



TCfL

Transport Committee for London

Annual Report '97 '98

1998 saw the birth
of TCfL –
a new organisation
whose mission
is to improve
London's transport



Contents

2

Our Work

Chair's Foreword
Sally Powell (Chair)
Introduction
Nick Lester (Chief Executive)
Mobility
Parking Appeals
Traffic Enforcement
Trace
Traffic Signals and
Surveillance

12

Financial Statistics

Revenue Accounts

Mobility
Traffic Enforcement
Traffic Control
Systems Unit
Parking
Parking Penalties

Transport Committee for London Annual Report '97 '98



16

Joint Report of the Parking Adjudicators '98

Contents

Chief Adjudicator's Foreword

Introduction

The Need for Fairness

The Importance of a
London-wide Approach

The Public Perception of the
Parking Appeals Service

The Bexley Tax Disc Case

The Davis Case

Out of London Appeals

Traffic Orders

Hire Agreements

28

Appendix One - Digest of Cases

Delivery/collection and
loading/unloading goods

Strict liability where the driver
is not at fault

Going for change

Footway parking in High
Wycombe

Delay

The Duty of Fairness and
Reasonable Signing of
Restrictions

Appendix Two User Survey

Appendix Three Adjudicators

Chair's Foreword



Sally Powell (Chair)

TCfL is uniquely positioned to shape the future of London's transport

OUR

This year has seen unprecedented co-operation between London's 33 councils to found TCfL

For those interested in the future of London's transport, these are exciting and challenging times.

The mayor and the GLA are due to become reality in the near future. New technology offers potential solutions to old problems.

Perhaps in easier times these opportunities would provide us with the means to improve the quality of life of Londoners. But demand for transport services keeps growing, not only on the roads, but on public transport too.

Given the projected growth in economic activity, and the rising expectations of all citizens for greater mobility, a huge effort is needed simply to stop things getting worse.

One thing is clear. Piecemeal action by disparate organisations cannot resolve

London-wide problems. That's why the London boroughs came together to form the Transport Committee for London.

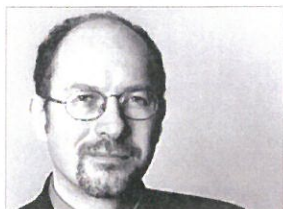
This year has seen unprecedented co-operation between London's 33 councils to found TCfL. This has not only brought together our existing collective actions, it provides a base from which to launch new London-wide initiatives.

In future years we will be in a position to work with the mayor and GLA to deliver strategic benefits for London's residents and visitors.

The formation of TCfL is just the start of a sea-change in attitudes and actions designed to deliver a transport system that fully meets the needs of the most dynamic city in the world.

Sally Powell (Chair)

Introduction

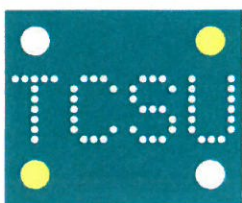
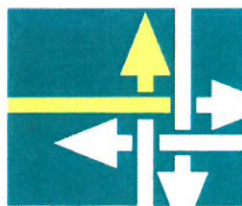


Nick Lester (Chief Executive)

The 20th of January 1998 saw the birth of a new organisation whose mission is to improve London's transport. The Transport Committee for London (TCfL) was formed by four local government-run bodies with London-wide responsibilities. Soon London will have a mayor and assembly too, and will be working together to develop the strategic vision of a better London with a quality transport system accessible to all for the new millennium.

Work

Our principal responsibilities for the time being are the tasks undertaken by the four units whose work we inherited. They were:



The London Boroughs' Transport Committee responsible for the London-wide night and weekend lorry ban;

The London Committee on Accessible Transport who administered the Taxicard scheme, concessionary fares for elderly and disabled people and developed policy on accessible transport;

The Parking Committee for London which set decriminalised parking penalties, ran the Parking Appeals Service and undertook related parking enforcement work;

The Traffic Control Systems Unit responsible for London's traffic lights and traffic control cameras.

In the future TCfL will work closely with the London boroughs on transport and related issues, and assist central government, London's mayor and the Greater London assembly in their transport work.

The TCfL is a joint committee of all London's councils. Ultimately most of the responsibility for London's roads network and much of the public transport provision rests with them. As such TCfL is uniquely well positioned to shape the future from a strategic perspective.

This work supports borough goals including improving access by all those living in or visiting London, particularly those with a mobility impairment; improving London's environment; improving safety and security on our transport networks and contributing to London's economic well-being.

Mobility

Freedom pass enabled 300,000,000 journeys to be made last year

The London Committee on Accessible Transport (LCAT) was created after the London boroughs inherited responsibility for concessionary fares in the capital from the Greater London Council. LCAT, now TCFL's Mobility Unit, exists to ensure continued funding of the concessionary fares scheme for elderly and disabled Londoners, manages the issuing of the freedom pass to over a million users and negotiates the cost of the scheme. TCFL's Mobility Unit also administers the Taxicard scheme, on behalf of 29 councils, which provides door-to-door transport for the people with disabilities and provides advice to councils on accessible transport issues and disseminates best practice guidance.

Freedom pass allows permit holders free travel after 0900 on almost all tube, and bus services, and after 0930 on national rail services in the Greater London area.

The year saw over £140 million spent on providing freedom passes to disabled and elderly Londoners. This enabled around three hundred million journeys to be made on buses and rail services in London.

The freedom pass greatly improves the quality of life of pensioners and many

disabled people in London enabling them to enjoy their free time wherever they want.

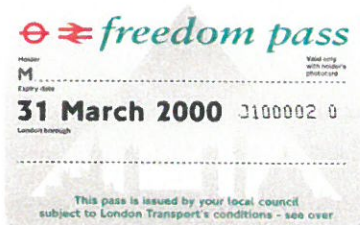
Enhancements to the system introduced this year included giving freedom pass holders the right to buy 'onward' tickets on the national rail network beyond the boundary of London on the same basis as all-zone travelcard holders.

Freedom pass is the new name for the concessionary fares permit. The name freedom pass was launched to coincide with the biennial reissue campaign for permits which started in February 1998. The objective of the campaign was to increase the number of eligible persons who apply for a freedom pass. Bus and tube station advertising was used and a new information booklet issued. Information was also provided in a number of minority ethnic languages, Braille, large print and on tape.

Taxicard is the other major service delivered by TCFL to improve mobility for the disabled in London. Taxicard enables an eligible disabled person to phone for a black cab and normally pay no more than £1.50 for journeys up to about £10 on the meter – the rest of the cost being covered by their local council. There are minor variations in Taxicard from borough to borough, but 29 out of the 33 participate in the Taxicard scheme.

This year saw the start of a trial scheme to improve the performance of Taxicard. In some areas waiting times for people are very variable, but can be significant. In an effort to reduce these times a trial scheme was introduced offering enhanced payments to cab drivers for taking Taxicard users. Initial results are very encouraging, and we anticipate changes based on the trial will be implemented London wide, resulting in a reduced waiting times. The summer saw Computercab introduce a new satellite communications system Mobistar which has further improved efficiency on their network of taxis, thus reducing waiting times further. The combined effect was to greatly improve service throughout London, although a limited supply of cabs in some areas continues to prevent performance reaching desirable levels.

In addition to Taxicard, there are a host of other door-to-door transport services for disabled Londoners. These include LT-funded services, Dial-A-Ride, social service daycare transport, community transport, health service patient transport and council funded trips to school. In an effort to improve the quality, effectiveness and efficiency of these services TCFL sponsored the Commission for Accessible Transport which will report next year. The Commission comprises representatives of service users, health authorities and trusts, local education authorities, social services departments, the Association of London Government and the Department of Environment, Transport and the Regions. It is hoped the commission can recommend ways forward which will improve door-to-door services and provide a better system of transport for disabled Londoners.





Ian Miley suffers from sero negative arthropathy, which greatly reduces his mobility. But he still leads an active social life, and his Freedom Pass enables him to get where he wants to go with the minimum of hassle.



Parking Appeals

This year saw 34,611 appeals lodged. 57.5% of cases resulted in the appeal being allowed.

The Parking Appeals Service prides itself on providing swift justice for all. After an appeal is lodged 28 days notice must be given to both parties of the date of the hearing. Most cases are heard and decided two weeks later.

The Parking Appeals

Service (PAS) was established by the Parking Committee for London after decriminalisation of many types of parking violations in 1993. It is the tribunal which determines whether or not a motorist is liable to pay a penalty, or be clamped or removed, following an alleged illegal parking act.

The tribunal must be independent of the councils which penalise motorists, and as such TCfL's role is confined to providing the financing and administrative support for the tribunal. The adjudicators who hear the cases are all qualified lawyers. The adjudicators are required to report to TCfL annually on their work, and a copy of their report can be found on page 16.



Nearly four million parking tickets a year are issued by councils in London. The Parking Appeals Service only deals with complaints when the motorist has failed to resolve their dispute with the council and chooses to take the matter further. This only happens in a very small minority of cases, however, with so many vehicles ticketed, clamped or towed the numbers of appeals is very large. This year saw 34,975 appeals lodged, making PAS one of Britain's busiest tribunals. 57.5% of cases resulted in the motorist's appeal succeeding.

