AGENDA ITEM 6

THE JOINT REPORT OF THE PARKING ADJUDICATORS FOR ENGLAND AND WALES
APRIL 2008 TO MARCH 2009

1) Chief Adjudicator's Foreword

I am pleased to present to the Joint Committee the report of the Adjudicators for the first year following the Traffic Management Act (TMA) implementation.

It seems a long time ago that the Department for Transport went out to consultation about its proposals to review the Road Traffic Act and introduce better measures for civil parking enforcement through the Traffic Management Act 2004.

Some of the proposals were met with foreboding both on the part of motorists and of Councils who were already in what was then known as the Decriminalised Parking Enforcement (DPE) scheme. It goes without saying that they did not necessarily share their forebodings about the same issues.

Reasons to be Cheerful

As I was listing the topics for this annual report I was listening to Radio 4 and heard Stephen K Amos explaining his Reasons to be Cheerful. It occurred to me that from the point of view of both motorists and councils this report contains a number of facts and statistics that could be regarded as Reasons to be Cheerful. I am bound to say that in my long experience as Chief Adjudicator in the DPE; now CPE scheme I never thought there would come a time when I could say in an annual report that there were Reasons to be Cheerful.

The first undeniable fact is that the number of Penalty Charge Notices (PCNs) issued in each Authority has, on the whole, dropped significantly from the early days of DPE. Of course there are some Councils that are issuing more PCNs each year and there are probably various different reasons for that. However it can be seen from the tables that the average number of PCNs issued in each Authority has significantly dropped.

The next reason to be cheerful is that following the express provisions in the TMA for imposing a duty on Councils to consider compelling circumstances Adjudicators have noticed an increase in the number of occasions when Council officers readily accept that it is an appropriate case for discretion to be exercised.

In particular the greater incidence of Council officers attending hearings has resulted in them adopting a very fair approach to what they have heard the Appellants describe. It is always the case that at a hearing before an Adjudicator the Appellant has an opportunity to explain the surrounding circumstances of what happened when the Penalty Charge Notice was issued, or relating to the purchase or sale of a vehicle. Often the Appellants will tell the Adjudicator matters of great importance to the resolution to their case, but which they did not

realise they should say in their written representations. Council officers are quick to understand these issues and Adjudicators are pleased that on many occasions they have agreed to waive a penalty for compelling circumstances or recognise that some small error on the part of the Council would justify them agreeing not to pursue the penalty against the Appellant. This is particularly so in oral appeals and in our new telephone appeals (see the section dealing telephone appeals).

Adjudicators consider this to be a very positive effect of the new measures and guidance put in place on the 31 March 2008.

The introduction of telephone appeals is in itself a reason to be cheerful because it has enabled a significant number of Appellants who clearly wanted to 'have their say', to put their case before the Adjudicator without having to take time off work or travel to a hearing. When we first introduced telephone appeals we thought that this would provide a reasonable alternative to an Appellant who wanted an oral hearing, but much to our surprise, we have ascertained that the main 'market' for telephone appeals is from Appellants who would otherwise have selected a postal appeal. This demonstrates that in principle most Appellants do want to explain their case in person but take a pragmatic decision that it is not worth the time and effort expended to attend a personal hearing in order to fight what is after all the maximum of a £70 penalty (a tank of petrol for a large car).

We are therefore delighted that we have been able to provide the means of widening access to the tribunal and for both Appellants and Councils alike to perceive that they are getting a fair hearing.

We have obviously included a detailed section on the new provisions of the TMA and an analysis of some of the cases that have highlighted how these provisions are working in action. It is true to say that there were some teething problems in the beginning not least because the regulations themselves are not only complex but also intertwine in such a ways that it makes the statutory notices lengthy and difficult to understand.

In the run up to the implementation Councils were unclear as to whether they were required to reiterate the words of the regulations or whether the forms could be shortened to give an everyday account of what was required. However, quite understandably, the Councils preference was to err on the side of caution and to replicate the wording of the regulations. It was therefore helpful that the PATROL Joint Committee recognised that some help could be given jointly to all the outside London Councils embarking on CPE and Adjudicators welcomed the initiative by the PATROL Joint Committee to commission Stephen Sauvain Q.C. to Chair a committee to consider the TMA documents and make recommendations to establish a common set of notices that the motoring public would come to know and recognise. That report was published and Adjudicators are pleased to note that most Councils follow the recommendations.

Commonality in forms and notices is therefore becoming a hallmark of the new scheme.

Motorists certainly saw no reason to be cheerful about the new provisions for sending PCNs by post. Considerable concern was expressed about this, particularly because there was significant press coverage about the incidents of camera enforcement in London prior to the TMA implementation.

As it turns out Councils outside London have been hesitant to use these new powers. One or two Councils embarked on camera enforcement from early on, notably Medway followed by the Wirral. There are some cases dealing with camera enforcement from these Authorities in the Case Digest. In particular, the Wirral case highlighted the need to properly apply the guidance given by the Department for Transport's Operational Guidance. In particular the guidance emphasises that camera enforcement should not be used when enforcement by a Civil Enforcement Officer can properly used and Councils should heed that guidance carefully before embarking on an enthusiastic bout of camera enforcement.

Some Appellants have highlighted their lack of awareness that camera enforcement was in operation, being used to the camera warning signs that have long been in existence for both speeding cameras and camera enforcement of bus lanes.

The inevitable problem with camera enforcement is that drivers are not aware that they have committed a contravention until sometime after the event when they receive the Penalty Charge Notice through the post. In earlier times of moving traffic enforcement the Police would stop a vehicle and the officer would inform the driver that the vehicle had been seen, for example, driving in a bus lane and the driver would have an opportunity to give any explanation that was necessary to the officer who could then make a judgement as to whether it was appropriate for reporting with a view to a summons. It also enabled the driver to have the facts of what had happened fresh in his or her mind so that they could address them again if necessary when the summons arrived. If a driver is not aware that they have committed a contravention then there is no reason why they should recollect the details of what happened. Therefore care must be taken by Councils to look at the video image of a vehicle in a bus lane to ensure that there have not been any incidences of this nature in the lead up to the time that the vehicle was in the bus lane. Clearly Councils have discretion as to whether to send a Penalty Charge Notice in the first place.

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The Department for Transport Traffic Signs Review

Signs and lines have always been the most common theme in parking appeals. Therefore Adjudicators are pleased when the Secretary of State for Transport announced that there would be a review of traffic signs prior to the production of the new version of the Traffic Signs Regulations and General Directions (TSRDG). I was pleased to be asked to sit on the Steering Group for the Signs Review and be asked to Chair one of the working groups - the Enforcement Working Group. Over the years Adjudicators have to consider the enforceability of a particular traffic regulation in relation to the signs. There have been numerous cases where the size and shape and position of signs have all been subject to dispute. Motorists often say that they did not know that they were committing a contravention because the signing hadn't been adequate to bring the nature of the traffic regulation to their attention.

Parts of the Traffic Signs Regulations and General Directions 2002 (S.I. 2002 No.3113) are becoming out of date and so in preparation for the next version of TSRGD English Ministers decided it was opportune to undertake a review of road signs, with particular attention to whether it is necessary for there to be so much prescription, the impact of road signs on the environment, and to reconsider precisely how much signing is required to make contraventions of traffic orders enforceable.

It is inevitable that considerable attention is being given to parking signs and lines, with particular thought being given to the effectiveness of zones and whether that principle should embrace more parking imperatives, (such as footway parking) or whether the entire concept of zones is too unwieldy and not readily understood by motorists.

Following on from the initial meetings and setting up of the three working groups, research will be commissioned by the DfT to examine independently some of the proposals under consideration.

There will be formal consultation, but the DfT welcomes all input from those who have an interest or experience of signing. The British Parking Association (BPA) Local Authority Special Interest Group is also looking at the proposals that have been put forward to ensure that local authority concerns and ideas are considered fully.

It is very helpful that the Department for Transport have brought together a wide range of stakeholders on these issues including those from heritage circles where concern is expressed about increasing clutter on the roads. It will be valuable for this exercise to be completed and Adjudicators look forward to seeing the results of the review.

Judicial Reviews

In the meantime Adjudicators' decisions have been subject to applications for judicial review

In *Neil Herron v. the Parking Adjudicator* (and Sunderland City Council) the claimant applied for judicial review on two grounds:

1. That the Adjudicators do not appear to be independent and impartial because of the Joint Committee arrangements;

2. That concerning the definition of a controlled parking zone in Regulation 4 of the TSRGD.

Following an oral application for permission the Judge, Mr. Justice Keith, refused permission for Judicial Review of the challenge to the independence of the Adjudicators. I make no apology for quoting his judgement with regard to our independence in full:

> "*I am entirely satisfied that it is not arguable that a fair-minded and informed observer would conclude that there is a real possibility that the adjudicators are biased. My reasons mirror those which are set out in the defendant's summary grounds for resisting the claim, but it would be wrong to be too influenced by the technical position. It is important to attach due weight to what happens in practice.*
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> *The defendant's summary grounds, which Mr Oliver Mishcon for the claimants has not really engaged with at this hearing, show that parking adjudicators are appointed following open competition by a selection panel, and only then with the Lord Chancellor's consent. Indeed, their appointment is actually made by the Chief Parking Adjudicator, pursuant to powers delegated to him by the committee which represents those local authorities outside London responsible for the enforcement of parking contraventions. It is he who determines the terms and conditions of parking adjudicators and where they are to sit. Moreover, it is wrong to say that they do not enjoy security of tenure. They can be removed from office in very limited circumstances only, and even then only with the consent of the Lord Chancellor and the Lord Chief Justice. Their appointment is automatically renewed for a further five years, save again in very limited circumstances, and again only with the consent of the Lord Chancellor and the Lord Chief Justice. Additional factors safeguarding their independence are that since they must be either barristers or solicitors of at least five years' standing, they are subject to professional codes of conduct, and their decisions are subject to judicial review.*
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> *Finally, statistics are said to show that almost two in three appeals are allowed. That is an impressive indicator of independence. Adjudicators, of course, have no financial incentive to uphold particular penalty charge notices, and it is important to note that the funding provided by each participating local authority is based on the number of penalty charge notices issued, not the number of penalty charge notices upheld.*

For these reasons, I refuse the claimants permission to proceed with this claim on the basis that the parking adjudication system lacks independence"

Permission was granted for the application concerning the definition of a CPZ in Regulation 4 of the TSRGD, in regard to Sunderland where the PCNs were issued, to be subject to a full judicial review. We await the hearing dates for that hearing.

Permission for Judicial Review was refused in the case of Pendle v. The Parking Adjudicator (and Buckinghamshire County Council).

Permission for Judicial Review has been granted in the case of Dickinson v. The Parking Adjudicator (and Hull City Council). In that case the judge did not give reason as to why she was granting permission but, so far as we understand, the Claimant in person originally was seeking a re-hearing of his appeal. Nicola Davies Q.C., sitting as a Deputy High Court Judge, indicated that she considered that the parties should agree that there would be a fresh hearing of the Dickinson appeal before an Adjudicator. This offer has been made to Mr. Dickinson, but his application for Judicial Review has been placed on hold pending the outcome of the Judicial Review in the Sunderland case.

At the time of writing this report Oxfordshire County Council have been granted permission for a judicial review of a decision concerning what they regard to be the bus lane in the High Street, Oxford. Again we are awaiting a hearing date and look forward to the outcome of that application.

The Sunderland CPZ case relates to PCNs issued under the RTA (i.e before 31 March 2008) and the Oxfordshire case concerns bus lane enforcement under the Transport Act 2000. Therefore the first year of the TMA measures has passed without an application for Judicial Review concerning those provisions.

