

Environment and Traffic Adjudicators

Protocol for addressing complaints regarding Environment and Traffic Adjudicators

January 2019

Introduction

- 1.1 Environment and Traffic Adjudicators are independent judicial office holders. They are appointed by the statutory joint committee, the Transport and Environment Committee (TEC), with the consent of the Lord Chancellor. One of the Adjudicators is designated the Chief Environment and Traffic Adjudicator and acts as the judicial head of the Environment and Traffic Adjudicators.
- 1.2 This document sets out the procedures for dealing with complaints about the personal conduct of Environment and Traffic Adjudicators. Such complaints are dealt with by the Chief Environment and Traffic Adjudicator.
- 1.3 The handling of complaints must be set in the context of the need to protect **judicial independence**. Environment and Traffic Adjudicators are not accountable to the TEC, the Lord Chancellor or the Chief Adjudicator for the decisions they take. The interests of justice require that, in their work, Environment and Traffic Adjudicators are independent of the views of the Local Authorities and the TEC and are not subject to their control. Their decisions, including procedural decisions and case management decisions, are judicial decisions and can only be challenged through the legal process.

2 Which types of complaint can the Chief Adjudicator investigate?

- 2.1 There are essentially two categories of complaint against Environment and Traffic Adjudicators: those relating to **judicial decisions** and those relating to **personal conduct**.
- 2.2 **JUDICIAL DECISIONS:** Referring to the way in which judicial functions have been exercised, or any proper steps in the process of reasoning underlying an Adjudicator's decision. Common complaints are that the Adjudicator made the wrong decision or said that the evidence of a party or witness was unreliable.

- 2.3 **PERSONAL CONDUCT:** Referring to the way the Adjudicator behaved when dealing with a case.
- 2.4 The Chief Adjudicator **cannot** investigate complaints about **judicial decisions**. He does not provide an alternative avenue of appeal for those who are dissatisfied with these decisions. Except where he is himself dealing with a case judicially as an Adjudicator, he cannot reverse, vary or set aside decisions that the Adjudicators have made. When sitting judicially, the Chief Adjudicator does so as an Adjudicator and not as the Chief Adjudicator as such. There is no right to have a case decided by the Chief Adjudicator; it is entirely a matter for him as to how cases are assigned.
- 2.5 People who are dissatisfied with an Adjudicator's decision, or with the way in which an Adjudicator conducted proceedings, must pursue the matter through the legal avenues available. These are:
- an application to an Adjudicator under regulation 11 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993 or paragraph 12 of the Schedule to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, for review of the decision;
 - an application to the High Court for judicial review.
- 2.6 The Chief Adjudicator **can** investigate complaints about **personal conduct**. As head of the Environment and Traffic Adjudicators, the Chief Adjudicator is concerned to see that standards of personal conduct by Adjudicators are maintained at the high level that the public is entitled to expect. In certain cases, he can discipline Adjudicators for misconduct. The Chief Adjudicator will consider and investigate complaints that appear to him to relate to the personal conduct of Environment and Traffic Adjudicators, subject to the conditions set out in this Protocol.
- 2.7 In the most extreme cases the TEC can, on the advice of the Chief Adjudicator and with the consent of the Lord Chief Justice and Lord Chancellor, remove Adjudicators from office for misconduct. This process would in practice be initiated only in the most serious cases, following an investigation undertaken by a Judge nominated by the Lord Chief Justice at the request of the Chief Adjudicator

3 What is meant by 'personal conduct'?

3.1 It is difficult to list every type of complaint about personal conduct. The Chief Adjudicator's responsibility will normally be confined to complaints about personal behaviour within the hearing room. However, it will extend to matters outside the hearing room where the allegations concern behaviour that might tarnish the reputation of the Adjudicators or breach the office holder's terms and conditions of service. Any complaint about an Adjudicator's personal conduct **must** be supported by specific examples.

3.2 Examples of personal conduct complaints about Adjudicators include:

- allegations of inappropriate remarks made during the course of a hearing;
- allegations of rude or offensive conduct towards a tribunal user; and
- unacceptable delay in giving a decision.

3.3 The Chief Adjudicator does not usually regard allegations of a conflict of interest as relating to personal conduct. If an Adjudicator is alleged to have an interest that should have caused him or her to step down from a case, this will usually give rise to possible grounds for applying for review or judicial review. In these cases the Chief Adjudicator will explain to complainants that whether or not to stand down is a matter of judicial discretion and the remedies available for challenging the decision. Where it might be useful for the Adjudicator complained against to be made aware of the complainant's concerns, the Chief Adjudicator may forward the papers to them.

