

The Environment and Traffic Adjudicators

ANNUAL REPORT



2021 – 2022

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CHIEF ADJUDICATOR'S FOREWORD

The Adjudicators have continued to work effectively and efficiently during a year when the Tribunal adapted to the gradual relaxation of Covid restrictions. In December 2021, face to face hearings returned after appropriate protective measures were put in place at the Hearing Centre in line with the Lord Chief Justice's guidelines.

While Adjudicators have continued to offer telephone hearings so that parties can choose to be heard without attending at the Hearing Centre, there has been a gradual increase in the number of Appellants seeking face to face hearings.

Remote working is another facility that the Adjudicators have adopted during the reporting year. Adjudicators will continue working on postal determinations. The Tribunal certainly benefited from the automated case management system already in place, which allowed Adjudicators and the proper officer team to move to remote working without the need for changes or system upgrades.

There is a 39% increase in appeals being registered and this reflects the increase in traffic movements as Covid restrictions were gradually lifted as well as the increase of Low Traffic Neighbourhood and Safer School Street schemes. Adjudicators have made significant efforts to responded to this increase. The number of appeals decided has arisen by a similar proportion (see Report at page 6).

The Adjudicators would like to take this opportunity of thanking the Proper Officer team who, despite various changes we have made to facilitate a return to face to face hearings, 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.

Following 12 years' service Caroline Hamilton has departed the Environment and Traffic Tribunal as its Chief Adjudicator.

The Adjudicators wish to place on record their gratitude for all her hard work and dedication and wish her well in her new role as Chief Adjudicator to the Traffic Penalty Tribunal.

Caroline remains an Adjudicator with the Environment and Traffic Tribunal.

The Environment and Traffic Adjudicators are pleased to present their joint report to the Transport and Environment Committee.

Anthony Chan
Interim Chief Adjudicator
Environment and Traffic

September 2022

1. WORKLOAD

The downturn in the number of appeals last year reflected the period when traffic movements were reduced due to Covid measures. From 2021, there is a gradual return to routines and motorists are beginning to return to their previous patterns of vehicle use. The increase in the percentage of appeals that relate to moving traffic contraventions continues to rise. One reason for this is that motorists have not noticed that their usual routes for commuting or school runs have become restricted under low traffic and school street schemes. Another factor is that motorists will not be aware of a penalty charge notice until it is served by post, which may be up to 28 days after the contravention. This will mean that the motorist who drives “on auto-pilot” has driven in contravention of a single restriction on a number of occasions before the first Penalty Charge Notice 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 penalty charge scheme.

Motorists must remain alert to signs and lines and comply with prohibitions, even when travelling along familiar or local routes. This is always the position, whether or not they 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 at the County Court at Northampton 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
 - a. Notice to Owner (parking)
 - b. Enforcement Notice (bus lane)
 - c. 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 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.

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 clearly stated on the face of the order itself, but it remains an ongoing misunderstanding for motorists who received such orders.

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.

When an appeal is registered in such circumstances, it is determined on the evidence then submitted, in the same way as any other scheduled appeal.

Most of the Witness Statements and Statutory Declarations are made under Ground 2 above. During the reporting year, Adjudicators were noticing that a number of these were not made appropriately. In some cases, this is caused by motorists believing mistakenly that their informal representations made before the service of the Notice to Owner entitled them to a Notice of Rejection. In other cases, especially those where the motorists have made repeated claims that they have not received a Notice of Rejection, Adjudicators have held that the motorists had not followed the correct procedure to preserve their rights to appeal. This has resulted in 4,470 payment directions in this reporting year.

APPEALS

TOTAL of all: (previous year in brackets)

45,722 (32,780) appeals registered

5,344 (7,305) statutory declaration/witness statement referrals

51066 (40,085)

42,256 (28,034) appeals were determined

18,131 (13,161) appeals were allowed of which 9,200 (7,161) were not contested

24,125 (14,873) 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.

