Road User Charging Adjudicators' Annual report 2019-20



Road User Charging Adjudicators' Tribunal London Tribunals PO Box 10598 Nottingham NG6 6DR

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Road User Charging Adjudicators' Tribunal Annual Report 2019-20

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1. Aims and objectives of the Road User Charging Adjudicators

- To provide all parties to road user charging appeals with independent, impartial and well-considered decisions based on clear findings of fact and the proper application of law.
- To have the appropriate knowledge, skills and integrity to make those decisions.
- To ensure that all parties to road user charging appeals are treated equally and fairly regardless of age, disability, sexual orientation, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief or sex.
- To enhance the quality and integrity of the road user charging appeals process.



2. The role of the Road User Charging Adjudicators

- Adjudicators are appointed in accordance with Regulation 3 of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended.
- Their role is set out by Regulations 11(2) and 16(2) of the same Regulations which state that an Adjudicator "shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in Regulation 10(3) or Regulation 13(3)."
- The Court of Appeal has made it clear, in the case of R (on the application of Joan Margaret Walmsley) v Transport for London [2005] EWCA Civ 1540 (17th November 2005), that it is not part of the Adjudicator's role to consider factors which fall outside of the grounds mentioned in Regulations 10(3) or 13(3) and accordingly what might be described as 'mitigating factors' are matters for the Enforcing Authority to consider and are not matters for Road User Charging Adjudicators.



3. "Statement of Requirements"

- as defined by the Greater London Authority ('GLA') and setting out the roles of the Chief Adjudicator and Adjudicators. In this Statement any reference to the "Service Provider" is a reference to London Councils which currently operates the Road User Charging Appeals (RUCA) Service under contract with the GLA.

1. Introduction

- 1.1 The Appeal Service is an independent judicial body providing decisions for appeals made against Transport for London (TfL) decisions to reject representations made against Penalty Charge Notices issued under the Road User Charging Scheme(s) operated by TfL.
- 1.2 Currently these schemes are the central London Congestion Charging Scheme, the London Low Emission Zone scheme and the London Ultra Low Emission Zone scheme. All three schemes fall under the adjudication provisions set out in the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001* as amended, the "Enforcement Regulations" and the relevant "Schedule" to it.
- 1.3 Adjudicators are appointed by the Lord Chancellor.
- 1.4 Adjudicators are supported by administrative staff and have facilities provided for them to enable them to sit and determine appeals. The GLA, as the authority, are required to make provision for these services and undertake this through appropriate outsourcing.
- 1.5 The Adjudicators are guided and managed by a Chief Adjudicator; subject to the provisions of the Schedule, an adjudicator may regulate his own procedure and this is primarily derived through the Chief Adjudicator.

2. Chief Adjudicator Role

- 2.1 The Chief Adjudicator is a judicially appointed role and is the representative head of the "Tribunal" which encompasses the Adjudicators. The Chief Adjudicator is accountable to the Lord Chancellor by way of appointment but also to the GLA. The Chief Adjudicator is not an employee of either the GLA or the Service Provider, albeit that payroll and other such services shall be provided for the Chief Adjudicator and Adjudicators by the Service Provider.
- 2.2 The role of the Chief Adjudicator means they work very closely with and in conjunction with the Service Provider and the role aims to ensure a smooth and cost efficient delivery of the decision making aspects of the adjudication role. The role extends through to "managing" the Adjudicators in terms of administration and setting and determining policy and procedural guidelines, training and development and dealing with complaints. This also extends to a range of other functions including the consideration and distribution of cases to the Adjudicators for them to hear.

- 2.3 The Chief Adjudicator has a wide role to play within the operation of the Tribunal with duties covering and not limited to:
 - Appointing Adjudicators, with leave of the Lord Chancellor;
 - Determining the terms and conditions of such appointments and extending appointments;
 - Defending legal proceedings brought against Adjudicators;
 - Acting as the point of contact for media relations and promoting the work of the Tribunal.
- 2.4 The role of the Chief Adjudicator also extends into dealing with complaints made against Adjudicators under the Appeal Service's complaints policy and includes an advisory role in relation to the Proper Officer and the Tribunal's Support Staff.
- 2.5 In addition the Chief Adjudicator has an advisory and informative role as they are required to produce an Annual Report.



3. Adjudicator Role

- 3.1 Adjudicators are appointed in accordance with Regulation 3 of the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, as amended*.
- 3.2 Their role is set out by Regulations 11(2) and 16(2) of the same Regulations which state that an Adjudicator "shall consider the representations in question and any additional representations which are made by the appellant or any of the grounds mentioned in Regulation 10(3) or Regulation 13(3)."

