

JOINT ANNUAL REPORT
OF THE
PARKING AND TRAFFIC
ADJUDICATORS
TO
LONDON COUNCILS'
TRANSPORT AND ENVIRONMENT
COMMITTEE
2010-2011

Contents

| | |
|---|---------------|
| Chief Adjudicator's Foreword | Page 3 |
| 1. Workload | Page 6 |
| 2. Annual Report 2010 Update | Page 15 |
| 3. Judicial Review | Page 22 |
| 4. The Adjudicators | Page 32 |
| 5. Judicial Work Shadowing | Page 33 |
| 6. Training | Page 34 |
| 7. Maintaining Standards and Appraisal | Page 35 |
| 8. The Adjudicators and the Parking and Traffic Appeal Service | Page 41 |
| 9. Appendix Case Digest | Page 44 |

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CHIEF ADJUDICATOR'S FOREWORD

I am pleased to present to the Committee, this joint report of the Parking and Traffic Adjudicators for the year 2010-2011, pursuant to Regulation 17(6) of the *Civil Enforcement of Parking Contraventions (England) General Regulations 2007* and Regulation 12(6) of the *Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005*.

I was appointed Interim Chief Parking and Traffic Adjudicator from 7th June 2010, just after the start of the period covered by this report and full-time Chief Parking and Traffic Adjudicator in December 2010.

The year has been as eventful and challenging for the Adjudicators as the last. The Adjudicators decided a total of 69,240 appeals in the reporting period (61,079 in 2009-2010 an increase of 8,161 on last year), as well as reaching decisions on ancillary matters such as statutory declaration/witness statements, out of time appeals and review applications (see Workload at page 6). We also saw the conclusion to two contested Judicial Review applications resulting in judgments that can only assist the Adjudicators by clarifying the law (see Judicial Review at page 21).

I am pleased to be able to report that Adjudicators have now completely reduced the backlog of postal appeals from some 8,500 in May 2010 to effectively zero. Postal appeals are now being heard on, or almost immediately after, the first scheduled date. This has been achieved by a considerable degree of focus and commitment from Adjudicators, for which I am grateful.

Appellants wishing to have a personal hearing are still facing a short delay. This is because we continue to offer Appellants a wide choice of hearing times, some slots proving to be more popular than others. Whilst our waiting times compare very favourably with most other tribunals, we are determined to reduce it. We had previously set aside time to concentrate on the long postal delay and this meant that there would be days with no personal hearings at all. We can now address this by having personal hearings throughout the week on a regular basis. Another innovation has been the way cases are now allocated to specific hearing rooms. This ensures an even flow of work for Adjudicators and less waiting time at the Hearing Centre for the parties. Saturday hearings continue to be very popular with appellants and thus there is the longest wait for these.

The Adjudicators have again, throughout this year, been ably supported by the Parking and Traffic Appeals Service but it has been a period of change for them, as it has throughout the public sector. Towards the end of the period covered by this report, Charlotte Axelson, the Head of the Parking and Traffic Appeal Service left us. Charlotte joined what was then the Parking Appeals Service at New Zealand House as the first Clerk to the Parking Appeals Service, more than sixteen years ago. We wish her well for the future. The Adjudicators take this opportunity to welcome Richard Reeve, under the Parking and Traffic Appeal Service's new structure as our Tribunal Manager. Richard Reeve and his efficient team will no doubt face many challenges in the year ahead. However, we are fortunate to have such dedicated and capable support.

All the Adjudicators look forward to another year, continuing in our aim to keep appeals accessible, fair and efficient, generating decisions that are concise clear and relevant.

Caroline Hamilton

Chief Parking and Traffic Appeals Adjudicator

June 2011

1. WORKLOAD

Penalty Charge Notices issued

The number of Penalty Charge Notices issued resulting in appeals remains low in terms of percentage of the notices issued by London Enforcement Authorities.

The Penalty Charge Notices breakdown as follows :

4,022,476 (4,151,901 in 2009-10) penalty charge notices issued for **parking contraventions** in the reporting year period (2010-2011). In the same year, 51,773 (50,185 in 2009-10) appeals to the adjudicators relating to parking contraventions were registered, representing approximately 1.3% of the penalty charge notices issued (1.2% in 2009-10).

216,495 (217,883 in 2009-10) penalty charge notices were issued for **bus lane contraventions**, with 1,396 (1,443 in 2009-10) appeals registered, representing 0.6% of the penalty charge notices issued (0.7% in 2009-2010).

571,590 (482,184 in 2009-10) penalty charge notices were issued for **moving traffic contraventions**, with 6,934 (5,259 in 2009-10) appeals registered, representing 1.2% of the penalty charge notices issued (1.1% in 2009-2010).

3,304 (3,105 in 2009-10) **London Lorry Control Scheme** penalty charge notices were issued with 110 (98 in 2009-10) appeals registered, representing 3.3% of all penalty charge notices issued (3.2% in 2009-2010).

Total PCNs issued by LEA: 4,813,865 (4,855,073 in 2009-2010)

Number of appeals: 60,213 (56,985 in 2009-10).

Whilst the delay between a PCN being issued and an appeal being registered means that there is not a precise comparison, this represents overall about 1.25% of all PCNs issued (1.17% in 2009-10) resulting in an appeal.

Appeals Received

The number of appeals received in the reporting year increased only slightly in terms of percentage of the Penalty Charge Notices issued but still represents only a very small proportion of motorists receiving PCNs. Enforcement Authorities continue to extend the discount period further to receiving correspondence and as stated in our previous report, this flexible approach may have had an impact on the reduction in appeals lodged and can only be commended.

| | Appeals received | Postal | Personal |
|---------|------------------|--------|----------|
| 2009-10 | 56,985 | 41,525 | 15,460 |
| 2010-11 | 60,213 | 39,924 | 19,930 |

| | % cases decided via personal hearing |
|---------|--------------------------------------|
| 2009-10 | 27.13% |
| 2010-11 | 24.24% |

Appeals Decided

Parking: 60,165 (53,806)
 Bus lane: 1,613 (1,409)
 Moving traffic: 7,354 (5,787)
 London Lorry Control Scheme: 108 (77)

Total: 69,240 (61,079)

Personal/Postal Appeals

Of the decided appeals, 16,787 (19, 507) followed personal appeal hearings and 52,453 (41,495) were postal decisions. There was a significant increase in appeals contested by the enforcement authorities perhaps denoting an increased confidence in the merit of their own decisions and in the appeal system.

