

Annual Report 2006-2007

Road User Charging Adjudicators



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A404



Notting
Hill Gate
Bayswater



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 fourth Joint Report of the Road User Charging Adjudicators for the year 2006-2007.

The year has generally been a quiet one. After the initial reaction to the introduction of the Congestion Charge most road users now appear to have incorporated it into their driving life. The number of appeals has dropped dramatically and we now receive on average 1,000 appeals each month. As a result we have achieved our target of 95 per cent of appeals heard within 56 days of receipt of the appeal form.

We had expected to see an initial increase in appeals following the introduction of the Western Extension of the zone in February 2007. This has not happened, again showing that the Congestion Charge has become part of the road user's daily life.

Last year I reported that there had been a significant increase in the costs of appeals. I am pleased to report that our costs have now stabilised. One particular difference we have noticed in the last year is the significant drop in the number of personal appeals. However, while we now have fewer personal appeals they are taking a longer time as appellants now have more cogent points to make. We also now receive a more detailed evidential pack from Transport for London. Transport for London now also sends a recording of telephone conversations where the appellant claims that the correct information was given over the telephone and there was a mistake at the call centre. This factor has also contributed to an increase in the length of the appeals.

Training was provided for the adjudicators on the Western Extension. This was very useful as it explained to adjudicators the new image capturing technology used to produce Transport for London's evidence.

The appeal process used is mainly paper-free and appeals are done on screen. This process is only possible with a sophisticated computer system and professional IT support. Previously, the system and support had been provided by SunGard Vivista. This contract was due to terminate on 3 July 2007 and in preparation for this a competition was started in 2006 to find a new contractor. SunGard Vivista was the successful competitor and has been awarded a new contract from 4 July 2007.

As part of our continuing aim of providing the best service possible to the public we now have an e-mail address (patas.team@patas.gov.uk) for the public to contact us for advice on the appeal procedure. We have also provided improved access to a statutory register for general use by the public. A full description of the statutory register is provided on page 18 of this report.

I started this report by saying "The year has generally been a quiet one". We do not expect this quiet life to continue. On 4 February 2008 we see the introduction of the Low Emission Zone and on 6 October 2008 the potential introduction of an emission related congestion charge.

In preparation for this major change, adjudicators will receive extensive training prior to 4 February 2008. There are also plans to provide training in diversity. This is particularly relevant in view of the diversity of the population in London.

Finally, I would like to thank all the adjudicators who work as a team and are very supportive of each other and the administrative staff who continue to give us unique support.

Generally it has been a good year. I look forward to the next.

Ingrid Persadsingh
Chief Adjudicator

Recommendations

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

Statutory duties under Article 9(5) of the Consolidated Scheme Order

Transport for London should review its compliance with its statutory duties under Article 9(5) of the Consolidated Scheme Order.

Where Transport for London is no longer satisfied that a vehicle is a non-chargeable vehicle, a reduced rate vehicle or a resident's vehicle it shall remove the vehicle from the register and notify the person prescribed in the Order.

Adjudicators have found Transport for London to have failed in this notification duty in a number of appeals, particularly relating to the removal of a private hire vehicle from the register.

The registered keeper of a private hire vehicle is entitled by law to receive notification of the removal of the vehicle from the register of vehicles exempt from the Congestion Charge, and Transport for London cannot simply rely on notification given of the expiry of the vehicle's Public Carriage Office Licence in advance of the vehicle's removal from the register.

The law on 'service'

Transport for London repeatedly demonstrates a misunderstanding of the law on service.

The statutory periods for payment of the penalty charge or for making representations



do not begin until service of the Penalty Charge Notice.

Where service has been delayed in the past, Transport for London has shown that it considers it has discretion whether to consider representations or extend time for payment of the penalty charge at the discounted rate.

However, this is not a matter for its discretion.

Where the Appellant can prove to the satisfaction of Transport for London (or the adjudicator on appeal) that service did not take place according to the usual presumption – two working days of posting – Transport for London must, by law, calculate the statutory periods from the date of actual and not presumed service.

The Road User Charging Adjudicators

As at 1 April 2007

Mercy Akman
Jane Anderson
Ian Coutts
Gordon Cropper
Jane Cryer
Leslie Cuthbert
Fiona Dickie
George Dodd
Anthony Edie
Gillian Ekins
Anthony Engel
Andrew Harman
Angela Black Hedegard
Fiona Henderson
Anitra Hussein
Ian Keates
Graham Keating
Maggie Kennedy
Sanjay Lal
John Lane
Francis Lloyd

Maura Lynch
Joanna Lyons
Isaac Maka
David Malone
Paul Middleton-Roy
Ian Mohabir
Michael Nathan
Belinda Pearce
Martin Penrose
Ingrid Persadsingh
Annabel Pilling
Luthfur Rahman
Christopher Rayner
Anita Reece
Timothy Smith
Alison Spicer
Jan Verman
Anwen Walker
Martyn Waygood
Christopher Woolley

The thoughts of an Adjudicator



I was appointed as a Congestion Charging Adjudicator in 2004. Over the three years since then there have been several important developments. I would like to think that some of the undoubted improvements to the whole process have been influenced by the appeals process and the concern of all the adjudicators to give the users of the tribunal a fair hearing.

What has impressed me strongly is the fact that, although in the grand scheme of things the amounts adjudicated upon are very small (typically the adjudicator's decision will result in the enforcement or remittal of a single £100 charge), for the users of the congestion charge zone the imposition of a penalty charge has consequences far in excess of the monetary amount. It is common for me when hearing appeals to realise that the appellants have devoted hours and hours to the preparation of their appeals and see the process as a test of

their own honesty and integrity. Some have described how the process has taken over their life and how they cannot sleep because of it.

Many appellants share this experience – whether they are city lawyers or retired.

In one recent case, where a solicitor was the appellant, I was shown a billing for hours worked that amounted to several thousand pounds – even though I refused the costs application the solicitor was so overjoyed that I had allowed his appeal (for £100) that the billing time he had spent on the case seemed of little consequence to him. Other appellants travel vast distances to argue their case (I have had appellants from Wales as well as from the highlands of Scotland). Even if they lose their appeal they seem satisfied that an adjudicator has given their points serious attention and has listened to them.

This brings me back to the first point I made: that the system has been improved. When I first began hearing appeals there was a concern that the public were not getting a good service from the call centre staff and appeals were very often allowed on the basis that the adjudicator believed the appellant's account of what they had been told rather than what Transport for London had said they had been told. These instances have become rarer and the recent and very welcome practice of the adjudicator and appellant being supplied with a recording of the call has gone a long way to eliminating these concerns – in fact on a recent appeal the appellant was convinced he had been given wrong information by the call centre but the recording disproved this and he conceded he had no grounds to appeal thereafter.



The western extension has not produced the volume of appeals that was anticipated but already it has thrown up some problems. Under the original scheme, Seymour Place was (and is) a common place for users to become embroiled into the zone. In the western extension, Ranelagh Bridge and the Westway has become the equivalent – in a recent appeal I was supplied with extensive photographic footage that even covered the location of the cameras by a motorist who felt he had been forced into the zone by confusing road signage. This issue is addressed in the 'Procedural issues' section of this report.

The training programme for adjudicators is comprehensive and thorough. In the most recent training event we had a presentation on the western extension. We also had a foretaste of the future in hearing about the progressive scheme to control emissions being introduced from next year (and on which we shall be trained in January 2008). The fact that other cities are now considering a congestion charge (for instance Manchester) will open up the learning experience for us all and will perhaps inaugurate a national network of adjudicators.

Since the decision in *Walmsley v Lane* (which was decided in the Court of Appeal) things have calmed down and all adjudicators have to make it clear to appellants that they can only decide the appeal on the limited grounds allowed for in the regulations. That said, the decrease in the number of appeals does suggest that Transport for London are taking a responsible attitude to the exercise of their discretion.

One very useful product of *Walmsley v Lane* was the creation of a statement from Transport for London as to when it would exercise its discretion. In the cases where discretion has not been exercised in favour of the appellant it is frequently clear that Transport for London have considered the matter very carefully before coming to this conclusion.

Again, I think that this approach has been influenced by the experience Transport for London has now had from the appeals being heard by an independent body of adjudicators who have not been afraid to record their concerns about the process.

Procedural issues

Challenge to the validity of Penalty Charge Notices

During the last year a challenge was raised in an appeal as to the validity of a Penalty Charge Notice which had been sent out to an Appellant (Appeal reference – 9060043107).

There was no dispute that the Appellant's vehicle was within the charging zone during the charging period. The Appellant further accepted that he was the registered keeper of the vehicle on the date in question and that he did not qualify for any discount or exemption under the Congestion Charge Scheme Order. The Appellant also agreed that he had not paid the charge in the time and manner required by the scheme.

