the abilities listed below:

- integrity and independence
- fairness and impartiality
- have an understanding of people and society
- have maturity and be of sound temperament
- be courteous, committed, conscientious and diligent
- intellectual and analytical ability
- sound judgment
- decisiveness
- communication and listening skills
- authority and case management skills.

TfL has no say in the appointment of Adjudicators, neither can they remove them from office.

How does the European Convention on Human Rights/the Human Rights Act 1998 apply to appeals before a Road User Charging Adjudicator?

Following the implementation of the Human Rights Act 1998 into UK law, all public authorities must act in accordance with the European Convention on Human Rights and all laws must be read in conjunction with the European Convention on Human Rights. An Adjudicator, however, does not have power to declare a law passed by Parliament as incompatible with the European Convention. This power resides with High Court judges.

Explanation of the grounds of appeal

Initially, the responsibility is on TfL to demonstrate that a contravention has occurred. This means that TfL must produce evidence to an Adjudicator to prove that:

- 1) A relevant vehicle,
- 2) was used or kept within the Congestion Charge zone,
- 3) during the designated hours of a particular date, AND
- 4) that the Appellant is the registered keeper of the vehicle; AND
- 5) that the correct payment for that vehicle for that date has not been received by TfL or the vehicle was not subject to an exemption.

If TfL fails to do this then the Adjudicator will not be satisfied that a contravention has occurred and therefore that a valid Penalty Charge has been created.

If TfL does produce sufficient evidence, however, the onus shifts on to the Appellant to satisfy the Adjudicator that one of the six statutory grounds of appeal exists. This Appellant must satisfy the Adjudicator that 'on the balance of probabilities' one of the appeal grounds is present.

Ground 1:

I was not the person liable at the time of the contravention

This relates to Regulation 13 (3) (a) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

There are four possible scenarios that qualify under this heading:

- (i) *That the Appellant was never the registered keeper in relation to the vehicle in question;*
 - (ii) *That the Appellant had ceased to be the person liable before the date on which the vehicle was used or kept on a road in a charging area; or*
 - (iii) *That the Appellant became the person liable after that date; or*
 - (iv) *That the vehicle shown in the photograph is a 'cloned' or 'ringed' vehicle.*
- (i) In order to succeed under this heading, an Appellant would need to produce evidence to demonstrate that their details may have been recorded incorrectly by the DVLA.
 - (ii) In order to succeed under this heading, it would not be enough to state that the vehicle had been sold prior to the date of contravention. In addition the Appellant would need to provide evidence of when they notified the DVLA that they had sold their vehicle.
 - (iii) In order to succeed under this heading, the Appellant would need to provide evidence of when they purchased the vehicle.
 - (iv) In order to succeed under this heading, the Appellant might provide evidence to show differences between their vehicle and the vehicle shown in the photographs produced in evidence by TfL, a police crime report number or evidence from DVLA. Alternatively the Appellant would need to produce evidence to show that their vehicle was not within the Congestion Charge zone at the time and date shown by the photographs.

Ground 2:

The charge has already been paid

This relates to Regulation 13 (3) (b) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

This ground of appeal actually requires that a 'licence' (a "Congestion Charge") is purchased in the time and manner required under the Scheme. What this now means in practice is that the Congestion Charge must be paid by midnight on the following charging day, albeit that the actual Congestion Charge amount alters slightly depending upon when the Congestion Charge is purchased. Therefore, attempting to purchase a Congestion Charge after this time will mean you are not purchasing a Congestion Charge in the 'time required under the Scheme'.

It also means that the road user must ensure that the vehicle registration number is correct when purchasing a Congestion Charge and that the Congestion Charge has been purchased for the correct date of travel. If you the road user does not, then a Congestion Charge has not been purchased in the 'manner required under the Scheme'.

In order to succeed under this ground of appeal the road user would need to produce evidence of payment having been made to TfL and as far as possible demonstrating that this payment related both to the correct vehicle and to the alleged contravention date. Therefore, bank statements alone will not necessarily be sufficient to satisfy an Adjudicator to find in an Appellant's favour. The best evidence is a receipt which confirms the date paid for and that the correct amount was paid although in certain circumstances if provided with full credit/debit card details, TfL may be able to trace the transaction.

Ground 3:

No penalty charge is payable under the charging scheme

This relates to Regulation 13 (3) (c) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

This includes cases where the provisions of the charging scheme do not impose a Penalty Charge e.g.:

- The vehicle was either not used or kept within the Congestion Charging zone during the designated hours
- that at the time of use, the road user qualified for an exemption or a 100 per cent discount from payment of the Congestion Charge
- the road user paid at the time and in the manner required under the Scheme.

Ground 4:

The vehicle was used without the registered keeper's consent

This relates to Regulation 13 (3) (d) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

This relates to cases where the vehicle has been driven without the consent of the registered keeper. It should be noted that a driver who was using the vehicle with the permission of the registered keeper but who had not obtained specific consent to use the vehicle in the Congestion Charge zone would not be covered under this provision.

Normally the Adjudicator would require evidence to demonstrate that the vehicle had been used without the consent or authority of the registered keeper. Evidence may for example be in the form of a letter from the police confirming that the vehicle had been reported as having been stolen prior to the date of the alleged contravention.

Ground 5:

The penalty exceeded the relevant amount

This relates to Regulation 13 (3) (e) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

This is an often misunderstood ground of appeal. It does not concern itself with whether or not an Appellant considers that the increase from an £8 charge to purchase a Congestion Charge licence to a £100 fixed penalty charge is a fair one. The amount of the Penalty Charge is set by law and an Adjudicator cannot order that an Appellant pay a penalty at anything other than the fixed amounts of either £100 or the discounted rate of £50 (if the Appellant made representations and appealed within the relevant time periods).

An example of when this ground of appeal would be applicable is where an Appellant entered the zone when the penalty amount was fixed at £80, for example in 2003, but when they received the Penalty Charge Notice it indicated that they must pay a penalty of £100.

Ground 6:

The registered keeper is a vehicle hire firm

This relates to Regulation 13 (3) (f) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

Under this ground, the registered keeper is allowed to transfer liability to the hirer if certain evidential points are proven. In the event that an appeal on this ground is successful the original Penalty Charge Notice is cancelled and TfL is entitled to reissue the Penalty Charge Notice directly to the hirer.

The registered keeper must establish all of the following:

- (i) that the registered keeper of the Penalty Charge Notice is a vehicle-hire firm
- (ii) that the vehicle in question was at the material time (i.e. when the camera captured the vehicle within the zone) hired from that firm under a hiring agreement and
- (iii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice imposed in relation to the vehicle during the currency of the hiring agreement.

Therefore 'loan' cars and 'courtesy cars' from a garage in the ordinary course of events are not covered under the Congestion Charge scheme. In order to transfer liability to the hirer, the registered keeper of the vehicle would need to prove that a valid hire agreement was in force.