12,416 (15,822) of the decided appeals were allowed following personal hearings. 6,060 (8,898) of these personal appeals were not contested by the Respondent authority. Of the contested personal appeals 4,149 were refused (285 with recommendations see page 20 below)

22,429 (22,912) appeals were allowed further to a postal appeal. 8,691 (11,523) of these postal appeals were not contested by the Respondent authority. Of the contested postal appeals 29,697 were refused (280 with recommendations see below).

55 (56) London Lorry Control Scheme appeals were allowed; of these 23 were not contested by the Respondent Authority. 53 appeals were refused.

Recommendations

The Traffic Management Act 2004 and accompanying Regulations give the Adjudicator the ability to return cases to Enforcement Authorities with a recommendation that the notice be cancelled or a refund given. The recommendation can only be exercised by an Adjudicator when compelling reasons apply. As before, the Adjudicators have no power to allow an appeal on the basis of mitigating circumstances.

Number of recommendations made to EA by Adjudicators, number of recommendations accepted/rejected

| | Refused with recommendation | Recommendation accepted | Recommendation deemed accepted | Recommendation refused |
|---------|-----------------------------|-------------------------|--------------------------------|------------------------|
| 2009-10 | 263 | 43 | 184 | 36 |
| 2010-11 | 565 | 130 | 328 | 107 |

The number of 'recommendations deemed accepted' results from an Enforcement Authority simply not responding to an Adjudicator's recommendation within the given timescale. It is however important that enforcement authority Respondents are seen to engage in the appeal process. The Adjudicators trust that this increased figure will be considered by the Enforcement Authorities concerned with a view to ensuring that the figure is reduced over the next reporting period.

Costs

Under Paragraph 13 of the Schedule to The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 the Adjudicator shall not normally make an order awarding costs and expenses but may, subject to sub-paragraphs (2) make such an order :

(a) against a party (including an appellant who has withdrawn his appeal or an Enforcement Authority which has consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b) against an Enforcement Authority where he considers that the disputed decision was wholly unreasonable.

It should be noted that the Adjudicators have no power to award compensation.

Number of costs applications received

| | | |
|--------------------------|----------------|------------------|
| <u>Appellants</u> | Parking | 188 (223) |
| | Bus lane | 13 (6) |
| | Moving traffic | 22 (27) |
| | Total: | 223 (256) |

Enforcement

| | | |
|---------------------------|----------------|----------------|
| <u>Authorities</u> | Parking | 49 (96) |
| | Bus lane | 0 (0) |
| | Moving traffic | 0 (2) |
| | Total: | 49 (98) |

Number of costs applications granted to Appellants and to Enforcement

Authorities

| Enforcement Authority | No. of awards to Appellants | Amounts awarded to Appellants | No. of awards to EAs | Amounts awarded to EAs |
|-----------------------|-----------------------------|-------------------------------|----------------------|------------------------|
| Barking and Dagenham | 2 (1) | £41.60 (£29.75) | 0 (0) | £0 (0) |
| Barnet | 4 (4) | £244.03 (£522.31) | 0 (0) | £0 (0) |
| Bexley | 1 (1) | £39.86 (£348) | 0 (0) | £0 (0) |
| Brent | 2 (1) | £167.85 (£118.05) | 0 (0) | £0 (0) |
| Bromley | 1 (1) | £108.50 (£145.79) | 1 (0) | £100 (0) |
| Camden | 11 (5) | £715.73 (£246.20) | 1 (1) | £50 (£50) |
| Corporation of London | 0 (0) | £0 (£0) | 0 (9) | £0 (£635.40) |
| Croydon | 1 (1) | £14.40 (£0) | 0 (0) | £0 (0) |
| Ealing | 10 (10) | £833.16 (£487.03) | 1 (1) | £190 (£64) |
| Enfield | 0 (0) | £0 (£0) | 0 (0) | £0 (0) |
| Greenwich | 1 (0) | £117.95 (£0) | 1 (0) | £87.71 (0) |
| Hackney | 3 (4) | £253.71 (£288.85) | 0 (0) | £0 (0) |
| Hammersmith & Fulham | 0 (1) | £0 (£95.02) | 1 (1) | £78.63 (£64.23) |
| Haringey | 3 (8) | £200.50 (£531.72) | 0 (1) | £0 (£108.23) |
| Harrow | 0 (0) | £0 (£0) | 0 (0) | £0 (£0) |

| | | | | |
|-------------------------------|------------------|-------------------------|----------------|-------------------------|
| Havering | 1 (1) | £83.55 (£16.80) | 0 (0) | £0 (0) |
| Hillingdon | 1 (0) | £34.81 (£0) | 0 (0) | £0 (0) |
| Hounslow | 4 (6) | £292.09 (£649.17) | 4 (0) | £100 (£0) |
| Islington | 0 (1) | £0 (£28.12) | 1 (2) | £93.09 (£133.59) |
| Kensington and Chelsea | 1 (0) | £22.78 (£0) | 1 (0) | £62.23 (£0) |
| Kingston Upon Thames | 0 (0) | £0 (£0) | 0 (2) | £0 (£100) |
| Lambeth | 30 (21) | £2065.57 (£1276.77) | 0 (0) | £0 (0) |
| Lewisham | 0 (0) | £0 (£0) | 0 (0) | £0 (0) |
| Merton | 0 (0) | £0 (0) | 0 (0) | £0 (0) |
| Newham | 5 (4) | £320.20 (£369.55) | 0 (0) | £0 (0) |
| Redbridge | 0 (2) | £0 (£67.84) | 0 (1) | £0 (£50.90) |
| Richmond Upon Thames | 1 (1) | £12.66 (£10.80) | 3 (18) | £179.19 (£1093.68) |
| Southwark | 5 (4) | £494.75 (£338.38) | 0 (0) | £0 (0) |
| Sutton | 1 (0) | £20 (£0) | 0 (0) | £0 (0) |
| Tower Hamlets | 2 (3) | £98.87 (£205.56) | 0 (0) | £0 (0) |
| Transport for London | 5 (23) | £451.30 (£1604.15) | 1 (0) | £67.75 (£0) |
| Waltham Forest | 2 (1) | £174 (£32.80) | 1 (0) | £113.18 (0) |
| Wandsworth | 1 (0) | £60 (£0) | 2 (0) | £178.48 (£0) |
| Westminster | 6 (26) | £390 (£1338.24) | 3 (6) | £192 (£575.10) |
| | | | | |
| Totals : | 221 (130) | £7258 (£8787.90) | 27 (47) | £1492 (£3155.63) |