After a year, it has emerged that the overall reaction to the TMA initiatives is that there has not been so much change as to be greatly noticeable. That Councils are issuing fewer tickets clearly shows that the scheme works in terms of compliance. Also, the new initiatives have both strengthened the powers for Councils, as well as creating greater rights for motorists in terms of the consideration of "compelling reasons" by way of referral to a Council's Chief Executive by the Adjudicator.

We await the further developments as these initiatives bed down.

As always I would like to express the Adjudicators' appreciation of the appeals teams and support staff in the office in Manchester. They are unfailingly dedicated to being both helpful and efficient. Andrew Barfoot, the Tribunal Manager brings his own professional skills as a solicitor to bear on the proper running of the tribunal administration and is assisted by the new Appeals

Manager, Lindsey Westwood, who comes from a background of performance monitoring to see if improvements can be made to the tribunal processes.

Finally I speak for all the Adjudicators in recording our thanks to Louise Hutchinson, Head of Service for the PATROL Joint Committee. It was her brainchild to commission the Independent Review of Parking Documentation and Notices chaired by Stephen Sauvain QC with a view to giving the joint committee a real role in terms of providing common information applicable to all councils in CPE. She has also encouraged the joint committee to give an award for the best council annual report, which will go a long way to set a standard for the fulfilment of the exhortations for better council reporting that have been a characteristic of our previous annual reports. She, together with Miles Wallace, has developed the separate website for PATROL, to provide general information about CPE outside London.

These initiatives have been of significant benefit to the appeals process insofar as they develop the joint committee's role in exercising greater influence over consistency across the councils.

These are definitely reasons to be cheerful!

Caroline Sheppard
Chief Adjudicator

2) Telephone Appeals

In last years Annual Report we announced that we had embarked upon a pilot trial for determining appeals by way of a telephone conference hearing as opposed to a hearing in person before the Adjudicator. So successful was the trial that the new notices of appeal issued for the Traffic Penalty Tribunal following the implementation of the Traffic Management Act initiatives on 31 March 2008included the option to have the case dealt with on the telephone on all appeal forms. Since then the number of Appellants who requested a telephone appeal has steadily increased month by month.

Following each telephone hearing the administrative staff send a feedback form to both participants in the telephone appeals and Adjudicators are pleased that this way of deciding parking cases has been well received and deemed a suitable method of adjudication. (The Service report contains an analysis of the feedback on telephone appeals).

Adjudicators are pleased that so many Council officers participate in telephone appeals. The feedback shows that they are convenient and an excellent saving for Council resources where there might not be time to allow an officer sufficient time to leave the office and attend a hearing. It is always preferable when both parties to the appeal participate at the hearing because greater balance can be achieved in weighing up the evidence. In many cases Council officers are able to explain some of the more obscure detail in their evidence, for example abbreviations used by the Civil Enforcement Officer (CEO) in the notebook.

However, Adjudicators have noticed that the greatest benefit in Council participation is that they can hear the Appellant explain exactly what happened. It is understandable that when reading the many letters that are sent to Councils setting out a motorist's opinion why the penalty charge should not be enforced or payable it is difficult to ascertain which accounts are truthful and which are not. Furthermore often the matters that are uppermost in the Appellant's mind are not necessarily the most relevant to the parking contravention, or they do not always mention on paper an important detail that would establish the point they are making.

Both in oral hearing before an Adjudicator and at a telephone appeal the Council officer is able to hear the explanation given by the Appellant, question the Appellant as well considering the Adjudicator's questions. Where the appellant has put forward compelling circumstanced, it often becomes more clear what exactly happened. In many, cases the Council officer, even if the parking contravention occurred, recognises that it would be unfair to pursue the penalty against the Appellant and suggests that the Council will waive the penalty. In these circumstances the Adjudicator is able to record a Consent Order that the

Council and the Appellant have agreed that while a parking contravention technically occurred the Council has agreed to waive the penalty (the instance of Consent Orders are not recorded separately in these statistical tables and there is a footnote to that effect).

Of course a telephone appeal is not suitable in every case. In one case the ground of appeal was that the vehicle had been sold and the Council evidence showed a photograph of the vehicle with the driver getting into the driver's seat. On the telephone the Appellant pointed out to the Adjudicator that it could be seen that the person getting into the car was not the Appellant! He had not considered that the Adjudicator could not see the Appellant and therefore was not in a position whether to determine whether the driver in the photograph was the Appellant or not. The Appellant was able to give a fuller explanation of the circumstances in which the vehicle was sold and so the Adjudicator allowed the appeal, notwithstanding she could not see the Appellant. This case illustrates the benefits of a telephone appeal to enable an Appellant who could not necessarily attend a hearing having an opportunity to fill in more details that are relevant to his appeal.

Telephone appeals do not go swimmingly in every case. There have been cases where, despite notice having been given to the Appellant of when the telephone call will be made, they have been out and about with their mobile phones in circumstances that are not suitable for the conduct of a hearing. In one instance the reception was so bad from the mobile phone that the Appellant had to climb a ladder and hold the phone above his head in order to get a strong enough signal to talk to the Adjudicator. However in another case where the layout of the site in where the positioning of signs was an issue the Appellant explained that the place where the Penalty Charge Notice (PCN) was issued was in the street where he lived and walked out an described the positioning of the street sign in relation to the photograph provided by the Council and examined by the Council officer and the Adjudicator as the Appellant described the scene. This was very helpful to establish the precise place where a parking bay had been suspended and it was agreed by all concerned that it was a useful way to resolve the issues raised in the appeal.

There have been some difficulties with Appellants not being available at the agreed time and Adjudicators and the Traffic Penalty Tribunal (TPT) staff recognise the need to improve instructions to Appellants when they ask for telephone appeal. However it is undoubtedly true that the introduction of this new way of dealing with appeals has proved successful and Adjudicators look forward to more appeals being determined using a telephone conference call.

3) Compelling Reasons and Referring Back

When the Government issued its new consultation on the new TMA initiatives there was considerable alarm on the part of Councils that the proposal to give Adjudicators power to refer cases back to Local Authorities in cases where the Adjudicator had found there were compelling reasons. The Secretary of State's Guidance suggests that these cases are referred back to the Chief Executive's department to enable a fresh pair of eyes to look at the case and to ensure that an objective view can be taken. Councils believed that there would be a considerable number of these cases and questioned whether they would have the resources to deal with them.

When the new provisions came into force Adjudicators decided that where they considered there were compelling reasons they would first adjourn the case to enable the parking department to reconsider the case in the light of the adjudicator's findings. We are pleased to report that this has worked well and in most cases the parking department readily accept e adjudicator's recommendation. As discussed in our report on telephone appeals, council officers to participate in hearings are particularly helpful and sensitive to appellant's accounts of what happened, or personal circumstances.

Consequently, as it turns out there have been few incidences where the Adjudicator has been obliged formally to refer a case to the Council's Chief Executive. Where that has been necessary it is encouraging that in most cases the Council has accepted the Adjudicators recommendation and waived payment of the penalty charge. Regrettably in some cases the Chief Executive has failed to respond. This may be because the Council concerned is not geared up to the new procedures, or possibly that the parking office failed to ensure the case reached the right department.

Adjudicators hope that as the new measures bed down, council will themselves recognise the sort of case where adjudicators are likely to ask them to exercise discretion. Having said that, as we highlighted in our comments about telephone hearings, there will always be evidence that emerges at a hearing, or otherwise in the course of an appeal, that will shed light on case showing it a genuine case of compelling reasons rather than general mitigation.

We have described some of the cases that have been referred to Council Chief Executives.

PR05401H
The appellant suffered from various disabilities. The PCN was issued when her vehicle was parked in a disabled bay with the blue badge displayed upside down. The appellant asked for the penalty to be cancelled and produced her blue badge

to the council. However, the expiry date appeared to have been overwritten by hand and the council did not accept that the badge had been valid on the date in question. The appellant participated in a telephone hearing but the council did not. She gave evidence that the condition of her badge had deteriorated as a result of condensation in the vehicle. She and her carer therefore took that badge into the council's offices where an official overwrote the date by hand. The adjudicator found the appellant to be a reliable witness and accepted that her account of the overwriting was true. He pointed out that as the blue badge was issued by Lancashire Council, it would have been relatively easy for the council to check its validity from its own records. He said: *"Where a motorist puts forward mitigating circumstances it is open to a local authority at any time to cancel a penalty charge as a matter of discretion. Furthermore, when considering a case involving a disabled and vulnerable motorist, the enforcement authority should be prepared carefully to consider the representations made and make further enquiries if possible"* The adjudicator was not satisfied that the council had properly considered the circumstances put forward by the appellant and considered that there were compelling reasons why they should do so. He therefore adjourned this case for the council to consider the exercise of its discretion to cancel the penalty charge on the facts as he found them to be**. The Council reconsidered and decided to cancel the penalty charge.**

CX05116H

The appellant was a contractor working on a long term project. He should have been able to obtain a contractor's permit allowing him to park but instead relied on a series of pay and display tickets. The adjudicator acknowledged that the contravention (parking after expiry of paid for time) was proved. However, several aspects of the case were unsatisfactory: in particular, the appellant's evidence that he and colleagues had repeatedly tried to obtain permits but were told they could not have them. The adjudicator said: *"Although [the appellant's] submissions are not grounds for me to allow the appeal, they are, in my view, grounds upon which the council could exercise its discretion to cancel the Notice to Owner."* **The council followed the adjudicator's recommendation and cancelled the penalty**

PE05269L

The compelling reasons in this case did not relate to the circumstances of the contravention but to the appellant's state of health. The PCN was issued for parking in a loading place without loading. The appellant said that the contravention did not occur because half a hundred weight of dog food was being loaded onto the vehicle. He asked for a personal hearing but did not attend. Shortly afterwards the appellant contacted the tribunal and explained that he had been admitted to an isolation unit with pulmonary tuberculosis and was likely to remain there for up to six months. He asked for the hearing to be adjourned until he was well enough to attend. The adjudicator said: *"I have concerns as to whether it is in the public interest for this matter to be pursued further. It is clear*

from the evidence in this case that [the appellant] is disabled and now far from well. I accept what he says about his current illness and it appears that as a result he may not be able to attend a personal hearing for many months. I consider that [the appellant's] current difficult circumstances amount to compelling reasons why the council should cancel the Notice to Owner." **The council cancelled the penalty and also another issued in similar circumstances.** Sadly, in the meantime, the appellant died.

