

Environment and Traffic Adjudicators

ANNUAL REPORT

2016-2017

*The Environment and Traffic Adjudicators
London Tribunals 2016-17*

| CONTENTS | Page |
|--|-------------|
| Chief Adjudicator’s foreword | 3 |
| 1. Workload | 6 |
| Appeals | 8 |
| Recommendations | 11 |
| Personal/Postal | 13 |
| Costs | 14 |
| 2. Law and Procedure Update | 15 |
| (a) Statutory Declarations and Witness Statements | 15 |
| (b) Suspended bays | 16 |
| (c) Litigants in person | 17 |
| 3. Judicial Review | 18 |
| (a) Update | 20 |
| (b) Applications | 20 |
| 4. Training and Appraisal | 26 |
| (a) Training | 26 |
| (b) Appraisal | 28 |
| 5. The Adjudicators | 29 |
| 6. Appendix – Appeal Themes | 30 |

CHIEF ADJUDICATOR'S FOREWORD

This reporting year is the adjudicators' second in our new accommodation at Chancery Exchange, where the centrally located hearing centre and our flexible operating hours allow us to continue to provide an accessible and user friendly appeals tribunal. We are pleased to be able to offer a full range of personal hearing times, that includes early and late sittings, as well as our popular Saturday slots. This flexibility means that motorists can schedule hearings at times that do not interfere with work or other commitments that they may have.

10,195 personal hearings were scheduled in this reporting year, giving parties to the appeal the opportunity of attending the hearing centre and putting their case to the adjudicator in person. Personal appeal hearings remain important to the tribunal, as they not only allow the parties to express themselves in some detail, but they also provide adjudicators with an opportunity to raise queries or explore issues that either party may not have addressed or included in written submissions. Hearings also give the adjudicator the opportunity of explaining regulations with reference to the evidence and clarifying the nature of restrictions in clear terms, ensuring that misunderstandings or mistakes that may have been made are not repeated. Whatever the outcome of the appeal, this personal interaction and engagement with the adjudicator is likely to result in the parties

leaving the hearing centre with a better understanding of the enforcement process.

Communication and Knowledge

It certainly remains the case that a large number of appeals are made by motorists who were simply unaware of the regulations or who had misunderstood their meaning or scope, incurring a penalty charge notice only inadvertently. This position is exacerbated by ill-informed comments being broadcast in the media or appearing on websites, that leave motorists with false expectations as to the strength of their case.

Our website at www.londontribunals.gov.uk provides valuable, accurate impartial information to parties to an appeal, with the aim of explaining the appeal process in clear terms. Last year, our report included a number of “appeal themes” attempting to clarify and correct misunderstandings and misapprehensions regarding motorists’ rights and obligations. By providing clear and accurate information from a position of impartiality, there is an expectation that fewer penalties will be issued to motorists who had no intention of contravening the regulations and in turn fewer appeals showing no legal merit will be lodged.

To this end, a further list of parking and traffic myths are dispelled at page 31 of this report.

The Environment and Traffic Adjudicators are pleased to present their 2016-2017 annual report to the Transport and Environment Committee of London Councils and take this opportunity of expressing thanks to the Proper Officer team for their continued support.

Caroline Hamilton

London, April 2017

Chief Adjudicator

Environment and Traffic

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1. WORKLOAD

This year has seen an increase in appeals registered at the tribunal, although the number of tickets that finally result in an appeal being lodged remains only a very small percentage of tickets issued to motorists in London.

Developments in technology mean that images of vehicles parked in contravention, with a penalty charge notice served to the windscreen, together with images of the relevant restriction sign can be loaded onto the enforcement authority's website for immediate viewing and consideration by the motorist. This speedy process allows the recipient of a penalty to have a very clear view of the reasons behind the ticket, at a point when the incident is still fresh in the motorist's mind. The rise in the tribunal's appeal numbers relates mainly to an increase in moving traffic appeals with a reduction in the number of appeals registered against parking contraventions.

Monitoring roads remotely allows for efficient enforcement, with the evidence secured through CCTV observation also being accessible by the motorist. Penalties served through the post do not however allow for the immediate checks that a contemporaneously served penalty charge notice allows. They provide only a delayed opportunity of assessing whether or not the contravention alleged is made out, or should be challenged through representation to the enforcement authority and if unsuccessful, thereafter by appeal. This delay in knowledge and receipt may explain the

larger number of appeals that relate to penalties served to the motorist by post.

