Agenda Item 6

The Joint Report of the Parking Adjudicators for England and Wales January 2007 to March 2008

Chief Adjudicator's Foreword

On 31 March 2008 new Regulations were introduced changing, in some important aspects, the way that local authorities enforce parking contraventions. On the same day, for the reasons explained in the Introduction to this report, the name of the tribunal dealing with parking appeals outside London changed to the Traffic Penalty Tribunal. Formerly we were known as the National Parking Adjudication Service (NPAS). Although this report in principle deals with the last fifteen months of our work as NPAS, it has also provided an opportunity to reflect on how, what is now known as, civil parking enforcement (CPE) developed outside London since NPAS came into being in 1999, how effective it has been, what problems that arose in the beginning, whether they have been resolved, and what issues have persisted.

The Traffic Management Act (TMA) regulation repealed the decriminalised parking enforcement (DPE) provisions introduced by the Road Traffic Act 1991.

The New Traffic Management Act Regulations have introduced some very positive changes. For example there is now a ground in appeal dealing with procedural impropriety on the part of the Council. Over the years Adjudicators have pointed to problems with the different Council's approach to prep the process, procedure, and the standard of documents. Therefore to introduce and express ground that the appeal can be allowed on that basis is a helpful step forward and will ensure that Councils approach parking enforcement in a more consistent way. The other important feature of the new regulations is that there is an express duty on Councils to consider compelling circumstances. Much has been said about the exercise of discretion over the years and I reiterate a point made in all our annual reports that most Councils exercise discretion in an entirely proper way having regard to the appropriate consideration. However, there has always been vanguard of Councils who appear to pay scant attention to these duties and the Department of Transport recognise this by introducing the express duty to consider compelling reasons. Whilst an Adjudicator cannot allow an appeal on the basis of compelling reasons, nevertheless there is a new express power to refer a case back for reconsideration.

This new power was met by Councils with some apprehension but the truth of the matter is that Adjudicators have always referred cases back when factors have emerged at appeals that would alter the Council's initial decision to exercise discretion. That, after all, is the nature of the appeal process. Adjudicators do not simply review the Council's decision to reject the representation (although that is an important part of the process) they can examine all the evidence that is relevant to the appeal, including evidence that was not before the Council when the representations were made. Therefore to have an expressed power for Adjudicators to make their finding of fact and where they consider that this would provide the Council with a fresh

opportunity to consider exercising discretion, they may now refer the case back to the Local Authority.

Adjudicators were a little disappointed at the complexity of the new legislation. The new Civil Enforcement of Parking Provisions are introduced in no less than 6 sets of Regulations, replacing The Road Traffic Act 1991 itself, and the Adjudicator's Regulations. Furthermore, the language used in the regulations is obtuse and confusing, and the duty placed on the authorities are so detailed, stemming from more than one set of regulations in some instances, that whilst providing a clearer steer for the duty of Councils in parking enforcement, it is also a minefield for falling into the trap of procedural improprieties. No doubt it will take a while for the new provisions to settle down but Adjudicators are convinced that the positive new provisions will strengthen the integrity of the regime once the teething difficulties have been recognised and overcome.

Given that the Department for Transport are considering the regulations that will apply to moving traffic there is an opportunity to combine the Moving Traffic Regulations with the Parking Regulations, and at that time simplify the parking regulations in the light of the early experience of TMA. The reason given by Ministers for introducing the parking provisions in advance of the moving traffic provisions was to enable some assessment of the parking provisions and to reflect that assessment in those that will be applied to moving traffic. There is no doubt that the documents associated with the new parking provisions are over complex and difficult to understand so Ministers have an excellent opportunity to incorporate specimen documents in plain English in the new regulations, rather than specify the mandatory sections of documents as they have done in the parking regulations.

Looking back over our annual reports since 1999 there have been some recurrent themes. We have revisited those in this annual report. Additionally, a characteristic of the old NPAS annual reports was that statistics that have emerged from the Adjudicators work in appeals have been produced on a year on year format to enable the public to consider how the scheme was progressing from the time that a particular local authority embarked on DPE. A startling factor that emerges from these appeals is that the number of PCNs issued by Councils outside London has diminished over the years. This, of course, is precisely what one would expect when a Council takes over civil enforcement powers. Clearly where there is a need to control parking and enforce those controls, a robust scheme of enforcement should always give rise to increase compliance. This is a clear indication from the PCN issue figures publishing the Adjudication Service over the years.

The period covered by this report is no exception. We have published a snapshot of some randomly picked councils which clearly demonstrates the extent to which the reduction in number of PCNs provides an entirely different picture of parking enforcement than that portrayed in some of the press. It is of course true that some councils have been issuing more Penalty Charge Notices and, no doubt, the reason for this will be explained in the individual annual reports of each council.

Over the years Adjudicators have consistently called for local authorities to produce their own annual reports to provide the data that is not available to adjudicators to publish. We were therefore pleased when the Secretary of State endorsed the principle that each CPE Council should produce an annual report of its activities and accounts. This will undoubtedly go a long way to open the council's activities to public scrutiny and to provide assurance that the activities are being undertaken properly and that the financial accountability accords with the objectives of the scheme.

The public keenly perceive the difference between cases where a person has avoided paying to park, or left their car in a reserved bay without the necessary permit, and those where a pay and display ticket or permit was not appropriately displayed. However councils appear not to make that distinction. Hence, in those cases the emphasis has shifted from a penalty being imposed for a parking contravention to the perception that the penalty is being imposed for what was effectively, and administrative omission. To be required to pay a penalty in these circumstances is perceived as disproportionate. After all, for many years a pay and display ticket was simply evidence that a driver had paid to park or that a vehicle was permitted to be parked in a bay reserved for certain vehicle users. Therefore 'proportionality' is a constant issue that arises in parking appeals.

Sir Christopher Rose, the Chief Surveillance Commissioner, commented that councils have 'a serious misunderstanding of the concept of proportionality' This opinion is shared by many appellants, and from time to time by adjudicators. We have therefore again devoted a significant part of this report to examining the exercise of discretion within the context of proportionality and council policies.

There has been significant publicity recently about councils ignoring adjudicators' decisions and continuing to enforce contraventions notwithstanding that an adjudicator had determined that the signing in a particular location had failed to convey the restriction that the local authority was endeavouring to enforce. While this has not been particularly common outside London we were dismayed to discover that Bristol City Council had continued to issue penalty charge notices and tow vehicles away from a Montague Hill South, a small cul-de-sac, where an old road had been stopped up, near the Bristol Royal Infirmary, which in 2003 I had held to be wrongly signed, with part of the site was not being part of the highway. At the time I commented adversely about the aggressive attitude the Bristol enforcement team had adopted towards the spot which citizens of Bristol rightly perceived as being a legitimate place to park, and found that, even if the location had been properly signed, the persistent removal of vehicles, with subsequent payments required for the release of the vehicles was totally disproportionate for enforcement of parking in what effectively is a backwater.

We were therefore dismayed to discover this year that two appeals were made involving vehicles that had been removed from the identical spot in Montague Hill South. It transpired that my lengthy Decision had been

disregarded, and the carriageway markings had not been repainted in accordance with my findings. Worst of all it transpired that Bristol City Council had continued to issue Penalty Charge Notices and tow vehicles away from that spot notwithstanding my determination that it was unlawful for them to do so. The Council were represented at the hearings by their senior solicitor who gave an unequivocal apology to the tribunal and attributed the continuation to issue PCNs and tow away vehicles from that small area of cobbled land to staff changes and insufficient supervision of the implementation of my findings in the 2003 Decision.

This was not the first time that Bristol's approach to vehicle removal had been called into question by adjudicators. In our xxx annual report we focussed on cases from appellants whose vehicles had been towed away in Bristol and examination of the tables in this report and the year-on-year statistics show that Bristol had consistently been out of step with the other councils that undertake vehicle removals.

We also noted that far too many appeals where the vehicle had been towed away were not contested, not only by Bristol, but by other councils as well. Adjudicators find it unacceptable that a person who has paid £140 to recover their vehicle and has had their representations rejected suddenly finds that by appealing to an adjudicator the council changes its mind and refunds the money. The statistics in this annual report demonstrates, yet again, that the proportion of towing-away appeals that are not contested by the council is inexplicably high. We hope that in future that all councils will review their policies and procedures about considering representations after a vehicle has been removed under the supervision of their legal departments.

Although it is perceived as predictable that the adjudicators would call for more supervision of the parking enforcement departments from the local authority's legal team, the Bristol cases highlight that need. We have observed that in most councils where a particular case has required the lawyers to get involved there has been a marked improvement in that councils approach to appeals and standard of evidence. In some case it has resulted in an overhaul of outdated Traffic Regulation Orders (TROs), while in others a revision of documents and standard letters has been the positive outcome. We have consistently reminded councils that parking enforcement is a legal process stemming from a contravention of a properly made TRO. That important principle has now been reinforced by the Secretary of State in the TMA Guidance to local authorities.