MW05897D
The PCN was issued for failure to display a valid p&d ticket. The adjudicator found as a fact that a ticket had been purchased but accepted that it was not displayed. The contravention was therefore established. The adjudicator made her finding of fact after the appellant produced numerous p&d tickets indicating her pattern of parking in the same car park 5 days a week every working week. She had never before failed to display a ticket; it was clearly a one-off mistake by a regular and otherwise reliable car park user. In these circumstances, the adjudicator adjourned her decision to give the council the opportunity to consider discretion. **The council accepted the recommendation and cancelled the penalty.**

TV05038GSD
The PCN was issued for parking on a single yellow line during restricted hours. The appellant said that he was ill in bed with flu and unable to move the car. There was an exchange of correspondence between the parties during which the council asked the appellant to provide evidence confirming his illness. However, the appellant never received this letter, which was lost in the Christmas post, and therefore provided none. In the absence of such evidence, the council declined to cancel the penalty. Months later when the matter came to appeal, the appellant saw a copy of the council's letter and duly provided a letter from his employer. The adjudicator felt it appropriate to ask the council to reconsider discretion now that the evidence requested so long ago had come to light. **The council accepted the recommendation and decided to cancel the penalty.**

LV05539J
The appellant had been a resident of Liverpool and the holder of a resident's parking permit for many years. His permit expired on 7 June. On 7, 10 and 11 June he attempted to renew his permit at the council's offices but was told that the printer was broken. On the last occasion he left a completed application and was told he would be telephoned when the printer was working. On 13 June he telephoned to enquire and was informed for the first time that he could renew his permit at a different location. He did so immediately. In the meantime, he received a PCN for parking without a permit. The council declined to cancel it. The appellant gave evidence at a hearing of his attempts to obtain a permit. The adjudicator believed him and made findings of fact accordingly. **He adjourned his decision and recommended that the council cancel the penalty in the light of the compelling reasons outlined. The council refused**. Ignoring the

adjudicator's findings of fact (which are conclusive and final) the council said it could find "no evidence" that the appellant had visited its offices on the dates in question and therefore disbelieved him. **The adjudicator exercised his power to refer the case to the Chief Executive of Liverpool City Council. The Chief Executive did not reply within the 35 days allowed by the Regulations. Under Regulation 7(9) of the Appeals Regulations, the council was therefore taken to have accepted the adjudicator's recommendation and it was recorded that the council had waived further enforcement.**

LV05503M
The appellant and his wife, a couple in their mid 80s and blue badge holders, arrived at an exhibition of railway art to find all the disabled bays full. The coach bays, however, were empty and a member of staff advised them that they would be empty all day as no parties were expected. The elderly couple parked in a coach bay. Despite the presence of a blue badge and a note explaining that they had difficulty walking far, a PCN was issued for parking in a place not designated for that class of vehicle. The council did not take part in the telephone hearing. The adjudicator did not allow the appeal but found that there were compelling reasons to cancel the penalty. He adjourned his decision with a recommendation that the penalty be cancelled. The council did not address the question of compelling reasons but said it had been unaware of the hearing and asked for it to be rescheduled. The adjudicator refused to subject the appellant to the ordeal of a further a hearing until satisfied that the council wished to address the compelling reasons rather than the facts of the contravention. He asked for further written submissions from the council. The council did not accept that there were compelling reasons and declined to cancel the penalty. **The adjudicator referred the matter to the Chief Executive, who did not reply. It was recorded that the council was taken to have accepted the adjudicator's recommendation to waive the penalty.**

NG05571D
The appellant was removing rubbish from the highway at the council's request when the PCN was issued for parking in a disabled bay. The appellant explained that he had been told he could stop there to load the rubbish rather than park too close to the corner. The adjudicator found that there were compelling reasons to cancel the penalty but, in a *'cursory letter'* stating that it had *"exercised discretion",* the council declined to do so. **The adjudicator referred the matter to the Chief Executive of Nottingham City Council who exercised discretion to cancel the penalty.**

LV05855J
The PCN was issued for failure to display a valid permit. The appellant, who had been a permit holder for many years, admitted that he had forgotten to renew but put forward various reasons why he believed that, in the circumstances, the penalty should be cancelled. The council submitted that because the contravention occurred, it could not take the appellant's arguments into account.

It did, however, offer to accept the reduced amount. The adjudicator said*, "In my view to exercise discretion in this way, save for the obvious example where a PCN may have been removed from the vehicle or payment was otherwise delayed, is an illogical decision in response to representations which put forward a reason why the penalty charge should not be enforced at all. The exercise of discretion does not mean that the Council can act as it sees fit but rather it is part of a legal process which must comply with the general principles of public law*". He continued, *"Whilst it is not unreasonable for the Council to have a general policy it is wrong for policy considerations to interfere with the proper exercise of discretion, a point which is made firmly in the DfT Guidance. It is therefore wrong for the Council to state that a penalty charge will never be cancelled in circumstances where the contravention has occurred and in the absence of any published guidelines, again recommended in the DfT Guidance, it is impossible to know how the Council does actually take the decision in any particular case. In my view on the facts of this case whilst [the appellant] clearly accepts his error there are compelling reasons why the penalty charge should be cancelled."* **The matter was referred to the Chief Executive and it was recorded that he did not respond and therefore was deemed to have waived the penalty.**

4) Ringing the changes – The Traffic Management Act 2004

This important piece of legislation came into force on 31 March 2008 repealing the provisions of the RTA 1991 and the associated regulations. In their place the TMA 2004 introduced a series of new statutory instruments affecting the regulation of parking and the procedure for challenging the issue of a PCN.

These new Regulations introduced a number of significant changes which the Adjudicators have had to consider during the period covered by this Annual Report.

The most significant new provisions are to be found in the Civil Enforcement of Parking Regulations (England) Representations and Appeals Regulations 2007, the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and the Civil Enforcement of Parking Contraventions (Guidelines on Level of Charges) (England) Order 2007.

Wales has its own statutory regulations which although essentially the same as those in England do include some significant variations. These are examined in our annual report for Wales.

Please find below an explanation of the abbreviations used:

TMA 2004	The Traffic Management Act 2004
RTA 1991	The Road Traffic Act 1991
The General Regulations	The Civil Enforcement of Parking Contraventions (England) General Regulations 2007
The Appeals Regulations	The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007
TSR&GD	The Traffic Signs Regulations and General Directions 2002
Operational Guidance	Operational Guidance to Local Authorities: Parking Policy and Enforcement, Department for Transport (March 2008)
PCN	Penalty Charge Notice
NTO	Notice to Owner
TRO	Traffic Regulation Order
CEO	Civil Enforcement Officer
NOR	Notice of Rejection of Representations

Parking Contraventions – What can a PCN be issued for?

Schedule 7(4) of the TMA 2004 sets out the list of parking contraventions outside London subject of civil enforcement and provides that there is a parking contravention if a vehicle is stationary in circumstances in which any of the offences listed in the Schedule is committed. It is to be noted that the legislation

reintroduces the concept of an “offence” which was specifically abolished by Schedule 3 of the RTA 1991. The “offences” referred to are principally those included in the Road Traffic Regulation Act 1984 relating to the regulation of parking, both on-street and in car parks provided by the Council. Paragraph 7(4)(2)(c) of the TMA 2004 introduces a power new in England and Wales to issue a PCN for a contravention of Regulation 18 or 20 of the Zebra Pelican and Puffin Crossing Regulations and General Directions 1997 regulating, amongst other things, allowing a vehicle to stop within the zigzag markings for any reason other than to allow a pedestrian to cross.

The parking contravention will occur when any of the relevant offences in Schedule 7(4) has been committed.

The importance of the Traffic Regulation Order (TRO)

Since most parking contraventions set out in Schedule 7(4) relate to an offence against the terms of a Traffic Regulation Order (TRO) it is important that the TRO itself creates a requirement or prohibition that can be contravened. In *CX05109B* a PCN had been issued to a vehicle for being parked in a restricted area of a car park. The reviewing Adjudicator held that the PCN should not have been issued for that contravention because there was no measure in the TRO creating restricted areas of the car park. The Order only required that a vehicle should be parked within bay markings and did not establish that any area of the car park was restricted. The appeal was allowed on the basis that the contravention recorded on the PCN did not occur. (See also **AS05048K**
In the Case Digest)

A similar conclusion was reached by the Adjudicator in *AL8* where the PCN was also issued because the vehicle was said to have been “parked in a restricted area in a car park”. In fact the vehicle had been parked marginally across two bays one of which was reserved for motorcycles. The relevant signing within the car park only required vehicles to “park only and wholly in a marked bay” which was the requirement of the applicable TRO. Consequently the Adjudicator concluded that the only contravention for which the PCN could have been issued was not being parked wholly within the bay markings or being parked in a bay not designated for that class of vehicle.

The decision is also an example of the importance of the correct contravention being recorded on the PCN because being parked outside the bay markings would attract the lower rate penalty charge whilst being parked in a restricted area of the car park or in a bay not designated for that class of vehicle would attract the higher rate penalty.
The Adjudicators suggest that in such circumstances the CEO should not issue the PCN for a higher rate contravention unless there is a good reason for doing so. To do otherwise might result in the appeal being allowed on the basis that the penalty charge exceeded the amount which was relevant in the circumstances.

New Measures Introduced in the 2007 Regulations

Whilst these Regulations largely restate the principles and procedure established by the RTA 1991 there are a number of important changes.

Service of Documents by post

Regulation 3 of the General Regulations provides that any Notice or Charge Certificate which is sent by post must be sent first class and will be deemed, unless the contrary is proved to have been received on the second working day after posting. Regulation 3(3) excludes Saturdays, Sundays, New Year's Day, Good Friday, Christmas Day and any other Bank Holiday in England and Wales from the definition of working day. The Adjudicators have found, particularly in the early stages that many Councils had not adapted their procedures to give effect to this Regulation especially in relation to the concept of the working day. It is important for automated systems to recognise the need to exclude the non-working days in the calculation of time periods.

Adjudicators have noted that the presumption of service is not always applied to the Council's rejection of informal representations which do not always take into account that deemed service period. This has arisen where the vehicle owner has paid online at the weekend, but the council system did not register the payment until the Monday.

Many Notices sent under the TMA provisions record the date of issue as being the date of posting. However, it has recently emerged in a number of cases that because many councils and their contractors apply overnight batch processing of documents, notices are not always posted on the date specified as the date of issue, and the date recorded in the PCN processing system as the date of issue. It appears that notices are frequently posted on the next working day, In one case (which cannot be the only example of this) it has been seen that the PCN processing system recorded that the NTO had been issued on a Friday, whereas it was printed overnight and therefore not posted until the following Monday. Of course batch processing is a well established practice in this day and age, but Adjudicators remind Councils of the importance of recording when the Notice was in fact posted in their systems to ensure that the service period is properly calculated.

Service of the PCN by post.

Regulation 10 of the General Regulations introduces for the first time the procedure for the service of a PCN by post (whilst Regulation 9 retains the procedure for service by fixing it to the vehicle or handing it to the person appearing to be in charge of it).

However a PCN may only be served by post where:

(a) on the basis of a record produced by an approved device the authority has reason to believe that the penalty charge is payable …
(b) a Civil Enforcement Officer attempted to serve a Penalty Charge Notice in accordance with Regulation 9 but was prevented from doing so by some person; or
(c) a CEO had begun to prepare a Penalty Charge Notice for service in accordance with Regulation 9 but the vehicle concerned was driven away from the place in which it was stationary before the CEO had finished preparing the penalty charge or had served it in accordance with Regulation 9.

The Adjudicators have had to consider a number of appeals where it has been necessary to decide whether the CEO had in fact been prevented from serving the PCN or whether the process of preparation of the PCN had begun.

Regulation 10(2) states that a CEO who observes conduct which appears to constitute a parking contravention shall not thereby be taken to have begun to prepare the PCN.

In *RW05184M* the appeal was on the basis that the vehicle had only stopped momentarily because one of the passengers in the vehicle had been feeling ill. The Council's case was that the CEO had started to issue the PCN but could not serve it because the vehicle drove away. In allowing the appeal the Adjudicator noted that the Council had not produced any evidence from the CEO in relation to the sequence of events and in particular the notes did not include any entry recording that the vehicle had been driven away. The Adjudicator held that it was for the Council to demonstrate that it was entitled to serve the PCN by post but on the basis of the evidence produced it had not done so. The appeal was allowed on the basis of a procedural impropriety by the Council.

Conversely in *TA05168E* the same Adjudicator found that there had been proper issue of a PCN by post on the basis of a clear note made by the CEO recording the events that led up to the vehicle being driven away before the PCN could be served. The Adjudicator declared himself satisfied that the actions of the CEO went beyond "mere observation of conduct appearing to constitute a parking contravention" and he concluded that the officer had begun to prepare the PCN for service before the vehicle was moved.

