

# The Environment and Traffic Adjudicators

ANNUAL REPORT  
2020-2021



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## CHIEF ADJUDICATOR'S FOREWORD

The COVID19 health emergency necessarily meant that the tribunal's work was briefly interrupted from March 2020. Adjudicators were however soon able to continue working on postal determinations accessing the case management system remotely before returning to the tribunal in line with the Lord Chief Justice's guidelines, ensuring that the continued administration of justice was delivered safely and access to justice maintained.

The tribunal certainly benefited from the automated case management system already in place, that allowed adjudicators and the proper officer team to move to remote working without the need for changes or system upgrades. Although the hearing centre remained closed to the public and to parties to the appeals during the reporting year, attendance at hearings was achieved by telephone. The swift transition to telephone attendance arrangements that the tribunal was able to implement allowed the parties who wished to, to continue to take part in hearings and to enjoy the flexible hearing times that the adjudicators remained able to provide.

The lockdown did, of course, impact appeal numbers, reflecting the period where movement was restricted and vehicles were not in use (see page 6). Moving traffic appeals increased once restrictions were eased, reflecting the new Low Traffic Neighbourhood schemes that have so far seen challenges in the High Court and Court of Appeal (see report at page 10).

The adjudicators have been able to work effectively and efficiently during a year that certainly presented challenges and take this opportunity of thanking the Proper Officer team who, despite the restrictions in place, continued to provide able and dedicated administrative support, maintaining access to justice for tribunal users and allowing the adjudicators to sustain their independence and focus on decision making.

The environment and traffic adjudicators are pleased to present their joint report to the Transport and Environment Committee.

*Caroline Hamilton*  
*Chief Adjudicator*  
*Environment and Traffic*

*April 2021*

## 1. Workload

The reduction in the number of appeals received reflects the period when the country was in mandatory lockdown with movement to and from homes severely restricted. Once restrictions were lifted a return to usual routines did not recommence and motorists have yet to return to their previous patterns of vehicle use. The increase in the percentage of appeals that relate to moving traffic contraventions arises not only because of the low traffic schemes that were introduced during that period, but also because the motorist who contravenes the prohibition will not be made aware of the penalty until the penalty charge notice, that is served by post, is received. Authorities usually have 28 days to serve the postal penalty charge notice and in some cases, this will mean that the motorist has driven in contravention of a single restriction on a number of occasions before the first penalty is delivered. For the purposes of an appeal, each a time a contravention occurs, the enforcement authority is entitled to enforce a penalty. It remains the case that the adjudicators have no power to take mitigation into account under what is a strict liability fixed penalty scheme.

Motorists must remain alert to signs and lines and comply with prohibitions, even when travelling along familiar or local routes and even if they do not agree with the restriction, consider it to be unlawful, or do not realise that a CCTV enforcement process is in operation.

### Statutory Declaration and Witness Statement referrals

The witness statement declaration process at the Traffic Enforcement Centre of the Northampton County Court provides a mechanism whereby motorists, who have not received statutory documents, or whose post has gone astray, can halt enforcement proceedings and return to the statutory appeal path.

There are however only limited grounds at law for making a declaration and the granting of the order by the Court simply reflects that a declaration has been made,

not that the content of the declaration has been assessed by the Court and found to be true.

The grounds for making a witness statement declaration to the Traffic Enforcement Centre that are relevant to appeals 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.

The mandatory referral of the order issued by the Court to the adjudicator is the responsibility of the County Court Claimant enforcement authority. Once the order has been referred, the adjudicator will consider whether a right of appeal has been established, allowing an appeal to be registered.

Once the appeal is registered it is determined on the evidence then submitted, in the same way as any other scheduled appeal.

The belief that the order of the Traffic Enforcement Centre cancels the motorist's liability to the enforcement authority for the penalty charge notice is false. The authority remains entitled to enforce the penalty; the motorist having been returned to the part of the process where communication was interrupted. This limitation is reflected on the order itself, but remains an ongoing misunderstanding for the County Court Respondent motorists, even though the order carries the following warning:

*"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 if it intends to do so.”*

The making and referral of an order does not automatically establish a right of appeal to the independent adjudicator. The regulations require the adjudicator to give directions as to the conduct of the proceedings unless it is considered that no such directions are necessary. The directions may include making an immediate payment order, listing the matter for appeal, or for the consideration of an order for costs.