PAS prides itself on providing swift justice for those that need it. After an appeal is lodged 28 days notice must be given to both parties of the

date of the hearing. Most cases are heard and decided two weeks later.

This year also saw the publication of our first customer satisfaction survey. The results were very encouraging for a judicial service, with over 70% of those people who appealed feeling that the exercise had been worthwhile. A number of ideas for improving the service became apparent during the survey, and these will be examined or implemented in the coming year.

In addition to managing hearings for London, PAS has been providing adjudication services to other councils operating the Road Traffic Act 1991.

Last year 289 appeals were heard from High Wycombe, Maidstone, Oxford, Watford and Winchester. This service will be ended in July 1999 as the authorities outside London take responsibility for establishing their own tribunal system.

...over 70% of people who appealed felt the exercise was worthwhile.

This year saw the publication of our first customer satisfaction survey...

Traffic Enforcement



Since the abolition of the GLC London's councils have been collectively responsible for the London-wide night time and weekend lorry ban.

This ban operates on residential roads to restrict unnecessary lorry movements. TCfL employs a team of staff to handle issuing exemption permits to those lorry operators whose vehicles have good reason to be travelling in the capital at night, and another team to take enforcement action against those operators who flout the law. Last year two thousand prosecutions were launched, with a conviction rate of over 90%. Over 48,601 permits were issued in this period to legitimate users.

As of the end of March 1998 every London borough supported the London-wide lorry ban except Harrow, Hillingdon and Wandsworth. During 1998/9 it is anticipated that all boroughs will participate in the scheme.

Enforcement action is taken against rogue lorry drivers and operators by noting the movements of lorries, and then checking with records if their permits allow such journeys to be made. Occasionally this is backed up by police action.

In addition to the work of the London Borough's Transport Scheme, the joint committee which ran the lorry ban before TCfL; TCfL also supports other traffic enforcement work, in particular enforcement against parking offences.

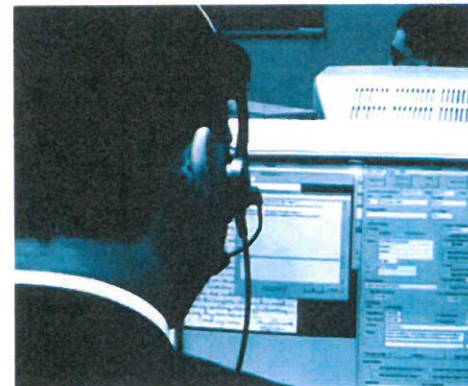
To enable the councils to run more efficient parking enforcement services we assist with IT services and provide other advice and support.

Last year 2,000 prosecutions were launched with a conviction rate of over 90%



Trace

Tow-away/Removal and Clamping Enquiries
- 160,000 callers were helped last year



24hr Helpline

0171 747 4747


Tow-away/Removal And Clamping Enquiries is a service for members of the public whose vehicles have been clamped or towed away. In London not only can the police remove a vehicle, but also local authorities for parking offences and DVLA for non-payment of tax. TRACE is a telephone helpline available 24 hours a day which will tell members of the public if their vehicle is in a pound, which one it is in, why it is there and how much money is needed to get it out again. Almost every car removed and many of those that are stolen result in a call to TRACE which last year handled over 160,000 enquiries.

Our other traffic enforcement IT services to local authorities include:

- A database of vehicles with a track record of non-payment of parking penalties;
- a link to DVLA in Swansea to enable rapid retrieval of keeper details where a parking penalty is left unpaid;
- a link to the county court which registers debts against motorists who do not pay penalties;
- a system for redirecting parking ticket payments made to the wrong council or police force.

Shortly before it was subsumed into TCfL the Parking Committee undertook to ensure that the training standards for parking attendants it had developed were adopted as a National Vocational Qualification. It is now possible to get an NVQ in parking control, and in the coming year all councils will be working towards getting their attendants accredited with the new qualification.

TCfL is also responsible for setting the levels of decriminalised parking penalties in London. There were no major changes to the system this year, although a review of the levels of penalty in the coming year is proposed.



Traffic Signals and Surveillance

38,000 maintenance calls were made to sites in London...

The Traffic Control Systems Unit (TCSU) has a huge task: to keep the traffic lights, pedestrian crossings, traffic surveillance and enforcement cameras working across London 24 hours a day. TCSU came into being after the demise of the GLC. Until 1998, the City of London acted as the Secretary of State's agent for TCSU. From 1998 this role has been taken on by TfL using the City of London as its agent.

Although we install and maintain the lights, responsibility for deciding where traffic signals are placed rests either with the local council (on most roads) the Highways Agency (on trunk roads) and the Traffic Director for London (on Priority 'Red' Routes). The client highway authority will approach TCSU and request the signalling systems they require. We then undertake the engineering work, ensuring each new installation can 'talk' to neighbouring sets of lights and traffic detection

systems if appropriate. In addition we provide the cameras and communications systems that enable the police to intervene from their command and control centre at Scotland Yard when matters require human action.

Almost all urgent changes to traffic lights timings in central London can be undertaken remotely without the need to send an engineer to the site however we have engineers on standby to respond to requests from the police if necessary.

Managing the lights in London is a massive task. To this end TCSU employs more staff than the whole of the rest of TfL put together. Last year over 38,000 maintenance calls were made to sites in London following the detection of faults. This is an increase on last year, however, it is not because signals are becoming less reliable. The increase is due to the larger number of traffic lights in London and also that TCSU is dealing with faults

to enforcement and surveillance cameras. Virtually all faults are automatically detected and sent to our fault control centre, enabling a fast response from engineers. We also have a fault hotline for members of the public to call. Overall this keeps non operational lights to a minimum, and signals were 96.8% available during 1997/8.

The year saw over 100 new enforcement cameras installed (covering red light, box junction and banned turn offences in addition to speeding); 358 junction or pelican crossing signals replaced, refurbished or re-ducted; and a further 159 sets of traffic signals installed at new sites.

One of the keys to minimise delays in London is the use of traffic management technology.

Scoot (Split Cycle Offset Optimisation Technology) is the system which automatically adjusts signal timings to maximise traffic flow. The year saw

...signals were 98% available.



All on street signals and controllers are fully millenium compliant

another 234 signal groups brought into the Scoot system. Scoot's operation is dependent on their being information on traffic flows from traffic detectors; they were 92.3% available last year.

TCSU's work with a number of European traffic management trials also continues.

Many of the new traffic signals and much of the upgrading of the existing ones is designed to improve bus flows. London has an old bus detection system which works well, but requires extensive digging up of the road in order to install and maintain. To eliminate this problem LT Buses and TCSU are collaborating on a new system which will combine existing automatic vehicle location systems with a beacon/radio system. This will enable buses to relay their position to key traffic signal controllers, which in turn rephase the lights ahead to give buses priority. Much of the funding for this system has been provided by London Transport Buses, and full trials will be held in 1998.

TCSU is also contributing to a new detection system that will enable signal priority to be given to emergency ambulances in conjunction with the London Ambulance Service. Although this may reduce response and journey times, the primary objective is to reduce the number of collisions between ambulances and other vehicles.

It is often reported that, among the problems that will occur on 1 January 2000, the traffic lights will stop working. This will not happen in London. Already all our on-street signals and controllers are fully millennium compliant and work is being undertaken to ensure control office systems are modified or replaced in time for 2000.

During the year TCSU carried out traffic control work for the Traffic Director's Priority 'Red' Route network and for the London boroughs on the bus and cycle priority networks. Other traffic control

work was undertaken for London Transport and Croydon Tramlink and private developers. Variable message signs, which provide information for drivers on current and forthcoming delays, were installed in a number of locations for the Highways Agency.

In order to keep vehicle detection systems, controllers, cameras, computers and fault detection systems in constant communication large numbers of connections along the streets are required. Overall availability of these systems last year was in excess of 99.5%.

In addition to London, TCSU provides services to the rest of the UK, and other parts of the world, on a consultancy basis. This year saw advice or software licensing to highway authorities in Belfast, British Columbia, Cape Town, Cheshire, Doncaster, Hertfordshire, Northampton and Surrey plus numerous private contractors.