Statutory Declarations/Witness Statements

This year saw a further increase in the number of statutory declarations filed by Appellants seeking to turn back the clock. Witness Statements are the correct statutory procedure to use when something has gone wrong with the representations and appeals procedures, such as where the Notice of Rejection or appeal decision was lost in the post and never received. They are one of the checks by which the motoring public can have confidence in the scheme. However, many of the applications were made on a false basis leaving the Adjudicator no option but to refuse to allow the declaration to proceed to appeal. The motorists' belief that filing a Witness Statement will somehow nullify the penalty charge itself still appears to be rife and we re-iterate that this belief is entirely false. We are concerned about the increasing number of cases where a 2nd, 3rd or even 4th witness statement is made.

Much time and money is wasted on these by the Courts, the Enforcement Authorities and the Adjudicators.

Number of Statutory Declarations/Witness Statements received

| | |
|-----------------------------|---------------|
| Parking | 8,760 (6,796) |
| Bus lane | 133 (156) |
| Moving traffic | 584 (517) |
| London Lorry Control Scheme | 0 (0) |
| Total: | 9,477 (7,469) |

2. Annual Report 2010 update

CCTV Enforcement

The power to issue a Penalty Charge Notice for contraventions detected with a camera and associated recording equipment is found under regulation 10 of The Civil Enforcement of Parking Contraventions (England) General Regulations 2007:

- (1) An enforcement authority may serve a penalty charge notice by post where –
 - (a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area;

It is essential that authorities provide evidence that the CCTV footage relied upon whether as a DVD or as stills has been produced by a device that has been approved by the Secretary of State. A Witness Statement is one way to produce that evidence, but there could be other ways. Appeals will be allowed if authorities do not provide evidence to show that the CCTV footage was a record produced by an approved device as required by regulation 10. Authorities must also demonstrate that the record is produced by the approved device ie there must be an evidential link between the video footage produced and the equipment used.

The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 allow an Adjudicator to consolidate proceedings where

there are two or more appeals and at any time it appears to an Adjudicator that (a) some common questions of law or fact arises in both or all appeals or (b) for some other reason it is desirable to make an order under this paragraph (Regulation 14).

A number of applications for review were consolidated before an Adjudicator in order to consider the evidence required to contest an appeal where issues regarding the CCTV recording devices were raised and in particular the nature of the devices used by City of Westminster prior to the issue of postal Penalty Charge Notices. Appeals had been allowed on the grounds that the City of Westminster had not produced any evidence that the enforcement camera used amounted to 'an approved device'. The Adjudicator could not therefore be satisfied that the contravention had occurred, as he could not be satisfied that the Penalty Charge Notice had been lawfully issued. In one of the cases (2110040978) the appeal had been allowed as the working copy of the CCTV evidence did not show any of the data concerning date, time and location. In the other cases (eg 211000697A) the appeals had been allowed on the basis that the authority had not complied with the requirement in paragraphs 2(c) of the Schedule to The Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007, that the recording device must include a recording system in which "each frame of all captured images is timed (in hours, minutes and seconds), dated and sequentially numbered automatically by means of a visual counter..." The Adjudicator considered a number of scenarios :

1) No copy of the Secretary of State's certificate

Under paragraph 2(1) of *The Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007*:

A device is an approved device for the statutory purposes if it is of a type which has been certified by the Secretary of State as one which meets the scheduled requirements.

Westminster's system was approved by the VCA (an executive agency of the Department of Transport) on 18th February 2010. The Certification states that after a review of the information provided in the technical construction file version 1.4 dated 16th February 2010 the device comprising of camera DVTel 9840 and system DVTel Latitude NVMS 6.0 is suitable for civil parking enforcement in the Westminster City Council area and is certified under certificate number PAD 038.

The Adjudicator having considered the evidence found that DVTel 9840 is a camera type and that all City of Westminster static cameras are of this type. Hence, when it has been produced, the same certificate may be provided in each case. In the first group of cases the Certificate of 18th February 2010 was not included in the evidence. There was therefore no evidence that the CCTV evidence produced was “a record produced by an approved device” as required by regulation 10 of *The Civil Enforcement of Parking Contraventions (England) General Regulations 2007*.

Westminster conceded that without a copy of the Certificate there was a missing evidential link and withdrew their applications for review in these cases.

2) Working copy with no data of date, time and location.

The working copy of the CCTV evidence should always include the date, time (to within a second) and location. In general usage the only difference between the evidential copy and the working copy should be that the working copy does not include the milliseconds which constitute the unique frame reference. If the data is missing on the working copy then there has been an error in the making of the copy. Without that data the CCTV images do not prove the contravention.

3) a) The Sequential Counter

The VCA accepted that the millisecond indicator used in Westminster’s digital system performed the function of sequentially numbering the frames because it uniquely identified each frame and ensured that they could be proven to be in the correct sequence. The information recorded on the evidential copy and reproduced on stills is of the form:

24/11/2010 14:38:53.589 – Brewer Street.

Each frame has a unique number looking at the whole of the time – in the above example 14:38:53.589. The 589 is the millisecond indicator. The Adjudicator found that each frame on the evidential copy and the still images produced was dated, timed and sequentially numbered by means of a visual counter. The Adjudicator did not find that the requirement for sequential numbering meant that the first frame must be numbered 1, the second 2 and so on. Although the milliseconds taken in isolation were not sequential the numbering is sequential when the whole of the time is looked

at. There is no possibility that the video could be tampered with without it being apparent. That the time is part of the sequential numbering process does not mean that the requirement for each frame to be timed, dated and sequentially numbered is not met.

b) The Certificate

Submissions were made that the Adjudicator should not accept that the device was an approved device just because it was certified as such by the Secretary of State in February 2010. Insofar as it was suggested that the Secretary of State was wrong to approve the device then that is not a matter within our jurisdiction. Any modifications that are made to a certified system must however be notified to the Secretary of State. The Adjudicator found the wording of paragraph 2 of the Approved Devices Order to be clear and unequivocal. "A device is an approved device for the statutory purposes if it is of a type which has been certified by the Secretary of State as one which meets the scheduled requirements." The Secretary of State has determined that Westminster's device does meet the scheduled requirements.