The Traffic Enforcement Centre orders are described in the appeal statistics as “referrals”. This reporting year the adjudicators made 4,000 payment directions. 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 general down-turn in the number of appeals reflects the reduction in movement and travel caused by the mandatory periods of lockdown.

**TOTAL of all:** (previous year in brackets)

32,780 (36,288) appeals registered

7,305 (7,847) statutory declaration/witness statement referrals

**Total: 40,085 (44,135)**

28,034 (32,035) appeals were determined

13,161 (16,426) appeals were allowed of which 7,161 (9,624) were not contested

14,873 (15,609) appeals were refused

Not all appeals received at the tribunal can be registered. Appeals submitted to the adjudicator that do not meet the requirements of the regulations may be rejected or returned to the appellant with a request for further or corrected information. It is only once the appeals have been checked and found to be valid under the regulations, that they are registered and scheduled.

To allow for the preparation and consideration of evidence by the parties, the regulations require 21 days to pass before a registered appeal may be listed for hearing before the adjudicator. The adjudicators allow a further 7 days to pass, to safeguard against postal or other delays. This timeframe means that an appeal that has been registered in one reporting year, may not be listed for hearing until the following reporting year.

1,621 payment directions were made further to witness statement declaration referrals that related to appeals that had already been determined.

Although a number of personal appeal hearings had to be suspended as a result of the lockdown, these have been returned to the hearing lists and determined with a telephone attendance. There is no backlog in the determination of appeals resulting from the lockdown.

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

### **PARKING**

15,800 (20,692) appeals were received

5,449 (5,275) referrals were made

**TOTAL: 21,249 (25,967)**

**Parking** appeals decided

14,702 (18,981) appeals were determined

Allowed

7,496 (10,044) appeals were allowed of which 4,303 (5,824) were not contested

Refused

7,206 (8,937) appeals were refused

### **BUS LANE**

1,556 (1,851) appeals were received

247 (264) referrals were made

**TOTAL: 1,803 (2,115)**

**Bus lane** appeals decided

1,350 (1,461) appeals were determined

Allowed

767 (979) appeals were allowed of which 446 (630) were not contested

Refused  
583 (681) appeals were refused

The restriction on movement during the lockdown saw a reduction in parking appeals. Once restrictions were lifted there was an increase in moving traffic appeals, inflated by the implementation of low traffic neighbourhood schemes.

### **MOVING TRAFFIC**

15,317 (13,621) appeals were received  
1,613 (2,308) referrals were made

**TOTAL: 16,930 (15,929)**

**Moving traffic** appeals decided

11,895 (11,268) appeals were determined

Allowed

4,853 (5,322) appeals were allowed of which 2,388 (3,114) were not contested

Refused

7,042 (5,946) appeals were refused

### **LONDON LORRY CONTROL**

94 (120) appeals were received

0 (0) referrals were made

**London Lorry Control** appeals decided

79 (121) appeals were determined

Allowed

44 (76) appeals were allowed of which 24(55) were not contested

Refused

35 (45) appeals were refused

### **LITTER and WASTE**

13 (4) appeals were received

0 (0) referrals were made

**Litter and Waste** appeals decided

8 (5) appeals were determined

Allowed

1 (5) appeal was allowed

Refused

7 (0) 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](http://www.londontribunals.gov.uk)



## RECOMMENDATIONS

Under the Traffic Management Act 2004 refused appeals may be returned to the enforcement authority by the adjudicator for the consideration of compelling reasons. This applies to penalties issued under the Traffic Management Act 2004 only. Any outcome to the referral that the motorist considers to be unfavourable is not subject to appeal or review under the regulations.