Revenue Accounts for the year ended March 1998

Mobility

	1997/98 £		
	Concessionary Fares	Taxicard	Total
Expenditure			
Payments to Operators	132,595,638	4,523,167	137,118,805
Survey costs	35,306	0	35,306
Re-issue costs	187,383	2,834	190,217
Administration			
Employees and overheads	272,824	143,963	416,787
Premises	30,655	14,210	44,865
Equipment	17,608	7,276	24,884
Other office costs	29,169	11,710	40,879
Consultancy	17,599	785	18,384
Small projects	0	0	0
Legal and professional	25,464	2,747	28,211
LATU review	0	0	0
Administration total	393,319	180,691	574,010
Total Expenditure	133,211,646	4,706,692	137,918,338
Income			
Borough levies	133,456,200	4,637,520	138,093,720
Interest earnings	174,452	121,974	296,426
LT secretarial contributions	30,000	0	30,000
Other income	42,471	2,274	44,745
Total income	133,703,123	4,761,768	138,464,891
Transfer to reserves	491,477	55,076	546,553

Traffic Enforcement

	1997/98 £	1996/97 £
Statement of net expenditure		
Employees	357,601	353,756
Premises	76,764	87,286
Supplies and services	77,483	59,264
Transport	21,511	19,530
Agency and contracted services	182,748	190,647
Technical support services	130,035	126,926
Total expenditure	846,142	837,409
Income	(165,651)	(139,577)
	680,491	697,832
Interest on balance	(18,152)	(18,020)
Amount to be met from member local authorities and revenue reserves	662,339	679,812
Source of finance		
Contributions from member local authorities	692,451	661,484
Revenue reserves	(30,112)	(18,328)
	662,339	679,812

Traffic Control Systems Unit

	1997/98 £						
	Original estimate	Revised approved estimate	Total actual cumulative expenditure to 31.3.98	Income	Net actual expenditure to 31.3.98	Amount previously requisitioned 1997/98	Current final claim
Capital							
Urban traffic control	770,00.00	770,00.00	958,555.16	185,272.12	773,283.04	770,00.00	3,283.04
Modernisation	2,570,100.00	2,577,100.00	2,580,406.87	0	2,580,406.87	2,577,100.00	3,306.87
Bus priority	200,000.00	200,000.00	671,381.53	473,027.44	198,354.09	200,000.00	-1,645.91
Signal schemes	3,000,000.00	3,163,926.00	5,651,238.06	2,480,898.66	3,170,339.40	3,163,926.00	6,413.40
Traffic control and monitoring	2,000,000.00	1,844,040.00	2,124,344.97	297,426.69	1,826,918.28	1,844,040.00	-17,121.72
Total capital	8,540,100.00	8,555,066.00	11,985,926.59	3,436,624.91	8,549,301.68	8,555,066.00	-5,764.32
Direct revenue							
Central systems	1,995,000.00	1,995,000.00	226,268.42	226,268.42	1,865,434.85	1,995,000.00	-129,565.15
Bus priority signals	6,160,000.00	6,160,000.00	324,321.26	324,321.26	6,106,376.45	6,160,000.00	-53,623.55
Monitoring	800,000.00	800,000.00	983,303.39	210,401.15	772,902.24	800,000.00	-27,097.76
Total direct revenue	8,955,000.00	8,955,000.00	9,505,704.37	760,990.83	8,744,713.54	8,955,000.00	-210,286.46
Other costs							
Staff	4,020,000.00	4,073,730.00	5,397,455.90	1,504,919.26	3,892,536.44	4,073,729.80	-181,193.16
Support services	1,350,000.00	1,393,088.00	1,740,758.78	415,117.66	1,325,641.08	1,393,088.20	-67,447.12
Total other costs	5,370,000.00	5,466,818.00	7,138,214.64	1,920,036.92	5,218,177.72	5,466,818.00	-248,640.28
Interest account	-	-	-	-	-	-	-181,570.90
Grand total	22,865,100.00	22,976,884.00	28,629,845.60	6,117,652.66	22,512,192.94	22,976,884.00	-646,261.96

Parking

	1998 £	1997 £
Income		
Borough levies	2,994,971	3,845,548
Other income	29,271	57,340
Interest receivable		3,902,888
		70,016
		3,972,904
Expenditure		
Operating costs		
EDS services	2,050,225	1,951,365
Adjudication	294,496	183,133
	2,344,721	2,134,498
Accommodation costs		
Rent	100,000	100,000
Rates	162,977	172,948
EDS Management charge	17,170	16,892
Light and heat	16,680	15,923
Insurance	13,385	21,284
Service charge	76,357	68,631
Cleaning	5,253	5,381
Security	557	987
Depreciation		
Leasehold improvements	17,281	17,281
	409,660	419,327
Staffing costs		
Office administration	347,656	304,294
Temporary staff	394	2,051
Training	932	1,422
	348,982	307,767
Computer costs		
Hardware maintenance	1,015	2,220
Supplies	3,198	2,000
Depreciation - computer equipment	25,133	23,865
Software development costs	-	68,451
	29,346	96,536
Carried forward	3,132,709	2,958,128
		3,972,904

Parking cont'd

Appeal outcomes

1997/98						
	PCN's issued	Vehicles clamped	Vehicles removed	Appeals allowed	Appeals refused	Total appeals
Council						
Barking and Dagenham	21,127	-	-	369	301	670
Barnet	97,469	-	-	778	806	1,584
Bexley	72,616	-	-	356	237	593
Brent	90,019	-	3,910	420	740	1,160
Bromley	63,102	-	53	120	194	314
Camden	292,977	15,607	6,643	1,730	1,581	3,311
Corporation of London	105,223	1,800	2,169	500	635	1,135
Croydon	96,065	-	4,851	287	360	647
Ealing	111,550	-	-	948	296	1,244
Enfield	77,781	-	1,594	201	281	482
Greenwich	70,945	-	-	554	478	1,032
Hackney	87,585	7,443	1,076	754	556	1,310
Hammersmith and Fulham	145,964	-	2,696	1,193	1,208	2,401
Haringey	104,920	-	66	561	437	998
Harrow	104,357	-	-	178	318	496
Havering	37,805	57	9	262	245	507
Hillingdon	48,051	-	-	352	148	500
Hounslow	21,127	-	-	122	26	148
Islington	79,009	-	-	675	280	955
Kensington and Chelsea	216,820	13,060	9,548	737	626	1,363
Kingston Upon Thames	39,742	-	-	39	91	130
Lambeth	68,458	-	5,000	1,130	423	1,553
Lewisham	43,920	-	-	602	275	877
Merton	43,920	-	-	69	122	191
Newham	91,504	-	-	864	874	1,738
Redbridge	58,958	-	-	69	102	171
Richmond Upon Thames	76,552	-	-	264	359	623
Southwark	101,762	5,972	1,972	182	169	351
Sutton	43,195	-	-	212	235	447
Tower Hamlets	102,552	-	-	1,927	278	2,205
Waltham Forest	113,376	-	-	325	376	701
Wandsworth	110,092	-	1,666	467	357	824
Westminster	863,701	28,065	17,593	2,814	1,500	4,314
Total/Average for London	3,702,244	72,004	58,846	20,061	14,914	34,975

Includes appeals outcomes for PCN's, clamps, removals, statutory declarations and reviews, excludes cases closed because they were submitted out of time, and Statutory Declaration cases closed at the preview stage.

Appeal outcomes by hearing type

1997/98			
Hearing type	Total number of appeals	Allowed (incl no contest)	Refused (incl withdrawn)
Personal	8920	6982	1938
Postal	25637	12886	12751
Total	34557	19868	14689

excludes some Statutory Declaration and review cases.

Out of London appeals by authority and outcome

1997/98				
Authority	Allowed	of which no contest	Refused	of which withdrawn
Winchester	33	20	84	9
Oxford	28	17	25	7
High Wycombe	69	48	34	1
Maidstone	15	13	0	0
Watford	1	1	0	0
Total	146	99	143	17