That adjudicators' decisions have been ignored lends support to the impression we are often left with that neither party to our proceedings properly understands the judicial function of adjudicators. This misapprehension was confirmed by the comprehensive user survey that was undertaken by Birmingham University in 2002. This was one of the driving forces in the decision to change the name of the organisation to the Traffic Penalty Tribunal.

Readers this year may note that there is no digest of case reports. This is because the new website that is still being developed for the Traffic Penalty Tribunal will contain a large number of cases that Adjudicators have considered over the years. This will enable us to post cases on the website on a regular basis rather than produce an annual digest. We are also working on placing the Adjudicators' Register on line on the website.

Another benefit in changing the name of the tribunal was that in the run up to the Traffic Management Act the Joint Committee, who have been responsible for providing funds for the Adjudication Service realised that they could fulfil a wider role in providing public information on behalf of all the Outside London Councils who are members of the Joint Committee with respect to their duties under CPE. Therefore they have developed their own identity becoming the Joint Committee for England and Wales for the civil enforcement of Parking and Traffic Regulations Outside London – PATROL. Adjudicators welcomed this initiative since the need for public information has always been a problem under the old DPE scheme and, while individual councils can provide their own information, there did not appear to be a central point where the general principles could be properly explained. Therefore PATROL have produced a website and a leaflet and have undertaken an important commission to establish standard documents as a recommendation for the councils in the scheme.

None of this could have been achieved without the strong commitment and leadership of the Joint Committee Head of Service, Louise Hutchinson, who has now been in her post for two years. She has reorganised the Joint Committee offices to establish a clear distinction between the committee staff who organise the infrastructure and administration and the Tribunal staff who are under the guidance of the Tribunal Manager, Andrew Barfoot. This is an important distinction to have been made since from time to time councils in particular have been confused as to the separation of the functions between the Tribunal itself and the Joint Committee administrators.

Andrew Barfoot was a welcome addition to his role as Tribunal Manager. Being a solicitor he effectively fulfils the role of Registrar and manages the adjudicators support team with the expertise that one would expect from an experienced solicitor.

I would like to take this opportunity to thank all the Tribunal staff who support the work of the Adjudicators. It is no easy task administering appeals for Adjudicators around the country and organising hearings in the numerous venues that we use in England and Wales.

Louise and Andrew both share the commitment of the adjudicators to greater access to the tribunal. One of the new initiatives we have all instigated is telephone appeals. The pilot for these was so successful that a telephone appeal in now offered as an option for all appellants. Council officers have also welcomed this initiative since it enables them to participate in most hearings without taking time out of their offices.

I am also pleased to report that for the past year some appeals have been heard in the Welsh language. We are fortunate to have two adjudicators who are Welsh language speakers. Recently we had the first telephone appeal in Welsh.

Therefore we have moved to a position where the National Parking Adjudication Service has become on the one hand the Traffic Penalty Tribunal dealing with the Tribunal work of the adjudicators and PATROL being a joint initiative on behalf of the participating councils outside London in the scheme. The common letter in our names is the letter 'P'. P is an iconic symbol in parking with the well known white P against the blue background which signifies a place to park. However the letter P crops up in many other contexts in our work. Principally parking appeals is not so much about traffic or vehicles or the parking of vehicles but it is about people and how they go about their everyday lives. Therefore the theme of this report is that P is for people. Taking this theme it provides an opportunity for us to reflect on our work since 1999 and we have taken the comments that we made in that report and examined whether the points we made then are still current and valid. It demonstrates that there have been significant improvements since 1999, but there are still misconceptions and bug-bears that need to be addressed. We hope that the new provisions of the Traffic Management Act will provide a framework for continuous improvement in parking enforcement. You will watch with interest whether the number of Penalty Charge Notices increases or continues to decrease outside London – who knows, one day there may not be a need for parking adjudicators!

Introduction

On 31 March 2008 the Road Traffic Act 1991 provisions for decriminalised parking enforcement were repealed and replaced by the new regulations for civil parking enforcement introduced by the Traffic Management Act 2004.

This Annual Report covers the last 15 months of the Parking Adjudicators' work under the flag of the National Parking Adjudication Service (NPAS). Parking adjudication outside London began when in 1999 the outside London local authorities undertaking what was then known as Decriminalised Parking Enforcement (DPE) formed a joint committee to provide adjudication of parking appeals for Councils in England and Wales outside London. They decided to call the outside London adjudication service the National Parking Adjudication Service.

In 2006 provisions were made to enable outside London local authorities to enforce bus lane contraventions. The bus lane authorities were required, because of complex legal provisions, to form a separate joint committee but the parking joint committee and the bus lane joint committee determined to operate adjudication under a single Tribunal. Therefore the parking adjudicators were all appointed as bus lane adjudicators. Consequently the 'P' for Parking in NPAS did not embrace the adjudicators' jurisdiction to deal with the new moving traffic offences in bus lanes.

When the parking adjudicators held a joint conference in Edinburgh with our Scottish colleagues they wryly pointed out that it was presumptuous to refer to our Tribunal as the **National** Parking Adjudication Service since we did not cover Scotland! Therefore the 'N' in NPAS purported to give us jurisdiction where we had none.

The word Adjudication has consistently caused problems with the public who have never been entirely clear as to what it was all about. There have even been confusions with the 'Independent Adjudicator' who ensures that the National Lottery balls are randomly selected! More importantly, our research revealed that many people have difficulty in spelling 'adjudication' for the purposes of the web address and email, etc. Therefore adjudication seemed to be a bit of a mouthful so far as perception is concerned.

Finally our user research also threw up the finding that many people regarded a 'service' as providing more than a judicial function. In particular many of the public have consistently thought that the adjudicators were a form of 'Ofpark' – an office of fair parking. Therefore it appeared that the word 'service' again did not properly convey the fact that the adjudicators' function is a purely judicial one.

So we had reached the time when all four words in the name National Parking Adjudication Service were either redundant or inappropriate.

Consequently the adjudicators dealing with appeals for both parking and bus lane contraventions needed to operate under a new name. Market research was undertaken in various parts of the country in both rural and metropolitan places and overwhelmingly the name Traffic Penalty Tribunal was perceived as conveying what the adjudicators actually do, namely determine appeals against penalty charge notices issued for parking contraventions and bus lane contraventions. Given that the Department for Transport and the Welsh Assembly are shortly going to introduce the Traffic Management Act 2004 provisions enabling local authorities in England and Wales respectively to undertake civil enforcement of other moving traffic contraventions, the name Traffic Penalty Tribunal will appropriately cover the additional jurisdiction of the Adjudicators.

Therefore this Annual Report is presented under the flag of the Traffic Penalty Tribunal with the new logo although in reality it is dealing not only with the final 15 months of our work at NPAS. We have also taken the opportunity to reflect on all the issues that have emerged since NPAS was created in 1999 and the issues that developed as more and more councils in England and Wales join the DPE scheme. We have revisited each Annual Report that the adjudicators produced during the lifetime of NPAS and have reviewed the matters that we addressed over the years. In particular we have compared 1999 when NPAS began with 2008 when the TMA was implemented.

That we have considered both past and present leads us this year to the theme of 'P is for…' to illustrate both common and uncommon themes that have characterised NPAS in the past, and continue in the present.

A characteristic of our reports in the past has been the production of statistical tables showing the appeals data for each of our councils. We have retained the statistics for previous years adding the figures for the year subject to the report, so the year by year performance of each council can be compared.

An obvious difficulty in producing a report that covers a fifteen month period is that the year by year by year comparisons would be distorted by figures for a fifteen months' activity. Therefore the cumulative table features the data for the twelve month period from 1 April 2007 to 31 March 2008.

We urge readers of this report to study the tables carefully because this is where the story is told.

P is not just for parking, it is for people, and…

Past and Present

We have been able to look back at the previous seven annual reports and reflect on the issues raised and the comments we made in the past. We were struck by many of the remarks made in our first NPAS report in 1999 and thought it apt to quote from that report in the light of how civil enforcement (as we now call DPE) has developed outside London from then until now.

All the "Past" quotations are from our 1999 report.

Past

"*Many current cases before Adjudicators involve a considerable delay on the part of councils in dealing with representations. We are seeing cases where there has been a delay as long as ten months"*

Present

We are pleased to report that adjudicators seldom encounter cases where there has been inordinate delay on the part of the council replying to correspondence. With one or two notable exceptions most councils appear to have organised themselves to enable them to respond relatively promptly. However, adjudicators still comment that there is overuse of standard letters and paragraphs and are concerned that in pursuing an objective of replying swiftly to representations, the representations themselves may not be being properly considered or addressed. This is dealt with in the body of this report. The holy grail for considering representations is to consider properly and address all the points made by the driver or vehicle owner in a response sent within the time frame for answering correspondence set for all other departments of the council. The adjudicators welcome the 56 day time limit set the TMA regulations for responding to representations while reminding councils that this is the an outside limit for dealing with representations rather than the norm.