**Refused with a recommendation:** 260 (281)

**Recommendation accepted:** 94 (98)

**Deemed accepted:** 107 (97)

**Recommendation Rejected:** 59 (86)

## PERSONAL/POSTAL APPEALS

**Postal Hearings:** 24,542 (25,534)

**Personal Hearings:** 8,233 (10,754)

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, conduct hearings by telephoning parties and witnesses and hearing 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, allowing both parties to attend without the necessity of travel.

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 the civil 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 lay appellant 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.

Under each set of regulations governing the tribunal, the adjudicator shall not normally make an award of costs or expenses and may only do so if the party against whom the order is made has acted in a way that is frivolous, vexatious or wholly unreasonable with regard to the appeal. The jurisdiction has no application fee for appellants and as reflected by the limited number of awards, costs under our regulations are not the norm.

Applications for costs listed for determination by the adjudicator:

<b>APPELLANTS</b>	<b>ENFORCEMENT AUTHORITIES</b>
Parking 12 (16)	Parking 45 (93)
Bus Lane 2 (1)	Bus Lane 1 (2)
Moving Traffic 8 (16)	Moving Traffic 10 (34)
London Lorry Control 0 (0)	London Lorry Control 0 (0)
Litter and Waste 0 (0)	Litter and Waste 0 (0)
<b>Total 22 (33)</b>	<b>Total 56 (129)</b>

## **2. KEY CASES**

The Queen on the application of (1) United Trade Action Group Ltd (2) Licensed Taxi Drivers Association Ltd v (1) Transport for London (2) Mayor of London [2021] EWHC Civ 1197.

### Low Traffic Neighbourhoods

Case summary by adjudicator Teresa Brennan

In the last year many of the appeals that adjudicators have dealt with have concerned challenges by motorists to road closures implemented by many local

authorities to introduce low traffic neighbourhoods (LTNs.) The rapid introduction of so many changes has been controversial with many motorists unhappy that they are no longer able to use routes that they have driven for many years.

Judicial review proceedings were heard in the High Court in separate cases by residents of Lambeth and Hackney about the introduction of LTNs. These claims were unsuccessful. However, London Taxi drivers won a judicial review in a hearing in the High Court before Mrs Justice Laing. The decision was subsequently overturned by the Court of Appeal.

The Licensed Taxi Drivers Association Ltd (LTDA) and the United Trade Action Group challenged The Mayor's Streetspace Plan made on 6<sup>th</sup> May 2020 (The Plan) Transport for London's Guidance issued to the Boroughs about how to implement the Plan (The Guidance) and also a temporary Traffic Management Order that restricted access to part of the A10 in Bishopsgate to buses and cycles only Monday to Friday 7am to 7pm. (The A10 Order)

The Mayor's Plan and The Guidance from Transport for London (TFL) had been made in the context of the Covid 19 pandemic. The aim of both the Plan and Guidance was to reduce traffic on through streets to encourage more travel by walking and cycling. In turn it was hoped that this would help reduce the number of people using public transport at a time when the spread of the virus was high and social distancing on public transport was necessary.

The A10 Order was a specific Traffic Order that made part of Bishopsgate accessible only to bus and cycles.

The taxi drivers' associations argued in court that their special status as a form of public transport had been ignored in both the Plan and Guidance and in the A10 Traffic Order because neither the Plan nor the Guidance made any reference to taxis and the Order created no exemption for taxis. Taxis are equipped to transport disabled passengers. There is a special Taxicard scheme which entitles disabled

passengers to subsidised taxi fares. Taxis unlike private hire vehicles are permitted to use most but not all bus lanes in London. In previous announcements the Mayor had emphasised the special status of taxis and The Department of Transport's Inclusive Transport Strategy of 2019 states that taxis have an essential role in enabling disabled people to complete door-to-door journeys.

The taxi drivers argued that they had been a failure to apply the public sector equality duty imposed by s149 of the Equality Act 2010. The Act requires public bodies to consider the needs of people with protected characteristics. People with protected characteristics include the elderly and disabled.

It was argued that the changes interfered with the taxi drivers' rights under the European Convention of Human Rights. Article 1 Protocol 1 to the European Convention on Human Rights because the road closures interfered with their right to carry out economic activity that they held because of their possession of a taxi driver's license. If taxis were prohibited from certain streets it could make journeys slower and more expensive and so deter customers and deprive taxi drivers of income.