4 Other considerations

4.1 Some complaints, which address personal conduct, may give rise to possible grounds for review or judicial review. Others are made while a case is still continuing. The Chief Adjudicator will not normally consider complaints about matters that are before an Adjudicator or are subject to judicial review in the High Court. In these

cases, complainants will be asked to contact the Chief Adjudicator again once all proceedings have been concluded (see also **Section 7**).

- 4.2 The Chief Adjudicator will not investigate complaints about personal conduct that appear to be trivial or without any foundation. Repeated complaints from a person who has previously made unfounded complaints may be dismissed without investigation.
- 4.3 In order for it to be investigated properly and to enable the Adjudicator concerned to have a reasonable opportunity to respond, a complaint must be made in reasonable time after the events complained of. It is unreasonable to expect an Adjudicator to recall events after a long passage of time. Furthermore, the tapes used to record cases are destroyed after three months. Where there has been delay in making a complaint, the Chief Adjudicator may still consider it where there are legitimate reasons for the delay. However, in deciding whether or not to investigate such a case, the Chief Adjudicator will consider whether the Adjudicator could reasonably be expected to remember the case and whether any materials exist that will enable the complaint to be investigated effectively.
- 4.4 The Chief Adjudicator may refuse to consider a complaint about an Adjudicator who has retired or resigned. However, depending on the circumstances of the case, he may ask the Adjudicator to comment on the complaint.

5 Making a complaint

- 5.1 Complaints about Adjudicators are received from various sources including legal practitioners, parties and other members of the public. They may come directly from the complainant or through an intermediary, such as a Member of Parliament. All complaints must include specific details of the grounds for complaint. The Chief Adjudicator will reject complaints in which it is simply alleged that an Adjudicator has misbehaved or has been rude or unsympathetic, but about which no further details are provided on request. Complaints must normally be made in writing. However, special arrangements may be made for anyone who cannot write down a complaint, for example because of language difficulties or disability.

5.2 Some complaints may come to notice in other ways, such as reports in the media. The Chief Adjudicator reserves the right to investigate any situation that has come to his notice in which it appears that an Adjudicator's personal conduct has been questionable. This applies regardless of whether or not a specific complaint has been received.

5.3 **Complaints should be addressed to:**

Head of Support Services
London Tribunals
PO Box 10598
Nottingham
NG6 6DR

email: queries@londontribunals.org.uk (we are unable to accept attachments)

DX: DX 324201 Nottingham 59

5.4 Complaints are also received from other sources, eg via the TEC or from Adjudicators themselves. Where any complaint is interpreted as relating, even partially, to an aspect of an Adjudicator's personal conduct, it will normally be passed to the Chief Adjudicator immediately.

6 What happens when a complaint is received?

6.1 If the Chief Adjudicator is of the view that he requires further information from the complainant, London Tribunals will write to the complainant for that information. When he has all the information he requires, he will decide whether to seek comments from the Adjudicator, either orally or in writing. He will explain that the comments may form part of the response to the complainant and will also ask the Adjudicator whether he or she is happy for any written response to be shown to the complainant. However, there is no entitlement for a complainant to see letters from the Adjudicator, as correspondence between the Chief Adjudicator, Adjudicators and officials is confidential.

- 6.2 It should be noted that permission is not requested from complainants to show a complaint to the Adjudicator concerned. It is assumed that submission of a complaint implies consent to disclose it to the Adjudicator.

7 What happens if the complainant...

... objects to the Adjudicator seeing the complaint or wants it to remain confidential?

- 7.1 London Tribunals will explain that the complaint can only be taken forward if it is disclosed to the Adjudicator. If the complainant does not respond within four weeks, the complaint will be treated as withdrawn. The complaints procedure assumes that complainants are willing for their names and the contents of their complaints to be disclosed in full to the Adjudicator concerned. If this is not the case an investigation usually cannot proceed.
- 7.2 Special circumstances may apply where a complainant is unwilling to be named, but the complaint appears to raise serious concerns about the Adjudicator's conduct. Details of the procedures to be followed in these cases are given in **Section 8**.

...says that proceedings are ongoing?

- 7.3 As a general rule, complaints are not investigated while a case is continuing. In these circumstances, London Tribunals will ask the complainant to notify it once the proceedings have been completed. In the meantime, the tape recordings of the case will be preserved.
- 7.4 Where serious allegations have been made the Chief Adjudicator may consider whether, in the best interests of justice, it might be more appropriate for subsequent hearings to be before a different Adjudicator. If this happens, and the Adjudicator is no longer hearing the case, an investigation may proceed if appropriate.

...says that the complaint forms part of the grounds of a review or judicial review?