The appeal process permits an ongoing review of the case by the parties to the appeal. The “do not contest” statistics relate to enforcement authorities who decide, during the course of the reviewing process, not to contest an appeal. This generally arises when evidence is produced by an appellant only after the notice of appeal has been registered. A typical example, is in cases where ownership of the vehicle is in issue and the appellant submits a confirmation letter that he has received from the DVLA, only after the appeal has been lodged. Vehicles that are rented out under hire agreements that transfer liability for penalty charge notices, also often result in delayed decisions not to pursue a penalty charge notice. When valid hire agreements are provided only after the appeal had been lodged, the enforcement authority is no longer in a position to contest the appeal and correctly withdraws from it. In such cases, the enforcement authorities are able to re-issue the notice to owner to the correct owner or to the individual (the hirer) to whom liability for the penalty has been lawfully transferred.

Appellants also have the opportunity of withdrawing appeals prior to their determination. This generally arises after the enforcement authority has served the appeal evidence pack, providing the appellant with the opportunity of considering full particulars of the authority/ respondent’s case that usually includes the civil enforcement officer’s notes and

photographs. Once an appeal has been withdrawn, the appellant has 14 days to pay the penalty amount, after which a charge certificate may be issued by the enforcement authority.

As in previous years, please note that apparent discrepancies in the figures provided below are the result of:

- . Appeals registered in the previous year (but determined in this reporting year);
- . Notices of Appeal that contain more than one penalty charge notice; and
- . Witness statement/statutory declaration referrals that are listed for appeal on the direction of the adjudicator.

APPEALS

TOTAL of ALL:

39,151 (37,934) appeals received.

11,717 (6,477) statutory declaration/witness statement referrals.

Total: 50,868 (44,411)

38,747 (35,828) appeals were determined (this figure includes appeals lodged in the previous year but determined in the reporting year).

18,279 (17,213) appeals were allowed of which 8,254 (7,302) were not contested by the enforcement authority.

20,468 (18,615) appeals were refused of which 644 were withdrawn by the appellant.

The number of appeals has been separated into contravention types (parking, bus lane, moving traffic, London lorry control, litter and waste) and the number of appeals received and decided is shown.

Parking appeals received.

26,896 (28,693) appeals were received.

9,493 (5,821) referrals were made.

TOTAL: 36,389 (34,514)

Parking appeals decided.

26,784 (27,696) appeals were determined.

Allowed

13,290 (13,572) appeals were allowed of which 6,264 (5,803) were not contested by the enforcement authority.

Refused

13,494 (14,124) appeals were refused of which 402 were withdrawn by the appellant.

Bus lane appeals received.

1,691 (1,483) appeals were received.

374 (146) referrals were made.

TOTAL: 2,065 (1,629)

Bus lane appeals decided.

1,713 (1,292) appeals were determined.

Allowed

753 (587) appeals were allowed of which 289 (185) were not contested by the enforcement authority.

Refused

960 (705) appeals were refused of which 37 were withdrawn by the appellant.

Moving traffic appeals received.

10,446 (7,607) appeals were received.

1,850 (510) referrals were made.

TOTAL: 12,296 (8,117)

Moving traffic appeals decided.

10,128 (6,693) appeals were determined.

Allowed

4,174 (2,970) appeals were allowed of which 1,650 (1,256) were not contested by the enforcement authority.

Refused

5,954 (3,723) appeals were refused of which 201 were withdrawn by the appellant.

London Lorry Control

118 (126) appeals were received.

London Lorry Control appeals decided.

122 (122) appeals were determined.

Allowed

62 (63) appeals were allowed of which 51 (43) were not contested by the enforcement authority.

Refused

60 (59) appeals were refused of which 4 were withdrawn by the appellant.

Litter appeals

3 (1) appeals were received.

1 appeal was allowed (not contested.)

0 (1) appeals were refused.

Waste appeals

5 (24) appeals were received.

5 (24) appeals were determined.

Allowed

4 (21) appeals were allowed of which 0 (15) were not contested.

Refused

1 (3) appeal was refused.

RECOMMENDATIONS UNDER THE TRAFFIC MANAGEMENT ACT

2004

The Traffic Management Act 2004 introduced the concept of “compelling reasons”, allowing adjudicators to refer cases back to the enforcement authority by making a “recommendation” as follows:

“If the adjudicator does not allow the appeal but is satisfied that there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled he may recommend the enforcement authority to cancel the notice to owner.”