Appeals without merit

Camera enforcement continues to give rise to a number of appeals without merit and although motorists are becoming more aware of enforcement authorities' ability to monitor restrictions through CCTV and issue postal Penalty Charge Notices, we are still in receipt of appeals from motorists raising issues that cannot amount to a ground of appeal, such as stopping to look at a map, to ask for directions, to answer a mobile telephone or to use a lavatory. Motorists still believe that enforcement in this manner is not 'fair play'. Particular concerns have been raised by motorists who receive a series of tickets issued at the same location. Postal penalty charge notice issue does not alert the motorist to a penalty until some days after the event which can lead to repeated incidents of parking at the same location. Tickets served to the vehicle at the scene put the motorist on immediate notice of a contravention allowing the motorist to alter a practice without delay and without incurring further penalties. Motorists must consider the lines and signs when parking rather than whether or not an enforcement officer is in the vicinity.

Appellants continue to lodge appeals that ignore what may be a valid ground of appeal in order to focus on appeal strategies perhaps recommended by websites or in media reports. A number of appeals focus entirely on requesting lists of documents that shed no light on the contravention but are apparently recommended on the web. The Adjudicators must of course consider all evidence put before them. It has to be said however that an Appellant who relies on a list of entirely irrelevant points or who demands that the Adjudicator 'proves that he is a person and not a human being' and lists 8 other items that the Adjudicator must 'prove' risks damaging his or her own credibility when it comes to actually considering the relevant submissions in a case. There continue to be many instances of this particular type of appeal spanning over some time (for example 2090564826, 2100301623, 210020082A). Case Number 210020082A gives an illustration as to how the Adjudicators view this type of representation. In this case, the appeal Adjudicator having assessed the evidence concluded : 'I am not dignifying the time wasting nonsense enquiries the appellant has submitted about legal personality in her letter of 7 May with any comment or detailed examination here. It is not the first occasion an Adjudicator will have seen these ; they result from internet use... She has not advanced her case to me by their submission'. The appeal was refused. The Adjudicator cannot decree what type of evidence either party should seek to rely on, but the increase of appeals that fail to address the issues whilst relying on a whole host of unhelpful representations is time consuming. Whilst under the regulations the appeal Adjudicator 'shall not normally' make awards of costs, this type of submission would certainly merit an application by the enforcement authority.

Newspaper and media reports are also regularly referred to and relied upon by appellants who genuinely believe that an article reflects the law. This often leaves a motorist with the false impression that he or she has a valid ground of appeal. Whilst it is appreciated that some aspects of parking law are surprisingly complex, and it is not an easy task to provide guidance that is both comprehensible and useful to the public, newspapers do have a responsibility to ensure that articles actually reflect the law. Putting out material that is simply wrong cannot be condoned and members of the public should treat articles that purport to give guidance on parking regulations with a degree of caution.

3. JUDICIAL REVIEW

Decisions, Permission Refused and Pending Permission

As with any public body or tribunal exercising power over the citizen, decisions of Adjudicators are subject to supervision by the High Court. An Adjudicator's decision can be challenged, in a procedure called Judicial Review. A decision may be unlawful where there was no power to make it; the decision was irrational; the procedure followed was unfair or biased or the decision was taken in breach of the European Convention on Human Rights in a way made unlawful by The Human Rights Act 1998.

Of the tens of thousands of appeals that are considered by Adjudicators every year, only a very small number are subject to an application for Judicial Review. Since the procedure is open to both authorities and appellants, this compares extremely well with many other tribunals.

During the period covered by this report there were only seven applications for Judicial Review, out of all the appeal decisions made. Of these, one application had permission to apply for Judicial Review refused but a notice of renewal is pending. No applications had permission for hearing granted. Six applications for permission are currently awaiting a decision by the High Court. As it takes time for an application to be heard, and a decision of the High Court handed down, it is often in the period of a subsequent report that a final outcome is known. During the period covered by this report a number of such decisions became known. Leave was also granted further to the dismissal of an application for Judicial Review on the application of the appeal Appellants in R v Herron & Parking Appeals Limited v The Parking Adjudicator and Sunderland City Council and The Secretary of State for Transport (2011) to proceed to the Court of Appeal. This follows the refusal of an out of London appeal but the London Adjudicators keenly await the judgement which will be the first time the Court of Appeal have had to consider Controlled Parking Zones and the Traffic Signs Regulations and General Directions 2002.

Judicial Review Decisions

London Borough of Camden -v- The Parking Adjudicator [2011] EWHC 295 (Admin)

The background to this case was that Adjudicators had allowed appeals against the imposition by the London Borough of Camden of a 'credit card administration fee' of 1.3%, over and above the prescribed penalty charge for contraventions, on occasions when the motorist paid the charge using a credit card or was advised of this fee on the penalty charge notice itself.

Mr Justice Burnett refused the Enforcement Authority's challenge to those decisions on the grounds that:

(i) the surcharge could not be separated from the penalty charge and, consequently, by requiring payment of more than the fixed charge if made by credit card, "the penalty charge exceeded the amount applicable in the circumstances of the case" (Regulation 4(4)(e) of the Appeal Regulations):

and

(ii) in the cases where the Penalty Charge Notice and/or Notice to Owner referred to payment of the surcharge, those documents were bad, and there had been "a procedural impropriety on the part of the enforcement authority" (Regulation 4(4)(f)).

The Judge found that the grounds set out in Regulation 4(4) of the Appeal Regulations are comprehensive and exclusive, such that an Adjudicator cannot allow a Traffic Management Act 2004 appeal unless one of those grounds is made good. Although this means that there is now no room for 'collateral challenges' outside those grounds, circumstances which, before the General and the Appeals Regulations came into force may have been considered as a collateral challenge (as was the case in R v Parking Adjudicator ex parte Bexley LBC [1998] RTR 128) may now fall within one of the statutory grounds.