In *RW05202M* the appeal was allowed because there was no evidence as to what had happened before the vehicle was driven away.

These decisions demonstrate the obligation on the Council to provide sufficient evidence for the Adjudicator to be satisfied that the procedural requirements for the service of a PCN by post have been met.

It is to be noted that generally postal service must be effected before the expiration of the period of 28 days beginning with the date on which the contravention is said to have occurred although there can be an extension of the period for up to six months if within 14 days of the contravention the enforcement authority has requested details of the vehicle owner from the DVLA but these have not been received before the end of the 28 day period. It is however obviously very important for service of a postal PCN to be effected as soon as possible so as to give the vehicle owner notice of the alleged contravention. Adjudicators will be concerned to ensure that if the Council relies on the provisions extending service beyond 28 days that the relevant enquiry of the DVLA has been made promptly and in a form which gives all those details which are necessary for the enquiry to be answered

Paragraph 2 of the Schedule to the General Regulations sets out the requirements for the form of a PCN which is served by post. These include, paragraph 2(h), the reasons why it is served in this way. In *YS05044M* the Adjudicator allowed the appeal because the Regulation 10 PCN did not make it clear which of the three reasons for postal service was being relied upon because the information was in standard form setting out a composite reason. The Adjudicator pointed out that in the Regulations the reasons for postal service are framed in the alternative and the vehicle owner has the right to know which was said to apply in any particular case.

Regulation 4(4)(h) of the Appeals Regulations introduces the specific right of challenge following the issue of a postal PCN that the CEO was not in fact prevented from serving the Notice by fixing it to the vehicle or handing it to the person in charge of it. Recently, after the period covered by this report, Adjudicators are more frequently asked to decide cases on this ground.

Roadside cameras

It follows from the new provisions relating to postal service that Councils can in appropriate circumstances issue a PCN on the basis of information recorded on a camera, whether fixed or mobile, which is an approved device in accordance with the Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007. It is of course necessary for the Council to provide evidence both of the alleged contravention and that it was obtained from an approved device.

Further in *WL05219F,* although the appeal was allowed because the Adjudicator found that the alleged contravention had not occurred, he drew to the attention of

the Council the Operational Guidance which at paragraph 8.78 recommended that enforcement authorities should use cameras sparingly and when doing so should put up signs to inform drivers that camera detection was in operation. This case also highlighted that it is inappropriate to use camera enforcement where there is no loading ban. The camera cannot necessarily establish whether the vehicle was engaged in loading or unloading. The Adjudicator further pointed out that the recommendation from the Secretary of State was that cameras were only to be used where enforcement was otherwise difficult or sensitive or where CEO enforcement was not practical and that they should not be used where permits or exemptions (such as residents permits or blue badges) which would not be visible to the equipment may apply.

Adjudicators remind Councils that are using camera enforcement that paragraph 8.82 of the Operational Guidance states that enforcement authorities should ensure that a Code of Practice is adopted setting minimum standards to ensure public confidence in the scheme.

Where the PCN is served as a result of information from a camera the PCN must include the information that the recipient may request free of charge to view the record of the contravention at the council offices during normal office hours or to be provided with the still images from that record. (Regulation 3(5) of the Appeals Regulations). This issue has arisen with regards to bus lane appeals (see the Bus Lane Adjudicators' Report)

Procedural Impropriety

Whilst the grounds for challenging a PCN have not been substantially changed Regulation 4(4)(f) of the Appeals Regulations introduces the additional ground that there has been a procedural impropriety on the part of the enforcement authority.

Regulation 4(5) defines a procedural impropriety as meaning:

"*A failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act by the General Regulations or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum and includes in particular:*

(a) the taking of any step whether or not involving the service of a document otherwise than:

i. in accordance with the conditions subject to which or

ii. at the time or during the period when it is authorised or required by the … Regulations to be taken and

(b) in a case where an enforcement authority is seeking to recover an unpaid charge the purported service of a Charge Certificate under Regulation 21 of the General Regulations before the enforcement authority is authorised to serve it by those Regulations."

This is therefore a very wide provision which potentially covers all aspects of the process of issuing and enforcing a PCN. However in general the Adjudicators have used the ground sparingly and only in cases where there has been a substantial departure from the required procedure or a failure by the enforcement authority has led to substantial prejudice to the Appellant.

The definition of procedural impropriety does however specifically include reference to the incorrect issue of a Charge Certificate probably because of the importance of the document both in terms of the concern that it may cause to the recipient and the increase in the amount of the penalty charge payable.

In *AT05221G* the Adjudicator allowed the appeal because the Council had issued the Charge Certificate after the date when it would be deemed to have been notified that an appeal had been received. The Adjudicator pointed out that in the light of the Regulations the Council would be expected to have in place procedures for preventing the issue of the Charge Certificate in those circumstances although it would be open to the Council to provide evidence if it was appropriate to do that the Certificate was issued without knowledge that an appeal had been made. The Adjudicators take the view that it is not reasonable in circumstances where there is evidence that the Charge Certificate has been served incorrectly for the case to be adjourned for further comment by the Council because it is to be expected that when reviewing the case for the purposes of the appeal it would realise the need to provide evidence to explain why there had been no impropriety.

Cases where appeals have been allowed for procedural impropriety are contained in the Case Digest.

Examples of the Adjudicator's approach to this ground of appeal can be seen in:

RG06114L where the appeal was allowed on the grounds of procedural impropriety in circumstances where the Council had failed to respond to the informal representations made by the driver of the vehicle but rather decided to respond to the vehicle owner which meant that the opportunity to pay the penalty charge at the reduced rate was lost. The decision was made on the basis that the Council had failed in its duty under Regulation 3(2) of the Appeals Regulations to consider and respond to the representations made to it prior to the issue of the Notice to Owner.

In the consolidated decision *SX 05216M and SX05214F* the Adjudicator concluded that the issue of a second NTO to the secretary of the company which owned the vehicle the first Notice having been issued in the name of a director

did not amount to a procedural impropriety in circumstances where the Council had been given information by a vehicle leasing company that it was the director and not the company who had entered into the vehicle leasing agreement.

Further the Adjudicator found that the issue of an additional NTO in error was not a procedural impropriety in circumstances where it was immediately cancelled and there had been no attempt to enforce the penalty charge in reliance on it.

Time limits

The new Regulations introduce time limits to which the Councils must have regard during the procedure of enforcing a penalty charge.

Regulation 20 of the General Regulations states that a Notice to Owner may not be served after the expiry of the period of six months beginning with the date of the service of the PCN either to the vehicle or to the person in charge of it or from the date when a previous Notice to Owner has been cancelled. However the Adjudicators take the view that this time limit must be considered as the maximum permissible and it should remain the case that the NTO should be served as soon as possible so that there is no potentially prejudicial delay which might occur in circumstances where the owner had not previously been notified of the issue of the PCN.

Regulation 5 of the Appeals Regulations requires the Council to respond to a challenge made following the issue of the NTO and within a period of 56 days beginning with the date on which the representations were served on it to serve a notice of its decision. Regulation 5 also permits the enforcement authority to disregard any representations which are received after the end of the period of 28 days beginning with the date on which the relevant NTO was served.

Importantly Regulation 5(5) provides that if the enforcement authority fails to comply with the 56 day time limit it is deemed to have accepted the challenge so that it is required to cancel the NTO.

The Adjudicators welcome the introduction of these time limits which have in their experience so far led to a reduction in the number of complaints about delays in the enforcement process and it is noted that Councils have generally successfully adapted their procedures to take account of these new requirements.

Compelling reasons

A topic which is frequently raised in these annual reports is the concern of the Adjudicators that some Councils do not give proper weight to mitigating circumstances included in the representations, whether informal or following the

issue of the NTO, made by a vehicle owner. It remains the case that whilst many Councils do adopt a reasonable, and some might say common sense approach to the consideration of representations too many Councils simply revert to the issue of a standard letter stating that the penalty charge is to be enforced because the contravention occurred without reference to the variety of circumstances which the Adjudicators know are put forward by Appellants.

Time and again Appellants express the view that their representations have not been properly considered or that they are simply not being listened to in their dealings with the Council's staff. Doubtless there may well be pressure on those staff, particularly in view of the newly imposed time limits to deal with paperwork quickly and the perception may be that there is simply not enough time to consider each case individually.

However that is not something which the Adjudicators would endorse. There is a clear statutory obligation on the Council to consider representations made before and after the issue of the NTO.

The requirement to consider representations properly is reinforced in the Operational Guidance issued in March 2008 which in Chapter 11 recommends that representations are considered on their merits without slavish regard to policy considerations and by staff who are trained in the legal process. Further it is recommended that Councils should adopt and publish its policy with regard to the consideration of representations.

Adjudicators have been given cause to doubt whether some Councils either know about or are prepared to adopt the relevant Guidance given the repeated failure to explain fully the reasons for rejecting what the Appellant may consider to be powerful mitigation.

In *LV05684H* the Adjudicator directed the Council to provide full details as to how far it had adopted the Guidance but this was ignored in favour of a statement that the Adjudicator's recommendations that the penalty charge should be cancelled were not to be followed. Indeed the same Council has consistently expressed the view that the exercise of discretion is entirely a matter for its officers to act in a way which they see fit whether or not the Appellant or the Adjudicator would agree with the decision. That must be seen as a very narrow interpretation of the Guidance and it is suggested has the potential to undermine public confidence in the system of decriminalised parking enforcement.

If any Council has in the past doubted the obligation to consider mitigation Regulation 4(2)(b)(ii) of the Appeals Regulations makes it clear that whether or not any of the statutory grounds of challenge apply if there are compelling reasons why in the particular circumstances of the case the enforcement authority should cancel the penalty charge it should do so.

In the past the High Court has expressed confidence that Councils will consider properly representations and in part that is given as a reason why the power to exercise discretion should generally be exercised by the Council and not the Adjudicator.

Indeed in the debate, particularly in the House of Lords, leading to the implementation of the 2004 Act there was discussion about whether the Adjudicator should have the power in appropriate circumstances to exercise discretion and order cancellation of the penalty charge because of the particular circumstances of the case.

That proposal was rejected in favour of the new provision in Regulation 7(4) of the Appeals Regulations which states:

> "*If the Adjudicator does not allow the 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 the enforcement authority to cancel the Notice to Owner*."

The Regulation goes on to say that it is to be the duty of the enforcement authority to which the recommendation is made to consider:

> "*afresh the cancellation of the Notice to Owner taking full account of all observations made by the Adjudicator and within the period of 35 days beginning with the date on which the recommendation was given to notify the Appellant and the Adjudicator as to whether or not it accepts the Adjudicator's recommendation*."

The Operational Guidance suggests that the recommendation should not be considered by any member of staff who has previously considered representations made by the vehicle owner or indeed within the Parking Department. The best practice is for the matter to be referred to the Council's Chief Officer.

If a decision is not given within 35 days the Council is deemed to have accepted the Adjudicator's recommendation and is then required to cancel the Notice to Owner.

Whilst the Adjudicators recognise the need to use this power only in appropriate circumstances where the judgment can be made that the mitigation is indeed compelling in those cases which have been returned to the Council Adjudicators have again noted that some Councils do not appear to understand or be willing to take seriously the obligation imposed by the Regulation.