The drivers also argued that they had a legitimate expectation to pass and repass London's Roads. This expectation arose from the established practice of permitting Hackney Carriages to do so and from requiring drivers to invest time and money to learn routes. Also, of having access to bus lanes and being regarded as a vital part of the integrated transport network. The latter expectations arose from the express policy in the 2007 Taxis and Bus Lane Policy.

Finally, the drivers argued that the Plan, Guidance and A10 order were all irrational.

In the High Court the LTDA won all their arguments save for human rights argument.

The judge found that in making the Plan and Guidance the Mayor and TFL failed to distinguish taxis from general traffic and that in making the Plan and Guidance and

the A10 Order the Mayor and Transport for London did not have proper regard to the public sector equality duty pursuant to s149 of the Equalities Act 2010.

The policies in the Plan and Guidance which treat taxis as general traffic to be excluded from certain routes had led to a clear breach of the taxi drivers' legitimate expectation in regard to the use of bus lanes. The Mayor and Transport for London had not shown that there was an overriding public interest which justified the frustration of the taxi drivers' legitimate expectation.

Finally, Mrs Justice Laing found that the decision-making process for the Plan and Guidance and the A10 Order were seriously flawed and the decisions made were not a rational response to the issues that arose as a result of the Covid 19 pandemic. As a consequence of the decision the judge ruled that the Plan and Guidance and the A10 Order should all be quashed however she stayed this ruling pending an appeal.

The Mayor and TFL appealed against the decision. The hearing took place on 15<sup>th</sup> and 16<sup>th</sup> June 2021 and the three judges in the Court of Appeal ruled at the end of the hearing that the appeal was allowed. The full judgement with their detailed reasons was published on 30<sup>th</sup> July 2021.

The judges of the Court of Appeal were very critical of the way in which the judge had approached her decision.

They found that there was no basis for finding that the Plan and Guidance and A10 Order were irrational. The Court found that the judge had given little to no weight to the fact that the Plan and Guidance were made in May 2020 when the duration and future course of the pandemic was unpredictable. Deaths were high, there were no vaccines, bus capacity had to be reduced for social distancing reasons and if the bus routes were congested bus times would take longer thereby increasing time passengers might spend on bus at risk of infection. It was not a tenable reading of the Plan and Guidance that it was intended to prohibit all motorised traffic apart from buses from central London but even if it was, it was quite clear by the time the

judicial review claim was made in August let alone when it was heard in November that this was not happening.

The Court emphasised that the Plan and Guidance were no more than a Plan and Guidance to the individual London Boroughs to take into account when implementing traffic orders. The Boroughs were well aware of the special status of taxis. They were also well aware of their duties under section 149 of the Equality Act 2010. There was no basis to infer from either the Plan or Guidance that consideration of the status of taxis and the public sector equality duty would not be considered when making new traffic orders. The Guidance referred the Boroughs to the public sector equality duty and said that proposals should be carefully assessed for their impact on people with protected characteristics.

It was wrong to say that because taxis were not expressly mentioned in the Plan and Guidance that it followed that they were not taken into account. The Plan and Guidance scarcely changed the position of taxis at all. Taxis could still use 93% of all bus lanes and apart from Bishopsgate/A10 the 2020 announcements did not change this. Even if there was a modest reduction in use of bus lanes by taxis this was a difficult balancing act looking at the interests of disabled and frail elderly against the imperative demand for a regular and socially distanced bus service.

In the lower court LTDA had referred to TFLs 2007 Bus Lane Policy and Guidance. This referred to the special status of taxi drivers. This policy was used to support the argument that taxis had a legitimate expectation to pass and repass on London's roads. The Court of Appeal found that UTAG and LTDA could not plausibly argue that anything said in 2007 documents or references to special status of taxis gave rise to an expectation that no bus lane in London could ever be closed to them. Further even if there had ever been any such legitimate expectation the emergency measures that had to be made in response to a pandemic were a paradigm example of a case where the public interest was a powerful reason why any such legitimate expectation would not be binding.

