The Environment and Traffic Adjudicators

ANNUAL REPORT

2019-2020

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CHIEF ADJUDICATOR'S FOREWORD

I am pleased to present the joint statutory annual report on behalf of the environment and traffic adjudicators that, as well as providing background information to the appeal statistics generated by our automated case management system, assists in providing a more rounded insight into the decisions and case management of the independent adjudicators, allowing for a clearer understanding of the impartial adjudicators' jurisdiction, responsibilities and functions under the statutory civil penalty schemes.

The end of this reporting year saw the necessary and abrupt closure of our tribunal premises at Chancery Exchange, as a result of the COVID19 health emergency, but during the course of the majority of the year, the tribunal remained open to the public, operating in the usual efficient manner, the adjudicators determining appeals against civil fixed penalties issued in respect of moving traffic, bus lane, parking, London lorry control, litter and waste contraventions in London.

Until the closure of the tribunal, the adjudicators continued to provide the accessible and flexible hearings timetables, that allow parties to not only select the type of proceedings they prefer to participate in (personal or postal appeal), but also allowing for the selection of a suitable hearing day and time, for those who decide to attend a personal appeal hearing. By offering personal hearings slots from 8am to 8pm and by including Saturday morning and early afternoon hearings, the tribunal retains the features that saw its concern for users described as "unmatched elsewhere in the justice system" by Sir Andrew Leggatt

(1930-2020) in his detailed study and review of tribunals. This review ultimately resulted in the Courts and Tribunals reform programmes and the Tribunals, Courts and Enforcement Act 2007, from which we take guidance.

Adjudicators continue to recognise the importance of maintaining the unparalleled access to justice, that the wide range of hearing times and the postal or personal hearing selections provide, with the aim of ensuring that no appellant will be obliged to take time off from work or other commitments, to fully participate in a hearing.

At the end of the reporting year, when personal attendance at appeals was unavoidably replaced by a telephone attendance, the necessary adaption did not hinder our flexible listing practices, or impede the adjudicators' efficiency. Unlike many courts and tribunals throughout the justice system, the adjudicators were able to resume hearings with a telephone attendance for those who had selected a personal hearing, as soon as government restrictions allowed, without any additional operational delay. Hearings remain informal with regard to the evidence submitted and are as before, entirely participative.

As ever, the adjudicators take this opportunity of formally thanking the Proper Officer team, provided by the joint committee, for its thoughtful and dedicated administrative support over the year.

Caroline Hamilton
Chief Adjudicator *April 2020*

1. Workload

The number of penalty charge notices that result in an appeal to the independent adjudicator remains low. With the majority of parking cases, before a right of appeal arises, the motorist will have had the opportunity of making informal representations to the issuing authority against the penalty charge notice and a formal challenge to the notice to owner, issued by the enforcement authority to the DVLA registered keeper. It is only when the formal challenge is rejected by the enforcement authority in the "Notice of Rejection" document, that the statutory right of appeal to the independent adjudicator arises. Again in other types of case there will also be a Notice of Rejection after formal representations.

Authorities continue to upload penalty charge notice details including photographs, to their websites allowing the motorist, who finds a penalty charge notice served to his vehicle, to view the enforcement evidence that resulted in the issue of the penalty charge notice without delay. This prompt confirmation of events, allows the motorist to see and understand why a penalty has been issued and clearly assess whether representations or a payment should be made.

Penalties issued by post are invariably received some time after the incident relied on by the enforcement authority has taken place. This makes it even more useful for motorists to be able to view images, including moving images, online, allowing the motorist, who may be unaware that an infringement occurred, to recollect an incident, see it in context and make a more informed assessment as to whether the

allegation on the face of the penalty charge notice is one that should be rejected or accepted by a prompt payment, taking advantage of the statutory discounted penalty amount.

This ability to make evidence available at first instance assists in allowing matters to be resolved between the parties, without the need to resort to an appeal. The very small number of appeals registered, compared with the number of tickets issued in London, remains a reflection of a process where enforcement and the pre-appeal investigations, are properly applied.

Once an appeal is registered, it is still incumbent on the parties to assess the available evidence and decide whether the matter should be pursued to a hearing. This can be particularly relevant to issues arising from the sale or theft of a vehicle, where the required evidence was not available to the motorist within the statutory timeframes allowed for making formal representations to the authority. The ongoing duty to assess the evidence is reflected in the number of appeals that are not contested, generally as a result of further, post notice of rejection evidence submitted with the notice of appeal.

Statutory Declaration and Witness Statement referrals

The witness statement declaration process is in place to assist motorists who have not received statutory documents and whose post has for some reason, gone astray.

The grounds for making a declaration are as follows:

1. I did not receive the notice to owner (parking)

Enforcement notice (bus lane)

Penalty charge notice (moving traffic)

2. I made representations about the penalty charge to the local authority concerned within 28 days of the service of the notice to owner/enforcement notice/penalty charge notice, but did not receive a rejection notice.
3. I appealed to the parking adjudicator against the local authority's decision to reject my representation within 28 days of service of the rejection notice, but have had no response to my appeal.