LV05684H involved the incorrect display of a pay and display ticket. The Adjudicator had heard evidence from the Appellant at a personal hearing and made a finding of fact that a pay and display ticket, which could be seen displayed face downwards on the dashboard had been purchased by the Appellant who for the first time had made a simple error. The recommendation based on these facts and other mitigating circumstances put forward by the Appellant was rejected by the Council's legal department, apparently on behalf of the Chief Officer, on the basis that it was necessary for there to be an effective enforcement regime the implication being that in no case where there had been an incorrect display of a pay and display ticket would the penalty charge be cancelled.

In two other cases *LV05752F* and *LV05855J* referred back to the same Council no response was made to the recommendation within the 35 day period and so the Adjudicator directed the cancellation of the Notices to Owner.

Whilst the Adjudicators acknowledge that many Councils have adopted the Operational Guidance and operate a system which would be regarded by all as fair and reasonable it remains a concern that there is an inconsistent approach to the consideration of representations which can and in the Adjudicators experience often does leave the Appellant with a sense of injustice.

Time and again Appellants express surprise that the Adjudicator does not have a general power to put right the apparent failings of the Council. However in *WG05182D* the Adjudicator allowed the appeal on the basis of procedural impropriety on the part of the Council because it had failed either to consider or to explain the reasons for rejecting the Appellant's mitigation. The Adjudicator noted that the language of the Council's NOR looked "rather like they are standard or formulaic words applied in a pay and display ticket case. It is required that each case is considered on its individual merits and a standard approach without reference to the particular circumstances is not sufficient."

The Adjudicator went on to point out that the approach adopted by the Council was that discretion would not be exercised because the contravention had occurred. The Adjudicator stated "discretion is irrelevant if there is no contravention. It is only relevant when a contravention has occurred. The approach should be that having identified that a contravention occurred the Council should then have considered the Appellant's explanation for it and decided with an explanation to him why if that were the case the penalty charge should nevertheless be paid."

Variable Penalty Charges

A significant feature of the new legislation is the introduction of higher and lower rate penalty charges. This provision was introduced with the explanation from the Department for Transport that some contraventions of parking regulations could properly be recognised as less serious than others particularly if the vehicle had

been parked in a car park or was not causing any real obstruction to other vehicles.

The range of the new penalty charges are set out in the 2007 Guidelines on Level of Charges Regulations which by reference to a list of contravention codes in Tables 2 and 3 establishes those contraventions where the higher rate penalty charge is appropriate. Table 2 sets out the on street contraventions and Table 3 the off street contraventions which are to attract the higher rate charge. Table 1 of the Regulations sets out the appropriate bands for the charges which in the case of the higher level is £50 or £70 and the lower level £40 or £60. Thus it can be seen, that since 31 March 2008 a significant number of PCNs have been issued for a lesser penalty than the blanket £60 that applied outside London under the RTA provisions.

Levels of Charges Regulations only apply to English Authorities outside London (see The Annual Report for Wales to compare and contrast the Welsh Levels of Charges Regulations). They do not apply to London because the London Authorities introduced variable charges earlier on, based on the contravention codes used in the PCN processing systems (and shown on each PCN). However, the Outside London charges got off to a difficult start because the version of the contravention codes prescribed in the Levels of Charges Order was not the most recent one being used in London. This has caused problems for council contractors who automatically updated the codes in the CEOs computers outside London.

These provisions have come to the attention of Adjudicators in circumstances where, particularly in the early days, Councils included the wrong penalty charge on the PCN and where it is obvious that the incorrect contravention has been chosen by the CEO in circumstances where the lower rate charge would be payable in respect of the more appropriate contravention. (see *AL8* above)

The Adjudicators are concerned that an unnecessary ambiguity has been created by describing the contraventions to which the higher rate charge applies in terms of the contravention codes created for the London Authorities,.

One example of this is the reference in Table 2 to Contravention Code “12. Parked in a residents or shared use parking place without clearly displaying either a permit or voucher or pay and display ticket issued for that place”. The concept of a shared use parking place was clearly devised to cover contraventions in bays where different conditions of use apply. In the Adjudicators view this has the potential to undermine the general principles of variable charging, as well as failing to make clear to the recipient of the PCN what contravention has occurred with respect to the vehicle. Although the London Authorities may have ceased to issue PCNs for a Code 15 contravention – ‘being parked in a residents’ bay without displaying a valid residents’ permit’ - that contravention code is still common and necessary in areas outside London.

However, because London did not include it in their list of 'higher' rate penalties, so it was omitted from the list on the Level of Charges Guidelines. This means that if the bay is shared use (typically with limited free parking, or pay and display) then a PCN will be issued for Code 12 at the higher penalty rate. However, if the bay is not shared use then the code should properly be a 15, at the lower rate. This anomaly is further aggravated by the fact that Code 16 'parked in a permit bay without displaying a valid permit' is sometimes used and it is on the list of 'higher' charges.

In *RG06284L* the Adjudicator had to consider the definition of a shared use bay. The Council maintained that because the relevant Traffic Order designated the bay as being of shared use it was to be so described at all times. However the shared use restriction ended at 6pm after which time it became a bay only for the use of those vehicles displaying a resident's permit. The Adjudicator found that after 6pm the bay was not properly described as being of shared use and although the Council requested a review of the decision, the finding was upheld.

The Adjudicators suggest that it is necessary for Councils to carefully consider the purpose of the Variable Charging Regulations and to ensure that the CEOs are aware of the need to issue the PCN for the correct and most appropriate contravention.

The concept of a shared use bay is generally to impose a restriction, whether that is limited free parking or the requirement to purchase and display a pay and display ticket but to exempt those vehicles which display a resident's permit from the restriction.

While a vehicle which is parked in a shared use bay without displaying a resident's permit or pay and display ticket might properly be seen as contravening either restriction in circumstances where the time on the pay and display ticket has expired during the hours of the shared use restriction it appears that the more appropriate contravention would be that the vehicle has been parked after the expiry of paid for time which attracts the lower rate of penalty charge.

Further in the *Reading* case the Adjudicator pointed out that because the PCN had been issued at a time when only the residents' restriction applied whilst the use of Contravention Code "12" was possible the wording of the contravention might well be difficult for the recipient of the Notice to interpret with the result that it did not meet the requirement of paragraphs 1 or 2 of the Schedule to the General Regulations that it should include the grounds on which the CEO believed that a penalty charge was payable.

Further the Adjudicators are aware that some Councils continued to issue the PCN under Contravention Code "15: parked in a residents space without clearly

displaying a valid permit" which because it is not included in Table 2 is subject to the lower rate charge.

The concept of the shared use bay also raises the question of exemption for those vehicles displaying the blue disabled parking badge.

The display of the badge would not generally exempt the vehicle from the residents' restriction but by reason of paragraphs 7 and 9 of the Local Authority's Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000 the display of a valid disabled parking badge would exempt it from either a limited waiting or pay and display restriction.

Therefore during the hours of the shared use restriction the Adjudicators take the view that these exemptions continue to apply notwithstanding that vehicles displaying a residents permit are in effect exempted from the restriction on time or the need to purchase a pay and display ticket.

In *HS05199B* the Adjudicator allowed the appeal because the contravention recorded on the PCN was that the vehicle had been parked in a disabled parking bay "without displaying a valid disabled persons parking badge in the prescribed manner". In fact the contravention was said to have occurred because the blue badge had been displayed the wrong way up so that the details of the expiry date and serial number could not be seen from outside the vehicle.

The wording of the contravention follows the Contravention Codes introduced in the London area but the contravention included in the Levels of Charges Order is "40 – parked in a designated disabled persons parking place without clearly displaying a valid disabled persons parking badge" with a similar wording for the off street contravention "87".

The Adjudicator made the point that there is a difference between not displaying the badge at all and displaying an otherwise valid badge incorrectly. The contravention recorded on the PCN was therefore important because as it did not follow the wording of the contravention listed in the Charges Order only the lower rate charge was payable.

There was every reason to assume that those drafting the legislation recognised the potential difference in the seriousness of the two contraventions. The appeal was therefore allowed on the basis that the amount of the penalty charge exceeded the amount applicable in the circumstances of the case.

The result of the new Levels of Charging Guidelines is that far from making it clear to motorists that some contraventions are regarded as more serious than others, it now sends out messages that the amount of the penalty on the PCN is effectively a lottery depending on the policy of the council. It has also given rise to comments that councils may have selected, for example, to issue a Code 16 in

a residents bay because it attracts a higher penalty charge than the same contravention expressed as a Code15.

Many council officers outside London have expressed frustration at the list of variable charges that inappropriately replicated conditions in London that do not necessarily apply in areas outside London.

Adjudicators urge Ministers to reconsider the Level of Charges Guidelines at the earliest opportunity, but only after proper consultation with all stakeholders affected.

In the mean time Adjudicators hope that the Councils will give CEOs adequate training and instruction to ensure that the PCN is issued for the correct contravention which attracts the most appropriate level of penalty charge.

5) Digest Of Cases

Regulation and exemption

Within certain parameters prescribed by law (eg adequate provision for the disabled) each council has the right and duty to assess local needs and decide what regulations are appropriate. The Department for Transport publishes Operational Guidance from time to time to assist councils but this is advisory only.

TA05141M
A security van (a Cash and Valuables In Transit vehicle or CVIT) parked in a taxi rank to make a delivery and received a PCN. The appellant argued that it was necessary to park close to the delivery address for security reasons, citing evidence of risk from robbers. The Department for Transport's Operational Guidance urges councils to consider facilities for CVITs; however, Taunton Deane had decided that the local risk of crime was relatively low and none were needed.
Held: There is no general exemption for CVITs, which should observe the parking regulations like everybody else. There may be circumstances in which a specific risk makes it unsafe for the driver to park lawfully, in which case the council should consider exercising discretion in the light of the particular facts. However, the appellant's evidence as to risk related to generic circumstances sometimes affecting CVITs and not to any particular risk in this case. Indeed, the council argued that the CVIT driver could and should have found a more appropriate place to park.
Appeal dismissed

TROs: Has a provision of the TRO been contravened?

A parking contravention may occur if a vehicle parks either where parking is restricted or in breach of the terms on which parking is permitted. The applicable terms and restrictions are contained in Traffic Regulation Orders (TRO). A council wishing to enforce a penalty charge issued needs to show first that a provision in a TRO has been breached. In the following examples, the question was whether the motorist's actions amounted to a breach of the relevant TRO.

AS05048K
The appellant parked a vehicle towing a trailer in a car park. Together, the vehicle and trailer were too big for a single space. The vehicle therefore occupied one space and the trailer another immediately behind. The vehicle displayed a p&d ticket but the trailer did not. A PCN was issued for parking beyond the bay markings. The TRO required vehicles to be parked "wholly

within a parking bay" and defined "vehicle" by reference to the meaning assigned to "motor vehicle" in section 136(1) of the Traffic Regulation Act 1984. That section defines both "motor vehicle" ("a mechanically propelled vehicle intended or adapted for use on roads") and "trailer" ("a vehicle drawn by a motor vehicle").