Parking Penalties



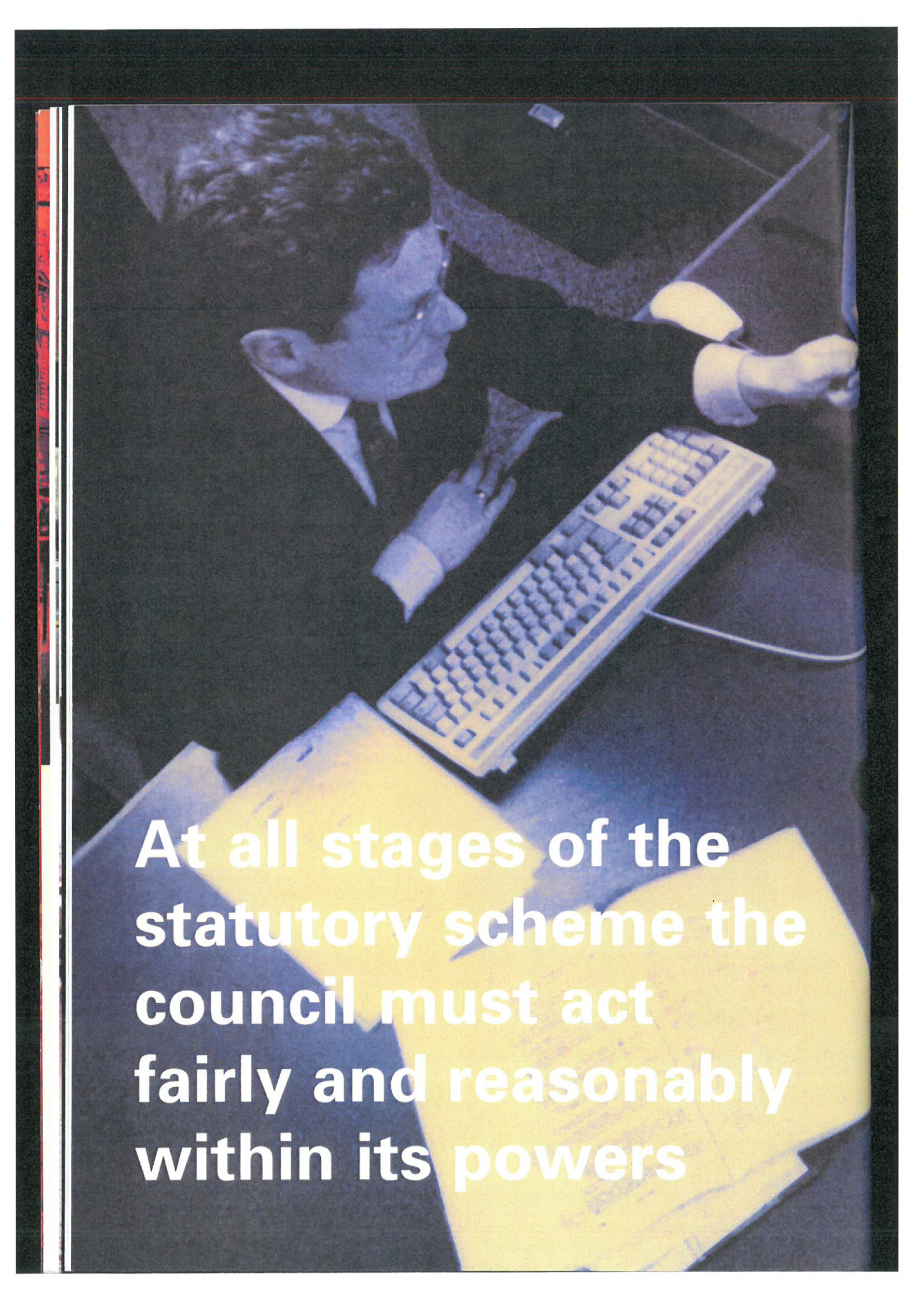
Band A £60 (£30 discounted)



Band B £40 (£20 discounted)



Band A/B

A photograph of a man in a dark suit and glasses, sitting at a desk. He is looking down at a large, light-colored keyboard. His right hand is resting on the keyboard, and his left hand is holding a small object, possibly a pen or a small book. There are several large, light-colored papers or folders on the desk in front of him. The background is dark and out of focus.

**At all stages of the
statutory scheme the
council must act
fairly and reasonably
within its powers**

Joint Report of the Parking Adjudicators '98

Chief Adjudicator's Foreword

Introduction

The Need for Fairness

The Importance of a London-wide Approach

The Public Perception of the Parking Appeals Service

The Bexley Tax Disc Case

The Davis Case

Out of London Appeals

Traffic Orders

Hire Agreements

Appendices



Chief Adjudicator's Foreword

I have pleasure in introducing the fifth annual report of the Parking Adjudicators. It is again a joint report of all 26 Adjudicators.

In the five years since I presented the first Annual Report, the Road Traffic Act 1991 (RTA) decriminalised parking enforcement scheme has developed in London and has recently been adopted by five councils outside London. Much experience has been gained on the way, both in terms of the council processes and the understanding of the impact of decriminalisation. It has become clear that the Adjudicators' functions are not simply confined to factual findings in an individual case but also include the need to consider the law that should be applied, including the legal effect of the provisions of the RTA 1991. This approach was approved earlier this year by the High Court in *R v the Parking Adjudicator ex parte Bexley*.

Over the last five years Adjudicators have examined a variety of issues which emerged from their cases. This year those various issues have continued to arise but they can now all properly be seen in the same context of what has been identified as the one overarching principle of the Road Traffic Act:- the duty of councils to act fairly. This, therefore, is the main theme of our report.

This same principle of fairness has also been emphasised by the Secretary of State in his revised Traffic Management and Parking Guidance issued in February 1998. The relevant paragraphs from the new Guidance are set out in our introduction.

The importance of Traffic Orders has also become more clear this year and this is the second theme of our report.

However, I would stress that the emphasis on the need for fairness should not be taken as an indication that Adjudicators do not consider the system is administered fairly now. It is the nature of the scheme that cases where it is perceived that there has been unfairness come before Adjudicators. Our function is to consider these cases, therefore the report on our functions inevitably focuses on these issues. It must always be borne in mind that only approximately one percent of penalty charge notices issued result in an appeal to Adjudicators

Caroline Sheppard, Chief Adjudicator



Introduction

Under Section 73(17) of the Road Traffic Act 1991 the Adjudicators are obliged to make an Annual Report to the Joint Committee on the discharge of their functions.

In the year covered by this report 35,541 appeals were lodged and 34,975 decisions were issued. This compares with 27,069 and 24,784 respectively for the previous year. The increase in appeals reflects the increase in the number of Penalty Charge Notices issued by the Council.

One of the most important cases this year was *R v the Parking Adjudicator, ex parte the London Borough of Bexley* decided on Judicial Review by the High Court, where the Adjudicator's decision was upheld.

This year we have introduced a digest of the most significant of those cases decided during the period covered by the annual report. The six cases in the digest demonstrate the key issues which have arisen. These are not new issues. In some cases the existing law has been clarified, in others, the proper legal implications of the Road Traffic Act scheme have been examined. Although the cases all deal with different issues they have a common theme, echoing the guidance given by the Secretary of State. This is the theme of 'Fairness'.

One of the most important cases this year was *R v the Parking Adjudicator, ex parte the London Borough of Bexley* decided on Judicial Review by the High Court, where the Adjudicator's decision was upheld

In February 1998 The Secretary of State issued revised Traffic Management and Parking Guidance for London. He set out the main objectives of the Road Traffic Act as being:

- 8.4 Local authorities should ensure that the system is run efficiently and economically and overall is at least self-financing, where necessary taking account of receipts from off-street parking places. However, self-financing should not be at the expense of safety or traffic management considerations.
- 8.5 Local authorities should operate the system fairly. Safeguards for drivers and owners are contained throughout the procedures for operating the system under the Act. Local authorities should ensure that there is adequate and accurate signing and plating of parking controls. GOL [the Government Office for London] is available to give advice in signing.
- 8.6 Local authorities have a statutory duty to consider representations against the issue of Penalty Charge Notices (PCNs) and wheel clamping or removal action. The local authorities should exercise this duty in a fair and consistent way. They should also consider using their discretion to waive additional parking charges where there are extenuating circumstances. Experience has shown that producing full and prompt replies to representations results in fewer appeals to the Adjudicators and more PCNs paid. Local authorities may also wish to develop policies on whether, and when, to re-offer the 14 day period for payment of a PCN at the discounted rate. A number do so when the initial challenge to the PCN was made within 14 days.

Adjudicators' note

*The emphasis in this revised guidance in paragraphs 8.4 and 8.5 is on the councils' duty to act fairly. This echoes recommendations in our earlier reports and mirrors the key issues that emerged in the significant cases which Adjudicators decided last year. The balance between the self-financing nature of the scheme referred to in paragraph 8.4 and traffic management were considered by the High Court in *R v the Parking Adjudicator ex parte Bexley* and by the Adjudicator in *Davis v the Royal Borough of Kensington and Chelsea*.*

The Need for Fairness

At all stages of the statutory scheme, the council must act within its powers in order to give effect to the proper purpose of the scheme. That includes a duty to act reasonably and with administrative fairness.

The need for fairness applies to:

- **the making of the Traffic Management Order which cannot be ultra vires and must further the purposes of traffic safety and traffic management (the Bexley and High Wycombe cases)**
- **the availability of the Traffic Management Order. All Orders must be clear, certain, consistent and available for public inspection**
- **the signing of the parking regulation which must be clear, certain, reasonable and fair (the Lincoln's Inn Fields case)**
- **the need for the council to consider properly representations from the motorist in relation to the exercise of its discretion. Again this must be exercised in a fair, consistent and reasonable way (the Davis case)**
- **the time table of enforcement, so that the Notice to Owner and all subsequent stages of the procedure must be followed in a timely, fair and reasonable manner (the Davis case)**



The Importance of a London-wide Approach

The Lincoln's Inn Fields case also highlighted the difficulties encountered by motorists in those areas of London where the boundaries of two or more local councils intersect. In these areas the need for proper signing is more acute.

But the RTA scheme also calls for co-operation between different councils so that the public are not disadvantaged by the local nature of decriminalised parking enforcement. It is difficult to see how the imposition of a penalty on Mr Bladon contributed to traffic management in Westminster.

Adjudicators recommend that councils approach parking enforcement on a strategic basis.



The Public Perception of the Parking Appeals Service

Although we were shown all the cases selected for broadcast in advance they were not necessarily ones that Adjudicators would have chosen as good examples of appeals.