Mr Justice Burnett gave two examples. First, where a Penalty Charge Notice fails to contain prescribed information (explicit breach of the statutory scheme) or where the local authority unduly delays sending out Notices to Owner (implicit breach), both were procedural improprieties that fell within Regulation 4(4)(f). The Judge said that the term “procedural impropriety” is given a special definition for the purposes of the Appeals Regulations. That demonstrates, he said, that Parking Adjudicators are empowered to consider what would otherwise require a collateral challenge, but that they may do so only within the confines of the definition within the regulation. Both the previous cases which are referred to on this point in this decision (i.e. *Davis v Royal Borough of Kensington and Chelsea (PATAS 1970198981)* [failure by authority to act in a timely manner] and *Moulder v London Borough of Sutton PATAS 1940113243* [defective wording on a Penalty Charge Notice]) would now be allowed under the head of “procedural impropriety”.

The second example was where the enforcement authority rely upon ‘signs and lines’ which do not comply with the *Traffic Signs and Regulations and General Directions 2002*, there is no contravention – because a contravention requires both an underlying traffic management order, and valid signs and lines complying with statutory rules – and consequently an appeal would fall within the ground ‘the alleged contravention did not occur’ (Regulation 4)(4)(a)).

Mr Justice Burnett also considered that the ground is wide enough to accommodate any defence that there would be in criminal proceedings, if enforcement were criminal and if the ground arose by virtue of events and circumstances leading up to the alleged contravention [paragraph 53] and said: “So, for example, conduct on the part of the enforcing authority prior to the alleged contravention which would have made it an abuse to prosecute would be covered by this ground.”

Burnett J further added: “Although it is difficult to envisage, it is at least theoretically possible to imagine events that could occur after the alleged contravention which might have been used by way of defence in the theoretical criminal proceedings. Whether that would fall within this ground, one of the other grounds or be accommodated within the ‘compelling circumstances’ envisaged in regulation 7(4) of the Appeals Regulations is something that would need to be worked through on the facts of a real case.”

The Queen on the Application of Makda -v- The Parking Adjudicator [2010]
EWHC 3392 (Admin)

On two occasions, a licensed private hire vehicle driver stopped for about 70-90 seconds on double yellow lines, waiting for a pre-booked passenger who did not appear. The driver did not leave the vehicle. The original appeals before the Adjudicator were refused. The Appellant then sought judicial review. Mr Justice Burnett allowed the judicial review.

The Judge considered that this fell within the relevant Westminster traffic management order exemption for waiting “for so long as may be necessary for the purpose of enabling any person to board or alight from the vehicle or to load there or unload there from his personal baggage.”

Mr Justice Burnett held that the question to be addressed is whether the vehicle waiting was necessary for the purpose of enabling a passenger to board etc. The Judge stressed the requirement for necessity: but, in the context of picking up a passenger at a pre-determined time and place, the Judge considered the time spent by a driver looking for his passenger, or for the passenger identifying his vehicle, were capable of being time necessary for the purposes of enabling the person to board the vehicle.

Whether the time spent on that exercise is necessary in any given case is a question of fact and degree. The Court did not express any opinion as to whether, on the facts of the cases before him, the time spent waiting was a reasonably necessary time for these purposes (because it was conceded that, if the Adjudicator had adopted the wrong legal approach, then the decisions of the Adjudicators should be quashed rather than remitted). Whilst the length of waiting time will of course be an important factor, the question to be asked concerns whether that length of time in all of the circumstances is reasonably necessary. That will depend upon all relevant factors.

In his judgment, Mr Justice Burnett noted: “In the course of argument this morning I have had cause to observe that adjudicators have an extremely difficult task. They perform what seems to me to be an important yet very difficult judicial function. It is important because thousands of appeals are adjudicated upon each year in

circumstances where many people who appeal parking tickets will have no other cause to become involved with the judicial system. The task is difficult because a very large number of those appeals are dealt with on paper. They are dealt with on short submissions made by drivers or vehicle owners. Those submissions are inevitably not informed by reference to the underlying statutory provisions or legal concepts in play. Adjudicators are therefore in one sense expected to be all seeing and all knowing.”

Permission to seek Judicial Review refused

1. ***The Queen on the Application of Hakeem -v- The Parking Adjudicator [CO/15773/2009] (Hakeem -v- London Borough of Enfield PATAS 209009607A (2010))***: An appeal on the ground that the Appellant was not the owner of the vehicle at the material time was refused. Permission to seek Judicial Review was refused by the High Court at an oral hearing. Application to the Court of Appeal is pending.

2. ***The Queen on the Application of Emezie -v- The Parking Adjudicator [CO/393/2011] (Loson -v- London Borough of Camden PATAS 2100423416 (2010))***: An appeal on the ground that the vehicle was not parked in a part of a bay that was suspended was refused. Permission to seek Judicial Review was refused by the High Court at an oral hearing. The learned Deputy High Court Judge found : ‘There is not the slightest perceivable public law ground for intervention. This was a dispute of fact which the defendant (the Adjudicator) was charged with resolving; the grounds amount in substance merely to a restatement of the claimant’s claim and selective reference to evidence. Nothing in the grounds or elsewhere in the papers could lead to a view that the bays were not properly suspended or even that there was any reason to suppose that they were not. Nor is there any evidential basis to the claim that the defendant was biased...’. Notice of renewal is pending.

3. ***The Queen on the Application of Crowley -v- The Parking Adjudicator [CO/1114/2010] (Crowley -v- London Borough of Camden PATAS 2090407205 (2009))***: An appeal against a Penalty Charge Notice issued for staying longer than permitted in a pay and display bay on the ground that the signage prohibiting purchase of a second voucher was not clear was refused. Permission to seek Judicial Review was refused by the High Court.

4. ***The Queen on the Application of Soile -v- The Parking Adjudicator [CO/1114/2010] (Soile -v- London Borough of Southwark PATAS 2080817288 (2009))***: An appeal against a Penalty Charge Notice on the ground that the vehicle was with a garage for repair at the material time was refused. Permission to seek Judicial Review was refused by the High Court. The Honourable Mr Justice Ouseley found the application to be out of time and added : ‘The case is without merit anyway. The law was properly applied...’

5. ***The Queen on the Application of Abeyakoon -v- The Parking Adjudicator [CO/1114/2010] (Abeyakoon -v- London Borough of Camden PATAS 209053770A (2009))***: An appeal against a Penalty Charge Notice for contravening bus lane restrictions on the grounds of a medical emergency was refused. Permission to seek Judicial Review was refused by the High Court. The Honourable Mrs Justice Nicola Davis found : ‘...No error of law is disclosed in the decision of Adjudicator Wilkinson...the case is considered to be totally without merit’.