Personal appeals in the reporting year were achieved by face to face or telephone hearings. Despite the increase in the number of appeals registered, 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

19,893 (15,800) appeals were received
3,825 (5,449) referrals were made
TOTAL: 23,718 (21,249)

Parking appeals decided

16,821 (14,702) appeals were determined

Allowed

8,129 (7,496) appeals were allowed of which 4,542 (4,303) were not contested

Refused

8,692 (7,206) appeals were refused

Bus Lane

1,293 (1,556) appeals were received

102 (247) referrals were made

TOTAL: 1,395 (1,803)

Bus lane appeals decided

1,246 (1,350) appeals were determined

Allowed

639 (767) appeals were allowed of which 371 (446) were not contested

Refused

607 (583) appeals were refused

Moving Traffic

23,692 (15,317) appeals were received

1,417 (1,613) referrals were made

TOTAL: 25,109 (16,930)

Moving traffic appeals decided

23,362 (11,895) appeals were determined

Allowed

8,948 (4,853) appeals were allowed of which 3,913 (2,388) were not contested

Refused

14,414 (7,042) appeals were refused

There is a slight increase in parking appeals as parking enforcement reduced during the lockdown. Once restrictions were lifted there was an increase in moving traffic appeals, inflated by the implementation of low traffic neighbourhood and safer school street schemes.

London Lorry Control

141 (94) appeals were received

0 (0) referrals were made

London Lorry Control appeals decided

129 (79) appeals were determined

Allowed

55 (44) appeals were allowed of which 37 (24) were not contested

Refused

74 (35) appeals were refused

Litter and Waste

13 (13) appeals were received

0 (0) referrals were made

Litter and Waste appeals decided

8 (8) appeals were determined

Allowed

1 (1) appeal was allowed

Refused

7 (7) 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

Direct Vision Standards

690 appeals were received

0 referrals were made

Direct Vision Standards appeals decided

690 appeals were determined

Allowed

359 appeals were allowed of which 337 were not contested

Refused

331 appeals were refused

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: 208

Recommendation accepted: 64 (94)

Deemed accepted: 88 (107)

Recommendation Rejected: 56 (59)

PERSONAL / POSTAL APPEALS

Of the 45,722 appeals that we received, just under 30% were personal (face to face or telephone) hearings. This represents a slight drop in the proportion of personal hearings than in the previous reporting year.

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.

When Adjudicators were able to resume face to face hearings in December 2021, they have continued to offer telephone hearings to those who prefer them.

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:

APPELLANTS

Parking 49 (12)

Bus Lane 2 (2)

ENFORCEMENT AUTHORITIES

Parking 45 (45)

Bus Lane 0 (1)

Moving Traffic 24 (8)

London Lorry Control 0 (0)

Direct Vision Standards 0 (0)

Litter and Waste 0 (0)

Total 75 (22)

Moving Traffic 10 (10)

London Lorry Control 0 (0)

Direct Vision Standards 0 (0)

Litter and Waste 0 (0)

Total 55 (56)

2. FREQUENT ISSUES

Adjudicators wish to highlight several common issues in the reporting year.

Challenges to procedure

As camera enforcement increases, motorists find it more difficult to challenge evidence surrounding an alleged contravention. More motorists and their advisors are making challenges to the enforcement process itself.

Adjudicators have found that some authorities do not address these challenges in any meaningful way if at all. All too often, a Notice of Rejection gives the impression that it was a generic response, which gives motorists further grounds for complaint.

Transfer of liability

While liability for a penalty normally falls on the registered keeper of the contravening vehicle, liability can be transferred in the case of vehicles hired for less than six months to the hirers. In the case of long leases, the lessees may become liable depending on the terms and conditions of the lease.

Adjudicators have found that the legal difference between short-term hire and long leases are not well understood by motorists and authorities. Furthermore, for a transfer of liability to occur in short-term hires, the hire firm must provide documentation of the hire as required by law. These requirements are also not well understood with some authorities insisting on strict compliance while other would accept a transfer without ever seeing the documentation.

