



# **Annual Report 2003-2004**

---

Road User Charging Adjudicators

For further information contact  
Ingrid Persadsingh  
Chief Congestion Charge Adjudicator  
[Ingrid.Persadsingh@alg.gov.uk](mailto:Ingrid.Persadsingh@alg.gov.uk)  
T: 020 7747 4777

## Table of Contents

AIMS AND OBJECTIVES	4
CHIEF ADJUDICATOR'S FOREWORD	5
ISSUES ARISING FROM THE SCHEME	8
Hire Agreements	7
Private Hire Vehicles	9
Driver And Vehicle Licensing Authority	10
The Rugby Automatic Clock	10
ISSUES ARISING FROM OPERATING THE SCHEME	11
Cameras	11
Information to the Public	11
Pay and Appeal	11
Discretion and Mitigation	11
Bailiffs	11
Clamp and Removal	12
PROCEDURAL ISSUES RELATING TO APPEALS	13
Out of Time Appeals	13
Statutory Declarations	13
Service of the Penalty Charge Notice	13
Letters sent to the keeper when the Declaration is being referred to the Adjudicator	14
Underpayments	14
Applications for Review	15
Applications by the charging authority	16
Costs	16
ADMINISTRATIVE ISSUES RELATING TO APPEALS	18
Website	18
Processing Problems	18
HOW THE YEAR WAS FOR ONE ADJUDICATOR	19
RECOMMENDATIONS	20
ANNEX ONE: ADJUDICATORS	21
ANNEX TWO: GROUNDS OF APPEAL	22
ANNEX THREE: ANNUAL OVERVIEW	23

## **AIMS AND OBJECTIVES OF THE ROAD USER CHARGING ADJUDICATORS**

**1.**

**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.**

**2.**

**To have the appropriate knowledge, skills and integrity to make those decisions.**

**3.**

**To ensure that all parties to road user charging appeals are treated equally and fairly regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion or disability.**

**4.**

**To enhance the quality and integrity of the road user charging appeals process.**

## Chief Adjudicator's Foreword

I am pleased to present to the Secretary of State this Joint Report of the Road User (Congestion) Charging Adjudicators for the year 2003-2004.

2003 was a unique year in the history of the road user in London. Transport for London (TfL) in exercise of the powers conferred on it by the *Greater London Authority Act 1999* and the *Road User Charging (Charging and Penalty Charges) (London) Regulations 2001* set up a scheme for congestion charging in Central London whereby a charge is imposed in respect of each charging day on which a relevant vehicle is used or kept on one or more designated roads at any time during charging hours.

Under the scheme where users challenge the decision of TfL that they had failed to pay the charge they have a right of appeal to the Road User Charging Appeals Adjudicators.

The hearing centre is in Central London at New Zealand House in The Haymarket. Premises are shared with the Parking and Traffic Appeals Adjudicators. The Parking and Traffic Appeals Service (PATAS) provides the administrative service for both tribunals. To facilitate appellants hearings are heard Mondays to Fridays from 8:00am to 8:00pm and on Saturdays from 8:00am to 2:00pm. Appellants can choose to have a personal or postal hearing. PATAS operates a unique and highly regarded end-to-end computerised adjudication process and all appeals are conducted in a paper free environment. Appellants can expect to have their appeals heard within 15 minutes of their scheduled time and in the majority of cases are given a typed decision at the end of the hearing. Following the decision both TfL and the appellant, where strict criteria are met, have a right to a review of the original decision. Costs may also be awarded in exceptional circumstances.

To put road user charging adjudication into effect, twelve Adjudicators were appointed initially, including a Chief Adjudicator. This resulted in a unique opportunity and challenge to create and build a new team and to develop a new tribunal by interpreting the new legislation and mastering the details of the scheme.

The Tribunal was originally planned to cope with 7,000 appeals per annum. The Congestion Charge came into effect on 17 February 2003. By the end of March 2003 the Service had received 2,056 appeals. This level of appeals has continued and by March 2004 a total of 42,339 appeals had been received with a total of 24,314 appeals closed. There has been one appeal under the clamp and removal regulations, which the appellant won.

A detailed overview is included in this Report at Annex Three. As a result of the increased workload a further three Adjudicators were appointed in April 2003 and, as a temporary measure, those London Parking Adjudicators who expressed an interest have been appointed by the Lord Chancellor as Congestion Charging Adjudicators for a year to help with the backlog. The Chief Adjudicator and the Adjudicators of the Parking Appeals Service have throughout the year generously shared their collective 'Parking' experience and my colleagues and I thank them.

Nevertheless a backlog of 12,000 appeals remains ready to be heard. It is recognised that delay can defeat justice and, in order to speed up the period within which an appeal should be heard, a further 21 Adjudicators have been appointed. They have been trained by Christopher Rayner, a fellow Adjudicator.

The Adjudicators would also like to record their appreciation to the Head of PATAS, and her staff, who have had to cope with the daily ongoing administrative problems, for their efficient and enthusiastic support throughout the year in handling the unexpected workload.

I would personally like to acknowledge the work that the Head of PATAS did in helping to set up the Congestion Charging Appeal Service and her continuing concern to ensure that the current excellent service standards are maintained.

We also acknowledge the help and support we have received from the reception staff who have often had to deal with hostile appellants; to the computer support staff who have helped us with utmost patience to master the computerised system; and to the call centre staff who have had a difficult time dealing with an unprecedented number of calls, many wrongly directed to the appeals call centre.

For me as the Chief Adjudicator, the year has been one of a steep learning curve. What was initially planned as a part time post soon became nearly full time. The main problems were created by the unexpected numbers of appeals and the shortage of Adjudicators' time. The use of a computerised adjudication system contributed significantly to an efficient operation but nevertheless 12,000 appellants are waiting to have their appeals heard.