As the registered keeper must be a vehicle hire firm, hire purchase agreements are excluded.

A 'hire agreement' is a document which needs to meet a number of conditions in order to qualify under the definition of a hiring agreement. These provisions come from Section 66(7) of the Road Traffic Offenders Act 1988 and Schedule 2 of The Road Traffic (Owner Liability) Regulations 2000.

Section 66(7) applies to a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a *fixed period of less than six months* at the outset, whether or not that period is capable of extension by agreement between the parties or otherwise.

This document must contain upon it a 'statement of liability' signed by the hirer indicating that they accept liability for any penalties in relation to the Congestion Charge scheme in relation to the vehicle during the period of the hire agreement.

Recorded upon the document must be the following particulars of the person signing the statement of liability:

1. Their full name
2. Their date of birth
3. Their permanent address
4. Their address at the time of hiring (if different from 3 above and their stay is likely to be more than two months from date of hiring)
5. The details of their driving licence:
 - (a) country where issued (if not UK)
 - (b) serial number or driver's number
 - (c) date of expiry

(If the person taking possession of the vehicle is not the same as the person by or on whose behalf the statement was signed, the full name of that person should also be supplied, if known).

In addition, the document needs to record the following particulars:

1. Registration mark of vehicle hired under the hiring agreement
2. Make and model of vehicle hired under the hiring agreement
3. Registration mark of any vehicle substituted for the above during the currency of the hiring agreement
4. Make and model of any vehicle substituted for the above during the currency of the hiring agreement
5. Time and date of any change of vehicle
6. Time and date of commencement of original hiring period
7. Expected time and date of expiry of original hiring period
- †8. Time and date of commencement of authorised extension of hiring period
- †9. Expected time and date of expiry of authorised extension of hiring period
- †10. Actual time and date of return of vehicle (or when vehicle returned out of hours time and date on which vehicle-hire firm next opened for business).

†(These requirements applying only to the vehicle hire firm's copy of the hiring agreement.)

The regulations are prescriptive and in the event that any single item is not recorded on the hire agreement, the agreement will not be sufficient to transfer liability.

Service of a Penalty Charge Notice in the congestion charging jurisdiction - clamp and remove appeals

In Congestion Charging Regulation 12(1) of the Enforcement and Adjudication Regulations states that TfL **MAY** serve a notice (a penalty charge notice). Regulation 12(2) states that a penalty charge notice shall be served on the Registered Keeper or the Person Liable.



The use of the word “may” in the statute is a question of construction. Regulation 12(1) means that TfL may or may not issue a penalty notice and if it chooses to, Regulation 12(2) states that the penalty notice shall be served on the Registered Keeper or Person Liable.

Chadwick LJ in the Court of Appeal in the Congestion Charge case of *Walmsley v TfL [2005] EWCA Civ 1540* stated in paragraph 15 of his judgment that there was no doubt that in a proper case, TfL may decide not to issue a Penalty Charge Notice. In the case of foreign drivers, whose vehicles are not registered with DVLA, TfL quite simply is unable to serve a Penalty Charge Notice. This must be a proper case when they choose not to serve a Penalty Charge Notice by post.

In Congestion Charging, the power to immobilise and/or remove the offending vehicle comes from Articles 13 and 14 of the Scheme Order and Regulation 10 and 12 of the Charges and Penalty Charges Regulations. There must be three outstanding **PENALTY CHARGES**, not penalty charge notices, against that vehicle. According to Regulation 11(2) of the Charges and Penalty Charges Regulations, a penalty charge will be outstanding if **EITHER** it has not been paid **OR** it has not been cancelled and is not subject to an appeal.

Chadwick LJ in paragraph 7 of his judgment stated that Article 12 of the Scheme Order creates a debt at midnight if the congestion charge has not been paid and that this penalty (debt) although payable when imposed does not have to be paid until the penalty notice is served.

Nevertheless, Regulations 11 and 15 state that the vehicle shall only be released if all outstanding penalty charges are paid. It would appear then, according to Chadwick LJ, that the penalty charges do not have to be paid until the penalty notices are served but the vehicle will not be released until the penalty charges are paid. TfL usually serves the Penalty Charge Notices at the Pound. Paragraph 17 of the Enforcement and Adjudication Regulations allows service of a document by delivering it to a party. The relevant person, who claims the vehicle, is a party and would probably but not certainly also be the Registered Keeper or Person Liable - the person upon whom the penalty notice shall be served. Nevertheless, Regulation 10 of the Enforcement and Adjudication Regulations gives the relevant person the right to make representations, whether or not he/she has been served the penalty notice. The Appellant does not have to be the recipient of a Penalty Charge Notice.

This is also why, in cases where the penalty notice has never been issued, the penalty is fixed at either £80 or £100. There is no discount period and neither is a charge certificate issued because a Penalty Charge Notice would never have been served prior to release, when all outstanding penalty charges are paid and the release fees paid.

In Congestion Charging, in Part 111 of the Enforcement and Adjudication Regulations - Representations and appeals in relation to the removal or immobilisation of vehicles - the Appellant is referred to as the relevant person. In Part 1V of the Regulations - Recovery of Penalty Charges - the Appellant is referred to as the recipient of a Penalty Charge Notice. To be the recipient of a Penalty Charge Notice is clearly not a requirement to make a 'clamp and removal' appeal.

In Congestion Charging, paragraph 17 of the Enforcement and Adjudication Regulations also states that a Penalty Charge Notice may be served by sending it to the proper address. As liability in congestion charging is initially against the Registered Keeper, TfL serves the Penalty Charge Notice by sending it to the Registered Keeper's address. Of course, there is a rebuttable presumption of service. Either the Penalty Charge Notice was received late or not at all. In the latter situation, Regulation 19 of the Enforcement and Adjudication Regulations allows the person against whom the county court judgment was served to make a statutory declaration.

In Congestion Charging, if the Penalty Charge Notices were issued but not received then the relevant person, if the same as the Registered Keeper or Person Liable, may very possibly make a statutory declaration when they pay for the release of their vehicle and pay for outstanding penalty charges, as long



as charge certificates were issued and County Court judgments were obtained. The declaration would have to be made within 21 days of the service of the judgment.

Alternatively, and this would probably be the usual situation, the Relevant Person etc would have to apply to a County Court judge for permission to make a statutory declaration out of time. This option would not be available to a foreign driver, whose

vehicle is not registered with DVLA because a County Court judgment would never have been obtained (because no Penalty Charge Notice would ever have been issued) and as such would preclude the Relevant Person etc from making a statutory declaration.

