The Joint Report of the Parking Adjudicators for England and Wales 2006

National Parking Adjudication Service

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CHIEF ADJUDICATOR'S FOREWORD

In my foreword to the 2005 Annual Report I commented that in over 40 councils the number of penalty charge notices (PCNs) that were issued was less than in 2004. I am pleased to report that this trend continued in 2006 with over 70 councils outside London having issued fewer penalty charge notices than in 2005. Since the objective of parking enforcement must be compliance with the Regulations, this would appear to be a clear indicator of the success of civil parking enforcement.

These observations may be somewhat simplistic because there are still few reports from the councils themselves as to the trends behind parking enforcement and their individual measures of performance in this important area of their work. I have called in every foreword to the NPAS Annual Report for more public information from the councils and I am glad to report that the National Parking Adjudication Service Joint Committee (NPASJC) are giving full support to this initiative. It is all the more important that the policies and consequences of civil parking enforcement by local authorities are analysed because of the significant strides that the Department for Transport are making in extending civil enforcement to other minor traffic offences.

The trends in 2006 towards issuing less PCNs may, however, have been affected by the High Court case of *R v. The Parking Adjudicator ex parte Barnet London Council*. Because our 2005 Annual Report was published shortly after Mr Justice Jackson's judgment in that case in September 2006, the details of that case were fully reported last year. It will be recalled that the substance of the High Court judgment was that a PCN should contain two dates, namely the date of issue of the notice and the date of the alleged parking contravention. Regrettably more than 80 councils outside London turned out to have been issuing penalty charge notices that, according to the High Court view, did not comply with Section 66(3) of the Road Traffic Act 1991. This was disappointing because following the original London case, namely *Al's Bar v. London Borough of Wandsworth* where the importance of a PCN having both dates was decided by the London Chief Adjudicator, the same point was raised outside London in *McArthur v. Bury Metropolitan Borough Council*. The NPAS Adjudicator agreed with the London Chief Adjudicator that a penalty charge notice must contain both dates, and shortly after that judgment was published NPAS sent a circular round to all the NPAS councils bringing to their attention the impact of the two decisions. It therefore came as some surprise when the matter finally was confirmed by the High Court in September 2006 that over 80 councils outside London had disregarded the advice given in the NPAS circular and not changed the format of their PCN.

Therefore, in late 2006 many councils, not only had to change their PCNs with immediate effect, but also found that the earlier PCNs in their processing systems were deemed to be unenforceable. This had a significant impact on the caseload before the NPAS Adjudicators and the results of the High Court decision and its consequences can be seen in the tables in this report.

There is one council whose approach to this has given Adjudicators cause for concern and so they have taken the unusual step in this report of dedicating a small section to Birmingham City Council and their conduct following the High Court decision. I would emphasise that this is not a decision taken lightly but Adjudicators consider that the disregard for a High Court decision on the part of the council that issues the most PCNs outside London could not pass without formal comment.

A number of appellants have raised the wording on PCNs following the large amount of publicity that the *Barnet* case was given in the national press. In particular many

comments have been made that there are other aspects of the wording on PCNs that are hard for the public to understand. In particular the words in the most common parking contravention of all, namely "*waiting in a restricted street during prescribed hours*" do not make it clear to many motorists as to the alleged parking contravention for which the penalty is being imposed. Of course it is the principle of the scheme that the penalties are imposed for a breach of the terms of a Traffic Regulation Order (TRO), whereas the public more readily believe that they are being penalised for parking on yellow lines. Given that over 8 million penalty charge notices are issued in England and Wales, these observations on the part of the public do point to the need for an overhaul of the terminology that was created for parking enforcement in the 1960s which still dominates the notices, documents and notice processing systems 50 years later.

When the Road Traffic Act 1991 promoted the exciting new initiative of decriminalised parking enforcement one of the compelling reasons for the scheme was that it was no longer considered that parking should be dealt with as a criminal offence with the full majesty of the criminal law behind it. The objective was to simplify the process for motorists in a way that was more proportionate to the notion of a parking contravention. It is noteworthy that the criminal law has now come round to this way of thinking and I note that the Criminal Procedure Rule Committee has the statutory objective, "to make Criminal Procedure Rules that are simple and simply expressed with a view to securing that the criminal justice system is accessible, fair and efficient". In the light of that question why, in 2006, the draft Regulations still contain expressions such as "permitted to remain at rest" when what they mean is "parking". In 1989 Parliament produced a Parking Act, therefore the word "parking" entered the statutory dictionary nearly 20 years ago. Why has it not continued to be used in Parliamentary drafting? It would undoubtedly be more helpful to the millions of drivers at whom these Regulations are directed if modern day expressions were introduced into the regulatory and enforcement scheme.

In 2006 I was fortunate to be included on the Department for Transport (DfT) Working Party on the implementation of the parking aspects of the Part 6 of the TMA. Because it was decided that the Secretary of State's guidance on parking enforcement to be issued under the TMA would focus at a high policy level, there was regrettably little time to undertake an overhaul of the language to be used in the regulations themselves. It is an unavoidable consequence of the TMA itself that the regulations concerning parking enforcement and any subsequent representations or appeals have to be made in two sets of regulations. This in itself will be complicated for the motorist to follow. There will be an opportunity to take a further look at the drafting of the Civil Enforcement Regulations when the DfT moves on to implementing the bus lane and moving traffic provision of the TMA. It is to be hoped that when the TMA is fully implemented there will be there will be two sets of regulations that follow the admirable objective of the Criminal Procedure Rule Committee that are "simple and simply expressed with a view to securing that the *civil enforcement* system is accessible, fair and efficient".

The *Barnet* case emphasised the importance of councils using the words and terminology of the statute, and that failing to do so was at their peril. It is therefore important to emphasise at this stage that when the new TMA regulations are brought into force in 2008 that councils must be properly prepared with their documents expressed not only in a clear way so that the recipients can understand them, but also so that they properly convey the terms of the legislation. This will prove a significant challenge for all councils in the current DPE scheme.

NPAS itself recognises that there will need to be significant changes made to NPAS documents and the case management system as a result of the TMA initiative. It will also provide a welcome opportunity for the NPAS Adjudicators to work closely with the London Adjudicators to ensure that consistent training on the new provisions is provided to do their part in fulfilling the overall objective of the TMA.

This provides me with an opportunity to mark my appreciation of the close working relationship with Martin wood, the Chief Adjudicator in London. The bond between NPAS and the London Parking and Traffic Appeals Service has been strengthened this year with a joint commitment to assist the Department for Transport in implementing successfully the new provisions for the civil enforcement of parking in the TMA.

Finally, last year I welcomed Louise Hutchinson, the new Head of Service to NPAS, and am delighted to report that she has already made a significant contribution to developments at NPAS, not least of which is her helpful foreword she has provided to her section of this report. Her dedicated commitment to improving the service that NPAS provides to its users is already apparent to everyone who has had contact with her.