Once the adjudicator has made the recommendation “It shall be the duty of an enforcement authority to which a recommendation is made... to consider afresh the cancellation of the notice to owner taking full account of all observations made by the adjudicator and within the period of thirty five days beginning with the date on which the recommendation was given ... to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator’s recommendation. If the enforcement authority notifies the appellant and the adjudicator that it does not accept the adjudicator’s recommendation, it shall at the same time inform them of the reasons for its decision.”

Adjudicators use the recommendation sparingly as is reflected by the high threshold, requiring that the reasons put forward be “compelling reasons.” Recommendations only apply to penalty charge notices issued under the provisions of the Traffic Management Act.

This reporting year a total of **590** recommendations were made to the enforcement authorities with the following results:

Recommendation Refused – 207

Recommendation Accepted – 147

Recommendation Deemed Accepted (as no authority response received) – 236

The high number of “deemed accepted” recommendations is regrettable, as although a recognised part of the statutory process, without the input from the enforcement authority, the adjudicator and more importantly, the motorist are not provided with the reasoning behind the authority’s position.

PERSONAL/POSTAL APPEALS

Hearings are open to the public, although a private hearing can be provided in appropriate circumstances. In August 2016, the adjudicators could be seen at work in the BBC television series “Dom on the Spot”. Adjudicators took part in filming with the aim of publicising the tribunal and the right of appeal and of clarifying issues that commonly arise. As well as interviewing appellants before and after their personal appeal hearings, the film gave a flavour of how appeal hearings are conducted, allowing the public to feel more confident about exercising their right of appeal and attending a hearing to put their case.

We have also posted a short film illustrating the appeal process on our website, again with the aim of clarifying the procedures and re-assuring the motorist who believes that a ticket has been incorrectly issued, but who remains wary of, or intimidated by, the thought of lodging an appeal and attending a hearing.

Postal Hearings: 40,673

Personal Hearings: 10,195

Although the primary function of the adjudicator is to determine appeals, the tribunal receives a great deal of pre and post appeal correspondence, much of which requiring judicial input. Adjudicators who are not determining appeals use the adjudication systems to work on case management and other matters, such as late appeals, invalid or inconsistent appeals and ancillary applications such as costs and reviews.

COSTS

Lodging an appeal at London Tribunals is a right, whatever the merits of the case and does not attract a registration or application fee. Under the regulations that govern the appeal proceedings, an award of costs is however possible in our jurisdiction, but is not the norm. Paragraph 13 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 provides that the adjudicator may make an order awarding costs and expenses against a party (including an Appellant who has withdrawn his appeal or an Enforcement Authority that has consented to an appeal being allowed) if the adjudicator is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or against an enforcement authority where the adjudicator considers that the disputed decision was wholly unreasonable. The regulations provide however that the adjudicator “shall not normally made an order awarding costs and expenses...”

The applications for costs received in the reporting year within that period break down as follows:

| Appellants | Enforcement Authorities |
|------------------------|--------------------------------|
| Parking 106 | Parking 5 |
| Bus Lane 14 | Bus Lane 0 |
| Moving Traffic 20 | Moving Traffic 1 |
| London Lorry Control 0 | London Lorry Control 0 |
| Litter and Waste 0 | Litter and Waste 0 |
| Total 140 | Total 6 |

2. LAW AND PROCEDURE UPDATE

(a) Statutory Declaration and Witness Statement referrals

Adjudicators continue to address the large number of referrals made by enforcement authorities ensuring that motorists who have missed the opportunity of making representations or appealing, due to lost post or administrative error, are returned to a position where they can continue to challenge a penalty and if need be, exercise their right of appeal. The continued misapprehension that the order of the Traffic Enforcement Centre of the Northampton County Court cancels the penalty charge notice itself remains, even though the face of the order makes it clear that this is not the case by stating in terms : **“Important note to the respondent: this order does NOT cancel the original Penalty Charge Notice. The Local**

Authority may well take further action on it. The Local Authority should inform you as soon as possible if it intends to do so". Making a declaration or filing a witness statement is certainly not a way of avoiding a penalty and may result in an additional award of costs payable to the enforcement authority.