Once the revocation order has been issued by the Court, it is referred to the adjudicator by the enforcement authority, who then considers whether a right of appeal has been established, or whether an appeal should be registered.

It must be understood by the Respondent motorist in the County Court, that the orders made at the Traffic Enforcement Centre **do not** cancel a ticket and do not bring the enforcement of a penalty charge notice to a close. This information appears on the face of the Court's order but motorists still frequently seek to rely on the order as a ground of appeal.

The Court's order is simply the legal mechanism that allows the parties to be returned to the point where communications failed:

"Important note to respondent:

This order does NOT cancel the original penalty charge notice. You should contact the Local authority/charging authority as they may well

take further action on it. The authority should inform you as soon as possible it is intending to do so."

The adjudicator will consider the referred orders and it is only if the declaration is substantiated and the adjudicator is satisfied that a right of appeal has been established, that the matter will be listed for a contested appeal hearing.

If no statutory appeal rights are established, the enforcement authority remains entitled to continue enforcement and the adjudicator will make a payment direction in favour of the authority. This direction requires a payment of the full penalty amount to be made to the authority within 28 days, or the time frame indicated by the adjudicator.

The Traffic Enforcement Orders appear in our appeal statistics below as "referrals". The payment directions are not included as appeal outcomes, in the statistics below, no right of appeal having been established by the County Court Respondent.

APPEALS

The appeal statistics, furnished via our automated case management system, are accompanied by short commentaries clarifying or expanding on any points of note, or issues that have arisen over the reporting year.

TOTAL of all:

36,288 (37,051) appeals received

7,847 (6,099) statutory declaration/witness statement referrals

Total: 44,135 (43,150)

32,035 (36,473) appeals were determined
16,426 (17,600) appeals were allowed of which 9,624 (9,752) were not contested

15,609 (18,873) appeals were refused

Appeals registered at London Tribunals may be registered in one reporting year and determined in the next, resulting in a perceived discrepancy in the figures. The regulations require 21 days to pass before an appeal is listed for hearing. The tribunal allows for 28 days, to safeguard against postal delays. This time allows the parties to prepare and submit evidence and consider evidence served by the opposing party.

The individual appeal types (parking, moving traffic, bus lane, London lorry control, litter and waste) had the following receipt numbers and outcomes.

PARKING appeals received

20,692(22,245) appeals were received

5,275 (4,786) referrals were made

TOTAL: 25,967 (27,031)

Parking appeals decided

18,981 (22,118) appeals were determined

Allowed

10,044 (11,083) appeals were allowed of which 5,824 (6,264) were not contested

Refused

8,937 (11,035) appeals were refused

BUS LANE appeals received

1,851 (1,765) appeals were received

264 (206) referrals were made

TOTAL: 2,115 (1,971)

Bus lane appeals decided

1,660 (1,674) appeals were determined

Allowed

979 (902) appeals were allowed of which 630 (556) were not contested

Refused

681 (772) appeals were refused

This year the trend observed in 2018-19 continued, with our records showing a small reduction of parking appeals, replaced by a similarly small increase in moving traffic appeals.

MOVING TRAFFIC appeals received

13,621 (12,900) appeals were received

2,308 (1,107) referrals were made

TOTAL: 15,929 (14,007)

Moving traffic appeals decided

11,268 (12,552) appeals were determined

Allowed

5,322 (5,536) appeals were allowed of which 3,114 (2,883) were not contested

Refused

5,946 (7,016) appeals were refused

Each recorded appeal may contain multiple penalty charge notices. Moving traffic appeals are necessarily served by post further to the identification of the registered keeper by the DVLA. Each appeal registered at London Tribunals can accommodate a number of penalties

issued to the vehicle, which is more common in moving traffic contraventions, when a motorist, unaware of camera enforcement, or having failed to observe a restriction, repeats the contravention before being served with the postal penalty charge notice.

LONDON LORRY CONTROL appeals received

120 (131) appeals were received

0 (0) referrals were made

London Lorry Control appeals decided

121 (121) appeals were determined

Allowed

76 (73) appeals were allowed of which 55 (49) were not contested

Refused

45 (48) appeals were refused

LITTER and WASTE appeals received

4 (10) appeals were received

0 (0) referrals were made

Litter and Waste appeals decided

5 (8) appeals were determined

Allowed

5 (6) appeals were allowed of which 1 (0) was not contested

Refused

0 (2) appeals were refused

The adjudicators' written determinations are published on our statutory register that can be viewed online through our website at www.londontribunals.gov.uk

RECOMMENDATIONS:

The adjudicators have no power to take mitigating circumstances into account and can only allow an appeal when a statutory ground of appeal has been established. The scheme is a fixed penalty scheme and the adjudicators do not and cannot assess degrees of culpability. This has been confirmed in terms by the Court of Appeal in the Road User Charging appeal of Walmsley v Transport for London [2005] EWCA Civ 1540, where it was underlined that the adjudicators had no such power under the statutory fixed penalty schemes. The judicial review detailed below further illustrates this point (see page 29, Edmond *Michaels v Royal Borough of Kingston-upon-Thames ETA 2190299405 (2019))*.