Caroline Sheppard
Chief Adjudicator

INTRODUCTION

The National Parking Adjudicators are pleased to present their joint annual report for 2006. This will be the seventh joint report of the NPAS Adjudicators since 1999. Over the years we have commented on a number of aspects of decriminalised parking enforcement, many of which are particularly applicable to councils outside London.

This year we have returned to some familiar themes, but ones that still cause problems for councils and concerns to the public. In particular we have analysed issues that emerge from the pay and display schemes, both on-street and in car parks. We have also again dedicated a section to car parks. This is an area which is particular to councils outside London since there is little car park enforcement in central London.

In the past we have commented on a number of appeals that have been lodged that have subsequently not been contested by the councils. More recently we have undertaken some analysis of the reasons for this and we have reported on our preliminary analysis of those reasons. We have also taken the unusual step of providing a separate section for the approach of Birmingham City Council that became apparent when analysing their non-contested cases following the judgment of Mr Justice Jackson in the *Barnet* case. That section speaks for itself.

Local Authority Annual Reports

In her foreword to the 2005 Annual Report, the Chief Adjudicator expressed the hope that, in addition to the NPAS Annual Report, local authorities would themselves publish statistics relating to their parking enforcement together with details of their parking accounts. The rationale for this is that since it is clear that many councils are operating the scheme satisfactorily, more openness would enable the public to see that this is the case.

The Adjudicators also supported this view and were pleased when The National Adjudication Service Joint Committee requested further information, on behalf of their constituent councils, on what might the content of these reports.

As well as providing information parking arrangements and restrictions in their own area, the following is a suggested framework for local authority annual reports although it is recognised that local authorities, in addition, may have local issues they wish to report on.

1. Introduction setting out the local policy and objectives in relation to Decriminalised Parking Enforcement (DPE).
2. How information about parking and parking enforcement is made available to local residents?
3. The location of parking including disabled spaces and charging information.
4. Financial accounts and use of any surplus.
5. Arrangements for the local handling of representations
6. Referrals to NPAS and their outcome
7. Results of any public consultation
8. An assessment of how far have local DPE objectives been achieved?
9. Areas identified for improvement and development
10. Operational statistics including:

- Number of Penalty Charge Notices (PCNs) issued
- Number of Notice to Owners (NTOs) issued.
- Percentage of PCNs paid at the reduced rate without challenge
- Percentage of PCNs paid at the reduced rate following a challenge.
- Percentage of PCNs paid at the full rate pre NTO
- Percentage of PCNs paid at the full rate post Notice of Rejection.
- Percentage of PCNs paid at the full rate post appeal.
- Percentage of PCNs paid at Charge Certificate.
- Percentage of PCNs taken to Court Order
- Percentage of PCNs where informal representations are made.
- Percentage of informal representation dismissals that go on to NTO stage.
- Percentage of informal representation dismissals that settle after dismissal.
- Percentage of formal representations that go to appeal.
- Issues/grounds of appeal at informal and formal representation stage
- Percentage of representations which the Council allowed because it was agreed that the appellant wasn't liable or decided it couldn't discharge the burden of proving liability.
- Percentage of representations which were allowed as a result of the Council exercising discretion.
- Percentage of PCNs allowed/dismissed at appeal
- Percentage of PCNs cancelled at any stage.
- Reasons why the council decides to no contest appeals

Clearly local authorities will wish to report on their individual local circumstances and it is not possible to address here all the issues which this might include. However, the Adjudicators firmly believe that published information addressing these points will help to increase the public's understanding of civil parking enforcement at a local level.

The Adjudicators would also take this opportunity to give encouragement to the publishing of all Traffic Regulation Orders and policies on the local authority website.

THE FLUTTERING TICKET

The fluttering pay and display ticket is a perennial issue for the adjudicators. This part of the report deals with a selection of the issues dealt with during 2006.

The great majority of these appeals begin life in off street pay & display (p&d) car parks where a timed ticket is bought from a machine. Similar issues sometimes occur at on- street p&d parking places and also with the display of permits and season tickets. The situation arises when the appellant says that a valid ticket was bought and placed in the vehicle but became dislodged through no fault of his own so that either the entire ticket or the information printed on it could not be seen by the parking attendant. The parking attendant issues the PCN under code 06 for failure clearly to display a valid p&d ticket.

The adjudicators recognise that some motorists do attempt to avoid paying to park and that others are habitually careless in the way they display tickets and permits. With regard to the majority, however, this is an area of parking enforcement in which the actual transgression on the part of the motorist is of a very minor nature. It follows that in addition to the various technical and practical points relating to these contraventions, issues arise concerning enforcement and, in particular, the exercise of discretion by councils. Some councils persist in adopting a very harsh approach apparently (like the underlying legislation itself as presently drafted) making no distinction in terms of enforcement between contraventions occurring on and off street.

It is also interesting to note that the incidence of fluttering ticket cases is by no means evenly spread across the 156 councils operating decriminalised enforcement powers. Since NPAS introduced the current system for identifying the primary issue in each case during 2006, a significant number of councils have generated no appeals whatsoever in the fluttering ticket category. This means either that the quality of the tickets is so good in those areas that no problems occur and / or that those councils adopt an approach to the exercise of discretion that members of the public are not moved to challenge.

The motorist's obligation

The motorist's dual obligation both to **pay** for a ticket and to **display** it was summed up in **DS05016H**. *"The obligation on the motorist is not only to purchase a pay and display ticket but also properly to display it to facilitate subsequent inspection."* In **MC05043JSD,** the council's photographic evidence showed the non-sticky ticket placed upside down on the dash. The appellant conceded having made an error in displaying the ticket and the appeal was dismissed. In **DB05002B** the appellant bought a p&d ticket and placed it on the dash. It became dislodged, probably when the door was closed, and on his return the appellant found it in the door pocket where it could not be seen by the PA. The appellant had not complied with the obligation to pay and display and the appeal was dismissed. In **SK05001C** the appellant's p&d ticket had fallen from the dash and although still visible inside the car could not be read by the attendant. The appeal was dismissed.

The burden of proof

The council has the burden of proving that the contravention took place as alleged. If the relevant details of the ticket can still be made out, there will usually be no contravention. In **SS05044D** the ticket details were readable even though it had fallen from position. The TRO in **SS05094B** required the ticket to be displayed so that the details could be verified by a PA. The sticky ticket had been attached to the side window back to front. After carrying out a site inspection of the vehicle, the adjudicator ascertained that the details could have been read through the opposite side window. In **HV05029M** the ticket was visible on the dash but had slipped beneath the black strip at the bottom of the windscreen. The adjudicator concluded that the attendant could have read it if he had tried harder.