6. ***The Queen on the Application of Lavi -v- The Parking Adjudicator [CO/4013/2010] (Lavi -v- London Borough of Islington PATAS 2090393406 (2010))***: An appeal against a Penalty Charge Notice for failing to travel in the direction shown by an arrow on a prescribed sign, on the ground that issue was merely a revenue raising exercise by the Authority was refused. Permission to seek Judicial Review was refused by the High Court.

7. ***The Queen on the Application of Bernstein -v- The Parking Adjudicator [CO/4013/2010] (Bernstein -v- Royal Borough of Kensington and Chelsea PATAS 2090628612 (2010))***: An appeal against a Penalty Charge Notice for parking in a bay reserved for a specific disabled permit holder but in reliance of a Blue Badge, a concession not applying in Central London, was refused. Permission to seek Judicial Review was refused by the High Court.

Pending Judicial Reviews

1. ***The Queen on the Application of Marks -v- The Parking Adjudicator [CO/12434/2010] (Marks -v- City of Westminster PATAS 2100396095 (2011))***: An appeal regarding use of a disabled person’s parking permit in the City of Westminster. The appeal was refused as the Blue Badge scheme does not generally extend to the City of Westminster, City of London, Royal Borough of Kensington and

Chelsea and parts of the London Borough of Camden as well as Heathrow Airport, including its perimeter roads.

2. **The Queen on the Application of Idigbe -v- The Parking Adjudicator [CO/682/2011] (Idigbe -v- Transport for London PATAS 2100235788(2011))**: an appeal by a licensed private hire vehicle driver which was refused as the driver was observed by the civil enforcement officer going to a takeaway food shop and thus falling outside the exemption for picking up and setting down passengers.

3. **The Queen on the Application of Patel -v- The Parking Adjudicator [CO/345/2011] (Patel -v- London Borough of Hammersmith and Fulham 2100235788 (2011))**: an appeal by a driver who parked on the footway in order to pick up his children from school, for which there is no exemption.

4. **The Queen on the Application of Patel -v- The Parking Adjudicator [CO/351/2011] (Patel -v- London Borough of Hammersmith and Fulham 2090643977 (2011))**: an appeal in respect of a Penalty Charge Notice which was issued on a bank holiday, when restrictions still applied.

5. **The Queen on the Application of Dikir -v- The Parking Adjudicator [CO/2360/2011] (Dikir -v- City of Westminster. PATAS 2110028892 (2011))**: an appeal by a driver who was parked in a restricted street on the ground that he had urgently to use a lavatory due to a medical condition.

6. **The Queen on the Application of Makda -v- The Parking Adjudicator [CO/2480/2011] (Makda -v- City of Westminster PATAS 2100229253 (2011))**: an appeal by a licensed private hire vehicle driver which was refused as the driver was observed waiting longer than permitted by the exemption for picking up and setting down passengers.

4. THE ADJUDICATORS

The Adjudicators appointed under Regulation 17(5)(a)(b) of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 are judicial office holders, barristers and solicitors independent of the parties to the appeals. They decide appeals from motorists against penalties imposed by the London Local

Authorities and Transport for London for contraventions of parking, bus lane, moving traffic and London Lorry Control Scheme regulations.

We currently have a pool of 45 part-time Adjudicators all qualified barristers or solicitors. The Adjudicators continue to be recognised by the Judicial Appointments Commission as having valued judicial experience resulting in a number of Adjudicators leaving in order to pursue full-time judicial appointments. In July 2010 our colleague Therese Kamara was appointed a Judge of the First-tier Tribunal of the Immigration and Asylum Appeals Chamber exercising the immigration law jurisdiction within that Chamber. We extend our congratulations to Immigration Judge Kamara and wish her well in a challenging jurisdiction. Many of the Adjudicators hold other part-time or fee paid judicial appointments allowing the Parking and Traffic Appeals Service to continue to benefit from the experience and skills acquired in other jurisdictions.

This year saw the retirement of two Adjudicators Robin Allen (appointed 1996) and Andrew Wallis (appointed 2001). We thank them for their commitment to the Tribunal and wish them both a long and contented future.

A list of the current Parking and Traffic Appeals Adjudicators appears on the final pages of this report.

5. JUDICIAL WORK SHADOWING

The Adjudicators continue to play a part in the Judicial Work Shadowing Scheme (see Annual report 2010). This year we welcomed further participants giving prospective judicial office holders a flavour of the challenges a judicial appointment brings. The Adjudicators remain pleased to have been included in the scheme and are proud to be able to demonstrate the core values identified by the Administrative Justice and Tribunal Council of openness and transparency, fairness and proportionality, impartiality and independence and equality and access to justice.

Our jurisdiction is an ideal first step for those wishing to pursue a judicial career as demonstrated by the number of Adjudicators who have progressed to other jurisdictions. In particular the large number of personal appeal hearings that this Tribunal undertakes gives the Adjudicators significant experience in managing hearings with unrepresented members of the public, something that is of course now

fast becoming more and more the norm in other jurisdictions where public funding is no longer so readily available.

6. TRAINING

The objective of our training is to ensure that the Adjudicators continue to reach decisions that are concise, clear and well founded in law, ensuring that Adjudicators remain abreast of current issues of law and procedure.

In June 2010 and March 2011 training meetings were held to update Adjudicators on current developments relevant to their role. Sessions were held on law and operational and procedural matters.

The June 2010 programme included presentations on Decision Writing, Witness Statements, Pay by Phone Parking as well as updates on pending Judicial Reviews and recent cases.

Our March 2011 meeting focused on case management issues, the London Lorry Control Scheme, Online Contravention Footage, consideration and discussion on the impact of the two Judicial Review judgments London Borough of Camden v Parking Adjudicator [2011] EWHC 295 (Admin) and Makda v Parking Adjudicator [2010] EWHC 3392 (Admin) handed down by the Honourable Mr Justice Burnett in January 2010 (see page 23) as well as updates regarding the new structure of the Parking and Traffic Appeals Service.

Both training sessions were well attended and attracted Continued Professional Development Points required by practising barristers and solicitors.