The Traffic Management Act 2004 introduced the concept of “compelling reasons” allowing the adjudicator, who had no power to allow a parking appeal, but who was satisfied that compelling reasons had been established could make a formal recommendation to the authority that a notice to owner is cancelled.

The authority is then required to consider cancellation of the notice to owner, taking full account of all observations made by the adjudicator and, within a period of 35 days, must notify the appellant and the adjudicator, as to whether or not it accepts the adjudicator’s recommendation.

Recommendations that are not accepted must be accompanied by reasons, but no appeal to the adjudicator arises further to that decision.

If the enforcement authority does not respond to the recommendation made by the adjudicator within the statutory time frame, the recommendation is deemed to have been accepted and the notice to owner must be cancelled.

Most appeal representations received at London Tribunals are accompanied by an element of mitigation. This must not however be confused with a "compelling reason" which connotes a high threshold and is usually a matter that has arisen after representations have been rejected and/or have not already been properly considered and addressed by the authority in the notice of rejection document.

The limited use of the power by adjudicators reflects the high threshold the motorist must meet to demonstrate a compelling reason for cancelling a notice to owner, when a contravention has been proved by the enforcement authority's evidence and no statutory ground of appeal has been established.

Refused with a recommendation: 281 (471)

Recommendation accepted: 98 (142)

Deemed accepted: 97 (173)

Recommendation Rejected: 86 (156)

PERSONAL/POSTAL APPEALS

Appellants are able to select the appeal type they prefer to participate in when they complete the notice of appeal form either online, via the tribunal's appellant portal, or on the paper forms that can still be submitted by post. The enforcement authority may also wish to elect to attend an appeal by sending a presenting officer, but generally the authority submits its case (which may include the CCTV images of the

incident relied on) without a personal attendance. On occasion the adjudicator may direct attendance by a party or witness but this is rarely necessary or proportionate.
Applications for costs orders made by the enforcement authorities relating to witness statement declarations are also listed for personal hearings to allow the Respondent to the Traffic Enforcement Court Order, who has failed to substantiate the declaration made, the opportunity of explaining why a declaration was indeed lawful.

Postal Hearings: 25,534 (30,986)
Personal Hearings: 10,754 (6,055)

Further to the health emergency, personal attendance at our hearing centre was replaced by a telephone attendance. The adjudicators, using the automated case management system, telephone parties and witnesses and hear evidence and submissions in the usual way.
The telephone appeals have been largely successful, with adjudicators being able to consider and assess oral evidence and submissions using a conference call facility where necessary.

Issues of pure credibility that favour a face to face attendance are unusual in the tribunal, where motorists relying on oral evidence of an activity, such as loading, are generally also able to provide delivery notes or invoices to support the claimed exemption, thus corroborating oral evidence. The adjudicator will also have sight of the enforcement officer's contemporaneous notes and photographs to assist in the assessment of evidence. Telephone attendances still allow the

adjudicator to test evidence and explore representations that might establish a ground of appeal that was not recognised by the motorist.

At the date of publication of this report, the hearing centre remains closed to the public and we are still unable to return to personal attendance.

COSTS

The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 Schedule Part 2 Regulation 13 and The Road Traffic (Parking Adjudicators) (London) Regulations 1993 Part II Regulation 12.

The adjudicator has no power to make an award of compensation or damages, but may make an award of costs in limited circumstances. The regulations underline that an award of costs is not the norm and the claimant must first satisfy the adjudicator that one of the statutory conditions has been met. Before listing a matter for a contested hearing the adjudicator will determine whether there is evidence demonstrating that a 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 it is considered by the adjudicator that the disputed decision was wholly unreasonable. "

It should be noted that the tribunal considers that Respondents at the Traffic Enforcement Centre who have repeatedly relied on false

declarations to achieve the revocation of an order for recovery and the cancellation of a charge certificate have acted vexatiously and wholly unreasonably and referrals accompanied by an authority's application for fixed costs are treated accordingly.

Applications for costs listed for determination by the adjudicator:

APPELLANTS	**ENFORCEMENT AUTHORITIES**
Parking 16 (75)	Parking 93 (91)
Bus Lane 1 (4)	Bus Lane 2 (3)
Moving Traffic 16 (22)	Moving Traffic 34 (43)
London Lorry Control 0 (0)	London Lorry Control 0 (0)
Litter and Waste 0 (0)	Litter and Waste 0 (0)
Total 33 (101)	**Total 129 (137)**

2. KEY CASES

Failing to comply with a prohibition on certain types of vehicle: the red prohibition roundel.

A number of cases came into the appeal lists where a motorcyclist dismounts and pushes a bike through a prohibited area.

Most Traffic Management Orders will refer to the motorist "causing" the vehicle to enter the prohibited area, but the test for "driving" was analysed by the Courts in DPP v Alderton [2003] EWHC 2917 (Admin) where "controlling

the movement and direction" of a vehicle was found to be sufficient (no engine on), although the extent and degree of control will be an important consideration, with a use of the driver's controls for directing the movement relevant.

The appeal decision of adjudicator Mr Styles, below gives an example of the approach that the tribunal has long adopted to motorists circumventing restrictions by pushing a vehicle.