Past

" .. a significant number of our cases involve some defect in the Council process or procedure. We emphasise that we do not consider these defects to be deliberate on the part of the Councils, but occur either through lack of planning, or a natural will to tailor the scheme to local circumstances, or possibly ignorance."

Present

The Government recognised this problem persisting over the years so introduced a new ground of appeal in the TMA regulations enabling adjudicators to allow appeals on the basis of 'procedural impropriety' on the part of the council.

Past
"We are committed to the principle of access to justice, and make every effort not to put barriers in the way of an Appellant seeking to exercise his or her rights".

Present
Throughout the history of NPAS, and now with the Traffic Penalty Tribunal the entire organisation has maintained its commitment to access to justice. This is characterised by the new initiative of telephone appeals, which were successfully piloted and are now offered as a matter of course as an option to appellants on the Notice of Appeal. Early analysis of the statistics for telephone appeals is tending to show that it is appellants who would have selected a postal appeal that are principally opting for a telephone hearing. This shows that many appellants appreciate the opportunity to explain their case to the adjudicator in person, but clearly found the commitment to attending a personal hearing inconvenient or onerous. Therefore by providing this new method of determining appeals access to justice has been extended considerably for the Traffic Penalty Tribunal appellants. We are also developing the ability to lodge an appeal on line and increasing numbers of councils have signed up to this scheme whereby they provide the appellant with a Traffic Penalty Tribunal pin code in the Notice of Rejection that enables the recipient of the Notice of Rejection to lodge an appeal on line.

We also commented in our first Annual Report:

Past
"There are occasions when the Adjudicator considers that the Local Authority should attend a hearing to clarify aspects of their case." P4

Present
We are therefore pleased to report that the new telephone appeal initiative has enabled council officers to take part in increasing numbers of appeals. Adjudicators find this very encouraging since it is always helpful for the council officer to hear the appellant's evidence and to provide any additional evidence that the adjudicator may require.

The feedback from both appellants and council officers with respect to telephone appeals has been extremely encouraging and details of the scheme so far is examined separately within this report.

Past
"It is only to be expected that a significant number of cases will not be contested by the Local Authority since Appellants tend to send in more detailed evidence with their appeal then they had originally submitted to the Local Authority with their representations" p6

"However, there is concern where high percentages of cases are not contested. This may imply that the Local Authority is not properly considering

representations and is relying on the case coming to appeal to be resolved" p6

Present

The high percentage of appeals that are not contested by local authorities have consistently given rise to adverse comments by adjudicators.

Past

"A significant feature of the decriminalised administrative parking enforcement scheme is that it is the owner of the vehicle who is liable for payment of any PCN issued to the vehicle…." p9

"Councils…. Are under an inherent duty to act fairly and have a general duty to consider mitigating or extenuating circumstance," p10

Present

This has been a constant bug-bear in the civil enforcement scheme – so much so that a significant section of this report is dedicated to the ongoing concerns about fairness and the approach to the exercise of discretion.

Past

"The scheme must be operated fairly; the statute gives an example of this in creating a ground that, notwithstanding the principle of owner liability, it would be unfair to enforce a penalty charge against an owner of the vehicle if the vehicle had been taken without their consent at the parking contravention occurred. This ground also emphasizes to Local Authorities that it is in the nature of the scheme that there will always be some PCNs issued, the payment of which cannot be enforced." p11

"It is important to emphasise that the revenue aspects of the scheme is not the purpose of it. The sole purpose of both parking regulation and enforcement is traffic management." p12

Present

Although the Government and councils themselves insist that revenue is not a consideration in the civil enforcement scheme the public and press do not appear to be convinced by these protestations. Repeatedly in my foreword to Tribunal annual reports I have called for councils to publish their own annual reports including full statistics of their enforcement activities and their accounts. If this information was available to the public and press then it would make it clear whether a council is meeting its traffic management objectives and the public could see for themselves what happens to the revenue raised through parking enforcement. Adjudicators welcome Secretary of State's Statutory Guidance issued under the Traffic Management Act 2004 that the Secretary of State has called for councils to publish annual reports. It is not entirely clear who will ensure that councils comply with the Secretary of State's exhortations.

In our annual report for 2003 we examined the importance of councils providing annual reports and recommended that at the very least they should contain the following 10 statistics in terms of:

1. The number of penalty charges they issue each year.
2. The number that are paid at the reduced penalty.
3. The number of notices to owner they issue.
4. The number of representations they receive.
5. The number of representations they accept.
6. The number of representations they reject.
7. The number of appeals that they have lodged against them.
8. The outcome of those appeals.
9. The number of charge certificates they issue and the proportion paid.
10. The number of cases they refer to the County Court.

In last years' annual report we developed the desirable elements of an annual report further. It is therefore disappointing that so few council annual reports come to adjudicators' attention. We were, however, pleased recently to receive a helpful and interest annual report from Weymouth.

We would encourage councils to send copies of their annual reports to adjudicators, in addition to making them available on the parking department's pages on the council website.

Past

"In many examples of Councils' letters rejecting representations we find that the Council have either:

- *Failed to address the issue, often giving reasons for rejection that have no bearing on the issue raised by the vehicle owner.*
- *Disregarded compelling evidence supplied by the vehicle owner"*
- *Demonstrated that they do not know their own Council parking regulations or locations within their area.*
- *Rejected the representations after significant delay in considering and replying*

It is perhaps not surprising that in these cases motorists question the reason for receiving a rejection to their representations and form the opinion that the council has other objectives"

Present

Adjudicators still have cause to make these comments about council consideration of representations and correspondence so yet again this forms a significant part of our annual report into the last 15 months of appeals under the Road Traffic Act.

Past

"In adopting the RTA scheme it is essential that Councils ensure that staff considering correspondence, representations and preparing appeals are properly trained…"

Present

The importance of staff training is another issue that has been raised in more than one annual report. Again adjudicators are pleased that the Secretary of State has placed a strong emphasis on staff training in the TMA Statutory Guidance to Local Authorities.

Past

"Parking is an every day activity governing the lives of most citizens and it is fundamental that parking regulations should be applied and enforced consistently and fairly. However when the law enabling parking to be regulated and enforced is so complex, obscure and incomprehensible it makes the task of Local Authorities harder and militates against consistency and fairness. It would be helpful if the government were to consolidate and simplify the legislation."

Present

This plea for the legislation to be simplified was made in 1999, five years prior to the passing of Part 6 of the Traffic Management Act 2004, and nine years before the civil enforcement of parking provisions were finally introduced. However, our plea for simplification went unheeded. The Government eventually produced six separate sets of regulations to replace the Road Traffic Act 1991 provisions. The new regulations are far from a simplification complex comprising six sets of Regulations to replace the RTA and the Adjudicators' Regulations. Furthermore, the statutory requirements of the information that must be provided on a penalty charge notice stem for the Schedule of one set of the regulations with additional requirement from regulation 3 of a second set.

Past

"It is puzzling to Adjudicators that each Authority with which we deal has drafted and prepared their Traffic Regulation Orders in entirely different ways……" The Adjudicators would encourage wider publication of each Council's orders so that motorists as well as parking appellants can familiarize themselves with the regulations." p19/12

"When a Local Authority applies for a SPA order they undertake to the Secretary of State that all their Traffic Regulation Orders and restrictions have been reviewed. We urge Councils to be meticulous in this task". p 20

Present

What can we say about TROs? They continue to bewilder adjudicators and some councils appear to give very low priority to consolidating their TROs and

redrafting them in language and terms that are comprehensible to the drivers who must abide by them. Having said that, increasing numbers of councils are attaching helpful plans to their TROs, although there have been cases where the interpretation of the plan has been called into question.

Past

"Each Case turns on its own facts"

Present

This is another phrase that adjudicators regularly use and after nine years in their written decisions they sometimes doubt whether both parties to the appeal understand what it means. This is particularly pertinent in cases which appear to councils to be inconsistent. An adjudicator makes findings of fact on the basis of evidence presented to them and it is inevitable that a case that may appear to a council to be identical with another case may result in a different outcome because the appellant in the second case has substantiated a fact that the appellant in the first case did not do.

P is also for …

The iconic “P” sign signifying where a vehicle may be parked
P is not just for parking it is for people and the practical events that affect their lives.

Permits, Payments, Pleas, Policies and Proportionality

In a number of Annual Reports the Adjudicators have consistently expressed concern about the way in which some Councils have fulfilled the duty to consider the representations made to them by the recipient of a Penalty Charge Notice. The Local Government Ombudsman has emphasised the need for the Council to carefully consider all the circumstances set out by a motorist or vehicle owner concerning matters which affect their liability to pay the penalty charge.

It was the view of the Ombudsman and remains the view of the Adjudicators that in order to exercise the discretion which the Council has at any stage to accept the representations and cancel the penalty charge it is essential to consider not only whether any of the statutory grounds of challenge apply but also whether there are circumstances in any particular case which make it unnecessary for the penalty charge to be enforced.