The Court of Appeal also ruled that the judge's findings about the A10 Order were wrong. The Order was not irrational. The particular stretch of road had long standing and acute problems of traffic management. TFL accepted that the scheme did cause difficulties for taxi drivers but they argued that the response was rational and a sensible compromise in an unprecedented and unpredictable emergency. The Court agreed.

The A10 Order did not fail to consider the public sector equality duty. The judgment said that the court was clear in its view that there was no proper basis for a finding that the assessment was merely a formality leading to a foregone conclusion.

The taxi drivers had no legitimate expectation that they would be allowed to use any bus route in London. There was no basis for saying that a single scheme with the justifications advanced at the time could represent a breach of legitimate expectation unless there was any issue of bad faith in making the decision.

The LTDA and the United Trade Action Group were ordered to pay Mayor and TFL's costs with the first £50,000 to be paid in 14 days.

### Direct Vision Standards

Contraventions under the direct vision standards HGV safety permit scheme came into force in March 2021. The requirement is enforced by Transport for London and appeals under contravention codes 58 "using a vehicle on a restricted street during prescribed hours without a valid permit" and code 59, "using a vehicle on a restricted street during prescribed hours in breach of permit conditions" have been determined by the environment and traffic adjudicators.

### Once Call All Limited v Transport for London (ETA 2210284583 & others)

"This group of appeals relates to requirements, that came into force on 1st March 2021, put in place to ensure that heavy goods vehicles are equipped, such as to allow the driver to have a clear and safe vision.

The Direct Vision Standards scheme requires operators of heavy goods vehicles (over 12 tonnes gross vehicle weight) entering or operating in Greater London, to hold a safety permit issued by Transport for London.

Operators of vehicles in breach of the requirement, may be issued with a penalty charge notice under the terms of the London Local Authorities and Transport for London Act 2003.

It is a strict liability contravention, with responsibility for ensuring that the vehicle has secured the relevant safety permit from Transport for London, resting with the vehicle operator, in these cases the appellant company, "One Call All Limited."

Mr Alan Garrett attended the telephone appeal hearing on behalf of the enforcement authority, Transport for London and Mr Amil Swrczeweki attended on behalf of "One Call All Limited."

The central issue arising in the group of appeals is whether the vehicle had been furnished with the required safety permit, allowing it to drive and operate within Greater London. On each party's case, it had not.

The appellant representative provided a number of explanations as to why the permit had not been secured, detailing the company's efforts to ensure that the vehicle met the permit requirements, but this in itself did not allow the vehicle to drive or operate within the zone. As indicated in the statutory notices of rejection issued to the company by Transport for London, "...the vehicle may not operate within the designated area in the traffic order until a permit has been granted, simply making an application is insufficient."

The evidence relied on by the company representative regarding the efforts made to secure the permit, amount to pure mitigation that does not amount to a statutory ground of appeal and cannot be taken into account by the adjudicators under the



fixed penalty scheme. This has been confirmed by the Court of Appeal in the case of Walmsley v Transport for London & Others [2005] EWCA Civ 1540.

No safety permit having been issued, with regard to each penalty before me, the evidence satisfies me that the contravention described on the face of the penalty charge notice occurred. In each case the authority was entitled to issue the penalty charge notice.

The case summaries indicated and Mr Garrett confirmed at the hearing, that the authority was willing to accept a reduced penalty amount of £275 for each penalty under the three appeals (15 in total). Having heard, the appellant company's evidence, Mr Garrett has also indicated that he will engage with the company further to establish why a permit has yet to be issued and remains willing to consider exercising a further discretion regarding the total sum due.

The appeals are refused.”

### 3. JUDICIAL REVIEW

The judicial decision of the independent adjudicator, including a case management decision, cannot be investigated by way of a complaint, but may be challenged by review and thereafter, judicial review.

This reporting year saw the following applications and outcomes:

#### Applications

1. ***The Queen on the Application of Barbara Webley -v- the Adjudicator London Tribunals and (interested party) London Borough of Lambeth [CO/1175/2021] (Barbara Webley v London Borough Lambeth ETA 2200239640)***.