Adjudicators attended an initial three-day induction and training course. There have also been three workshops where Adjudicators have been able to discuss a wide range of legal, procedural and operational issues encountered in putting into effect the regulations of the congestion charge appeals system. Further workshops are in the pipeline where ongoing unresolved issues can be finalised now that the system has been in operation for over a year. Discussions have also taken place to look at appraisal and mentoring schemes for Adjudicators. Some Adjudicators have also been on a residential judicial workshop run by the Department for Constitutional Affairs and more have expressed an interest in doing so.

Finally I would like to thank my fellow Adjudicators. It has been a difficult year but, with their constant support, a successful one. Now that the Congestion Charge looks here to stay I look forward to an interesting future with them.

As this was a year of putting into effect new and unpopular legislation I have decided to devote a significant section of this Report to illustrate some of the problems we encountered.

**Ingrid Persadsingh**

September 2004

## Issues arising from the scheme

### Hire Agreements

Liability for the congestion charge rests with the registered keeper of the vehicle unless there is an applicable exemption or unless liability can be transferred. One instance when liability can be transferred from the registered keeper is under a hire agreement that satisfies specified conditions under the Regulations that govern congestion charging.

A range of issues has arisen where vehicle hire firms have made appeals seeking to transfer liability under hire agreements. Some of the issues relate to:

- 1) Fixed hire period of more than six months
- 2) Statement of liability signed by the hirer
- 3) The validity of extensions to hire agreements
- 4) Inclusion in a hire agreement of the particulars required under schedule 2 of the Road Traffic (Owner Liability) Regulations 2000.

For liability to be transferred under Regulation 6(6) of the Road User Charging (Charges and Penalty Charges)(London) Regulations 2001 the Adjudicator needs to be satisfied that the vehicle in question was at the material time hired from the vehicle hire firm (registered keeper), under a hiring agreement for a fixed period of less than six months and that the person hiring it had signed a statement acknowledging his liability in respect of any fixed penalty offence committed in relation to the vehicle during the currency of the hiring agreement. The Adjudicator also needs to be satisfied that the agreement complies with schedule 2 of the Road Traffic (Owner Liability) Regulations 2000.

When vehicle hire firms appeal on the ground that they wish to transfer liability to the hirer, they regularly submit in evidence hiring agreements which do not satisfy these Regulations. In order to transfer liability a hiring agreement must, at its outset, be for a fixed period of less than six months and there must be a statement of liability for the "currency" of the agreement signed by the hirer. The agreement must show, *inter alia*, the time and date the vehicle goes out, the time and date the vehicle is due back and the actual time and date of return. If the agreement is open ended at its outset an appeal to transfer liability will fail. Similarly, if an agreement is open ended at its outset but a handwritten return date is added, often at the appeal stage, TfL will not accept the agreement because it was not expressly made at the outset for a period of less than six months.

Other agreements submitted in evidence by vehicle hire firms have not included a statement of liability, appropriately worded, and signed by the hirer at the time of hire. If agreements do not comply with the Regulations liability cannot be transferred from the vehicle hire firm to the hirer.

Hire extensions have created another area of appeal. Under schedule 2 of the 2000 Regulations, an agreement must include a) time and date of commencement of authorised extension of hiring period; b) expected time and date of expiry of authorized extension of hiring period; c) actual time and date of return of vehicle.

These three requirements apply only to the vehicle hire firm's copy of the hiring agreement.

In one example of an appeal TfL rejected the appellant firm's representations on the ground that the hire extension was unsigned. In this particular case, the appellant had a properly drafted original hiring agreement, which met all the requirements of the Regulations and included a statement of liability signed by the hirer. There was an authorized extension and the contravention occurred during the extended period. With the advance of technology, the appellant's computer system simply printed off, on a separate sheet of paper, the required details of the extended hire period that met the Regulations. The extension bore the same agreement number but was not signed by the hirer. The Adjudicator treated the original agreement and the authorized extension as one agreement and took the view that the original signed statement of liability applied. Prior to the progression of the computer age, details of the extension period would have been endorsed on the original signed hiring agreement and no issue would have arisen. It seems fair, practical and logical that, where all requirements have been complied with, to treat the original agreement and the extension as one agreement and to allow the transfer of liability to the hirer.

An agreed approach to appeals relating to such hire extensions should result in fewer appeals and a consequent saving in costs.

It could also be beneficial for TfL to consider working with the vehicle hire firms to encourage them to set up hiring agreements that comply with the Regulations. Whilst it is the responsibility of the vehicle hire firms to draft their agreements and complete them so that they meet the Regulations it is in the interests of the efficiency of the system to reduce numbers of appeals. There are presently very significant numbers of appeals relating to hiring agreements that could be reduced in number if the hiring agreements were in an improved format.



## Private Hire Vehicles

At the start of the charge many mini cab drivers were unaware that to be exempt they needed to register with the Public Carriage office. The Public Carriage Office also experienced administrative difficulties. As a result mini cab drivers failed to pay the charge.

In order to get a clear picture of the registration process the Chief Adjudicator visited the Public Carriage Office and established the following:

Private hire vehicles licensed by the Public Carriage Office are eligible for exemption from the road user charge. The exemption will apply to private hire vehicles that are accepted onto a register operated by the Public Carriage Office on application by a London licensed private hire vehicle operator.

The registration process is as follows:

- The driver needs to be registered as an existing driver under the terms of the London private hire pre-registration licensing scheme, and hold a London Private Hire Driver Temporary Permit.
- The registered keeper, generally the driver, of a potential mini-cab vehicle must submit a registered keeper Declaration to an operator.
- The operator must complete an Operator Submission Form with details of the operator, and the vehicles that he wishes to be registered (vehicle registration mark and make). This form is usually sent to the Public Carriage Office by fax, but can also be posted.
- Within 48 hours, the data supplied by the operator (which is accepted at face value by the Public Carriage Office) is entered on the Public Carriage Office database, and is downloaded twice daily to TfL.
- At the same time, an acknowledgement letter is sent to the Operator, with a list of the vehicles that have been registered, and the date from which the list is effective.
- The acknowledgement letter originally stated that “the Operator should retain this acknowledgement letter in their records as confirmation of the vehicles used by their organisation for private hire journeys in the Greater London Authority Area. In line with the arrangements when you made your initial application, do not assume that your vehicles are registered until you have received an acknowledgement letter. The £5 daily congestion charge must be paid for any vehicle in your fleet which is not listed on the attached sheet.”
- The above process also applies to Fleet amendments submitted by the Operators.
- Following the introduction of the registration process there were a number of operational issues resulting in some mini cab drivers not being properly registered and in order to further clarify the process the Public Carriage Office now sends a letter to operators which explains the registration process and states “When your vehicles have been registered we will send you an acknowledgement letter listing the details of your exempted vehicles. You should check the list carefully so that any mistakes can be rectified promptly.

