Joint Annual Report of the Parking Adjudicators to The Association of London Government Transport and Environment Committee 2002-2003

CHIEF ADJUDICATOR'S FOREWORD

I am pleased to present to the Committee this joint report of the Parking Adjudicators for the year 2002-2003.

In terms of general tribunal issues, this has been a less eventful year than recent years, now that the dust has settled somewhat in relation to the various initiatives that have been ongoing: the Tribunal for Users Programme following the Leggatt Review of Tribunals, the preparation of the Framework of Standards for Tribunals by the Council on Tribunals and the drafting of a Competence Framework for Tribunal Members by the Judicial Studies Board. Whilst discrete projects, they share the common aims of raising standards and promoting coherence and common practice across tribunals. Indeed, the Competences Framework was designed to complement the Framework of Standards.

As to the Tribunals for Users Programme, the position remains that there is no immediate prospect of this tribunal being brought within a unified tribunals service. Officials from the Programme did, however, visit us during the year to view our computerised adjudication system.

The Council on Tribunals and the Judicial Studies Board published the Framework of Standards and the Competence Framework respectively in the autumn of 2002.

Amongst the purposes of the Framework of Standards are to promote best practice and provide a tool for assisting tribunals in reviewing their performance. During 2003/2004 we intend completing an audit of our performance against the Framework, to identify areas where remedial action might be necessary.

The Competence Framework sets out the skills, knowledge and behavioural attributes needed to perform the judicial function in tribunals that are generic to all jurisdictions. It is intended to be used by individual tribunals for developing their own specific competence framework, as a self-development tool for individuals and to feed into training programmes, appraisal schemes and appointments processes.

I was pleased to attend the Council on Tribunals Conference in November 2002. This annual conference gives the opportunity for tribunal heads, members of the Council on Tribunals and the Judicial Studies Board and Government to meet to discuss current issues. The Conference received an update on the Tribunals for Users programme. The Competences Framework was discussed and the President of the Appeals Service gave a presentation on judicial performance appraisal in the Appeals Service.

The Conference also saw the launch of 'Making Tribunals Accessible to Disabled People', produced jointly by the Council on Tribunals and the Disability Rights Commission. It contains guidance on applying the Disability Discrimination Act 1995. The Act makes it unlawful for a service provider to discriminate against a disabled person by treating a disabled person less favourably or failing to make reasonable adjustments for them unless the discrimination is justified for specific reasons, such as health and safety. The Act does not apply to the performance of a tribunal's judicial functions; if a tribunal were to discriminate when deciding a question before it, recourse would be by the appropriate judicial remedy. The principle that the guidance addresses

is that tribunals should be accessible to users and should focus on their needs. Accessibility means procedural as well as physical accessibility. The hearing centre at New Zealand House is fully accessible to wheelchair users and both the administrative staff and the Adjudicators are alert to the need to ensure that any disabled person is able to participate fully in the proceedings. Apart from the requirements of the 1995 Act, to do otherwise would be likely to be a denial of the fair trial required by the European convention on Human Rights. All Adjudicators have received training in equal treatment, including disability issues.

So far as the day-to-day work of the Adjudicators is concerned, an important development has been the modification of the computerised adjudication system to incorporate, from early 2003, the automated processing of bus lane appeals. These had previously been processed using traditional paper files. The advantages of this development are considerable. It has brought these appeals into the mainstream of the adjudication process, enabling them to be presented automatically on screen to the Adjudicator rather than being allocated and tracked manually by the administrative staff. The adjudication by the Adjudicator is facilitated by their being able to use the familiar computerised processes rather than, to them, obsolescent and cumbersome manual methods. The management of the workload is greatly assisted in many ways by the inclusion of these appeals in the automated reporting and recording facilities. To give a simple example, the figure for the number of postal cases awaiting adjudication, which is automatically displayed on the screen, now includes bus lane appeals, thus giving a complete picture of our pending workload. All of this assists the efficiency of our operation.

Postal cases have in a sense tended to be treated as second-class citizens, in that appellants who attend the hearing centre for a personal hearing do of course have to be given priority. Thus, postal cases would be dealt with by Adjudicators when there were no personal appeals to be heard or by Adjudicators working at the terminals provided for dealing with postal cases only, if there were enough Adjudicators in the hearing centre to staff them. This has meant that the queue of postal cases has tended to build up and that the average time before an appeal was first considered by an Adjudicator was considerably longer for a postal case than a personal. We have taken steps to redress this by instituting regular ‘postals only’ weeks in which no personal appeals are scheduled. These ‘postal weeks’ will be retained as a normal feature for as long as is necessary to reduce the postal queue to a level that brings the ‘first considered’ date into line with that for personal appeals.

We have held three training sessions for all Adjudicators dealing with a range of legal, procedural and operational issues, including amongst others the new Traffic Signs Regulations and General Directions 2002, bus lane appeals and the statutory declaration and review procedures. These events provide an important forum for Adjudicators to discuss current topics.