'Clampers'

During the last part of the year we had a BBC team filming hearings for their documentary series, which was broadcast in May under the title 'Clampers'. Both the Lord Chancellor and the Lord Chief Justice had consented to the broadcast of actual hearings. One of the three hearing rooms was chosen for hearings to be filmed. Appellants were not advised in advance that filming would be taking place on the day their hearing was listed but were asked when they arrived whether they wished their case to be filmed. Those who did agree were informed that if they had second thoughts after the case had been heard they could at any time withdraw their consent to be broadcast. In fact none did. Since there were always two Adjudicators other than the one being filmed conducting hearings in other rooms there was no pressure on any appellant to take part. All who took part agreed that the presence of the cameras was not intrusive and did not affect the proceedings. There appeared to be a tendency for those with a strong case to agree to be filmed whereas those who were less sure whether their case fell within the grounds for appeal were less keen. Other appellants declined to be filmed on the basis that they had not come dressed for an appearance on television. No disruption was caused to the hearing centre when the BBC were at work and their team fitted in well with our organisation.

Although we were shown all the cases selected for broadcast in advance they were not necessarily ones that Adjudicators would have chosen as good examples of appeals. It is the nature of the 'Clampers' type of documentary series that 'characters' are selected for broadcast. It is hard to measure whether the series itself and the participation of the Parking Appeals Service increased public awareness of and confidence in the decriminalised parking scheme. The volume of appeals lodged since the series certainly increased. Whether this was related to 'Clampers' or for other reasons will need to be examined in the next year's annual report.

The Public Perception of the
Parking Appeals Service (continued)

The Appellant Survey

Following on from Professor Raine's conclusions the Adjudicators urge councils to:

- ensure that the public are aware of the right to appeal
- review their letters of rejection concerning costs
- examine the feasibility of providing for personal hearings in venues away from the New Zealand House hearing centre.

We received Professor Raine's report from Birmingham University following the survey they conducted into appellants' perceptions of, and satisfaction with, the Parking Appeals Service. The University also conducted a small survey of vehicle owners who had had their representations rejected by the council, but had not appealed. The results of the survey are covered in detail at Appendix 2. Adjudicators were particularly interested to discover whether appellants perceived them as independent and whether they regarded the proceedings as fair. Not surprisingly, the answers to the questionnaire differed depending on whether the appellant had attended a personal hearing or had simply opted for a postal decision.

Following on from Professor Raine's conclusions the Adjudicators urge councils to ensure that the public are aware of the right to appeal, review their letters of rejection concerning costs and examine the feasibility of providing for personal hearings in venues away from the New Zealand House hearing centre. The Adjudicators conclude that further surveys should be conducted on a regular basis.

The Bexley Tax Disc Case

An Adjudicator's decision in relation to a condition which a London Borough Council attempted to impose under an order relying on the powers given by section 35(1) of the Road Traffic Regulation Act 1984 has been judicially reviewed in the High Court. *R v The Parking Adjudicator ex parte the London Borough of Bexley Council*.

The point at issue was whether a condition in an off-street parking order was valid or not and whether it had been broken. The condition was broadly that a vehicle shall not wait in the off-street car park unless it is licensed in

accordance with the relevant vehicle excise and registration legislation and unless the use of the vehicle by the driver is covered by an insurance policy complying with the requirements in Part VI of the Road Traffic Act 1988. The Penalty Charge Notice stated the grounds on which the parking attendant believed that a penalty charge was payable as being that the vehicle was 'parked without displaying a valid vehicle excise licence'. The Adjudicator determined that the order requiring the display of a tax disc was not valid since it was beyond the powers conferred upon local authorities

The Adjudicator's decision was upheld by the High Court. The Court's decision establishes the following principles:-

- 1 The powers under section 35(i) of the 1984 Act to impose conditions may only be used for a purpose connected with parking. The condition in question was invalid because it was outwith those powers.
- 2 The condition was bad in law because (i) the parking attendant had no means of knowing whether or not it had been broken and had no right to find out, and (ii) the condition would have been an extension of the criminal law as it would have extended to a vehicle in an off-street car park vehicle excise requirements which apply only as regards a vehicle on a road.
- 3 A Parking Adjudicator is not confined to determining matters of fact under the grounds of appeal specified in paragraph 2(4) of schedule 6 to the 1991 Act, but has a collateral power to decide questions on the validity of provisions in an order.
- 4 Even if the condition in question had not been bad in law, it had not been broken in the way alleged in the penalty charge notice as the conditions did not require a vehicle excise licence to be displayed.

The judge confirmed that it was the intention of Parliament that Adjudicators should be lawyers and it was therefore intended that they must also be required to consider points of law. This principle has subsequently been endorsed by the House of Lords in *Boddington v British Transport Police* [1998] 2 WLR 639

1 2 3
4 5 6
7 8 9

The judge confirmed that it was the intention of Parliament that Adjudicators should be lawyers and it was therefore intended that they must also be required to consider points of law.

*Road Traffic
Act 1991*

CHAPTER 40



The Davis Case

The ability of an Adjudicator to determine the ambit of the proper powers of a council was considered further in a number of consolidated cases led by *Davis -v- The London Borough of Kensington & Chelsea (1997 PAS 1970198981)*. These cases concerned delays in process, but the decision also considered generally the purpose and nature of the scheme of the 1991 Act, and the duties falling on councils under that scheme.



The Duty to Act Fairly

It is now well settled that the purpose of the scheme is traffic management, and not fiscal. As underlined by the Secretary of State's Guidance, it is the intention of the Act that those who are subject to the scheme must be dealt with fairly at every procedural stage. The council consequently must act fairly at all stages of the process: from the issue of the PCN and service of NTO, through the consideration of any representations made in respect of the NTO and determination of any appeal by the Adjudicator, to the determination of liability for the penalty charge and ultimate enforcement. Although not yet in force, the importance of this duty has been underlined by the recent passing of The Human Rights Act 1998, which incorporates The European Convention on Human Rights into domestic legislation which has specific provisions relating to procedural fairness.

In the Davis case, the Adjudicator held that, in the light of this duty, the statutory scheme of the 1991 Act necessarily imposed on a council a burden to take all steps within a

reasonable time. What will amount to a reasonable time will depend upon the step to be taken and the individual circumstances of a particular case, and the Adjudicator expressly did not lay down fixed rules. However, he set out some of the factors that were relevant in considering reasonableness, including guidance set out in the Code of Practice on Parking Enforcement and the extent to which the delay has been caused by the owner himself. He indicated that it is unlikely that a lack of resources (or the manner in which scarce resources are allocated) would render reasonable an otherwise unreasonable delay. He went on to say that, whilst each case will depend upon its own facts, in the usual case it may be difficult for a council to show it had acted reasonably promptly where at NTO had been served more than 6 months after the issue of the PCN upon which it is based or where representations in respect of an NTO had not been considered by a council within 2-3 months from receipt.

When does a council have an enforceable right to a penalty?

Every council has a positive duty to exercise its discretion in relation to parking penalties, and not pursue a charge when it is inappropriate.

In the Davis case, the council argued that it had 6 years from the issue of a PCN in which to issue an Notice to Owner, because its cause of action arose on the issue of the PCN and the Limitation Act allowed 6 years for the enforcement of such a cause. However, a cause of action is a factual situation which gives a person a right to a remedy in the Courts, and the Adjudicator held that the council had no right to a remedy in any Court of law prior to 14 days after the service of a charge certificate. It is only then that proceedings can be taken in the County Court to enforce the increased charge in the charge certificate. Until that stage, neither the car owner nor anyone else has an enforceable obligation to pay any charge. He therefore held that prior to the service of a charge certificate, the Limitation Act imposed no restriction upon a council's ability to pursue a penalty, although this did not derogate from a council's duty to take all procedural steps within a reasonable time.

This case consequently stressed the point that every council has a positive duty to exercise its discretion in relation to parking penalties, and to not pursue a charge when it is

inappropriate so to do. That discretion can be exercised at any stage of the process, and must be exercised at certain specific stages: for example, both the Act and the Secretary of State's Guidance stress the duty on councils to consider representations in respect of a Notice to Owner, and the requirement that 'local authorities should exercise this duty in a fair and consistent way', and consider 'using their discretion to waive additional parking charges where there are extenuating circumstances'.

In other cases, appellants have brought to the attention of Adjudicators correspondence from some councils indicating that, a contravention having been accepted by the owner or found to have occurred by the council itself, the council could not waive the penalty - it was bound to pursue it. Such correspondence concerns the Adjudicators because it is not only wrong (a council always has a discretion to waive a penalty), but suggests that some councils are not complying with their statutory duty to consider extenuating circumstances put forward by the owner, with a view to waiving the penalty if appropriate.



Consequences of a breach of the duty to act fairly

Finally, the Adjudicator considered the consequences of a breach of the council duty to act fairly, for example by failing to act reasonably promptly in relation to a step in the procedure. He considered that there was no difference in principle between a collateral challenge of a traffic management order (as in the Bexley case, on page 22) and of a decision of a council to pursue a penalty in circumstances in which it had breached its duty to act fairly. He held that that duty is implied in to the statutory provisions and is as much a part of them as the express terms of the statute or order themselves. Therefore, where a council had acted ultra vires in failing to comply with its duty to act fairly, for example by not acting with reasonable timeliness in relation to a particular case, the Adjudicator was bound to find that the council could not pursue a penalty based upon its own unlawful act, with the result that he must allow the appellant's appeal.