Do not assume your vehicles are exempted until you have received an acknowledgement letter. Exemption will not apply retrospectively”.

- The Public Carriage Office have also amended the Operator Submission Form to state specifically “Important: do not assume any vehicle has congestion charge exemption until you have checked the vehicle registration mark is correct within the acknowledgement list that the Public Carriage Office will send to you following this submission”.

## **Driver and Vehicle Licensing Authority**

Adjudicators have questioned the evidential reliability of the information provided as registered keeper’s details. It is obvious that this is not a reproduction of the information provided to TfL from the Driver and Vehicle Licensing Authority but a synopsis of that information.

## **The Rugby Automatic Clock**

TfL have pursued appeals where the contravention has occurred within seconds of the charging time. Adjudicators have not been unanimous in their approach. Some Adjudicators have applied the absolute letter of the law and not allowed any leeway. Other Adjudicators have felt that an allowance of up to two minutes is acceptable.

It is understood that TfL have decided to adopt a two-minute discretion and, in the circumstances, there may be fewer of this type of appeal.

## Issues arising from operating the scheme

### Cameras

TfL always refer in their photographic evidence to the location of the camera and not the designated road within the zone where the vehicle was recorded as being in the zone.

What is needed is precisely where the vehicle was i.e. specifying in detail where the contravention occurred. This is particularly crucial in cases on the perimeter of the zone and where a mobile camera has been used.

### Information to the Public

While there is a steady flow of information available to residents in London, Adjudicators are concerned that visitors to the city are often not sufficiently aware of the Congestion Charge.

It has been suggested that the charging authority's call centre number on all signs would assist visitors to seek information.

### Pay and Appeal

TfL have generously allowed appellants to pay and appeal. They have also in some cases frozen the penalty amount if the appeal is made and the £40 paid in time. In other cases appellants have assumed that the penalty amount is frozen at £40 and are then surprised if they lose their appeal to find they need to pay £80.

### Discretion and Mitigation

Many appellants have pursued their appeals under the impression that Adjudicators have a wide discretion and are able to take mitigating circumstances into account. This power is reserved to the charging authority.

Adjudicators are often concerned that TfL appear not to have exercised their discretion or taken into account mitigating circumstances in deserving cases.

### Bailiffs

There has been considerable concern over the practice of TfL to proceed with enforcement while an appeal has been lodged. This has resulted in very distressed appellants either phoning or visiting the hearing centre asking for help. In some cases they have felt threatened by bailiffs turning up on their doorstep.

## Clamp and Removal

Where TfL identifies a vehicle stationary on a road within the charging area, in respect of which at least three penalty charge notices are outstanding, they may immobilise ('clamp') or remove ('tow-away') the vehicle and require payment of all outstanding penalties before release for the vehicle.

To date there has been one appeal, which the appellant won as he was able to show that the charging authority had sent the penalty charge notices to the wrong address.

As the regulations stand, to have the right to appeal all penalties have to be paid. As clamp and removal appeals involve multiple contraventions the outstanding sums may be quite onerous. Where there has been a genuine error but the owner of the vehicle is not in a financial position to pay the charges he may find himself unable to appeal.

In the interest of natural justice TfL should consider appeals proceeding on payment of part of the outstanding sum.

## Procedural Issues relating to appeals

### Out of Time Appeals

These have generally resulted where appellants have engaged in protracted communications with TFL without realising that the time to appeal is running.

### Statutory Declarations

The provisions relating to Statutory Declarations are contained in Paragraph 19 of the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001*. In summary a Statutory Declaration may be made to the County Court if the person making it has been the subject of a Recovery Order for an outstanding Penalty Charge but who claims that one of the essential documents was not received. For example he/she may:

- (a) deny receipt of the penalty charge notice through the post;
- (b) state that representations were sent to the Charging Authority within time but that no Notice of Rejection was received showing how to appeal;
- (c) state that an appeal to the Adjudicator was made but no response was received.

This mechanism is enacted in a very similar manner to those already governing contiguous situations in the decriminalised enforcement of parking and bus lane penalties. There is a significant difference here: the registered keeper of the vehicle does not receive a penalty charge notice and then a second enforcement notice through the post which invites the recipient to make representations. Instead there is a single penalty charge notice, which does the same job. If, therefore, the keeper does not receive the penalty charge notice the next document to arrive will be the Charge Certificate. Where the reason for making the Declaration is ground (a) above, the Authority may proceed with its enforcement by issuing and serving a second penalty charge notice. Declarations on the other grounds must be referred to the Adjudicator.

There have been a large number of referrals. By their very nature they are likely to be the cases where a question has arisen about the administration of the Scheme. The Adjudicators think it appropriate to call attention to a few trends:

### Service of the Penalty Charge Notice

The failure to receive the penalty charge notice potentially has a draconian effect. Once the Charge Certificate is received the penalty has significantly increased and the keeper is informed that it is too late to make objection, there is no right of appeal and, in addition, the discount rate is no longer applicable.

There have been several cases where the keeper has made a Declaration, which has utilised the wrong ground. Therefore the referral was made to the Adjudicator but the record has suggested that the penalty charge notice was not received. There appears to have been reluctance in the Authority to re-serve the penalty charge

notice in circumstances where there was clear evidence that the document might not have arrived by post (for example changes of address).