Adjudicators would urge hire companies and authorities to pay greater attention to the legal issues involved before the matter reaches the appeal stage.

Change of vehicle ownership

Penalty Charge Notices (other than those served on parked vehicles or handed to the motorist) and Notices to Owner are issued to registered keepers whose details are obtained from the Driver and Vehicle Licensing Authority (DVLA). In some cases, Penalty Charge Notices are sent to a former keeper of a vehicle because the change of registration has not been recorded by the DVLA. When this occurs, the former registered keeper will be expected to provide proof of a change of ownership.

Most enforcement authorities have indicated that they will only accept confirmation of change of ownership from the DVLA. Motorists on the other hand have reported that there are substantial delays at the DVLA. The delays in obtaining proof can then cause delays to the disposal of the appeals.

To avoid these delays, motorists need to register the disposal of their vehicles promptly and authorities may need to consider accepting other forms of proof, such as a sales receipt backed by a transfer of money, or by letters of insurers showing an amendment of vehicle details in an insurance policy.

Theft / Cloning of Vehicles

Motorists have from time to time claimed that their vehicles had been stolen or that the contravening vehicles are clones of the motorists' vehicles. Authorities are asking routinely that these claims must be substantiated by police reports.

Until recently, motorists would normally provide a crime reference number which the authorities can seek to verify with the police. Motorists are now reporting that the police no longer issue crime numbers for cloned vehicles and authorities have reported that even if there is a crime number, they are no longer able to obtain information from the police.

Motorists and authorities will need to consider the use of other forms of evidence to settle the issue.

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 by the High Court.

In a Judicial Review, a judge reviews the lawfulness of a decision or action made by the Adjudicator. In other words, Judicial Reviews are a challenge to the way in which the Adjudicator's decision has been made, rather than the rights and wrongs of the conclusion reached.

There were only a few Judicial Reviews of Adjudicators decisions in the reporting year. They were mostly challenges to the correctness of the Adjudicator's decision. These applications were refused because the decisions did not disclose public law errors.

Of note is the decision in *Michael Thomas Gallagher v the Adjudicator London Tribunals and London Borough of Tower Hamlets CO/302/2022, ETA 2210757685*.

The Authority issued a penalty charge notice to Mr Gallagher because his vehicle failed to comply with a motor vehicle restriction. This had occurred on a Bank Holiday Monday. Mr Gallagher argued that he was led to believe by the authority's announcement that the restriction was not enforced on a Bank Holiday.

The authority had given a public statement which stated: "traffic and parking enforcement by Tower Hamlets is relaxed on National Bank Holidays." The Adjudicator found that this statement would on its own give the impression that the restriction was not being enforced on the Bank Holiday, but he held that as the publication also stated that "there will be no enforcement on Christmas Day, Boxing Day and New Year's Day", it was clear that the relaxation applied only in respect of those 3 days.

Mr Gallagher's challenge application for a review of the decision by another Adjudicator failed and he applied for a Judicial Review.

The High Court upheld the Adjudicator's decision. The High Court's decision confirmed that motorists can legitimately rely on announcements about relaxation of enforcement. However, a substantive legitimate expectation can only be based on a representation which is clear, unambiguous and devoid of relevant qualification. The High Court found that the authority's statement failed to meet this test, so Mr Gallagher was not entitled to rely on it.

There was no suggestion that the Authority had intentionally misled motorists by issuing an ambiguous announcement. The case underlines the importance of need for clarity when making policy announcements about relaxation of enforcements, and that motorists must take care when relying on these announcements.

4. TRAINING AND APPRAISAL

TRAINING

Six 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. See section six 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 has taken 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 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. NOTE BY FORMER CHIEF ADJUDICATOR CAROLINE HAMILTON

Caroline Hamilton was appointed as a fee paid adjudicator in 1996 and held the position of Chief Environment and Traffic Adjudicator from 2010 to 2022. Caroline remains an adjudicator at London Tribunals, but has now taken up the post of Chief Adjudicator at the Traffic Penalty Tribunal. The Traffic Penalty Tribunal adjudicators are charged with determining road user, traffic and parking appeals issued to motorists in England and Wales outside of the 33 London Boroughs.