- 3.3 An Adjudicator's role does not allow them to consider factors which fall outside of the grounds mentioned in Regulations 10(3) or 13(3), and accordingly what might be described as "mitigating factors". These are matters for TfL;
- 3.4 Adjudicators act and determine Appeals independently. They are not employees of either the GLA or the Service Provider;
- 3.5 Adjudicators provide all parties in the Appeals process with independent, impartial and well-considered decisions based on clear findings of fact and proper application of law;
- 3.6 Adjudicators have and maintain the appropriate knowledge, skills and integrity to make those decisions;
- 3.7 Adjudicators ensure that all parties to Road User Charging Appeals are treated equally and fairly regardless of age, disability, sexual orientation, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief or sex;
- 3.8 Adjudicators aim to enhance the quality and integrity of the Road User Charging Appeal process.



4. Support Staff Role

- 4.1 The Support Staff provide administrative support to the Adjudicators, including and not limited to:
 - Customer Service support;
 - Processing of Appeals and resolving queries over Appeals;
 - Scheduling Hearings.



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4. Chief Adjudicator's foreword

As this annual report goes to press, the Tribunal is dealing with the impact of an unprecedented shut down due to the coronavirus.

I decided to close the Tribunal for all hearings from the middle of March 2020. This coincided with the decision of Transport for London to suspend all road user charges.

In June 2020 telephone hearings were introduced in the tribunal and these have proved a successful way of handling appeals.

A number of adjudicators have worked from home in order to consider postal appeals and handle essential tribunal review functions.

I have not yet decided when face to face hearings can resume as this will require substantial changes to the current layout of the public areas as well as to the hearing rooms themselves.

For the years from 2003 up to 2019/2020 this tribunal has received 226,749 appeals, and closed 217,994 appeals. The number of receipts in 2019/20 from 2018/19 has nearly doubled from 9,812 to 17,734 appeals.

After its decision to suspend the charge at the outset of the pandemic, Transport for London reintroduced the charge from 18th May 2020.

There have been a number of temporary amendments to the scheme which are detailed in Section 5 below.

Transport for London has given no indication as to the duration of these changes, which came into effect on 22nd June 2020.

As I reported in last year's report, I decided to appoint new adjudicators to the Tribunal in view of the retirement of several adjudicators (many of whom had been in post since 2004) and the introduction of the ULEZ scheme with its potential to increase the number of appeals heard. The recruitment process was carried out throughout the summer and autumn of 2019 and has resulted in the appointment of 23 new adjudicators to the Tribunal.

A short account of the process by one of these new adjudicators is given at Section 7. I am very grateful to all those existing adjudicators who helped with the recruitment and training process. The names of all the current adjudicators are shown in Section 6 below.

The administrative and IT staff have continued to provide notable support to the tribunal and its functions over this last year and I record my thanks to them. One of the longstanding adjudicators – Michael Nathan – has recently retired and I would like to express my thanks to him for his long and valuable service to this tribunal. A short account of his career is included in Section 9.

Ingrid Persadsingh

Chief Road User Charging Adjudicator



5. Temporary changes to the congestion charge scheme

On 16th June 2020 Transport for London announced that it was bringing forward proposals to temporarily extend charging days and hours and increase the cost of the Congestion Charge. Transport for London have not indicated whether these changes will be permanent. The changes were introduced because of concerns that car traffic was back to pre-pandemic levels. Action also needed to be taken to improve conditions for walkers and cyclists. During the coronavirus lockdown traffic fell to around half pre-lockdown levels, with corresponding improvements to air quality in the capital.



From 22nd June 2020 the Congestion Charge increased to £15, and now operates seven days a week from 07.00 to 22.00 hours each day (except Christmas Day on 25th December).

Customers will have up to three days after the date of travel to pay the daily charge – although this will be at the higher rate of £17.50 in comparison to charges bought on or before the date of travel.

The residents' discount was closed to new applications on 1st August 2020. Residents who had not previously registered were given additional time to submit their applications.

On 22nd May 2020 the NHS staff reimbursement scheme was reinstated, together with the introduction of a new care homeworker reimbursement scheme. From 22nd June 2020 the expanded scheme for NHS patients came into force with new

reimbursement arrangements targeted at supporting frontline local authorities and charities who are dealing with coronavirus.

These will cover, for instance, additional trips made by staff at NHS Trusts, ambulance staff and those who work in care homes in the area. This change is in addition to the previously announced expansion of the NHS staff reimbursement scheme.

