

Environment and Traffic Adjudicators

ANNUAL REPORT

2018-2019

The Environment and Traffic Adjudicators



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CHIEF ADJUDICATOR'S FOREWORD

I am pleased to present the adjudicators' joint annual report to the Transport and Environment Committee, providing an insight into the work of the environment and traffic adjudicators, the independent office holders appointed as the statutory tribunal, charged with determining parking, moving traffic, bus lane, London lorry control, litter and waste appeals.

The environment and traffic adjudicators are a mature appeals tribunal, with procedures, points of law and principle having become well established over the years. This has been achieved not only through guidance and direction provided by the Court of Appeal and Judicial Review outcomes, but also through determinations by adjudicators in our own key cases, panel decisions and consolidated hearings.

During the current reporting year, the adjudicators have continued to determine appeals justly, proportionately and efficiently, providing parties to an appeal with the opportunity of making written representations, or of attending a hearing in person, in order to give evidence or put their appeal representations directly to the adjudicator should they prefer to do so. The tribunal's flexible, user friendly facilities continue to provide access to justice to all who wish to contest a civil penalty

through appeal, following the formal rejection of representations by the issuing enforcement authority.

The annual report serves to highlight the work of the independent adjudicators and provides information to parties to an appeal, with a view to achieving a better understanding of the civil penalty scheme and the statutory grounds of appeal.

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.

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

The adjudicators take this opportunity of thanking the Proper Officer team for its continued able and dedicated administrative support.

Caroline Hamilton
Chief Adjudicator

1. WORKLOAD

CCTV evidence

This year saw a further increase in moving traffic and bus lane appeals with a reduction in parking contravention appeals. By way of explanation, it should be noted that The Civil Enforcement of Parking Contraventions (England) General (Amendment No.2) Regulations 2015 stopped CCTV enforcement of parking contraventions, other than on red route, bus stop, bus lanes and outside schools (see page 17).

For bus lane and moving traffic contraventions, CCTV enforcement remains in operation, allowing incidents to be recorded contemporaneously.

For the purposes of appeal, moving images can provide the adjudicator with a clear view of the location and the incident, as well as evidencing the adequacy and clarity of lines and signs, with the opportunity of observing the position of other vehicles that may have contributed to a transgression.

Clarity of evidence

The right of appeal to the adjudicator in general only arises when parties have made formal representations to the enforcement authority which have been rejected, with a statutory notice of rejection served. The very small number of appeals that are made to the adjudicator compared with the number of tickets issued in London, must be a reflection of matters being resolved to the satisfaction of the parties at

an early stage. It is certainly the case that the clarity of evidence that enforcement authorities are now able to collate and display to the motorist, in the form of contemporaneous photographs and recordings is high, providing the motorist with a clear and speedy illustration of the alleged contravention. The same technology applies to motorists, who are now far more likely to provide their own clear digital images to support their case.

Ongoing review by each party

The appeal process of necessity includes an ongoing review by each party, further or better evidence sometimes only being provided at appeal stage. The reference below to appeals that have been allowed, not having been contested by the enforcement authority reflects the ongoing obligation on parties, to review their respective positions. A large proportion of the appeals that are not contested by the enforcement authorities arise where late evidence, supporting the sale, lease, or hire, of a vehicle is provided to the enforcement authority by the registered keeper company, only after a notice of rejection has been issued and an appeal lodged. The authorities will not have had the opportunity of assessing that evidence prior to the appeal having been registered and any decision not to contest the appeal will generally result in a fresh notice to owner being served on the relevant party.

Multiple penalty charge notice appeals

Each notice of appeal is registered by the adjudicator under a single case number and is recorded by the case management system as one case, although a single appeal may contain multiple penalty charge

notices. This automated recording system explains discrepancies in the outcome numbers detailed below. It must also be remembered that the figures include appeals registered by the adjudicator in the previous year that were scheduled or determined in the reporting year.