The purpose of the Congestion Charging legislation is to penalise those who do not purchase a licence for a Congestion Charge and to clamp and remove those who are persistent offenders. When the legislation is looked at as a whole the conclusion may be reached that a vehicle may be clamped and/or removed even when a Penalty Charge Notice has not been issued. See:

Regulation 12(1) and (2) of the Enforcement and Adjudication Regulations ('may');

Article 12 of The Scheme Order (debt created);

Articles 13 & 14 of the Scheme Order and Regulations 10 & 12 of the Charges and Penalty Charges Regulations (power to clamp and remove);

Regulation 11(2) of the Charges and Penalty Charges Regulations (outstanding penalty charge); and

For the difference between the description of an Appellant in Regulation 10 in Part 111 of the Enforcement and Adjudication Regulations (the clamp and removal provisions) and for the description in Regulation 13 in Part IV (recovery of penalty charges);

In congestion charging if a Penalty Charge Notice was not issued without good cause, this would be a procedural impropriety and again the Appellant would be entitled to have their appeal allowed. In the case of drivers who do not have their vehicles registered, they cannot be sent a Penalty Charge Notice.

Chadwick J stated, *"There is, as it seems to me, no doubt that, in discharging its functions as operator of the Congestion Charging Scheme for London, TfL can, if it thinks fit in a proper case, decide not to issue a Penalty Charge Notice under Regulation 12 of the Enforcement and Adjudication Regulations."* It is easy to infer therefore that in cases where the vehicle was not registered with DVLA, TfL thought it a proper case not to issue the Penalty Charge Notice because they were unable to do so. The Congestion Charging Scheme is dependent upon a vehicle being properly registered to the Keeper's address.

Recent Developments

Pay-next-day: Revised regulations extend the time for making a Congestion Charge payment.

A change in the regulations governing the Congestion Charge Scheme came into force on Monday 19 June 2006 with the effect that road users have been given an extra day to pay the Congestion Charge.

Prior to 19 June 2006, the Regulations required that a Congestion Charge be purchased no later than midnight on the date of travel. An £8 Congestion Charge was payable if purchased up to 90 days in advance of the date of travel or up to 10pm on the day of travel into the Congestion Charge Zone. If the Congestion Charge was purchased between 10pm and midnight, the cost of the Congestion Charge increased to £10. If no Congestion Charge was purchased by the midnight payment deadline, the old regulations provided that a penalty charge of £100 was incurred automatically.

Under Article 6 (5) of the Central London Congestion Charging Scheme: The Consolidated Scheme Order, incorporating the Greater London (Central Zone) Congestion Charging (Variation and Transitional Provisions) Order 2006, road users are given the opportunity to pay the £8 Congestion Charge up to midnight on the day of travel, or pay £10 up until midnight on the following charging day.

In practice, the road user who forgot to purchase a Congestion Charge for a Friday would have until midnight the following Monday to pay or, if that Monday was a public holiday, until midnight on Tuesday.

Crucially, only two methods of payment are available to road users under the revised regulations, if payment is to be made on the next charging day. Pay-next-day can only be made via the TfL official telephone call centre (**0845 900 1234**) or via official Congestion Charge website at www.cclondon.com. Pay-next-day will not be available if paying the Congestion Charge by SMS text message, at payment machines in car parks, over the counter at shops or petrol stations or by post.

The 'late fee' from 10pm to midnight on the day of travel has been abolished. In practice, road users who prefer to pay the Congestion Charge by SMS text message must pay £8 by midnight on the date of travel but there is no longer a need to text '**LATE**' when paying between 10pm and midnight. Those road users who forget to pay on the day of travel and would usually pay by SMS text message or at a retail outlet must make a next-day payment of £10 only by telephone or via the official website.

The grounds of appeal to the Adjudicator remain the same under the revised regulations. Any road user seeking to appeal on the basis that they paid the Congestion Charge would need to satisfy the Adjudicator that 'the Congestion Charge payable for the use or keeping of the vehicle on the road on the occasion in question was paid at the time and in the manner required by the Charging Scheme'.

Prior to the introduction of the 'pay-next day provision', Road User Charging Adjudicators consistently saw a significant number of appeals made by road users who had not made a payment before the midnight payment deadline. Common mitigation put forward by Appellants were that they were unaware of the midnight payment deadline, that they had genuinely attempted to pay the Congestion Charge by midnight but were unsuccessful (such as an SMS text message tendering payment was received by TfL after midnight or the Appellant was held in a call centre queue until just after midnight) or that they had simply forgotten to pay the charge that day.

The impact of the pay-next-day scheme in terms of the number of appeals made to the Adjudicators is yet to be seen. Whilst there will still be occasions when the road user forgets to pay even with the extended payment deadline, the change to the regulations and the operation of the scheme is significant and it is anticipated that in the medium to long term, after a settling-in period, there will be significant fall in the number of appeals to the Adjudicators based on this ground.

Enhanced PATAS website

The Parking and Traffic Appeals Service has demonstrated its commitment to providing a modern and efficient service by developing an enhanced online resource for users of the Tribunal.

The new website www.parkingandtrafficappeals.gov.uk provides a 'gateway' which links to separate areas for the Road User Charging Adjudicators Tribunal and the Parking Adjudicators Tribunal.

The aim of this site is to provide information, guidance and assistance to anyone intending to appeal to the Tribunal. The information contained on the website is intended to assist the public in de-mystifying the appeals process and to promote access to justice.



Different sections of the website provide information on the Congestion Charge enforcement process, an explanation of the appeals procedure and what parties can expect when attending a hearing before an Adjudicator.

Key sections of the website contain answers to frequently asked questions, set out in full key decisions by Adjudicators on relevant cases and provide access to all relevant regulations such that all parties appearing before the Adjudicators have the opportunity to prepare fully their case and have all relevant information available to them.

The website site does not offer advice to any party. Whilst common scenarios and frequently asked questions are discussed, each case depends upon its own facts and the evidence required by the Adjudicator in each case will depend upon the specific facts of the case.

| Future developments

The Low Emission Zone

The object of the Low Emission Zone is to increase the air quality of London. Air pollution is a serious problem in the capital. Research has proved that there are a thousand premature deaths a year and the same number of hospital admissions because of it. Dr Keith Prowse, Chairman of the British Lung Foundation, has said that the scheme would reduce these figures and that the scheme is good news for the one in seven of the population with respiratory disease. The particular problems are with particulates (PM10) and nitrogen oxides (NOx). It is worse in London, main roads and at Heathrow. Road traffic is the major source (47 per cent) of emissions.

The Mayor of London has a statutory duty to take steps towards achieving UK air quality objectives and EU limit values. In 2003 a feasibility study recommended a London-wide low emission zone as being the most effective option for moving London closer to achieving air quality objectives. In 2005 TfL re-examined the feasibility study and concluded there were no alternatives to the low emission zone likely to achieve the same level of benefits in the same or a shorter timeframe.