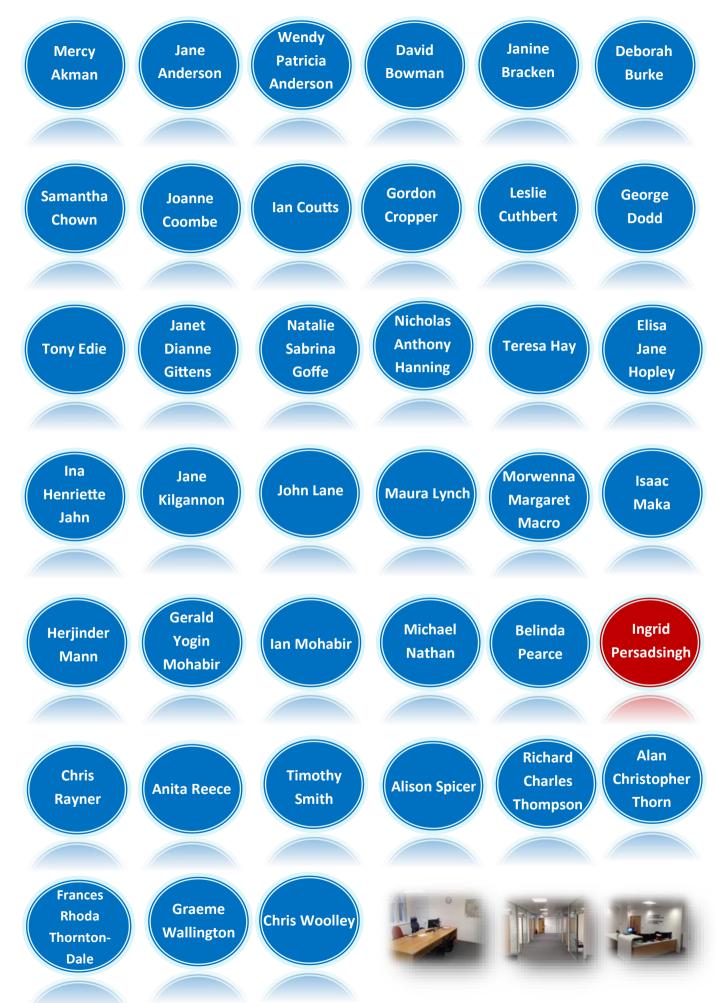
The Mayor has also introduced new reimbursement arrangements for local authority workers and charities operating in



the zone who provide particular support or services in response to the pandemic.

The reimbursement scheme also applies to NHS patients who are vulnerable to coronavirus. Local authorities and charities operating in the zone where they are providing support in response to the pandemic are also included. This could apply, for instance, to domiciliary care workers and volunteers supporting shielding residents.

6. Adjudicators who currently hear appeals



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7. Report of a recently appointed Adjudicator

I am a 'newbie' adjudicator. I was one of the successful applicants for the position of Road User Charging Appeal Adjudicator. The application process began in November 2018 and we were appointed by the Lord Chancellor in November 2019.

I do not live in London and I am a non-practising solicitor. When I applied for the position in 2018 I didn't fancy my chances – so much so that I didn't tell anyone that I had applied.

Why did I apply?

The short answer is, because I could! Proof of the adage my children have heard many times over the years encouraging them to get qualifications whenever possible - you never know when they might come in useful.

There were three other factors:-

My career has often taken unexpected turns and at this stage in my working life, I was intrigued about applying myself to something very different from my day to day work – how would it feel to be making the decisions rather than advocating on behalf of one party or another in a case?

My 'non-traditional' career path is complicated to explain, and I had a hankering for a job that could be described more easily.

Added to that, my ego was hankering for some recognition of 30 years of hard-won skills and experience.

Did I sail through the application process, absolutely not!

Like many legal professionals, I haven't had to apply for many jobs, so even listing out my previous employment and skills was a bit of a challenge, but that was nothing on the rest of the process – a qualifying test, followed by a scenario test based on the case of Walmsley (a case close to the hearts of all adjudicators) were a challenge and five months after applying, the email I had been waiting for arrived.

I was asked to attend a selection day in London!



The selection day included a role play of a personal hearing followed by a 40minute interview in front of a panel of three. The interviewers were unfailingly polite, but nonetheless wily and they asked me a series of probing questions. Any weakness in my answers was spotted, highlighted and probed at length. We all smiled when I was asked how I coped with stress – I had been stranded on a broken-down train that day and made the interview with 3 minutes to spare!

Another wait and then a congratulatory email which I was thrilled to receive.