The crux of the Appellant's argument was that the Penalty Charge Notice itself was defective and as a consequence was rendered invalid and unenforceable. Therefore, the ground of appeal relied upon was that provided by Regulation 13 (3) (c) of The Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended, namely 'that no penalty charge is payable under the charging scheme'.

The Appellant contended that either the individual failings or the cumulative effect of non-compliance with all aspects of what must exist within a Penalty Charge Notice rendered the notice invalid and unenforceable.

What information needs to be present on a Penalty Charge Notice is outlined by Regulation 12 (3) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001. This information consists of:

- (a) the amount of the penalty charge to which it relates
- (b) the date and time at which the charging authority claim that the vehicle was used or kept on a road in a charging area in circumstances in which, by virtue of a charging scheme, a charge was payable in respect of the vehicle
- (c) the grounds on which the charging authority believe that the penalty charge is payable with respect to the vehicle
- (d) the time, in accordance with the charging scheme under which it is imposed, and the manner in which the penalty charge must be paid
- (e) the amount of the reduced penalty charge if it is duly paid in the time specified in the charging scheme
- (ea) the amount of the increased penalty charge if:
 - (i) the penalty charge is not paid; or
 - (ii) no representations are made under regulation 13, before the end of the relevant period as defined by regulation 17(2)(a)
- (f) the address to which payment of the penalty charge must be sent
- (g) that the person on whom the notice is served ('the recipient') may be entitled to make representations under regulation 13 and
- (h) the effect of regulation 16.

The following elements were said by the Appellant to be examples of non-compliance:

1. Regulation 12 (3) (b) – the contravention does not occur until one minute past midnight of the day following the date of

travel therefore the Appellant contended that the date of contravention was wrongly recorded on the Penalty Charge Notice in that what was stated on the notice was the date the vehicle was used within the zone.

2. Regulation 12 (3) (c) – that the wording in the Penalty Charge Notice about the grounds upon which the authority believe that the penalty charge is payable was confusing in light of the error as to the contravention date.
3. Regulation 12 (3) (d) – that the calculation of the time periods shown on the Penalty Charge Notice as to the time for paying the penalty charge was incorrect because of the wrongly recorded date of contravention.



4. Regulation 12 (3) (e) – that the calculation of the time periods shown on the Penalty Charge Notice as to the amount for paying the penalty charge was incorrect because of the wrongly recorded date of contravention.
5. Regulation 12 (3) (f) – that once the payment slip at the bottom of the Penalty Charge Notice is detached, the address to which payment of the charge must be sent would no longer be present.
6. Regulation 12 (3) (g) – under the heading “Important” the text of the Penalty Charge Notice reads – “You are advised to pay the penalty charge or, if you have reasonable grounds, dispute this notice in the form of a representation”. This use in the Penalty Charge Notice of the word “reasonable”, the Appellant asserted, stifled or restricted an individual's right to make representations.
7. Regulation 12 (3) (h) – that the effect of Regulation 16 (which outlines the right to appeal to an Adjudicator who may discharge the Penalty Charge Notice) was absent from the Penalty Charge Notice.

These submissions were duly considered by an Adjudicator following receipt of Transport for London's response to the Appellant's appeal. The case was refused by the Adjudicator and the following are a summary of some of the points she made in coming to her decision:

- There are a number of factors which distinguish a Penalty Charge Notice under the Road User Charging/Congestion Charging scheme from those issued in relation to parking contraventions including the fact that there are two stages in the parking procedure and two documents including a 'Notice to



Owner' which does not exist in Congestion Charging

- That the two sheets (four pages) bearing blue print, and headed "Penalty Charge Notice", collectively comprise the Congestion Charge Penalty Charge Notice. The additional page included with these two sheets is for elucidation purposes only and does not form part of the document which needs to include the terms of Regulation 12 (3)
- That there was either 'substantial' or 'literal' compliance with each of the required elements of Regulation 12(3) and that accordingly the Penalty Charge Notice was valid and enforceable. These expressions: 'substantial' and 'literal' compliance being those utilised by Lord

Woolf M.R. in R v Secretary of State for Home Department ex parte Jeyanthan [2000] 1 WLR 354.

The Appellant subsequently sought review of this decision but their application for review in relation to the construction of the Penalty Charge Notice was refused by the reviewing Adjudicator on the basis that the proper forum for confirming whether or not the original Adjudicator had applied the correct interpretation of the enforcement regulations was not by means of peer review but rather by means of judicial review to the High Court.

Neither party involved in the appeal subsequently lodged an application for judicial review at the High Court.

Ranelagh Bridge

The western extension to the congestion charging area has thrown up controversy surrounding access to the Westway, going westwards.

The Westway is a free route through the charging area. The Westway may be accessed without entering the charging area via Ranelagh Bridge, which is outside the charging area.

Ranelagh Bridge may be accessed from north of the Westway from Harrow Road, Warwick Avenue, that part of Bishops Bridge Road outside the charging area, that part of Westbourne Terrace outside the charging area, that part of Orsett Terrace outside the charging area, that part of Gloucester Terrace outside the charging area and then Ranelagh Bridge. These roads run along the boundary of the charging area.

It would appear that there is no other way of gaining access to the westbound carriageway of the Westway via Ranelagh Bridge without incurring a charge.

Reproduced below are partial Statutory Register entries in respect of three cases concerning this location giving the adjudicators' decisions and the reasons for them:

Case 9070035240 – Mr Richard Magner v Transport for London

Mr Richard Magner is appealing under Regulation 13(3)(C) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, namely that no penalty charge is payable under the Charging Scheme. Regulation 6 of the Road User Charging (Charges

And Penalty Charges) (London) Regulations 2001 imposes liability for congestion charges, namely if a vehicle is used or kept on a road in a charging area during the prescribed hours.

The issue in this appeal is whether the appellant's vehicle was used or kept within the Congestion Zone during the prescribed hours. Liability is strict. Once a vehicle has been so used the Congestion Charging legislation imposes responsibility and strict liability upon a Registered Keeper to pay the charge incurred by that vehicle by midnight of the next charging day from the day on which the charge is incurred. Liability is incurred whether the vehicle was used intentionally or unintentionally within the zone during the prescribed hours and for whatever distance it was used within the zone. It must follow that in order to avoid that liability a Registered Keeper must ensure that they do not enter the zone during the prescribed time. The responsibility is the Registered Keeper's alone.

I am satisfied from the photographic evidence produced by Transport for London and also from the statements provided by David Priestley, Position Enforcement CSR, dated 18th June 2007 that the vehicle was so used. The question of signage does not amount to a statutory exemption to the congestion charge incurred. Transport for London is under a duty of fairness

to ensure that there are sufficient signs around the perimeter of the zone. I am of the opinion that they have discharged that duty by placing perimeter signs, which alert a motorist that they are about to or are incurring a charge and reminder signs. There is an obvious limit to the amount of advance



warning signs that Transport for London can erect but again I find that Transport for London has taken reasonable steps with these also. I am not persuaded that the signage here was inadequate.

In the circumstances I must refuse the appellant's appeal on the grounds of inadequate signage and that he had been misled.'

Case 9070035116- Mr Thomas Bostock v Transport for London

'This contravention occurred on the 5th of April 2007 at the junction of Ranleigh [sic] Bridge and Gloucester Terrace.

The Appellant accepts that his vehicle was within the zone and that no charge was paid. However, he appeals on the grounds that the road must have been included in the zone by mistake as it is a trap for unwitting drivers trying to join the Westway. He argues that his normal route heading west out of London is to come from north of the Paddington Roundabout, down Gloucester Terrace and onto the Westway. This meant that his route took him into the zone for a very short distance and he should not be penalised for this.

Transport for London argue that there are a number of free routes allowing motorists to enter the Westway without travelling into the zone but the route followed by the Appellant is not one of them.

I am satisfied on the evidence that the Appellant did not intend to enter the zone or avoid payment of the charge. I am equally satisfied that the Appellant's vehicle was captured on camera being driven within the zone and that the parameters of the zone are lawful.

Accordingly this appeal must be refused. I note that the Appellant has paid the charge in full and no further monies are due.'

Case 9070034587- Mr Cary Goorwitch v Transport for London

'The Appellant makes this appeal on the ground that the Penalty Charge exceeds the relevant amount.