- 7.5 It is normally inappropriate for London Tribunals to reply substantively to the complaint until the proceedings have been completed. London Tribunals will advise the complainant that it will not be able to respond until the proceedings have been concluded.

If the complaint and the grounds of the proceedings are effectively the same, or overlap to a great extent, the Chief Adjudicator will be bound by any decision made on the issue and will not be able to consider a complaint separately. The situation may be different if the case itself is subject to a review or judicial review, but the complaint relates to a separate issue.

8 Special circumstances

8.1 The Chief Adjudicator has a responsibility for maintaining the highest standards of judicial conduct. It would, therefore, be against the public interest for him to ignore any serious cause for concern. At the same time, he has a duty to deal with Adjudicators in accordance with the requirements of fairness and natural justice, and an obligation to consider the confidentiality of complainants who do not want their concerns to be brought to the Adjudicator's attention. However, where it seems to him that a complaint gives serious cause for concern he may decide to investigate on the basis of any other sources of information available. These may include transcripts, tape recordings, or the evidence of third parties. This may apply even if the complaint has been withdrawn, or it is clear that the complainant wishes his or her concerns to be treated in confidence. In these cases, the Chief Adjudicator will be guided by his view of the potential seriousness of the complaint, were it to be proven justified.

8.2 The Chief Adjudicator deals with special circumstance complaints according to the considerations detailed below.

Is there other information available, which might indicate whether or not the complaint is valid?

8.3 The Chief Adjudicator will first try to establish whether the complaint can be supported by information from other sources.

Other information is available, but it does not support the complaint

8.4 No further action will be taken. The complaint will remain withdrawn and no papers will be placed on the Adjudicator's personal file. The Chief Adjudicator will let the complainant and the Adjudicator know of this decision.

Other information is available, and it gives further grounds for concern

- 8.5 The Chief Adjudicator will put the complaint to the Adjudicator (including the information gained from other sources) and ask for comments in the normal way. The complainant will normally be informed that this has been done.
- 8.6 If the complainant has stated that they do not want the complaint to be disclosed the Chief Adjudicator will normally rely solely on the information from other sources.

There is no other source of information available

- 8.7 If the allegation is sufficiently serious, the Chief Adjudicator may still decide to put the complaint to the Adjudicator and ask for comments. In some cases, the public interest in investigating a complaint may override any obligations of confidentiality to the complainant. It may, therefore, be appropriate to put the original complaint to the Adjudicator, even though the complainant has stated that he or she does not wish to be identified. The complainant will normally be informed of the position.

9 Exceptional cases

- 9.1 A complaint about the conduct of an Adjudicator may be so serious in itself, or in combination with previous complaints already notified to the Adjudicator concerned, that the Chief Adjudicator may have cause for concern about the Adjudicator's suitability to remain in office. In these cases, the complaints procedures merge into the disciplinary procedure outlined in **Annex A**. If the Chief Adjudicator takes the view that, were a complaint to be upheld, the TEC would be justified in considering whether to remove the Adjudicator concerned from office, he will report the matter to the TEC for the Committee to decide whether the **Annex A** procedures should be implemented. The investigation may, as appropriate, include both the complaint itself and the previous conduct of the Adjudicator. The Investigating Judge will be given terms of reference and sent copies of relevant papers from the Adjudicator's personal file, including, if appropriate, the previous complaints made against him or her. The investigation will proceed in accordance with the procedure outlined at **Annex A**

- 10.1 When a complaint is being investigated, the Chief Adjudicator will give proper consideration to the complainant's account and the Adjudicator's response before making a decision on the basis of the evidence available.
- 10.2 He will study the Adjudicator's response very carefully and compare it to what has been said by the complainant.
- 10.3 When an Adjudicator's response does not appear to address all the points raised in the complaint, the Chief Adjudicator will ask the Adjudicator for further information as soon as possible.
- 10.4 As part of the investigative process, the Chief Adjudicator may obtain the tapes or transcripts of the hearing. Consideration may also be given to seeking the views of third parties who were present at the hearing. In such cases, he will tell the Adjudicator, in detail, what is happening.
- 10.5 When tapes or transcripts support the complaint, or when they call into question what the Adjudicator has said, he or she will be given a further opportunity to comment before a final conclusion is reached.
- 10.6 When a complaint has been investigated, the final reply to the complainant will clearly state whether or not it has been upheld. In every case, the Adjudicator will be sent a copy of the reply to the complainant.

11 Do Adjudicators see all complaints about them?

11.1 Adjudicators do not normally see complaints that are rejected without further investigation because, for example, they are:

- about judicial decisions or handling of the procedures;
- malicious or misguided;
- out of time.

