joint report of the parking adjudicators 2003/04

transport and environment

Association of London Government

Joint Annual Report of the Parking Adjudicators

to the Association of London Government Transport and Environment Committee

Chief Adjudicator's foreword

I am pleased to present to the Committee this joint report of the Parking Adjudicators for the year 2003-2004.

The year saw the tenth anniversary of the commencement of decriminalised parking enforcement under the Road Traffic Act 1991, so now is an appropriate moment to look back over this first decade.

Wandsworth was the first local authority to start enforcement, in July 1993. By the end of 1993 a further six local authorities had followed their lead. The first parking appeal to an Adjudicator was heard in October 1993. There were then just four Adjudicators.

By 1995-96 all local authorities had taken on enforcement powers. However, delays in some in getting operational processes fully established means that for statistical purposes regarding 1996/97 as the first full year is more meaningful. This comparison shows the growth in both enforcement and appeals. Up to March 1994, the enforcing boroughs issued 255,340 Penalty Charge Notices and the Adjudicators dealt with 227 appeals. In 1996/97 over 3.5 million parking Penalty Charge Notices were issued and supplementary enforcement action – clamping or removal – was undertaken in over 115,000 cases. In that year the then 27 Adjudicators received just over 27,000 appeals. In 2003/04 over 5.1 million parking Penalty Charge Notices were issued and almost 220,000 vehicles were clamped or removed. The complement of Adjudicators had by then risen to 43, and they decided 43,920 parking appeals.

What is clear from the figures is that there has been an increase in parking enforcement. However, there is a need for caution in drawing any conclusions from these bare figures. We are not aware that there has been any systematic, authoritative study into the reasons for the increase. We imagine there are likely to be a number of factors. For example, the increase in the areas to which parking controls apply would naturally tend to lead to an overall rise in enforcement action. The rate of appeal has remained relatively low; currently about 0.8 per cent of Penalty Charge Notices issued lead to an appeal. So it is right to recognise that over 99 per cent of Penalty Charge Notices are resolved without going to appeal.

As well as the increase in the number of parking appeals, the Adjudicators' jurisdiction was widened by the London Local Authorities Act 1996, which gave the London local authorities the power to enforce bus lanes. The Act provided for appeals to be dealt with by Traffic Adjudicators and for their functions to be performed by the Parking Adjudicators. In 2003/2004, they decided 2,885 bus lane appeals.

So, in 2003 – 2004, the Adjudicators decided a total of 46,805 appeals.

…what is clear from the figures is that there has been an increase in parking enforcement

In addition, since early 2003, the Parking Adjudicators have shared the hearing centre and administrative support organisation at New Zealand House with the newly constituted Road User Charging Adjudicators, who decide appeals against liability for congestion charge penalties in London. Whilst they are a separate tribunal, the issues they consider are similar to those considered by, and consequently their procedures are modelled on and mirror closely those of, the Parking Adjudicators.

During its first 10 years, the Appeals Service has acquired a deserved reputation for being a modern, innovative and customer focused tribunal. Its administrative and operational efficiency is facilitated by the unique computerised adjudication system that enables the Adjudicators to adjudicate on-screen, provides automated administrative functions including scheduling, and produces comprehensive management information. The tribunal sits every weekday, up to 8pm on Wednesdays and Thursdays, and on Saturday mornings. Personal appellants are given a specific hearing time. They are also normally able to take away the decision with them within a few minutes of the conclusion of the hearing.

But there is no time for resting on laurels. The increase in the workload seems set to continue. In January to March 2004, the Adjudicators received 13,058 parking appeals compared with 10,281 in the same period the previous year, an increase of 27 per cent. In addition, their jurisdiction is further widened by the London Local Authorities and Transport for London Act 2003, which provides for the decriminalisation of the London lorry ban and of certain moving traffic offences. The report deals with these in more detail below.

To meet the increasing workload, 12 new Parking Adjudicators have been appointed, and we welcome them. Five who are already Road User Charging Adjudicators are familiar faces at the hearing centre. More computer terminals are to be installed to cater for the increased number of Adjudicators.

One existing Adjudicator, Everton Robertson, did not seek reappointment when his term of office expired.

The Adjudicators look forward to the next 10 years and are determined to continue to provide the high standard of service for which the tribunal has become known.

Whilst it is interesting to reflect on the development of the tribunal, it has, of course, been business as usual. In November 2003, with Charlotte Axelson, the Head of PATAS, I attended the Annual Conference of the Council on Tribunals. The main focus of the conference was the Government's Tribunals for Users Programme, the child of Sir Andrew Leggatt's Review of Tribunals, about which I have written in previous reports. The conference was therefore very much concerned with looking forward to the future of tribunals.

The keynote address was delivered by Lord Filkin CBE, Parliamentary Under Secretary of State at the Department for Constitutional Affairs. He explained that tribunal reform formed part of the Government's broader programme of public sector reform. He placed tribunals in the wider context of the resolution of disputes and emphasised the importance of proper process in central and local government departments with the aim of achieving early resolution at source and so avoiding the need for tribunal involvement. He also referred to the importance of feedback loops from tribunals to departments to promote improvements in departmental decision-making.

Lord Filkin stressed the importance of the independence of tribunals and described the desirable attributes of a tribunals system as being speed, accessibility and economy.