Two Adjudicators, Kate Scott and Diana Witts, decided not to seek reappointment when their terms of office expired in December 2002. I would like to record my appreciation of the valuable contributions each of them made to the work of the tribunal and wish them well for the future. We welcome three new Adjudicators who have joined us: John Hamilton, Francis Lloyd and Mamta Parekh.

The Adjudicators wish to express their thanks to the Head of the Parking and Traffic Appeals Service, Charlotte Axelson, and her staff for their efficient and enthusiastic support throughout the year.

INTRODUCTION

We have decided this year that we should highlight two core principles. First, we return to the topic of fairness. In our reports we deal with a range of issues. However, in commenting on particular matters, it is important not to lose sight of the overriding principle that Local Authorities are under a general duty to act fairly in exercising their powers of enforcement.

We also comment on enforcement as a legal process. There still appears to be a lack of understanding that enforcement is a legal, not merely an administrative, process and of the consequences of that for the enforcing authority.

Cases decided this year referred to in the report are set out more fully in the Digest of Cases at the end.

FAIRNESS

The fact that the Local Authority is under a legal duty to act fairly was first highlighted in *Davis v Kensington & Chelsea (PATAS Case Number 1970198981).* The Adjudicator said that where an Adjudicator finds that an authority has acted *ultra vires* in failing to comply with this duty, it is open to him to uphold a collateral challenge and find that the authority cannot pursue a penalty based upon its own unlawful act.

That case was particularly concerned with the obligation to enforce a parking penalty within a reasonable time. However, there are many aspects to the duty, which applies to all stages of the enforcement process.

But irrespective of the legal duty to act fairly, we would hope that Local Authorities would aspire to the highest standards in carrying out enforcement and wish to deal with the motoring public in a way that is fair and is seen to be fair. This is what Central Government expects of them. '**Traffic Management and Parking Guidance for London'** issued by the Government Office for London states that '*Local authorities should operate the system fairly'* and contains commentary on what this should mean in practice. The message is echoed in '**Guidance on Decriminalised Parking Enforcement Outside London'** issued by the Department of Transport and the Welsh Office. This contains extensive practical guidance based on the operation of decriminalised enforcement in London.

We will now look at some topical issue relating to fairness.

➢ Camera Enforcement

Last year we recommended that Local Authorities should consider sending copies of video stills with the Penalty Charge Notice as a matter of routine in camera enforcement cases. We were pleased to note the positive response of the Committee to this recommendation (and indeed to all our recommendations) in asking the Policy Section's Camera Enforcement Team to consult the boroughs on the implications of putting it in to practice with a view to incorporating such a recommendation into the Code of Practice on Camera Enforcement. The recommendation was made in the interests of encouraging early resolution of disputes as to liability or, indeed, avoiding them altogether. However, the provision of this evidence is also consistent with fair treatment. Where a Penalty Charge Notice is issued through the post rather than on the street, as is invariably the case with bus lane enforcement, it will reach the recipient at least some days after the incident, and no doubt in some cases longer than that. Because of this, the motorist may have little if any recollection of what, to them, is likely to have been an

unmemorable event. Seeing the stills enables them to make an early, properly informed decision as to whether to contest liability or pay the penalty – and take advantage of payment at the reduced rate. We welcome the fact that, following our concerns expressed in our report last year, Local Authorities have, we understand, abandoned the practice of charging for stills.

We are aware that bus lane Penalty Charge Notices issued by Camden now incorporate both a video still and a unique web code to allow viewing on its website of other stills of the incident. We congratulate Camden on this initiative, which we commend to others. We understand that Transport for London is considering introducing a similar practice.

The value of the stills is that they are powerful evidence and are likely to reduce the scope for argument on factual issues. This, of course, applies to any photographic evidence. We therefore welcome the fact that some Local Authorities are supporting on street enforcement by providing their parking attendants with cameras to take photographs as evidence of contraventions.

➢ Acting Within a Reasonable Time

- **Responding to Representations**

  In the *Davis* Case the Adjudicator said that, without suggesting there is any rigid time limit, in a case without extraordinary features an authority should respond to representations to a Notice to Owner within 2-3 months from receipt; but that after that it is still open to an authority to show that the delay in considering the representations was not unreasonable in all the circumstances. It became apparent during the year that one Local Authority had been issuing Notices of Rejection many months, or even longer, after receiving the representations.

  In one extreme case, it received the representations on 23 March 2001 and issued the Notice of Rejection on 12 March 2003. Not surprisingly, the Adjudicator allowed the appeal for failure to respond within a reasonable time. The Notice of Rejection contained no expression of regret for the delay or even an acknowledgment of it.

  Apart from the question of its legal duty, it is lamentable that a Local Authority could apparently think that delays of such magnitude were acceptable, simply in terms of general principles of good administration if for no other reason. We are pleased to say that it appears this Authority has now resolved its difficulties.