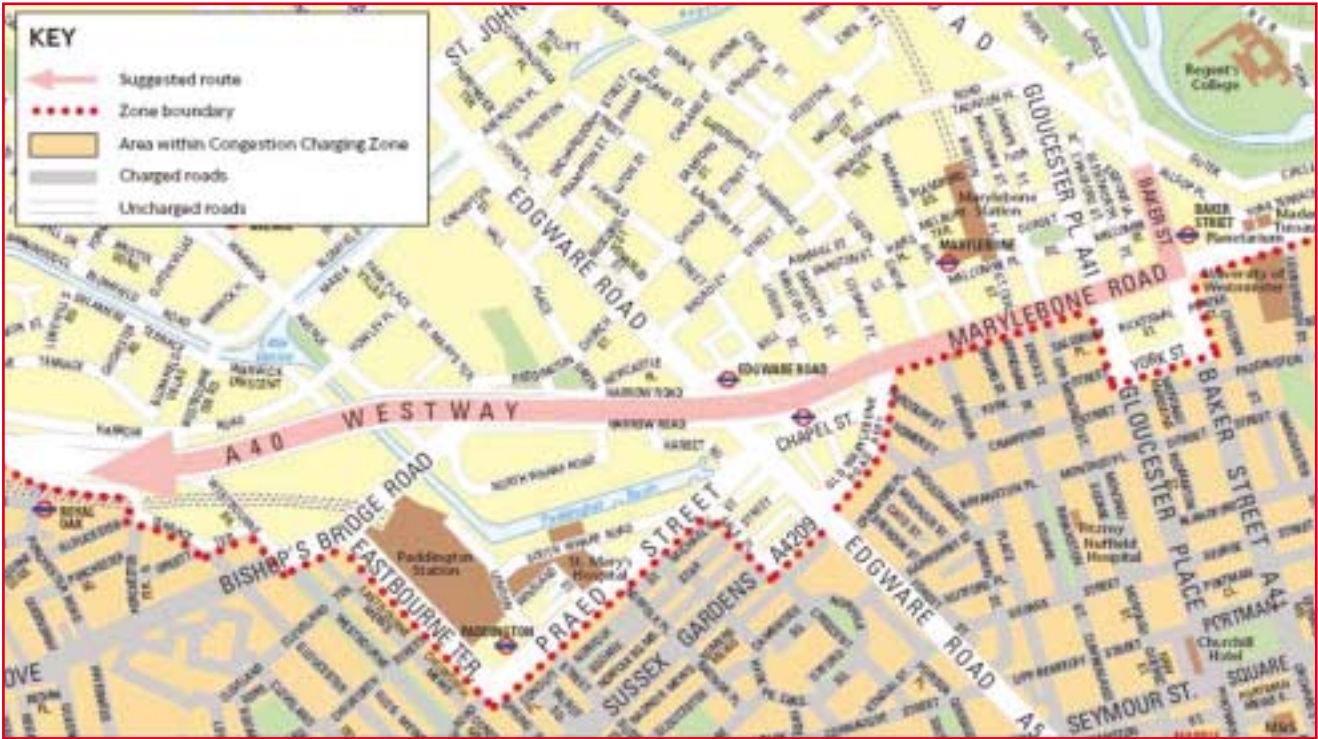
The contravention is said to have occurred on 08 March 2007.

This appeal was originally considered by me on 22 June 2007. On that occasion, the appeal was adjourned, in the absence of the parties, as there were a number of other similar appeals relating to the same contravention location, Ranelagh Bridge/Gloucester Terrace. Transport for London was directed in another similar case to provide further evidence as to the free routes which purportedly existed to enable road users to access the A40 westbound without incurring a Congestion Charge. In the present appeal, Transport for London has filed and served additional evidence. No further representations have been received from the Appellant in response to Transport for London's representations.

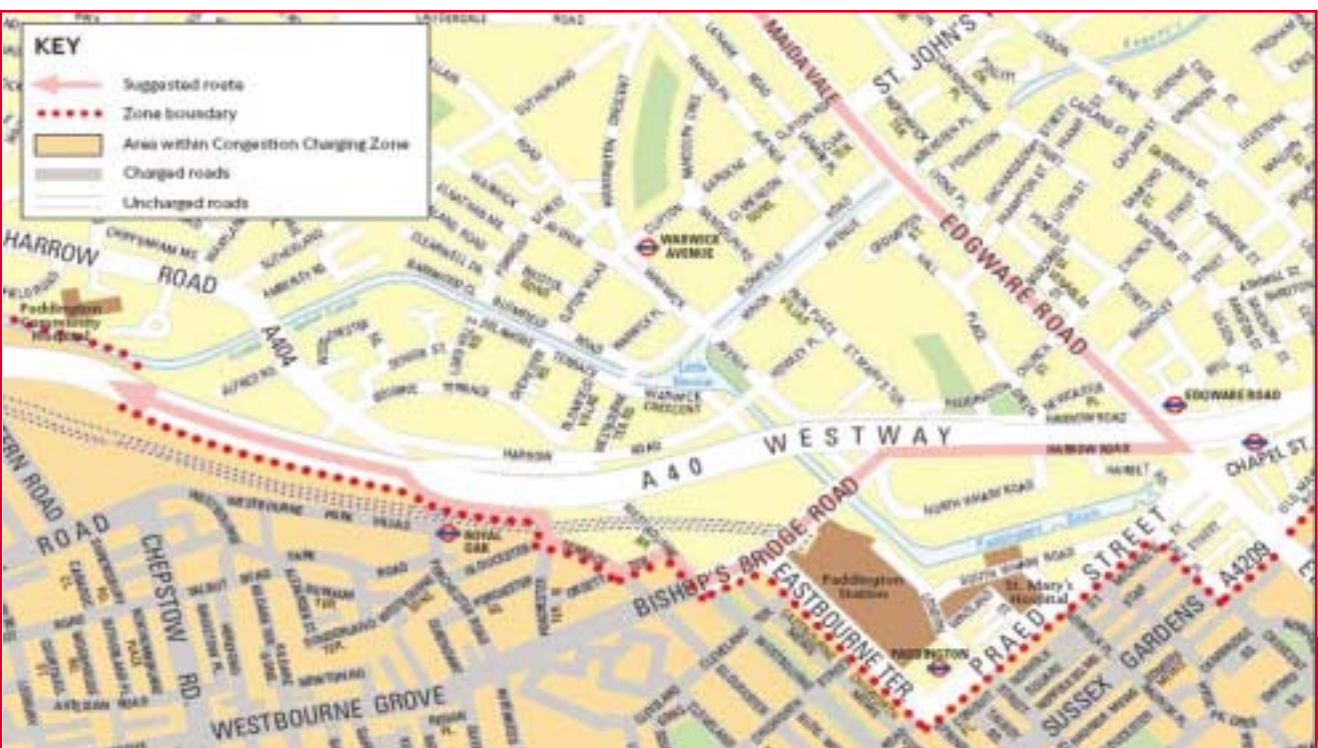
The Appellant does not dispute that on 08 March 2007, his vehicle was used on a road within the Congestion Charge Zone. The Appellant states that he was travelling from Maida Vale to Lillie Road with a view to accessing the A40 westbound. He then entered Porchester Road and Gloucester Terrace, a route which he states he had been using for years. He states that he did not realise that he had entered the Congestion Charge Zone until he received a Penalty Charge Notice. He states that his vehicle was in the Congestion Charge Zone for no more than two minutes. He submits that he should pay the Congestion Charge fee of £8.00 and not the Penalty Charge of £100.00.

Transport for London submits that the Congestion Charge Zone was extended westwards on 19 February 2007 and that the extended zone was well publicised. Transport for London submits that there are four ways to access the A40 Westway, avoiding the Congestion Charge Zone:

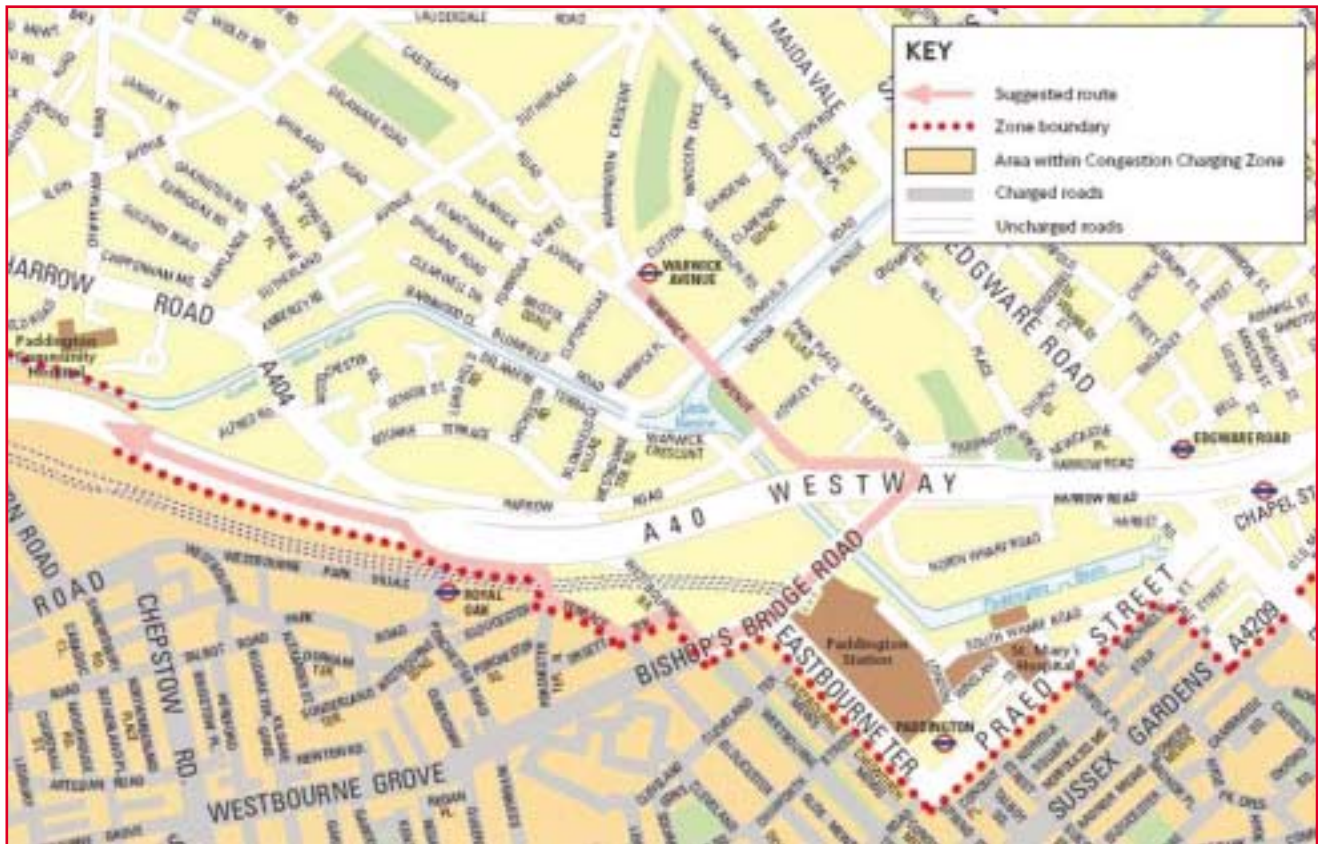
1. Approaching the A40 southbound along Baker Street, turning right onto Marylebone Road and directly onto the Westway.



2. Approaching southbound along the A5 Maida Vale, along Edgware Road, turning right onto Harrow Road, along Bishops Bridge Road, Westbourne Terrace (western arm), Orsett Terrace, Gloucester Terrace (eastern arm), Ranelagh Bridge and then onto the A40 slip road, effectively following the Congestion Charge Zone northern boundary.



3. Approaching southbound, from west of Maida Vale, along Warwick Avenue, beneath the Westway, turning right onto Bishops Bridge Road and then onto Westbourne Terrace (western arm) following thereafter the same route as in 2, above.



4. Approaching northbound along the free through route along Edgware Road, turning left onto Harrow Road, joining Bishops Bridge Road and following the thereafter the free route set out in 2 and 3 above.



The Regulations provide that a Congestion Charge is payable when a vehicle is used or kept on a road within the Congestion Charge Zone during the hours of operation of the Congestion Charging Scheme. On the basis of the compelling photographic evidence before me, I find as a fact, that the Appellant's vehicle was used on Gloucester Terrace (western arm) on 08 March 2007 during chargeable hours at a time when a Congestion Charge was payable. I find as a fact by reference to the deposited plans, that Gloucester Terrace (western arm), west of Porchester Terrace, is a road within the Congestion Charge Zone. I find as a fact accordingly that a Congestion Charge was payable.

I further find as a fact on the evidence before me, that no Congestion Charge was actually purchased at the time and in the manner required by the Regulations. Accordingly, I am bound to find as a fact that a contravention occurred, that the Penalty Charge Notice was properly issued and that the Appellant, as the registered keeper of the vehicle, is the person liable to Transport for London for payment of the Penalty Charge.



I find on the evidence before me that a 'free route' exists, affording road users the opportunity to access the A40 Westway westbound, at Ranelagh Bridge, without entering the Congestion Charge Zone and without incurring a liability to pay a Congestion Charge.

I find that the Regulations impose a duty upon the road user to familiarise themselves with their intended route in advance or to purchase a Congestion Charge if using a vehicle in the Congestion Charge. To this end, Transport for London is under a duty to erect adequate signs at the entry and exit points to the Congestion Charge Zone. I am satisfied that Transport for London complied with that duty.

Further, I find as a fact that the Penalty Charge Notice of £100.00 imposed by Transport for London is the standard fixed penalty amount imposed by the Regulations and does not exceed the relevant amount.

Whilst I have no reason to believe other than that the Appellant made a genuine error, the Appellant's representations in this appeal amount to mitigation only and not a ground of appeal. The Court of Appeal held in the case of *Walmsley -v Transport for London* [2005] EWCA Civ 1540 that no Adjudicator is entitled by law to take mitigation into consideration. Applying the law to the facts of the case, I am bound to find that a contravention occurred and that no grounds of appeal have been established.

For the reasons given, the appeal is refused.

I direct that Appellant to pay Transport for London the standard penalty amount of £100.00 to be received by Transport for London no later than 03 September 2007. If the penalty amount is not paid within the time prescribed, the penalty will increase to £150.00 and Transport for London would be entitled to proceed under the Regulations with enforcement action.'

[Maps not part of original judgement but included here for illustration purposes only.]

Recording of call centre conversations

Under Regulation 13(3)(b) of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 it is a statutory ground of appeal to prove 'on the balance of probabilities' that the charge has already been paid. In order to succeed under this ground, the Appellant would need to provide evidence of payment having been made to Transport for London for the relevant date and vehicle registration mark.

Appellants frequently argued that they had telephoned the call centre to make the relevant payment and that an error had been made by the call centre staff, resulting in payment either not being taken, or not being attributed to the requested date of travel, or not being attributed to the requested vehicle registration mark.

In the past, Transport for London recorded only 5 per cent of calls to the call centre and retained the recording for three months. It was almost impossible to retrieve any recording for the purposes of an appeal. If Transport for London contested the appeal, it would be submitted that its staff were all highly trained and that no error could have been made by them.

The weighing of the evidence in each case was a matter for the Adjudicator and many would conclude that, although accepting the operators are well trained, no-one is infallible and human errors would inevitably be made on occasion. For example, failing to properly process a payment, not repeating back the vehicle registration mark, making an error as to the date the charge was to be paid for. In these circumstances an Adjudicator could find the Appellant had specified all the correct information to purchase the charge in accordance with the scheme and it

had been solely an error of the operator in recording and processing the information.

Transport for London has now refined the process by which calls are recorded and identified; 100 per cent of calls are normally recorded and retained for at least 12 months. As a result, in many cases where this argument has been raised on a contested appeal, Transport for London has been able to locate the recording of the relevant telephone call. In some cases, having reviewed the case and listened to any recording, Transport for London will no longer contest the appeal. This may be because the recording has revealed that an error had been made by a member of the call centre staff. In other cases, a copy of the recording will be provided on CD as evidence to be considered by the Adjudicator hearing the appeal.

The tribunal is equipped with a number of devices to play back these recordings. The track on the CD is a recording of the entire call and the quality of the recordings is usually high. Because of the review process carried out by Transport for London before providing the CDs to the tribunal, the majority of the appeals on this ground have been refused by Adjudicators. This is because the recording of the Appellant's call to the call centre reveals that Transport for London's version of events is usually the right one. As a result, Adjudicators have an easier task resolving the factual dispute.

In order to locate the recording, Transport for London relies upon Appellants providing sufficient evidence to enable the call to be traced. This could include the date and time of the call, the operator spoken to, the Appellant's telephone number as well as details such as account number or receipt if applicable. These should, therefore, be part of any representations made by an Appellant to Transport for London or an Adjudicator.

Recent developments

The Statutory Register

A new system has been introduced to allow road users easier access to the register of appeals maintained by PATAS. A computer terminal at the New Zealand House hearing centre in central London enables members of the public to come in person to search the Statutory Register free of charge and print out a copy of any entry required.

The Statutory Register is an official register of all Congestion Charge cases determined by the Road User Charging Adjudicators, kept in accordance with Section 21 of the schedule to the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.



Section 21 provides that

'(1) the proper officer shall keep a register of all appeals and of the decisions made on them



- (2) the register -
 - (a) shall be kept at the principal office of the proper officer
 - (b) shall be open to the inspection of any person without charge at all reasonable hours and
 - (c) may be kept electronically
- (3) a document purporting to be certified by the proper officer to be a true copy of any entry in the register shall be evidence of the entry and of matters stated therein.'