The conference was also addressed by Jonathan Spencer, Director General – Clients and Policy at the Department, who described the timetable for implementing the Tribunals for Users Programme. The Government subsequently published, in July, its White Paper Transforming Public Services: Complaints, Redress and Tribunals, which builds on these themes and sets out detailed policy and proposals for implementing the programme of reform. This will initially result in the creation of a unified Tribunals Service as an Executive Agency of the Department for Constitutional Affairs, incorporating the largest central government tribunals. The aim is to

launch this organisation in April 2006.

Whilst tribunals run by local government have for now been excluded from the remit of the new service, they are not forgotten. The White Paper says that their funding and sponsorship arrangements are sufficiently different to merit separate and fuller review, which is intended to commence in January 2007 and be completed by January 2008.

The conference also saw the launch by Mr Justice Sullivan, Chairman of the Judicial Studies Board Tribunals Committee, of the JSB's new guidance documents: Framework of Standards for Training and Development in Tribunals and Fundamental Principles and Guidance for Appraisals in Tribunals and Model Scheme.

The conference concluded with a session on the importance of focusing on the tribunal user. Interestingly, some speakers highlighted the view that unrepresented parties are at a disadvantage before tribunals. The Leggatt review said that a combination of quality information and advice with well organised tribunals and well conducted hearings should enable the vast majority of appellants to put their cases properly themselves; and that this would assist the important aim of making tribunals participatory. PATAS has always applied these aspirations. Hearings are informal, participatory and usually short. The Adjudicator ensures that all relevant issues are teased out. As a result there is generally no advantage in an appellant being represented, and they rarely are.

Finally, may I express the Adjudicators thanks to Charlotte Axelson and her staff for their support to the Adjudicators during the year.

Overview of the year

Customer survey

Five years ago the Parking Committee for London, as it then was, carried out a customer satisfaction survey of appellants. We are pleased that the Committee considered that it was timely to repeat the exercise and in 2002 commissioned a further survey. After a tendering process, the project was awarded to TNS, a major market research company.

The aims of the survey were to:

- look at levels of customer satisfaction
- examine perceptions of the role and status of the Adjudicators
- identify areas in which the service could be improved from a customer perspective.

This survey, unlike the first, included local authorities. Questionnaires were developed through initial consultation with a small number of users to identify the main issues involved from their perspective. Some 300 appellants and 25 parking managers (or acceptable substitutes) were then interviewed, using the questionnaires. The fieldwork was carried out in March and April 2003 and the final report presented in November 2003.

A summary of the survey results is included in the Committee's overall report.

Key issues from the survey

In total, 63 per cent of appellants and 52 per cent of local authority respondents were very or quite satisfied. Given that the nature of the Appeal Services work means that in every case there is a loser whose natural tendency is likely to be to feel disappointed, TNS considered this represented a good level of satisfaction.

By far the biggest driver of satisfaction amongst appellants is whether their appeal is allowed. It is perhaps inevitable that this will be the case. However, it is encouraging that even amongst appellants who lost their appeal, 25 per cent were still satisfied with the service, and for 39 per cent the experience still matched or exceeded their expectations. Similarly, although the perception of independence was influenced by the outcome, 38 per cent of those who lost their appeal still agreed that the Adjudicator was independent.

Appellants who had a personal hearing were also more likely to show satisfaction with the service and to agree that the Adjudicator was independent.

The lower level of satisfaction amongst local authority respondents is of concern. A factor may be that they will deal with a caseload of appeals whereas an appellant's attitude is likely to be based on the experience of a single appeal.

However, the responses from local authority respondents suggest that there may be misunderstanding about the role and status of the Adjudicators amongst a significant minority of local authority staff: 18 per cent did not understand that an appeal is a judicial process. There may well be a connection between this and the view that the Service is not necessary. The reality is that the Service satisfies the constitutional imperative of the citizen's right to their liability for a penalty imposed by the State to be determined by an independent tribunal. Similarly, the view that it is the Adjudicators' role to work with councils may indicate a lack of appreciation of the need for the Adjudicators to be independent of the local authorities. The concern about consistency of decisions is not a new issue, and appears to derive from a misunderstanding about the nature of the judicial process: that on matters of fact each case stands on its own.

Just as there was a perception amongst some appellants that the Adjudicator was not independent, so there was a significant number of local authority respondents who viewed the Adjudicators as biased against local authorities. Specific comments made by local authority respondents suggest that, as with appellants, their perception is linked

to the outcome of appeals; and that there is also a connection with misunderstandings about the judicial process.

In order to address these issues, the main item at the first of our new series of user groups was a presentation by the Chief Adjudicator on the role of the Adjudicators and the nature of the judicial process. We hope that this will have improved understanding and lead to a higher level of satisfaction amongst local authorities.

There was concern about the time taken to decide appeals because of the backlog of cases. This is being addressed by the appointment of more Adjudicators and by holding "postal cases only" weeks from time to time.

There is some desire for more local hearing centres.

The issue of feedback is dealt with below.

Service measures

We have introduced a number of new measures to enhance our service.

We already have sources of information for appellants to assist them in deciding whether to appeal and, if so, how to go about it. Information about PATAS is already set out on our website at www.parkingandtrafficappeals.gov.uk The notes attached to our appeal forms, which are issued by local authorities when they send a Notice of Rejection of the motorist's representations, explain the appeal process and contain answers to common queries in a question and answer format.

From early 2004 we have issued a "What Happens Next?" leaflet with all appeal decisions. This provides to the appellant relevant post-appeal information, such as their options for challenging the decision if they think it is wrong and for applying for costs.