Photographic evidence may be invaluable. In **EL05019C** the appellant supplied a ticket valid at the time the PCN was issued and claimed that it had been displayed in the passenger window. The adjudicator said *"I have carefully examined the very clear photographs taken by the parking attendant and I am satisfied that there no pay and display ticket displayed in the passenger window, or on the dashboard, or in the driver's side door. I therefore consider that the parking attendant was correct and that there was no ticket on display and find that the alleged parking contravention did occur."* By contrast in **OD05021K** the appellant alleged that the details were visible despite the ticket having fallen. The council's photographs were of poor quality and unclear and the adjudicator held that it had failed to prove its case.

The PA's notes will also be scrutinised. In **RF05003G** the notes indicated that a thorough inspection of the vehicle had taken place and, coupled with the council's photographs, persuaded the adjudicator that there was no ticket on display. In **CA05004B**, however, the TRO required the ticket to be visible from the front or side of the car. Although the PA had noted "screen clear" his notes did not indicate that he had checked the other windows. ("AWC" (all windows checked) is the usual abbreviation). The appeal was allowed.

The requirement continuously to display

It may be the case that the p&d ticket was never correctly displayed. In **MC05043JSD** (see also above) the appellant's own evidence demonstrated that he had not displayed the p&d ticket correctly before leaving the vehicle. In **DE05005B** the appellant bought a ticket and stuck it to the windscreen then drove a short distance before finally leaving the car. The TRO required the ticket to be placed on the windscreen facing forwards so that it was readable from the outside. The council's photographs demonstrated that this was not the case when the PA issued the PCN. It was found as a fact that the p&d was not displayed correctly when the driver parked and left the car.

The situation is more complicated where the finding of fact is that the p&d was originally displayed correctly but later fell. The precise wording of the TRO will then be vital. Many TROs specify that the ticket must continue to be displayed throughout the time that the vehicle is parked. **BI05053H** is an example. The adjudicator said: *"The requirement for the display of the ticket is that it remains visible throughout the period of parking. Unfortunately it became obscured and therefore was no longer clearly displayed (as required) – A contravention therefore occurred for which the PA was entitled to issue the PCN*."

Other TROs, whether by deliberate or accidental omission, do not contain a requirement continuously to display the ticket. The adjudicator in **MW05001J** made

findings of fact that the appellant had bought and displayed a p&d ticket but that the ticket was no longer on display when the PA inspected the vehicle, having become dislodged, possibly when the boot was closed. The relevant provision of the TRO did not state that that the display of the ticket must continue throughout the duration of parking. This contrasted with the preceding article of the TRO (dealing with tickets displayed in different classes of vehicle) which stated in terms ? that the ticket "*must be clearly displayed at all times*". The adjudicator concluded that the appellant had complied with all elements of the article relied upon and that no contravention had occurred.

Other TRO issues

It is important for the requirements of the TRO to be communicated adequately to motorists by the car park signage. In **IP05044B**, although the TRO itself required tickets to be displayed throughout the time the vehicle was parked, the car park signage merely said "fix ticket inside windscreen", which the appellant did. Similarly, in **BX05006M** a valid ticket had been placed upside down on the dash. The TRO required the ticket to be "in a conspicuous position". It did not specify which way up and the adjudicator found that the TRO had been complied with. The adjudicator also criticised the council for drafting discrepancies in the TRO and for poor treatment of the evidence.

The TRO must establish that a penalty is actually due. In **SS05190F t**he adjudicator was satisfied that the appellant had bought a valid ticket which had fallen leaving the car parked in breach of the terms of the TRO. However, the TRO set out the specific circumstances in which a penalty was payable, namely if: (1) the parking fee has not been duly paid; or (2) the permit displays the wrong or no registration mark; or (3) the vehicle is left for longer than the time paid for. As none of these applied, no penalty was payable.

The p&d ticket

Sometimes, the adequacy of the p&d ticket itself is called into question. When a p&d scheme is operated, the council must provide drivers with the means to comply with the obligation imposed.

Dashboard tickets

In **DB05057D** the adjudicator said: *"…having seen the original ticket I note that it is made of rather thin paper which is likely to be dislodged when a car door is shut. It may be that the Council would argue that it is the driver's responsibility to ensure that the ticket is on display when the vehicle is left, but on the other hand if it chooses to issue pay and display tickets made of such thin paper it must expect that now and again this type of situation will arise."* In **DB05035M** the appellant bought a ticket. It fell from the dash when she closed the door so she picked it up and replaced it. She then opened the back door to remove some items and found the p&d on the foot well on her return. The adjudicator had the opportunity to examine the original ticket. It was made of flimsy paper with no adhesive mechanism. She said *"I also note that the Council has since purchased heavier weight paper to make the tickets less likely to blow off."*

In **HV05040D** the adjudicator accepted the appellant's evidence that she had displayed the ticket on the dash and checked after closing the door that it was still there. He said: *"The Council contend that the onus is on the motorist to ensure that the ticket is properly displayed but except for using sellotape or blutack, which some*

motorists do, I do not know what else she could have done. Such measures may be an answer to the problem but it is a problem created by the Council's decision to use non sticky tickets. I am not aware of any signs in the car park suggesting the use of adhesives by motorists when parking their cars. I am aware from dealing with cases in other areas that the decision to use such tickets is governed by many factors including environmental, but not least is the fact that sticky tickets are much more expensive." By contrast, in **BF05062G**, it was not suggested that the dashboard-type ticket was especially flimsy. It was undisputed that the ticket was upside down. The adjudicator held that it had never been properly displayed. In **KH05028E**, the adjudicator rejected the appellant's suggestion that the wind had turned his ticket upside down. *"I also think that it would take a remarkable gust of wind to lift a correctly displayed ticket, flip it over 180 degrees, and neatly place it back on the dashboard, face down."*

Sticky tickets

Sticky tickets seem generally to be more reliable but nonetheless cause problems from time to time, especially in very hot or very wet weather. The adjudicator said in **BK05046D**: *It is a known fact that, on wet days, the moisture on the windscreen can sometimes prevent a ticket from sticking properly. It is clear that the windscreen was very wet from the parking attendant's photograph and so I assume that the ticket had not adhered to the windscreen and dropped off. It was through no fault of [the appellant] and I agree with him that he should not be required to pay a penalty.* The possibility that sticky tickets may fail was recognised again in **SK05049K**. *"If the Council chooses to adopt a method of enforcement which involves the ticket being displayed using the adhesive backing it must recognise that there are instances either through driver error or weather conditions where the adhesion may fail."*