The search facility allows users to browse the whole register on a day-by-day basis or search the register by reference to case number, date, appellant name, Penalty Charge Notice number, vehicle registration mark, decision date or by reference to whether a case was allowed, refused, withdrawn or closed. The Adjudicator's decision and full reasons are then accessible for every case determined since the inception of the Congestion Charge Scheme, together with details of the Adjudicator's direction and details of the Penalty Charge amount payable.



Future developments

The Low Emission Zone

The Road User Charging Adjudicators' Annual Report of 2005-2006 set out a summary of the proposals by the Mayor of London to introduce a Low Emission Zone (LEZ) in Greater London. The first phase of those proposals will become reality on 4 February 2008.

The LEZ extends to the whole of Greater London, not just the existing Congestion Charge Zone and will operate every day of the year from 4 February 2008 including weekends and public holidays. The LEZ affects older diesel-engine lorries, buses, coaches, large vans, minibuses and other specialist vehicles derived from lorries and vans including; motorised horse boxes, breakdown and recovery vehicles, refuse collection vehicles, gritters, sweepers, concrete mixers, tippers, removals lorries, fire engines, motor caravans, ambulances and large hearses (over 2.5 tonnes). Vehicles that meet the required emissions standards for the LEZ can be used within the zone

without paying a daily charge. Operators of vehicles that do not meet the LEZ specified emissions standards can be used within the zone however operators will be subject to a substantial daily charge and will be liable for a Penalty Charge if the daily charge is not paid.

The Road User Charging Adjudicators have jurisdiction to hear LEZ appeals.

Emissions Related Congestion Charging

Between 10 August and 19 October 2007, Transport for London ran a public consultation on Emissions Related Congestion Charging with proposals to charge cars with the highest greenhouse gas emissions £25 to drive in the existing central London Congestion Charging zone. Vehicles with the lowest emissions would be eligible for use within the existing Congestion Charge zone without charge, qualifying for a 100 per cent discount once the vehicle was registered with Transport for London.

The proposed new Emissions Related Congestion Charge are as follows:

Low-CO₂ emitting cars including cars in Vehicle Excise Duty (VED) Bands A and B (up to and including 120g CO₂ per km) which also meet Euro 4 air quality standard: 100 per cent discount (£0).

The majority of cars which fall in VED Bands C, D, E and those in band F with emissions up to 225g CO₂ per km, as well as those registered pre-2001 with engines up to and including 3,000cc: the same daily Congestion Charge as at present – £8.

The highest CO₂ emitting cars, including VED Band G and equivalent vehicles (above 225g CO₂ per km) and vehicles registered pre-March 2001 with engines larger than 3,000cc: £25 per day.

The proposed timetable is as follows:

4 February 2008:

Introduction of the discount for low CO₂ emitting cars. The Alternative Fuel Discount would be closed to new registrations on this date.

6 July 2008:

The last day an annual or monthly charge can be bought at the daily charge rate of £8 (albeit discounted for the annual or monthly purchase) for high CO₂ emitting vehicles (for charging days beyond 6 October 2008).

6 October 2008:

Introduction of the £25 daily rate high CO₂ emitting cars. People currently entitled to the residents' discount, who continue to drive Band G cars would no longer be entitled to this discount and would be required to pay the full £25 daily charge.

July 2009:

Withdrawal of the Alternative Fuel Discount for existing vehicles registered with Transport for London.

Older vehicles

The Driver and Vehicle Licensing Agency (DVLA) did not start recording CO₂ data until 2001. Cars first registered before 1 March 2001 and which have an engine capacity over 3,000cc would be subject to the higher daily charge of £25 as they have CO₂ emissions comparable with Band G vehicles. Those vehicles first registered before 1 March 2001 which have an engine capacity up to 3,000cc would be subject to the standard daily Congestion Charge of £8.

Exemptions and discounts

It is proposed that there will be a 100 per cent discount for vehicles with the lowest CO₂ emissions – those in VED bands A and B. This will replace the existing Alternative Fuel Discount. Registered keepers already registered for the Alternative Fuel Discount would continue to receive the discount until July 2009, unless the vehicle changed ownership.

The current discounts and exemptions for Blue Badge holders, Taxis and Licensed Private Hire Vehicles would be unaffected by these proposals.

Under the Congestion Charging NHS reimbursement scheme, eligible claimants are reimbursed the £8 daily Congestion Charge. It is proposed that this scheme would continue for the £8 standard daily charge, however those drivers of Band G and equivalent vehicles would only be eligible for an £8 reimbursement rather than £25.

As these matters are still under public consultation, these proposals are subject to confirmation by the Mayor of London.

Judicial Review applications

R (on the application of Jeanette Dufaur) -v- (1) The Road User Charging Adjudicator and (2) Transport for London [2006]

Judicial Review – liability of registered keeper - duty to notify DVLA of sale

On 5 April the High Court refused permission to Miss Dufaur to apply for a Judicial Review of the decision of the Adjudicator. The Adjudicator had refused an appeal which had been brought on the ground that the Appellant was not the registered keeper of the vehicle.

The Appellant had sold a vehicle prior to the contravention date but did not send the V5 registration document to the Driver and Vehicle Licensing Agency (DVLA), relying on the new owner to contact DVLA. The Adjudicator found as a fact that the Appellant had not complied with the strict requirements of Regulation 6 (5) to notify DVLA of the sale and that liability remained with the Appellant as the registered keeper of the vehicle (PATAS case number 9060048359). The Appellant sought review by another Adjudicator and that review was refused. The Appellant in turn applied to the High Court for permission to bring Judicial Review proceedings.

In refusing permission, Kenneth Parker QC, sitting as a Deputy High Court Judge, made the following observations:

'The Adjudicator's decision was plainly right. Under the applicable Regulations, the Claimant remained the registered keeper and hence liable for any congestion penalty until she served DVLA

with the notice of change of ownership. On her own account she relied upon the new owner to ensure that non-delegable duties which she personally owed under Regulation 21(2) of the Road Vehicles (Registration and Licensing) Regulations were fulfilled. The new owner failed so to ensure and the change of ownership was not effectively notified until after the penalties had been incurred. Under the strict provisions governing his jurisdiction on appeal, the Adjudicator had no discretion to allow the appeal once he was satisfied that the conditions of liability had been met, as indeed they were met in this case for the reasons stated.

Furthermore, although not strictly relevant to the precise grounds of the claim as formulated, the provisions regulating liability are plainly justified: as is shown by well publicised statistics, a new owner may wish to avoid registering the vehicle in order to evade payment of excise tax and other fines and penalties which ownership may create, and the old owner, albeit innocently, may facilitate such fraud if he or she leaves the non-delegable obligations concerning registration to be discharged entirely by the new owner. The old owner, therefore, remains justifiably at risk of incurring congestion charge penalties as registered keeper until he or she does notify change of ownership.'

In the event, Transport for London and the Appellant settled the claim and cancelled the Penalty Charge Notice after Judicial Review proceedings were commenced but prior to the court refusing permission on paper.