<u>Shanewaj v City of London (ETA 2200169625)</u>

"… The prohibition (See Article 4. with Schedule 2. Item 3.) on motorcycles as signed and illustrated on the CCTV clip was very prominent.
Under the traffic management order sent me by the Council breaches occur when persons "cause any motor vehicle to enter" on the restricted route.
There is no legal exemption in respect of vehicles being pushed or "walked". It is legally irrelevant whether the engine is on or not. The vehicle is still a motor vehicle.
I have seen the driver in this case dismount but I am satisfied the contravention did occur and I have recorded this appeal as refused.
There is no legal exemption which can justify cancellation in this case."

<u>Failing to comply with a prohibition on certain types of vehicle – goods vehicles exceeding max gross weight indicated.</u>

A number of appeals were consolidated at the tribunal arising from the implementation and enforcement of weight restrictions at Rotherhithe tunnel. The appeals related to the adequacy of signage at the location and were determined by adjudicator Mr Houghton as detailed below:

<u>TCMC Crowded Space Limited v Transport for London (ETA 2190140816)</u>

“This is one of a large number of cases listed before me many of which raise issues relating to the weight restriction in force in the Rotherhithe Tunnel and to the clarity or otherwise of the signage indicating that restriction. In the cases involving personal Appellants the enforcement authority, TfL, attended the hearing (and its adjournment) represented by its officer Mr. Garrett. Although each individual case must be decided on its own merits some of the same points are raised time and time again, either separately or in combination. In summary these may be stated as the inadequacy of the indication that the limit is only two tonnes, the absence of any indication that the 2 tonnes means the weight the vehicle is capable of carrying as opposed to the actual weight, and the impression given by the sign that the restriction applies only to lorries. In addition some Appeals raise issues as to what the vehicles gross weight actually is and whether or not the vehicle falls within the definition of a goods vehicle at all.

In the cases where a personal hearing took place TfL has made detailed written submissions dealing with these and other potential points relating to enforcement. At the conclusion of the hearing I reserved my decision to give the matter the detailed consideration it requires. Having

done so it seems to me appropriate to include in this and nearly all the cases identical paragraphs setting out my decision on the relevant issues, and then to deal as may be necessary with any remaining issues raised in individual cases.

The Appellant will therefore appreciate that not everything in the extensive paragraphs that follow will necessarily apply to his/her particular case.

THE RESTRICTION AND TRAFIFC MANAGEMENT ORDER

By virtue of a Traffic Management Order coming into force on the 21st September 2018 a weight restriction for goods vehicles with a "maximum gross weight exceeding 2 tonnes" was imposed on defined sections of roads immediately leading to the Rotherhithe Tunnel (Branch Road and Brunel Road). The Order was subsequently amended with effect from the 1st May 2019 to include definitions of "Goods vehicle" and "maximum gross weight" and to amend a previous consolidation Order to change the prohibition on vehicles actually entering the tunnel from 17 tonnes maximum to bring that prohibition, rather late in the day, in line with the 2018 Order.

DEFINITION OF A GOODS VEHICLE

At the date of the alleged contravention the definition of a goods vehicle in the Order of the 18th April (and which is lifted from the definition in the Traffic Signs Regulations and General Directions 2016) i.e. a motor vehicle or trailer constructed or adapted for use for the carriage or haulage of goods or burden of any description") was not in force.

However it seems to me that considering the meaning of the words as a

matter of ordinary use of the English language a similar conclusion is arrived at. Whether a vehicle is a goods vehicle depends on what it is, what it is designed for, not what it is being used for. A saloon car does not become a goods vehicle as soon as goods are put in it, and a van does not cease to be a goods vehicle because it happens to be empty.

Whether or not a vehicle is a goods vehicle is essentially a question of fact. TfL relies heavily on the category allocated to it by the DVLA, which is based on its type approval (category N for goods vehicles). It submits, in simple terms, that if the manufacturer tells the authorities that it considers its vehicle to be a goods vehicle then it should be treated as such on the basis that the manufacturer must be taken to know what the vehicle is constructed to do. Whilst I would not regard the DVLA record as unchallengeable I would agree that this is extremely persuasive evidence and that in the absence of any evidence of some error on the part of the DVLA when registering the vehicle very strong evidence would be required to refute that of the DVLA registration.

The majority of the present cases involve vans of some description - which are self-evidently goods vehicles on any view.

MAXIMUM GROSS WEIGHT

The TMO prohibition applies to vehicles of a maximum gross weight. This is not the actual weight of the vehicle at the time but its maximum weight fully loaded to its maximum design capacity. It is the case that, no doubt as a result of hasty drafting, no definition of the expression "maximum gross weight" appears in the TMO as it was in force at the

time. Nevertheless this is a long standing expression in Road Traffic law and is defined in the Road Traffic Act 1988 s 108 as "the weight of the vehicle laden with the heaviest load which it is constructed or adapted to carry". It is a term used and defined in the TSRGD (see below). Other terms are also in use, The DVLA website states that -

Maximum authorised mass (MAM) means the weight of a vehicle or trailer including the maximum load that can be carried safely when it is being used on the road. This is also known as gross vehicle weight (GVW) or permissible maximum weight. It will be listed in the owner's manual and is normally shown on a plate or sticker fitted to the vehicle. This weight is also the "revenue weight" of the vehicle (s60A vehicle Excise and Registration Act 1994). In proving that a given vehicle had a maximum weight in excess of 2 tonnes TfL has relied on the information held by the DVLA and which appears on the registration document showing that weight. This is as I accept, derived from information provided by the manufacturer, and I would regard this as all but conclusive in the absence of some very persuasive evidence from an Appellant that some error had occurred in the DVLA's records. The manufacturer must be taken to know the weight the vehicle is designed to carry.