(b) Suspended bays

Camden London Borough Council v Humphreys [2017] EWCA Civ 24 (PATAS 2130558549)

Brief facts

Mr Humphreys left his motorcycle in a motorcycle bay from 15 August to 13 September 2013, without returning to it. On 24 August, the Enforcement Authority put up a sign, saying the bay would be suspended from 27 to 28 August. On 27 August, it issued a Penalty Charge Notice. Mr Humphreys contended that he had not committed a parking contravention, because the bay was not suspended when he had parked his vehicle.

The adjudicator found that a contravention had occurred; but, accepting that Mr Humphreys did not know of the suspension, recommended that the Enforcement Authority cancel the penalty charge notice (see recommendations at page 11 above). However, the Authority declined to do so.

History

Mr Humphreys applied to the High Court for the judicial review of the adjudicator's decision. The Enforcement Authority played no part in the claim, even when permission to proceed was granted. At the substantive hearing, Mr Humphreys, represented by a barrister pro bono, persuaded the Deputy High Court Judge to allow the claim - it seems without reference to the traffic management order.

Court of Appeal

The Enforcement Authority, realising that this judgment was damaging in so far as it set a precedent that was wrong in law, appealed to the Court of Appeal. The appeal ([2017] EWCA Civ 24) was refused. The only substantive ground upon which it unanimously did so was that the Council, having not contested the claim at first instance, could not do so on appeal.

That meant that the issue of whether there is a contravention where a bay is suspended only after a vehicle has parked was not authoritatively determined by the Court.

However, two of the judges (Beatson and Briggs LJ), considered that the contravention was effectively one of strict liability if the vehicle was left in a bay that was later suspended; and so there was a contravention. They considered that the Deputy Judge had erred in concluding that there was not.

Beatson LJ also said that the Deputy Judge erred in eliding a non-contravention with a contravention where there were *compelling circumstances* such that it was appropriate to recommend to the Council that it cancel the ticket; and in finding that the Adjudicator's reasons were inadequate – because they were clear.

However, the third judge (McCombe LJ) considered that, in the circumstances, there was no contravention.

This case is not a precedent, one way or the other, on any of the substantive issues – but, the majority considered that parking in a suspended bay is a parking contravention effectively of strict liability – which is the view that has been taken by adjudicators for some time. Adjudicators continue to determine appeals on that basis.

(c) Litigants in person

It is part of the adjudicators' function to ensure that cases are determined justly, in a timely manner and at proportionate cost. Although our regulations allow for a flexible approach to case management and

adjudicators appreciate that most appellants will not have legal representation, it is sometimes necessary to put a halt to unsolicited communications, in order to case manage effectively by adopting a more formal approach. It remains the case that a small number of appellants or their nominated representatives, take up a large part of the tribunal's time by keeping up a torrent of communication by telephone and email. This causes a delay to all the tribunal's work, as time is spent fielding these communications to the detriment of other work.

The adjudicators are impartial; they have no agenda and are not campaigners working for or against either party to an appeal; they are charged with determining appeals by considering the evidence submitted, making findings of fact and applying the law. The appeal is a judicial process and it is the adjudicator who is charged with case management.

The Court of Appeal has now recognised in the case of Agarwala v Agarwala [2016] EWCA Civ 1252 that it can be difficult to keep up with parties who inundate the Court with unsolicited communications and that should the need arise strict case management directions may be given. This Court of Appeal ruling certainly resonated with our tribunal and the adjudicators' function, that of determining appeals justly and impartially but also efficiently.

3. JUDICIAL REVIEW

The appeal and review process provided by our regulations is a sufficient safeguard to ensure that cases are justly determined. Appeal outcomes and interlocutory decisions, may be reviewed by an adjudicator, on the application of a party, in the following circumstances:

- (i) the decision was wrongly made as the result of an administrative error;
- (ii) the adjudicator was wrong to reject the notice of appeal;
- (iii) a party who failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;
- (iv) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not reasonably have been known of or foreseen;
- (v) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known of or foreseen; or
- (vi) the interests of justice require such a review.

Once the appeal and review processes are exhausted, the jurisdiction of the tribunal is complete. The judicial review procedure is in place should a party still believe that a decision reached is wrong in law and wishes to make a further challenge.

The adjudicators, who remain impartial, take no part in the judicial review proceedings, allowing the appellant and respondent to the appeal to

pursue the application in the Administrative Division of the High Court without intervention.

This is the usual process for a tribunal to adopt and means that the neutrality of the adjudicator is not impugned through the support of one party or the other.

This reporting year saw only 4 applications to the Administrative Courts with the outcomes as summarised below.

