

## The Environment and Traffic Adjudicators

ANNUAL REPORT  
2022-2023



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## CHIEF ADJUDICATOR'S FOREWORD

The Adjudicators have continued to work effectively and efficiently.

There is a slight reduction in the overall number of appeals received. The balance of the workload has shifted towards parking where there was a 12 % increase in caseload. The increase in moving traffic appeals in the previous reporting year has been reversed. There is a 15% reduction in moving traffic appeals.

Remote working is a facility that the Adjudicators have adopted during the last reporting year. Adjudicators are now conducting remote hearing of postal appeals when the workload permits. In the reporting year, remote hearings took place 2 to 3 days a month.

Adjudicators have continued to offer telephone hearings so that parties can chose to be heard without attending at the Hearing Centre.

The Tribunal has also trialled the use of hearings by video. We received positive comments from Appellants as well as Adjudicators. We shall work on issues revealed during the trial with the aim of rolling out video hearings in 2024.

Four Adjudicators returned to the Tribunal after a decision was taken to raise the retirement age of Adjudicators to 75 in line with other judicial office holders. The Tribunal has also appointed three Adjudicators who already hold appointments at the Traffic Penalty Tribunal. I extend a warm welcome to these Adjudicators.

The Adjudicators would like to take this opportunity of thanking the Proper Officer team who continue 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.

*Anthony Chan*  
*Chief Adjudicator*  
*Environment and Traffic*

*October 2023*

# 1. WORKLOAD

The overall number of appeals was similar to the previous reporting year. However, the balance of appeal types has shifted. There was a reduction in the number of moving traffic appeals and an increase to parking appeals. There can be various reasons for this. Publicity, the improvement of signage after successful appeals and some authorities modifying the restrictions after consultations may have contributed to the reduction in moving traffic contraventions.

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 but widespread. 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 5,024 payment directions in this reporting year.

## APPEALS

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

43,836 (45,722) appeals registered

7,143 (5,344) statutory declaration/witness statement referrals

**50399 (51066)**

32,765 (42,256) appeals were determined

14,757 (18,131) appeals were allowed of which 7,366 (7,161) were not contested

18,008 (24,125) 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

980 (1,246) appeals were determined

#### *Allowed*

616 (639) appeals were allowed of which 354 (371) were not contested

#### *Refused*

364 (607) appeals were refused

## Moving Traffic

19,467 (23,692) appeals were received

1,927 (1,417) referrals were made

**TOTAL: 21394 (25,109)**

**Moving traffic** appeals decided

15,749 (23,362) appeals were determined

*Allowed*

6,135 (8,948) appeals were allowed of which 2,702 (3,913) were not contested

*Refused*

9,614 (14,414) appeals were refused

## London Lorry Control

68 (94) appeals were received

0 (0) referrals were made

**London Lorry Control** appeals decided

66 (126) appeals were determined

*Allowed*

46 (55) appeals were allowed of which 27 (24) were not contested

*Refused*

20 (74) appeals were refused

## Litter and Waste

0 (13) appeals were received

0 (0) referrals were made

**Litter and Waste** appeals decided

0 appeals were determined

*Allowed*

0 appeal was allowed

*Refused*

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)

## Direct Vision Standard



636 (690) appeals were received  
0 referrals were made

**Direct Vision Standards** appeals decided

612 (690) appeals were determined

*Allowed*

472 (359) appeals were allowed of which 464 (337) were not contested

*Refused*

140 (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:** 228 (228)

**Recommendation accepted:** 75 (64)

**Deemed accepted:** 62 (88)

**Recommendation Rejected:** 91 (56)

## 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.

## REVIEWS

Either party can seek a review of the Adjudicator's decision, but a review can only be allowed under limited circumstances for example, when a party failed to appear or be represented at a hearing for some good reason; or when there is new evidence and the existence of this could not have been reasonably known of or foreseen before the decision.

The Adjudicators received 1103 applications for a review across all jurisdictions in the year. 233 applications were successful resulting in the original decisions being overturned.

## 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.

Appellants made 118 applications in the reporting year up from 75 in the previous year. Enforcement authorities made 83 applications up from 55 in the previous years.

22 of the Appellant's applications were successful. The Authorities received costs in 73 cases.

## 2. FREQUENT ISSUES

### **Challenges to the enforcement process**

Internet forums and a significant increase in Appellants using representatives have brought about more challenges to the enforcement process.

In *David Duthieuw v London Borough of Ealing (November 2022)*, the Adjudicator accepted the Appellant's submission that the camera used by the authority to enforce bus lane was not type approved by the Secretary of State. There was in fact no valid approval of the device for the bus lane cameras in London at the time of the decision.

In *Commercial Plant Services and others v Transport for London (May 2023)*, Adjudicators found that camera enforcement was not allowed for red route bays. The decision is contested at the High Court and we expect a determination by November 2023.

There are also numerous challenges to the contents of legal notices.

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 without any regard to what the motorists have said. This gives motorists further grounds for complaint. In some cases, despite the motorists repeating their arguments on appeal, authorities have still failed to address the points raised.

While the appeal regime is designed to act as an efficient and proportionate way to resolve disputes between motorists and authorities, authorities cannot expect Adjudicators to respond to an appeal on their behalf. They must engage on the issues at an appeal. They must do so with care and, where legal issues are raised, they must ensure that their responses are legally sound.

### **Cashless payment for parking**

Cashless payment is becoming more common across London. Many Londoners are reasonably familiar with the process. In many cases, payment can be made by phone or to one of the two main providers (Ringo and PaybyPhone) of the service via their respective apps.

Adjudicators have dealt with cases where motorists having seen a sign which says “pay by phone” opted to use the PaybyPhone app. It then transpires that what the sign was indicating was that payment can be made by phone and there is another sign on the payment machine which says that the service provider is Ringo. The motorist will be penalised. Whilst the wording “pay by phone” on the timeplate complies with the prescription in Column 5 of Item 7 (at 2(g)) in Part 4 of Schedule 4 to the *Traffic Signs Regulations and General Directions 2016*, Adjudicators would like to see better clarity and distinction between paying by phone literally and paying to the PaybyPhone.

### **Transfer of liability**

I have reported last year on issues concerning the transfer of liability when the registered keeper of a hired vehicle seeks to transfer of liability to the hirers.

Adjudicators have found that despite the restrictive statutory provisions which are re-stated in case law, parties are still not grasping provisions. Adjudicators noted that some authorities have allowed transfer even when the required evidence has not been provided. Adjudicators are then required to deal with appellants’ submissions that their representations have been accepted by some but not other authorities.

Adjudicators would urge hire companies and authorities to pay greater attention to the legal issues and consider the evidential requirements for a transfer before the matter reaches the appeal stage.

### 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 an Adjudicator's decision 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.

### 4. TRAINING AND APPRAISAL

#### TRAINING

Adjudicators have an annual training event when current issues are discussed. In view of the increase in complex issues being raised in appeals, the Tribunal will consider adding another event each year.

#### 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 2022 will next be appraised in 2024. However, as appointments have been made over the years, the cycles are not uniform, and some may occur each year.

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**

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

*The Environment and Traffic Adjudicators  
London Tribunals 2022-2023*