- **Referring Statutory Declarations**

  It sometimes happens that the Notice to Owner or Notice of Rejection does not reach the intended recipient; or that the motorist appeals to the Adjudicator but receives no response, perhaps because the Notice of Appeal sent to the Appeals Service is lost in the post. In such cases, the first the motorist hears of the enforcement action is when they receive the Charge Certificate issued by the Local Authority. Where there has been such a breakdown in the enforcement process, the motorist may lodge with the County Court a statutory declaration explaining the circumstances. The Court will then make an order the effect of which is to put the clock back to the point where the process went wrong. Once this order is made, the Local Authority may serve another Notice to Owner in those cases where it was that Notice that went astray. In the other two cases the Local Authority must refer the statutory declaration to the Adjudicator, who may then give such directions as to how the matter should proceed

as he considers appropriate. The Adjudicator may, for example, direct that the case proceed as an appeal.

The Road Traffic Act 1991 lays down no specific time limit within which the Local Authority must refer the statutory declaration. There have been numerous instances in the last year of considerable delay by Local Authorities in doing so; as much as a year or more in some cases. The fact that there is no statutory time limit does not mean that Local Authorities may delay referring statutory declarations with impunity. The reference of a statutory declaration is a statutory duty, which as a matter both of general principle and in line with *Davis* should be performed with due expedition. Where this has not been the case, it is open to an Adjudicator to direct that the matter should not proceed further and that the Local Authority should cancel the Penalty Charge Notice and Notice to Owner.

What is due expedition in this context is a matter for the Adjudicator; again, there is no hard and fast rule. However, Adjudicators will have in mind that the reference of a statutory declaration is merely an administrative act. In contrast to considering representations, it does not require the Local Authority to apply its mind to any arguments put forward by the motorist. There is therefore no real reason why the reference should not be made promptly. It should also be borne in mind that it is in the nature of statutory declaration cases that there will already have been unusual delay because of the breakdown in the enforcement process. Whilst this will not be the fault of the Local Authority, it might nevertheless be prejudicial to the motorist's position. Any further lapse of time caused by delay in the reference of the statutory declaration would be likely to exacerbate the prejudice.

The motorist is subject to statutory time limits at every stage of the process: 14 days to pay at the reduced rate, 28 days to respond to the Notice to Owner and so on. The legislation is less rigid in terms of imposing time limits on Local Authorities, and where it does it is more generous to Local Authorities than to the motorist. Nevertheless, fairness and a level playing field require that where there is no statutory time limit they should act with reasonable expedition. We believe they will recognise that this must be the case.

➢ The Notice of Rejection

It is this notice that informs the motorist that the Local Authority does not accept his representations and triggers his right to appeal to the Adjudicator. As the '**Guidance on Decriminalised Parking Enforcement Outside London'** says (paragraph 14.25),

The notice of rejection should also contain the authority's reasons for rejecting the representation. This is not just a courtesy to the motorist. Experience in London suggests that it also reduces the number of cases taken to adjudication by frustrated motorists.

We endorse these comments, but would add that giving a specific response to the points raised in the representations is more than just a courtesy, important though that is; it is also an element in fair dealing. For if the motorist does not receive an explicit, reasoned response to his points, how is he to make an informed judgement whether to appeal?

- **Mitigation**

  A particular aspect of dealing with representations that causes continued problems is that of mitigation. The case of *Westminster v The Parking Adjudicator,* which we reported last year, made clear that the Adjudicator has no power to take into account mitigating circumstances in deciding an appeal. It also highlighted the responsibility

of the Local Authority to consider whether to waive a penalty because of mitigation. On occasions, the Adjudicator will adjourn an appeal to refer back to the Local Authority with a request that it consider exercising its discretion to waive a penalty because of what the Adjudicator considers is compelling mitigation. In such cases it is, of course, entirely a matter for the Local Authority whether to do so and if it decides to pursue enforcement the Adjudicator must decide the appeal on its legal merits.

This practice is long established and is referred to in the '**Guide to the Parking Appeals Service'**. Even so, Local Authorities do sometimes query why the Adjudicator adopts this practice when mitigation is a matter for the Local Authority. As the Guide explains, one situation when Adjudicators do this is where it is not clear from the Local Authority's evidence that the mitigating circumstances have been considered by the Local Authority's officers. Local Authorities often say that they have considered the mitigation, but this is of little use if the fact that they have is not apparent from the Notice of Rejection by the point being addressed expressly. The reason Adjudicators refer such cases back is to ensure that the Local Authority's responsibility to consider representations, including about mitigating circumstances, is carried out and that the motorist receives fair treatment. If it is apparent from the Notice of Rejection that the mitigation had been considered, it is far less likely that the Adjudicator will not feel it necessary to refer the case back.