While Councils may feel it important to exercise discretion against a background of a general policy in order to ensure some degree of consistency, if discretion is to be exercised fairly in any particular case the outcome of a challenge cannot be decided on the basis of a rigid adherence to internal policies which are after all unlikely to have been made public.

All too often the most detailed representations are dismissed apparently summarily in one or two lines of a standard letter restating the fact that the contravention occurred and that it is the responsibility of the driver to ensure that the vehicle has not been parked in breach of any particular restriction.

The use of such standard letters suggests to the Adjudicators that in fact the representations had not been considered properly or fairly because in the absence of any reasons the individual making the challenge would not be able to understand how the Council had reached its decision or whether any of the points which may have been raised in mitigation had been considered.

Despite the concerns raised by Adjudicators in previous Annual Reports the situation remains that many Councils are simply unwilling or unable to consider challenges based on mitigating circumstances and still decline to accept the independent Adjudicator’s recommendations, which are often made after hearing the Appellant’s evidence, that in the particular circumstances of the case the penalty charge should be cancelled.

Pleas (in mitigation) are particularly common in cases where the PCN has been issued because of a failure to display a permit, disabled parking badge or pay and display ticket.

While, in general, the motoring public accepts, albeit in some cases reluctantly, the need for parking to be regulated a regular cause for grievance is where the recipient of a PCN is in fact the holder of a valid permit or badge, or has made the correct payment for parking time, but the permit, badge or ticket was not readily visible to the Parking Attendant.

Adjudicators come across numerous examples where the driver of the vehicle has paid for a ticket to cover the parking period but has either made a simple error or has failed to check that the permit or ticket is clearly displayed, that and it is certainly not uncommon for disabled badge holders, often because of their particular disability to incorrectly display the badge with the expiry date and serial number face down. The holder of a Resident's permit might neglect on one occasion to display the permit in his vehicle, for example where a replacement vehicle is being used temporarily. Most common of all is the situation where a driver purchases a valid pay and display ticket and attempts to display it in the vehicle but for one reason or another, it has become dislodged, or the parking attendant did not see it. This occurs increasingly often in cars with shaded borders to the windscreen.

The essence of these cases is that the vehicle was entitled to be parked where it was, either because the correct payment had been made, or a valid permit had been issued for the car, or that the Blue Badge holder qualified for the exemption applying to a disabled person's vehicle. Consequently the vehicle owner is being penalised, not for a parking contravention, but for failing to comply with a requirement to prove that they were parking correctly.

It goes without saying that adjudicators are not criticising the parking attendants in these cases. It is the difficulty that council officers (or their contractors) apparently experience in being able to assess the subsequent representations that is called into question.

Of course there are drivers who try to abuse the scheme and develop dishonest strategies for manipulating the system to 'get away with' not paying. However it is the inherent task of council officers and adjudicators alike to determine whether a representation is honest, dishonest or misconceived. The problem appears to be that many councils have taken the view that it is "fairer" to reject all representations of this nature, without exception. Adjudicators have sometimes seen letters of rejection that expressly explains this approach saying that it would be unfair on other people who have paid a penalty charge if the correspondent were to be 'let off'.

The consideration of representations is a quasi-judicial process (which is why it cannot be contracted out) and requires the exercise of judgment in addition to the application of policies. Each case must be considered on its own merits rather than by rigid adherence to a universal policy. If policies are applied rigidly then judgment will not be properly exercised. The whole point of

policies as opposed to rules is that policies can and should be departed from providing the decision maker has sound reasons and can express them.

In some cases where an adjudicator has considered a particular case on the evidence available to the adjudicator and appellant, the council rejects a recommendation from the adjudicator that the penalty charge is cancelled, because the council will not accept the adjudicator's findings of fact. Sometimes the reason for this turns out to be that the council rejected the representations taking into account evidence or external factors that were never explained or disclosed. Adjudicators emphasise that councils should always explain the actual reason why representations are rejected. If, for example, the real reason for rejecting representations is that the driver has sent in a pay and display ticket purporting to cover the time when the PCN was issued on earlier occasions then the council should say so, citing the earlier occasions. It is unsatisfactory simply to say that the representations are rejected because a contravention apparently occurred or because the parking attendant was justified in issued the PCN.

Equally, there may be particular local problems that require a firm approach from the council who may consider that examples should be made. However, it does nothing for public acceptance of the civil enforcement of parking if, for instance, a local authority in a drive to tackle abuse of the Blue Badges, to deal harshly with a genuine badge holder who may have had difficulties, perhaps because of the need to get out of the car with a wheelchair.

The appeal process is provided to enable the adjudicator to consider all the evidence, and in particular fresh evidence that may not have been available to the council decision maker, and make findings of fact as to what was most likely to have happened.

While Councils appear reluctant to accept that a pay and display ticket can become dislodged in circumstances outside the driver's control, although it may not be visible at the time the PCN was issued, nevertheless the correct parking fee had been paid. Adjudicators regularly express the view that Councils should pay rather a greater attention to the reason why the ticket, permit or badge is required to be displayed. It is of course to allow "policing" of the particular restriction but in circumstances where the driver would be entitled to leave the vehicle in a permit, disabled or pay and display bay it is difficult to see why a Council would want to enforce the penalty charge where a valid permit, ticket or badge is subsequently produced. It seems that greater weight is attached to the requirement to display without considering whether in fact the primary requirements for the use of the parking place had been met.

It is in this area that the Councils can be seen to be operating different and not wholly consistent policies. For example some Councils readily accept the production of a valid permit, badge or ticket as a reason for cancelling the penalty charge. Other Councils will never do so, while some exercise discretion favourably on the first occasion but then will not subsequently do so without any regard to the passage of time. Adjudicators are critical of this

type of “one strike” policy on the basis that it is not a proper exercise of discretion, particularly if a substantial period has passed since the issue of the cancelled, PCN. They also share the concerns of holders of a Residents or prepaid parking permit who question why it is necessary for them to pay a penalty charge if a simple error is made in the display of what was otherwise a valid permit.

Disabled badge holders, who are often because of their disability more vulnerable, question why simply placing an otherwise valid disabled badge upside down should require them to pay a penalty charge.

Of course the circumstances in which these situations arise are many and various and each is likely to depend on its own facts but the Adjudicators continue to express concerns that the rigid implementation of policy or an unwillingness to look at the facts of the case as a whole means that the statutory requirement for the Council to consider representations is not being undertaken properly.

Whilst many Councils do readily accept recommendations by the Adjudicator it is a continuing theme of decisions that consideration of representations is limited by the inflexible application of a policy.

For example:-

BP0583G
This case involved the incorrect setting of a disabled badge and having heard evidence the Adjudicator concluded that the Appellant had made an honest mistake and recommended that the Council did not enforce the penalty charge. The Council rejected the recommendation on the basis that despite the Adjudicator’s findings of fact it did not accept the mitigation advanced.

KH05202
A valid disabled parking badge had been partly obscured by the clock card. The Council’s notice rejecting the representations simply repeated the fact that the contravention occurred. The Council stated that it did not give any special consideration to disabled badge holders because it was considered discriminatory to do so.

BH05874G
A parking permit had been partly obscured although two out of three of the relevant details remained visible. These were confirmed when the driver sent in the copy of the permit. The Council rejected representations simply on the basis that the contravention occurred.

SC05047J
A disabled badge holder placed the badge the wrong way up on the dashboard in circumstances where she was under considerable distress because of a medical condition for which she was attending a hospital appointment at the time she parked the car. The Adjudicator

> heard evidence and concluded that the Appellant was a wholly straightforward witness. The strong recommendation was made to the Council that the penalty charge should be cancelled. The case was adjourned for the Council to give further consideration to the Adjudicator's recommendations but two months later the Council had still not responded.

These cases all involved appeals in respect of Penalty Charge Notices issued before the commencement, on 31 March 2008, of Regulations made under the Traffic Management Act 2004.

Regulation 5 of the Civil Enforcement of Parking Contravention (England) Representations and Appeals Regulations 2007 impose a duty on the Enforcement Authority to consider any representations made before the end of the period of 28 days beginning with the date on which the Notice to Owner is served, and to consider whether one of the statutory grounds of challenge in Regulation 4(4) applies or:-

> "(2) there are compelling reasons why in the particular circumstances of the case the Notice to Owner should be cancelled and any sum paid in respect of it should be refunded."

Regulation 7(4) provides that if the Adjudicator does not allow an appeal but is satisfied that there are compelling reasons why in the particular circumstances of the case the Notice to Owner should be cancelled he may recommend that the E A should cancel the NtO.

Where such a recommendation is made it is then the duty of the EA to consider again the cancellation of the NtO taking "full account of all observations made by the Adjudicator and to give a response within 35 days beginning with the date on which the recommendation was given."