(a) Update from 2015-2016

1. ***The Queen on the Application of Robert Gordon Humphreys -v- The Parking Adjudicator [CO/1069/2014] (Robert Gordon Humphreys -v- London Borough of Camden PATAS 2130558549 (2013))***. The appeal to the Court of Appeal was refused as detailed in the short report at page 16 above.
2. ***The Queen on the Application of Eventech Limited -v- The Parking Adjudicator [CO/10424/2011] (Eventech Limited -v- London Borough of Camden PATAS 2110086039 and 211008604A (2011))***: This case remains at the Court of Appeal currently stood out pending alternative dispute resolution/settlement. There are a large number of appeals waiting for this case to be resolved and there is every hope that this will be finalised in 2017.

(b) Applications 2016-2017

1. **The Queen on the Application of Butho Nxumalo -v- (1) Southwark Council (2) The Parking Adjudicator and Southwark Council Parking Services [CO/5750/2016] (Butho Nxumalo -v- London Borough of Southwark ETA 2150404923 (2015)).**

The adjudicator found as follows:

“Mr Nxumalo attended today. He denies the contravention. The appellant argues that at the time that he drove his car into the box junction his exit was free. Mr Nxumalo states that had the car in front of his car driven forward he would have been able to drive out of the box. The appellant also argues that the box junction does not comply with the requirements of the Traffic Signs Regulations and General Directions 2002

The contravention occurs if a person causes a vehicle to enter the box junction so that the vehicle has to stop within the box junction due to the presence of stationary vehicles. The Enforcement Authority does not have to prove that the vehicle caused any obstruction to other road users. The contravention occurs if all or part of the vehicle is stopped in the box.

The CCTV footage shows the appellant’s car drive into the box junction a short distance behind another vehicle. There is a car in the box as the appellant drives his car into the box. The car is forced to stop in the box as it is unable to exit it due to the presence of the vehicle in front. Mr Nxumalo should have waited to ensure that there was a space on the other side of the junction before he drove into it rather than assuming that the traffic would continue to flow.

Mr Nxumalo argues that there are two boxes at the junction of Lower Road/Surrey Quays and that this has not been authorised by the Department of Transport. He argues that the edges of the box do not reach the kerb.

I find that the evidence shows that there are two box junctions on each side of the carriageway. There is a bus lane in the middle of the carriageway. I am satisfied that the box junction substantially complies with the requirements of diagram 1044 in the Traffic Signs Regulations and General

Directions 2002. There is no requirement that all four corners of the box meet the kerb provided that the box junction does substantially comply with the Regulations.

I find that the contravention occurred. I refuse this appeal. “

Review: An application for the review of the decision was rejected, the reviewing adjudicator having concluded that the appeal adjudicator was entitled to reach the decision on the basis of the evidence submitted.

Judicial Review: Permission to apply for the judicial review of the decision was refused, the learned Deputy High Court Judge finding the application to be totally without merit and noting that the claimant had failed to show any arguable ground for seeking permission. Costs of £540 for the preparation of the acknowledgment of service document were awarded to the London Borough of Southwark.

2. ***The Queen on the Application of Michael Hagos -v- (1) Transport for London and (2) The Adjudicator [CO/6093/2016] (Michael Hagos -v- Transport for London ETA 2160208466 (2016))***

The adjudicator found as follows:

“The CCTV evidence shows the vehicle stationary on a red route indicated by double red line for approximately 5 minutes. During that time other vehicles pass and there is no evidence of anything to obstruct its further progress. A vehicle may not stop on a red route, even briefly, unless some exemption applies. The Appellant, whom I have heard in person, states that he was finding his way and also that his vehicle has suffered a flat tyre. There is no exemption allowing a vehicle to stop for navigational purposes. The Appellant has produced no evidence of repair to, or replacement of a tyre, and the vehicle is seen to drive off in a normal manner. The Appellant has made no mention of a punctured tyre at any point hitherto. I do not find his evidence on this point to be credible. I am not satisfied that any

exemption applied. The vehicle was therefore in contravention and the PCN was lawfully issued.”

Review: The reviewing adjudicator found no error of law in the appeal decision and rejected the application.

Judicial Review: The learned Deputy High Court Judge found no arguable ground for a judicial review and refused the application. The claimant made an application for the renewal of permission to the Court in person, but that was also refused.