Service of any legal document by post carries a presumption at law that it arrived at the destination address. However this presumption may be rebutted if the Adjudicator considers that there is evidence to suggest that the intended recipient did not in fact receive it. If this is the finding, all subsequent enforcement action will be null and void.

The Adjudicators recommend a more realistic and flexible approach here and that penalty charge notices are re-posted where the need arises.

### **Letters sent to the keeper when the Declaration is being referred to the Adjudicator**

Cases have arisen where the Authority has made referral of the Declaration to PATAS but has also written to the keeper stating that the penalty be paid in the meantime.

The Adjudicators have ruled that this is an unlawful practice. When the Court accepts a Declaration, the Recovery Order and Charge Certificate are cancelled. Until the Adjudicator makes a Direction, therefore, there is no outstanding penalty charge. The keeper must not receive any communication suggesting that he should make any payment or that he has power to withdraw the appeal. He does not.

Any letters sent to the keeper ought to reflect the legal position: that the existing enforcement has been cancelled by the Court, the Authority wishes to continue the enforcement, that the law requires it to refer the matter to the Adjudicator and that the keeper will be contacted by PATAS in due course.

### **Underpayments**

There have been a large number of cases where the Declaration has been made in circumstances where a payment has been tendered but the Authority has not accepted the payment in full settlement. For example the keeper has attempted to pay the Congestion Charge instead of the Penalty or has paid the discounted amount at a time not acceptable to the Authority.

These payments have not been viewed as representations even though the Authority was aware that it did not intend to treat them as fully satisfying the enforcement. Therefore the keeper has simply received the Charge Certificate and has not been informed of any right of appeal.

The Adjudicators do not consider that this is a fair procedure. Decisions have reflected their findings that, as such, the subsequent enforcement is flawed.

If the Authority receives any payment that it does not accept in full settlement, the payment should be treated as a representation and a Notice of Rejection sent – properly explaining its position and indicating how to appeal to the Adjudicator. It is improper to attempt to deprive the keeper of the right of appeal in these circumstances. One of the grounds of appeal is that the penalty charge exceeds the amount payment in the circumstances of the case.

## Applications for Review

Paragraph 12 of the Schedule to the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001* provides that: -

- (1) The Adjudicator shall have power on the application of a party, to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to costs on the grounds (in each case) that-
  - (a) the decision was wrongly made as the result of an error on the part of his administrative staff;
  - (b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;
  - (c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not have been reasonably known of or foreseen; or
  - (d) such a review is required in the interests of justice.
- (2) An Adjudicator shall have power, on the application of a party, to review and revoke or vary any interlocutory decision.
- (3) An application under this paragraph shall be made to the proper officer within 14 days after the date on which the decision was sent to the parties, and must state the grounds in full.
- (4) The parties shall have the opportunity to be heard on any application for review under this paragraph; and if, having reviewed the decision, the Adjudicator directs the decision to be set aside, he shall substitute such decision as he thinks fit or order a re-determination by either the same or a different Adjudicator.
- (5) Paragraph 11 shall apply to a decision under sub-paragraph (1) as it applies to a decision made on the disposal of an appeal.

With their decision letter, each appellant receives a copy of our leaflet **Your appeal has been decided. What Happens Next?** The leaflet includes advice as to what an appellant may do if he considers the appeal decision to be wrong, and sets out the regulations. The guidelines for review of an Adjudicator's decision under Regulation 11 of the *Road Traffic (Parking Adjudicators) (London) Regulations 1993* determined in the review decision of *Ross v The London Borough of Enfield (1996)* apply equally to applications made under Regulations 12 of the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001*.

The guidelines make it clear that a party is not able to seek a review of a decision merely because that party believes the decision is wrong. Our leaflet echoes this guideline, advising the appellant: 'You cannot ask for a review simply because you disagree with the Adjudicator's decision'. Despite this, the majority of applications for review made by appellants essentially seek a re-hearing of facts already rehearsed and considered by the appeal Adjudicator. The review application will generally be made under Regulation 12(1)(d): 'such a review is required in the interest of justice'.

Appeals refused on the basis that the appellant relies on mitigation rather than a ground of appeal generates the majority of unfounded applications for review under this regulation. It may be that in these cases, a reduction in applications for review could be achieved by including a paragraph in decisions or the advisory leaflet reiterating that no Adjudicator has the power to take mitigation into account.

## Applications by the charging authority

Regulation 12 applies equally to the charging authority. Cases where Adjudicators have allowed appeals when evidence has been missing have generated the majority of these applications, made under Regulation 12(1)(a). The applications are made by TfL's 'Policy and Monitoring Advisor' rather than the caseworker and usually contend that the evidence submitted did not reach the appeal file. Generally the evidence submitted with the review application contains evidence that was plainly not included with the original appeal. Ensuring that a complete appeal file is lodged with PATAS is not an onerous task, there is no requirement on an Adjudicator to adjourn an appeal to allow the charging authority to forward missing documents.

It seems that the number of these applications could be reduced were the policy and monitoring advisor to liaise with the case worker and consider the appeal bundles forwarded with the appeal, in particular the file front sheets that indicate the number of pages included in each file, prior to applying for a review.

Proving that one of the grounds set out in Regulation 12(1) applies merely gives Adjudicator discretion as to whether or not a decision should be reviewed. The appeal procedure is designed to be appropriate and proportional. Our aim must be to reduce the number of review applications by generating decisions that are complete and clear thereby ensuring that the Adjudicator's decision is final and conclusive.

## Costs

Under Paragraph 13 of the Schedule to the *Road User Charging (Enforcement and Adjudication) (London) Regulations 2001* it is provided that an Adjudicator shall not normally make an order awarding costs and expenses but may, subject to hearing representations from the party, make such an order against that party if he is of the opinion that the party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable. Additionally, an order may be made against TfL where the Adjudicator considers that the disputed decision, (the decision by TfL to reject the appellant's representations), was wholly unreasonable.