The adhesive may be defective. In **IP05050E** the appellant gave credible evidence to the effect that he had spoken to a nearby business owner and two parking attendants, who confirmed that tickets were "always falling off". One PA recommended placing them on the dash instead of trying to stick them. If the quality of the adhesive is called into question, the council should address the issue in its evidence. In **SS05017M** the adjudicator found as a fact that the appellant had bought a sticky-backed ticket and stuck it to the windscreen. It became dislodged at some later time before the attendant inspected the vehicle. The appellant queried the adequacy of the adhesive but the council made no submissions on that issue. It was held that no contravention had been established. In **IP05040M** the adjudicator said: *"The appeal clearly raises the issue as to the quality of the adhesive backing on the ticket. The Council says it does not accept a failure of the ticket but it produces no evidence to me that this particular batch of tickets had been inspected or whether there is evidence of the absence of other complaints about the tickets on this day or in this car park. In my view it is the Council's responsibility, when the issue has been specifically raised, to provide at least some evidence to demonstrate that of the quality of the adhesive backing was sufficient to allow the driver to comply with the requirement to display it on the windscreen. In the absence of any such evidence I cannot be satisfied that the Council had provided the driver with the means to comply with the Traffic Regulation Order and so I am not satisfied that the contravention occurred*."

In **FY05025F** the adhesive backing apparently failed in the wet conditions and the ticket fell. The appellant asked how many representations had been made by drivers who purchased and attempted to display a ticket which later fell but the council did not respond. The adjudicator said *"I anticipate that the Council will be well aware that on occasions the tickets do become detached from the windscreen through no fault*

of the driver…" and concluded that the Council had been unable to prove that the ticket was capable of being fixed to the windscreen in the manner prescribed. In **IP05044B** the council dealt with the issue successfully (the appeal was allowed for other reasons) by providing evidence that only three PCNs had been issued on the day in question to the 200 odd vehicles in the car park and only the one under appeal for failure to display a p&d ticket. This tended to indicate that the adhesive tickets were doing their job.

Possession of a valid p&d ticket

The motorist may provide a valid p&d ticket covering the time when the PCN was issued. It is important to remember that the majority of these are perfectly genuine. The council may not accept that the ticket so provided was ever bought by the appellant; sometimes tickets are obtained from other motorists or picked up from the floor. There are a number of examples where the adjudicator agreed. In **OD05029B** the provenance of the ticket produced by the appellant was in doubt. The adjudicator adjourned the case and asked the appellant to provide further information about its purchase. He failed to do so and the adjudicator concluded that the contravention had occurred. In **ST05010G** the appellant said the p&d ticket had been stolen from his convertible car. The adjudicator did not agree. She referred to the unlikelihood that that a car would be parked with the roof down in January and also to the council's photographs, which showed the roof to be up. In **BB05033K** the adjudicator noted that the ticket produced had been issued from the machine at a time after the PA had begun his inspection of the vehicle and also that although the driver had come back to the car while the PA was present, he made no attempt to speak to the PA or to show him a valid ticket. In **MC05028E** the original fallen ticket produced by the appellant had in fact expired at the time the PCN was issued. In **DE05027E** the appellant produced a ticket some time after the event and claimed that it must have fallen down. The adjudicator found that the contravention had been established and made no criticism of the council's decision not to exercise discretion. She said *"no doubt the Council decision has been influenced by the inconsistency in the Appellant's accounts and the fact that he did not promptly contact them to explain."*

The council's discretion to cancel the PCN (is it worth cross referencing here with the section we have done on the Kent Managers guidance)

The purpose of the p&d ticket is to enable the council to satisfy itself through the agency of the PA, who checks the date, place and time of purchase that the drivers of parked vehicles have actually paid to park. If the p&d ticket has fluttered out of sight then, unless the adjudicator finds that he did not inspect the vehicle sufficiently carefully, he will not generally criticise the PA for issuing the PCN. The question to be decided is whether the council should now cancel it. If the adjudicator finds on the facts that no contravention occurred, he will direct the council to cancel the PCN. In many cases, however, a technical breach of the TRO will have occurred and the question of cancellation will be one for the discretion of the council. In **BI05011H** the adjudicator reminded the council that it *"has the discretion in all appeals to cancel any penalty at any stage of the enforcement process. It must consider that discretion in each and every appeal – even where circumstances may appear familiar or similar to other previously decided appeals."*

It should always be remembered that enforcement against a motorist parked in a marked bay in an off-street car park is not the same as enforcement on-street. The motorist parking in contravention on the street may cause all manner of danger, difficulty and inconvenience to other road users. The motorist parking in

contravention off-street will, at worst, deprive another motorist of a parking space and / or the council of a relatively small sum of money. When, as with an otherwise valid but fallen p&d ticket, the contravention is technical, the worst harm that may occur is putting the council to the administrative inconvenience of issuing and cancelling a PCN.

Many councils operate a policy of cancelling PCNs if the appellant is able to produce a valid p&d ticket covering the relevant period. This practice is to be commended. In **HV05042K** Havant Council set out its policy, which the adjudicator described as not only pragmatic but also fair and reasonable. In terms of exercising discretion generally, the Adjudicators are also pleased to see the joint effort of the councils in Kent to develop written policies on discretion. In **BB05022C** the envelope containing the PCN stated that any valid p&d ticket should be sent to the council within five days. The appellant waited a month before sending his in. The council declined to exercise discretion in those circumstances and attracted no criticism from the adjudicator.

In **BB05028K** there was no ticket was on display and the contravention was established. The appellant said that the sticky ticket had come unstuck and fell to the floor. She produced a valid ticket. The council did not accept that the appellant had actually bought and displayed this ticket. However, in the light of the adjudicator's finding of fact that she had, the council exercised its discretion to cancel the PCN. Similarly, in **IP05007F** the council decided to exercise its discretion to cancel the PCN in the light of the adjudicator's finding of fact that there was a valid ticket in the vehicle even though it had fallen down out of sight. The adjudicator commended the council for this decision. **LA05007B** concerned a fallen car park permit rather than a p&d ticket. The permit had fallen out of sight and the appellant argued that it was not easily fixed to the windscreen although, as the adjudicator painted out, it could have been placed on the dash. The adjudicator said he would expect the council to take into account when considering the exercise of its discretion the fact that the appellant had paid for his permit. However, the council decided to enforce the penalty on this occasion because it had cancelled two previous PCNs issued in similar circumstances.