Some Appellants submitted that they cannot be expected to know this weight. I reject that submission. It seems to me that a driver of any goods vehicle should be familiar with the maximum load it is designed to carry which can be ascertained from the vehicle's handbook or its registration document.

THE STATUTORY SIGNAGE

The sign showing the outline of a lorry with a figure on it , in this case 2t, is the sign prescribed by the Traffic Signs Regulations and General Directions 2016 (“the TSRGD") to show the maximum weight. Diagram 622.1A is stated (at Schedule 3 Part 2 item 13) to indicate "Goods vehicles exceeding the maximum gross weight indicated prohibited." Maximum gross weight is defined in Schedule 1 TSRGD as the "maximum laden weight", which is in turn defined as “the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden". It appears that many of the drivers in these cases did not appreciate that the weight shown means the maximum weight the vehicle is designed to carry, not the actual weight the vehicle happened to be at the time.

In addition some Appellants have submitted that the use of a lorry image is incorrect or confusing; however this is simply the symbol prescribed by Regulations to indicate merely a goods vehicle (not necessarily a heavy goods vehicle or lorry). There is no separate symbol prescribed by the Regulations for light goods vehicles. The lorry symbol is used for this general purpose to cover goods vehicles of all sizes, in this and previous Regulations, on many types of sign; and many a small van driver has correctly relied on it for exemption when it appears on a sign indicating, for example, an exemption to entering a Pedestrian Zone in order to load/unload.

The sign is the correct sign for the restriction specified in the TMO, and is indeed the only sign TfL could lawfully use, at the entry point to the tunnel, to indicate the presence of the restriction. Any other sign of some design other than that prescribed by the TSRGD would be open to challenge on the basis that it was not the legally prescribed sign. The sign is shown in the Highway Code, with which all motorists should be familiar, and is correctly described there as indicating a prohibition on a goods vehicle over the maximum gross weight shown.

As a result of the positioning of the cameras the sign is not visible in the photographs showing the various vehicles. However TfL has produced site photographs showing the signs in position; and although these are dated the 23rd May I accept TfL's evidence that, as one would expect, the signs were erected prior to the coming into force of the Order and were regularly checked. In the absence of any compelling evidence to suggest that these signs were not there at the material time it seems to me the balance of probabilities lies strongly in favour of the signs being in place as shown.

ADVANCE WARNING SIGNS

I would accept in principle that a single sign at the very entrance to the tunnel (though legally required in the prescribed form) would not necessarily be sufficient on its own to give adequate information as to the prohibition relied on (which is what the signage is required to do). Various passages in the Traffic Signs Manual, official guidance on siting of signage, 2019 Chapter 3 support this position

5 1.2 "it is important to address the directional signing changes needed when a regulatory measure prevents some or all traffic from following the previously signed route
5.1.3 Advance warning of certain restrictions may be given by incorporating the prohibitory sign into directions signs. These are not a substitute for the terminal signs at the start of the restriction.
5.17 only one sign is required but care should be taken to ensure that a single sign is clearly visible to all road users and does not give rise to issues of enforcement or road safety…

In the present case by the time motorists see the single statutory sign there is a risk that they do so too late to take another "escape" route. In my judgement some sort of warning is required, and indeed it appears to be accepted by TfL that the warning is at least desirable. It duly points to the presence of the warning signs shown on its plan. I accept that the signs are in the positions shown. Photographs produced by some appellants appear to show the previous signage.

The signs are of a large rectangular design containing four roundels, including one showing the 2t weight restriction, headed with the warning "ROTHERHITHE TUNNEL RESTRICTIONS AHEAD" and in the case of the signs positioned further away from the tunnel entrance, an indication of the route to be followed by restricted traffic. I accept TfL's evidence that a motorist could not arrive at either entrance without passing one of these signs. Some motorists refer to the possibility of these signs being temporarily obscured from certain angles by passing traffic. However given the number and size of these it seems to me

improbable that a motorist could arrive at the mouth of the tunnel without having seen any warning sign. Indeed the majority of the motorists in these cases do appear to have noted the presence of the signs, but misinterpreted their meaning.

These signs do not comply with any signage in the TSRGD but they are not required to do so, falling to be treated as a freestyle warning sign. The only issue is whether they are effective to provide clear warning. It seems to me that they are adequate. They tell the motorist that there are "restrictions" at the tunnel and that the restrictions are those shown on the four roundels. Those roundels are copies of the signs prescribed by law to indicate the restrictions in force and are in my view a reasonable method of giving advance information of the restrictions and the signage later to be encountered. There is a sign available in the TSRGD for giving advance warning of a weight restriction (Diagram 818.4). However this sign also similarly gives the warning by means of a copy of the same rondel (on a blue background with the wording Weight restriction). I am not persuaded that this sign (sited together in a group of the three others that would then be necessary for the other restrictions) would be any more visible or its meaning any clearer to motorists than the one in use.