Held: It followed that the trailer was not part of the motor vehicle but separate from it. The vehicle itself was in a marked bay; therefore the relevant provision of the TRO had not been contravened.
Appeal allowed

BM06545D
To be entitled to park, a motorist might either buy a p&d ticket from the machine and display it in the vehicle or make payment by mobile telephone in accordance with the relevant instructions, in which case a ticket was not required. The appellant paid by telephone but made a keypad error when entering his vehicle's registration number. Thus, the enforcement officer had no record of his payment and issued a PCN for parking without a p&d ticket.
Held: No provision of the TRO had been contravened. In the absence of evidence of the precise instructions given, the council had not established that the appellant failed to make the appropriate payment.
Appeal allowed

TW05107
The TRO provided that a vehicle was not permitted to wait again in *"that parking place"* within four hours of leaving it. This restriction applied to three separate lengths of the same road. The appellant acknowledged that he parked, left and returned to the road some 50 minutes later but said he parked in a different place; therefore no contravention had occurred. The council argued that the three lengths of road should be treated interchangeably, effectively as one; therefore return to any of them within four hours amounted to a contravention.
Held: The adjudicator considered the definition of "parking place" in the TRO and concluded that the three lengths of road were separate parking places. Thus, the appellant had not contravened the TRO. The position would have been different if he had returned to a different spot within the same parking place.
Appeal allowed

Many parking contraventions involve mistakes of one sort or another. Each case is decided on its particular facts but it is not generally the case that a PCN should be cancelled simply because a genuine mistake was made. However, a very minor (*de minimis*) deviation from the precise requirements may be held not to constitute a contravention of the TRO, as the following example shows.

BH05920B
The PCN was issued for parking in a resident's permit space without displaying a valid permit. The appellant was a visitor. She obtained and displayed a visitor's scratch-card voucher. This required her to scratch off the day of the week, date, month and year. She made a mistake with the date, scratching off 21 instead of 22; all the other details were correct. The council claimed that this error invalidated the voucher.
Held: This was the wrong approach. No contravention had occurred. The mistake was *de minimis* and did not invalidate the voucher. Given the combination of correct information given, the voucher could not have been used on any other day. While the adjudicator did not necessarily criticise the enforcement officer for issuing the PCN, the council should have appreciated that a minor and genuine error had occurred and cancelled it.
Appeal allowed

In contrast:

PB05081E
The PCN was issued for parking without clearly displaying a valid permit. The appellant held a permit that was valid for the car park in question. However, he had lent his car to his son, who held a valid permit for a different car park. The son returned the car but by mistake left his own permit in the car, obscuring the appellant's permit. The council had cancelled a previous PCN issued in similar circumstances and declined to do so again.
Held: The council was entitled to refuse to cancel the PCN.
Appeal allowed but for different reasons.

TROs: Layered regulations

Problems arise from time to time with conflicting or competing restrictions within the TRO. There is no objection to these in principle, as the adjudicator recognised with some force in the following case.

SX05148C
The adjudicator said *"The tribunal … recognises that parking places, be they loading bays, disabled bays, residents bays, time-limited free bays, pay and display bays, or other bays, are a scarce resource that have to be shared fairly and equitably amongst all motorists, and that particular purposes must also be recognised if the various competing needs of motorists, businesses and residents are to be reconciled. Similarly with hybrid bays, which are designed to make maximum use of parking places, so that different pressing needs, at different times, are recognised and accommodated, and bays do not stand empty because taxis or residents or wagons don't need them 24 hours a day…"*
Appeal allowed

WT05111E
This case illustrates how restrictions of an entirely different nature can co-exist on the same stretch of road, in this case outside a school. The road in question was marked with double yellow lines indicating no waiting at any time but subject, naturally, to the usual exemptions for disabled parking, dropping off passengers and so on. The road was also marked with zigzag no stopping markings, which applied at certain times during the school term. The appellant parked at a time when the no stopping restriction was not in operation.
Held (on review): Both types of restriction could exist; indeed, this is clearly envisaged by the TSR&GD (Direction 22(3)). When the zigzag no stopping restriction is in force, vehicles may not stop to drop off school pupils or for any other purpose. At other times the normal double yellow line restriction applies. There was no applicable exemption in the appellant's case and the PCN was correctly issued under code 01.
Appeal dismissed

However, the council must be careful with its drafting as confusing or ambiguous provisions in a TRO may be unenforceable.

BH05833K
One provision in the TRO subjected the entire length of Buckingham Street to a no waiting at any time restriction (double yellow lines). Another provision sought to superimpose a residents-only permit scheme operating between 9am and 8pm. Parts of the road were marked with parking bays and the remainder with double yellow lines. The PCN was issued under code 01 to a permit holder who parked half in a bay and half on the double yellow line.
Held: The restriction could not be enforced. The TRO as drafted did not achieve the council's intentions. The two provisions were mutually inconsistent, confusing and differed from the street signage. Indeed the effect of resolving the conflict would be to subject the parking bays to the double yellow line restriction outside the hours 9am and 8pm. This, clearly, could not be right; the bays were intended for permit holders only between 9am and 8pm and for everybody at other times.
Appeal allowed.

BH06312B
Exactly the same point arose and the adjudicator followed the decision in **BH05833K**. The council sought to distinguish the two cases on the facts and the provisions of the TRO were again considered in detail by the reviewing adjudicator.
Held: The TRO was defective and ambiguous. The adjudicator made it clear that the objection was not to the provision of a hierarchy of layered provisions in principle, merely to the way the council had gone about it in this particular TRO.

He said: *"As is referred to in the definition of a CPZ the Council are entitled to provide parking places such as these in a road which has an underlying NWAAT restriction. However it is the manner in which the Council have sought to achieve this by the TRO that is the issue in this and similar cases."*
Appeal allowed

HS05161K
The TRO that the council cited and relied upon did not exist. It also seemed that the road where the appellant claimed to have parked was missing from the plan. Numerous changes to the restrictions and TROs in the area had led to a situation of such confusion and uncertainty that the adjudicator could only find in the appellant's favour even though the manner in which she parked was highly undesirable.
Appeal allowed

TROs: Roads and plans

Many councils now draft TROs that impose restrictions and permit parking on terms indicated by plans. Again, this is unobjectionable in principle but care must be taken. In particular, as the following case demonstrates, the PCN must be issued in a place actually covered by the TRO.

RW05026L
Regulations and restrictions were imposed in accordance with a plan attached to the TRO. The PCN was issued in what the council said was a restricted street and the appellant said was an underground loading area. The adjudicator found as a fact that the area was indeed an underground cul-de-sac.
Held: The fact that that map did not make it clear that the area was underground in itself cast doubt on the validity of the restriction. Having taken evidence from both parties about the nature of the location, the adjudicator concluded that it was not a highway or road covered by the TRO. She said*: "…from the agreed description of both [parties] it seems to me that it cannot be a highway or a road. To be a highway, it is established that the public have to be able to pass to and fro, and given that this is an underground cul-de-sac I do not see that it could be described as a highway."*
Appeal allowed.

Variable Penalty Charges

The difficulty illustrated, which emerged through no fault of the council concerned, arose from the introduction of the new higher and lower rate bands for penalty charges. The case demonstrates a no doubt unintended consequence of the TMA Regulations and the standard PCN codes.

HS05060J
The most recent version of the standard PCN codes (6.5) describes off street contravention code 87 as follows: *"Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner."* The council's PCN followed this wording exactly. It claimed the higher rate of £70. However, the higher rate may only be claimed if the contravention is one of those set out in Table 2 or Table 3 in the Schedule to The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 ("the Order"). The Order describes contravention 87 slightly differently: *"Parked in a disabled person's parking space without clearly displaying a valid disabled person's badge."* The wording used in the Order was, no doubt, taken from an earlier version of the standard codes. It seems unlikely that this consequence was either intended or foreseen by the draftsman of the Order.
Held: If the council wishes to claim the higher rate, the PCN must contain the wording set out in the Order. A PCN using the wording contained in version 6.5 may be issued only at the lower rate.
Appeal allowed on the ground that the penalty exceeded the relevant amount

Removed vehicles

NG05766C
A PCN was issued and the vehicle subsequently removed. The adjudicator brought to the council's attention the following extract from the Operational Guidance which, he held, had not been complied with: *"8.91 The decision on whether to immobilise or remove a vehicle requires an exercise of judgment and must only be taken following specific authorisation by an appropriately trained CEO. The immobilisation/removal operatives should not take the decision. Vehicles should not be immobilised or removed by contractors unless a suitably trained CEO is present to confirm that the contravention falls within the guidelines [see 8.89]."* The council applied for a review. It relied on its vehicle removal form, which established that two CEOs had undertaken the removal.
Held: The application for review was misconceived; the council appeared to have missed the point of paragraph 8.91. There needs to be a properly trained CEO on-board the removal truck who makes an independent judgment as to whether the circumstances surrounding the parked vehicle fall within the Council's policy and published priorities for removing vehicles. That CEO is expected to make a separate note to the CEO who issued the PCN, setting out the circumstances of the parking and why, in the opinion of the on-board CEO, the removal of the vehicle is warranted.
Appeal allowed. Application for review denied.

PCN issued by post

Regulation 10 of the General Regulations contains a new power to issue a PCN by post if:

(i) the penalty charge notice is being served by post on the basis of a record produced by an approved device;

(ii) it is being so served, because a civil enforcement officer attempted to serve a penalty charge notice by affixing it to the vehicle or giving it to the person in charge of the vehicle but was prevented from doing so by some person; or

(iii) it is being so served because a civil enforcement officer had begun to prepare a penalty charge notice for service in accordance with regulation 9, but the vehicle was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing the penalty charge notice or had served it in accordance with regulation 9.

BR05034F
Barrow Borough Council
The PCN was served by post citing sub-paragraph (iii), namely that the CEO had begun to prepare the PCN but the vehicle was driven away before it could be served. The CEO gave evidence to the effect that he did not issue the PCN because he felt threatened by the demeanour of the driver.
Held: In the circumstances, the CEO had been precipitate in seeking to issue a PCN. In any event, sub-paragraph (iii) did not apply. If he had attempted to serve the PCN in the normal way and had been prevented, sub-paragraph (ii) would have been applicable.
Appeal allowed

Proof and evidence

The general rule is that the council must prove the facts alleged to amount to a contravention and also that the PCN was served. Signage is presumed to be in order unless the contrary is proved. Thus, if a motorist claims that the signage was not in accordance with the TSR&GD, he must produce evidence. The appellant in KH05229G (Kingston upon Hull City Council) (above) had measured the bay. If the motorist relies on an exemption to a general restriction, he must prove that it applies to him. The standard of proof is always 'on the balance of probabilities'.

MW05644J
Medway Council
The PCN was served by post on the basis of CCTV evidence.

Held: The PCN stated that the alleged contravention took place at 10:08. However, the CCTV operator's statement made no reference to the time and the video stills relied on were taken between 10:10:39 and 10:12:53. Thus, the evidence failed to establish that the contravention took place at the time stated on the PCN.

Appeal allowed

6) Application for Review

Paragraph 12 of the Schedule to The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 largely replicates the procedure for review of an Adjudicator's decision previously provided in The Road Traffic (Parking Adjudicators) (England and Wales) Regulations 1999, applicable to appeals concerning Penalty Charge Notices issued under the Road Traffic Act 1991.

It can be seen from paragraph 12 that a review application is a two stage process. Firstly, the Adjudicator has to determine whether the application falls within the narrow grounds for review set out in that paragraph. If it does not then the application will be refused. If, however, one or more of those grounds is made out then a review of the Adjudicator's decision will be carried out. In such cases, the review will be determined on the basis of representations from both parties in relation to that application. On review, the Adjudicator's decision may be upheld, revoked or varied.

During 2008/9 the Traffic Penalty Tribunal received post-decision correspondence in respect of 369 cases (248 from appellants and 121 from councils), of these 64 were accepted as an application for review from appellants and 48 from councils. In 27 of 64 cases (appellants) the original adjudicator decision was upheld on Review. In 19 of 48 cases (councils) the original adjudicator decision was upheld on Review.