Some councils, however, have attracted severe and sometimes repeated criticism from adjudicators for refusing to cancel PCNs in fluttering ticket cases. The adjudicator said in **DB05035M** (see also above) *"…I consider that [the appellant] did everything she could reasonably do in the circumstances to display her ticket. I would expect a Council to look favourably on motorists in this situation"* and in **BN05042E** "*The Council have not explained why they have elected to seek to enforce this PCN where there is persuasive evidence (taking account of the matching times on the two tickets) that a ticket was purchased and a reasonable attempt made to display it."* In **AL05015K** the adjudicator made findings of fact that a valid ticket had been purchased and displayed at the time the vehicle was left but had fallen when observed by the PA and said *"In view of the above facts and bearing in mind that the ticket has been produced it is disappointing to note that discretion was not favourably exercised prior to this appeal."* Again in **SK05049K**, *"I have to say that in circumstances where a driver produces a pay and display ticket which it is accepted was purchased and it is reasonably certain that an attempt was made to display it in the vehicle it is difficult to see why the Council would want to enforce the penalty charge. The purpose of displaying the ticket is only to ensure that the correct fee has been paid which in this case it had."*

The last word on this subject goes to the adjudicator in **MK05074H**, who adjourned the appeal with directions to the council to reconsider the exercise of its discretion.

While eventually dismissing the appeal, he was very critical of the council when it declined to do so. His decision is instructive on the question of discretion generally as well as in the context of the fluttering ticket specifically. It is therefore quoted in its entirety.

"There is no doubt that [the appellant] had purchased and attempted to display the pay and display ticket on the dashboard of the vehicle. However, in error she had placed the ticket face down and that is the reason why the PCN was issued.

In response to my direction the Council has indicated that it wishes to continue to contest the appeal because the contravention is a failure to display the ticket and not a failure to pay. This seems to me a fundamental misunderstanding of the point of my request, and indeed the point of the Traffic Regulation Order which is to regulate parking and to ensure that payment is made for parking time. As I have pointed out, if a Council decides to operate a pay and display system it must be expected that on occasion the driver will make an error in the display of the ticket but nonetheless parking time will have been paid for, as in this case.

The Council have stated that there is an administrative cost in the issuing and cancellation of a PCN, the implication being that the point of enforcing the charge is to recover that cost. That in my view is a wholly incorrect approach to the exercise of discretion and does not take into account the mitigation that the charge has actually been paid. If the Council is saying that its decision in [the appellant's] case to enforce the charge is so that the administrative costs can be recovered that would in my view be wrong.

The Council also says that its policy to cancel a ticket only on the first occasion when the driver makes a mistake is fair. It concedes that the current ,"one strike", policy does not have a time limit although it says it will reconsider the position after the scheme has been in place for five years. In my view this is too long a time and is not the fair policy that the Council suggests. A driver who consistently fails to display a ticket is in a wholly different position to one who occasionally and in entirely good faith makes a simple error. Even if the policy was exercised on the basis of one failure per year this might not necessarily be regarded as fair but would certainly be far closer to a reasonable policy than one which permits only one mistake every five years. I would suggest that the Council considers very carefully whether its policy on this issue requires amendment. [The appellant] may well consider that it is unfortunate that the Council should reject my recommendation in favour of its own policy but unfortunately her only remedy lies in challenging the Council's decision making process in the High Court, which is wholly disproportionate to the amount of the penalty charge in issue.

The [2005] Annual Report produced by NPAS emphasises that any Council operating the Decriminalised Parking Scheme should not fetter its discretion to the extent that it fails to recognise the exceptional case. Guidance on applying policy relating to the exercise of discretion has been given by the High Court in the case of Walmsley v. The Parking and Traffic Appeals Service [2005] EWCA Civ.1540. Mr. Justice Sedley said in his judgment:

> *"Any public body exercising discretionary powers of this kind affecting a large number of people risks being castigated for inconsistency if it does not have a policy to guide the officials who exercise the power …….. but consistency is not the same thing as rigidity and public authorities are also at risk if they fetter their discretion for being unduly formulaic. The courts have accordingly*

recognised that it is proper to adopt a policy provided it is applied flexibly in exceptional cases."

The procedure under the Road Traffic Act 1991 requires that the Council considers not only whether the contravention occurred but whether it is necessary in the particular circumstances of the case to enforce the charge. My view is that [the appellant] may well have a very real complaint about the exercise of the Council's policy in her case, but unfortunately the power to regulate the Council in this regard lies in the jurisdiction of the High Court and not with me.

I have considered very carefully whether because the Council has not exercised its discretion properly I should, in the interests of fairness, exercise the discretionary power myself. Given the content of the Council's response to my directions I would do so were it not for the fact that the previous cancellation, on which the Council bases its one strike policy was in December of 2005, therefore within a year of the issue of the PCN which is now subject of this appeal. Although potentially unfair I do not think that it can be said to be wholly unreasonable on the part of the Council to take into account that previous error made within the previous 12 months. I am therefore persuaded that it would be wrong for me to intervene on this occasion, although I would certainly do so on different facts. I do, however, urge the Council to reconsider the exercise of its policy in cases like this and to pay more attention to the fact that the driver has paid the relevant charge and not simply where the mistake has been made in the display of the ticket. I am satisfied that the contravention occurred and so the appeal is dismissed."

CAR PARKS

A substantial number of appeals dealt with by the Adjudicators are against the issue of a PCN for the contravention of restrictions in off street car parks. In the period of this report 22 % of all the appeals considered arose from PCNs issued in car parks.

The Council's power to provide and regulate off street parking is found in Section 32 of the Road Traffic Regulation Act 1984 and Section 35 of that Act authorises a Council to stipulate the conditions on which a car park may be used and to require the payment of a charge.

However there is no off street equivalent to the Traffic Signs Regulations and General Directions 2002 which regulate the signing of on street parking. Also the Local Authorities Traffic Orders (Procedure) (England and Wales)Regulations 1996 which require that after a Traffic Regulation Order is made relating to any road the Council must ensure the provision of adequate roadside signing does not apply in car parks.

It follows that the signing in car parks is unregulated but Council's should recognise the obligation to operate any parking scheme fairly which must include the provision of signing which reasonably brings any condition as to the use of the car park to the attention of the driver.

The conditions as to the use of any particular car park can vary enormously and the Adjudicators are regularly called on to consider whether the signing is sufficient to allow a particular restriction to be enforced.

Because there is no statutory guidance as to the design or position of car park signing the Adjudicators are called upon to consider a wide variety of different signs.

The basic principle adopted by the Adjudicator is that the content of a car park sign must be reasonably clear and convey the terms of the particular restriction in ordinary language which can readily be understood.

Further the signing must be in a position where it can reasonably be read by a driver and although some Councils suggest that the onus is on the driver to establish the terms and conditions applying in a particular car park Adjudicators have held that it is unreasonable for a driver to be expected to walk back to read the small print on a sign situated some distance from where a vehicle is parked.

The clearest signs are often those which are situated at the entrance to a car park and which can readily be seen and understood even from a slow-moving vehicle.

If the size of a car park requires it in ? the Council should consider carefully the use of repeater signs which can readily be seen from all areas where vehicles are parked.