Statutory Declaration and Witness Statement referrals

The referrals to the adjudicator of Orders made at the Traffic Enforcement Centre of the Northampton County Court continue to form a large part of the adjudicators' workload. Although a clear warning is recorded on the face of the Court Order itself, motorists still frequently, incorrectly assume that the order cancels the penalty charge notice. It does not. The order simply returns the enforcement process to the point where communication between the parties, or the tribunal failed.

Once a court order and supporting evidence has been referred to the adjudicator, the motorist is invited to substantiate the witness statement or statutory declaration relied on. It is only when the adjudicator is satisfied that a right of appeal has been established, that the case will be listed before an adjudicator for determination on the merits. These cases are addressed in the usual way, the appellant being offered the option of selecting a personal or postal decision, returning them firmly to the appeal path that has been missed only as a result of mail going astray.

Where no appeal rights are established, the adjudicator will make a payment direction.

It must be underlined, that the process is not a mechanism for avoiding penalties or for accessing the statutory right of appeal when the correct procedures and statutory regulations have not been followed.

Our case management team is now able to process the enforcement authority's statutory referrals through the automated case management system, allowing for a swifter referral to the adjudicator and a more timely outcome.

APPEALS

TOTAL of all:

37,051 (38,093) appeals received

6,099 (5,811) statutory declaration/witness statement referrals

Total: 43,150 (43,904)

36,473 (36,217) appeals were determined

17,600 (17,584) appeals were allowed of which 9,752 (9,396) were not contested

18,873 (18,634) appeals were refused

The individual appeal types had the following receipt numbers and outcomes.

PARKING appeals received

22,245 (25,275) appeals were received

4,786 (4,701) referrals were made

TOTAL: 27,031 (29,976)

Parking appeals decided

22,118 (23,790) appeals were determined

Allowed

11,083 (12,348) appeals were allowed of which 6,264 (6,799) were not contested

Refused

11,035 (11,442) appeals were refused

BUS LANE appeals received

1,765 (1,678) appeals were received

206 (157) referrals were made

TOTAL: 1,971 (1,835)

Bus lane appeals decided

1,674 (1,588) appeals were determined

Allowed

902 (714) appeals were allowed of which 556 (314) were not contested

Refused

772 (874) appeals were refused

MOVING TRAFFIC appeals received

12,900 (11,004) appeals were received

1,107 (953) referrals were made

TOTAL: 14,007 (11,957)

Moving traffic appeals decided

12,552 (10,723) appeals were determined

Allowed

5,536 (4,454) appeals were allowed of which 2,883 (2,252) were not contested

Refused

7,016 (6,269) appeals were refused

LONDON LORRY CONTROL appeals received

131 (130) appeals were received

0 (0) referrals were made

London Lorry Control appeals decided

121 (110) appeals were determined

Allowed

73 (61) appeals were allowed of which 49 (31) were not contested

Refused

48 (49) appeals were refused

LITTER and WASTE appeals received

10 (6) appeals were received

0 (0) referrals were made

Litter and Waste appeals decided

8 (6) appeals were determined

Allowed

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

Refused

2 (0) appeals were refused

RECOMMENDATIONS:

Under the terms of the Traffic Management Act 2004, where an adjudicator does not allow an appeal, but is satisfied that there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled he may recommend that the enforcement authority cancel the notice to owner. Thereafter it is the duty of the enforcement authority, to which a recommendation has been made, to consider afresh the cancellation of the notice to owner, taking full account of all observations made by the adjudicator and, within a period of 35 days, to 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 within the statutory time frame or at all, the recommendation is deemed to have been accepted and the notice to owner must be cancelled. This power, is to be used sparingly by the adjudicator, "compelling reasons" necessarily requiring a high threshold, as is reflected in the small number of recommendations made in this reporting year.

Refused with a recommendation: 471 (443)

Recommendation accepted: 142 (172)

Deemed accepted: 173 (121)

Rejected: 156 (150)

PERSONAL/POSTAL APPEALS

Either party to an appeal may elect to attend their appeal hearing. Under the regulations the Adjudicator also has the power to direct attendance.