7) Service Report

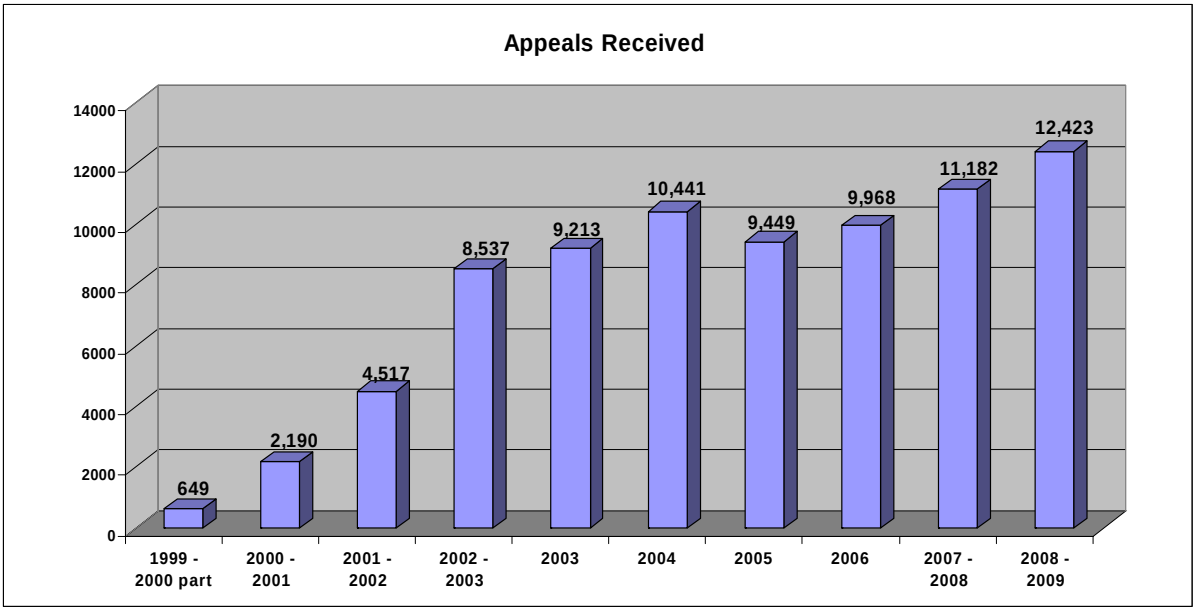
This annual report provides an opportunity to reflect on the first twelve months of the Traffic Penalty Tribunal which came into being on 31st March 2009 to coincide with the implementation of the Traffic Management Act 2004. A new identity, new legislation and new procedures have played their part, however, the aim of

"providing a tribunal service which is user-focused, efficient, timely, helpful and readily accessible"

remains central to the ethos of the tribunal.

The number of appeals during the year April to March 2009 reached 12,423 representing a 11.1% rise from the previous twelve months. During the year, an additional 46 councils joined the scheme bringing the total number of enforcing councils to 238. Figure 1 also shows trends in appeals over the ten years of parking adjudication in England (outside London) and Wales.

Ten Years On



The Traffic Penalty Tribunal is the only devolved tribunal which is providing adjudication in England and Wales. The tribunal includes Welsh speaking Adjudicators and Hearing Centre Supervisors.

Appellants are able to state a preference for their case to be decided by a postal hearing (on the papers) or with a personal hearing at one of the Tribunal's 78 hearing venues. During 2008/09, 315 hearing lists were scheduled across England and Wales . A major development for the tribunal was the roll of out of telephone hearings following a successful pilot.

The telephone hearing provides increased flexibility for appellants, councils and the tribunal. Parties to the appeal are joined in a telephone conference call and have the opportunity to speak directly to the Adjudicator without leaving their home or place of work. During the this first year of roll-out, 7% of hearings were by telephone, in the final quarter (January to March 2009) this rose to 11%.

Feedback on telephone hearings has been extremely positive with consistently high levels of satisfaction for appellants and councils in terms of: convenience, timeliness and the opportunity to put their point across to the Adjudicator. Between 98 and 100% of respondents to the evaluation questionaire, stated that they would take part in another telephone hearing.

Appealing to the Traffic Penalty Tribunal is a judicial process and, as such, it is not appropriate to set out rigid timescales for deciding appeals. There are a number of factors that will contribute to decision timescales:

Requests from parties to the appeal:

- Additional time to submit evidence
- Requests for adjournment of hearings
- Inconvenience of hearing time/venue
- Availability of witnesses

Adjudicators may require:

- Adjournments for additional evidence or submissions
- A personal hearing supplemented by a later telephone hearing to consider additional evidence.
- Consolidation of cases which relate to a common issue.
- Holding cases pending a particular Decision of the Traffic Penalty Tribunal or High Court

However, it is recognised that, where possible, appellants and councils welcome timely decisions and there are general guidelines for hearings:

- **60% of cases** to be offered a personal hearing date within **8 weeks** of receipt of the NoA

- **90% of cases** to be offered a personal hearing within **12 weeks** of receipt of the NoA

- **80%** of postal decisions to be made within **7 weeks** of receipt of the NoA

In these early days of telephone hearings, the tribunal is monitoring this aspect of its work before finalising a specific guideline.

During 2008/09, reporting has gone a stage further to consider case closure whilst using the above targets as reference points. Over this year, the average number of weeks between registering an appeal and the decision being issued is set out in Table 1. The tribunal has met its guideline timescale for postal appeals and the majority of cases closed during the period were closed within 12 weeks. The tribunal regularly reviews these statistics which are used to identify whether there are judicial, administrative or resource factors which need to be taken into account.

	April 08 to March 09 12 months		
Type of Hearing	**Postal**	**Personal**	**Telephone**
Average no of weeks between registration and decision issued	**6.01 weeks**	**11.04 weeks**	**10.53 weeks**
Cases with less than 7 weeks between registration and decision (postal target)	**6,614 (80%)**	**n/a**	**n/a**
Cases with less than 8 weeks between registration and decision (personal/ telephone target)	**n/a**	**857 (38%)**	**352 (39%)**
Cases with less than 12 weeks between registration and decision (personal/telephone target)	**7,851 (95%)**	**1,587 (70%)**	**702 (78%)**

The tribunal has a number of administrative targets: 90% of telephone calls to be answered within 15 seconds. In 2008/09, the tribunal achieved this in 97% of calls. In addition, the tribunal aims to acknowledge 95% of Notices of Appeal within 2 working days. This target has been achieved.

Accessibility to appeal is a central plank in the tribunal's philosophy. The tribunal is pleased to see the increasing number of councils offering the facility for appellants to appeal on line to the tribunal. Where councils offer this facility, it is known that on average approximately one quarter of appellants opt for this means of submitting an appeal. The tribunal continues to urge councils to enable this to be a universal offer to all potential appellants rather than being dependent on which council issued the penalty charge notice.

Equally, the tribunal is working to reduce the amount of paperwork exchanged with councils. The tribunal has developed a method of electronic submission of evidence for councils and is actively encouraging this to increase the

effectiveness of the tribunal and divert staff resources from routine administration to improving the tribunal experience for all parties.

In common with other organisations, the tribunal's web site is the focus for its information to parties to the appeal and it will increasingly become the platform for interactions between the tribunal and the parties to the appeal. As a starting point, appellants wishing to use the Appeal on Line Facility do so via the tribunal's web site. The foundations for this future working were made in 2008 and it is anticipated that signficant steps will be reported on in this respect in next year's report.

As reported in last year's report, the successful council induction programme has been extended to councils/officers who were not able to attend previously. This programme has proved significant in increasing awareness and understanding of the judicial nature of the tribunal and what is required from local authorities in their administration of appeals to the tribunal.

Feedback is essential for the tribunal to improve its procedures. The user experience was central to the appointment to a new Appeals Manager post which focuses on quality and peformance matters in the administration of the tribunal and we are pleased to welcome Lindsey Westwood to the tribunal team. Lindsey's role involves assessing the tribunal's administration on a day to day basis, analysing trends and reviewing formal and informal feedback. For instance, comments from appellants and councils have been central to shaping the administration of telephone hearings. The tribunal is also grateful to its Appellant and Council User Groups for providing constructive feedback with which to improve the tribunal experience.

In conclusion, the Traffic Penalty Tribunal recognises that in appealing to the tribunal motorists have already navigated through the various stages of the challenge procedure with the council that issued the penalty charge notice. Once, a notice of appeal is registered at the tribunal, the aim is to conduct the administration of the case in a way that, as far as possible, is swift and meets the needs of the parties whilst meeting the judicial requirements which the tribunal must uphold .

Adjudicators' Report for Wales

Chief Adjudicator's Foreword

I am pleased to present to the Wales sub-Committee this joint report of the Traffic Penalty Tribunal Adjudicators for the year 2008-2009. The report will, in turn, be presented by the Joint Committee to the First Minister for Wales.

This year we are preparing a separate Annual Report for Wales. Because traffic has been devolved to the Welsh Assembly the Traffic Management Act 2004 applies separately to the two National Authorities, Wales and England. As a result the Welsh Assembly issued its own set of regulations applying the principles of the Traffic Management Act 2004. These closely match the England regulations. Having said that, the Level of Charges Regulations for Wales is entirely different in its format and Adjudicators are bound to say, that they prefer to the approach taken by the Welsh Assembly, which has created far fewer problems than that of their English cousin.

An analysis of the Welsh Regulations follows in this report. The regulations for Wales, as well as those for England, provide that the Joint Committee arrangements between England and Wales can be continued. When the PATROL Joint Committee was created from the NPAS Joint Committee the Welsh Authorities helpfully indicated that they wished to continue the adjudication arrangements that applied to England and Wales under the Road Traffic Act 1991 legislation. However this has created the situation whereby the adjudication arrangements for Wales are in fact devolved and therefore the Traffic Penalty Tribunal (Wales) is a devolved tribunal. Nevertheless, everyone has recognised that it makes sense to administer and arrange the tribunal affairs in conjunction with England since it enables motorists to continue with the choice that the Traffic Penalty Tribunal provides to have a hearing in a place convenient to their home or work rather than travel back to the place where the Penalty Charge Notice was issued.

It is also recognised that it is more cost effective to administer parking appeals from the central office in Manchester while providing a full choice for Appellants in Wales to have the hearing in the areas where civil enforcement is operated.

It therefore gives me great pleasure to remain Chief Adjudicator for Wales as well as for England, especially since it appears that the very positive benefits of devolution are beginning to take effect, and the two currents in the steam of the Traffic Penalty Tribunal serve to refresh and enliven the jurisdiction.

Welsh Language

We consider it important that we are able to offer hearings in the Welsh language, with two Adjudicators from Wales who grew up speaking the language. We also have two Hearing Centre Supervisors who are able to speak the Welsh language when meeting and greeting Appellants at the hearings. The Notice of Appeal is produced in the Welsh language and, even though the processing staff are in Manchester, if an Appellant writes his or her appeal in Welsh it is easily translated within good time to enable the appropriate steps to be taken to plan the appeal.

Telephone Appeals

Our new initiative of offering telephone conference hearings has been well received by Welsh appellants and council officers alike. These provide an opportunity to have a hearing whereby the appellant can fully explain his or her case to the adjudicator and the council can participate fully ensuring their case is well presented. These arrangements are particularly helpful for those who would find in inconvenient to travel to a hearing. Last year 6% of Welsh appeals were dealt with on the telephone, but that proportion has significantly increases at the time of writing this report.

Working together

Adjudicators continue to be impressed by the cooperation that the Welsh Authorities exhibit in terms of working together. This is certainly an area where benefits can be achieved and are noticeable in the high standards in presenting evidence to appeals and the approach taken to exercise discretion. .

Administrative Justice and Tribunals Council (the AJTC).