3. ***The Queen on the Application of Robert Sackey -v- The Environment and Traffic Adjudicator and (1) Agatha Sackey (2) London Borough of Enfield [CO/1963/2016] (Agatha Sackey v London Borough of Enfield ETA 215038338A (2015))***

The adjudicator found as follows:

“The Enforcement Authority assert that the vehicle, not being of the specified class, was parked at a location restricted for use by vehicles of a specific class only; the Appellant denies liability for the ensuing Penalty Charge Notice on the basis of prevailing circumstances as detailed in her written representations and those of her witnesses: Mr R. Sackey and S. Si. The Road Traffic Act 1991 prescribes that the owner of a vehicle, not the driver for the time being, shall be liable for a Penalty Charge Notice issued in respect of it. The ‘owner’ is presumed to be the keeper as registered at the Driver and Vehicle Licensing Agency (DVLA) Enquiries of DVLA established the Appellant as the registered keeper of the said vehicle, therefore the Appellant is the person liable. The sections of the earlier Road Traffic Act, to which the Appellant makes reference, do not apply to the issue of Penalty Charge Notices, but rather to proceedings in respect of the commission of offences. The Enforcement Authority who assert that the said vehicle was so parked contrary to, and during the operative period of, a restriction are obliged to

adduce evidence to the requisite standard to substantiate that assertion. The evidence upon which the Enforcement Authority rely to substantiate the assertion comprises the certified copy Penalty Charge Notice, and extracts of governing Traffic Management Order provisions, together with photographic evidence: CCTV footage and still frames taken there-from revealing the said vehicle in situ and the divisional lane carriageway markings.

It is incumbent upon a motorist to consult signage and comply with carriageway indications, and to be acquainted with the nature of such restrictions by reference to The Highway Code.

The Enforcement Authority also adduce images of the bus lane signage along the route of the road in question.

Photographic capture is adduced in contention demonstrating the bent nature of one such sign. I note that directly beside that sign is the bay time plate advising motorists as to the restrictions operative within the same, therefore the motorist cannot fail to miss the bus lane sign.

A recent Decision in the High Court endorsed the view that minor irregularities do not denigrate the viability of a restriction where the signs and lines suffice to indicate the nature and extent of a restriction.

I am satisfied that the combination of the signage along the route together with the carriageway markings are sufficient to communicate the nature of this restriction. Further the prudent motorist must adhere to bus lane indicators until such point as an 'end of bus lane' sign is observed.

The different bus lane sign, to which a camera enforcement advertisement has been newly added, is noted; the fact that such camera enforcement advertisement was not in the immediate vicinity previously does not detract from its viability; since the placement of such signs around the road network suffices to indicate that camera enforcement is an option available for use by the Enforcement Authority in respect of transgressions.

The general premise is that a vehicle shall be deemed to wait in a restricted area if any point in that street is below the vehicle or its load (if any) and the vehicle is stationary.

The brevity of duration, the fact that the driver remains in the vehicle, or that the engine continues to run is immaterial. The driver's representations, regarding the reason for so parking, have been noted, but amount to mitigating circumstances only and do not found the nominated (or any) 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 to take mitigation into consideration in reaching a determination.

*Evidentially I am satisfied that this contravention occurred, accordingly I **refuse this Appeal.***"

Review: The reviewing adjudicator found no ground for interfering in the original decision.

Judicial Review: The application for permission to apply for judicial review was refused and the claimant has referred the matter to Court of Appeal, seeking permission to appeal the decision to refuse permission to apply for judicial review. The matter is currently awaiting a judicial decision on the papers under case reference C1/2016/3463.

4. **The Queen on the Application of Sylvie Dudi -v- London Tribunals Environment and Traffic Adjudicators [CO/5601/2016] (Sylvie Dudi v London Borough of Croydon ETA 2150421831 (2015) and Sylvie Dudi v London Borough of Lambeth ETA 2150416285 (2015))**

In each case, the adjudicator found as follows:

"I am asked in this case to accept that a named 19 year old boy from PARIS 18 when visiting the appellant took the car keys and drove without permission.

The appellant evidence is vague about the keys and access and it is vague about insurance. It is disturbing as a 19 year Parisian driving a car without permission in London will very likely be committing the crime of driving without insurance. It seems to me that the sort of explanation the appellant has written is very easy to write whether true or not.

Had there been a timely report to the police complaining about the visitor driving the car and an investigation /prosecution the appellant case would be stronger in my eyes than it is.