Whilst some Local Authorities do comply with the desired standard, there are still many whose responses are inadequate and must leave the motorist in a quandary as to what to do. Some rejections amount to no more than a cursory 'Your representations have been rejected'. Others go into some detail about uncontested elements of the incident without addressing the particular issue, often mitigation, raised by the motorist. Local Authority officers should try to put themselves in the shoes of the motorist and ask themselves how they would feel if they had written the representations and received that response. And Local Authorities may wish to consider that every appeal that would have been avoided had an adequate reply been given is an expense to the Local Authority both in terms of the fee paid to the Appeals Service and the administrative time of preparing the appeal. So a proper reply is as much in the Local Authority's own interests as it is fair to the motorist. **We recommend that all Local Authorities should review the adequacy of the training their staff receives in this respect.**

➢ Issuing an Appeal Form with the Notice of Rejection

The legislation requires the Notice of Rejection to describe in general terms the form and manner in which an appeal to an Adjudicator must be made. It is the long-established and agreed practice that Local Authorities will issue an Appeal Form with the Notice of Rejection. Whilst this is not required by the legislation, it has been universally accepted as consistent with dealing fairly with the motorist. It is also consistent with the **'Guidance on Decriminalised Parking Enforcement Outside London'** which includes as one of the minimum or common standards with which the Secretary of State expects all Local Authorities to comply that '*Local authorities should include within the notice of rejection an appeal form on which the recipient can make his or her appeal'.*

We were therefore surprised and concerned to discover that one Local Authority had ceased complying with this standard. Instead, it was requiring recipients of rejections to telephone it to obtain a form. Apparently a Best Value Review saw not issuing the Appeal Form and bringing the appeals process to potential appellants' notice as a more efficient way of managing the process. In our view, the practice impeded access to justice both by making it more difficult for the motorist to appeal and by eating into the 28 days within which an appeal must be made (although the Adjudicator may extend that

period). We received a number of appeals in which the appellant referred to their difficulty in obtaining an appeal form.

The practice also had knock on consequences that cause unnecessary complication. For example, the economical and efficient administration of appeals is assisted by the established standard processes being followed. One element of this is encouraging appellants to use the printed Appeal Form. This facilitates instant recognition of an appeal when lodged and includes all the necessary information for registering an appeal. Where an appellant has difficulty in obtaining an Appeal Form they may appeal by letter, as they are entitled to do. This can create difficulties if the letter is not immediately identified as an appeal or does not contain all the required information. This causes unnecessary work, the cost of which ultimately falls on the Local Authorities.

We are pleased to say that it does now seem that this Local Authority has now reverted to issuing the Appeal Form with the Notice of Rejection.

Whilst the issue does appear to have been resolved in this case, the Adjudicators do regard this matter as going to the heart of the commitment of Local Authorities to carry out their enforcement powers fairly. **The Adjudicators therefore recommend that the Committee reaffirm that it supports the practice of issuing the appeal form with the Notice of Rejection and considers that all Local Authorities should comply with it.**

➢ Multiple Tickets

We referred last year to our concerns relating to cases where a motorist has received a succession of Penalty Charge Notices for a single incident in circumstances where the motorist was not in a position to forestall repeated enforcement action, usually because they are away. As we said, the issue for the Local Authority is whether having regard to all the circumstances it is appropriate to pursue enforcement of all the penalties. We are pleased to say that there does seem to be an increasing acceptance amongst Local Authorities that this is the right approach and hope this trend will continue.

To conclude our report on fairness, we would emphasise that not only is fair treatment of the motorist the right thing to do; in our view it will also pay dividends for the Local Authorities themselves in terms of greater respect for the enforcement process, quicker resolution of disputed penalties, fewer appeals and consequent savings in costs. This is not to say that we believe that Local Authorities do not aspire to fair treatment. But there is still a good deal that needs to be done to ensure that it is apparent to the motorist that they have been treated fairly.

ENFORCEMENT - A LEGAL PROCESS

Most of the cases summarised in the Digest of Cases concern this topic.

Wilkinson v LB Southwark related to the Local Authority's failure to comply with the statutory duty to inform a motorist who has obtained the release of their vehicle from a clamp of their right to make representations against liability. In *Lauezzari v LB Islington,* the Local Authority issued a letter headed 'Notice of Rejection of Representations' which did not contain all the statutory requirements for such a notice. The letter also requested further information, but the person who prepared it clearly did not understand the consequences of attempting to combine that step with the formal process of rejecting representations.

Skelton v LB Camden raised an important issue about the legal responsibility of the Local Authorities for enforcement. In deciding whether to refund penalties, the Local Authority had taken into account the financial consequences for itself arising from its contractual arrangements with the private contractors to whom it had outsourced on-street enforcement. The Adjudicator found that this was an improper consideration to take into account. The fact that a Local Authority chooses to contract out on street enforcement does not affect the fact that the legal responsibility for the enforcement regime rests with the Authority.