The Traffic Penalty Tribunal Adjudicators are under the supervision of the Administrative Justice and Tribunals Council (the AJTC). The AJTC has recognised that post-devolution there are separate considerations that apply to administrative justice in Wales and to that effect they have set up a Welsh Committee of the AJTC. That committee published its own annual report on 16 June 2009.

Professor Sir Adrian Webb, the Chair of the Welsh Committee of the AJTC, kindly invited Louise Hutchinson and myself to a meeting to consider the impact of devolution on the Traffic Penalty Tribunal and Parking Appeals in Wales. It was helpful to have the opportunity to discuss whether parking appeals served Welsh needs satisfactorily in the joint Wales and England jurisdiction of the Traffic Penalty Tribunal. At this stage it appears that the arrangements made for dealing with appeal from the Welsh Authorities are best done in conjunction with the outside London English appeals because it provides a wide choice of hearing type for appellants as well as providing for local hearings and Welsh language. It is encouraging that, for the time being, there appears to be greater benefit in specialising in parking and bus lane appeals in shared arrangements rather that embark of the greater expense of a totally devolved tribunal.

Proposals for moving traffic civil enforcement in Wales.

We are pleased to have been consulted by the Welsh Assembly Government about their proposals to introduce the implementation of the Traffic Management Act 2004 Moving Traffic Regulations in Wales. It is encouraging that the Welsh Assembly Government (WAG) has embraced the devolved nature of the TMA powers to proceed with civil enforcement of moving traffic that is necessary in Wales. If the regulations are brought into force for implementation in Wales it will provide a useful opportunity to measure how effective the new provisions are so that England can look at the Welsh initiative with a view to deciding when to implement Moving Traffic in England. We look forward to seeing the draft regulations for Wales and to their early implementation.

The Department for Transport Traffic Signs Review

The Traffic Signs Regulations and General Directions 2002 (S.I. 2002 No.3113) apply to both Wales and England. In consideration the next version of TSRGD English Ministers decided it was opportune to undertake a review of road signs, with particular attention to whether it is necessary for there to be so much prescription, the impact of road signs on the environment, and to reconsider precisely how much signing is required to make contraventions of traffic orders enforceable. A Steering Group was set up which includes a representative from WAG as well as The Chief Adjudicator of the Traffic Penalty Tribunal, who has also been asked to Chair the Enforcement Working Group.

It is crucial that there is full involvement from representatives from Wales, because of the potential consequences of adopting different signing in England, and the consideration of the impact of new ideas on sign that must be written in two languages.

It is inevitable that considerable attention is being given to parking signs and lines, with particular thought being given to the effectiveness of zones and whether that principle should embrace more parking imperatives, such as footway parking, or whether the entire concept of zones is too unwieldy and not readily understood by motorists.

Following on from the initial meetings and setting up of the three working groups research will be commissioned by the DfT to examine independently some of the proposals under consideration.

There will be formal consultation, but the DfT welcomes all input from those who have an interest or experience of signing. The British Parking Association (BPA) Welsh Special Interest Group is also looking at the proposals that have been put forward so far to ensure that considerations for Wales are kept at the forefront of the Review.

The Welsh TMA Regulations

The Regulations for Wales appear in three documents, namely the Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008, the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008 and The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008.

There is also the Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) Order 2008 and the Civil Enforcement of Parking Contraventions (Guidelines on Level of Charges) (Wales) Order 2008.

The fact that there are three sets of Regulations means that whilst the information contained within them is essentially the same as that in the English Regulations the references are different.

The power to serve a PCN by post is contained in Regulation 6 of the Welsh Enforcement Regulations although the principles for using this method of service and the relevant time limits are the same as those set out above.

The time limit for the service of the Notice to Owner is contained in Regulation 12 of the Enforcement Regulations.

The duty of the enforcement authority to consider mitigation and whether there are compelling reasons why a PCN should be cancelled is to be found in Regulation 4 of the Welsh Appeal Regulations and Regulation 4(5) defines procedural impropriety. Again the time limits for the consideration of the representations are the same as in the English Regulations.

The power for the Adjudicator to refer the matter back to the Council if he considers there are compelling reasons why the penalty charge should be cancelled is found in Regulation 7(4) of the Appeals Regulations and the provisions relating to the service of documents by post are to be found in Regulation 3 of the Enforcement Regulations.

Variable Charging in Wales

Whilst the levels of penalty charges are the same the Guidelines on Levels of Charges (Wales) Order does not set out the high rate contraventions by reference to a Table but perhaps rather more logically includes an annexe which refers by description to those contraventions which attract the higher rate of penalty charge and by reference to Schedule 7 of the 2004 Act.

There is no reference to shared use bays but rather in paragraph 2(a) the contravention is described as parking "without displaying a permit voucher or pay and display ticket". It is still necessary for the Civil Enforcement Officer (CEO) to consider carefully which contravention may have occurred but the Adjudicators suggest that by describing the contravention in this way it is easier for the correct decision to be reached.

An example of how the Welsh drafting avoids the problems that have arisen in England through pinning the charges to the computer contravention codes is that paragraph 10(d) appears to avoid the problem created by the contravention codes 40 and 87 in the England Variable Charging Order because it refers to the requirement to display the badge "correctly" so avoiding the potential argument that arose in case *HS05199B* (see the Case Digest).

Appeals Summary

There are currently eight local authorities operating civil parking enforcement in Wales (Carmarthenshire, Conwy, Gwynedd, Isle of Anglesey, Neath Port Talbot, Swansea and Wrexham). When completing the Notice of Appeal to the Traffic Penalty Tribunal, appellants are able to state a preference for their case to be decided by a postal hearing (on the papers) or with a personal hearing at one of the Tribunal's five hearing venues in Wales Caernarfon, Carmarthen, Denbigh, Llandudno and Swansea) or, if it is more convenient, at one of the Tribunal's English venues. During 2008/09, five personal hearing lists were scheduled in Wales.

A major development for the tribunal during 2008/09 was the roll of out of telephone hearings following a successful pilot. The telephone hearing provides increased flexibility for appellants, councils and the tribunal. Parties to the appeal

are joined in a telephone conference call and have the opportunity to speak directly to the Adjudicator without leaving their home or place of work. This will have particular benefits for appellants in rural areas. Feedback on telephone hearings has been extremely positive with consistently high levels of satisfaction for appellants and councils in terms of: convenience, timeliness and the opportunity to put their point across to the Adjudicator.

In Welsh cases during 2008/09, 6% of hearings were undertaken by telephone and 40% were in person. 54% of cases were decided on the papers.

During 2008/09 the Traffic Penalty Tribunal receive a total of 145 appeals against penalty charge notices issued by Welsh councils (Table 1). This compares with 223 appeals during 2007/08 and represents a 35% reduction. The total number of penalty charge notices issued by Welsh councils during 2008/09 was 75,838. This represents an appeal rate of 0.19% which compares with a rate of appeal for English councils of 0.31%. The percentage of cases allowed by the Adjudicator was 25% compared to 29% in England. In other respects the picture is similar in Wales and England with an identical percentage of cases not contested by councils (34%) and 35% of cases refused.

Details of Appeals Received for All Councils April 2008 to March 2009

SPA/PPA Area by year of operation and month of commencement	Appeals Rec'd	PCN's issued	Rate of appeal per PCN	Not Contested by council	Allowed by Adjudicator	Total allowed including not contested by council	Refused by Adjudicator incl. out of time and withdrawn by appellant	Awaiting decision Incl. other decided
All Welsh Councils	**145**	**75,838**	**0.19%**	**50**	**36**	**86**	**51**	**8**
Apr 08 - Mar 09				**34%**	**25%**	**59%**	**35%**	**6%**
Carmarthenshire	**13**	**8,705**	**0.15%**	**3**	**1**	**4**	**8**	**1**
Apr 08 - Mar 09				**23%**	**8%**	**31%**	**62%**	**8%**
	34	11,032	0.31%	1	13	14	20	0
Apr 07 - Mar 08				3%	38%	41%	59%	0%
	28	13,867	0.20%	9	10	19	9	0
2006				32%	36%	68%	32%	0%
	38	13,902	0.27%	3	16	19	19	0
2005				8%	42%	50%	50%	0%
	9	9,588	0.09%	1	7	8	1	0
Feb-04				11%	78%	89%	11%	0%
Conwy	**24**	**12,939**	**0.19%**	**8**	**8**	**16**	**7**	**1**
Apr 08 - Mar 09				**33%**	**33%**	**67%**	**29%**	**4%**
	31	16,121	0.19%	6	10	16	15	0
Apr 07 - Mar 08				19%	32%	52%	48%	0%
	2	5,303	0.04%	1	1	2	0	0
Sep-06				50%	50%	100%	0%	0%
Denbighshire	**37**	**11,847**	**0.31%**	**16**	**5**	**21**	**16**	**0**
Apr 08 - Mar 09				**43%**	**14%**	**57%**	**43%**	**0%**
	71	13,658	0.52%	32	14	46	23	2
Apr 07 - Mar 08				45%	20%	65%	32%	3%
	68	16,776	0.41%	26	13	39	26	3
2006				38%	19%	57%	38%	4%
	29	14,155	0.20%	11	3	14	15	0
2005				38%	10%	48%	52%	0%
	15	6,563	0.23%	4	5	9	6	0
Jul-04				27%	33%	60%	40%	0%
Gwynedd	**23**	**9,209**	**0.25%**	**8**	**3**	**11**	**7**	**5**
Apr 08 - Mar 09				**35%**	**13%**	**48%**	**30%**	**22%**
	46	13,529	0.34%	11	11	22	23	1
April 2007 - Mar 08				24%	24%	48%	50%	2%
Isle of Anglesey	**7**	**2,087**	**0.34%**	**3**	**1**	**4**	**3**	**0**
Apr 08 - Mar 09				**43%**	**14%**	**57%**	**43%**	**0%**
	7	3,611	0.19%	2	0	2	3	2
April 2007 - Mar 08				29%	0%	29%	43%	29%

Neath Port Talbot	**28**	**13,831**	**0.20%**	**9**	**13**	**22**	**5**	**1**
Apr 08 - Mar 09				**32%**	**46%**	**79%**	**18%**	**4%**
	34	15,647	0.22%	14	6	20	14	0
Apr 07 - Mar 08				41%	18%	59%	41%	0%
	48	19,260	0.25%	23	17	40	7	1
2006				48%	35%	83%	15%	2%
	57	20,398	0.28%	8	24	32	24	1
2005				14%	42%	56%	42%	2%
	83	17,962	0.46%	41	25	66	17	0
2004				49%	30%	80%	20%	0%
	84	16,448	0.51%	39	24	63	19	2
2003				46%	29%	75%	23%	2%
	110	17,028	0.65%	49	26	75	34	1
2002-2003				45%	24%	68%	31%	1%
	76	19,644	0.39%	30	23	53	16	7
2001-2002				39%	30%	70%	21%	9%
	117	20,496	0.57%	49	48	97	19	1
2000-2001				42%	41%	83%	16%	1%
Jun-99	31	13,688	0.23%	11	11	22	9	0
(part) 1999-2000				35%	35%	70%	30%	0%

Swansea	**3**	**10,084**	**0.03%**	**0**	**2**	**2**	**1**	**0**
Sept 08 - Mar 09				**0%**	**67%**	**67%**	**33%**	**0%**

Wrexham	**10**	**7,136**	**0.14%**	**3**	**3**	**6**	**4**	**0**
Apr 08 - Mar 09				**30%**	**30%**	**60%**	**40%**	**0%**
	0	235	0.00%	0	0	0	0	0
Mar 2008 - Mar 08				0%	0%	0%	0%	0%