Out of London Appeals

Winchester was the first authority to adopt the RTA powers outside London. This year four other authorities joined the scheme, namely Oxford, High Wycombe, Maidstone and Watford. We are dealing with their appeals until the adjudication service for England and Wales is established next year.

One of the challenges in providing an appeal service for out of London councils has been to identify suitable venues in which to hold personal hearings. The Council on Tribunals, which issued its helpful report *Tribunals, Their Organisation and Independence* in August 1997, set out as one of their conditions for independence:

'adequate and appropriate hearing accommodation in premises which are not connected with one or other of the parties.'

Given the small number of appeals from these councils, it is not feasible to dedicate premises for parking appeals. However, most of the adequate accommodation available appears to be within council premises. Winchester hearings are held at the Guildhall, which is owned by the City Council but is not used for administrative purposes. The Council use it for ceremonial purposes and it is generally available as a conference centre. In those circumstances it has proved an appropriate hearing centre for Winchester appeals. Similar premises are being sought in the other towns.

As the Birmingham University appellants' survey identified, appellants who attend personal hearings tend to have a higher perception of fairness of the scheme. As decriminalised parking enforcement is adopted throughout the rest of the country care will need to be taken to make suitable arrangements for personal hearings.

Even the few appeals that have been made to Adjudicators from outside London authorities have revealed wide variations in the wording of Traffic Orders. The problems caused by these variations are dealt with overleaf.

Traffic Orders

Four of the reports in the digest turn on the interpretation of Traffic Management Orders (TMOs) and Traffic Regulation Orders (TROs outside London).

- 1 The loading/unloading case revealed that different councils were applying widely held beliefs about the legal requirements of the loading/unloading exemption which were not sustained by the Traffic Management Orders.
- 2 The strict liability 'no blame' case showed the need specifically to create strict liability within the order, and illustrated how essentially the same provisions for pay and display schemes were created by each council using entirely different terminology.
- 3 The 'going for change' case demonstrated the importance of clear, certain requirements for payment.
- 4 The High Wycombe footway parking case considered whether a council can restrict footway parking by a TRO and the associated requirement for appropriate signs, (a theme shared with the Lincoln's Inn Fields case).

In last year's report we expressed concern that Adjudicators were not supplied with orders when they requested them. We reported that there had been instances where appellants had been unable to obtain a copy of or access to the Traffic Management Order which they were alleged to have contravened. We regret that this situation has not improved since last year.

It must be borne in mind that the Road Traffic Act 1991 only changed the method of enforcement of parking regulations, it did not alter the regulations themselves or their application. A parking contravention is a contravention of a provision in an order made by a council.

There is general concern about:

- the lack of availability of the orders to appellants and to Adjudicators
- the multiplicity of orders
- the prolixity and confusion of some of the orders
- the diversity of provisions in the orders.



In some cases appellants are told that they must make an appointment to examine a traffic order. It is fundamental that appellants have easy access to orders, preferably without charge. Since public statutes are now available free on the Internet councils might consider a similar solution with their traffic orders.

The problems with traffic orders are not confined to their diversity, prolixity and unavailability. The Carr and Baker appeals demonstrated that although in both cases the council had made orders creating pay and display parking, they were drafted in entirely different terms. They both included a provision that created strict no fault liability, but many of the orders for pay and display examined by Adjudicators do not. Given the wide use of pay and display schemes how is the motorist (or Adjudicators) meant to know what the extent of his liability is without consulting the relevant order?

The High Wycombe footway parking case demonstrates that the problems with traffic orders are not confined to London. Moreover a further issue in that case was that the penalty charge notice was issued for the London version of the contravention, i.e. code '60'. This is understandable since that code is incorporated into all the standard Penalty Charge Notice processing systems, including the parking attendants' hand held computers.

It has been generally accepted that the contravention codes originally designed for London (but largely based on those used previously by the police) should be used as national standards. Not only does this create conformity for ticket processing and exchange of information but also is significant in the training of parking attendants and their NVQ national accreditation.

One of the legal features of the decriminalisation of parking

enforcement is that the Penalty Charge Notice is the *prima facie* evidence that the parking contravention occurred. It is fatal to the enforcement of the Penalty Charge Notice if it does not properly describe the contravention that is alleged to have occurred. Those definitions should support the existing wording of the contravention codes.

Standardisation of definitions would enable clear and accurate information to be provided to motorists about the requirements and restrictions when parking their vehicles. It would also enable councils considering representations and Adjudicators to concentrate on the facts without referring to each traffic order.

The Adjudicators recommend that the legal definitions of parking restrictions, requirements and exemptions should be drafted in a standard format, and used by each council adopting the Road Traffic Act decriminalised parking enforcement powers.

The Adjudicators recommend that the legal definitions of parking restrictions, requirements and exemptions should be drafted in a standard format, and used by each council adopting the Road Traffic Act decriminalised parking enforcement powers.

Hire Agreements

1333 cases

came before us last year where the ground of appeal was that the vehicle to which the Penalty Charge Notice had been issued was subject to a hire agreement. Last year we reported the case of *Autolease v London Borough of Barnet* (PAS 1970121546) which confirmed that the provisions of the 1975 regulations were mandatory and therefore a hire agreement for the purposes of transferring liability for a penalty charge to the hirer under the RTA had to conform with the requirements. Since the regulations were made in 1975 practices in the hire car industry have changed. Also the requirement that a hire agreement should contain the issuing authority of the hirer's driving licence stems from the days of red driving licences issued by local councils. Therefore over the years

agreements have evolved to fit current circumstances but they do not always conform to the requirements of the 1975 Regulations. This has given rise to numerous appeals to Adjudicators.

It can never have been intended that council resources and Adjudicator time should be expended to such an extent on what is effectively, an administrative exercise in examining a document to check for its compliance with the regulations.

The Home Office have produced draft new regulations concerning this matter but they do not appear to have been made.

The Adjudicators urge that new, appropriate Regulations are made and brought into force without further delay.

Appendix One - Digest of Cases

Delivery/collection and loading/unloading goods

Jane Packer Flowers Ltd -v- The City of Westminster (PAS 1960034955) and Other Consolidated Cases

A number of cases were heard together where the issue was whether the appellants' vehicles fell within the loading/unloading exemption. The Adjudicator considered the provisions of the various Traffic Management Orders and the full case law under the old criminal parking scheme. He found that many of the widely held beliefs about what does or does not constitute delivering/collecting and loading/unloading were not supported by the Traffic Management Orders.

In these cases the Adjudicator found:

- 1 'Goods' does not have a narrow meaning and can include small items.
- 2 Private loading/unloading is only allowed where the use of the vehicle was necessary and not merely convenient. This is a matter of fact for the Adjudicator. Shopping can sometimes fit within the definition.
- 3 Loading/unloading in the course of a business will always fall within the exemption, subject to proof of facts.
- 4 Delivery/unloading includes locating goods, taking them to where the recipient wants them and checking paperwork.
- 5 Parking in order to establish whether there are goods ready for collection or on the off chance of a sale is not covered by the exemption.
- 6 There is no authority to suggest that loading/unloading must be continuous. It is a matter of evidence for the Adjudicator to determine even if no such activity is observed by a Parking Attendant over a particular period.
- 7 The London TMOs impose a 20 minute maximum, but the driver can only use such time as is necessary for loading/unloading and is not entitled to the full 20 minutes.
- 8 There is no 'period of grace' before a Parking Attendant can issue a Penalty Charge Notice.

Evidence

Documentary evidence is the best evidence in establishing loading/unloading, but the local authorities should consider what the driver says even if this cannot be supported by documentary evidence.

Strict liability where the driver is not at fault

J D Baker v London Borough of Wandsworth (PAS 1960175673)
D Carr v The Corporation of London (PAS 1960207612)
CM Jabri v Royal Borough of Kensington & Chelsea (PAS 1960229637)

In these cases the Adjudicator had to consider a council's power to make regulations which impose no fault liability for parking contraventions: in particular where drivers have paid and displayed but the purchased ticket has become dislodged whilst the driver is away or where drivers have paid for parking time on an electronic meter but the apparatus has malfunctioned after the driver has left the vehicle.

The Adjudicator found that:

- 1 Pay and display - the Councils did have power to make such regulations imposing no fault liability: Sections 35 and 36 of The Road Traffic Regulation Act 1984 (the 1984 Act) unambiguously gives local authorities power to make regulations requiring the display of a pay and display voucher, including the manner of display.
- 2 Meters showing out of order - it was not clear that the 1984 Act gave such power.
- 3 It was necessary to carefully interpret the exact wording of the relevant Traffic Management Order (TMO).

If a TMO stated that it was necessary for the driver to 'cause or permit' the relevant contravention then fault on the part of the driver was required. The words 'cause or permit' meant that some knowledge of the unlawfulness of the parking had to be shown.