I have not been persuaded the appellant explanation is correct. I have not seen sufficient evidence to accept the explanation.

As this is a civil penalty charge the identity of the driver is not relevant to liability except in the case of theft and similar circumstances.

I have recorded this appeal as refused.”

Review: The reviewing adjudicator found no merit in the application and rejected it.

Judicial Review: The learned Deputy High Court Judge refused the application for permission to seek a judicial review, having identified no arguable error of law and no sustainable legal ground for the application.

An oral renewal of the application was also refused.

4. TRAINING AND APPRAISAL

(a) Training

This year adjudicators held one training meeting in the Chancery Exchange meeting room on 27 March 2017. The following items were considered:

(i) Signs and lines: The Traffic Signs Regulations and General Directions 2016 came into force on 22nd April 2016. Provisions are made for existing signs to continue in accord with earlier regulations. The new regulations are notably less prescriptive than the 2002 Regulations.

(ii) Judicial review outcomes considered:

LB Camden v Humphreys and Parking Adjudicator (CA) (see page16 above).

R (on the application of Nottingham City Council) v Bus Lane Adjudicator

R (on the application of Baker) v Traffic Penalty Tribunal and Derby City Council

(iii) Surbiton Crescent Junctions with Anglesea Road and Surbiton Road - Failure to comply with the prohibition on certain types vehicle – adequacy of signage considered.

(iv) Review applications feedback:

Our practice remains that appellants who miss their personal appeal hearing due to mistake or ill-health may attend the hearing centre and apply for the review of the appeal decision in person. These cases are generally heard afresh by the adjudicators. Analysis of the

applications for review that are received after a contested hearing has taken place discloses a large number of cases where the application is made on the basis of a disagreement with the outcome of the appeal and the wish for a re-hearing on the same evidence, rather than an application supported by a proper ground for review under the regulations. A review is however not simply an opportunity for an appeal to be re-listed and heard again. Reviews will not proceed to a re-hearing just because a party disagrees with the adjudicator's decision (see the grounds for review under the regulations at page 19 above).

(b) Appraisal

Adjudicators completed appraisals in line with our appraisal programme, which is based on the scheme developed by the Judicial College that is in place for tribunal judiciary. Whilst the environment and traffic adjudicators are not part of the unified system established by the Tribunals Courts and Enforcement Act 2007, the adjudicators aim to match and maintain the high levels of tribunal and court judiciary.

The objectives for the appraisal scheme are to:

- ensure the maintenance of the tribunal's standards and consistency of practices,
- ensure that the tribunal's training programme is informed by the identification of particular needs,

- maintain public confidence in judicial performance as a result of regular monitoring,
- ensure that all adjudicators demonstrate the competences necessary for their role,
- measure individual performances against the tribunal's standards,
- identify individual and general training and development needs,
- use the collected experience of adjudicators to identify ways of improving the tribunal procedures in particular the overall efficiency of the tribunal, and
- provide an opportunity for adjudicators to raise issues relating to their experience in sitting, training and tribunal procedures.

The next tranche of appraisals is due to commence in the first quarter of 2018.

5. THE ADJUDICATORS 2016-17

The Environment and Traffic Adjudicators

| | |
|--------------------------|-----------------|
| Jane Anderson | Michel Aslangul |
| Angela Black | Teresa Brennan |
| Michael Burke | Anthony Chan |
| Hugh Cooper | Mark Eldridge |
| Henry Michael Greenslade | John Hamilton |
| Caroline Hamilton | Neeti Haria |

| | |
|--------------------|--------------------|
| Andrew Harman | Edward Houghton |
| Monica Hillen | John Lane |
| Anju Kaler | Francis Lloyd |
| Michael Lawrence | Kevin Moore |
| Alastair McFarlane | Joanne Oxlade |
| Mamta Parekh | Belinda Pearce |
| Neena Rach | Christopher Rayner |
| Jennifer Shepherd | Caroline Sheppard |
| Sean Stanton-Dunne | Gerald Styles |
| Carl Teper | Timothy Thorne |
| Paul Wright | |

This reporting year saw the retirement of adjudicator Anthony Edie, who remains at London Tribunals as a Road User Charging Adjudicator. Our adjudicator recruitment exercise will be completed in July 2017.