No further action is taken in such cases.

11.2 While individual complaints that an Adjudicator has been unfair, or made the wrong decision, generally reflect nothing more than the disappointment of an unsuccessful party, it would be a cause of concern if an Adjudicator were to attract a disproportionate number of complaints. It might be that, while they had not behaved improperly, there is something in their hearing room manner which attracts criticism and which, if they were aware of it, could be addressed. If an issue of this sort arises, it will be dealt with as a personal development matter.

12 What details are kept on the Adjudicator's personal file?

12.1 Only complaints that have been investigated are placed on an Adjudicator's personal file. This paperwork will include a copy of the original complaint, the Adjudicator's response, and the final reply to the complainant. Copies of all other relevant documents will also be placed on the file.

12.2 If a complainant fails to respond to a request for further information, specifically withdraws the complaint, or requests that it be regarded as confidential, it will normally be treated as though it had been rejected without investigation. In these cases the Adjudicator will not be notified of the complaint and no record will be placed on the Adjudicator's personal file. However, if the complaint is investigated in accordance with the provisions of the sections on special circumstances and exceptional cases,

the Adjudicator will be notified and copies of the papers will be placed on his or her personal file.

- 12.3 An Adjudicator will always be informed of any complaint that is to be recorded on his or her personal file.

13 What action will be taken against Adjudicators when complaints are substantiated?

- 13.1 The Chief Adjudicator will determine how best to deal with each case on its merits. Where he concludes that formal disciplinary action may be required he will proceed in accordance with the laid down procedures (attached at **Annex A**).
- 13.2 Where action short of dismissal is considered appropriate, such as a rebuke or warning, the Chief Adjudicator will normally speak to the Adjudicator in person. The Adjudicator will be told the purpose and status of the meeting beforehand and will be given details of the matters to be discussed. He may invite the Adjudicator to offer an apology that he can pass on to the complainant, or seek an assurance that there will be no repetition of the events concerned. A note of the discussion will be made and placed on the Adjudicator's personal file. A copy will also be sent to the Adjudicator. The Chief Adjudicator will also normally write to the Adjudicator concerned following the meeting.
- 13.3 When there is a record of similar complaints from several different sources, the Chief Adjudicator may want the Adjudicator to reflect on whether this discloses a pattern of behaviour that needs addressing. The discussion will be confined to investigated complaints about personal conduct, of which the Adjudicator will already be aware, and where an investigation has already been completed.

- 13.4 When the Chief Adjudicator takes action in response to a complaint, he will inform the complainant, in general terms, of the action he has taken. In cases that have attracted publicity, he may make a public statement.
- 13.5 Anonymised details of complaints may be published in TEC Reports, answers to Parliamentary Questions and other public documents. Lessons learned from complaints may also be promulgated to other Adjudicators.

14 What are the timescales and limitations?

- 14.1 It is not possible to prescribe a specific timescale for dealing with complaints against Adjudicators given the depth of consideration necessary. The Chief Adjudicator aims to complete his enquiries and ensure that the complainant receives a substantive response as quickly as possible. In cases where this may take some time, the complainant and Adjudicator will regularly be informed about the progress of the investigation, until its conclusion. It is important that complaints for investigation under this Protocol be submitted without unjustified delay. The normal requirement for these to be made in writing is explained at Section 5. Complaints should normally be received within 14 days of the occurrence over which complaint is being made. The Chief Adjudicator may summarily dismiss a complaint received outside this timescale and will generally do so unless he is satisfied there is sufficient satisfactory explanation for the delay. Decisions of the Chief Adjudicator in relation to this Protocol will generally be regarded as final and re-opening of any decided complaint will only be under Chief Adjudicator discretion in response to exceptional circumstances.

15 Complaints against Adjudicators which relate to their conduct as barristers or solicitors

15.1 Complaints, in relation to Adjudicators' professional activities as barristers or solicitors, are matters for the professional bodies concerned. The Chief Adjudicator will not investigate them.

**PROCEDURE RELATING TO FORMAL REMOVAL OF ENVIRONMENT AND TRAFFIC
ADJUDICATORS FROM OFFICE**

1. The TEC may remove an Environment and Traffic Adjudicator from office on the following grounds.
 - misconduct;
 - being unable or unfit to discharge the functions of an Adjudicator

2. A decision to remove an Adjudicator from office would be taken with the concurrence of the Lord Chancellor and Lord Chief Justice. Such decisions would be taken following an investigation made at the request of the TEC, conducted by a Judge nominated by the Lord Chief Justice, in consultation with the Chief Adjudicator, who will report to the TEC and the Lord Chief Justice.