These provisions follow the model established by the *Road Traffic (Parking Adjudicators) (London) Regulations 1993* for parking and bus lane appeals, and establish the principle that costs should only exceptionally be awarded in Congestion Charge appeals.

For appellants, this reflects the fact that for the most part the issues in appeals are straightforward, so that it is unnecessary and inappropriate for them to incur legal costs by being represented at the hearing. It should also ensure that where appellants believe they have a case they are not discouraged from appealing by the fear that losing the appeal will result in them being liable for the Authority's costs.

For the Authority, the regulation equally provides them with a safeguard against expensive costs orders where an appellant has chosen to incur legal costs in a straightforward case where there was nevertheless a triable issue for an Adjudicator to determine. On the other hand, it also serves as a reminder to the Authority of their duty at every stage, from receipt of representations to the close of the appeal proceedings, to regularly review their approach to each individual case, and to



satisfy themselves of the reasonableness of maintaining their opposition to the appeal.

An example of a case where the exception to the "no costs" approach was established was *Davies -v- Transport for London (Case No 903024542A)*. Mr Davies' car had been caught on camera in Baker Street, but he insisted from the outset that although he had indeed driven in that street on the date alleged, he had only done so in that part of Baker Street, which was outside the zone. Shortly before the scheduled personal hearing TfL indicated that they would not contest the appeal. It transpired, as Mr Davies had long suspected, and ultimately was able to demonstrate by reference to his own photographs, that the camera relied upon was mounted on a mobile patrol unit (MPU).

In a lengthy decision awarding costs against TfL the Adjudicator said. "I have set out the above history in such detail because I am deeply disturbed by TfL's conduct of the case from the very beginning. Mr Davies could not have produced more information or evidence if he had tried. TfL must have known from the outset that the images on which they have relied were taken from an MPU. That must immediately have raised the possibility that, whether the MPU was itself inside or outside the zone, vehicles outside the zone might be caught on camera. Given Mr Davies crystal clear account of his route it was incumbent on TfL to actually examine the images, as Mr Davies later did himself, to identify the part of Baker Street in which the car was seen. All the information necessary to carry out that exercise was in the hands of TfL. It is clear that no such exercise was carried out until Mr Davies sent his analysis of the images on 12 January 2004, if indeed it was even carried out then."

The Adjudicator went on to castigate TfL with the following comments, "The final chapter of TfL's handling of this matter is shameful, failing to admit to the Adjudicator (even though they grudgingly did so to the appellant himself) that they had ever made a mistake other than a "processing anomaly" (whatever that is), and actively misrepresenting that they had not contested another case when the very opposite was true.

In these circumstances I have no hesitation in finding that TfL's conduct in rejecting Mr Davies' representations and in opposing his appeal was wholly unreasonable. I have yet to find that an authority has acted vexatiously, but I would say that this is the closest I have come to doing so."

This case also illustrates Adjudicators' practice as to quantifying costs once an award has been made in principle. Mr Davies did not itemise his costs claim, but stated that the time he had spent on the case was worth, "several thousands of pounds". The regulations themselves provide no tariff or guidelines, so Adjudicator's are guided by the Civil Procedure Rules (CPR) as they are applied to Small Claims in the County Court. These provide for a litigant in person (i.e. one not represented by a lawyer) to be awarded costs at the modest rate of £9.25 per hour, together with any out of pocket expenses. In the event therefore the Adjudicator awarded Mr Davies £185 plus £25 out of pocket expenses.

It should be emphasised that the hourly rate cited is not a binding figure, and in exceptional cases awards might be made to include legal and other costs actually incurred. However the principle of proportionality to the value of the "claim", usually a single penalty charge of £80, will of course always have to be borne in mind.

## Administrative issues relating to appeals

### Website

PATAS maintains a website where the public have access to the regulations governing the congestion charge and other relevant information. The address is [www.parkingandtrafficappeals.gov.uk](http://www.parkingandtrafficappeals.gov.uk)

It is planned to build on this site as the tribunal matures.

### Processing Problems

The very large number of appeals led to processing problems at PATAS. From the start we were receiving 20 or 30 notices of appeal a day and the initial team of 2 full time staff found this hard to deal with as well as processing evidence from TfL and correspondence. Now the team is 3 full time staff with the additional use of temporary staff during busy periods.

The number of calls received by PATAS call centre was also very high. Initially about 80% of all calls received were about congestion charge penalty charge notices, of which about 60% had been incorrectly referred by the TfL call centre. This was made worse by callers unable to get through to the TfL call centre. This had a major impact on the call centre being able to manage all incoming calls effectively. The inability of PATAS staff to resolve many of these issues – as they related to matters under TfL control – led to irate callers and frustrated personal appellants.

Fortunately the quality of service offered by the TfL call centre has improved during the course of the year leading to fewer calls and better redirection. However, TfL need to improve their image and they should focus on improving the customer care offered and ensuring that front line staff are properly trained with the correct knowledge to deal with callers.

Persistent problems were also experienced with evidence supplied by TfL. Although they are legally required to submit evidence well in advance of the appeal, in too many cases evidence only arrived after midday on the day of the hearing, or even not at all. This creates problems both for processing staff but also for Adjudicators and appellants and cases may need to be adjourned so that both the Adjudicator and the appellant have a chance to consider TfL's evidence.

At the start of the year, TfL were also omitting the registered keeper's details when sending out notices of appeal, which also created more processing work.

## How the year was for one Adjudicator

This is my first judicial appointment. My experience over the last year or so has taught me a great deal about human nature and the ways that ordinary people feel about the congestion charge.