The tribunal provides parties to an appeal with the opportunity of selecting the type of appeal they want (personal attendance or determination on the papers) on the notice of appeal form, either issued with the Notice of Rejection or accessed through the online appeal portal. The form includes a timetable where preferred availability can be indicated when a personal appeal has been requested.

This year our postal/personal appeal scheduling processes were amended and simplified. The tribunal previously scheduled a personal appeal hearing for appellants who neglected to make an appeal type choice, or to those whose selection was equivocal (for example ticking both the postal and personal selection boxes on the notice of appeal form, or making no selection at all). In such cases, rather than automatically providing a personal hearing listing, the appeal is now scheduled for a postal determination.

This change was implemented when it had over time become clear that a large number of such appellants who had been provided with personal hearing slots, were simply failing to attend the tribunal hearing.

A further analysis of attendance also established that a number of appellants, who had not knowingly selected a personal hearing, but who had been provided with a personal hearing slot, had attended the hearing centre in the mistaken belief that they had been summonsed, or directed to attend by the adjudicator.

A party provided with a postal hearing listing, who indicates before the case is decided, that a personal hearing was expected is still upon request, given the opportunity of attending the tribunal in person.

This change in our processes is reflected in the statistics below and has meant that the appeals scheduled for a personal hearing, are cases where the appellants have clearly indicated that they wish to attend. This has reduced the number of “no show” cases, which in turn allows for an earlier hearing slot and resolution for appellants genuinely seeking to attend.

Postal Hearings: 30,986 (25,200)

Personal Hearings: 6,055 (11, 082)

The tribunal also continues to list personal application hearings that arise further to the referral of statutory declaration or witness statement orders, costs, applications for review and other ancillary matters. These attendances are not recorded in the above statistics.

COSTS

The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, provide that the adjudicator shall not normally make an order awarding costs and expenses but may make such an order

- (a) Against a party (including an appellant who has withdrawn his appeal or an enforcement authority which has consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) Against an enforcement authority where he considers that the disputed decision was wholly unreasonable.

An order for costs is not the norm and cannot be considered by the adjudicator unless an application is made by a party to the appeal. The burden rests with the applicant to demonstrate that the conduct relied on meets the requirements of the regulations and that the costs claimed have actually been incurred. The adjudicator has no power to make an award of compensation or for damages.

Applications for costs listed for determination by the adjudicator:

APPELLANTS

Parking 75 (55)

ENFORCEMENT AUTHORITIES

Parking 91 (12)

Bus Lane 4 (9)	Bus Lane 3 (1)
Moving Traffic 22 (29)	Moving Traffic 43 (3)
London Lorry Control 0 (0)	London Lorry Control 0 (0)
Litter and Waste 0 (0)	Litter and Waste 0 (0)
Total 101 (93)	Total 137 (16)

2. KEY CASES

Postal penalty charge notices.

The Traffic Management Act 2004 introduced provisions that allowed for the service of penalty charge notices for parking contraventions by post. This was put in place to stop the perceived problem of “drive aways” – motorists who parked in contravention, but who drove away from the scene before the parking officer had fixed the penalty charge notice to the vehicle, or, had served the notice to the person appearing to be in charge of the vehicle, as previously required under section 66 of the Road Traffic Act 1991.

Lawful service of a penalty charge notice can now be achieved by post, after an observation on the street, with no ticket served to the vehicle or driver, because it had been driven away prior to service of the penalty charge notice, or, further to a remote observation via an approved camera monitoring device.

By the time the 2004 Traffic Management Act came into force (2007), disputes from “drive aways” had largely diminished, through the increased use of digital cameras that allowed civil enforcement officers

on the street to record service of the penalty charge notice to the vehicle.

Photographing a vehicle parked in contravention, with the penalty charge notice served to the vehicle's windscreen is now routine and easily achieved.

The Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015, stopped CCTV observations by providing that enforcement authorities could no longer enforce penalty charges for parking contraventions recorded by CCTV equipment leading to the issue of a penalty charge notice by post.

A number of exceptions to this change were provided under the regulations, very importantly one of which related to vehicles that are parked in the "keep clear" areas that are marked outside schools.