It is not sufficient for important restrictions such as the requirement to park wholly within a marked bay to be listed amongst other more general conditions as to the use of the car park without any warning that a penalty charge will be issued if the requirement is contravened.

The Adjudicators recommend that the Council should bear in mind that there is a difference between the general "contractual" terms as to the use of the car park and those restrictions which if contravened may result in the issue of a PCN. The latter

conditions should be prominently displayed and not hidden in the small print of a complicated sign which has to be carefully studied in order to understand any particular restriction.

Clear signing is particularly important in relation to the use of the car park by disabled badge holders. The Adjudicators are aware that there is no uniform exemption for disabled badge holders from the requirement to purchase a pay and display ticket. Dispensation for badge holders may vary from Council to Council and even in different car parks within the same Council area.

In some car parks badge holders may be at entirely exempt from the parking charges whilst in others the exemption will apply only when the vehicle is parked in a designated disabled bay.

The Adjudicators see a wide variety of signs and have to consider complaints from disabled drivers that the particular form of the signing does not make the intended restriction clear.

In **RE05087** and **RE05093** the appeals were allowed because the requirement for all disabled badge holders to purchase a pay and display ticket was only signed on the tariff boards put up around the perimeter of a large town centre car park. There were no signs at the entrances and the Adjudicator found that a disabled driver was unlikely to walk to a tariff board particularly to one? situated some distance away from where the vehicle had been parked unless a alerted to the particular requirement to do so.

In the absence of any statutory regulation the Adjudicators are obliged to consider the general principles that any sign must provide the driver with sufficient information to know clearly what is required.

In **BB05126** the Adjudicator considered an appeal made by a visitor to a south coast holiday resort. Although there was a prominent sign indicating that the car park operated a pay and display system and there were smaller and less prominent signs indicating the parking was restricted from 8 a.m. to 6 p.m. to permit holders only. The appellant complained about the prominence of the pay and display signs had "enticed" him into the car park. The Adjudicator allowed the appeal on the basis that the signage was "confusing and complicated" particularly as a sign of the entrance simply had additional signs placed above and below the main sign and it was not in the Adjudicator's opinion possible to get a complete picture of the restrictions without going back and forth between the various signs. In fact the Adjudicator also highlighted that the Traffic Regulation Order did not make provision for any permit only places.

The issue of fluttering tickets is referred to elsewhere in this report and the Adjudicators suggest that the exercise of common sense and fairness is particularly important in situations where a valid pay and display ticket has been purchased but is not displayed on a vehicle using a car park.

The purpose of the condition included in many Traffic Regulation Orders for the pay and display ticket to be prominently displayed throughout the time when the vehicle is parked is only a means of ensuring that the correct parking charge has been paid and that the vehicle has not overstayed the time purchased.

Many Appellants express surprise and annoyance that they are being asked to pay a penalty charge when for a relatively small sum they had purchased and displayed the

necessary ticket which had then for reasons beyond their control fallen out of sight of the parking attendant.

In a car park the Council has the opportunity to operate a system for the collection of parking charges which does not involve the display of a ticket for example by having the car park permanently attended or perhaps more conveniently with the use of a prepaid ticket operating an exit barrier.

Where a pay and display system is employed it is suggested that the Councils must recognise that on occasions a valid ticket will not be displayed because of driver error or perhaps because it is dislodged or the adhesive backing fails. Where a valid pay and display ticket is produced as part of a challenge to the issue of the PCN and there is no reason to think other than that it had been properly purchased it might not be considered unreasonable for the driver to expect that the PCN will be cancelled.

Certainly there may be cases where a ticket has been improperly transferred between vehicles or the Council has reason to doubt that any ticket had been purchased in the first place if the original is not produced in which circumstances it is not unreasonable for the driver to expect the charge to be enforced.

Further it may be that any particular driver is in the habit of failing properly to display a ticket in which case he must realise that it is less likely that the Council will exercise discretion in his favour. However as has been discussed previously in these reports any Council is obliged to consider carefully representations made following the issue of a PCN and to exercise discretion based not only on whether the contravention occurred but also whether it is fair and reasonable to enforce the penalty charge. It is important therefore to consider the purpose of the Regulation and not just whether the parking attendant was justified in issuing the PCN.

The Adjudicators find that some Councils are more willing to exercise discretion in circumstances where a valid pay and display ticket is subsequently produced while others operate either a strict policy of never exercising discretion in those circumstances or perhaps only allowing the benefit of the doubt on a single occasion in respect of any particular vehicle. The Adjudicators suggest that this is not in fact a proper exercise of discretion in circumstances where it is clear that the correct parking charge had been made. There can be no criticism of the Parking Attendant for issuing the PCN but that does not require the Council to enforce it and it is in the Adjudicators view unreasonable for a Council to suggest that they should be permitted to recover the costs inherent in issuing the PCN.

The other common reason for an appeal relating to off street parking arises when the PCN has been issued because a vehicle is parked beyond the markings of a parking space. In fact 3% of NPAS appeals related to this contravention. Appellants often feel that it is wholly unfair that they should be required to pay a penalty charge because a wheel of the vehicle is on all? slightly over the line marking the parking space.

The Adjudicators suggest that this is another area in which the Parking Attendant and the Council should exercise a degree of common sense. The purpose of any Regulation Order requiring a vehicle to be parked within a parking space is of course to maximise the use of the available spaces and to prevent inconvenience to other users. Clearly a PCN is justified where the vehicle is using more than one parking bay or blocking an access route. It is less easy to justify the issue of a PCN where a vehicle may be parked at the end of the line of bays so that even if it slightly extends beyond the white line there can be no possible obstruction or inconvenience to other drivers.

In **BF05032** the appeal was allowed because the Adjudicator had to consider a complaint by the Appellant that his Jaguar motor car was too wide to be parked wholly within the confines of a parking bay in a multi-storey car park The Adjudicator considered that the dimensions of the particular parking bay only have allowed the driver a very narrow space in which to open the door and get out of the car. It was considered that there was insufficient room for him to adequately open the rear door of the vehicle in order to be able to lift out his child.

Further a sign which referred to the requirement to park within a bay “for the safety and consideration of all car park users” was found to be insufficient because there was no warning that the penalty charge might be imposed.

WORN YELLOW LINES

This section of the Report seeks to dispel what seems to be a commonly-held misapprehension about the legal status of yellow lines (and other road markings) which have become worn over time to less than pristine condition. Readers of previous annual reports will be aware that this topic has been aired several times before. Nonetheless, there has been a spate of cases during 2006 in which motorists have challenged the validity of yellow lines for not being in pristine condition and therefore, it is argued, not in accordance with the regulations. Several of these appeals have been pursued by the appellant beyond the original adjudication to an application for review.

Proper signing and marking of restrictions

The basic position regarding signage generally is as follows. A council operating decriminalised parking enforcement must:

- decide which restrictions it wishes to enforce and where;
- create those restrictions by a valid Traffic Regulation Order; and
- mark and sign the restrictions.