Some Appellants encountered the restriction having been previously entitled to use the tunnel for many years. However motorists must respond to signage as they encounter it and cannot assume that because a route was open to them yesterday it is open to them today. Obviously it would be good practice for an enforcement authority to give some

period of warning, but I am satisfied on the basis of TfL's evidence and the evidence of some appellants TfL did so, in that there was a period not only of warning notices being issued but a period when TfL took the highly unusual step of placing staff at the entrances to the tunnel to warn drivers in person.

CONCLUSION

It seems to me that in those cases where the issues of signage are raised that the Appellants fell foul of the weight restriction not because of a failure of signage but as a result of a failure of understanding. It is in my view impossible to say that the roundels indicating the weight restriction were not reasonably visible, even as one of a group of four, and they are the entirely correct and prescribed signage to indicate that restriction. Naturally the number of PCNs issued (obtained in one case by a Freedom of Information request) and the fact that initially personnel were placed at the tunnel entrance to turn van drivers away might suggest the level of misunderstanding to be fairly widespread. On the other hand one has to approach this kind of evidence with some caution in that for every driver who misunderstood the sign there may be many others who did not, and took care not to enter the tunnel.

As in the present case I am satisfied in this case that the signage was reasonably visible and correctly indicated the prohibition relied on a contravention occurred and the PCN was lawfully issued."

<u>Further cases of failing to comply with a prohibition on certain types of vehicle.</u>

A number of cases arose regarding roads or routes that had been altered with new restrictions being put in place. Motorists, accustomed to taking a certain route having failed to heed or notice prohibition signs that were not in place when previous journeys were made.
Adjudicator Mr Teper's decision underlines the burden on the motorist to be alert to restrictions even in circumstances where a familiar route is used.

Begum v LB Newham (ETA 2200345455)
"The Authority's case is that the Appellant's vehicle failed to comply with a prohibition on certain types of vehicle (motor vehicles except buses, taxis and permit holders A1) when in Browning Road on 4 May 2020 at 00.26.

The Appellant's case is that she has used this route before and was unaware of the new restriction. She also argues that the Authority failed to respond to her representations within the required 56 days.

I have considered the evidence and watched the CCTV footage and I find that the Appellant's vehicle failed to comply with a prohibition on certain types of vehicle (motor vehicles except buses, taxis and permit holders A1) when in Browning Road on 4 May 2020.

I find that the signage is both compliant with the regulations and that it is clear and adequate. The signage indicating the restriction can be seen

when in Rectory Road in good and sufficient time to take an alternative route.

The 56 day rule for responding to formal representations is in relation to parking matters only. There is no time limit for a response to formal representations for moving traffic contraventions, however anything significantly over 3 months would be considered excessive. This is not the case here.

Motorists are not entitled to rely on past experience when driving because restrictions change, and the changes apply equally to those new to the location as well as those who have used it before.

All other matters raised by the Appellant go to mitigating circumstances, which have already been considered by the Authority; they do not provide an exemption or defence.

The Adjudicator decides appeals by making findings of fact and applying the law as it stands. The Adjudicator has no power to quash a penalty charge on the basis of mitigation submitted.

The appeal is refused."

3. JUDICIAL REVIEW

Once appeal rights under the statutory schemes have been exhausted (appeal and review), parties may contest an outcome further, by making

an application to the High Court for permission to seek the judicial review of an adjudicator’s decision.

This year saw one application for judicial review given permission to progress to a full hearing, resulting in the appeal outcome being overturned by the learned judge, who was satisfied that that vehicle was parked on private land (see page 33 below).

Outcomes

1. ***The Queen on the Application of Edmond Michaels -v- The Parking* Adjudicator and (interested party) Royal Borough of Kingston-upon-Thames [CO/4651/2019] (Edmond Michaels v Royal Borough of Kingston-upon-Thames ETA 2190299405 (2019))**

The appeal:

Adjudicator's Reasons

“The Authority's case is that the Appellant's vehicle was stopped on a restricted bus stop when in Clarence Street on 6 June 2019 at 20.34.
The Appellant has explained that he is disabled and required urgent use of a lavatory.
I have considered the evidence in this appeal and I find that the Appellant's vehicle was stopped on a restricted bus stop when in Clarence Street on 6 June 2019.
Motorists are not permitted to stop, load/unload, perform manoeuvres, wait for parking spaces to become available or set down or pick up passengers whilst on restricted bus stops under any circumstances.

The contravention is one of 'stopping' which is an instant contravention and not one of 'parking'.
All matters raised by the Appellant go to mitigating circumstances, which have already been considered by the Authority. They do not amount to a defence or an exemption.
The Adjudicator decides appeals by making findings of fact and applying the law as it stands. The Adjudicator has no power to quash a penalty charge on the basis of mitigation submitted.
The appeal is refused."