Useful information

The structure of the Road User Charging Adjudicators' Tribunal

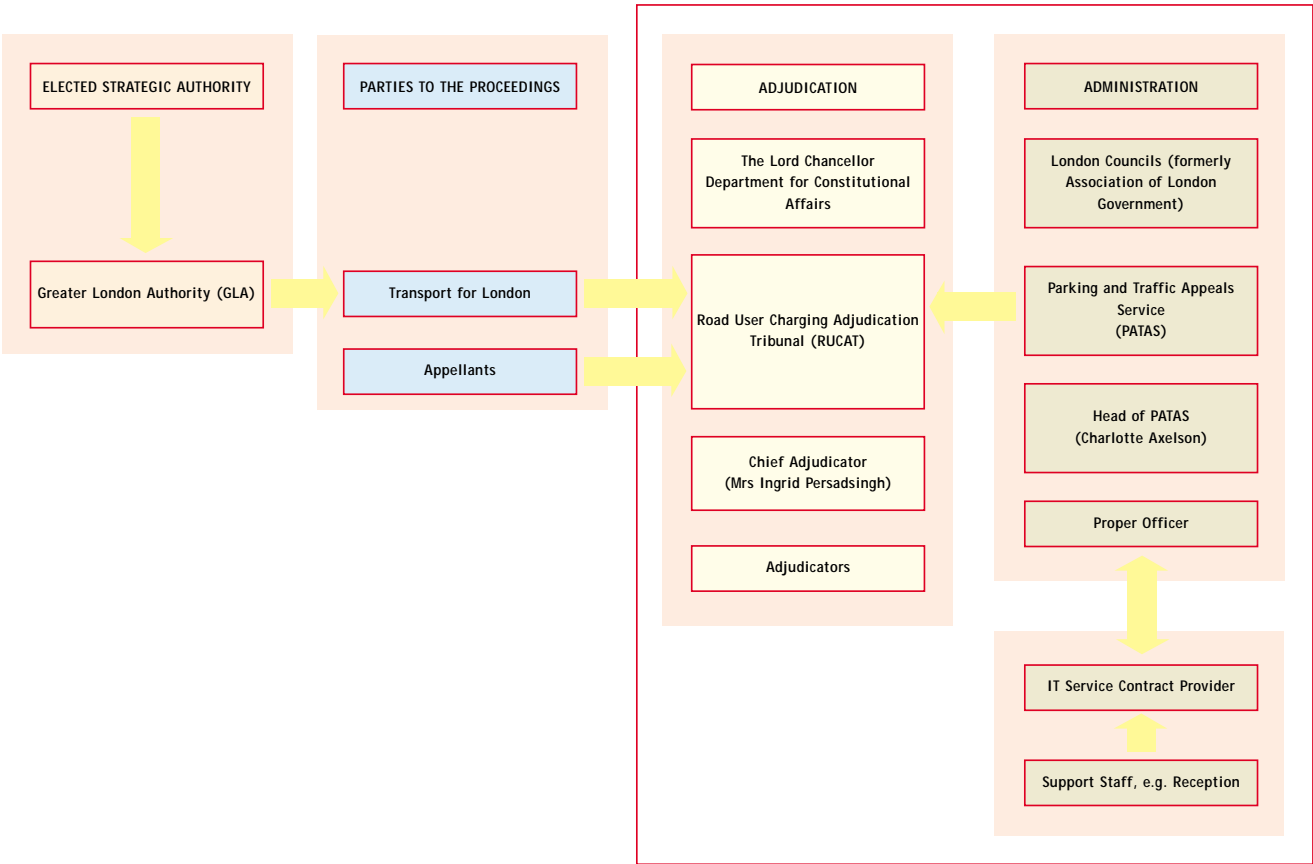
What is 'RUCAT'?

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:



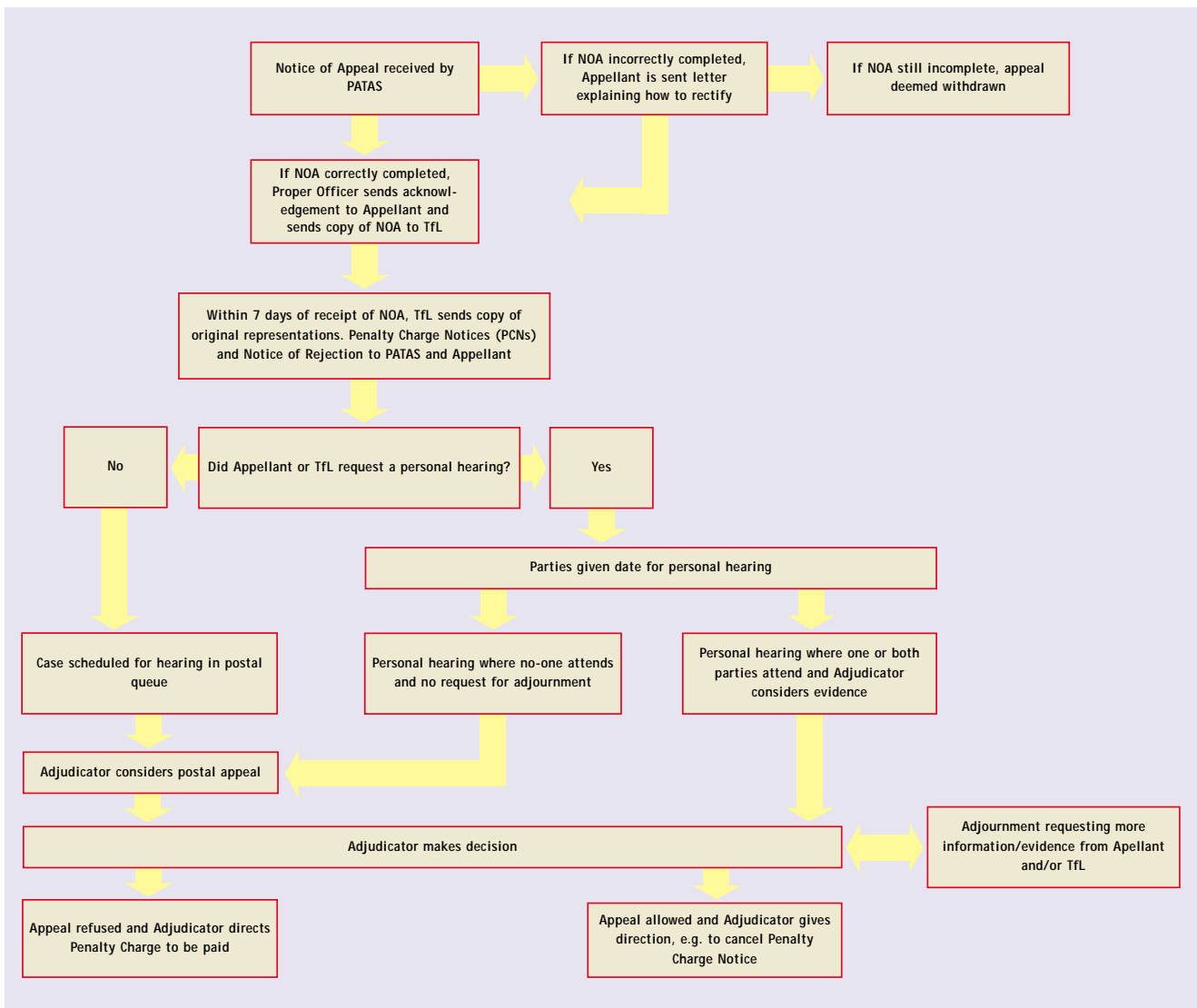
What is an appeal?

If Transport for London 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 Transport for London.

If Transport for London accepts those representations, then the Penalty Charge Notice will be cancelled.

If Transport for London rejects the representations, the registered keeper of the vehicle may appeal to the Road User Charging Adjudicator. The appeal is against Transport for London'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.



Who are Adjudicators?

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 Transport for London 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 by the Lord Chancellor/the Department for Constitutional Affairs.

Who pays Adjudicators?

London Councils pays Adjudicators on a monthly basis. 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.

Transport for London 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, 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.

Initially, the responsibility is on Transport for London to demonstrate that a contravention has occurred. This means that Transport for London 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 Transport for London or the vehicle was not subject to an exemption.

If Transport for London 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 Transport for London 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. The Appellant must satisfy the Adjudicator that 'on the balance of probabilities' one of the appeal grounds is present.

Grounds of Appeal

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 Transport for London, 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 charge must be paid prior to midnight following the date of travel, 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 do 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 Transport for London 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, Transport for London 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, for example:

- 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 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.

This allows the registered keeper 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 Transport for London 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 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:

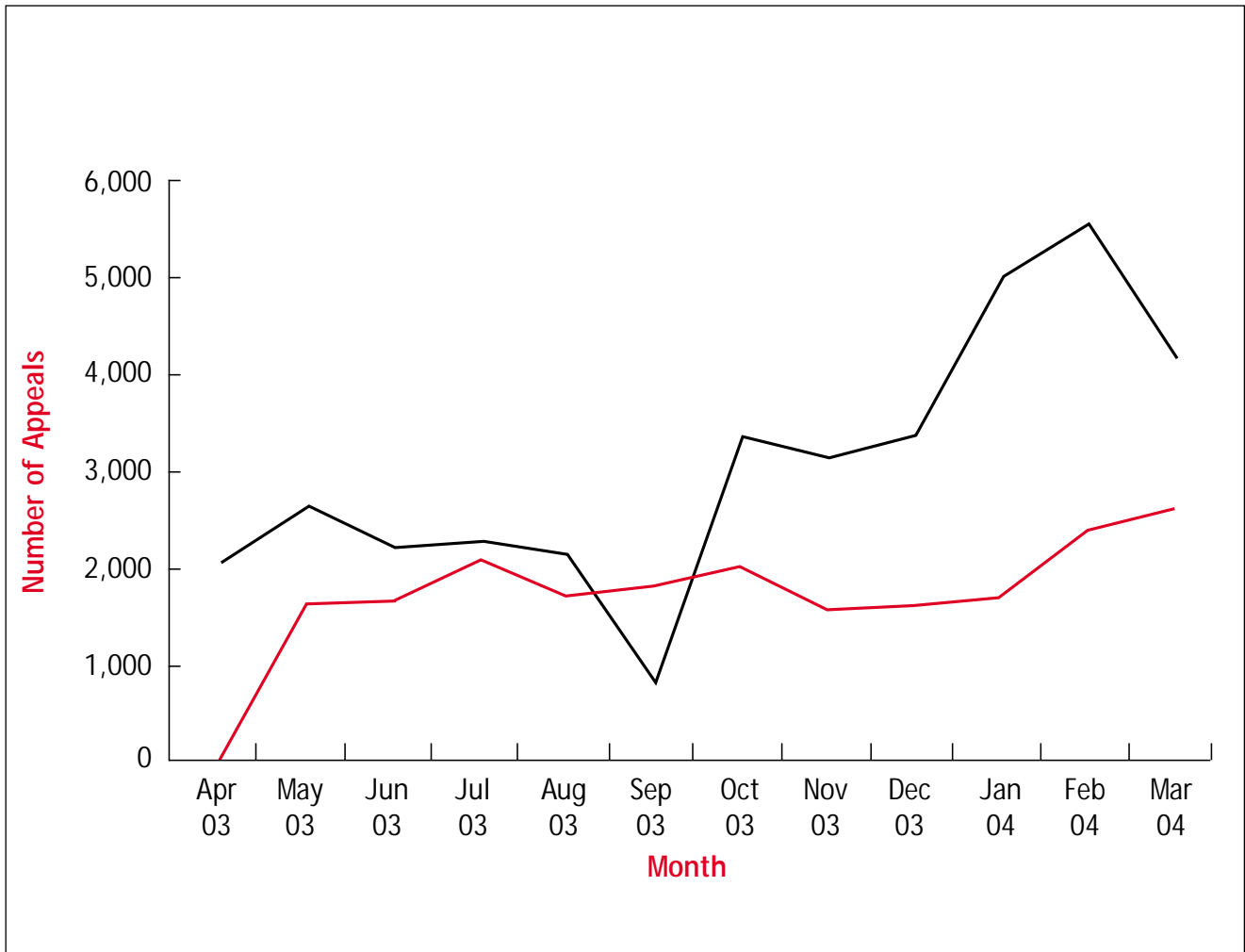
1. registration mark of vehicle hired under the hiring agreement
2. make and model of vehicle hired under the hiring agreement
3. registration mark of any vehicle substituted for the above during the currency of the hiring agreement
4. make and model of any vehicle substituted for the above during the 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 apply only to the vehicle hire firm's copy of the hiring agreement.*)

The regulations are highly 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.

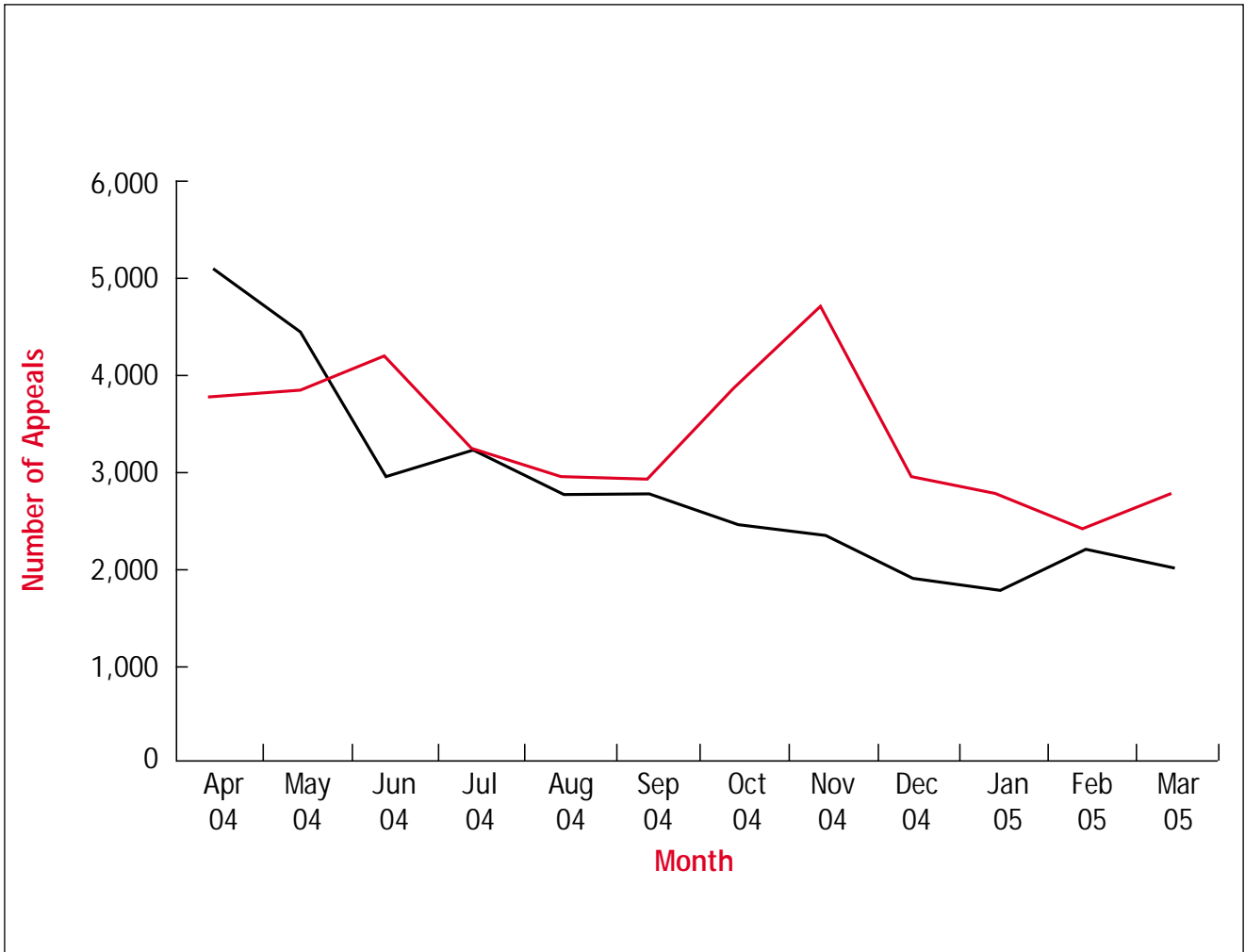
Annex 1

Appeals: April 2003 – March 2004



	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	2,056	2,647	2,211	2,293	2,130	813	3,369	3,126	3,356	5,006	5,542	4,156
Total Cases Closed	0	1,628	1,640	2,090	1,700	1,816	1,994	1,558	1,593	1,694	2,407	2,615