The scheme is to cover the whole of Greater London. A charging scheme is preferred to an outright 'ban'. The charge for non-compliant vehicles will be between £100 and £200. The scheme will operate all day, every day. From early 2008 the Scheme will target diesel lorries, buses and coaches. Potentially, from 2010 the Scheme will extend to diesel vans. At the moment TfL has stated that cars will not be targeted. Enforcement will be by camera and non-payers of the charge will receive a penalty charge notice of between £500 and £1,000.

Enforcement procedure will be similar to congestion charging, that is on a photograph/ VRM basis. The photograph of the VRM will give TfL an idea of the vehicle's registration date. TfL will infer that a vehicle registered before a certain date (date to be advised) emits these pollutants and a charge will be incurred and must be paid for in the usual way. Failure to do so, after TfL checks with DVLA, will result in a penalty charge being issued in the usual way to the registered keeper.

The scheme hopes to encourage the owners of those vehicles that do emit pollutants to convert their engines. A successful conversion will result in the issue of a 'reduced pollution certificate'. The issue of the certificate will be recorded with DVLA. Accordingly whenever a charge is not paid and TfL checks with DVLA against vehicles, which they think are liable, those vehicles with a certificate recorded against them will not be then liable for payment of the charge.

In February 2008, the scheme will go live for heavier lorries. In July 2008, the scheme will go live for lighter lorries, buses and coaches. In 2010/2012, emission standards are expected to be tightened and vans will be included in the scheme.

These proposals are all still subject to public consultation and Mayoral approval.

Walmsley v TfL and Others

[2005] EWCA Civ 1540

Issue: Judicial Review - Mitigating circumstances and Adjudicators' discretion

The Court of Appeal, overturning an earlier decision of the High Court (referred to in the Road User Charging Adjudicator's Annual Report 2004-2005), upheld the Adjudicator's decision to refuse an appeal.

Baroness Walmsley had used her vehicle in the Congestion Charge zone on 29 and 30 October 2003 and had sought to purchase a Congestion Charge licence for her vehicle via the internet. Although she had correctly entered the first four characters of her registration number the last three letters she entered were those of her previous vehicle and were not those of her current car. This mistake was made for both days of travel.

Two Penalty Charge Notices ('PCNs') were issued by TfL and sent by post to Baroness Walmsley.

The Baroness made representations asserting that she had paid the Congestion Charge. TfL rejected those representations. The Baroness appealed to an Adjudicator.

The Adjudicator refused her appeal indicating that,

"There is a high level of responsibility on the registered keeper of the vehicle to pay any charge incurred by it by midnight of the day on which the charge was incurred. Liability is strict.

The Congestion Charge Regulations afford no discretion in this situation. The registration recorded on the receipt must be for the vehicle used within the Zone during the prescribed hours. Article 6(5)(a) of the Congestion Charge Scheme states, 'a licence may be purchased only for a single vehicle having a specified registration mark'. The Appellant did not pay for the vehicle's specified registration mark. I accept that this was a genuine error but I have no alternative other than to refuse this appeal."

This decision was upheld on review by another Adjudicator. The Baroness applied for and was granted Judicial Review in the High Court by Mr Justice Stanley Burnton.

In his decision Mr Justice Burnton indicated that he considered that as the Baroness had made an error when specifying her vehicle registration mark, she was liable for a penalty. However, he went on to indicate that Regulation 16(2) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 afforded Adjudicators discretion to cancel Penalty Charge Notices in situations such as the Baroness's where the error was genuine and accordingly the case was remitted back to the Adjudicator for re-determination.

TfL appealed Mr Justice Burnton's decision.

Held: In the Court of Appeal Lord Justices Chadwick, Sedley and Keene upheld TfL's appeal, reinstating the original Adjudicator's decision. The Court of Appeal held that Regulation 16 (2) did not provide any discretion to Adjudicators along the lines suggested by Mr Justice Burnton and that the only time an Adjudicator could direct a Penalty Charge Notice be cancelled was if one of the six statutory grounds of appeal under the Regulations were made out. None of the grounds of appeal were in fact made out by the Baroness.

In addition, their Lordships were critical of TfL having a policy on the use of its discretion which it had not made available to the public.

R (on the application of Bijan Dolatabadi) v TfL

[2005] EWHC 1942 (Admin)

Issue: Judicial Review - *Common law fairness and the exercise of discretion by TfL*

Mr Dolatabadi had applied to TfL to re-register a Blue Badge in order to qualify for a 100 per cent discount of the Congestion Charge under the Blue Badge parking concessions scheme for disabled drivers. The Blue Badge holder, an 88 year old disabled man, had incorrectly completed the registration form. Mr Dolatabadi then spoke with a TfL call-centre operator who informed him that re-registration was not necessary, amended the details by telephone and informed him that he was now properly registered.

Around 15 Penalty Charge Notices ('PCNs') were issued. Mr Dolatabadi wrote numerous letters to TfL challenging the issue of the PCNs but without specifically referring to each Penalty Charge Notice number. TfL accepted representations in relation to three of the PCNs. In relation to the others, TfL submitted that the PCNs had not been challenged.

A single Penalty Charge Notice went to appeal before an Adjudicator and the appeal was allowed. TfL maintained that as Mr Dolatabadi did not challenge the other PCNs, TfL were free to enforce them. TfL proceeded to seize Mr Dolatabadi's vehicle and were about to proceed to sell it at auction. Mr Dolatabadi applied to the High Court for an injunction and Judicial Review.

Held: Mr Justice Collins, finding in favour of Mr Dolatabadi, was highly critical of TfL. He referred to the case of *Cooper v. Wandsworth Board of Works* [1863] 14 C.B.N.S in which it was held that although a statute might create a power, the common law writes in the need for fairness.



The following summarises some of the comments and findings of Collins J:

- *TfL were relying upon a technicality to deprive the Appellant from justice which was thoroughly unfair*
- *Mr Dolatabadi acted on advice given by the TfL operator. TfL 'did not bother to check' what the Appellant had said in his representations regarding his conversation with the call centre operator. All the PCNs that followed this conversation were unlawful*
- *Anyone reading the registration form should have realised that a mistake had been made in the form being completed. TfL chose to 'hide behind bureaucratic form filling nonsense'. This was not fair. A sensible system would have checked the form. It is inevitable that some people will fill out a form wrongly, especially the elderly and the disabled*
- *Mr Dolatabadi made it as clear as he could in correspondence that he was challenging all current and future PCNs*
- *TfL's Notice of Rejection was a standard, formal letter which failed to deal with the specific issues the Appellant had raised*
- *The Appellant was entitled to a discount – he was not misusing the right to a discount*
- *It was accepted by TfL that they had a discretion not to pursue the notices*
- *The Congestion Charge Scheme is a statutory scheme which provides a route to appeal. Judicial Review is a matter of last resort*
- *The Notice of Acceptance entitled the Appellant to believe that TfL had accepted the matters he had raised and that he had no need to challenge the other Notices*
- *The Appellant had a legitimate expectation, operated by the misinformation given to him by TfL and the failure to respond properly to his letters, to his clear detriment. The Appellant 'made the mistake of believing TfL would honour the word of its employee'*
- *The case should never have reached the stage where the Appellant was required to appeal to an Adjudicator. The PCNs should have been cancelled*
- *Having appealed, however, the Adjudicator, an independent third party, found the Appellant's account to be true. The Adjudicator made findings of fact which the Appellant was entitled to rely upon. TfL could not go behind those findings of fact. The Adjudicator accepted that the Appellant had been misled. That should have been the end of the story*
- *TfL should not have proceeded to instruct bailiffs when they knew the Adjudicator's decision and should not have proceeded to impound the vehicle. To then hold on to the car once the Judicial Review issue was raised was 'wholly unjustified, quite absurd and wrong'*
- *TfL should have appreciated at an early stage that there was a mistake in completing the form, that Mr Dolatabadi qualified for a discount and that he believed on reasonable grounds that he would not be penalised*

Judgment was given in favour of Mr Dolatabadi. TfL were directed to return the vehicle forthwith and to refund all monies paid.

R (on the application of Fivepounds.co.uk) v TfL

[2005] EWHC 3002 (Admin)

Issue: Judicial Review - *Fleet schemes and the public law principle of 'legitimate expectation'.*

On 15 December 2005, Mr Justice Bean sitting in the Administrative Court heard an application for Judicial Review brought by 'Fivepounds.co.uk Ltd' against TfL.

In summary, the claimant company purported to operate a fleet scheme where individual members of the public could sign up.

The claimant stated that it registered 1,700 vehicles with TfL before TfL changed its rules to exclude the claimant from the scheme and gave notice that it intended to close the claimant's accounts. The claimant obtained an injunction against TfL to prevent it from actually closing its accounts. It then applied for Judicial Review of TfL's decision to close the accounts and seeking a declaration as to whether it qualified as a fleet operator under the regulations.

The claimant submitted that it qualified as a fleet operator in that it had a power of 'control and management' over its customers vehicles. Its contracts with its customers required the customer to display a promotional sticker on a vehicle and to give up the vehicle for inspection. The claimant stated that this was limited but sufficient control for the purposes of the scheme.

Further, the claimant submitted that in initially permitting the claimant to take part in the scheme and in the course of dealing which followed, TfL created a legitimate expectation upon which the claimant could rely.

Additionally, it was argued that in seeking to close the claimant's accounts, TfL had infringed the claimant's human rights.

Held: Mr Justice Bean, in giving Judgment on 21 December 2005 held:

"It is wholly artificial and unreal to describe the vehicles registered with Fivepounds under their congestion charge fleet scheme as being 'controlled and managed' by Fivepounds."

The Judge held that TfL had not given Fivepounds.co.uk a legitimate expectation that it could take part in the fleet scheme. In making his findings, Mr Justice Bean held:

- a) By a representation, which may include a regular practice and a course of dealing, a public body may create an expectation from which it would be an abuse of power to resile;
- b) The general rule is that the representation must be clear, unambiguous and unqualified, but this is not invariable; the test is whether the public authority has acted so unfairly that its conduct amounts to an abuse of power;
- c) The citizen must place all his cards on the table, making full disclosure, and his expectation must be objectively reasonable; though whether there has been such a failure of disclosure by a party as to disentitle him from having a legitimate expectation must depend on the particular circumstances of the case;
- d) Where the court is satisfied that the public body made the representation by mistake, the court should be slow to fix the public body permanently with the consequences of that mistake.

Mr Justice Bean concluded that Fivepounds.co.uk had not made out any of their grounds of challenge and that the application for Judicial Review must be dismissed.

R (on the application of Dr Claudia Grunwald) v (1) The Road User Charging Adjudicator and (2) TfL

Issue: Judicial Review - *Foreign registered vehicles and service of Penalty Charge Notices*

Dr Grunwald appealed to the Adjudicator following the immobilisation (clamping) and removal of her vehicle. Thirty-five penalty charges were said to have been incurred but no Penalty Charge Notices ('PCNs') were ever served by TfL. TfL maintained that it was unable to serve any PCNs upon Dr Grunwald as her vehicle was a 'foreign registered vehicle' and was not registered with DVLA in the UK.

The original Adjudicator allowed the appeal. TfL sought a review of the Adjudicator's decision and, upon review by a different Adjudicator, the original Adjudicator's decision was revoked. The reviewing Adjudicator refused Dr Grunwald's appeal on the following basis:

- 1) The Appellant was prejudiced by TfL's decision not to serve a Penalty Charge Notice, however this was a lawful act/omission in accordance with the Regulations and Scheme Order and that this 'prejudice' is inherent within the Regulations and Scheme Order
- 2) Whilst the Appellant may have relied upon guidance she was given by TfL's call-centre operator as to how long she needed to retain receipts, when purchasing licences for her vehicle, the overall responsibility as to how long to keep a receipt rests with the owner of the vehicle
- 3) Although TfL held a record of the Appellant's vehicle registration mark, name, vehicle type and colour, and also had on record the Appellant's name and full postal address, TfL had a valid reason for not utilising this information in order to serve a Penalty Charge Notice, given that this was not why the information had been supplied to TfL originally
- 4) TfL has an overriding duty to act fairly towards users of the Congestion Charge scheme, which still exists following the Court of Appeal's judgment in *Walmsley v Lane and Another* [2005], however TfL did act fairly towards the Appellant in relation to these penalty charges and the appeals process
- 5) TfL was not obstructive nor acted procedurally unfairly in failing to provide evidence to the Appellant until six months after the Appellant's first request.

Following the reviewing Adjudicator's decision to refuse the appeal, Dr Grunwald made an application to the High Court for Judicial Review. A settlement was reached out of Court between TfL and Dr Grunwald and the application for Judicial Review was thereafter withdrawn.



R (on the Application of Catherine Edwards) v The Road User Charging Adjudicator [2006]

Issue: Judicial Review - *Congestion Charge payments by post and time limits for payment*

Miss Edwards was the registered keeper of a Jeep. On 13 September 2004, the vehicle was used on a road within the Congestion Charge zone. On the same day Miss Edwards sent a cheque in the sum of £5 to TfL by post, being the amount of the Congestion Charge due for the use of her vehicle in the Congestion Charge zone. Payment was received by TfL several days later. No payment was received by TfL by midnight on the date of travel.

A Penalty Charge Notice was issued by TfL on 14 September 2004, the day after the contravention.