Our training days followed at the beginning of this year. Together with the other new appointees, I was introduced to the Chief Adjudicator. We learnt about how to conduct postal and personal appeal hearings, how to make and communicate our decisions, the standards and behaviours expected of us and details of the appraisal system for monitoring our work. Most importantly, we could see how much support



was available to us from our administrator and IT colleagues and the experienced adjudicators working with us, many of whom also have other judicial roles outside of this tribunal.

I began to decide cases in February 2020 and the high level of support we were initially given continued.

We were encouraged to raise any query with one of the experienced adjudicators also sitting that day. Their patience was unfailing and we quickly gained experience and confidence in our work.

The final stages of our training were rudely interrupted by Covid-19 and between March and June 2020, the work of the tribunal was suspended. With the help of the Chief Adjudicator, the administrators and IT support, we are now completing our period of supervision and moving to dealing with postal and telephone hearings unsupervised as the tribunal slowly re-opens with enhanced safety measures in place.

In spite of the unwelcome interruption caused by Covid-19, I feel completely supported in my work as an adjudicator and I am looking forward to giving many years of service.

Here's to 2021.....

8. Independent Worker's Union of Great Britain v Mayor of London [2020] EWCA Civ 1046

This was an appeal heard by the Court of Appeal in which the operation of the Congestion Charging Scheme was considered.

It was an appeal from an order of Lewis J in the High Court who had dismissed a challenge made to an amendment to the Greater London (Central Zone) Congestion Charging Scheme. This amendment resulted in the removal of the exemption from payment of the congestion charge for licensed private hire drivers. In contrast black cab (or taxi) drivers continued to be exempt from the charge.

The judicial review claim before Lewis J argued that the removal of the congestion charge exemption for minicab drivers unlawfully discriminated against certain groups of minicab drivers on grounds of race and gender contrary to Section 19 of the Equality Act 2010. 94% of licensed minicab drivers in London are from Black and Minority Ethnic (BAME) background, whereas 88% of taxi cab drivers are white.



Lewis J held that the aim of the measure (removing the exemption from minicab drivers) was to reduce traffic and congestion within the congestion zone. The means adopted corresponded to a real need to reduce traffic congestion, and was appropriate and suitable to achieve that aim. No other measure would realistically achieve that aim. The measure was therefore proportionate and any indirect discrimination was not unlawful.

The Court of Appeal dismissed the appeal. The Court held that the measure of removing the exemption for minicab drivers was lawful and proportionate. The Mayor's overwhelming and legitimate aim was to reduce traffic and congestion in the zone. The only way of doing this was to reduce traffic and congestion in the zone. The measure and any discriminatory impact on BAME drivers was justified by the legitimate aim of reducing traffic congestion and pollution.

In the course of the judgment the Court of Appeal set out a succinct description of the role of any judge or adjudicator when assessing the evidence and reaching a decision: "It is not necessary for a judge to conduct a line by line analysis of all the evidence available, nor is there any duty on a judge, in giving reasons, to deal with every argument presented by counsel in support of his or her case. The judge's function is to reach conclusions and give reasons to support those conclusions". The same principles apply to adjudicators in this tribunal when assessing the material before them and when reaching their decision.



9. A farewell to Michael Nathan



Michael Nathan was one of the original solicitor appointees as a Road User Charging Adjudicator in December 2002, which heralded the introduction of the London Congestion Charging Scheme, and retired from his appointment in September 2020. He also served as a Parking Appeals Adjudicator between 2004 and 2015.

His background was as a property lawyer with a major West End firm between 2001 and 2014 after building up a four partner commercial firm founded in 1973. Michael has always taken a passionate and conscientious interest in professional matters, and has been an active committee member of his local law society since 1997, and has served as a national Law Society Council member. He is also committed to access to justice, and volunteers with a national charity that supports litigants in person.

As one of the original 12 adjudicators, Michael was part of the team who enabled the tribunal to get on its feet quickly and effectively administer this new jurisdiction. With a workload of 42,000 appeals instead of the planned 7,000, in the first few years, his contribution was essential to our success. He brought his personal attributes of fairness and patience and equal access to justice to all to his work at the tribunal.

As chief adjudicator and on behalf of all his colleagues, we thank him for his contribution to the tribunal and wish him a happy and busy retirement with his garden and charitable work.