Motorists must comply with the restrictions that are reasonably brought to their notice. Someone can only be expected to comply with something of which they have been made aware or ought to have been aware given a reasonable degree of vigilance. The relevant statutory provision is Regulation 18 (1) of the **Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996** which states: "Where an order relating to any road has been made, the order making authority shall take such steps as are necessary to secure- (a) before the order comes into force the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road; (b) the maintenance of such signs for so long as the order remains in force."

The manner in which the ranges of possible restrictions are to be marked and signed is prescribed by **The Traffic Signs Regulations and General Directions 2002**. This weighty, comprehensive and detailed volume sets out the precise requirements, size, type, colour and permitted variants of every sign and road marking. A restriction marked with signage that is not in accordance with the regulations may not be enforced. Although councils employ teams of highways engineers who are familiar with the regulations, errors do occur from time to time. In **TG05000L** the TRO imposed time-limited free parking along the entire length of a residential road. It erected appropriate kerbside signage but, with the laudable intention of discouraging motorists from parking against the dropped-kerb entrances to driveways, only painted bays where the kerb was raised. The appellant parked on the road outside his own driveway and, of course, outside the bay. The adjudicator held that the time restriction could not be enforced against him. The regulations require that time limited parking must be indicated both by roadside signage and bay markings: neither does the job without the other.

Inevitably, over time, markings and signage succumb to wear and tear. Roadside signs are vulnerable to accidental damage and vandalism or may become obscured by algae or foliage. Road markings become worn. They may fade or be broken up

by minor repairs to the road, until eventually reaching such a state that repainting becomes essential. If lines deteriorate sufficiently, they may be held not to be in accordance with the regulations. **MW05005K** is an example. The council argued that the yellow lines, though faded, were clear but the appellant said the lines were so broken and faded that she thought they were no longer in operation. The adjudicator said: *"The … issue is whether or not the yellow lines, in the condition they were in, were sufficient to put a motorist on notice that restrictions applied and if so, the nature of those restrictions. Looking at the Council photographs, which are very helpful, it is quite clear that the lines are particularly broken and faded and that [the appellant] is correct in her contention that, in places, it looked as if there was a single yellow line rather than the double yellow line*". The appeal was therefore allowed on the ground that the contravention did not occur.

Signage need not be pristine

It is not the case, however, that a restriction marked by lines in a less then perfect condition may not be enforced. The Regulations, although occasionally cited by appellants, do not specify that they should be. The appellant in **SI05064M** sought to rely upon regulation 11(1) of **The Traffic Signs Regulations and General Directions 2002** which requires that road markings *"…shall be of the size, colour and type shown in the diagram."* The relevant diagram in Schedule 6 was 1018.1. The appeal was dismissed by the original adjudicator and the appellant applied for a review of her decision. The application was refused. The reviewing adjudicator said: *"…neither the regulation nor the notes to the diagram say anything about the condition of the lines as [the appellant] is trying to suggest. There is no requirement that the lines must be in perfect condition all of the time. There is no doubt that the quality of the lines in question have deteriorated with the passage of time and repairs to the road surface. Nevertheless they remain enforceable if in spite of their imperfections it is clear that they are and remain double yellow lines"*.

In **SX05041K** the original adjudicator said: *"it is not the law that yellow lines must be in perfect condition at all times. What is important is that the state and quality of the lines at any one time and place make it clear to motorists that they are in fact double yellow lines."* The adjudicator dealing with the subsequent request for a review agreed and the application was refused. In **DD05005E** the adjudicator said *"Lines need not be maintained in perfect condition. The question is whether the state and quality of the lines at any one time make it clear to motorists that double yellow lines are present".* Again, the application for the adjudicator's decision to be reviewed was refused. In **CA05023G** the adjudicator said *"What is important is whether the state of the lines at the time in issue is of such a quality to enable a motorist, on reasonable enquiry, to ascertain the nature and existence of the restriction that the Council wishes to enforce. Such enquiry takes account of minor imperfections and fading colour*".

How good is good enough?

It will be a question of fact in each case whether the condition of the lines was good enough to convey the nature of the restriction to the reasonably vigilant motorist. In **HM05031L** the adjudicator found that *"although the double yellow lines depicted in the Council's photographs are not in perfect condition, it is nevertheless clear that they are and remain double yellow lines."* In **CV05134E** the adjudicator said: *"So, the question is whether or not the double yellow lines in Bayley Lane on 1/12/2006 sufficed? Bayley Lane is cobbled and there are some spaces and I consider that the Council's statement that it is "happy" with the lines is over-optimistic. However, in my view, the photographs (produced by both the Council and [the appellant]) show that*

the double yellow lines were sufficiently visible, on 1/12/2006, to convey to motorists the requisite information (i.e. that Bayley Lane was marked with double yellow lines)". The adjudicator in **SI05064M** said: *"Having seen the photographs I was satisfied that though there were some breaks in the lines, none were of significance and they did not substantially interfere with the continuity of the line. Therefore I found that the lines were clear and adequate to convey the restrictions that were in force".*

Weighing the evidence

Where the adequacy of signage is the issue, photographic evidence is always helpful. Good, clear contemporaneous photographs, if available, are ideal. Photographs taken a short while later may also be useful; if the road is very crowded with vehicles when the PCN is issued, a better picture can sometimes be obtained at a quieter time. A photograph taken a long time after the event is less valuable; it is the state of the lines when the PCN was issued that is being assessed. A photograph taken after repainting has no probative value as to the state of the lines at the relevant time but might tend to indicate that the council considered repair to be necessary. An isolated photograph of a length of yellow line devoid of contextual clues is wholly useless.

The adequacy or inadequacy of the lines is a question to be decided by the adjudicator in each case on the basis of the evidence actually presented to him. If the appellant raises the state of the lines as an argument, the council should always address the point in its submissions. If it does not, it may be taken to accept what the appellant says. Cases **HM05026L** and **HM05031L** demonstrate both these points particularly clearly. Between them, they covered six PCNs issued to the same vehicle in the same length of road during the same three week period.

The first PCN issued was the subject of **HM05026L**. The appellant asserted that the double yellow lines were invalid as they were broken and did not have T bars at the ends. He further stated that the lines had been renewed since the PCN was issued. The adjudicator said: *"Despite this information supplied by [the appellant], the Council has chosen to make no comment on its accuracy in its submissions on appeal. Accordingly, I accept what [the appellant] has told me and I allow the appeal on the basis that the lines were worn and have subsequently been renewed. At the time of this alleged contravention, the yellow lines were not enforceable."* The other five PCNs were considered by a different adjudicator in **HM05031L**. This time, the council addressed the issue of the state of the lines. It said in its Notice of Rejection of Representations, *"we are satisfied that the condition of the lines was more than adequate to indicate that a restriction was in place, but that you chose to ignore it*" and made the same point in its submissions to the adjudicator. It also supplied photographs, taken on each date to demonstrate that the lines were present and a map. On the basis of this evidence, the adjudicator found *"that although the double yellow lines depicted in the Council's photographs are not in perfect condition, it is nevertheless clear that they are and remain double yellow lines"*.