The Adjudicator held that no Congestion Charge had been purchased at the time and in the manner required by the regulations and that accordingly a contravention had occurred. The appeal was dismissed. An application for review of the Adjudicator's decision was similarly dismissed.

Miss Edwards applied to the High Court for permission for Judicial Review of the decision of the Adjudicator. The application for permission to apply for Judicial Review was refused by Mr Justice Mitting on 9 March 2006. In making the order refusing permission, the Judge had the following observations:

- "1. The Adjudicator's decision was unquestionably correct
2. The Claimant exercised her right to apply for a review of the decision
3. The delay was inordinate; but even if the proceedings are subject to Article 6 ECHR (which I doubt), this is not a viable ground for quashing the decision."

Miss Edwards applied to the High Court for an oral hearing of her application for permission to apply for Judicial Review but subsequently withdrew her application.



R (on the Application of Robin de Crittenden) v The National Parking Adjudicator [2006]

[This case relates to parking enforcement but is persuasive to the Congestion Charge Scheme.]

Issue: Judicial Review – The Bill of Rights 1689

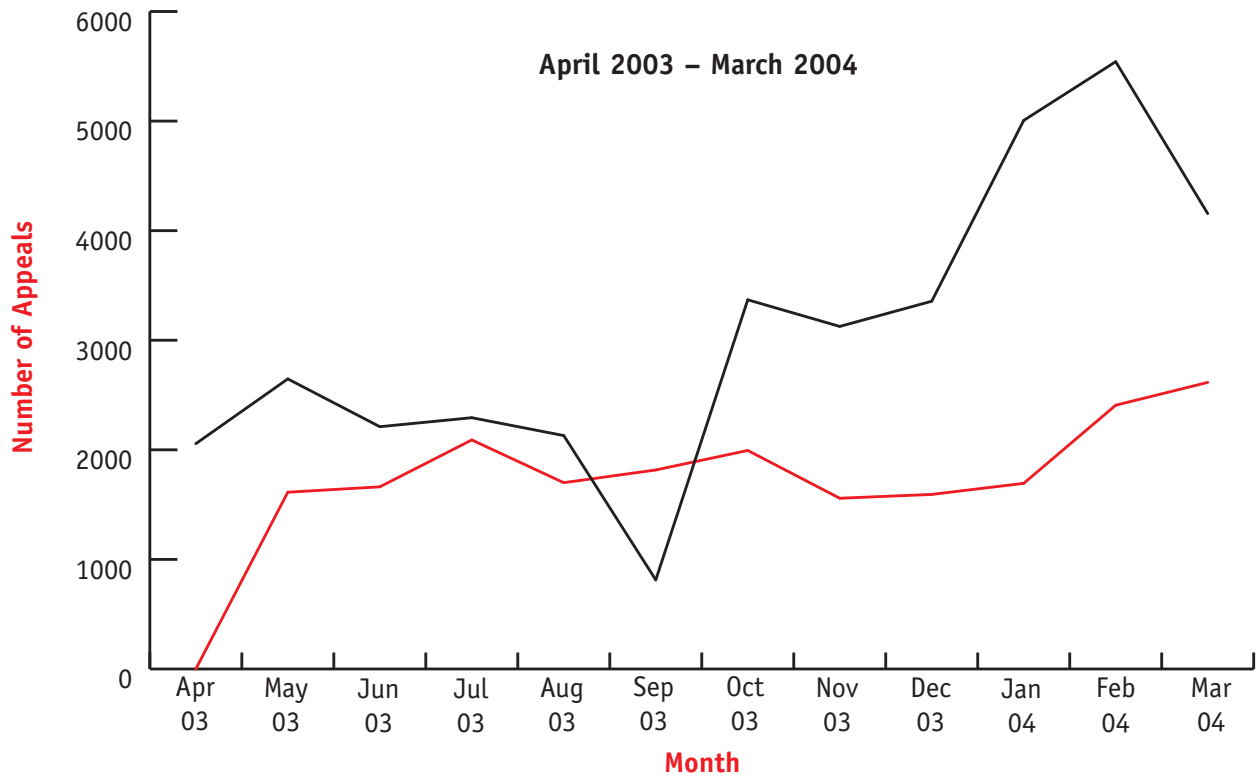
The claimant, Mr de Crittenden, had two appeals allowed by a parking adjudicator sitting at the National Parking Appeals Service. He nevertheless applied for Judicial Review of the Adjudicator's decisions and contended that the Adjudicator was wrong in finding that the appeals process did not conflict with the Bill of Rights and that the procedure was unlawful.

Held: Mr Justice Collins dismissed Mr de Crittenden's arguments. In summary Mr Justice Collins held that:

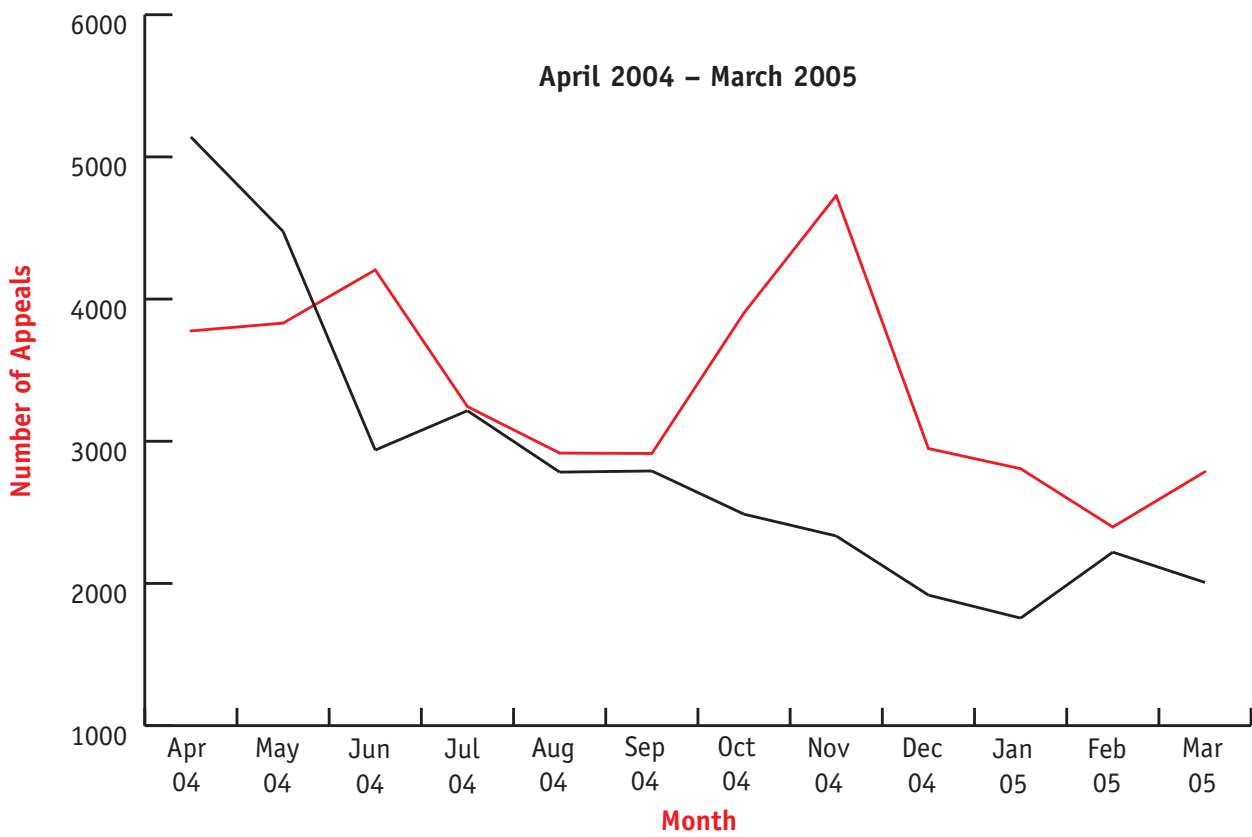
1. The whole purpose of the Road Traffic Act 1991 was to take parking enforcement outside the criminal law and to provide for civil penalties
 2. The scheme provides procedures for challenging liability to the Adjudicators
 3. Mr de Crittenden's complaint that the Adjudicators are not independent is completely unfounded. They are an independent tribunal brought in by Parliament. There is nothing strange in our legal system in this arrangement. There are many tribunals carrying out similar functions
 4. The Adjudicators' decisions are subject to a right to apply for Judicial Review. The citizen has the right to go to an independent body and ultimately the court
 5. Mr de Crittenden complained that the Adjudicators were not doing what they should; that is, requiring the local authority to discharge the burden of proving the contravention. Obviously if there is a challenge the burden is on the local authority. But the motorist must produce some material to show that his challenge has some merit
 6. If there are errors of law by the Adjudicators, the court is there to deal with that
 7. The penalty is not a 'fine or forfeiture' within the Bill of Rights. The suggestion that the Bill of Rights applies is a nonsense, a completely baseless argument
 8. Even if this were a 'fine or forfeiture' within the Bill of Rights, there is a system of appeal that accords with the Bill of Rights. The appeal to the Adjudicator is the required trial
 9. The claim had no merit whatever. The reliance on the Bill of Rights is hopeless.
- It was held accordingly that permission to apply for Judicial Review was refused.

Annex 1

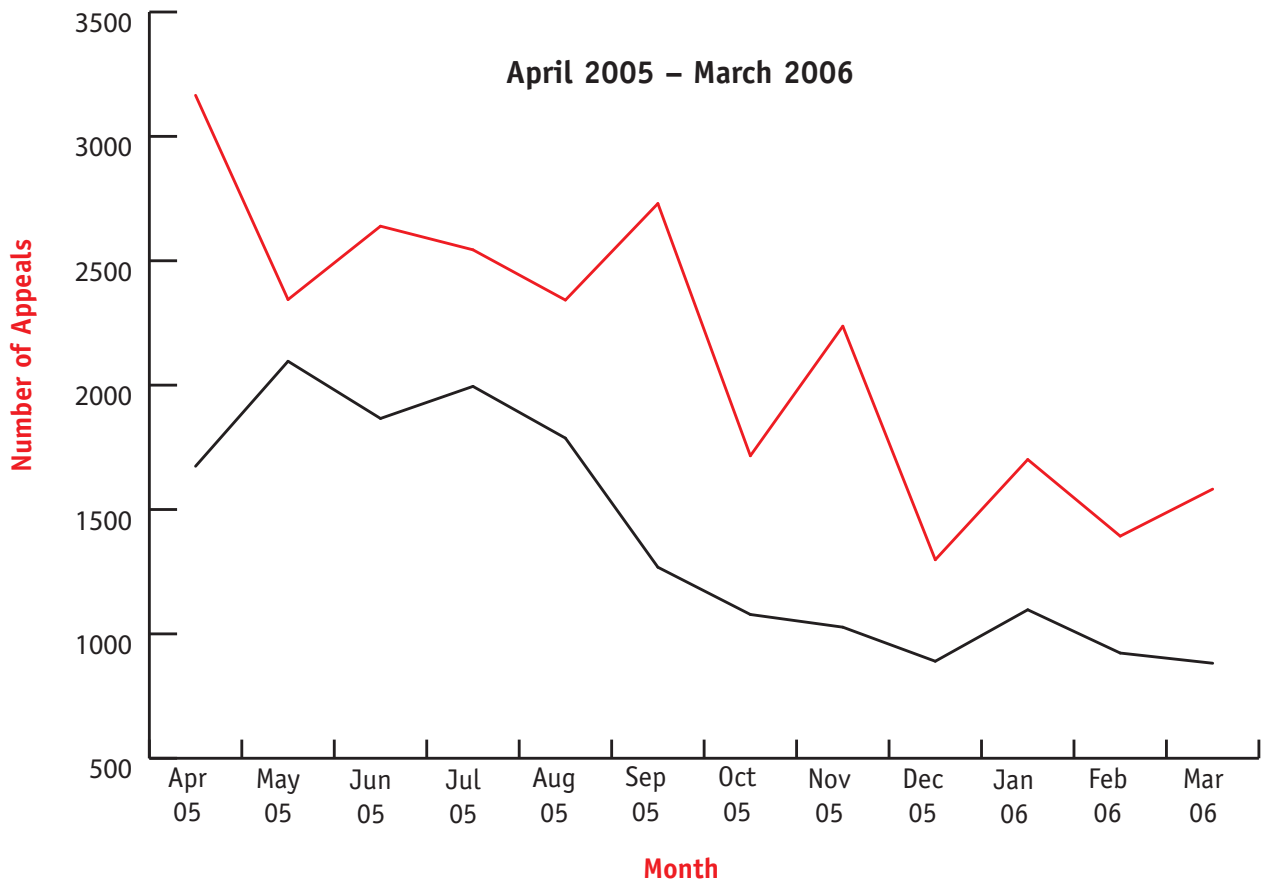
Appeals: April 2003 - March 2006



	Apr 03	May 03	Jun 03	Jul 03	Aug 03	Sep 03	Oct 03	Nov 03	Dec 03	Jan 04	Feb 04	Mar 04
Appeals Received	2056	2647	2211	2293	2130	813	3369	3126	3356	5006	5542	4156
Total Cases Closed	0	1628	1640	2090	1700	1816	1994	1558	1593	1694	2407	2615