Other regulations which merely state, for example, that a ticket 'shall be displayed at all times' are lawful and create no fault liability. Even if a driver has left the vehicle with a pay and display ticket properly displayed, if it is subsequently dislodged before he returns, he is liable.

Going for Change

Barnes v London Borough of Hillingdon (PAS 1960033828)
Clarke v London Borough of Bexley (PAS 1960138280)
Mayor v London Borough of Camden (PAS 1970053388)
Wilcox v Corporation of London (PAS 196019426A)

These cases all involved the common situation where motorists park in a meter or pay and display bay but find they do not have the correct change. Often they leave their vehicle and go into a shop or in search of someone to change their money.

The Adjudicator decided the following:

- 1 Where the TMO was drafted in terms that payment should be made 'on leaving the vehicle in the parking place', payment had to be made without delay as soon as the vehicle was put in the parking place.
- 2 A reasonable amount of time was to be allowed to pay the required amount, which would include putting coins into a meter and walking to and from a pay and display machine and then displaying the voucher as required, but it would not include going for change.

The Adjudicator concluded that the principles to be found in the two leading cases under the old law of *Strong v Dawtry* and *Riley v Hunt* still applied.

Footway parking in High Wycombe

Burnett -v- Buckingham County Council (PAS HIW0003)

A penalty charge notice was issued to Mr Burnett's car because it had been left on the footway. The adjudicator had to decide whether the relevant Order properly restricted parking on the footway at this location and if so, whether the restriction had been properly signed. The description of the alleged contravention on the Penalty Charge Notice (PCN) was the one used in London, where the footway parking restriction is achieved through an Act of Parliament rather than a Traffic Management Order.

In this case the Adjudicator found that:

- 1 Section 1 of the Road Traffic Regulation Act 1984 (the 1984 Act) allows local authorities outside London to make Traffic Regulation Orders (TROs).
- 2 Section 2 of the 1984 Act allows a TRO to make provision for prohibiting, restricting or regulating the use of a road by vehicular traffic 'including provision for prohibiting or restricting waiting of vehicles'. This enabled the council to prohibit parking on a 'road' which by virtue of Section 142 of the 1984 Act means any length of highway or of any other road to which the public has access. 'Road' ordinarily includes the footway, but does not ordinarily include a garden or space because the public do not ordinarily have a right of way over such areas.
- 3 Section 32 of the 1984 Act gives local authorities power to provide for parking on a 'road'.
- 4 The Local Authorities Traffic Orders (Procedure)(England and Wales) Regulations 1996 (the 1996 Regulations) provide, in effect, that any regulation of parking made by a local authority under the 1984 Act must be brought to the attention of the motoring public by means of signs. The regulation of parking is subject to the display of proper signs and is unenforceable if proper signs are not displayed.
- 5 The relevant Order purportedly imposed a blanket ban on footway parking.

The Adjudicator concluded, however, that the Order was not valid because:

- 1 The contravention stated on the PCN was that of 'being parked on an urban road with one or more wheels resting on a footway, land between two carriageways, grass verge, garden or space'. This is the description of the contravention as used in London. However, there was no reference to 'a garden or space' in the relevant Order in High Wycombe. The PCN was, therefore, inconsistent with the Order. Section 66(3) of the Road Traffic Act 1991 requires the contravention for which the PCN is issued to be accurately identified on the face of the PCN.
- 2 The parking restriction was not signed and so was not enforceable.
- 3 The council had acted ultra vires (beyond its powers) in that it had failed to sign the restrictions and it had failed to accurately identify the contravention on which it sought to rely in the PCN.
- 4 Parking restrictions imposed by Act of Parliament need not be signed. Restrictions created by subordinate or delegated legislation (as in TMOs or TROs) must be signed.

Footway parking in London

The London ban is not founded on subordinate legislation made under the 1984 Act but is created by an Act of Parliament in its own right : [Section 15 of the Greater London Council (General Provisions) Act 1974]. There is a blanket ban on footway parking, and there is no requirement that the restriction be signed because it is directly created by Act of Parliament. Indeed, the ban operates so that only the exceptions to the ban must be signed.



Delay

Davis -v- Royal Borough of Kensington & Chelsea (PAS 1970198981)

In this decision the Adjudicator considered a number of cases where it was found that:

- 1 There was a substantial delay (often in excess of 12 months) on the part of the council in either issuing a Notice to Owner (NTO), considering representations, issuing a Charge Certificate, registering the Charge Certificate with the County Court or taking enforcement action to recover the debt.
- 2 Appellants had acted promptly when they received communications from the council.
- 3 Appellants had evinced surprise on receiving documentation from the council and for the most part claimed that, because of the lapse of time, they could not (and could not be expected to) remember the incident.

The Adjudicator concluded that the council had not discharged its duty to act fairly because of the delay in pursuing the penalty charges in the cases under consideration.

The Adjudicator concluded:

- 1 The purpose of the scheme under the Road Traffic Act 1991 was traffic management; it was not primarily intended as a means of raising revenue.
- 2 There is a duty on local authorities to administer the scheme fairly, as well as efficiently and economically.
- 3 Delay could not only restrict an Appellant's ability to challenge evidence but also prejudice his ability to satisfy the burden of proof. The duty to act fairly included the duty to hear the other side which could not be fulfilled where there was delay.
- 4 The European Convention on Human Rights provided that all persons within member states were entitled to a fair and public hearing within a reasonable time.
- 5 The extent to which the owner had been prejudiced by the delay was just one factor to take into account in assessing whether that delay was unreasonable.

The Adjudicator indicated what he considered to be a reasonable timetable for each stage of the process, emphasising that each case had to be considered on its facts. The proposed timetable was:

- Issue of Notice to Owner: within 6 months of issue of the PCN.
- Consideration of representations: within 2-3 months of receipt of representations.
- Enforcement of charge certificate: each case to be decided on its merits.

The Duty of Fairness and the Reasonable Signing of Restrictions (the Lincoln's Inn Fields Case)

Mr J Bladon -v- City of Westminster (PAS 1970289930)

Mr Amerjit Johal -v- London Borough of Camden (PAS 1980047552)

These two cases were decided together and reiterate the duty of fairness owed by a council towards motorists in relation to the need to clearly sign parking regulations. Both concerned the adequacy of the signage of parking restrictions in Lincoln's Inn Fields. This is a square in central London, three sides of which are within Camden. The remaining side is in Westminster. Mr. Bladon parked in a pay and display bay located in Westminster and purchased a ticket from the nearest machine which was located in Camden. A Parking Attendant employed by Westminster issued a Penalty Charge Notice because no Westminster pay and display ticket was displayed even though the Camden ticket was on display. The question was whether the signage adequately indicated the fact that the bay and the machine were located in different local authorities, and the consequences of that fact.

The procedure to be followed by local authorities in signing restrictions is set out in The Local Authorities' Traffic Orders (Procedure) (England & Wales) Regulations 1996 (SI 1996 No.2849). Regulation 18 (1) provides:

'Where an order relating to a road has been made, the order making authority shall take such steps as are necessary to secure:

- (a) before the order comes into force, the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;*
- (b) the maintenance of such signs for as long as the order remains in force.'*

The Adjudicator decided that the obligation under Regulation 18 (1) of the 1996 Regulations went further than the council having merely to place the minimum signs required by the Traffic Signs Regulations and General Directions 1994 (SI 1994 No.1519). Adequate information must be made available to the motorist in the particular circumstances of each location.

The Adjudicator also decided that a council must not only comply with the letter of the regulations it was also under a duty to act fairly in all the circumstances (c.f. *R-v- The Secretary of State for the Home Office ex parte Doody*). A council must, therefore, install and maintain signs and road markings which accord with the concept of fairness to the motorist and the need in unusual locations to ensure that the motorist was fully informed of the relevant traffic restrictions. Signs must therefore operate in such a way as to provide reasonable information to the motorist concerning what is required in order to park lawfully.

In certain locations, therefore, it may be necessary for additional signs or arrangements to be put into place so that councils can discharge their duties to provide adequate information to the motorist.

The Adjudicator recommended that additional signs be installed at the location and that both councils should make reciprocal arrangements to ensure that in Lincoln's Inn Fields the pay and display tickets issued by one borough in the square should also be valid in the other borough.

Appendix Two

User Survey

The Parking Committee resolved in December 1995 to undertake a customer satisfaction survey of users and potential users of the Parking Appeals Service.

After a tendering process, the research was undertaken by Professor John Raine of the School of Public Policy at Birmingham University. Field work was conducted over the summer of 1997. The research took the form of a survey of a sample of appellants and, equally importantly, a smaller sample of those who might have appealed but did not do so. The findings of the research provide some interesting insights.

Some of the key questions for the survey were as follows:

- How aware were people of the right to appeal?
- Why did some lodge their appeal by post and others choose to present their case in person? Did it make a difference?
- How did personal appellants perceive the experience (and what was the impact of the IT in this context)?
- How independent and fair was the adjudication process perceived to be?