This matter is currently listed for hearing on 28<sup>th</sup> October 2021 a renewed application (further to a refusal on the papers) having been granted by the Court on 20<sup>th</sup> July 2021.

2. ***The Queen on the Application of Barbara Webley -v- London Tribunals and (interested party) London Borough of Lambeth [CO/1802/2021] (Barbara Webley v London Borough Lambeth ETA 22003508A)***.

This matter is currently listed for hearing on 28<sup>th</sup> October 2021 a renewed

application (further to a refusal on the papers) having been granted by the Court on 20<sup>th</sup> July 2021.

3. ***The Queen on the Application of Barbara Webley -v- London Tribunals and Red Routes (interested party) [CO/1802/2021] (Barbara Webley v Transport for London ETA 2190547744)***. Awaiting outcome.

## **Outcomes**

1. ***The Queen on the Application of Ahmed Balogun and The Traffic Adjudicator and (1) London Borough of Southwark (2) The Lord Chancellor (3) The Secretary of State for Justice [CO/1534/2021] (Ahmed Balogun v London Borough of Southwark ETA 2210035895)***.

### **The appeal**

I have to deal with appeals against 9 PCNs issued to Mr. Balogun's vehicle in similar circumstances, over the period 28.09.20 to 22.10.20. The allegation in each case is that the vehicle was parked in Derwent Grove in a residents or shared-use parking place or zone without either clearly displaying a valid permit or voucher or pay and display ticket issued for that place, or without payment of the parking charge.

These cases were listed for a telephone hearing today but Mr. Balogun has failed to provide a contact number in any of the cases which therefore fall to me to decide on the evidence submitted by the parties to date.

Mr. Balogun challenges the enforcement with the assertion that restrictions had only been introduced in the final quarter of 2020 and only then in order to generate income. He argues that the attempt to enforce is in breach of Human Rights Act 1998 sections 6 and 7. He also criticises the terms of the Notices of Rejection. Mr. Balogun expresses grievance at judicial conduct which I am satisfied does not impact on the present cases.

Parking restrictions are not set in stone and do change from time to time. The motorist ought always to be alert to this possibility. The Enforcement Authority have provided evidence of a Traffic Management Order coming into force on 14.09.20 which I am satisfied they are entitled to enforce.

I am satisfied in each case that the Civil Enforcement Officer's record and photographs establish the vehicle was parked in contravention of clear signage and that the PCN was attached to the vehicle.

I am satisfied that the enforcement in each case involves no breach of Human Rights Act 1998.

Having considered all the evidence I am satisfied that each contravention occurred and that each PCN was properly issued and served. I am not satisfied that any exemption applies in any of these cases.

Mr. Balogun states that he was not the owner of the vehicle at the material times with the vehicle being owned by an organisation of which he is the secretary, The Campaign for Truth and Justice. He asserts that the Campaign and its members 'enjoy exclusive rights to their

properties free of all legal duties and obligations' and that Human Rights Act 1998 and Magna Carta preclude enforcement in these cases. I am satisfied this is incorrect.

Mr. Balogun was the registered keeper at the time of issue of the PCNs. The Law requires that I presume that he was also the owner. I am not satisfied that he has rebutted that presumption and he remains liable for these PCNs.

In correspondence Mr. Balogun refers to 2 further PCNs but these are not currently before the Tribunal and I have no jurisdiction to adjudicate on them.

### **The review**

The application was refused with no ground for revisiting the determined appeal identified.

### **The application for judicial review**

The application was refused and certified as being totally without merit. Both grounds were unarguable and totally without merit and bound to fail.

## **2. *The Queen on the Application of Tay Israel Alaton-v-Adjudicator London Tribunals and (interested party) Enfield Council [CO/2177/2020] (Tay Israel Alaton v London Borough of Enfield ETA 2200138847).***

### **The appeal**

The appellant's attendance at the hearing today was achieved by telephone.

The appellant said that he had not received the council's evidence but that he was nevertheless prepared to proceed.

Having taken his evidence I reserved my decision to allow for full consideration of the papers.