	Apr 04	May 04	Jun 04	Jul 04	Aug 04	Sep 04	Oct 04	Nov 04	Dec 04	Jan 05	Feb 05	Mar 05
Appeals Received	5140	4476	2938	3215	2783	2791	2487	2334	1918	1756	2220	2007
Total Cases Closed	3776	3831	4205	3244	2917	2914	3903	4728	2949	2807	2397	2786



	Apr 05	May 05	Jun 05	Jul 05	Aug 05	Sep 05	Oct 05	Nov 05	Dec 05	Jan 06	Feb 06	Mar 06
Appeals Received	1674	2096	1866	1995	1787	1268	1078	1027	890	1097	923	882
Total Cases Closed	3165	2344	2639	2544	2342	2730	1716	2237	1298	1701	1393	1582

Annex 2

Congestion Charging statistics 2003-2006

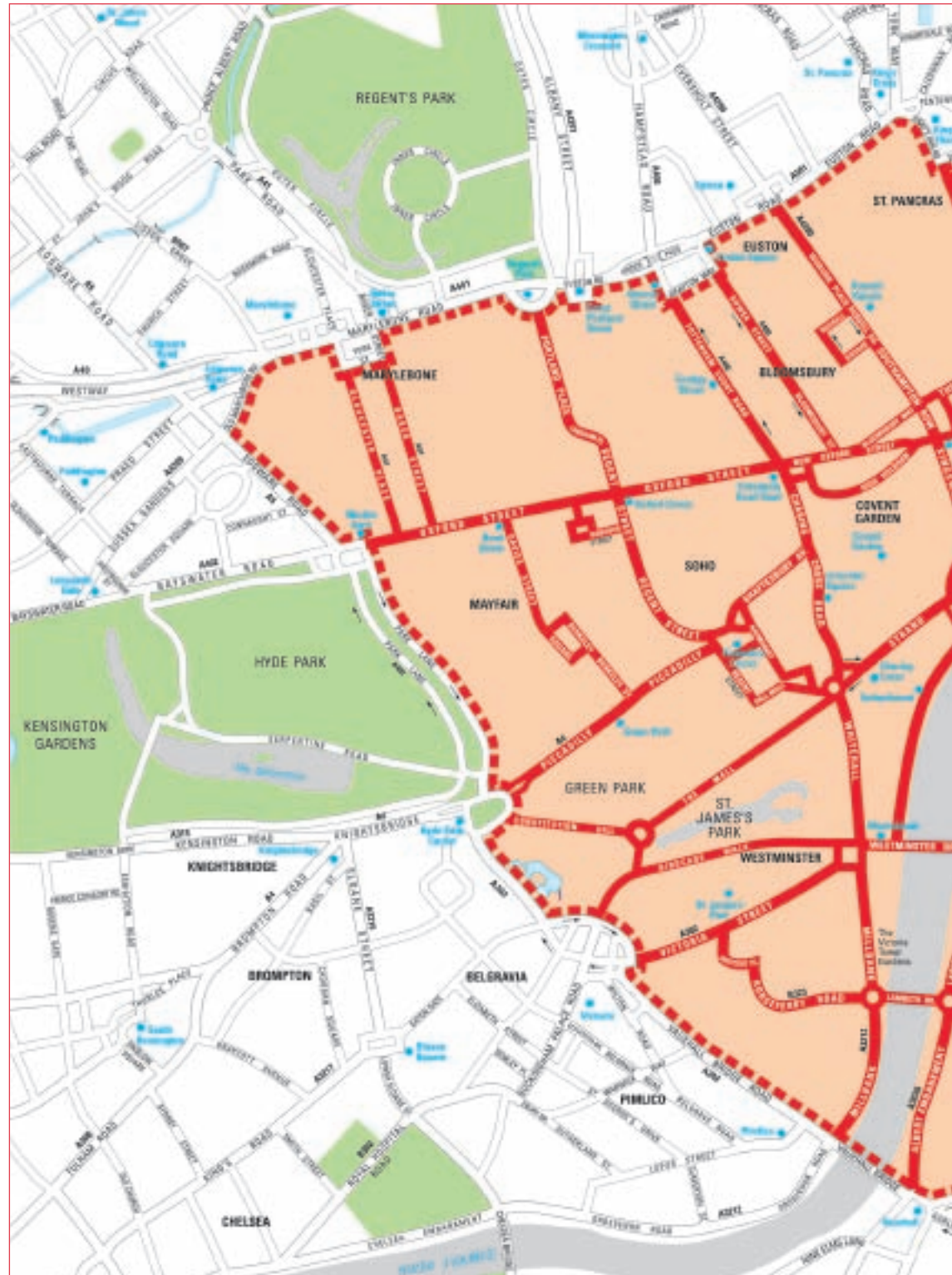
	2003/04	2004/05	2005/06
	Total	Total	Total
Appeals received	42,339	34,065	16,583
Total cases closed	24,314	40,457	25,115
Appeals withdrawn by appellants	287	268	420
Appeals not contested by TfL	13,033	13,160	5,084
Appeals refused postal	4,770	17,838	13,870
Appeals allowed postal	2,806	5,443	7,121
Appeals refused personal	643	1,408	1,436
Appeals allowed personal	2,116	2,012	2,522
Closed administratively	659	328	166
Appeals adjourned	1,518	6,085	3,399
No. of cases ready for adjudication at end of the year	9,383	7,528	2,004
Review decisions	121	349	743
Costs decisions	10	140	153
	Averages	Averages	Averages
% withdrawn by appellants	1.2%	0.7%	1.76%
% not contested by TfL	52.7%	32.3%	20.47%
% refused postal**	20.4%	44.1%	56.04%
% allowed postal*	12.1%	13.6%	27.90%
% refused personal**	2.6%	3.6%	5.62%
% allowed personal*	8.8%	4.9%	9.65%
% closed administratively	2.4%	0.8%	0.65%
% allowed total	20.8%	18.5%	37.69%
Average postal hearing (mins)	20.3	22.66	35.96
Average personal hearing (mins)	22.99	35.15	50.72
% of cases first considered within 56 days	24.4%	34.9%	34.47%
Average days delay*	88	212	205
% of hearings within 15 mins	76.0%	84%	69.13%

* 2003/04 and 2004/05 figures exclude DNCs. 2005/06 figures include DNCs

** 2003/04 and 2004/05 figures exclude Withdrawals. 2005/06 include Withdrawals

Annex 3

1. MAP OF THE EXISTING (CENTRAL) CONGESTION CHARGE ZONE





Location of Congestion Charging Zone within Greater London



- Central London congestion charging Zone
- Congestion Zone boundary
- Road within charging Zone
- Road outside charging Zone
- Underground, DLR or National Rail station

2. MAP OF THE EXTENDED (WESTERN) CONGESTION CHARGE ZONE





Annual Report 2005-2006

Road User Charging Adjudicators

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October 2006

All photos by TopFoto except pages 15 and 25 (EMPICS)