Ingrid Persadsingh



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10. Useful Information

The structure of the Road User Charging Adjudicators' Tribunal

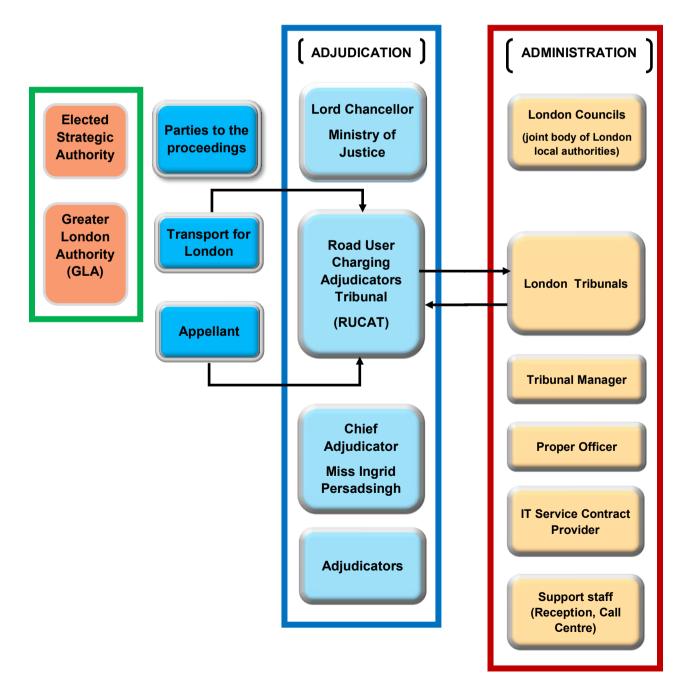
What is 'RUCAT'?

RUCAT is the 'Road User Charging Adjudicators Tribunal'. It is an independent tribunal which decides appeals against Congestion Charge and Ultra Low Emission Zone penalties in London.

Who are London Tribunals?

London Tribunals provides administrative support to the Road User Charging Adjudicators. Under the *Road Traffic Act 1991* and the *Traffic Management Act 2004*, London Councils is required to provide this service to the Environment and Traffic Adjudicators and provides the same service for the Road User Charging Adjudicators under contract to the GLA.

The following diagram explains the structure of RUCAT and London Tribunals:



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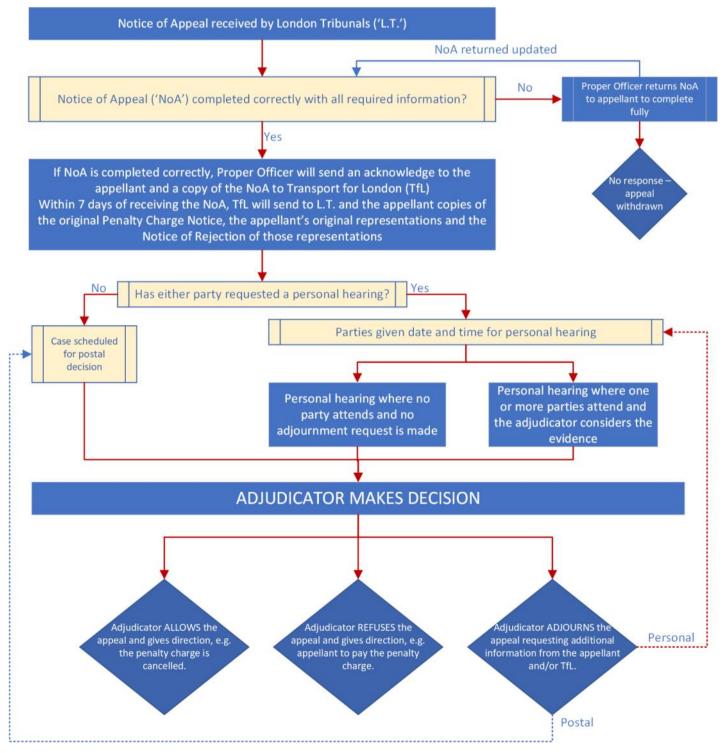
The appeal process

If Transport for London ('TfL') serves a Penalty Charge Notice ('PCN') arising from an alleged Congestion Charge or Ultra Low Emission Zone contravention, the registered keeper of the vehicle is entitled to contest the penalty charge by making written representations to TfL.

If TfL accepts those representations, then the PCN will be cancelled.

If TfL rejects the representations, the registered keeper of the vehicle may APPEAL to the Road User Charging Adjudicator. The APPEAL is an appeal against TfL's decision to reject the written representations.

The following diagram explains the process of an appeal once it is received by London Tribunals ('L.T'.).



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Grounds of appeal

Initially the responsibility is on Transport for London ('TfL') to demonstrate that a contravention has occurred.

This means that TfL must produce evidence to the Adjudicator to prove that:

- 1) A relevant vehicle;
- 2) was used or kept within the congestion charge area or low emission zone;
- 3) during the designated hours of a particular date; and
- 4) that the appellant is the registered keeper of the vehicle; and
- 5) that the correct payment for that vehicle for that date has not been received by TfL or that the vehicle was not subject to an exemption.