6. APPENDIX

Appeal themes

Appeal decisions can be viewed on our statutory register through our website at www.londontribunals.gov.uk and all can be accessed by visiting our hearing centre at London Tribunals, Chancery Exchange, 10 Furnival Street, London EC4A 1AB, a very short walk from Chancery Lane underground station.

Although adjudicators are impartial and are not charged with providing legal advice to parties to an appeal, it is clear that the more information adjudicators are able to provide, the more likely it is that motorists will become better informed and less likely to believe misinformation or follow incorrect advice that remains in the public domain.

The list of common scenarios detailed in the appendix of last year's annual report are viewable through our website, together with "key cases" that provide further information that will assist in analysing and assessing appeal points.

The following are clarifications of common queries or scenarios raised.

1. What changes were actually made by The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015 and The Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015?

(i) The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015 came into force on 6th April 2015 and provides that:

"No penalty charge is payable for the contravention where the vehicle has been left beyond the permitted parking period for a period not exceeding 10 minutes". The amendment only applies to vehicles that are parked in a designated parking place and the vehicle has been left beyond the permitted parking period. This does not mean

that you can park on a yellow line or in a parking space for ten minutes. It means that the enforcement authority is not entitled to issue a ticket until 10 minutes has elapsed from the period of paid for time (i.e. ten minutes after the expiry of your pay and display ticket) or ten minutes after a period of free parking has elapsed. The rules do not provide a blanket ten minute period of grace wherever you have parked as has been widely erroneously reported. (See case: Chaudry v Royal Borough of Kensington & Chelsea ETA 2160157321).

(ii)The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 were amended by The Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015

The Civil Enforcement of Parking Contraventions (England) Regulations 2007 allow for a notice of penalty charge, in respect of a parking contravention, to be sent through the post on the basis of CCTV evidence alone. These Regulations curtail the use of CCTV by amending the Civil Enforcement of Parking Contraventions (England) Regulations 2007 to require that a notice of a penalty charge in respect of a parking contravention on a road in a civil enforcement area must generally be given by a civil enforcement officer affixing it to the vehicle. This is subject to certain exceptions namely, in bus lanes, at bus stops or stands, on school entrance markings and on red routes. At these locations, penalty charge notices may still be served by post. The rules do not provide a blanket prohibition on CCTV enforcement as is widely believed.

2. “The officer got the colour of my car wrong this makes the ticket void and unenforceable.”

The colour of the vehicle recorded by an officer sometimes differs to that shown in the vehicle’s log book. Commonly this occurs when officers are noting the colour of a metallic vehicle, or a shade of blue or green. Appellants often believe that if the colour is recorded incorrectly by the enforcement authority the appeal falls to be decided in their favour. This is

not the case. The colour of a vehicle is not a piece of evidence that is required to be included in the details of a penalty charge notice under the regulations. Whilst the colour may be relevant if the motorist is disputing that the vehicle observed was his vehicle (i.e. a cloned vehicle or a mistake in recording the vehicle registration mark) the colour is usually irrelevant.

3. “Writing to the council (enforcement authority) freezes the penalty at the reduced rate.”

Enforcement authorities are only obliged to accept a reduced penalty amount (a payment of 50% of the penalty amount) when the payment is received by them within the discount period. This is stated on the face of the penalty charge notice itself. Writing to the enforcement authority or lodging an appeal, however promptly does not freeze the discount. The full penalty amount applies, although some enforcement authorities will offer the motorist an extended discount period when representations have been rejected. When an appeal is subsequently lodged and refused by the adjudicator, the appellant has 28 days to pay the penalty at the full rate. The penalty will not increase during the appeal process but it is the full charge that is frozen, not the reduced, discount amount.

4. “My parking space was taken by visitor/access to my own garage was blocked.”

When motorists cannot access their usual, preferred or expected parking spot that does not entitle them to park elsewhere without complying with the applicable restrictions. This is the case even if the vehicle blocking their access or taking the space has done so unlawfully.

5. “I was in a hurry as I had to get to an urgent business appointment so I drove in the bus lane.”

Driving in a bus lane because you are in a hurry or running late for an appointment is not permitted and is not a ground of appeal.

- 6. “It is my car but I was not driving, and the driver told me that they would deal with the ticket, it is nothing to do with me.”**

The responsibility for settling a penalty rests with the owner/registered keeper of the vehicle not the driver. Even if the driver has assured you that they will liaise with the enforcement authority, the right of appeal is yours alone, as enforcement will be against you.

*The Environment and Traffic Adjudicators
London Tribunals 2015-16*