We have also put in place the Parking Adjudicators Judicial Complaints Protocol. This formalises the procedures for the handling of complaints against Adjudicators. It is closely based on the Department for Constitutional Affairs' Judicial Complaints Protocol, which governs the investigation of complaints against judges. The principle that underpins the Protocol is that the handling of complaints must be set in the context of the need to protect judicial independence. Parking Adjudicators are judicial office holders. Their decisions, including procedural decisions about the handling of cases, are judicial decisions and can only be challenged through the legal process; they cannot be the subject of an investigation through an administrative complaints process. The Chief Adjudicator will, however, consider and investigate complaints that appear to him to relate to the personal conduct of Parking Adjudicators, subject to the conditions set out in the Protocol. As head of the Parking Adjudicators, he is concerned to see that standards of personal conduct by Adjudicators are maintained at the high level that the public is entitled to expect.

After an interval caused by pressure on resources, we have again held a number of user group meetings with representatives of local authorities. As well as dealing with the role of the Adjudicators (see above), these have dealt with a range of procedural topics relating to the appeals process, such as the statutory declaration procedure and ancillary applications to the Adjudicators. They have been well attended and, we believe, well received. We hope that these will have helped local authority staff to understand the appeals process better. We intend to continue holding these at regular intervals.

We have continued to issue our quarterly newsletter to local authorities. This provides information on a range of subjects, such as key cases, new legislation, statistics and staff changes. Since December 2003 the newsletter has been posted on our website.

Training

Our main training event was a two day national conference in November, held jointly with our colleagues from The National Parking Adjudication Service and the Road User Charging Adjudicators. We were pleased that Lord Newton, Chairman of the Council on Tribunals, was able to attend to give the opening address. He gave an overview of the tribunals' world from his wider perspective, including progress on the Government reform plans, which the Council on Tribunals supports. He said that PATAS's efficient, customer focused practices, including its use of computer technology, are regarded as an example for other tribunals. The conference also heard the views of His Honour Judge Gary Hickinbottom, Chief Social Security Commissioner and a former Parking Adjudicator, Mike Talbot, Department for Transport, Nick Lester, Director, ALG Transport & Environment Committee and Kevin Delaney, RAC Foundation on "Decriminalisation Past, Present and Future", and considered the drafting of a competences framework for Parking Adjudicators.

We held one other training session at which we received a presentation on the customer survey and considered other topical issues.

All Adjudicators are expected to attend the Judicial Studies Board's Tribunal Skills Development Course as soon as possible after appointment, unless they have already been on it in another capacity. Attending this course is an important part of their training in giving them a wider perspective on the tribunal world and allowing them the opportunity to exchange views and experiences with members of other tribunals. The Board has recently introduced a Tribunal Advanced Skills Course and one Adjudicator attended the inaugural course to evaluate it. She reported favourably on it and, whilst it is not intended at this stage that every Adjudicator should attend it, consideration is being given as to how it might fit into our general training strategy.

In April the Chief Adjudicator attended a Judicial Studies Board seminar for tribunal Presidents and Training Officers to assist the Board in the development of the Framework of Standards for Training and Development in Tribunals and Fundamental Principles and Guidance for Appraisals in Tribunals and Model Scheme. In November 2003, three Adjudicators, including the Chief Adjudicator, attended a Judicial Studies Board workshop on Tribunals' Appraisal Scheme Development. This workshop provided a forum for considering the issues arising from the introduction of appraisal schemes for tribunal members.

Workload

Comprehensive statistics relating to our workload can be found in the "TEC Statistics" section of the Committee's annual report. We decided a total of 46,805 appeals: 43,920 parking appeals and 2,885 bus lane appeals. The latter represents an increase from 1,674 the previous year, no doubt as a result of increasing bus lane enforcement by local authorities. This rise is likely to continue as more local authorities take on bus lane enforcement.

Appellants attended in person before the Adjudicator in about 20 per cent of appeals; the remainder were decided as "postal" cases on the papers only.

In addition to deciding appeals, there is a considerable amount of ancillary work that requires the attention of the Adjudicators. This includes matters such as applications for review, applications for costs and applications to appeal out of time. This work takes up a considerable amount of Adjudicator time. We have a Duty Adjudicator group who undertake the consideration of these matters in addition to their normal adjudication work.

Issues

We comment here on particular issues that have arisen this year.

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

Procedural and Substantive Defects

The Adjudicators continue to see cases where the local authority has failed to follow proper procedures. The following are some examples.

- The local authority failed to consider the Appellant's representations, in breach of its duty under paragraph 7, to Schedule 6 of the Road Traffic Act 1991. This was clear because the Notice of Rejection was dated the day after the Notice to Owner, which the appellant did not respond to until after issue of the Notice of Rejection. Indeed the appellant received both the Notice to Owner and Notice of Rejection in the post on the same day.

- The local authority served the Notice to Owner outside the statutory six-month time limit. Having not served the Notice to Owner within that time, the local authority was not entitled to pursue enforcement, yet it continued to do so. Furthermore, in this case the Adjudicator noted with concern that the Llocal authority took seven months to reply to the appellant's initial letter sent on the day of the issue of the Penalty Charge Notice.