I have no hard statistics although I do keep notes about each case that I adjudicate upon. Having reflected upon those notes and upon my experience I report the following:

- I feel that, whatever the final outcome of those appellants who decide to be heard in person, they feel that their appeals have been disposed of fairly.
- The flexibility of the system is the way forward, not only for tribunals, but also for other courts, for example the criminal courts; they help focus upon the users rather than the providers.
- It is beyond doubt that the congestion charge scheme is controversial; this places an additional burden upon the Adjudicators to ensure that they deal with cases sensitively whilst still ensuring that they apply the law faithfully.
- There is very limited scope for the application of discretion; this places a particularly high burden upon TfL to ensure they contest only those cases that truly should be contested; one wonders whether, on occasions, there is any true exercise of discretion.
- After some teething troubles, the technology appears to be working well; again the way that the IT system operates is, I believe, an example to other tribunals of how to operate.
- There is an obvious concern about the backlog of cases. I feel that cases are, on the whole, taking longer to complete than was originally estimated. We should make no apologies for this: The congestion charging scheme's flexibility and (apparent) simplicity creates its own problems; Adjudicators need to be satisfied that they have the material they need to ensure that the correct decision is being made. It should also be borne in mind that so far as the appellants are concerned, there are issues of principle at stake. Also, for many people, the sum of £40 or £80 represents a significant amount of money.
- There is no such thing as a typical appellant. Those appearing before us come from every walk of life and represent all sections of society. Adjudicators need to be particularly vigilant to ensure that appellants feel that they have received a fair hearing.

## Recommendations

The Road User Charging Adjudicators make the following recommendations to the Secretary of State:

- The charging authority should improve customer care service, giving front line staff the correct knowledge to deal with callers.
- The charging authority should aim to ensure all evidence is lodged with the appeal service in time.
- The charging authority should work towards effective implementation of the statutory declaration process.
- The charging authority should work with hire agreement firms to encourage compliance with the relevant regulations.
- The charging authority immediately should cease proceeding with enforcement while an appeal is pending.
- The charging authority should allow appellants, where their vehicles have been clamped or removed, the opportunity to pay part of the charges and appeal.
- The charging authority should provide better evidence from the Driver and Vehicle Licensing Authority.
- The charging authority should give better information on all signs, in particular the call centre number.
- The charging authority should produce more specific camera evidence.
- The charging authority should consider wider exercise of their discretion.
- The charging authority should exercise a consistent approach to their pay and appeal practice.