The allegation in these proceedings is that this vehicle was parked on Winnington Road with one or more wheels on or over a footpath or any part of a road other than a carriageway. Parking with one or more wheels on or over a footpath or otherwise than on a carriageway is prohibited 24/7 throughout Greater London unless an exemption applies.

There is no dispute that footway parking is permitted on Winnington Road within exempted areas.

In support of his case the appellant submitted that (i) signage indicating exempted footway parking areas was not clear supporting images being provided there being no signage in place telling him that he could not park where he did (ii) this PCN had been cancelled by the council as stated in its letter of 17 02 20 issued in respect of a second penalty charge incurred by this vehicle at this location that month (iii) his disabled badge was displayed in the vehicle (iv) the council had given him 14 days to pay this PCN but then issued a notice of rejection in the statutory sum of £130.00 and (v) that the council's correspondence officer was motivated by anti-Semitism.

Addressing these points in turn.

(i) There is no duty on the council to sign this prohibition. On the assumption that footway parking signage at this location is unclear motorists should not assume that an exemption allowing footway parking is in force. If clear signage to that effect is not posted then the prohibition applies.

(ii) On the council's case, which I accept, the PCN cancellation referred to in its letter of 17 February is in respect of PCN EF11539231, not the PCN issued in these proceedings.

(iii) Albeit that the council asked the appellant for a copy of his disabled badge the display of such a badge does not in fact provide an exemption to this contravention.

(iv) the council in its rejection notice of 26 March reset the reduced payment period. No payment was received. It is in those circumstances permitted to pursue enforcement of the charge in the statutory sum of £130.00.

(v) the appellant's claim as to anti-Semitism on the part of the council's officer is in my view without merit.

I am satisfied against this background that the contravention occurred and that the appellant is liable for this penalty charge.

The appeal is refused.

### **The application for review**

The adjudicator identified no ground for review.

### **The application for judicial review**

There was no discernible arguable error of law in the decision-making process or in the outcome.

### **3. The Queen on the Application Parham Reza Partovi-Tabar -v- the London Tribunals Environment and Traffic Adjudicators and (interested party) London Borough of Richmond-upon-Thames [CO/1127/2020] (Parham Reza Partovi-Tabar v London Borough of Richmond Upon Thames ETA 2190481588 (2019))**

### **The appeal**

At this scheduled personal hearing the Appellant attended in person but the Enforcement Authority did not attend and were not represented.

A contravention can occur if a vehicle is driven fail to keep left shown by a white arrow on a blue sign.

There appears to be no dispute that the vehicle was in Lonsdale Road, Barnes, as shown in the closed-circuit television (cctv) images produced by the Enforcement Authority.

The vehicle is seen to pass to the right of the bollard when the sign clearly indicates that all vehicular traffic should keep left.

Mr Partovi-Tabar's case is that the previous island was obstructed by a parked vehicle and he did not move back into the left lane because of a motorcycle behind. Mr Partovi-Tabar also says he did not see any sign warning of camera enforcement.

It does remain the responsibility of the motorist to check carefully at all times whilst driving their vehicle, so as to ensure that they do so only as permitted. This includes making sure that they comply with all restrictions and prohibitions indicated by the signs. If a vehicle cannot proceed because as directed then an alternative route should be found.

There is no requirement for a sign indicating camera enforcement, although one is prescribed if used. The absence of a sign does not mean that the contravention cannot be enforced.

The penalty charge is £130. The amount of the penalty charge is set by the Transport, Environment and Planning Committee of London Councils and approved by the Mayor of London with the authority of the Secretary of State. Under Section 4(8)(a)(iv) and 4(10) of the London Local Authorities and Transport for London Act 2003 the enforcement authority must accept the reduced penalty of £65 if paid within 14 days of the issue of the Penalty Charge Notice. Once this period has expired and, for whatever reason including appealing to the Adjudicator and/or making representations to the authority, the charge remains unpaid then the full penalty becomes due.

Section 4(18) of the 2003 Act provides that in determining, for the purposes of any provision of the Act, whether a penalty charge has been paid before the end of a particular period, it shall be taken to be paid when it is received by the authority concerned.