If the EA does not accept the Adjudicator's recommendations it is required to provide reasons for the decision. If no response is made within the 35 day period the Authority is to be taken as having accepted the Adjudicator's recommendations.

It is clearly the case that the additional requirement for both the EA and the Adjudicator to consider whether there are compelling reasons for the cancellation of the charge is to be regarded as a significant additional safeguard for an Appellant.

Whilst the Adjudicators acknowledge that such recommendations are only to be made in appropriately compelling circumstances it is expected that the EA will establish an efficient procedure for dealing with recommendations when they are made.

It is suggested that in general the EA should take a more flexible approach to informal representations to ensure that genuine mitigation is not overlooked

and that the public have a real perception that parking regulations are enforced fairly and reasonably.

It is to be noted that paragraph 6.17 of the Operational Guidance issued by the Department of Transport to Local Authorities in March 2008 states that whilst the exercise of discretion should in the main rest with back office staff the Authority may wish to set out certain situations where a Civil Enforcement Officer should not issue a PCN and might, for example to consider issuing a verbal warning rather than a PCN to a driver who has committed a minor contravention and is still with or returns to the vehicle before the PCN has been served. The Guidance states that the EA should have clear policies, structures and training for CEOs on how to exercise such discretion.

Further paragraph 11 of the Guidance states:-

> "11.3 It is in the interests of the authority and the vehicle owner to resolve any dispute at the earliest possible stage. Authorities should take account of the CEOs actions in issuing the PCN but should always give challenges and representations a fresh and impartial consideration.
>
> 11.4 An authority has discretionary power to cancel a PCN at any point throughout the CPE process. It can do this even when an undoubted contravention has occurred if the authority deems it appropriate in the circumstances of the case. Under general principles of public law authorities have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.
>
> 11.5 Enforcement Authorities have a duty not to fetter their discretion so should ensure that PCNs, NtOs, leaflets and any other advice that they do not mislead the public about what they may consider in the way of representations. They should approach the exercise of discretion objectively and without regard to any financial interest in the penalty or decisions that have been taken at an earlier stage in the proceedings. Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits. An Enforcement Authority should be ready to depart from its policies if the particular circumstances of the case warrant it."

Paragraph 11.10 states that when dealing with informal representations the Authorities should give proper consideration and respond to the challenges with care and attention and in a timely manner in order to foster good customer relations, reduce the number of NtOs sent and the number of formal representations to be considered. The Secretary of State suggests that response to informal representations should be made within 14 days.

In relation to cases referred back to the authority by the Adjudicator paragraph 11.44 states they should be directed to the Office of the Chief Executive of the Authority to ensure that the case is given proper consideration on the facts presented without preconceptions. It is specifically stated that the

Adjudicator's recommendation should not be dealt with by the individual who considered the original representation.

The Adjudicators anticipate that a proper implementation of this Guidance, taken together with the new provisions in the Regulations will go a long way to avoiding the types of situation where the recipient of a PCN feels that it is unjust that a penalty charge should be imposed for what amounts to a minor or technical contravention particularly where it is issued because of the failure to correctly display an otherwise valid permit or badge or where the charge for parking has been paid.

P is for Principle

"It's not the money, it's the principle!" If adjudicators have heard those words once, we must have heard them a thousand times. This is often said by appellants, citizens who have, for the first time in their lives taken up the cudgels of the law, taken time off work and to explain why they are affronted by the actions of the council in their case.

P is for Paint and Poles

The single most common issue raised in appeals involves the paint on the carriageway. In many cases the road markings have rubbed away making them indecipherable. In other cases they are too narrow or perhaps the wrong colour. These cases are too numerous to list but it is a common ground for a motorist to appeal against a Penalty Charge Notice. Cases that have also involved issues about the height of the pole that the sign was on, where on the pole the sign was placed, whether the sign on the pole was facing outwards towards the carriageway or had been twisted round on the pole.

P is for Paper

There have been numerous appeals concerning paper used for printing pay and display tickets. Sometimes the tickets issued by machines have a tear-off strip and are sticky, intended to be stuck to the windscreen. Adjudicators have noticed over the years that many motorists are reluctant to stick adhesive substance to the windscreen of their pride and joy car. They consider that the residue of the adhesive is unsightly to the otherwise pristine condition of their vehicle. So instead of sticking the ticket to the windscreen they simply leave it on the dashboard. From time to time adjudicators have felt the need to explain, to men in particular, that a small pot of nail varnish remover pads kept in the car is useful for removing that residue, thereby enabling the motorist to display the ticket in the manner that it was intended. Pay and display tickets that are not adhesive are sometimes produced on flimsy paper. In one case the adjudicator observed that the vehicle was parked on an incline with and the pay and display ticket emerged from the machine curled because of the flimsy paper. Therefore as the motorist got out of the car and opened the door the wind (for which Manchester is infamous) caught the pay and display ticket and blew it out of the car and down the hill. There have been many other similar cases where a flimsy ticket has not remained on the dashboard once the door has been closed.

P is for Parcel and Pizza

Numerous cases have involved the delivery of parcels and 44 appeals have been about the delivery of pizzas.

One of the most consistent grounds of appeal is that the vehicle was issued with a Penalty Charge Notice when it was in the process of loading or unloading, collecting or delivering. Cases involving parcels and pizzas are just a few where this has been put forward as the reason for parking.

All Traffic Regulation Orders contain an exemption to waiting restrictions for the purposes of loading and unloading, delivering and collecting. Adjudicators have made a number of decisions over the years setting out the principles that apply.

While councils find it helpful to establish some general principles about loading and unloading it each case must turn on its own facts. Therefore as a general principle a commercial vehicle can be presumed to be loading or unloading but that is not to say that that activity is not taking place from a private vehicle. Equally as a general principle it may be said that an unattended vehicle observed for 5 minutes without any activity being seen is unlikely to be parked for the purposes of unloading or delivering. There may be some particular reason why that activity will have taken longer than 5 minutes.

Of course councils need to have some ground rules to consider representations and it is not always easy for them to establish the precise facts of a case on the basis of written communications. This underlines the benefit of the appeal system to Adjudicators whereby we can examine the facts, often at an oral hearing or at a telephone hearing where the appellant can give fuller information about the activity that was taking place. Therefore that an adjudicator may allow an appeal where the ground put forward in both representations and the appeal is that the vehicle was engaged in loading is not necessarily a criticism of the council for rejecting the representations, but simply that the Adjudicator has more information about the facts that actually happened.

Commercial deliveries, particularly out of large commercial vehicles create problems of their own. This is particularly so where there are loading bans for a significant portion of the working day in operation outside the premises to which the vehicles need to unload. These issues are especially prevalent in many of the ancient cities and small market towns in the various local authorities across the nation where the Adjudicators have jurisdiction.

P is for Passenger

It is one of the basic exemptions to waiting and loading restrictions that passengers and their baggage may be set down. Furthermore the activities of passengers often forms the reason why the driver or owner of the vehicle is appealing.

Over the years the setting down provisions have needed to be sensitive to the needs of modern society. For example, a small child cannot simply be set down out of a car and told to enter premises on its own. It is fundamental in today's society that that child should be accompanied into the building and handed over to the care of another adult. Equally a passenger with disabilities may need to be escorted into the premises they are entering. The same goes for elderly people who may not be able to carry their own baggage to where they are going. Therefore an unattended vehicle can be engaged in setting down a passenger even though the parking attendant did not see this taking place.

P is for Patient

A significant number of appeals have involved patients attending medical appointments. This can either be as a passenger of a vehicle owner who has perhaps escorted them into the surgery or hospital or the patient having driven themselves to the medical appointment. A regular issue that arises is being able to park near to the surgery or hospital. Whereas the Blue Badge scheme exists for those with permanent walking difficulties there are no specific exemptions for people suffering from a temporary walking difficulty. Therefore visits to medical practitioners are often put forward by way of mitigation or extenuating circumstances.

Normally a council will ask for confirmation of the medical appointment which Adjudicators consider to be reasonable. However, sometimes in an appeal more evidence will come to light whereby the Adjudicator is satisfied that the Appellant is unable to supply written confirmation but nevertheless has given a credible explanation.

P is for Patience and Prompt

In the past Adjudicators have often observed that some Appellants have been required to exercise considerable patience in awaiting a response to their correspondence or representations. Consequently a consistent theme in the Adjudicators' Annual Report has been delay.

A particular problem is where Notices to Owner have been sent out significantly after the date of the alleged parking contravention. Where a vehicle owner receives a document so late it inevitably means that any evidence relating to the parking contravention may not be in existence. For example, if it is alleged that the vehicle was parked without a pay and display ticket and the vehicle owner considers that it would have been displaying a ticket it is highly unlikely that the ticket will be in existence at that stage. This is particularly a problem where the Penalty Charge Notice was not found on the vehicle at the outset.

P is for Persistence

Adjudicators have been impressed over the years with the persistence with which many Appellants pursue their appeal. In a significant number of cases the Appellant feels the need to go to enormous lengths to prove their case.