Appeals: April 2004 – March 2005



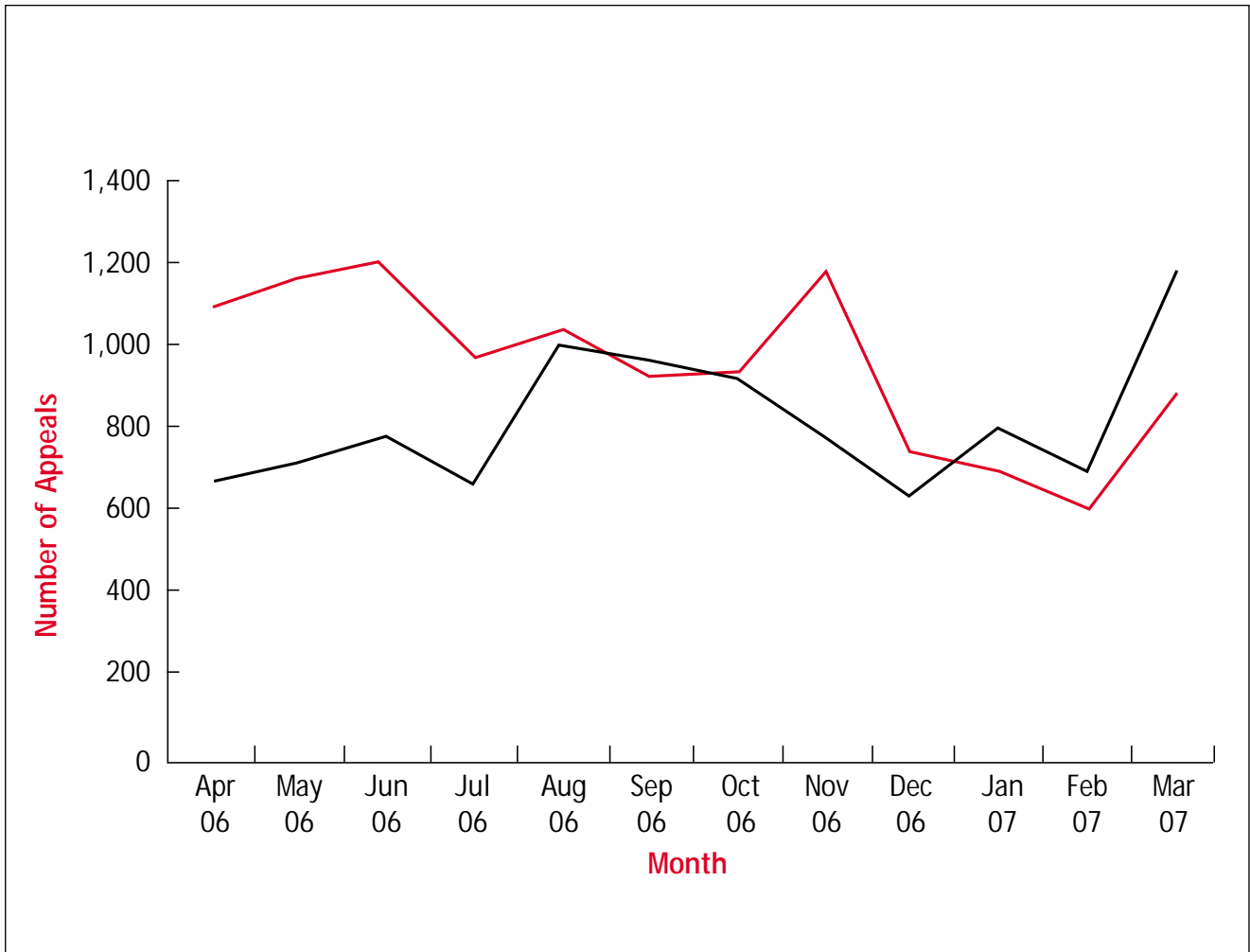
	Apr 04	May 04	Jun 04	Jul 04	Aug 04	Sep 04	Oct 04	Nov 04	Dec 04	Jan 05	Feb 05	Mar 05
Appeals Received	5,140	4,476	2,938	3,215	2,783	2,791	2,487	2,334	1,918	1,756	2,220	2,007
Total Cases Closed	3,776	3,831	4,205	3,244	2,917	2,914	3,903	4,728	2,949	2,807	2,397	2,786

Appeals: April 2005 – March 2006



	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	1,674	2,096	1,866	1,995	1,787	1,268	1,078	1,027	890	1,097	923	882
Total Cases Closed	3,165	2,344	2,639	2,544	2,342	2,730	1,716	2,237	1,298	1,701	1,393	1,582

Appeals: April 2006 – March 2007



	Apr06	May06	Jun06	Jul06	Aug06	Sep06	Oct06	Nov06	Dec06	Jan07	Feb07	Mar07
Appeals Received	647	701	755	642	971	934	886	757	616	771	677	1,190
Total Cases Closed	1,063	1,133	1,156	950	1,009	902	901	1,139	720	675	582	856

Annex 2

Congestion charging statistics 2003 – 2007

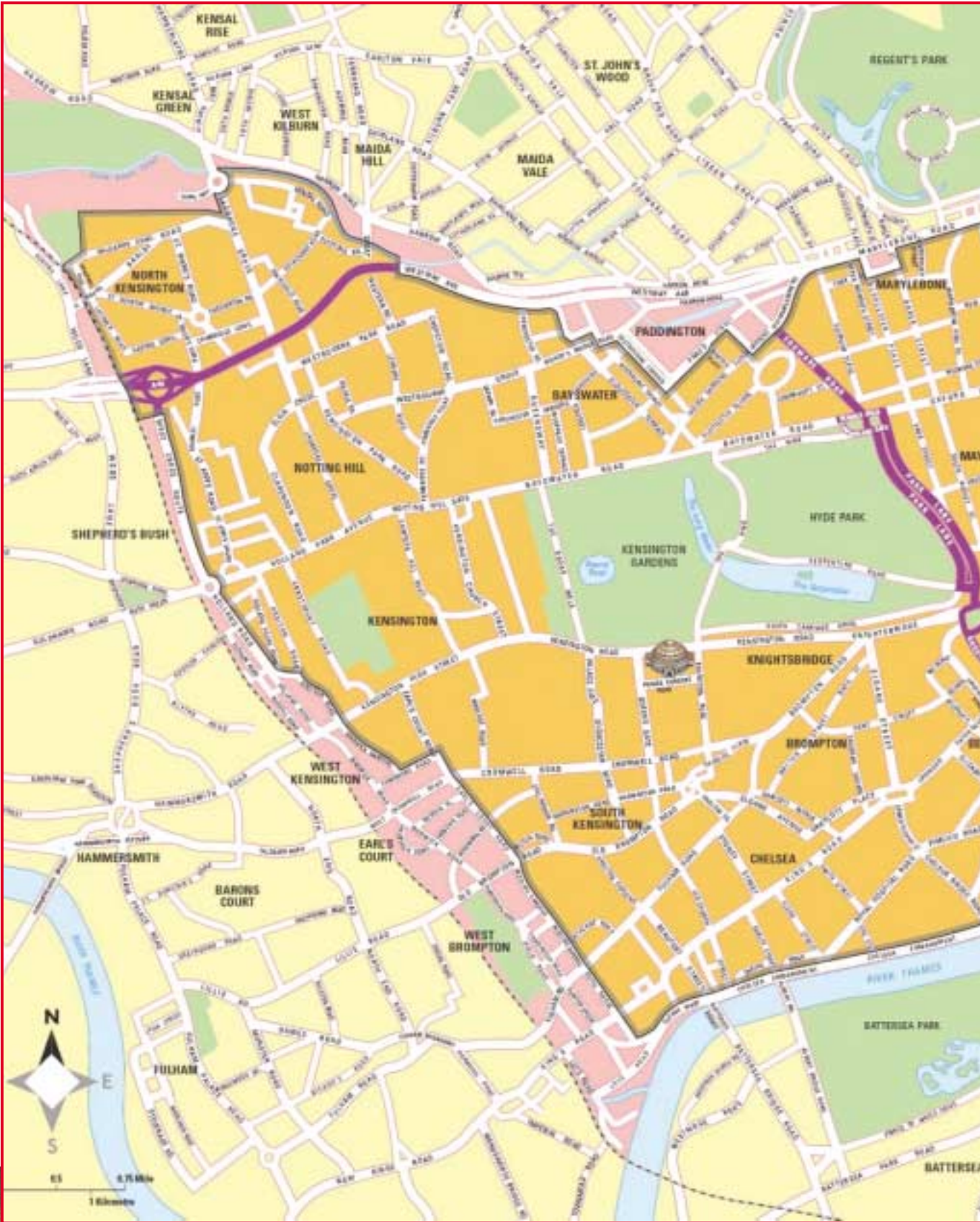
	2003/4	2004/5	2005/6	2006/7
	Totals	Totals	Totals	Totals
appeals received	42,339	34,065	16,583	8,054
statutory declarations received	N/A	N/A	N/A	1,493
total cases closed	24,314	40,457	25,691	11,085
appeals withdrawn by appellants	287	268	420	138
appeals not contested by TfL	13,033	13,160	5,084	2,984
appeals refused postal*	4,770	17,838	13,870	6,179
appeals allowed postal**	2,806	5,443	7,121	3,300
appeals refused personal*	643	1,408	1,436	505
appeals allowed personal**	2,116	2,012	2,522	1,060
closed administratively	659	328	166	41
appeals adjourned	1,518	6,085	3,399	1,608
postal cases ready for adjudication at end of year	9,383	7,528	2,004	306
review decisions	121	349	743	181
costs decisions	10	140	153	12
	Averages	Averages	Averages	Averages
% withdrawn by appellants	1.2%	0.7%	1.8%	1.2%
% not contested by TfL	52.7%	32.3%	20.1%	26.9%
% refused postal	20.4%	44.1%	55.3%	55.7%
% allowed postal	12.1%	13.6%	27.4%	29.8%
% refused personal	2.6%	3.6%	5.5%	4.6%
% allowed personal	8.8%	4.9%	9.7%	9.6%
% closed administratively	2.4%	0.8%	0.6%	0.4%
% of cases allowed	20.8%	18.5%	37.0%	39.4%
average postal hearing (mins)	20.3	22.66	35.96	43.79
average personal hearing (mins)	22.99	35.15	50.72	60.13
% of cases 1st considered within 56 days	24.4%	34.9%	34.5%	49.4%
average days delay	88	212	205	80
% hearings within 15 mins	76%	84%	69%	76%

* Includes Withdrawals

** Includes DNCs

Annex 3

Map of the Congestion Charge Zone





Annual Report 2006-07

Road User Charging Adjudicators

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