- The local authority accepted that the parking attendant had not served the Penalty Charge Notice by either fixing it to the vehicle or giving it to the person appearing to the parking attendant to be in charge of the vehicle, as, subject to certain exceptions not applicable to the case, the law requires. It nevertheless argued that it wished to enforce the penalty on the basis that the parking attendant told the appellant that a Penalty Charge Notice would be sent to him in the post. In allowing the appeal, the Adjudicator said that it was difficult to understand how a Notice to Owner could have been served in relation to a Penalty Charge Notice that the local authority knew had never been properly issued.

- The local authority had served two charge certificates on the appellant, despite the fact that the local authority had already received her representations in response to the Notice to Owner. As the Adjudicator said, this could result in a potential Appellant paying the charge rather than contesting a case. The Adjudicator expressed surprise that the local authority had not addressed this error.

  In our report last year we expressed concern about delay by local authorities in referring statutory declarations to us. But other, more serious, issues have arisen this year in relation to the way local authorities deal with statutory declarations.

- In one case, the Appellant made a statutory declaration on the ground that he had appealed to the Parking

...the Adjudicators continue to see cases where the local authority has failed to follow proper procedures

Adjudicator but received no response. The Court made the usual order cancelling the charge certificate. The local authority's duty on receiving this order was to refer the statutory declaration to the Parking Adjudicator. In fact, it apparently treated the declaration as if it were representations from the Appellant since it issued a Notice of Rejection to the appellant. The Adjudicator said that in doing so it acted unlawfully; and that the breach of duty by the local authority was a serious irregularity because in issuing the supposed Notice of Rejection it unlawfully purported to impose on the Appellant a liability for a penalty and a time limit for challenging that liability.

- In another case, on receiving a statutory declaration, the local authority did not immediately refer it to the Parking Adjudicator. Instead it wrote to the appellant. The Adjudicator described the contents of this letter as breathtaking. In summary, it told the appellant that he had exhausted all the appeal processes, that the penalty was overdue, that unless he accepted their offer to accept £40 by a date specified, he would have to pay £125, and that bailiffs would be instructed to recover it. The Adjudicator said that the letter amounted to a wholly unlawful demand for payment, accompanied by the threat of bailiff enforcement. The Adjudicator saw a number of other cases where this local authority had sent similar letters.

It is not only in matters of procedure that local authorities understanding of the law appears to be less than might be expected. The same is sometimes the case in relation to the substantive issues, as the following example shows.

- The Appellant stopped to drop off her husband to go to the bank. Because he was a wheelchair user, she took his wheelchair out of the vehicle and took him into the bank. She returned within a short time to move the vehicle. The Appellant thought of her taking out the wheelchair as unloading and claimed the unloading exemption. The loading exemption did not apply at the location because loading was expressly prohibited. However, this was not an unloading case at all. The circumstances were squarely within the boarding/alighting exemption, which did apply even where loading was prohibited. The Adjudicator said that it was understandable that the Appellant, as a layperson, focused on the wrong exemption. It was, however, very surprising that the local authority did not recognise the circumstances for what they were.

- It also appears that there is some misunderstanding of the operation of the concept of owner liability and the rebuttable presumption that the owner is the registered keeper, as Behan v Hammersmith & Fulham shows. Any incorrect application of the principles could lead to a penalty being enforced against someone not legally liable for it.

As the Chief Adjudicator's foreword says, less than 1 per cent of cases reach the appeal stage. This would suggest that the scale of any problems in the operation of the enforcement system is small; and, of course, the cases that reach us are ones that are contentious and therefore are more likely to be infected with a defect of some kind. On the other hand, we do not know how many motorists do not challenge, or give up challenging, liability for one reason or another. Furthermore, the real test of the robustness of the enforcement process lies not in those Penalty Charge Notices that are routine but in those the motorist challenges. This is an issue as much of quality as of quantity. Every case where the local authority does not follow the correct procedures or wrongly applies the law has the potential for causing injustice to the motorist. We assume that these cases are the result of incorrect understanding of the law. It would seem this must be because of inadequate training of the staff concerned. We recommended last year that local authorities should review the adequacy of the training their staff receive in considering and replying to representations. It appears there is still work to be done and, indeed, that the need is not confined to staff dealing with representations. We hope that local authorities will act on our recommendation where necessary.

It should also be borne in mind that Adjudicators have the power to award costs where they consider a party has acted frivolously, vexatiously or wholly unreasonably.

As the figures in the TEC Statistics show, few such awards are made. Nevertheless, Adjudicators will exercise the power where they consider it appropriate. In one case, the Adjudicator awarded costs where the local authority had taken seven months to reply to representations. In doing so, the Adjudicator said that the local authority must have been aware of the case of Davis -v- Kensington & Chelsea (PATAS Case Number 1970198981) in which the Adjudicator indicated that to respond to representations more than three months after they were made potentially breaches the local authority's duty to act fairly. The Adjudicator said that the local authority had acted unlawfully in seeking to enforce this penalty charge after such a delay by serving a Notice of Rejection. In acting unlawfully, the local authority was also acting wholly unreasonably, since no reasonable local authority would so act.

Local authorities' responsibilities

The issue in an appeal was whether the parking attendant had properly served the Penalty Charge Notice. The parking attendant's credibility was therefore in issue. The appeal was refused. However, the local authority's Notice of Rejection stated: "This unit only deals with the administration of PCNs and not issues concerning the parking attendant's conduct". It went on to tell the motorist to take the matter up with the local authority's private enforcement contractor. This missed the point that the conduct of the parking attendant was directly relevant to the appeal. In any event, parking attendants carry out enforcement for the local authority. The contracting out of enforcement to private contractors does not absolve the local authority of its responsibility for the integrity of the enforcement operation. For a local authority to suggest otherwise is a matter of concern.