The same can be said by some council officers who exhibit a similar persistence in seeking to enforce the penalty.

In many cases this is completely justified and assists Adjudicators considerably in determining the appeal. However sometimes the lengths to which either one of the parties, or sometimes both, go to prove or disprove liability for a parking ticket seems disproportionate.

P is for Petrol

It has long been established that running out of petrol is not a defence to a Penalty Charge Notice. This has not stopped more than 100 motorists appealing on the basis that their car had run out of petrol. This is because a motorist is under a duty to check that a vehicle is in full working order before setting off on a journey and there is no reason why a vehicle should run out of petrol in those circumstances. Nevertheless many motorists still make representations and appeal on the basis that the vehicle had run out of petrol.

P is for Picnic

3 appeals involved families going off for a picnic and ending what was supposed to be idyllic day by finding a Penalty Charge Notice on their car. The principle illustrated here is that particular care must be taken when parking in an unfamiliar place. Drivers cannot presume that, for example, parking is not restricted in their own neighbourhood on Sundays, that it the same applies elsewhere. In particular at tourist and leisure destinations councils control parking throughout the weekend and often in the evening. Also there is a requirement to pay in some car parks at unexpected times. Therefore motorists visiting these sites must take special care to check what is required.

P is for Plans

Many councils now attach plans to their Traffic Regulation Orders. These have been examined in a number of cases. While they are generally helpful a particular group of councils have been criticised for indicating the different regulations that apply by the use of different colours, However there are so many shades of red and green that it is impossible to discern the precise nature of the regulation as it appears on the plan. It also raises the question of whether a regulation can be made in a red/green colour format when a significant proportion of the population is colour blind, especially men.

P is for Play

Play features in parking appeals mainly in relation to match day parking restrictions round the numerous football stadiums in our jurisdiction. These have consistently given rise to the issue of a Penalty Charge Notice. Residents have difficulty when visiting fans descend on the area for a game and therefore there are permit schemes round most football grounds. Visiting fans need somewhere to park and the different types of parking restrictions that apply on match days vary from local authority to local authority.

In our Annual Report of 2004 the Adjudicators focused on the many cases they had received that year concerning parking arrangements at football grounds and rugby grounds. These issues continue to give rise to a number of appeals where Penalty Charge Notices have been issued when football matches are taking place.

P is for Plumber

27 appeals concerned plumbers. The difficulty experienced by plumbers and by builders and other similar occupations is that in principle they are required to unload their tools and then move the car before embarking upon the work. However plumbers often tell Adjudicators that until they have assessed the difficulty for which they have been called out they do not know which of the tools they need to unload. Therefore they do not know when they arrive at the premises what they will need to do next. Councils will exercise discretion where appropriate documents are produced but inevitably Adjudicators deal with cases where the plumber has not been able to produce written proof that his vehicle was parked for the purposes of unloading his plumbing tools for a particular job.

P is for Police

More than 100 appeals have involved, in one way or another, the police. In fact there have been several appeals from off-duty policemen.

It is an exemption in most Traffic Regulation Orders that the vehicle had stopped under the direction of a police officer in uniform. However difficulties arise where a policeman has helpfully given directions which the motorist has interpreted as permission to park. There have also been cases where the motorist has been stopped by the police and regrettably taken to the police station leaving his car where he was stopped. Councils will always cancel Penalty Charge Notices where proof of this having happened is produced.

P is for Policy

Adjudicators have consistently encouraged councils to publish their policies, particularly concerning the exercise of discretion.

A constant theme running through Adjudicators' reports and subject to Adjudicators' criticism is where councils apply their policies too stringently. Adjudicators have often remarked that a Notice of Rejection will be expressed, for example, in terms of, "I am unable to cancel this Penalty Charge Notice" when what they mean is it is not our policy to cancel it or simply that they do not consider it appropriate to cancel the Penalty Charge Notice.

P is for Position

The position of the vehicle is often a key factor in a parking appeal. This is particularly so where a vehicle is required to be parked within the confines of the marked bay. There are no required bay sizes in car parks and there have

been a number of appeals where the bays have been slightly smaller than they might be on the street or have a pillar at the side of them.

A special bug-bear is where a Penalty Charge Notice has been issued to a vehicle for not being parked wholly in a bay when the photographs show a car park to be almost completely empty. Understandably the motorist feels that there can be no justification for a penalty charge when essentially there has been no 'mischief' insofar as nobody has been inconvenienced by a wheel encroaching into an empty bay. Council officers, on the other hand, often explain that car parks fill up very quickly and therefore even if a person parks not wholly within a bay in what at the time is an empty car park, within a short space of time there will be people driving round looking for a space.

P is for Preparation

The preparation of a case submitted to Adjudicators is important and a poorly prepared case may result in the appeal not succeeding.

P is for Pride

Interestingly the word 'pride' has appeared in at least 63 Decisions. Adjudicators have often been impressed with the pride with which the parties to an appeal have presented their cases. Many councils take enormous pride in excellent presentation and a significant number of Appellants produce well prepared cases.

On a different tack, Adjudicators have dealt with cases where the principal ground of appeal is that the pride of the driver has been dented and they are affronted by the fact that they have received a Penalty Charge Notice. This can arise in cases where the vehicle concerned is clearly the pride and joy of the Appellant who believes that their pride and joy requires special attention which enables it to be parked immediately outside their house, regardless of parking restrictions that only apply to other people!.

P is for Prejudice – and also Politeness and Punch

Inevitably, given the nature of the jurisdiction Adjudicators often see cases where one side is perceived by the other side to be prejudiced. Some appellants give the impression that they are inherently prejudice against all council enforcement activities, while other are convinced that councils are prejudiced against all drivers – as one appellant put it, that the minute a person sits behind a steering wheel he or she ceases to be treated as a citizen. Sometimes these attitudes give rise to aggressive behaviour and immoderate language. Adjudicators always urge people challenging a PCN to remain objective, stick to the facts and to desist from personal criticism of parking attendants and council officers. It is more helpful for all parties to remain calm and polite throughout.

Regrettably we come across cases where it is suggested that the parking attendant was threatened or even punched. The new TMA regulation allow councils to issue the PCN by post where this has occurred, so there is no advantage to be gained by a motorist threatening the civil enforcement officer (as parking attendants are now known).

P is for Printing

Issues concerning printing occur particularly where the PCN has emerged from the hand held computer with the printing awry, or faded. The same problems occur when documents are produced by councils to present in evidence to Adjudicators.

P is for Prostate

It will come as no surprise that many cases involve people who have had to stop because of an urgent need to use the toilet. In 8 cases this was put down to prostate trouble. These people were able to produce some evidence of their condition but in most cases people are unable to provide supporting evidence of this urgent need. Therefore these cases must always turn on their own facts although Appellants are understandably reticent to explain about embarrassing conditions.

P is for Puncture

Perhaps surprisingly, only 27 cases have been identified where the appellant has explained that the vehicle was parked because of a puncture. Vehicles breaking down have always been the subject of numerous parking appeals. Councils will always ask a vehicle owner to produce evidence which is entirely reasonable. Adjudicators will normally expect the same degree of evidence although from time to time there may be an explanation as to why there is no documentary proof of the breakdown. In various cases the issue has been not so much that the vehicle broke down but for how long it was left before it was removed or repaired. Therefore considering whether a vehicle breaking down amounts to a defence of a parking contravention will depend on the facts of the individual case.

P is for Pupils

The school run with parents stopping to deposit their pupil children at school remains a constant headache for the parking enforcement departments of councils. Perhaps surprisingly there have only been 8 cases that we can identify involving school pupils. This will come as some surprise to councils for whom parking contraventions around schools remain high priority to tackle.

P is for Pantomime

We have discovered that there have been 8 appeals where the appellants have explained that they had parked in order to go to the pantomime. In a sense an outing to the pantomime embraces many of the problems that motorists have that end in a parking ticket. A family after Christmas driving to an unfamiliar area to go to the theatre, with excited children in the car and probably in the dark are all recipes for misunderstanding what is required to park.

P is for Private Car Parks

Over the past year there has been considerable discussion in the press about private car parks. These do not come within the jurisdiction of the Parking Adjudicators. However since we have been monitoring phone calls to both

the Tribunal and the Joint Committee PATROL team it has emerged that 35% of telephone calls and complaints we receive are from motorists who have either received what is known as a 'parking charge notice' in a private car park, or have been sent a 'parking charge notice' through the post.

This is a matter of great concern to the adjudicators and to the councils in the scheme. The first problem is that the 'parking charge notices' that are issued to cars deliberately mimic a penalty charge notice issued in the Civil Enforcement Scheme. They have apparently been designed so that a motorist believes that it is a lawfully issued charge notice and feels obliged to pay. Furthermore the notices sent through the post again mimic the official notices sent in the Civil Enforcement Statutory Scheme.