For obvious reasons, it was considered imperative that these areas were kept clear of vehicles driving, stopping and moving off, at locations where children are milling around, rushing to and from school.

The relevant amended regulation in full and typical signs and road markings are reproduced below:

Penalty charge notices for contraventions on a road – service by a civil enforcement officer

9A.—(1) This regulation applies in relation to the service of a penalty charge notice where a vehicle is stationary on a road in a civil enforcement area.

(2) Except as provided by the following paragraphs a penalty charge notice with respect to the vehicle may be served only by the fixing of a notice to the vehicle by a civil enforcement officer who has reason to believe that a penalty charge is payable with respect to it.

(3) The requirement in paragraph (2) that the notice may be served only by the fixing of a notice to the vehicle does not apply—

(a) where the civil enforcement officer is able to serve the penalty charge notice by giving it to the person appearing to the civil enforcement officer to be in charge of the vehicle;

(b) in the circumstances mentioned in either paragraph (1)(b) or (1)(c) of regulation 10;

(c) in any of the circumstances specified in paragraph (6).

(4) Where the circumstances specified in paragraph (3)(a) apply, the civil enforcement officer may (instead of fixing the notice to the vehicle) give the notice to the person appearing to the civil enforcement officer to be in charge of it.

(5) Where any of the circumstances specified in paragraph (6) apply the penalty notice may be served by a civil enforcement officer who has reason to believe that a penalty charge is payable with respect to it—

(a) by fixing it to the vehicle; or

(b) by giving it to the person appearing to the civil enforcement officer to be in charge of the vehicle.

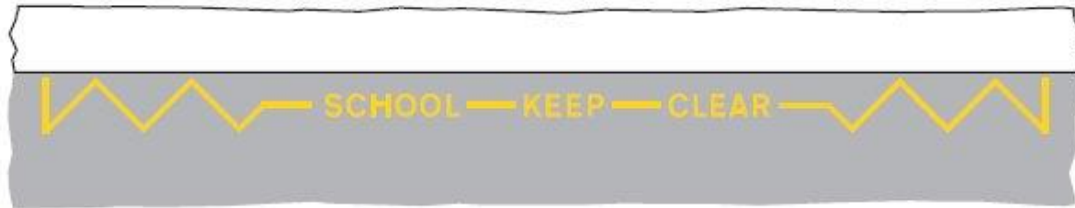
(6) The circumstances referred to in regulation 9A (3)(c) are that a vehicle is stationary in a civil enforcement area on—

(a) a bus lane;

(b) a bus stop clearway or bus stand clearway;

(c) a carriageway outside a school entrance which is marked in accordance with diagram 1027.1 of Schedule 6 and diagram 642.2A of Schedule 2 to the Traffic Signs Regulations; or

(d) a red route.



Peoples v London Borough of Bromley (ETA 2180150154)

In this case the adjudicator Mr Houghton analysed the extent of the contravention “stopped in a restricted area outside a school.” His decision upholding the penalty charge follows:

Adjudicator's Reasons

The Appellant's vehicle is seen in the CCTV evidence to be stationary between the white lines marking the centre of the carriageway and the Keep Clear markings, close to, but not touching them. While the vehicle is stationary a passenger leaves it.

She appeals on effectively two grounds. The first is that the vehicle, although stationary, was so only in the ordinary course of driving in that it was stopped in stationary traffic. The legal basis for exemption in these circumstances would be that the vehicle is stationary in order to avoid an accident (in that if it continued to move it would run into the vehicle ahead of it). However it seems to me the CCTV evidence does not

support exemption on this basis. There is seen to be no vehicle immediately ahead of the Appellant's preventing its progress at the time when the passenger leaves the vehicle.