Adjudicators' powers

The powers of the Adjudicators were considered in two review cases McAdie v Hammersmith & Fulham and Douthit v Hammersmith & Fulham. Both concerned the power of the Adjudicator to consider collateral challenges, a power that was confirmed by the High Court in R v Parking Adjudicator Ex P. Bexley [1998] RTR 128. The theme of the two cases is that in considering collateral challenges the Adjudicator must apply the appropriate, established legal principles.

The powers of the Adjudicator were the subject of an application for judicial review in R (Transport for London) v The Parking Adjudicator. In the appeal decision the Adjudicator had found that the signs relating to a bus lane were inadequate and therefore that the bus lane controls were unenforceable. In the judicial review, Transport for London challenged the power of the Adjudicator to consider the adequacy of signs. The Adjudicators have always considered they had the power to do so and many cases each year, it is estimated about 20 per cent, turn on the point. In many such cases, of course, the local authority receives a favourable decision by the Adjudicator confirming the adequacy of the signs. The case of Minier v Camden is such a case. So the challenge by Transport for London raised an important issue, both of principle and in practice. However, the case was concluded by Transport for London withdrawing its claim and confirming that it accepted the Adjudicator could consider the adequacy of signs.

Removals

The power of the Adjudicator to control the exercise of the power to remove vehicles was considered in Douthit, in which the Adjudicator said that the discretion to remove is subject to judicial control (although the local authority succeeded in its application for review in the particular circumstances of the case). Rickman v Waltham Forest is an example of a case where the Adjudicator found the power had not been lawfully exercised.

The limitation that a vehicle may not be removed from a designated parking place if not more than 15 minutes have elapsed since the end of a period of paid for parking was considered in Thornton v Wandsworth. The case turned on the meaning of "designated parking place".

Payments

Appellants sometimes make payment at the reduced rate outside the 14 days allowed, on occasions offering the payment "in full and final

settlement". The issue in McGow v Richmond was whether the local authority cashing the cheque in such cases debarred it from pursuing the balance of the penalty. The Adjudicator found that it did not, since the penalty is prescribed by the statutory scheme.

The issue in McAdie was whether the appellant had paid a bus lane penalty within the 14 days allowed. This turned on the meaning of "paid" under the London Local Authorities Act 1996, the governing legislation. The Adjudicator found that the penalty was paid when received by the local authority, not when posted.

Other Issues

A private hire vehicle is not a taxi under the Traffic Signs Regulations and General Directions 1994: Faw v Transport for London.

When a Penalty Charge Notice issued by post for a parking contravention is "served": Bell v Southwark.

Whether the absence of a T-bar at the end of a yellow line rendered the restrictions unenforceable: Minier v Camden.

Judicial Reviews

In addition to the Transport for London application referred to above, four appellants commenced judicial review proceedings to challenge the Adjudicator's decision in their appeal. In all the cases, the High Court refused to grant permission for the application to proceed.

Feedback

The Chief Adjudicator's Foreword refers to the importance the Government's policy attaches to improved departmental decision making and to feedback loops from tribunals as a means of promoting this. The Adjudicators strongly support this approach. So, it seems do local authorities, judging from the wish expressed by local authority respondents in the customer survey for more feedback. In fact, local authorities already receive feedback from the Adjudicators in a variety of ways: in decisions, by the Chief Adjudicator drawing their attention to a particular issue, at user groups, in our annual report. We have, however, no information about what arrangements, if any, local authorities have for considering and taking action on this feedback. It is clearly desirable for local authorities to have such arrangements, which would give effect to the Government's policy. We recommend that all local authorities should have such arrangements; and so as not to dilute the importance we attach to this recommendation, it is our sole recommendation this year. Given the views of local authority respondents in the customer survey, no doubt local authorities will support this recommendation.

Recommendation

That all local authorities should have in place arrangements for addressing feedback received from the Adjudicators and taking such action on it as may be appropriate.

Digest of cases

Digest of cases

Behan v Hammersmith & Fulham
(PATAS Case Number 202031860A)

This was an application for review by the local authority of a number of decisions relating to Penalty Charge Notices issued to the same vehicle.

The facts were that on the date of the incidents a Mr Goldblatt, not Mr Behan, was the registered keeper. However, the local authority removed the vehicle for a later incident. It was reclaimed by Mr Behan, who apparently acknowledged he was then the owner, although still not the registered keeper. The local authority then served Notices to Owner on Mr Behan in relation to the earlier incidents the subject of these appeals. The local authority contended that the circumstantial evidence was sufficient to establish, on the balance of probabilities, that Mr Behan was the owner at the time of these incidents.

The local authority contended that the original Adjudicator was in error in saying in his decision 'if he was not the registered keeper there is no presumption for Mr Behan to rebut, and hence no case for him to answer'; and that this view of the legal position, led him to the wrong conclusion.

The reviewing Adjudicator said that the effect of ss. 66(2) and 82 (2), (3) of the Road Traffic Act 1991 was that the owner is liable for penalties; the keeper is taken to be the owner; and the owner is presumed to be the registered keeper.

This latter presumption is rebuttable.