7. MAINTAINING STANDARDS AND APPRAISAL

Dealing with Cases Justly

Ours is a mature Tribunal and the Adjudicators recognise the importance of being willing to change and develop in order to reflect the needs of our users.

Unlike the Civil Procedure Rules and the procedural rules of many First Tier Tribunals, the Parking Adjudicators' Procedural Rules do not have an express

overriding requirement to deal with cases justly; but that obligation is, of course, implicit. Adjudicators exercise a judicial function, and must ensure that cases are dealt with justly.

Dealing with a case justly includes not only (i) ensuring that parties have a fair hearing and are on an equal footing, but also (ii) the requirement to deal with a case expeditiously and without delay, in ways that save expense and that are proportionate to the amount of money involved, the importance of the case and the complexity of the issues involved. To deal with a case other than expeditiously and proportionately, is to deal with a case other than justly; because justice has an eye to the adjudication system as a whole, and other cases/parties within that system.

The Adjudicators recognise that quite rightly, there is a continued expectation that cases are addressed in an efficient manner with decisions reached that are just and that remain proportionate in time and cost to the public purse. There can be no doubt that the public is entitled to expect Adjudicators to work efficiently and provide value for money.

Appraisal

As stated in our 2010 annual report the Adjudicators recognised the urgent need to come into line with other Tribunals and implement an appraisal scheme. To that end, five Adjudicators attended the Judicial Studies Board 'Tribunal Appraisal Skills Seminar' in October 2010. The course, designed to prepare participants to be appraisers within their tribunal, provided seminars on the purpose of appraisal, the tasks and responsibilities of appraisers and identifying skills and practice. Once the group had completed their training we were able to draft and implement our first appraisal scheme.

The overall objectives for the appraisal scheme were to:

- Ensure the maintenance of the Tribunal's standards and consistency of its practices.
- Ensure training programmes are informed by the identification of particular needs.

- Maintain public confidence in Adjudicators' performance as a result of regular monitoring.
- Ensure that all Adjudicators endeavour to demonstrate the appropriate qualities and abilities for effective performance of their role.
- Enable individual performance to be measured against the tribunal competences and standards.
- Identify individual training and development needs.
- Create opportunities for adjudicators to raise issues relating to their own experience in determining appeals, training and tribunal procedures.

The appraisals started in January 2011 and all the sitting Adjudicators have now been appraised. The tribunal has adopted the Judicial Studies Board's *Tribunal Competences: Qualities and Abilities in Action* (October 2007) as the foundation for the criteria for the appraisal scheme. The competence framework focuses upon:

- knowledge and values
- communication
- conduct of cases
- evidence, and
- decision making.

In each competence the appraiser considered whether the Adjudicator was satisfactory or in need of further training. Areas for further development and training could be identified for Adjudicators without affecting the overall assessment of satisfactory.

Various information was considered in advance of the appraisal including:

- a self-assessment
- the Adjudicator's training record
- the Adjudicator's sittings record
- the Adjudicator's average case throughput.

The appraiser observed at least one personal appeal, and listened to a recording of another hearing. The appraiser considered four written decisions of the Adjudicator comprising:

- the two decisions from the observed personal and recorded hearings
- a decision selected by the Adjudicator
- a decision selected by the Chief Adjudicator or appraiser.

The appraiser then provided feedback to the Adjudicator relating to the competences and based on the evidence obtained through the appraisal process.

The appraiser completed an appraisal report in draft, the Adjudicator was given an opportunity to comment upon it and, when it was agreed, the appraisal report form was signed and returned to the Chief Adjudicator.

Many Adjudicators had been appraised before in different jurisdictions but for some it was a new experience. The process provided the opportunity to reflect upon what we do, why we do it and whether we could do it in a different way in the future. The exercise was generally considered to be worthwhile and constructive.

It was expected, and indeed proved to be the case, that the majority of Adjudicators were found to be satisfactory in all competences. In some instances areas for further training and development have been identified, without affecting the overall assessment of satisfactory.

The appraisal reports revealed that we have a great deal to be justly proud of. Excellence was identified in communication skills, in the conduct of hearings and the treatment of appellants, in the assessment of evidence and, most importantly, in decision writing.

The appraisers all learnt from the experience – from sitting in and observing others and from the frank discussions that followed.

As individuals we learnt a little more about our individual strengths and weaknesses; about areas that could be improved upon, and about how we are perceived by others.

Re-reading decisions has revealed the value of checking a decision before the case is completed to reduce spelling mistakes, typing and grammatical errors.

Adjudicators provided useful feedback to the appraiser and to the Chief Adjudicator about ways to improve efficiency and the service we offer.

Future training will be informed by the appraisal process and will include some Adjudicators attending courses run by the Judicial College; general training on decision writing and on the conduct of hearings; and specific training for some on the use of the computer system and by observation and discussion with experienced colleagues.

We have realised that the appraisal scheme should be reviewed to make it simpler and more relevant to the needs of this tribunal and work on this has already begun.

The continuing use of the appraisal process will enable us to maintain and improve our standards and practices - to ensure that we are producing sound, clear and understandable decisions and dealing with appeals as efficiently as possible. We believe that the process has identified strengths and weaknesses and has helped to improve the performance of individuals and of the tribunal as a whole.

8. THE ADJUDICATORS AND THE PARKING AND TRAFFIC APPEAL SERVICE

Chief Adjudicator

Caroline Hamilton

Parking and Road Traffic Adjudicators

Jane Anderson
Michel Aslangul
Angela Black
Teresa Brennan
Michael Burke
Anthony Chan
Hugh Cooper
Neeti Dhanani
Anthony Edie
Mark Eldridge
Anthony Engel
Christine Glenn
Henry Michael Greenslade
John Hamilton
Andrew Harman
Monica Hillen
Keith Hotten
Edward Houghton
Verity Jones
Anju Kaler
Andrew Keenan
John Lane
Michael Lawrence
Francis Lloyd

Paul Mallender
Alastair McFarlane
Kevin Moore
Michael Nathan
Ronald Norman
Joanne Oxlade
Mamta Parekh
Belinda Pearce
Neena Rach
Christopher Rayner
Jennifer Shepherd
Caroline Sheppard
Sean Stanton-Dunne
Gerald Styles
Carl Teper
Timothy Thorne
Susan Turquet
Austin Wilkinson
Martin Wood
Paul Wright

PARKING AND TRAFFIC APPEAL SERVICE

Richard Reeve - Tribunal Manager

Garry Hoy- Business Delivery and Project Manager

Dedray Marie - Senior Tribunal Assistant

Ada Amuta - Tribunal Assistant

Peter Hollamby - Tribunal Assistant

APPENDIX

CASE DIGEST

The case digest serves to give examples of the types of issues the Adjudicators have addressed over the reporting period. All the Adjudicators' decisions can be viewed on the statutory register.