The second ground of appeal is more fundamental. The Appellant submits that as her vehicle was not on the markings i.e. touching them, no contravention occurs. One cannot criticise her for taking this point in view of way the legislation is drafted; and in addition I note that she succeeded on this point in a decision of my learned colleague Mr Harman (case 2170011082), a decision which is not binding on me and with which I regret I am unable to agree for reasons set out below. If this submission is correct it seems to me it drives a coach and horses through the underlying road safety purposes of these markings and is not a position to be arrived at unless no other construction of the legislation is possible. I adjourned the hearing to obtain a considered response from the Council, which has replied as follows:-

Response re Adjudicator's adjournment request-In the opinion of the London Borough of Bromley a literal interpretation of the regulations meaning of "on" in this instance serves to defeat the purpose of the regulations in the first place, and the intention of Parliament when drafting them.

The London Borough of Bromley contends that there can be little doubt in this instance that the regulations were drafted so as to improve road safety outside of schools, which the Government deemed so serious in 2015 the Deregulation bill permitted this and only 3 other contraventions

that could continue enforcement with the use of CCTV. In our opinion, to then interpret them literally can only serve to contradict the intention of Parliament when drafting them, as effectively the conclusion, which is being suggested, is that a civil parking contravention only occurs if a motorist wheels are on, overlaps or encroaches on the actual "paint" in the carriageway.

Should a motorist "stop" adjacent to said markings without a wheel on the markings a contravention has not occurred, however, by doing so the motorist has obstructed the highway and increased the potential for dangerous driver behaviour outside of schools, which seems to negate Parliament's purpose for drafting the regulations in the first place. The principle of establishing the intent/purpose of Parliament when drafting regulations was covered in significant detail in the "Supreme Court of Justice: WOLMAN - case reference: C6/2006/0862", whilst the London Borough of Bromley acknowledges that this case referred to the footway parking regulations, the London Borough of Bromley considers that the points covered and conclusions drawn remain relevant and comparable.

The London Borough of Bromley would also bring to the attention of the adjudicator, the decision made in "London Borough of Bromley vs HARVEY - ETA case reference: 2160254780". In that case similar arguments were presented by the appellant, however, the adjudicator found that in respect of the wording on a no stopping sign, an interpretation which concluded that a motorist would be aware that they could not stop outside of a school on any part of the carriageway where there are no stopping restrictions but no upright signs, whereas when

such a sign was present they would conclude that this applied only to the "paint" on the carriageway was dubious at best, if not flawed.

The London Borough of Bromley sought the opinion of several other London Boroughs who have influenced the above submission and has asked London Councils to approach the Department for Transport direct for clarification on this matter.

The London Borough of Bromley respectfully requests that the appeal be refused for the reasons as outlined in the original evidence submission and as above.

Schedule 7 part 6 Traffic Signs Regulations and General Directions 2016 (TSRGD) provides as follows:-

School etc. entrances (diagram 1027.1)

2. The road marking provided for at item 10 of the sign table in Part 4, when not placed in conjunction with an upright sign which includes the symbol at item 12 of the sign table in Part 3 of Schedule 4 (prohibiting stopping on entrance markings), indicates a part of the carriageway outside an entrance where vehicles should not stop.

3. Subject to paragraph 4, the road marking at item 10, when placed in conjunction with an upright sign which includes the symbol at item 12, conveys the prohibition that, subject to the exceptions in paragraph 5, a person driving a vehicle must not cause it to stop on that marking

(a) if the sign placed in conjunction with the marking does not show a time period, at any time; or

(b) if the sign shows a time period, during that period.

In many cases of school entrance markings their existence will pre-date the TSRGD 2016 and there will therefore be a Traffic Management Order (TMO) in place; and these normally specify in a Schedule, as they do in the case of Day's Lane, that the stopping prohibition applies to the "side" of the various roads there listed. This was the situation in Harvey, and in such cases it is clearly a little easier to come to the conclusion that the prohibition applied to that extent. That prohibition has in all such cases for many years been signed with the type of signage in the present case (- the only prescribed signage available -) which has to the best of my knowledge been generally accepted by Adjudicators as adequate to indicate the effect of such a TMO i.e. a prohibition applying to the whole of one side of the carriageway. It seems to me improbable that The TSRGD 2016, in dispensing with requirement for a TMO, intended to create a new type of restriction which only applied to vehicles whose wheels were touching the paintwork of the marking. It would seem to be an extraordinarily unsatisfactory situation if there were in effect two sorts of markings, one operational to the centre of the carriageway if there were a supporting TMO, but another restricted to the paintwork if there were not, with no means of distinguishing the two.