The Adjudicator is only able to decide an appeal by making findings of fact on the basis of the evidence actually produced by the parties and applying relevant law. The Court of Appeal has affirmed that the Adjudicator has no power to consider mitigating circumstances of any description, although in this case the Enforcement Authority did exercise discretion by reoffering the reduced penalty period in their Notice of Rejection. Applications for time to pay must be addressed to the London Borough of Richmond Upon Thames direct.

Considering carefully all the evidence before me I must find as a fact that, on this particular occasion, a contravention did occur, the Penalty Charge Notice was properly issued and Mr Partovi-Tabar remains liable for the full penalty charge.

Accordingly this appeal must be refused.

### **The application for review**

The adjudicator identified no ground for review.

### **The application for judicial review**

The application was refused and found to be totally without merit. The claimant was ordered to pay the interested party's costs of preparing the acknowledgment of service.

## 4. TRAINING AND APPRAISAL

### TRAINING

6 of the current Road User Charging Adjudicators (a Judicial Appointments Commission appointment) have been cross-ticketed, allowing them to be appointed to sit as Environment and Traffic Adjudicators. This recognises and applies the Senior President of Tribunals' aim to achieve cross-deployment within the tribunals system (HMCTS) and outside it. A full training day was arranged for 15<sup>th</sup> May 2021. The adjudicators, already familiar with our shared automated case management system and tribunal practices were able to focus on the elements of the various contraventions dealt with by the environment and traffic adjudicators and the case law and regulations governing the tribunal's jurisdictions.

The cross-ticketing exercise facilitated an efficient and cost-efficient deployment of experienced adjudicators, allowing for greater cohesion and the sharing of specialisms, with both tribunals benefitting from the wider knowledge and understanding that sitting in each jurisdiction brings.

The six adjudicators join three others currently appointed to sit in both jurisdictions. See page 24 below.

### APPRAISAL

Most courts and tribunals have in a place an appraisal scheme to maintain judicial standards and ensure consistency of practices.

Environment and Traffic Adjudicators will normally be appraised one year after appointment and then in three yearly cycles. Thus, those Adjudicators who were appraised in 2020 will next be appraised in 2023. However, as appointments have been made over the years, the cycles are not uniform, and a further round is taking place in 2021.

As explained in previous Annual Reports, the appraisal scheme helps maintain public confidence in judicial performance and ensures that all Adjudicators keep up to date with law and regulations and are able to demonstrate the competences necessary for their role.

The appraisal scheme used by the tribunal is based on the former Judicial Studies Board's *Tribunal Competences: Qualities and Abilities in Action*, tailored for this particular Tribunal, and updated to reflect the March 2021 *Appraisal Standards and Appraiser Competences in Tribunals* reflecting the judicial skills and abilities framework.

A typical appraisal will involve observation of one or more personal hearings (conducted by telephone in the previous round) as well as detailed feedback discussions on this and other written decisions and then on wider performance matters.

As well as identifying any individual training and development needs, the appraisal scheme also provides Adjudicators themselves with an opportunity to raise issues relating to training and procedures.

Adjudicators generally find the whole process helpful and beneficial, providing positive feedback and taking the opportunity to make suggestions that add to the efficiency of the tribunal.

Issues arising from appraisals can also inform the Tribunal training programme where they can be shared and discussed with the Adjudicators as a collegiate body.

As is widely known, a number of adjudicators hold judicial appointments in other jurisdictions, and the appraisal scheme in this Tribunal allows them to share court and tribunal processes that have already been found to promote justice and efficiency.

Adjudicators regard the appraisal scheme as an important part of their appointment and recognise the benefits of sharing and exploring best practice.

## **5. The Environment and Traffic Adjudicators**

This reporting year saw the retirement of adjudicators Michel Aslangul and Edward Houghton. We thank them for their long-standing commitment and contribution to the work of the tribunal and wish them both a long and fulfilling retirement.

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

\*Road User Charging Adjudicator

*The Environment and Traffic Adjudicators  
London Tribunals 2020-2021*