“As Chief Adjudicator at London Tribunals I was able to implement a number of changes that saw appeals being determined justly, in an efficient, cost efficient and proportionate manner. These efficiencies not only required adjustments to the tribunal’s scheduling and administrative processes but also saw more consistency in our outcomes, for example, through the introduction of panel hearings.

Even though we operate under a statutory fixed penalty scheme, adjudicators remain tasked with the judicial function of assessing evidence, making findings of fact and applying the law. There is always a margin of judgment in the assessment of evidence, but by introducing panel hearings, where cases raising similar issues are heard together by two or three adjudicators, a more thorough analysis of the law can be undertaken and a decision generated that holds more weight in terms of precedent, allowing for a more consistent application and approach.

Panel decision outcomes also provide councils and motorists with a clearer and more certain understanding of the law, enabling both to make informed decisions in relation to the relevant parking or moving traffic issues including whether the circumstances of a particular case disclose a valid ground of appeal.

Over the years panel decisions addressed issues that came to the adjudicators’ attention that appeared to cause uncertainty or confusion to a number of motorists, or where elements of the regulations required some deeper analysis. During my term of office panels were convened to consider the loading/unloading exemption, U turns, CCTV enforcement, Box junctions, technical challenges and hire agreements. These decisions have all served to provide clarity, with a view to reducing contraventions that often occur through error or a misunderstanding of regulations, rather than intent.

Working collaboratively with the Traffic Penalty Tribunal, we identified a number of cases where penalties had been issued on identical grounds to the same appellant company by authorities in London and outside London. We were able to group the appeals and arrange for an adjudicator from each jurisdiction to sit together in order to determine the appeals by way of a panel decision. This joint initiative achieved better certainty for both councils and motorists providing consistency wherever the

penalty charge notice had been issued and allowing councils and the motorists to act on an informed basis.

Exploring this more united approach has already been achieved though the cross-assignment to the Environment and Traffic tribunal of a number of the London Road User Charging Adjudicators, as I reported in the 2020/21 annual report (at page 22). Sharing each tribunal's expertise in this way, serves to benefit the statutory tribunals as a whole, allowing for greater cohesion as well as a saving in costs with shared processes, training and recruitment programmes.

In my new post I very much hope to be able to build on these examples of co-operation and collaborative working with London adjudicators, not only achieving further financial efficiencies for the public purse, but also with a view to achieving a consistent approach to the determination of appeals throughout the currently distinct jurisdictions.

I enjoyed my time as Chief Adjudicator at London Tribunals and I take this opportunity to express my thanks to the Transport and Environment Committee for its continued understanding and respect for the adjudicators as independent and impartial office holders exercising a judicial function.”

Caroline Hamilton
Chief Adjudicator
Traffic Penalty Tribunal
September 2022

6. THE ENVIRONMENT AND TRAFFIC ADJUDICATORS 2021/22

Anthony Chan *Interim Chief Adjudicator*

Philippa Alderson

Jane Anderson *

Teresa Brennan

Michael Burke

George Dodd *

Cordelia Fantinic

Henry Michael Greenslade

Natalie Goffe *

Caroline Hamilton

John Hamilton

Andrew Harman *

Richard Harris

Monica Hillen

Samina Iqbal

Anju Kaler

Herjinder Mann *

Alastair McFarlane

Gerald Mohabir *

Kevin Moore

Dharmesh Patel

Mamta Parekh

Belinda Pearce *

Neena Rach

Anita Reece *

Sean Stanton-Dunne

Gerald Styles

Carl Teper

Richard Thompson *

Timothy Thorne

Ini Udom

Jack Walsh

Paul Wright

**also Road User Charging Adjudicator*