If TfL produces this evidence, the onus will shift to the appellant to satisfy the Adjudicator that, on the balance of probabilities, one or more of the six statutory grounds of appeal applies.

These grounds are:

- (a) that the recipient -
 - (i) never was the registered keeper in relation to the vehicle in question; or
 - (ii) had ceased to be the person liable before the date on which the vehicle was used or kept on a road in a charging area; or
 - (iii) became the person liable after that date.

(b) that the charge payable for the use or keeping of the vehicle on a road on the occasion in question was paid at the time and in the manner required by the charging scheme.

(c) that no penalty charge is payable under the charging scheme.

(d) that the vehicle had been used or kept, or permitted to be used or kept on a road by a person who was in control of the vehicle without the consent of the registered keeper.

- (e) that the penalty charge exceeded the amount applicable in the circumstances of the case.
- (f) that the recipient is a vehicle hire-firm and;
 - (i) the vehicle in question was at the material time hired from that firm under a hiring agreement; and
 - (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice imposed in relation to the vehicle during the currency of the hiring agreement.

These grounds apply to both alleged congestion charge and ultra low emission zone contraventions.

The Adjudicator CANNOT consider mitigating factors. This has been upheld by the High Court.



London Tribunals' website



London Tribunals maintains a website (<u>www.londontribunals.gov.uk</u>) with the aim of providing information, guidance and assistance to anyone intending to appeal to the tribunal.

The daily lists of each day's cases before the tribunal can be viewed, as well as maps and travel advice on getting to the hearing centre.

The website offers a useful guide to each stage of the enforcement process, explaining the options available to the appellant at each stage.

The Statutory Register (see right) can also be accessed through this website.

Statutory register



This is the official register of cases at the Road User Charging Tribunal, kept under Section 21 of the Schedule to the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001 (as amended).

It is a register of all appeals and the decisions made on them.

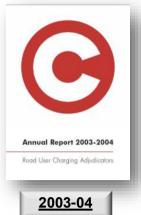
The Register can be viewed online at <u>https://www.londontribunals.gov.uk/</u> and can be browsed for one day of appeals at a time, or a more specific search (looking, for instance, at the appellant's name) can be made.

The Register can also be examined at the hearing centre.



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Previous annual reports (click report cover to view report)



















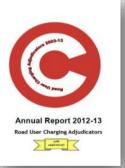
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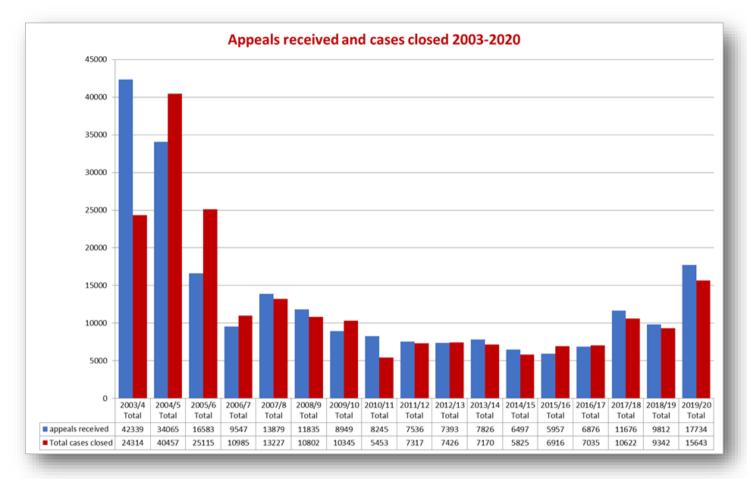