In ordinary language one routinely describes a vehicle as parked "on" a yellow line or "on" a red route without implying that the wheels are necessarily touching the paintwork. In the case of all waiting and stopping prohibitions (red routes, yellow lines, clearways, zebra crossings), it is not the case that an enforcement authority Council has to prove a vehicle touches the marking. In my view one should take a purposive approach to what is a road safety provision. In *Wolman*, cited by the Council, the issue arose as to whether a motorcycle parked on a stand with its wheels suspended a few inches above the footway could be said to be parked with wheels "on" the footway. The Court in the Course of its decision (that it could) said this:

Mr. Wolman submitted that as a matter of the ordinary use of language the word "on" in this context connotes some degree of physical contact, direct or indirect, between the wheels and the pavement. He referred us to the definition of the word "on" in various well-known dictionaries which support the view that its basic meaning describes the relative positions of two or more things, one of which is above and in contact with the other by which it is supported. However, as Lord Hoffmann observed in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 W.L.R. 896, 913, the meaning of words is a matter of dictionaries and grammars; the meaning of a document is what the parties using those words against the relevant background would reasonably have been understood to mean. In my view much the same applies to statutory provisions which, like commercial documents, have to be read in their own context. Language is a subtle medium and although a dictionary can provide us with examples of the way in which

individual words have been used, it cannot provide us with the meaning of an expression read as a whole in the context in which it was intended to be understood. A word such as "on" is in such common use in such a variety of expressions that for my own part I do not find dictionary definitions of its meaning or examples of its use very illuminating.

Mr. Manning drew our attention to a number of statements of high authority in support of the proposition that in interpreting a statute the court should examine the context of the legislation and have regard to the mischief at which it was directed, but in truth these principles are too well-established to call for the citation of any authority.

If the Appellant is right it would lead to a number of anomalies. A vehicle parked hard up against the lines but just not touching them could be entirely blocking the entrance affected which is not "kept clear" at all, and yet not be in contravention. As a result of the design of the road marking a vehicle parked very close to the kerb adjacent to part of the marking is not in contravention but a vehicle parked further out in the carriageway but just touching the point of a zig-zag is. Many keep clear markings are accompanied by single yellow lines indicating a waiting restriction in force outside keep clear hours. These certainly apply to the whole of one side of the carriageway and it would in my view be a little odd to have the more important, for road safety reasons, of the two restriction covering a much more restricted area.

The Traffic Signs Manual, the official DfT guidance for the placing of road signs states at Chapter 5 Para 22.23

“The markings should be not normally be placed on both sides of the road but only on the side on which the entrance is situated. However conditions may sometimes require otherwise e.g. where there are school entrances on both sides of the road or the road is so narrow that not to prevent parking on the opposite side is considered hazardous or a patrol operates at that point.”

It seems to me that the implication of this is that the Department assumed that markings apply to the side of the road.

In my view this is a situation where purposive approach should be taken and I agree with my learned colleague Mr Chan in Harvey, cited by the Council, where he said:

“Mr Harvey's submission may have some force if the Regulations were interpreted literally, but I think that a purposeful meaning of the signage should be preferred.

The purpose of preventing vehicles from stopping outside a school entrance is a safety issue. It prevents vehicles and children coming close to one another and it preserves sight lines between children and driver. The consideration applies whether the vehicle is on the yellow paint or two or three feet away. The fact that one may or may not have an upright sign does not affect this safety concern.

The logic behind Mr Harvey's submissions is also, with respect, dubious if not flawed. If Mr Harvey is correct, a driver who has less chance of appreciating that there is a prohibition because of the lack of an upright sign, would find himself in contravention by stopping within a length of the carriageway marked by yellow paint but the driver is permitted to stop in the same position because of the presence is an upright sign. It does not make sense. I think that the difference between Paragraph 2 and paragraph 3 is solely to set out that if there is a sign, the prohibition applies at the times indicated by that sign. The difference has nothing to do with whether the contravention only covers (or not) a vehicle physically on the yellow paint.”