Removal

Jones v London Borough of Ealing PATAS 210005970A (2010)

Mr Jones accepted that his vehicle was parked on double yellow lines and accepted reluctantly that the issue of a Penalty Charge Notice was in his words 'a fair cop'. Mr Jones considered the authority's removal of his vehicle to be disproportionate and an act of extortion and appealed on the ground that at the time the vehicle was removed the power to remove it had not arisen. He referred to a draft code of practice and contended that his vehicle should not have been removed because none of the grounds in the draft code applied. The code referred to the removal of vehicles where parking is inconsiderate or dangerous for example where the vehicle is likely to cause danger to other road users. The appeal Adjudicator having looked at the photographs taken by the Civil Enforcement Officers when removing the vehicle was satisfied that the vehicle was parked on double yellow lines and on a bend, both of which were accepted by Mr. Jones. The Adjudicator found that parking on double yellow lines near a bend is inconsiderate or dangerous. Mr. Jones suggested that his car was not causing an obstruction according to the definition in Longman's Dictionary of Contemporary English. The Adjudicator refused the appeal noting : ' I find that a car may be causing an obstruction in road traffic terms even if the road is not "blocked". Therefore I find that the Authority was not prevented by that code of practice from removing the vehicle...It is stated in the Highway Code that you must not park on yellow lines during the times of operation and that double yellow lines indicate a prohibition of waiting at any time. The Highway Code also states "Do NOT stop or park ...on a bend".'

Engaging With Appeal Procedure

Patel v London Borough of Hounslow PATAS 2100049739 (2010)

The appeal Adjudicator adjourned the hearing, directing the enforcement authority to file further evidence regarding issues that had arisen further to the removal of a vehicle parked in contravention at a bus stop. On the evidence before him, the Adjudicator had no power to allow the appeal and this was made clear in the adjournment directions. Having issued clear directions the Adjudicator added : ‘if the enforcement authority fails to reply in full to my adjournment directions I shall assume that they no longer seek to oppose the appeal in relation to the refund of the removal costs and I shall direct accordingly’. No response was received from the authority. At the adjourned hearing the Adjudicator concluded : ‘I have assumed from the failure by the enforcement authority to respond that they no longer seek to oppose this appeal in relation to the refunds of the removal costs and I direct these to be refunded to the appellant forthwith. Enforcement Authorities, like any party to an appeal, must comply with directions. Even if it be that an authority having considered directions decides that it does not wish to pursue a point it would be far more courteous and informative, both to the other party and the Adjudicator, to file a statement setting out the authority’s position.

CCTV Enforcement

Brown v Westminster PATAS 2100432814 (2010); Bolton v Westminster PATAS 2100431447 (2010); Gershfield v Westminster PATAS 2100362264 (2010); Mould v Westminster PATAS 2100287861 (2010): The issue in these cases was

whether the Appellant was entitled to the benefit of the exemption for picking up passengers. In each case the Adjudicator was concerned that at the moment a passenger boarded the vehicle the camera panned away. Concern was also expressed that there was excessive time spent on observing the vehicle’s licence number plate, which obscured any view of possible passenger pick up or exempt activity. In the case of Bolton, during an observation period of less than three minutes, there was observation in excess of one minute focusing entirely on the vehicle licence number plate.

Menzies v Westminster PATAS 2100362435 (2010): In this case concern was expressed by the Adjudicator that at the end of an observation period of just over 2 minutes the driver was seen to exit his vehicle (possibly to assist a passenger). At that point the camera panned away. It was not possible to see where the driver had gone because the observation ceased.

As with on street enforcement, without a meaningful observation of the vehicle, the Enforcement Authority is in a far weaker position should it wish to make representations disputing that an exempt activity is underway; a lack of observation leaves the authority with no evidence to dispute an exemption raised by a motorist. A fuller observation can only serve to assist the appeal Adjudicator in assessing the evidence of any exempt activity relied on.

Ownership

Meaney v London Borough of Ealing PATAS 2100413263 : The enforcement authority applied to review the appeal Adjudicator's decision, the Adjudicator having found as follows : 'The Act renders the owner of a vehicle liable for parking contraventions. The owner is the keeper which is presumed to be the registered keeper. Who is the actual keeper however is rebuttable. The Court of Appeal in the case of R v Parking Adjudicator, Ex P. Wandsworth L.B.C (1996) has ruled that keepership must be such that the keeper should exercise the rights of owner. On the basis of the agreement supplied noting the provision contained therein as to the vehicle's use I am not satisfied that the appellant could be said to have exercised the rights of the owner in respect of this vehicle. That agreement is insufficient in my view to rebut the presumption that the registered keeper is not the actual keeper of the vehicle. I am not therefore satisfied that liability for this penalty charge should have been transferred to the appellant'. The appeal was allowed and the authority was directed to cancel the Notice to Owner. The Enforcement Authority applied for a review of the decision contending that the driver in this case should be seen as the 'carer' of the vehicle. The application was refused and the authority reminded that no such principle was recognised under the Road Traffic Act 1991 and is not recognised under the Traffic Management Act 2004. The Adjudicators can only apply the law.

Evidence

Colquhoun v London Borough of Barking and Dagenham PATAS 2100436768 : The penalty charge notice was issued further to a CCTV observation, on the ground that the vehicle failed to comply with a sign indicating a prohibition on certain types of vehicles. The appellant complained that the Enforcement Authority's evidence was insufficient to show that a contravention had occurred and that the signs were inadequate and unclear. The Enforcement Authority referred to DVD evidence but did not produce that evidence relying on a series of still photographs. The appeal Adjudicator found : 'The photographic evidence does not show clear signage. The

wording on the sign purporting to be in Station Parade cannot be read. There is no site map and the location of the vehicle is unclear. I am not satisfied that signage was clear and adequate'. The burden rests with the enforcement authority to prove that a contravention occurred. From the evidence submitted that could not be established. The appeal was allowed.