The main survey took the form of a series of postal questionnaires dispatched to a 100% sample of appellants in a 4 month period (between December 1996 and March 1997). Names and addresses of appellants were supplied from the Parking Adjudicators' system, clearance having been obtained from the Data Protection Registrar. Of the total sample of 1,183 appellants contacted, 832 (about 70%) had had their appeal dealt with through the post (postal appellants); the remaining 351 having attended the adjudication in person (personal appellants). The questionnaire sent to personal appellants was rather longer than that for postal appellants with a number of additional questions about the experience of attending the hearing centre in central London and about their perceptions of the process there.

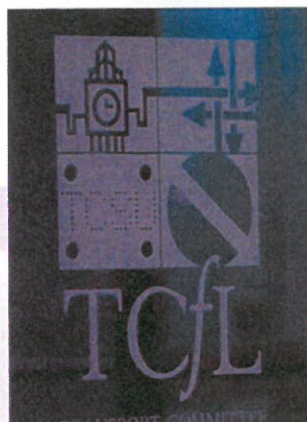
In addition to the appellant surveys, a separate short questionnaire again was sent to people whose representations against the imposition of parking fines had been rejected by the authority, but who had not exercised their right to appeal to the Parking Adjudicators. The questions focused particularly on their awareness of their right of appeal and the reasons for not exercising this right. Response rates of around 40% were achieved on all three sample surveys. Some key findings of the research are examined below.

Awareness of the right to appeal

21% of the non-appellant sample said that they were unaware of the right to appeal and claimed not to have received information about the Appeals Service or the form with the letter of 'rejection of representations' from the local authority. While it was not possible to ascertain whether this reflected administrative failure on the part of the authorities or oversight on the part of the recipients, the finding seemed significant in so far as it suggested that the statutory rights of a sizeable proportion of people were not understood. Moreover, 45% of all non-appellant respondents reported that they had not known of the possibility of a postal appeal (i.e. even if they were aware of an appeals process, they had thought it would mean an attendance at the central London venue being necessary). Perhaps of most significance here was the finding that two out of three such non-appellants who did not know about the option of postal appeals indicated that, had they known, they would have lodged an appeal.

Reasons for not appealing

The overall pattern of reasons cited by non-appellants for not making an application was as follows:



- Feared having to pay costs (28%).
- Unawareness of right of appeal (21%).
- Little chance of winning (16%).
- Didn't think it would be fair/impartial (12%).
- The allowable grounds didn't suit (12%).

Appendix Two (continued)

User Survey (continued)

The most commonly cited reason for not appealing was fear of being liable for costs in the event of an appeal being unsuccessful. This, in fact, was not just an issue of concern to non-appellants. The survey highlighted widespread confusion about the issue of liability for costs both among those electing to appeal by post and through personal hearings (as the following table shows).

	Postal	Personal	All
Not liable	22%	20%	21%
Might be liable	35%	44%	41%
Would be liable	18%	19%	18%
Don't know	25%	17%	20%

Non-appellants

definitely liable (15%)
probably liable (7%)
might be liable (30%)

Although the legal power to award costs is at their disposal, a costs order has only once been made by an Adjudicator against a motorist. Yet this reality was evidently not being communicated effectively to the public by the local authorities in their letters of 'rejection of representations'. While all boroughs make reference to the 'costs' issue in their correspondence, differences in the particular language (and legalistic tone) used by many of the boroughs in their correspondence seemed at least partly to blame for the confusion. This is shown by the differing perceptions of non-appellants from different boroughs.

Reasons for choosing between postal and personal appeals were also of some interest in the research. Reasons cited in response to questions in the survey were as follows:

Reasons cited for choosing a postal appeal

All the evidence was 'paper-based'	25%
Didn't think it was worth attending	23%
Inconvenient location for hearings	18%
Inconvenient date/time of hearing	14%
Didn't know of entitlement to attend in person	4%
Didn't want to face Adjudicator	2%

Reasons cited for choosing a personal appeal

Arguments would be best made face to face	31%
Felt it would increase chance of winning	25%
Wanted to participate in the process	22%
Inadequate space/design of form for postal appeal	13%
Convenience of appeals centre location	4%

Of interest was the impact of the computer system on personal appellants. The computer screen and keyboard plays a very visible part in the adjudication process. Indeed, Adjudicators are in the habit of swinging the monitor around so that appellants can see exactly what adjudicators are seeing and doing. So how did appellants regard the computer? Was it felt to be a help or a hindrance to them during their hearing? In fact for about one third of respondents the computer was judged to have helped (31%) and several indicated that they had been very impressed by the image-processing arrangements and the general efficiency of the automated system. On the other hand, for slightly more than another third (36%) the computer was felt to have made no difference to the process. A further 27% expressed no opinion on the matter (so might perhaps be considered similarly to have been unaffected by the computer); while some 6% of respondents reported that, for them, it hindered the process.

Perceptions of the adjudication process.

In this respect appellants were asked a range of questions about their perceptions of fairness, formality (asked of personal appellants only), understanding of the status of the appeals (i.e. a last-resort opportunity the decisions of which are binding), about the perceived independence of the Parking Adjudicators (e.g. from the boroughs) and about their overall experience of using the tribunal as against their initial expectations of the process. Key findings here were as follows:

Fairness

The appeal was fairly conducted	57%
The appeal was unfairly conducted	15%

Formality (personal appellants only)

The process was over-formal	8%
The process was about right	64%

Understanding of status of hearings

The status of the hearing was very clear	51%
The status of the hearing was fairly clear	18%
The status of the hearing was not clear	6%

Experience versus Expectations (personal appellants only)

The experience proved better than expected	42%
The experience proved about as expected	24%
The experience proved worse than expected	15%

Independence

The process was felt to be independent and impartial	42%
The process was not felt to be independent and impartial	30%
No view expressed on the independence of the process	28%

The research revealed some significant differences in perceptions between the postal and the personal appellants.

Perceptions of the independence of the adjudication process (postal/personal)

	Postal	Personal	All
Independent	36%	57%	42%
Not independent	35%	17%	30%
Don't know	28%	26%	28%

Similarly the findings highlighted significant differences in perceptions about independence between those who won their appeals and those who lost.

Perceptions of the independence of the adjudication process Postal (won / lost)

Postal	Lost	Won
Independent	11%	58%
Not independent	63%	15%
Don't know/no view expressed	26%	27%

Perceptions of the independence of the adjudication process Personal (won / lost)

Personal	Lost	Won
Independent	25%	90%
Not independent	64%	3%
Don't know/no view expressed	11%	7%

The findings as regards the overall perception from personal Appellants was:

Personal appellants were asked whether their decision to appeal had been worthwhile

Yes	74%
No	18%
Don't know/no response	8%

Few facilities for the public are available at New Zealand House. This is perhaps the only area in which the Appeals Service itself scored unacceptably 'low' on the survey.

The survey offers some interesting insights into how our administrative justice process is working and provides some important pointers for policy and practice in relation to the appeals tribunal. While on the whole the survey findings painted a generally positive picture of the process, as perceived by appellants, particularly in terms of a 'public service orientation' agenda, a number of important issues were identified as meriting further reflection and perhaps attention. These included:

- Limited awareness of the right of appeal and of the options (postal/personal)
- Confusion about liability for 'costs'
- Uncertainty about the independence and fairness of the adjudicative process (particularly among postal applicants, and among 'losers')
- Limited accessibility (one venue in central London) for personal hearings
- Markedly higher confidence in the system of personal appellants than postal appellants
- Desire for refreshments and magazines in the Hearing Centre

Appendix Three

Chief Adjudicator

Caroline Sheppard

Adjudicators 1996/97

Robin Allen (appointed December 1996)
Michel Aslangul (appointed December 1996)
Hugh Cooper (appointed December 1995)
Richard Crabb (appointed December 1994)
Neeti Dhanani (appointed December 1996)
Sarah Dobbyn (appointed December 1996)
Henry Michael Greenslade (appointed December 1994)
Usha Gupta (appointed July 1993)
Caroline Hamilton (appointed December 1996)
Gary Hickinbottom (appointed December 1994)
Monica Hillen (appointed July 1993)
Edward Houghton (appointed December 1994)
Andrew Keenan (appointed July 1993)
Brian James CBE (appointed December 1994)
Verity Jones (appointed December 1996)
Barbara Mensah (appointed December 1994)
Ronald Norman (appointed December 1996)
Neena Rach (appointed December 1994)
Kathleen Scott (appointed December 1996)
Jennifer Shepherd (appointed December 1994)
Sean Stanton-Dunne (appointed December 1996)
Gerald Styles (appointed December 1994)
Timothy Thorne (appointed December 1996)
Susan Turquet (appointed December 1994)
Diana Witts (appointed December 1996)
Paul Wright (appointed December 1994)







Transport Committee for London
New Zealand House
80 Haymarket
London SW1Y 4TE
Telephone 0171 747 4777
Facsimile 0171 747 4848
E-Mail admin@tcfl.gov.uk

TCfL is a joint committee of London's councils © 1998