He said that the local authority's submissions misstated the decision in R v The Parking Adjudicator ex parte Wandsworth. That case was concerned with the rebuttal of the presumption by the registered keeper. The decision was that in considering whether the presumption had been rebutted the test was whether the disposition concerned was the sort that would require notification to DVLA of a change of keeper. The case did not decide that the actual keeper should be treated as the registered keeper. The registered keeper was the person whose name appears on the register. It might be that the actual keeper was someone other than the registered keeper. If so, the actual keeper would be liable for penalties if the presumption that the registered keeper was the owner were rebutted. But that was not the same as them being treated as the registered keeper, nor was that the scheme of the Act.

The local authority referred to its being "entitled" to look elsewhere than the registered keeper for the person liable; and to the Adjudicator allowing it to build a case against Mr Behan. The flavour of the local authority's arguments was rather that it had some discretion as to whom to take action against. The local authority had the power 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": 1991 Act, Schedule 6, Paragraph 1. In most cases this would be the registered keeper because that would be the only information the local authority had, but it might occasionally have other information that would legitimately lead it to a different conclusion. Its decision must be based on legitimate considerations only. For example, it would not be proper to take into account against whom it seemed most likely it would ultimately be possible to pursue successful enforcement. Deciding who appears to have been the owner is not a matter of discretion; it is an exercise in considering the information available and coming to an objective view based on it.

The original Adjudicator had correctly stated the position that there was no presumption against Mr Behan. The burden therefore rested on the local authority to prove that he was the owner. That was the approach the Adjudicator adopted and it was the correct one. There was therefore no error of law by the Adjudicator; it was clear that he considered the evidence before him and the decision he made was compatible with it.

Review rejected.

McAdie v Hammersmith & Fulham
(PATAS Case Number HF022/0062)

This was an application for review by the local authority.

The appeal concerned whether or not the appellant was entitled to make payment of the penalty at the reduced rate or was liable for the full

penalty. The Adjudicator who decided the appeal decided that the appellant should be allowed to pay at the reduced rate. The local authority challenged that decision on the ground that the Adjudicator acted outside his jurisdiction in deciding the appeal in the appellant's favour.

The Adjudicator found as a fact that the appellant posted a cheque for the reduced penalty on 29 July 2002. The local authority said it did not receive it and the Adjudicator inferred that it had been lost in the post. The Adjudicator also found as a fact that the posting of the cheque on 29 July 2002 was just within the 14-day limit.

On the basis of his findings, he concluded that 'fairness demands that the Appellant be allowed to pay at the reduced rate...' The local authority contended that the Adjudicator had no power to come to that decision. The reviewing Adjudicator said it was therefore necessary to consider what the Adjudicator's powers were.

He said that the function of the Adjudicator was, essentially, to decide whether the appellant was legally liable for the payment of a penalty charge and, if so, whether for the full or the reduced penalty. In doing so, the Adjudicator may consider issues of collateral challenge relevant to the question of legal liability: R v Parking Adjudicator Ex p. Bexley [1998] RTR 128. If the Adjudicator decided that the appellant was legally liable for a penalty, whether the full or reduced penalty, the Adjudicator had no power to vary the amount of that penalty because of mitigating circumstances or for any other reason, as the penalties were fixed by the substantive law. The local authority did have discretion to waive a penalty even though the appellant may be legally liable for it, but the Adjudicator had no such discretion: Westminster v The Parking Adjudicator, "The Times" 6 June 2002.

In merely referring to the demands of fairness, the decision in this case did not disclose any proper basis for finding that the appellant was not legally liable for the penalty. A breach of the council's duty to act fairly could form the basis for allowing an appeal (Davis v Kensington & Chelsea 1998 PATAS Case Number 1970198981), but that was not the same as a general appeal to the demands of fairness. In any event, the Adjudicator did not put his decision in terms of addressing the duty of fairness, nor did the reviewing Adjudicator consider any question of a breach of the duty arose in this case.

He therefore accepted the local authority's contention that the decision was made in error and considered it appropriate to conduct a review.

The appellant posted the cheque on the last day of the period for payment described in the Penalty Charge Notice. It was therefore important to consider the meaning of 'paid' under the London Local Authorities Act 1996. If it meant "received by the council", the payment was unarguably out of time. If posting constituted payment, the payment was in time.

In parking, the Road Traffic Act 1991 section 82(5) provided that a penalty charge was paid when the local authority received it. The 1996 Act contained no such provision. Even so, common sense dictated that it was not effected until payment was received by the local authority. Accordingly, the payment in this case was not made within the period allowed and the loss of the cheque in the post was irrelevant. The appellant was liable for the full penalty.

Review allowed. Appeal refused.

Douthit v Hammersmith & Fulham
(PATAS Case Number 2030276743)

This was an application by the local authority for review. The issue that arose was whether Adjudicators had any power to control the powers of local authorities to remove vehicles that are in contravention of the parking controls.

The reviewing Adjudicator said that the removal of a vehicle was a power that the local authority had discretion whether to exercise. This discretion, like other discretionary powers, was subject to judicial control. The local authority therefore did not have carte blanche in the exercise of the discretion.

As to the jurisdiction of the Adjudicators, challenges to the propriety of the exercise of the

discretion were a collateral challenge that the Adjudicators had the power to decide: R v Parking Adjudicator Ex. P. Bexley [1998] RTR 128. In doing so they would apply the proper legal principles.