REVIEW: Reasons
"1. The general principles of review are that findings of fact and law are generally final. One Adjudicator will not overturn the findings of fact or law of another unless there are compelling reasons for doing so, such as where the findings are not compatible with the evidence before the original Adjudicator or the law.

2. I conclude that the original Adjudicator was entitled to reach the decision on the basis of the evidence submitted. The original Adjudicator found as a fact that the applicant's vehicle was in contravention as alleged. The decision was based on cogent evidence including the observations of the applicant's vehicle. Therefore the original Adjudicator was entitled to make this finding.

3. The original Adjudicator also made findings that an exemption was not proved on the balance of probabilities in the applicant's case. The original Adjudicator was entitled to come to this conclusion on the

evidence for the reasons given.

4. In addition, the original Adjudicator correctly identified the relevant legal principle that mitigation is not a lawful excuse and an Adjudicator has no power to take mitigating factors into account.

5. The applicant's latest representations are essentially no more than a disagreement with the original Adjudicator's findings and a repetition of the submissions made before. There is no reason to conclude that the original Adjudicator did not consider all the evidence submitted and all matters raised in the applicant's original representations."

JUDICIAL REVIEW: The learned judge found no realistic prospect that the claim could succeed, noting that the reason for stopping was mitigation that did not absolve the claimant (motorist) from liability.

RENEWAL: Permission to bring the judicial review was refused with costs of £2,000 awarded to the enforcement authority.

2. ***The Queen on the Application of Benjamin Williams -v- Adjudicator for London Tribunals and London Borough of Hammersmith and Fulham[CO/193/2020] (Benjamin Williams -v- London Borough of Hammersmith and Fulham ETA 2180384450 (2019))***

The appeal:

Adjudicator's Reasons

"Mr Williams attended today. He appeals as he states that it is not possible to see the box junction in Talgarth Road before the car is at the

edge of the box. Mr Williams argues that it is not possible to stop before driving into the box. Mr Williams provides video footage taken in December 2018 from his car as it drove towards the box junction.

The contravention occurs if a person causes a vehicle to enter the box junction so that all or part of 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 local authority provides a map of the location. The CCTV footage shows the box junction markings. Mr Williams provides a photograph of the box taken from Google Streetview. I am satisfied that the box junction markings comply with the Traffic Signs Regulations and General Directions 2016. I find that the road markings are clear.

I have seen Mr Williams's video but I am not persuaded that this demonstrates that an approaching motorist unfamiliar with the area cannot see the box junction until it is too late for a motorist to stop or pause before driving into the box.

The CCTV footage shows the appellant's car drive into the box junction and drive round a bus into the outside lane. 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 Williams states that he could not see the exit because of the bus that was stopped in the box. I accept this but he should have waited to ensure that he could see that there was a space on the other side of the junction before he drove into the box.

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

REVIEW: The reviewing adjudicator found no ground for interfering in the appeal decision.

JUDICIAL REVIEW: The application was refused; the claim was wholly unarguable. The adjudicators at first instance and on review were entitled to come to the decision made.

RENEWAL: The appellant (claimant) applied for an extension of time to allow the claim to be renewed at an oral hearing, but this was refused.

3.The Queen on the Application of Dr Preeti Pereira-v- London Borough of Southwark [CO/3424/2019] (Preeti Pereira -v- London Borough of Southwark ETA 2180438775 (2019))

R (Pereira) v Environment and Traffic Adjudicators [2020] EWHC 811 (Admin)

Under section 15 of the Greater London Council (General Powers) Act 1974, it is an offence to park in London "with one or more wheels on or over any part of the road". Section 2 defines "road" to include "any length of road or any part of the width of the road"; and, by section 104 of the Road Traffic Regulation Act 1967, "'road' means any highway and any other road to which the public has access". By Schedule 7 paragraph 3(2)(a) an offence under section 15 is a parking convention.

R (Dawood) v Parking and Traffic Appeals Service [2009] EWCA Civ 1411 concerned circumstances in which a motorcycle was parked on Cleveland Street W1 outside the house of the bike owner, on land owned by him but to which the public had access as users of Cleveland Street. The adjudicator held that that was in contravention. The Administrative Court and the Court of Appeal refused permission to proceed on the basis that the contrary was unarguable.

The issue has been revisited in R (Pereira) v Environment and Traffic Adjudicators [2020] EWHC 811 (Admin). There was a pavement outside the appellant's property. The part nearest the carriageway was owned by the highway authority ("the chain-link strip"). Just further down the road, it had a tree growing in it, so anyone walking down the pavement would have to deviate into the middle of the pavement ("the middle strip"). Adjacent to the hedge that fronted the house, there was a third strip ("the hedge strip") where the appellant regularly parked her car and the cars of visitors to the house. Each strip was about a car's width. The hedge strip and middle strip were owned by the appellant. Beyond the appellant's property, there were obstructions of the hedge strip (a post) and the chain-link strip (a post and tree) which meant that anyone walking down the pavement would have to divert into the middle strip.