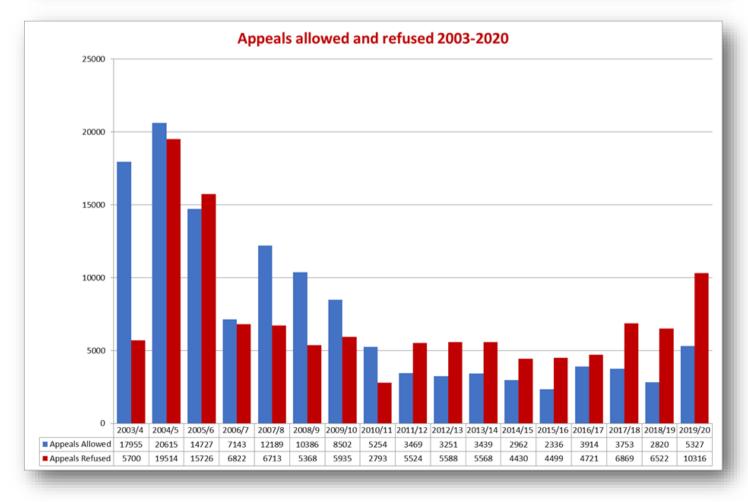


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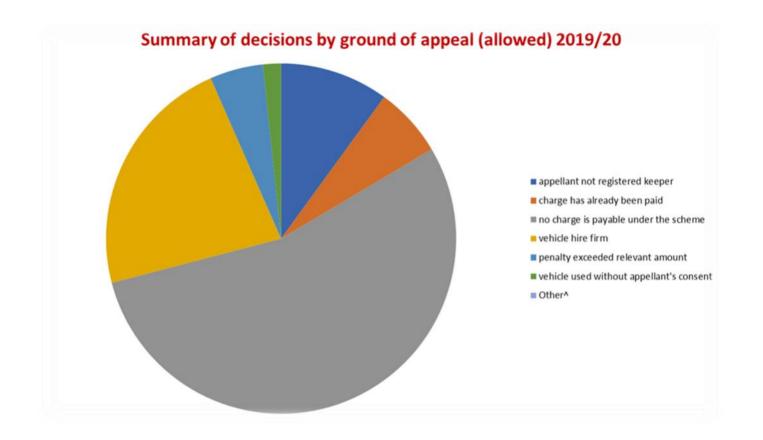
Appendix 1 — Appeals 2003—2020

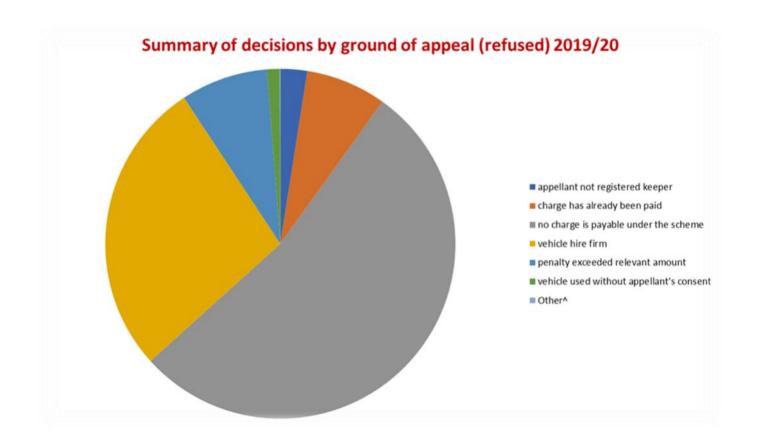




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Appendix 2 - Appeal decisions (by ground) 2019/20



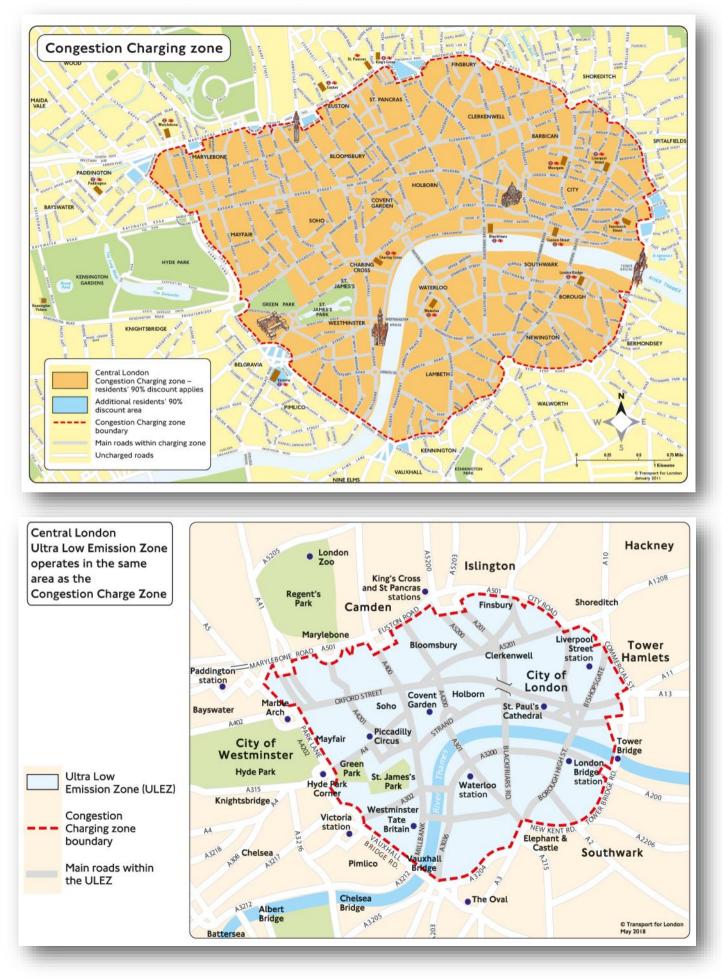


Appendix 3 - Congestion charging statistics 2015-20 (see previous reports for figures prior to 2015)