In this case the original Adjudicator found that the local authority had not satisfied her that the removal was proportionate. The reviewing Adjudicator said it seemed clear that since the direct application into English law of the European Convention on Human Rights effected by the Human Rights Act 1998, proportionality was a principle of law that must be applied in judicial proceedings in England and Wales. It was therefore an issue the Adjudicator was entitled to consider. However, he took the view that the Adjudicator erred in the manner in which she approached the issue. The application of the principle was discussed in "Judicial Review of Administrative Action" De Smith, Woolf and Jowell 5 th Edn. At page 601, it referred to the fact that proportionality was applied in relation to excessively onerous penalties; and that it had been alluded to in the context of administrative penalties. However, the test for applying proportionality was set out at page 605 as follows.

"Outside the field of human rights, proportionality should normally only be applied if the means are manifestly or grossly out of balance in relation to the end sought."

The circumstances here did not satisfy that test. The vehicle was parked close to a road junction and it could not be said that the view that it was causing an obstruction was perverse or, indeed, unreasonable. In those circumstances, there was no basis for finding the removal to be unlawful on the ground that it was not proportionate.

The reviewing Adjudicator noted that "Traffic Management and Parking Guidance for London" issued by the Government Office for London in 1998 stated at paragraph 11.5 that "Removal action is appropriate where parked vehicles are causing an obstruction...". The removal in this case was therefore in accordance with that guidance.

Original decision set aside. Appeal refused.

Rickman v Waltham Forest
(PATAS Case Number 2030279242)

The appellant did not contest the issue of the Penalty Charge Notice. She challenged the legality of the removal of her vehicle following the issue of the Penalty Charge Notice.

The local authority had supplied the guidance under which their Parking Attendants operate and stated that Parking Attendant's on board removal vehicles "are aware of the guideline policy on removal and clamping." According to the guidance the circumstances were ones in which the vehicle should have first been clamped and not removed for a further 24 hours.

The vehicle was not clamped. It was removed 19 minutes after the Penalty Charge Notice was issued. The Adjudicator found that the local authority's representatives did not follow their own guidance nor did the local authority address these points in their Letter of Rejection. No evidence had been submitted from the on board Parking Attendant to show knowledge of the guidance and how and if it was applied in this case. The Adjudicator found that the local authority was not entitled to remove the appellant's vehicle at the time it was removed.

Appeal allowed. Refund of release charges paid directed.

Thornton v Wandsworth
(PATAS Case Number 2020404417)

The location was marked both as a parking bay and with a single yellow line. The Penalty Charge Notice was issued at 16:01, one minute after the waiting restrictions signed by the yellow line came into force. The car was then removed before 16:15.

There was displayed on the car a pay and display ticket the validity of which expired at 16:00. Therefore after that time the car was parked in breach of the waiting restrictions signed by the yellow line.

However under Regulation 5 of the Removal and Disposal of Vehicles Regulations 1986 (as amended) a vehicle may not be removed from a designated parking place if not more than 15 minutes have elapsed since the end of any period for which the appropriate charge was duly paid at the time of parking.

The Adjudicator was satisfied on the basis of the Traffic Management Order that this bay was a designated parking place. Whilst the same stretch of road was subject to waiting/loading restrictions that prohibited use of the bay after 16:00, this did not change the fact that the bay was still a designated parking place even after that time.

The appellant had paid to park until 16:00. Accordingly, the local authority was not entitled to remove the car prior to 16:15. Consequently the car was removed before 15 minutes had elapsed since the end of the period for which the appropriate charge was duly paid at the time of parking.

Appeal Allowed. Refund of the release charges paid directed.

McGow v Richmond Upon Thames
(PATAS Case Number 2020298182)

This was an application for review by the local authority.

The Appellant paid the reduced penalty outside the 14 days allowed, the local authority cashed the cheque and then sought payment of the balance of the full penalty. The issue raised was the legal effect of the cashing of the cheque; did it debar the local authority from pursuing payment of the balance?

The reviewing Adjudicator said that even were one to regard this as a matter of the general law of debtor and creditor, the taking of a payment offered in full and final settlement did not, except in specific circumstances, debar the creditor from pursuing the balance of the debt. In any event, this was not a pure civil debt. This was a statutory scheme. The amount of the penalty was prescribed under that scheme and payment of a lesser amount did not relieve the person liable of the statutory liability for the full penalty due.

The local authority would, of course, still have to take steps to enforce the penalty within a reasonable time: Davis v Kensington & Chelsea (PATAS Case Number 1970198981). Local authorities should have in mind also that informing the motorist promptly that the local authority would be enforcing full payment was important. This was because if there were any delay in doing so the motorist might assume the matter was closed and dispose of relevant papers. In such cases, the Adjudicator would be mindful of whether the requirement of a fair trial could be satisfied.

In addition, the local authority had the discretionary power to waive the payment of the full penalty and the reviewing Adjudicator hoped that they would exercise this in a sensible way by, for example, allowing a few days grace in payment to avoid counter-productive arguments about the effectiveness of the postal service.

Review allowed. Appeal refused.