## **ANNEX ONE: Adjudicators**

### **CHIEF ROAD USER CHARGING ADJUDICATOR**

Ingrid Persadsingh

### **APPOINTMENT DATE**

December 2002

### **ROAD USER CHARGING ADJUDICATORS as at 31 March 2004**

Jane Anderson

Mary Connolly

Jane Cryer

Leslie Cuthbert

George Dodd

Anthony Edie

Gillian Ekins

Andrew Harman

Ian Keates

Margaret Kennedy

John Lane

Francis Lloyd

Paul Middleton-Roy

Michael Nathan

Christopher Rayner

### **APPOINTMENT DATE**

April 2003

December 2002

December 2002

December 2002

April 2003

April 2003

December 2002

December 2002

December 2002

December 2002

December 2002

March 2003

December 2002

December 2002

December 2002

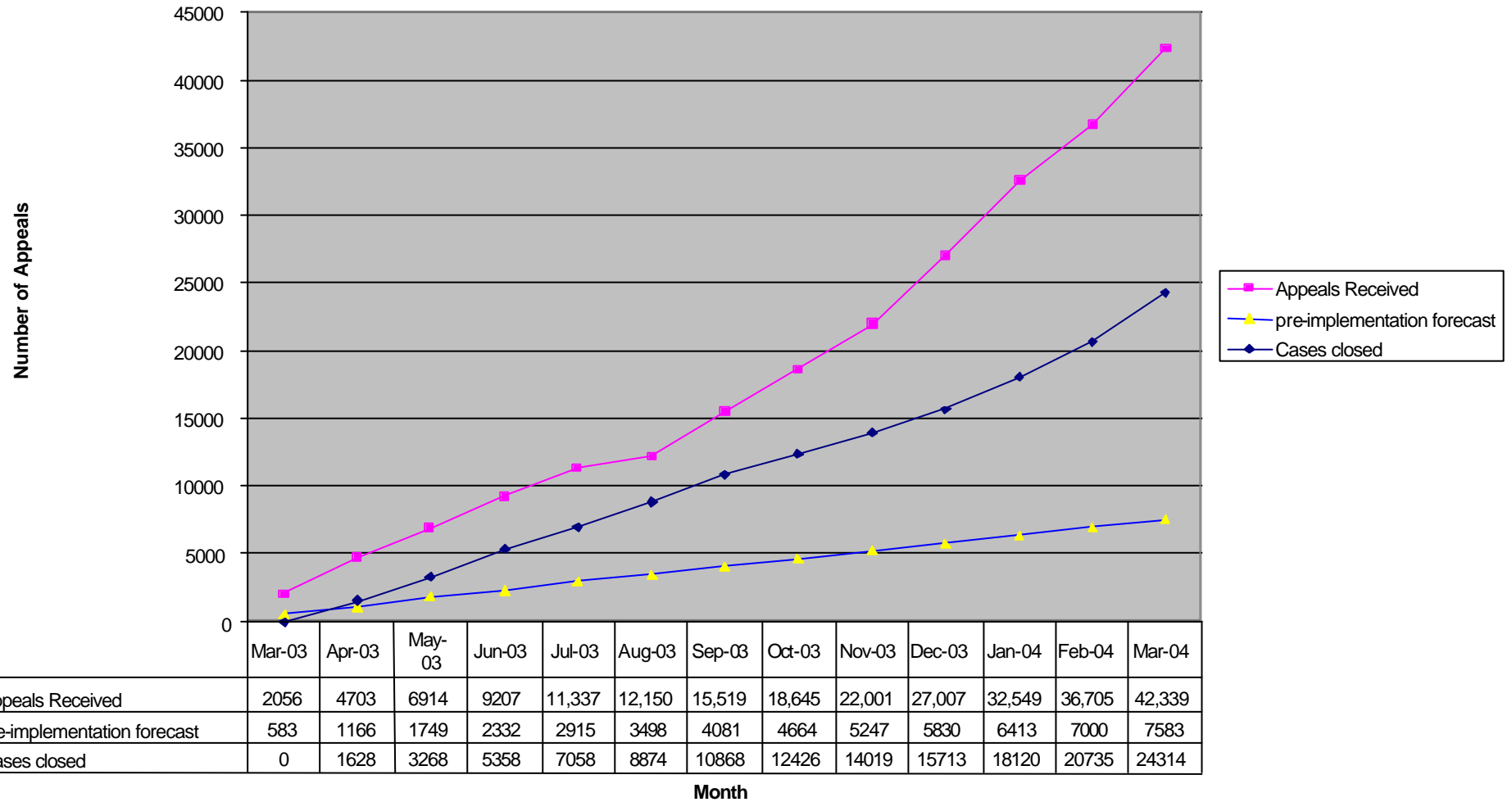
## ANNEX TWO: Grounds of Appeal

The only grounds of appeal are one or more of the following:

- (a) That the recipient
  - (i) never was the **registered keeper** of 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 the 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 [*i.e. for a period of less than six months*] 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
  - (iii) agreement.

## ANNEX THREE: Annual Overview

Appeals: March 2003 to March 2004



Congestion Charging case Flow - Monthly

	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Total	YTD Average
appeals received	2056	2647	2211	2293	2,130	813	3,369	3,126	3,356	5,006	5,542	4,156	5,634	42339	
Total cases closed	0	1628	1640	2090	1700	1816	1994	1558	1593	1694	2407	2615	3579	24314	
appeals withdrawn by appellants	0	11	6	15	16	29	17	30	25	37	29	35	37	287	
appeals not contested by TfL	0	1327	1106	1366	1008	483	775	489	629	777	1369	1518	2186	13033	
appeals refused postal	0	96	191	270	334	436	697	511	488	454	421	309	563	4770	
appeals allowed postal	0	171	214	268	139	550	294	195	170	176	170	163	296	2806	
appeals refused personal	0	1	24	38	36	17	31	76	52	61	96	126	85	643	
appeals allowed personal	0	17	92	125	161	297	151	197	187	136	245	247	261	2116	
closed administratively	0	5	7	8	6	4	29	60	42	53	77	217	151	659	
appeals adjourned	0	19	42	64	75	136	188	139	181	118	128	149	279	1518	
No. of postal cases ready for adjudication at end of		426	910	896	1327	1653	1259	2189	2889	5,040	6,478	8,338	9,383	n/a	n/a
No of personal hearings scheduled this month			437	352	544	368	421	627	565	343	615	752	633	n/a	n/a

	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Total	YTD Average
appeals received	2056	2647	2211	2293	2,130	813	3,369	3,126	3,356	5,006	5,542	4,156	5,634	42339	
postal cases ready for adjudication	n/a	426	910	896	1327	1653	1259	2189	2889	5040	6,478	8,338	9,383	n/a	n/a
personal hearings scheduled	n/a	0	437	352	544	368	421	627	565	343	615	752	633	5657	
total cases closed	0	1628	1640	2090	1700	1816	1994	1558	1593	1694	2407	2615	3579	24314	
% withdrawn by appellants	n/a	0.68%	0.37%	0.72%	0.94%	1.60%	0.85%	1.93%	1.57%	2.18%	1.20%	1.34%	1.03%		1.20%
% not contested by TfL	n/a	81.51%	67.44%	65.36%	59.29%	26.60%	38.87%	31.39%	39.49%	45.87%	56.88%	58.05%	61.08%		52.65%
% refused postal	n/a	5.90%	11.65%	12.92%	19.65%	24.01%	34.95%	32.80%	30.63%	26.80%	17.49%	11.82%	15.73%		20.36%
% allowed postal	n/a	10.50%	13.05%	12.82%	8.18%	30.29%	14.74%	12.52%	10.67%	10.39%	7.06%	6.23%	8.27%		12.06%
% refused personal	n/a	0.06%	1.46%	1.82%	2.12%	0.94%	1.55%	4.88%	3.26%	3.60%	3.99%	4.82%	2.37%		2.57%
% allowed personal	n/a	1.04%	5.61%	5.98%	9.47%	16.35%	7.57%	12.64%	11.74%	8.03%	10.18%	9.45%	7.29%		8.78%
% closed administratively	n/a	0.31%	0.43%	0.38%	0.35%	0.22%	1.45%	3.85%	2.64%	3.13%	3.20%	8.30%	4.22%		2.37%
% allowed total	n/a	11.55%	18.66%	18.80%	17.65%	46.64%	22.32%	25.16%	22.41%	18.42%	17.24%	15.68%	15.56%		20.84%

review decisions	0	0	0	1	1	8	11	29	14	7	10	18	22	121	
costs decisions	0	0	0	0	0	1	1	0	2	0	2	2	2	10	

	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Total	YTD Average
average postal hearing mins	n/a	22.45	22.79	19.57	21.7	19.39	17.26	22.35	20.59	18.16	18.9	21.12	19.27		20.30
average personal hearing mins	n/a	26.1	23.47	28.04	26.52	16.94	23.16	23.57	19.89	18.16	23.66	22.39	23.99		22.99
% of cases 1st heard within 56 days	n/a		37.00%	21.00%	24.00%	23.66%	20.12%	17.89%	21.46%	24.74%	21.16%	26.83%	30.23%		24.37%
average days delay	n/a		52.5	68.75	82	74	93.25	97.2	93.5	88.75	102.4	97.75	119.25		88.12



% hearings within 15 mins	n/a	77%	80%	80%	80%	74%	79%	76%	79%	77%	66%	67%	76%		75.92%
% of cases allowed	n/a	93.06%	86.10%	84.16%	76.94%	73.24%	61.18%	56.55%	61.90%	64.29%	74.12%	73.73%	76.64%		73.49%
% of cases not contested by TFL	n/a	81.51%	67.44%	65.36%	59.29%	26.60%	38.87%	31.39%	39.49%	45.87%	56.88%	58.05%	61.08%		52.65%

summary of decisions by ground of appeal (allowed)