This point has also arisen in relation to the operation of TRACE. This is the organisation established by the Local Authorities to enable motorists to locate vehicles that have been towed away. It sometimes happens that for one reason or another TRACE informs a motorist that they have no record of the vehicle when in fact it has been towed away and is in a vehicle pound. When this happens, it can be some time before the error comes to light and the motorist is able to recover the vehicle. On these occasions Local Authorities are apt to say that they are not to blame and that the responsibility rests with TRACE. This demonstrates a misunderstanding of the status of TRACE. It is no more than a body established by the Local Authorities, for reasons of administrative and practical convenience, to enable them to comply with their statutory duty to release vehicles claimed by owners. In carrying out its activities, TRACE is no more than the agent of the Authorities. As such, the consequences of and responsibility for its failings remain with the Authorities.

We have seen a number of cases where the Notice to Owner has been served outside the time limit prescribed by section 7 of the London Local Authorities Act 2000. - six months, subject to certain exceptions where longer is allowed. In some cases the notice has been sent within that time, but very close to the end of it. The requirement is not that the notice must be sent within the six months but served. Under section 7 of the Interpretation Act 1978, a document is deemed to have been served when it would reach the addressee in the ordinary course of post. Therefore, notices sent very close to the end of the six months will not have been served within that time. We assume that in these cases there has been a misunderstanding of the statutory requirement. However, in other cases, the notice has not even been sent within the six months. A Local Authority is not entitled to pursue enforcement where the Notice to Owner is not served within the statutory time limit. We imagine that most appellants are likely to be unaware of the time limit and are concerned that some may pay a penalty in response to what is an unlawful demand.

The mandatory requirements of section 66(3) of the Road Traffic Act 1991 and the effect of non-compliance were the issue in *Al's Bar and Restaurant Ltd v LB Wandsworth.* The Adjudicator found that the Penalty Charge Notice in question did not comply in a number of respects and that these rendered the Penalty Charge Notice invalid. He went on to consider whether he should find the Penalty Charge Notice to be a nullity and decided that he should. He considered that the balance was heavily in favour of his doing so. He pointed out that this was not the first occasion this issue has come before a Parking Adjudicator. In the case of *Moulder v Sutton LBC (PATAS Case No. 1940113243 24 May 1995)* an Adjudicator found the PCN in that case to be a nullity because of non-compliance with section 66. Yet it seemed that invalid PCNs were still being issued. The drafting of a compliant PCN is, he said, a simple drafting task and it is difficult to understand why these difficulties have arisen and continue to do so. He went on to say:

These sentiments apply to every stage of the enforcement process, not just the issue of a valid PCN. The Parking Adjudicators have had cause in their annual report on more than one occasion to comment on procedural irregularities that have come to their attention in appeals. The motoring public deserves nothing less than that the public

authorities exercising penal powers understand the importance of their complying with the conditions attached to their powers and are scrupulous about having in place administrative processes that do so.

We would commend these comments to Local Authorities. All these cases seem to be evidence of a lack of understanding of the Authorities legal obligations or insufficient rigour in applying them. We wonder whether Local Authorities take advice from their lawyers in establishing their processes and systems. It would be wise for them to do so. **We recommend that all Local Authorities should have in place procedures, including taking appropriate advice, to ensure that their enforcement processes are legally compliant.**

ADJUDICATOR'S POWERS

In *Flannery v RB Kensington & Chelsea* the appellant raised an interesting legal issue concerning the jurisdiction of the Adjudicator. The factual issue in dispute was one that commonly arises: had the Penalty Charge Notice had been served in the required manner? The appellant argued that in such a case the Adjudicator had no jurisdiction because the basis of the challenge did not fall within any of the prescribed grounds for contesting liability. He contended that the County Court was the appropriate forum for determining such a case. The Adjudicator rejected this argument. He found that the circumstances fell within ground (f): that the penalty charge exceeded the amount applicable in the circumstances of the case. Even if this were not so, he said, the issue would be a collateral challenge and therefore justiciable by the Adjudicator. The Adjudicator referred to the complications and undesirable consequences that would arise from this dual jurisdiction if the appellant's argument were right. They would, he said, be highly disadvantageous to the ordinary member of the public and undermine Parliament's clear aim in the 1991 Act of providing a simple means of challenging liability.

SUMMARY OF RECOMMENDATIONS

- Local Authorities should review the adequacy of the training their staff receive in considering and replying to representations.

- The Committee reaffirms that it supports the practice of issuing an Appeal Form with the Notice of Rejection and considers that all Local Authorities should comply with it.

- Local Authorities should have in place procedures, including taking appropriate advice, to ensure that their enforcement processes are legally compliant.

Martin Wood
Chief Parking Adjudicator
September 2003

DIGEST OF CASES

Enforcement - a Legal Process

Wilkinson v LB Southwark (PATAS Case Number 2010209765)

The appellant's vehicle was clamped. The issue was whether the Council had complied with its statutory duty under section 71 of the Road Traffic Act 1991. Section 71 (1) which provides that the person who obtains the release of a vehicle following either its removal or clamping 'shall thereupon be informed of his right under this section to make representations to the relevant authority and of the effect of section 72 of this Act [the right to appeal].' Section 71 (2) provides that 'The relevant authority shall give that information, or shall cause it to be given, in writing.'