Not only is it dishonest to present these private demands for money in the format of the official regulatory notices, but worst of all, there is no way that a motorist sent one of these can appeal against it. Recipients are overwhelmingly left with the impression that the only option they have is to pay. Of course it is open to the motorist to refuse to pay and wait until the car park operator applies to the County Court. However, according to the people who ring our telephone number out of desperation, most of the operating companies fail to give vehicle owners the right to air their grievance in court. If the payment has not been made to the private company in the time specified by them, then, say the complainants, the debt collectors arrive on their doorsteps.

This is an unacceptable situation although there is no easy solution to the problem.

The British Parking Association are working on a Code of Practice for private car parks. It is important that they incorporate legal advice and recommend that companies do not try to pass off their documents as being part of the Civil Enforcement Scheme. They must also emphasise the need to use the county court rather than simply to employ debt collectors, so that vehicle owners are not denied the right to put their case.

There is clearly a need for an Ombudsman to resolve disputes about private car parks, perhaps on the model of the financial services or insurance ombudsmen. This may not lie wholly within the province of the Department for Transport (although that Department does have responsibility for the DVLA), but steps must be taken by the appropriate Government Department to provide independent scrutiny of complaints about and financial demands from the operators of private car parks.

And finally …..

P is for Pet

Since our jurisdiction is England and Wales it would be surprising if pets had not featured in a number of appeals. We have identified 27 cases where the

word pet has been mentioned, but there are numerous more where the Adjudicator has referred to either the cat or dog or parrot. So …

P is for Python

In one case the Appellant was taking his poor sick python to the vet and parked outside to deliver the reptilian patient. When he protested to the council that he was delivering a python the council maintained that he should have parked in the car park some way away and carry the poorly python through the neighbourhood to the vet.

P is for Parrott

In another case the parking attendant formed the opinion that he parrot had knocked the Resident's Permit off the dashboard. And …

P is for Puppies

In yet another case the Appellant explained that he had left his car on a yellow line outside his office so that he could keep an eye on the three small puppies that he had left in the car.

All life, human, reptilian and mammalian features in parking appeals!

National Parking Adjudication Service to Traffic Penalty Tribunal

Service may have come out of the name but remains central to a tribunal which aims to be customer focused.

In summary

This Adjudicators' Annual report marks a turning point for adjudication and I am delighted to help outline the operation of the tribunal at this time. However before focusing on the changes, it is important to consider what has been achieved since the last Adjudicators' report for 2006. The tribunal has:

- Introduced bus lane appeals to the jurisdiction of the tribunal.
- Trained adjudicators and staff in relation to the requirements of The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations (2005) SI No 2757 and the Traffic Management Act 2004.
- Successfully piloted telephone hearings.
- Introduced the facility for appellants and councils to email evidence through a case management team email box.
- Enabled the integration of data from on-line appeals into the AIMS case management system.
- Implemented a new team based approach to case management.
- Introduced a project coordinator role to assist in new areas of development.

The preparation for the introduction of the new Traffic Management Act (2004) legislation coupled with the launch of the Traffic Penalty Tribunal and the new PATROL Joint Committee in 2008 has represented a major period of development for the tribunal staff and those staff working on behalf of the Joint Committee and has seen the:

- Introduced the Traffic Penalty Tribunal brand.
- Introduction of a new Traffic Penalty Tribunal web site incorporating a content management system to enable this to be updated in-house.
- Introduction of improved Notices of Appeal.
- Preparation for the roll out of telephone hearings with adjudicators, staff, appellants and councils.
- Success of a comprehensive PR campaign to promote the tribunal in the light of the Traffic Management Act 2004.
- Number of councils offering Appeal on Line has increased.

- Introduced the PATROL brand.

Since its creation in 1999, the tribunal has continued to expand, in terms of the number of councils taking on civil parking enforcement, although the number of appeals has remained relatively stable.

The growth in the scheme can be seen in the following table:

Table 1: Councils in the scheme and the number of appeals

Year	Number of Councils in the Scheme	Number of Appeals
1999 (part)	16	649
2000 -2001	31	2190
2001- 2002	50	4517
2002- 2003	69	8537
2003	85	9213
2004	118	10441
2005	143	9449
2006	160	10,000
2007	206	10,883

The appeal process – keeping it simple

A key objective of the tribunal is to provide independent, impartial and well considered decisions based on fact and law through a tribunal which is user-focused, efficient, timely, helpful and readily accessible. The hearing is central to the tribunal. The tribunal provides every appellant with:

- A dedicated appeals coordinator who handles the appeal.
- The opportunity to present evidence to an independent adjudicator in an informal tribunal setting.
- The opportunity to state a preferred venue around England and Wales.
- The possibility of a hearing outside office hours
- A hearing centre supervisor to greet parties to the hearing and explain what will happen in the hearing room.
- Tribunal standards in respect of correspondence and decision making.

Appellants may state a preference on their Notice of Appeal for one of three types of hearing: personal, postal and more recently by telephone. The tribunal is rolling out this facility to all appellants in 2008/09. Telephone hearings have proved attractive to both appellants and councils in terms of flexibility of location. The tribunal is also actively encouraging councils to provide the facility for appellants to appeal on line.

Delivering locally across England and Wales

Whilst the hub of the tribunal is at its headquarters in Manchester, the local face of the tribunal are the adjudicators and hearing centre supervisors who

attend hearings from Aldershot to York and from Bristol to Scarborough. The tribunal operates some 70 venues in local hotels, advice centres and even a fire station!

In Wales, the tribunal offers Welsh speaking Adjudicators and Hearing Centre Supervisors and tribunal forms and literature are translated into Welsh. Looking forward, the introduction of separate regulations for Welsh authorities will be monitored closely to ensure that the tribunal is kept abreast of local issues arising from this.

Technology – the driving force

Technology continues to be at the heart of the tribunal which prides itself on providing economies of scale of a national tribunal whilst delivering locally. Technology is vital to the whole operation allowing the Adjudicators to decide cases remotely in the case of postal hearings and to use their computers to download evidence during hearings. A case management system (AIMS) introduced in 2006 has enabled the tribunal to handle cases and communicate with all parties in a more effective way although the system has been amended and refined over the two year period since its inception.

The AIMS system represented the first stage of technological development. This was built upon in March 2008 with the introduction of a new tribunal web site utilising a content management system. The forthcoming financial year will focus on taking this web site to the next stage by more effectively enabling the electronic transfer of evidence and appeal tracking for appellants and councils which will provide efficiency savings for both councils and the tribunal building upon the success of the Appeal on Line facility for appellants.

Performance

As reported in the 2006 Annual Report, in 2007 the Joint Committee reviewed its performance standards to reflect the diverse geography of its jurisdiction and its mode of delivery:

Personal Hearings
60% of cases to be offered a personal hearing date within 8 weeks of receipt of the Notice of Appeal.
90% of cases to be offered a personal hearing date within 12 weeks of receipt of the Notice of Appeal

Postal Decisions
80% of postal decisions to be made within 7 weeks of receipt of the Notice of Appeal.

Table 2: Performance against standards: personal hearings and postal decisions.

Year 2007	Postal Actual	Target 80% of postal cases to be decided within 7 weeks	Personal Hearings Offered within 8 weeks of registration (Actual)	Target	Personal Hearings Offered within 12 weeks of registration (Actual)	Target
2007	90.61%	80%	64.14%	60%	88.27%	90%
Jan to March 2008	77.90%	80%	56.43%	60%	86.38%	90%

Notes on Table 2

a)The postal figures relate to cases registered during the period that have been decided.

b)The personal figures relate to cases registered during the period that have been offered a hearing.

c) A comprehensive picture can only be obtained after the year-end.

The existing administrative targets were retained in respect of the acknowledgement of the Notice of Appeal and telephone call waiting times which are as follows:

Table 3: Performance against standards: telephone waiting times and acknowledgement of the Notice of Appeal.

PERIOD	% of phone calls answered within 15 seconds	TARGET	% of appeals acknowledged within 2 working days	TARGET
2002/3	96%	80%	99%	80%
Year 2003	96%	80%	99%	80%
Year 2004	97%	80%	99%	80%
Year 2005	97%	90%	99%	95%
Year 2006	98 %	90%	92%	95%
Year 2007	98%	90%	92%	95%
Jan to Mar 2008	97%	90 %	90%	95%

The introduction of telephone hearings will be kept under review in relation to the establishment of appropriate targets.

Feedback Counts

Stakeholder feedback continues to be a high priority from the tribunal particularly through appellant and council user groups in order for the tribunal to remain accessible and responsive.