	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Total	YTD Average
vehicle hire firm	0	9	7	20	13	68	25	10	12	18	14	18	41	255	
appellant not the owner	0	14	17	18	18	52	27	39	41	33	52	62	67	440	
charge has already been paid	0	66	146	190	177	204	174	170	140	119	187	136	193	1902	
contravention did not occur	0	103	179	196	85	507	196	165	152	123	145	185	248	2284	
penalty exceeded relevant amount	0	1	3	12	15	27	28	20	14	13	10	20	12	175	
vehicle used without appellant's consent	0	0	0	5	4	1	5	0	3	2	3	1	4	28	

summary of decisions by ground of appeal (refused)

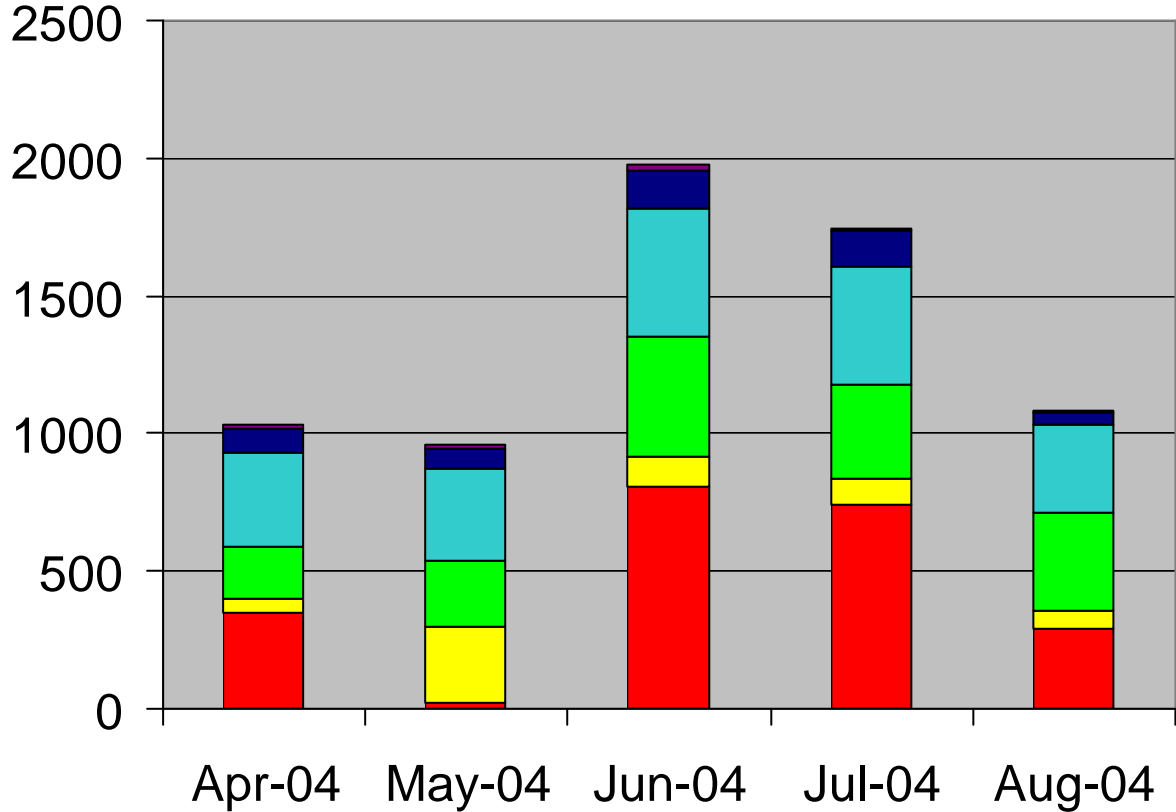
	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Total
vehicle hire firm	0	59	104	110	150	171	214	161	160	120	123	78	169	1619
appellant not the owner	0	6	20	25	14	25	43	33	41	28	46	28	37	346
charge has already been paid	0	20	89	106	124	144	201	147	123	114	139	126	162	1495
contravention did not occur	0	10	75	71	78	155	229	211	172	182	202	169	233	1787
penalty exceeded relevant amount	0	4	21	14	21	27	58	41	51	32	40	49	57	415
vehicle used without appellant's consent	0	0	0	3	2	5	6	4	5	5	3	5	4	42

Reasons for Case closures

	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04	Total
appeals withdrawn by appellants	0	11	6	15	16	29	17	30	25	37	29	35	37	287
appeals not contested by TFL	0	1327	1106	1366	1008	483	775	489	629	777	1369	1518	2186	13033
appeals refused postal	0	96	191	270	334	436	697	511	488	454	421	309	563	4770
appeals allowed postal	0	171	214	268	139	550	294	195	170	176	170	163	296	2806
appeals refused personal	0	1	24	38	36	17	31	76	52	61	96	126	85	643
appeals allowed personal	0	17	92	125	161	297	151	197	187	136	245	247	261	2116
closed administratively	0	5	7	8	6	4	29	60	42	53	77	217	151	659

2003/4	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03	Jan-04	Feb-04	Mar-04
Appeals Received	2056	4703	6914	9207	11,337	12,150	15,519	18,645	22,001	27,007	32,549	36,705	42,339
pre-implementation forecast	583	1166	1749	2332	2915	3498	4081	4664	5247	5830	6413	7000	7583
Cases closed	0	1628	3268	5358	7058	8874	10868	12426	14019	15713	18120	20735	24314

### grounds of appeal (appeal refused)



- vehicle used without appellant's consent
- penalty exceeded relevant amount
- no charge is payable under the scheme
- charge has already been paid
- appellant not registered keeper
- vehicle hire firm

### grounds of appeal (appeal allowed)