Faw v TFL
(PATAS Case Number 203013556A)

The Traffic Management Order establishing a bus lane provided that "taxi" had the meaning given in the Traffic Signs Regulations and General Directions 1994, regulation 4 of which provided that "taxi" meant a vehicle licensed under Section 37 of the Town Police Clauses Act 1847 or Section 6 of the Metropolitan Public Carriage Act 1869 or under any similar enactment. Mr Faw said that he was a licensed private hire driver under the Private Hire Vehicles (London) Act 1998 and therefore a "taxi" and entitled to use the bus lane. The Adjudicator said that since the permit was not issued under either of the Acts mentioned in the Traffic Signs Regulations and General Directions 1994, he had to determine whether the Act of 1998 was a "similar enactment". The principle purpose of the Metropolitan Public Carriage Act 1869 related to the licensing of "stage carriages" and "Hackney Carriages" in London. Of sole relevance in the case were Hackney carriages. These were defined by the Act as "any carriage for the conveyance of passengers which plies for hire in any public street, road or place . . ." Under Section 1(1)(a) of the Private Hire Vehicles (London) Act 1998 "private hire vehicle" meant a vehicle constructed or adapted to seat fewer than nine passengers which was made available with a driver to the public for hire for the purpose of carrying passengers, other than a licensed taxi or a public service vehicle. However, Section 4(1) provided that

the holder of a London private hire vehicle operator's licence should not in London accept a private hire booking other than at an operating centre specified in his licence. This meant that the holder of such a licence may not ply for hire in the street. The Adjudicator accordingly found that the vehicle was not a taxi.

Appeal refused.

Bell v Southwark
(PATAS Case Number 2040066350)

The London Local Authorities Act 2000 provides for service of a Penalty Charge Notice by post where a parking contravention has been recorded by the local authority on camera. It must be served within 28 days beginning with the date when the penalty charge allegedly became payable.

The Adjudicator said that where legislation provides for service of a document by post, service was deemed to have been effected two working days after the document was posted. However that presumption was rebuttable.

The Adjudicator found that the Penalty Charge Notice had been posted but that the appellant had not received it. It had therefore not been served on him.

Under the Road Traffic Act 1991 the local authority's entitlement to serve a Notice to Owner only arose when, "a penalty charge notice has been issued". Section 4 (4) of the 2000 Act equated "served" with "issued".

It was well established that where a Penalty Charge Notice had not been properly "issued" under the 1991 Act (i.e. by being fixed to the vehicle or given to the person appearing to be in charge of it) it could not subsequently be enforced by service of a Notice to Owner. As this Penalty Charge Notice was not served on the appellant, it too could not therefore be enforced by service of the Notice to Owner.

Appeal allowed.

Minier v Camden
§(PATAS Case Number 203022636A)

Mr Minier contended that the yellow line was invalid, and the Penalty Charge Notice consequently unenforceable, because the line "did not have the required termination bars" (commonly known as "T-bars").

The Adjudicator said that the form of signs and road markings were prescribed by the Traffic Signs Regulations and General Directions 2002 (the Regulations). The Diagrams showing single and double yellow lines were 1017 and 1018 respectively. Both showed a T-bar at one end of the yellow line(s). The tables under the Diagrams, at item 4, contained the entry, "Permitted variants: None".

The Regulations therefore permitted no variation to the form of the yellow line(s) as shown in the Diagrams, and a T-bar must appear wherever the yellow line stops and starts, for whatever reason.

However there was an established principle of law – "The law does not concern itself with trifles".

This yellow line indicated that waiting was restricted on a clearly defined length of this street. The line ended adjacent to the white lines indicating the limits of a parking place. In that context, it could not possibly be said that Mr Minier or any other motorist would be misled or confused by the absence of T-bars. Whilst that was a defect in the form of the line, it was immaterial and so minor that Mr Minier could not rely on it to avoid liability for a penalty charge.

Appeal refused.

Martin Wood
Chief Parking Adjudicator
August 2004

Parking adjudicators

Parking adjudicators	Appointment date
Robin Allen	December 1996
Michel Aslangul	December 1996
Teresa Brennan	July 1999
Michael Burke	July 1999
Hugh Cooper	December 1995
Richard Crabb	December 1994
Neeti Dhanani	December 1996
Susan Elson	July 1999
Anthony Engel	December 2001
Christine Glenn	December 2001
Henry Michael Greenslade	December 1994
Usha Gupta	July 1993
Caroline Hamilton	December 1996
John Hamilton	December 2002
Monica Hillen	July 1993
Keith Hotten	July 1999
Edward Houghton	December 1994
Tanweer Ikram	December 2001
Verity Jones	December 1996
Anju Kaler	July 1999
Andrew Keenan	July 1993
Francis Lloyd	December 2002
Paul Mallender	July 1999
Alastair McFarlane	July 1999
Barbara Mensah	December 1994
Ronald Norman	December 1996
Joanne Oxlade	December 2001
Mamta Parekh	December 2002
Belinda Pearce	December 2001
Neena Rach	December 1994
Christopher Rayner	December 2001
Everton Robertson	July 1999
Jennifer Shepherd	December 1994
Caroline Sheppard	August 1992
Sean Stanton-Dunne	April 1997
Gerald Styles	December 1994
Carl Teper	December 2001
Timothy Thorne	December 1996
Susan Turquet	December 1994
Andrew Wallis	July 1999
Austin Wilkinson	July 1999
Paul Wright	December 1994
Martin Wood (Chief Parking Adjudicator)	April 2000

Association of London Government
59½ Southwark Street, London SE1 0AL
Tel 020 7747 4777
Fax 020 7747 4848
Email info@alg.gov.uk
www.alg.gov.uk

transport and environment

Association of
London Government