The Adjudicator said that the Penalty Charge Notice was designed primarily to comply with the requirements as to form set out in section 66 of the Act and the enforcement procedure where there has been no removal or clamping. It referred to the making of representations after the Notice to Owner and went on 'except when you have been clamped or removed, you must pay all fees then make a representation in writing within 28 days.'

This was manifestly inadequate to comply with its statutory duty, in two respects. First, the content was wholly inadequate. It did not set out the grounds on which representations might be made, nor did it explain the effect of section 72. Secondly, it was defective as to timing. The requirement was 'thereupon' to inform a person who obtains release. 'Thereupon' means 'soon, immediately, after that' (Oxford Dictionary). The scheme was that the person should be told what their rights are at the point they arise. Clearly this makes considerable sense. Prior notification therefore strictly does not comply with the statutory duty.

The Adjudicator was mindful of the fact that the draftsman may well not have had in mind the convenient facility that is available for motorists to pay over the telephone by credit card, and it was highly desirable that this should continue. However, he could see no reason why the necessary written notification could not be given by the declamping operative.

Since the Council had failed to comply with its statutory duty, the enforcement process was fundamentally defective. It was a matter of the gravest concern that a Council obtaining penalties from members of the public had apparently failed so conspicuously to comply with its legal duty to inform motorists of their right to challenge the imposition of those penalties. The Council must ensure that it put in place at once appropriate procedures to ensure it did comply with its duty and should not carry out any further enforcement by clamping until it had done so.

Appeal Allowed

Lauezzari v LB Islington (PATAS Case Number 2020145953)

In response to the representations, the Council sent a letter headed 'Notice of Rejection of Representations'. It did not, however, contain all the statutory requirements of such a notice. In fact, the letter requested further information and said that if it was not received it would be assumed Mr Lauezzari no longer wished to make representations. It went on to say that he would then lose the opportunity to appeal to the adjudicator; and would be

given the right to appeal if he supplied additional evidence and the Council considered it insufficient. The letter gave 14 days for a reply.

The Adjudicator said that this course of action adopted by the Council was highly irregular. The Council's duty on receiving representations was to accept or reject them. It had no power to vary the statutory procedure in the manner it had purported to do. Nor should it serve a document described as a Notice of Rejection of Representations when in fact it was apparently not intended to be any such thing. That was not to say that in some circumstances it would not be sensible for the Council to seek further information from a motorist to enable it to decide whether to accept or reject the representations; but it could not vest such an inquiry with consequences that in law it could not have. For example, it would have been unobjectionable in this case for the Council to have sent a letter (not described as a Notice of Rejection) seeking information to enable it to make a better informed decision whether to accept or reject, requesting a reply within 14 days, and saying it would in any event make a decision whether to accept or reject at the end of that period.

The Council's procedure in this case was fundamentally flawed. It was over 6 months since it received the representations and it had never served a valid Notice of Rejection. It would not be in the interests of justice to allow it to pursue enforcement further.

Appeal Allowed

Skelton v LB Camden (PATAS Case Number 2020224357)

This was an application for review by the Council. The Adjudicator said that the previous Adjudicator had sought clarification of a statement in the Council's Case Summary that: "The cost of the issue of the Penalty Charge Notice and the subsequent clamping cannot be borne by the Council where the fault is not theirs". The previous Adjudicator had been concerned as to what considerations had been taken into account by the Council when considering Mrs Skelton's correspondence. Parking enforcement was for the purpose of traffic management, not raising revenue. And such financial considerations would suggest that the Council had, in deciding whether to exercise a discretion, improperly fettered itself by taking into account something that it ought not to have taken into account. The Council stated: "As the Council employs contractors to issue penalty charge notices to illegally parked vehicles the full amount received from the fees paid is not kept by the Council. However when the Council has to refund a motorist no money is recovered from the contracted company even if the fault is theirs. The Council therefore loses money when it has to issue a refund. In this case the Appellant had not firmly affixed the P&D ticket to the windscreen and had allowed it to fall out of sight onto the floor. The Council is therefore not prepared to lose money by refunding the Appellant when the PCN has been correctly issued and the vehicle lawfully clamped".

The Adjudicator said that the Council’s statutory duty is to consider representations and to consider them only in the light of those factors of which it ought to have taken account. The Council is not obliged to contract out any of its duties and, if it chooses to do so, the financial terms of its relationship with the contractor ought to be completely outside any thoughts of the officials dealing with the representations of motorists.

The extent to which those thoughts had been improperly directed was clearly evidenced. Not only was there no guarantee of a fair view having been taken of the Appellant's description of events from the point of view of any discretion, but the officials responsible had failed to take account the exemption contained in Section 70 of the Road Traffic Act 1991. Less than 15 minutes had elapsed from the end of paid for time. Indeed the paid

for time had not expired. Therefore the clamping was unlawful and the release fee ought to have been refunded even in the absence of a discretionary view. The Appellant was entitled to a complete refund as the contravention itself cannot be enforced where the Council has taken account of improper considerations.