Examples of recent consultation exercises include: the accessibility of appeal on line for appellants (see Figure 1) and feedback from the telephone pilot (see Figure 2)

Figure 1: Appellant feedback on Appeal on Line

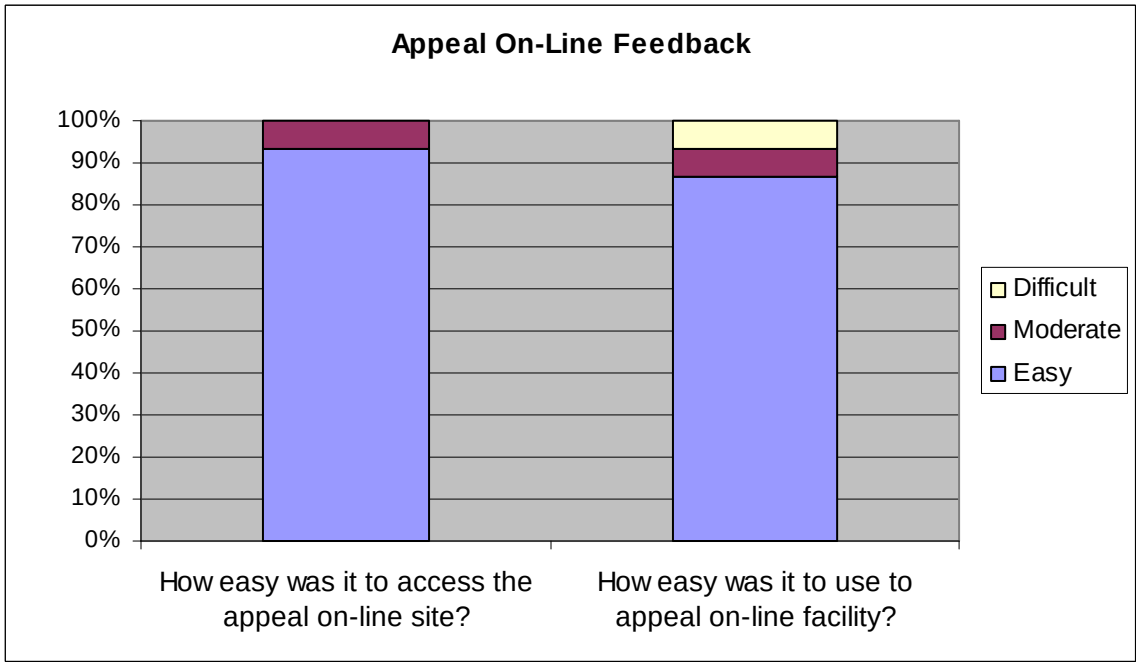
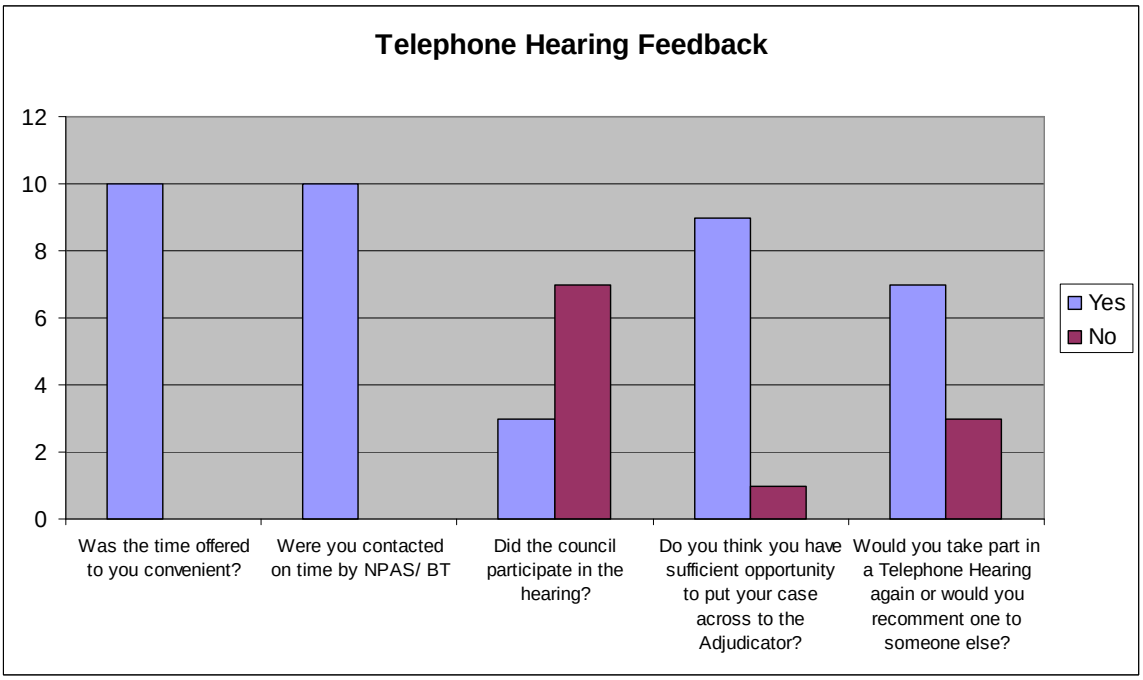


Figure 2 Feedback appellants during the pilot on telephone hearings



Feedback from council induction days has been extremely positive. The purpose of these events is to ensure that councils are fully aware of the judicial nature of the tribunal, the independence of the Adjudicators and the way in which they reach decisions and the process that the council must follow when a motorist makes an appeal. The challenge now is to ensure that

the benefits of this are made as widely available to councils that did not have access to this when they commenced enforcement.

Council User Group meetings continue to provide invaluable feedback for example on telephone hearings. Councils has been generally positive about the pilot initiative although some councils have pointed to difficulties with space availability i.e. a quiet room and telephone. Telephone hearings will continue to be evaluated following roll out.

The tribunal continues to meet with its Appellant User Group. Their input has been invaluable in the transfer from NPAS to Traffic Penalty Tribunal. It is now intended to build upon the content of the council induction days to provide increased public information.

Looking forward - The Key Challenges

Public Awareness

It is anticipated that the change of name to Traffic Penalty Tribunal will contribute to increased understanding by both appellants and councils of the judicial nature of the tribunal. However, a key challenge remains in raising awareness of the civil enforcement process and the right to appeal to an independent tribunal. The respective public information roles of the tribunal and the joint committee need to continue to address this.

Increasing effectiveness and efficiency in case management

Electronic Transfer

The tribunal is keen to reduce the burden of paperwork on both appellants and councils. The tribunal is encouraging councils to provide the facility for appellants to appeal on line and is currently exploring possibilities for appellants to track their appeal on line. Likewise, the aim is to reduce the potential burden of paper both for the tribunal and the councils in the transfer of council evidence. There has been sporadic development of initiatives to improve this. The tribunal is now seeking a more robust and integrated approach, building upon the recent investment in the content management system. In addition, email correspondence will be promoted with both parties and the facility to appeal on line will be reviewed to promote nationwide availability.

On-line Register of Appeals

The tribunal currently holds a register of decisions which can be accessed by visiting Barlow House. The next step is to make these decisions available on-line taking in account judicial and data protection best practice.

Traffic Regulation Orders on Tribunal Web Site

Traffic Regulation Orders submitted to the Tribunal by Councils will be made available to appellants through the tribunal's web site

Improved Reporting

The AIMS case management system has built in reporting capacity. This is currently supplemented by the use of Crystal reports. The potential of these two resources will be fully evaluated to assess what additional capacity might be required to improve the source of management information to assist performance management.

Appeal Tracking

Building upon increasing electronic transfer of appeals and evidence, a further step to improve accessibility for both parties will be to introduce appeal tracking where individuals and councils can establish on-line the stage that their appeal has reached.

Telephone Hearings

Following a successful pilot of telephone hearings, these have now been introduced into the mainstream of the tribunal. Their usage will be monitored closely and feedback will be sought from both appellants, councils and adjudicators to establish whether any areas of their development requires further improvement.

Back Office Systems

The case management teams currently handle 10,000 appeals per annum. This figure has remained relatively static and the teams have been established to increase the tribunal's ability to handle a widening jurisdiction including more bus lane enforcement and the introduction of moving traffic contraventions and the possibility of congestion charging. The priority now is to work with case management staff to identify how the back office processes can be streamlined to improve the quality and effectiveness of support to the Adjudicators.

Delivering a customer focused tribunal

The tribunal is unique in its model of delivery and geographical coverage. Last year we looked forward to the introduction of the Traffic Management Act 2004 and have accommodated its requirements as well as re-focusing the role of the tribunal and the joint committee. Whilst technology is a considerable force for delivery, parties to the tribunal continue to value the personal approach offered by the tribunal. The tribunal benefits from a long standing staff group. However, ensuring that the support staff have the appropriate skills and resources to support the adjudicators, liaise effectively with tribunal parties and respond to changing tribunal needs, remains a priority

A major force behind the constant drive to be customer-focused is the Chief Adjudicator, Caroline Sheppard. Her considerable experience and unrelenting commitment to this aim has provided a major catalyst for the

tribunal's initiatives to improve the user experience. I look forward to working in partnership with her over the coming year to achieve our forthcoming goals in this respect.

Louise Hutchinson
Head of Service