The adjudicator refused the appeal, on the basis that the hedge strip formed part of the adopted highway or alternatively it was a road over which the public had access. On review, the adjudicator also held that it was part of the highway, but on the different basis that it had been deemed dedicated after 20 years use. He did not consider the public access limb.

Dr Pereira applied for judicial review. In the usual way, the adjudicator played no part in the claim. The Council said that they would not contest it because it would be disproportionate to do so. However, permission to proceed was granted, and the substantive hearing went ahead with just Dr Pereira being represented, by Leading and Junior Counsel.

Fordham J allowed the claim.

As to whether the hedge strip was highway, he found that, before the adjudicator, the Council had not advanced any claim based on (nor adduced any evidence in support of) deemed dedication. The appellant's legal representatives had only raised deemed dedication to dismiss it. The judge held that the adjudicator had erred in considering the issue at all; and, in any event, he had erred in law in concluding that, because for 20 years there had been a way over the middle strip (on which the appellant never parked), there was deemed dedication of the hedge strip (on which she had frequently parked). That was a fact-specific finding. The judge did not remit the matter for rehearing by an adjudicator because the Council had never taken the point.

Nor did he remit the matter on the alternative, public access limb of determining whether the hedge strip was part of the "road", because he found that, on any view, the public had neither factual nor legal access to the hedge strip.

(i) He considered that, as a matter of fact, public access over the hedge strip had been defeated by the actions of the appellant in regularly impeding that access (whether or not coupled with the fact the public did not have access on the particular occasion when the PCN was put on the car).

(ii) He found that the public did not have legal access to the hedge strip at the relevant time (when the appellant's vehicle was parked on it), because they were permitted access by way of an implied licence which was inoperative when the car was parked there.

Comments

This judicial review was largely determined on its facts, and any legal exposition was both made without full legal argument and *obiter*. However, this judgment emphasises the following.

(i) Although an adjudicator can raise an issue not raised by any party – and, when an obvious point, may be obliged to do so (Robinson) – it is important to give both parties a full opportunity to deal with the issue. An adjudicator must make it plain that he/she is minded to consider the (new) point, and invite submissions on whether it is a point that should be dealt with/determined and the substantive point itself.

(ii) Where a vehicle is parked on a pavement, it may still be served with a PCN. If there is evidence that that part of the pavement is privately owned, then both the legal and factual position is complex. If the owner of the vehicle does not own the land or have the authority of the owner to park there, on the basis of this case, he is likely not to have "legal access". Whether there is factual public access will require careful consideration of the evidence; and it may be necessary to ask both the appellant and the council for their position with regard to this issue and any evidence upon which they rely.

The Court's full judgment can be found under key cases on our website at www.londontribunals.gov.uk

4. TRAINING AND APPRAISAL

TRAINING

The adjudicators attended a training meeting in December 2019. The adjudicators, appointed under the terms of the Traffic Management Act 2004 are part-time, independent office holders. The training sessions serve to highlight new appeal issues or enforcement locations and allow feedback from the appraisal scheme to be shared.
The meetings are also an opportunity for the adjudicators, who will have all attended the hearing centre at different times during the course of the year, to meet, share and discuss best practices, cementing our collegiate approach.

The new restriction in force at the Rotherhithe tunnel (see page 18 above) and the consolidated decision relating to contraventions occurring in Phoenix Way (prior to sign amendment) were considered in the December session.

APPRAISAL

The tribunal's mandatory appraisal scheme remains in place, with appraisals being completed on a three-year cycle. The scheme ensures the maintenance of the tribunal's standards and consistency of practices. It also provides an opportunity for adjudicators to provide feedback and identify ways that the tribunal may be improved. This is of particular value to the tribunal, where a number of adjudicators hold fee paid judicial appointments in other jurisdictions, allowing them to share court and tribunal processes that have already been found to promote justice and efficiency.

The objectives of 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.

Adjudicators appointed in March 2017 completed their second round of appraisals in the first quarter of 2020. All adjudicators completed appraisal in 2020. The scheme is now due to resume in the first quarter of 2023.

5. The Environment and Traffic Adjudicators

This reporting year saw the retirement of adjudicators Jennifer Shepherd and John Lane and the appointment of adjudicator Joanne Oxlade to the first-tier tribunal (Immigration). We wish them well in their future endeavours.

1. Alderson, Philippa
2. Anderson, Jane
3. Aslangul, Michel
4. Brennan, Teresa
5. Burke, Michael
6. Chan, Anthony
7. Fantinic, Cordelia
8. Greenslade, Henry Michael
9. Hamilton, Caroline
10. Hamilton, John
11. Harman, Andrew
12. Harris, Richard
13. Hillen, Monica
14. Houghton, Edward
15. Kaler, Anju
16. Lawrence, Michael
17. McFarlane, Alastair
18. Moore, Kevin
19. Oliver, Michael
20. Patel, Dharmesh
21. Parekh, Mamta
22. Pearce, Belinda
23. Rach, Neena
24. Iqbal, Samina
25. Sheppard, Caroline
26. Stanton-Dunne, Sean
27. Styles, Gerald
28. Teper, Carl
29. Thorne, Timothy
30. Udom, Ini
31. Walsh, Jack
32. Wright, Paul