	2015/16	2016/17	2017/18	2018/19	2019/20		
Appeals received	5957	6876	11676	9812	17734		
Total cases closed	6916	7035	10622	9342	15643		
Appeals withdrawn by appellants	205	174	132	235	749		
Appeals not contested by TfL	1066	1496	2738	1756	4559		
Appeals refused postal	3560	3258	4572	4326	6941		
Appeals allowed postal*	1199	1797	3152	1703	3344		
Appeals refused personal	734	1289	2297	2196	3375		
Appeals allowed personal*	71	621	601	1117	1983		
Closed administratively	81	70	0	0	0		
Appeals adjourned	146	139	326	237	886		
Review decisions	74	64	269	311	130		
Costs decisions	24	4	9	25	42		
Postal cases ready for adjudication at end of year	956	824	791	427	1378		
Personal hearings scheduled	508	705	629	606	1948		
% withdrawn by appellants	2.96%	2.47%	1.24%	2.52%	4.79%		
%not contested by TfL	15.41%	21.27%	25.78%	18.80%	29.14%		
% refused postal	51.47%	46.31%	43.04%	46.31%	44.37%		
%allowed postal*	17.34%	25.54%	29.67%	18.23%	21.38%		
%refused personal	10.61%	18.32%	21.62%	23.51%	21.58%		
%allowed personal*	1.03%	8.83%	5.66%	11.96%	12.68%		
% closed administratively	1.17%	1.00%	0.00%	0.00%	0.00%		
% of cases allowed	33.78%	34.37%	35.33%	30.19%	34.05%		
Average postal hearing (mins)	19.16	11.71	11	13	8		
Average personal hearing (mins)	26.68	22.47	14.25	25	17		
% of cases 1st considered within 56 days	n/a	n/a	n/a	n/a	n/a		
Average days delay	54	55	53	56	41		
% hearings within 15 mins	78.75%	84%	85%	85%	89%		
Summary of decisions by ground of appeal (allowed)	2015/16	2016/17	2017/18	2018/19	2019/20		
Appellant not registered keeper	326	352	273	359	534		
Charge has already been paid	52	106	308	115	344		
No charge is payable under the scheme	535	1408	2306	1858	2901		
Vehicle hire firm	283	418	711	553	1197		
Penalty exceeded relevant amount	47	93	125	82	262		
Vehicle used without appellant's consent	23	33	29	86	89		
Other^	4	8	1	0	0		
Summary of decisions by ground of appeal (refused)	2015/16	2016/17	2017/18	2018/19	2019/20		
Appellant not registered keeper	208	183	130	166	255		
Charge has already been paid	291	201	299	322	767		
No charge is payable under the scheme	2364	2949	4416	4291	5509		
Vehicle hire firm	792	827	1407	1059	2828		
Penalty exceeded relevant amount	590	316	490	390	830		
Vehicle used without appellant's consent	36	44	60	41	122		
Other^	13	27	67	20	5		
* - 2015/16 figures exclude appeals not contested by the enforcement authority (DNCs)							

* - 2015/16 figures exclude appeals not contested by the enforcement authority (DNCs)

^ - cases where the ground of appeal is not recorded



Appendix 4 - Congestion Charge and Ultra Low Emission Zone maps

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Useful addresses

Office for Judicial Complaints

10th Floor Tower 10.52 102 Petty France London SW1H 9AJ Telephone: +44-(0) 203 334 2555 Fax: +44-(0) 203 334 2541 E-mail: customer@ojc.gsi.gov.uk Website: http://judicialcomplaints.judiciary.gov.uk/

Office of the Judicial Appointments and Conduct Ombudsman

9.53, 9th Floor Tower 102 Petty France London SW1H 9AJ Website: http://www.justice.gov.uk/about/jaco.htm



Road User Charging Adjudicators (RUCA) London Tribunals PO Box 10598 Nottingham NG6 6DR

Telephone: +44-(0) 207 520 7200 (Monday to Thursday 8.00 am to 6.30 pm, Friday 8.00 am to 6.00 pm and Saturday 8.30 am to 2 pm, excluding bank holidays)

> e-mail: queries@londontribunals.org.uk Website: http://londontribunals.gov.uk/

Hearing Centre at: Chancery Exchange (Ground Floor) 10 Furnival Street, London EC4A 1YH