For these reasons. I am satisfied the sign stating that stopping "on" the markings is prohibited is adequate to inform the motorist of the prohibition applicable to that side of the road set out in the TMO. By the same reasoning I would similarly hold that the vehicle was "on" the markings for the purposes of Schedule 7 part 6 para 2 TSRGD (although it is not strictly necessary to do so in this case where there is a TMO in force).

As the vehicle was stationary in breach of a correctly signed prohibition in the TMO it was in contravention and the PCN was lawfully issued.

That said, I am pleased to note that the Council has asked London Councils to take the matter up with the Department for Transport. It might be preferable if the point were put beyond argument by redrafting of the Regulation.

Using a Mobile Phone to Pay for Parking Time

This paper by adjudicator Mr Greenslade covers recurrent issues in the tribunal.



A convenience for motorists in recent years has been the advent of a facility to pay for parking by use of a mobile phone. Originally this involved making a call, often to an automated system, or by texting. More commonly now, this can be done by using a smart phone application or 'app'. Local authorities do not provide this service directly but rather contract with a particular company to provide the facility at their on-street, and sometimes off-street, parking places. There are a number of companies providing mobile phone payment options throughout London and indeed the rest of the country.

As at any parking place, it does remain the responsibility of the motorist always to ensure they park properly and this includes, where any payment is required, making sure that they pay for the correct vehicle, at the correct location, and for the correct parking period.

Adjudicators have noted that paying for the wrong vehicle at such locations is not uncommon. This can, for example, occur either because

an incorrect registration mark has been entered, such as transposing letter 'O' with numeral '0', or because the motorist has paid for a different vehicle when they have more than one registered on the system. Adjudicators may readily accept that these are genuine mistakes but must find that they are clearly the responsibility of the motorist.

However, it is not uncommon for Adjudicators also to encounter the situation where the appellant is adamant they have paid to park and can produce evidence of such payment in the form of a receipt showing the correct vehicle registration mark, the relevant time and date and the location number shown on the time plate but on close examination it turns out that the payment has been made for a completely different location to where the vehicle was actually parked. It might even be in a different city. This can be simply an error in entering the correct number but, in other cases, the driver has correctly taken down the location number shown on the bay time plate, and so believed that they have paid, when in fact the same location number actually relates to somewhere else entirely.

When using a global positioning system (GPS) enabled smart phone, the app will usually present the user with several nearby locations, generally highlighting the most likely. The user can then select the relevant one. Where, for whatever reason, this is not offered, or the motorist is using text or calling an automated system, then the location number must be entered. The number may be repeated back but not necessarily the name of the location.

There is, perhaps regrettably, no complete co-ordination of location numbers by the different providers. Whilst the best option would be for this to happen, realistically it is not likely to do so in the near future. Nevertheless, possible confusion for the motorist could be alleviated by enforcement authorities making it much clearer as to which provider is providing payment service at a particular location. Pay-and-display machines, where they exist, will show this. If there are no pay-and-display machines, then clearly the information must also be on, or very near the time plate, usually in the form of an additional sign on the post. Even if there is still a pay-and-display machine, it may be some distance away from the parking place and the motorist is not directed to seek it out if the time plate itself explains that paying by telephone is available. Adjudicators may hear that the last time the motorist parked in this bay it was X company that provided the payment service and they had not realised, because there was no sign, that it now it is Y company or, alternatively, that the last sign they saw in a street or two away was one for Z company.

Regardless of the motorist's responsibility, enforcement authorities could avoid much confusion by having a simple sign or sticker indicating the particular payment service being used. This need be little more than the provider's name/logo, as users are likely to recognise which company this is, if they have the particular app. If Item 7 in Part 4 of Schedule 4 to the *Traffic Signs Regulations and General Directions 2016* (sign for parking subject to payment condition) does not permit such variant on the sign itself, there is no reason why it cannot be on the

post. The providers themselves may well be happy to do this, if requested by the enforcement authority.