Appeal Allowed

Al's Bar and Restaurant Ltd v LB Wandsworth (PATAS Case Number 2020106430)

The issue was the validity of the Penalty Charge Notice (PCN). The Appellant said that the PCN was invalid and unenforceable because it did not comply with section 66 (3) (c), (d) and (e) of the Road Traffic Act 1991 which requires a PCN to state

(c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;
(d) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion;
(e) that, if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle.

The Adjudicator said the substantive issues were:

1. Did the PCN comply with section 66(3)?

2. If not, what was the effect of non-compliance with section 66(3)?

1. Did the PCN comply with section 66(3) (c), (d) and (e)?

The Adjudicator said that substantial compliance would be sufficient; literal compliance was not essential. However, this should not be thought of as encouraging enthusiastic departure from the statutory language. Disciplined drafting dictated that where a statute required a document to contain particular statements, the starting point for drafting a compliant document ought always be that the statutory language should be carried across to the document unless there were very good reasons for doing otherwise. This was for the very obvious reason that using the statutory language eliminated the opportunities for challenging the document for non-compliance. The statutory requirements took precedence over the commendable aim of couching documents in plain English. Local Authorities must be aware that the language they used, however plain, must bear the same meaning in substance as that prescribed by the statute.

As to paragraph (c), the PCN said: 'You are therefore required to pay the sum of £80 within 28 days.' This did not comply with paragraph (c) because:

- The parking attendant effects service of the PCN by either fixing it to the vehicle or giving it to 'the person appearing to him to be in charge of the vehicle'. Under section 66(2) the person legally liable for payment of a penalty charge is the owner. It may or may not be that the person in charge of the vehicle is the owner. Therefore, the person who receives the PCN may or may not be the person legally liable to pay the penalty charge. For the notice to say 'You are required to pay' would be an inaccurate statement of the legal position in a great many cases.
- The prescribed period for payment is 'before the end of the period of 28 days beginning with the date of the notice'. The PCN said 'within 28 days'. The general

rule was that where a period is fixed for the taking of some step, the day of the act or event from which the period runs is excluded in calculating the period. Use of 'beginning with' excludes the general rule and the first day is included in the counting.
- The PCN did not bear its date as paragraph (c) implicitly required.

As to paragraph (d) The PCN said: 'The charge will be reduced to £40 if payment is received within 14 days'; and 'If payment of the Penalty Charge Notice is received within 14 days of the date of issue (as shown overleaf) the reduced charge will be accepted as settlement.' The PCN was did not comply for the same reasons as paragraph (c).

The Adjudicator commented that a better way of stating the time limits would be for the handheld computers carried by parking attendants to be programmed to print the relevant dates on the notice automatically. This would avoid the recipient having to work them out and any possibility of misunderstanding.

As to paragraph (e): the PCN said: 'If no payment is received within 28 days of the date of issue, a Notice to Owner may be sent to the registered keeper of the vehicle requesting payment.' This did not comply because:

- again, the relevant period was incorrectly stated.
- the PCN referred to 'the registered keeper' rather than 'the person appearing to [the London authority] to be the owner of the vehicle'. The 1991 Act placed liability not on the registered keeper but on the owner; the owner was to be taken to be the keeper; and there was then merely a presumption that the owner was the registered keeper. That presumption was rebuttable. The local authority was empowered to serve a Notice to Owner on 'the person who appears to them to have been the owner of the vehicle when the alleged contravention occurred'; not on the registered keeper. The power was clearly expressed in these terms because it might or might not be that the registered keeper was the owner at the relevant time; and it was possible that at the point of deciding on whom to serve the notice the Local Authority was in possession of information that the registered keeper was not the owner. The requirement in paragraph (e) was clearly deliberately formulated so as to inform the recipient of the Local Authority's power. That was the requirement; to instead inform the recipient of what generally happens did not fulfil the purpose of the requirement. Nor did 'may' have the meaning advocated by the Council. It was taken from paragraph (e) and the use of that word reflected the fact that the Local Authority had a power, not a duty, to serve a NTO. It had nothing to do with on whom the notice would be served.
- the PCN did not state by whom the NTO may be served as required by the Act.

What was the effect of non-compliance with section 66(3)?

The requirements of section 66(3) were mandatory, not directory. However, this did not mean that non-compliance automatically rendered the PCN a nullity; it was effective until struck down by a competent authority: *London & Clydesdale Estates Ltd v Aberdeen DC [1980] 1 WLR 182*. Whether to do so was a matter of discretion.

That the Appellant had not alleged any actual confusion or prejudice was a consideration to be taken into account, but not the only one. The Adjudicator referred to Lord Hailsham's comment in *London & Clydesdale* that 'I do not think we are entitled to play fast and loose with statutory requirements designed to inform the subject as to his legal rights against an authority possessed of compulsory powers. I do not think that prescriptions for the benefit of the subject are to be so disregarded'; and to *Wade & Forsyth: Administrative Law (8th Edn.) page 230* where it stated 'In notices affecting private rights, particularly where the effect is penal, scrupulous observance of statutory

conditions is normally required'. The requirements of section 66(3) were designed to inform the subject as to his legal rights in the context of the penal scheme. These considerations weighed in favour of finding the PCN a nullity, but were not conclusive on their own.