Recommendation

Adjudicators recommend enforcement authorities now give consideration to this observation regarding improving signage.

3. JUDICIAL REVIEW

As in previous years, of the 36,000+ decisions reached by adjudicators, only a very small number are subject to applications for permission to seek a judicial review in the High Court. Whilst the adjudicator will be the named defendant to the proceedings, it is the parties to the original appeal who make representations on the application, the adjudicator remaining impartial and ready to apply the law as clarified by the Court.

Outcomes

1. *The Queen on the Application of Eventech Limited –v- The Parking Adjudicator [CO/10424/2011] (Eventech Limited –v- London Borough of Camden PATAS 2110086039 and 211008604A (2011))*

The appeal was subject to a consent order further to alternative dispute resolution.

2. *The Queen on the Application of Daniel Lister -v- London Tribunals [CO/585/2018] (Daniel Lister -v- London Borough of Islington ETA 2170266425 (2017))*

The appeal:

Adjudicator's Reasons

“The appellant disputes the contravention stating that the only the back

of the sign is visible in the photographic evidence and he therefore believes it was not clearly visible at the date and time of the contravention.

The local authority accept that the angle of the video does not show the face of the sign but have submitted photographic evidence taken on the 8th and 12th April which is both before and after the date of the alleged contravention showing the sign to be present and clearly visible.

On the balance of probabilities, I am satisfied from the local authority's evidence that the contravention did occur and refuse this appeal.”

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

JUDICIAL REVIEW: The application was refused, the claimant's grounds were unarguable. They disclosed no error of law but instead a simple disagreement with the adjudicator's decision.

RENEWAL:

The appellant (claimant) applied for the claim to be renewed at an oral hearing, but this was refused; it was not made promptly with no good reason for the delay provided and the claimant had failed to advance any properly arguable ground to apply for judicial review, simply disagreeing with the adjudicator's decision.

4. TRAINING AND APPRAISAL

TRAINING

The adjudicators attended a training meeting in December 2018.

Adjudicators are part-time, independent office holders and the training sessions allow all adjudicators the opportunity of meeting and sharing their collected experiences. The key cases *Europcar Group Limited v London Borough of Camden (ETA 2170480403)* and *Peoples v London Borough of Bexley (ETA 2180150154)* were particularly highlighted in the December session.

APPRAISAL

The tribunal has a mandatory appraisal scheme in place, based on the model developed by the judicial office for first tier tribunal judiciary. The scheme has been reviewed and adapted for the particular needs of our tribunal.

The scheme is in place primarily to ensure the maintenance of the tribunal's standards and consistency of practices, but 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 other fee paid judicial appointments allowing them to share court and tribunal processes that have already been found to promote justice and efficiency.

The objectives of the 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 underwent full training followed by appraisals in December 2018. The general programme is due to resume in the first quarter of 2020.

5. The Environment and Traffic Adjudicators

1. Alderson Philippa
2. Anderson, Jane
3. Aslangul, Michel
4. Black, Angela
5. Brennan, Teresa
6. Brownhill, Ian
7. Burke, Michael
8. Chan, Anthony
9. Eldridge, Mark
10. Fantinic, Cordelia
11. Greenslade, Henry Michael
12. Hamilton, Caroline
13. Hamilton, John
14. Harman, Andrew
15. Harris, Richard
16. Hillen, Monica
17. Houghton, Edward
18. Kaler, Anju
19. Lane, John
20. Lawrence, Michael
21. Lloyd, Francis
22. McFarlane, Alastair
23. Moore, Kevin
24. Oxlade, Jo
25. Oliver, Michael
26. Patel, Dharmesh
27. Parekh, Mamta
28. Pearce, Belinda
29. Rach Neena
30. Iqbal, Samina
31. Shepherd, Jenny
32. Sheppard Caroline
33. Stanton-Dunne, Sean
34. Stott, Matthew
35. Styles, Gerald
36. Silk, Susan
37. Teper, Carl
38. Thorne, Timothy
39. Udom, Ini
40. Walsh, Jack
41. Wright, Paul