The Adjudicator said that parking control was a necessary activity of considerable importance that affected the daily lives of millions of motorists. Over 4 million PCNs were issued every year. Only about 1 per cent resulted in an appeal. In relation to such a routine, everyday, prolific activity it was highly undesirable for non-compliant PCNs to be served in large numbers. His decision should provide every encouragement to Local Authorities to ensure that the PCNs they serve are compliant with the statutory requirements. The drafting of a compliant PCN was a simple task and it was difficult to understand why these difficulties had arisen and continued to do so.

These sentiments applied to every stage of the enforcement process, not just the issue of a valid PCN. The motoring public deserved nothing less than that the public authorities exercising penal powers understood the importance of complying with the conditions attached to their powers and were scrupulous about having in place administrative processes that did so. It was also relevant that the penalties for parking contraventions were relatively low. It was very undesirable in those circumstances for their imposition to be attended by uncertainties about its legality for procedural reasons. What was required was simplicity, clarity and certainty. That aim was not assisted by a less than rigorous approach to procedures by Local Authorities. It was not acceptable for the Council to say, in effect, that it may not have complied with the statutory requirements but it really did not matter.

That finding this PCN a nullity without finding prejudice would put in jeopardy many other PCNs did not tip the scales against finding it a nullity. The effect would be historical and time limited. Historical because it would affect only past invalid PCNs provided that the Council in future issues valid ones. Time limited because it would not mean all past invalid PCNs becoming nullities; it would be necessary for a challenge to the validity of each PCN to be brought before a competent judicial forum, and there were time limits for doing so.

The Adjudicator found the PCN a nullity.

Original decision to allow appeal upheld.

Adjudicator's Jurisdiction

Flannery v RB Kensington & Chelsea (PATAS Case Number 2020400959)

Having appealed to the Adjudicator, the Appellant gave notice of the withdrawal of his appeal. Accordingly the Adjudicator dismissed the proceedings under Regulation 14(1)(b) of the Road Traffic (Parking Adjudicators) (London) Regulations 1993. In doing so he dealt with the issue of his jurisdiction raised by the Appellant.

The Appellant contended that the Penalty Charge Notice had not been served as required. He argued that the Adjudicator did not have jurisdiction because the basis of his challenge was not within any of the grounds prescribed by paragraph 2(4) of Schedule 6 to the 1991 Act, as amended. He had commenced proceedings in the West London County Court for a declaration that the PCN had not been validly issued.

He argued that the 1991 Act enforcement process was triggered by the service of a PCN; and therefore if the PCN was not served that process, from which the right to appeal to the Adjudicator and so the Adjudicator's jurisdiction derived, did not apply. Therefore, the Adjudicator had no jurisdiction and the proper forum was the County Court.

The Adjudicator rejected these arguments. He said that the circumstances fell within ground (f) in paragraph 2(4) of Schedule 6 to the 1991 Act: that the penalty charge exceeded the amount applicable in the circumstances of the case. If the PCN was not served, the penalty payable would be nil and therefore would exceed the penalty claimed by the Council. Even if this were not so, the issue raised by Mr Flannery would be a collateral challenge and therefore justiciable by the Adjudicator: *R v Parking Adjudicator Ex p. Bexley LBC QBD 29 July 1997*.

If the position were as Mr Flannery contended, undesirable consequences would follow. Whenever the issue in this case arose, whether the Adjudicator or the County Court had jurisdiction would depend on whether the PCN was properly issued. If it was, the Adjudicator would be the proper forum, if not, the County Court. So in every case one or other would have to make a finding of fact as to whether the PCN had been properly issued and on the basis of that determine its competence. If it found it were not competent, then there would arise the question whether the appellant could mount proceedings in the other forum, and perhaps even have the issue of fact determined afresh there.

There were also many cases in which an appellant contests liability on the basis that arises in this case and another; for example, that the contravention did not occur anyway. If Mr Flannery were right, the appellant would have to bring proceedings in the County Court for determination of the first issue and appeal to the Adjudicator for determination of the second. There was also the point that no fee is payable by the appellant for appealing to the Adjudicator. Furthermore, enabling an appellant to challenge liability in the County Court would undermine the intention encapsulated in regulation 12 of the 1993 Regulations that costs should be awarded against either party only where they had acted frivolously, vexatiously or wholly unreasonably.

The complications and undesirable consequences that would arise from Mr Flannery's argument being right were obvious. They could only be highly disadvantageous to the ordinary member of the public who contested liability to a penalty charge and undermine Parliament's clear aim in the 1991 Act of providing a simple means of challenging liability.

Proceedings Dismissed