In the light of these opposing outcomes, the appellant applied for a review of the decision in **HM05031L**. The application was rejected. "*The information and submissions provided by the Council in this case were different… As I have said, adjudicators decide cases on the information before them at the time. [Adjudicator A] and [adjudicator B] had different information before them from the Council. It may well be that [adjudicator B] should this be A? would have decided the case in a different way if she had had appropriate submissions from the Council".*

An appellant has no right to review a decision simply because he disagrees with the adjudicator's conclusion on the facts. Unless it appears that the original adjudicator overlooked some evidence or reached a conclusion that was wholly unreasonable, a second, reviewing adjudicator will not replace with his own the conclusion reached by the adjudicator who first assessed the evidence.

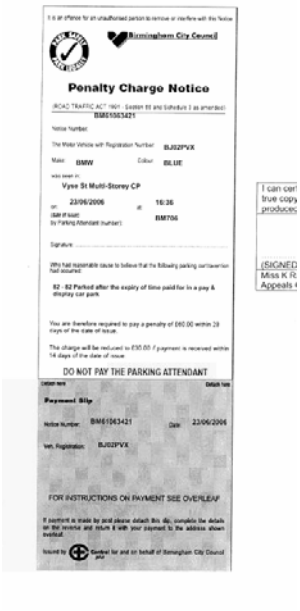
The entire length of line

In considering the state of the line, the adjudicator will be looking primarily at the length of road in which the vehicle was actually parked, not at the entire length of the line. It is sometimes argued that a deficiency anywhere on the line invalidates the entire length. This argument may be made in relation to wear and tear of the line or to the absence of the required T bar at the end. This is not the case. In **DD05005E** the appellant argued that the double yellow line was invalid because it extended round the corner from the main road into a private road where it should not have been and that the end of the line (in the private road) lacked a T bar. He also argued that parts of the line were in poor repair. The appeal was dismissed. Photographs taken by the parking attendant at the time clearly showed double yellow lines both at the front and rear of the appellant's vehicle. The Chief Adjudicator said "*While there may be pot-holes and occasionally patches of faded lines in the wider vicinity, the lines where the vehicle was parked are completely visible and clear. The yellow lines do continue into at the 'private' road, which does not appear to be subject to the TRO…. Since [the vehicle] was not parked in this road I do not consider that the status of any parking restrictions or the carriageway markings in that road to be material to this appeal*". And, regarding the T bar *"The absence of the T Bar would certainly be relevant if there was some doubt if [the appellant] had been parked at the end of the restriction and it was unclear as to where it began or finished. I accept that the council are obliged to mark the beginning and end of the restrictions with a T Bar, but the absence of the T Bar does not have the effect of invalidating the entire stretch of yellow lines"*. She concluded that the restriction was satisfactorily signed and the contravention established. The appeal was dismissed.

BIRMINGHAM

There is one council whose approach to the enforcement of non-compliant PCNs after the **Barnet** decision and its implications were known, calls for particular comment. Birmingham is a huge metropolitan authority which issued 186,459 PCNs during 2006. It is one of those, whose standard PCN contained the date of the contravention but not a separate date of issue. Thus, following the **Barnet** decision, a great many of the PCNs issued in Birmingham during 2006 became unenforceable.

BM05639L contains the following example of the pre-**Barnet** non-compliant Birmingham PCN issued on 23 June 2006.



Birmingham City Council

Penalty Charge Notice

Vyse St Multi-Storey CP

23/06/2006 at 16:36

BM706

DO NOT PAY THE PARKING ATTENDANT

Payment Slip

Notice Number: BM61043421 Date: 23/06/2006

Veh. Registration: BJ02PVX

FOR INSTRUCTIONS ON PAYMENT SEE OVERLEAF

The adjudicators appreciate that councils needed time to consider the High Court decision and its implications. On 3 October 2006 Birmingham issued a Notice to Owner following a non-compliant PCN. The adjudicator in **BM05639L** said: *"I do not criticise the council for issuing a Notice to Owner on 3 October 2006. The Barnet decision was newly issued at that time and the council was, no doubt, still considering its implications"*.

Birmingham, however, did not change its standard PCN very promptly after the publication of **Barnet**. Old-style PCNs were still being issued as late as mid-October 2006, when most of the other authorities affected by **Barnet** had already changed the wording of theirs. The PCN in **BM05531D** issued on 17 October is one of the latest old-format PCNs to come before the adjudicator, who commented: "*As the council has been aware since September 2006 when the High Court published its decision in the **Barnet** case, the PCN issued did not comply with the Road Traffic Act 1991 and could not be enforced in any event. In this case, the council not only issued a non-compliant PCN but followed it up with a Notice to Owner and a Notice of Rejection of Representations*".

When the wording was changed, Birmingham did not get it right at first. The new standard PCN set out two dates, but they were both the date of the contravention; the date of issue was still missing.

Birmingham City Council

Penalty Charge Notice

Date of Contravention: 16/10/2006

Notice Number: BM52123872

The Motor Vehicle with Registration Number S717KBY

Make DAEWOO Colour BLUE

was seen in Station St

on 16/10/2006 at 21:49

(Date of issue) by Parking Attendant (number) BM695

Signature .....

Who had reasonable cause to believe that the following parking contravention had occurred:

01 Parked in a restricted street during prescribed hours

You are therefore required to pay a penalty of £60.00 within 28 days of the date of issue.

The charge will be reduced to £30.00 if payment is received within 14 days of the date of issue.

DO NOT PAY THE PARKING ATTENDANT

Payment Slip

Notice Number: BM52123872 Date: 16/10/2006

Veh. Registration: S717KBY

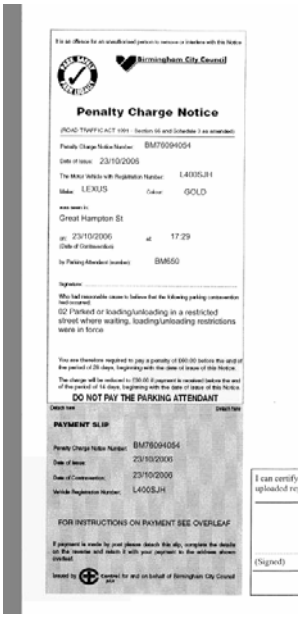
FOR INSTRUCTIONS ON PAYMENT SEE OVERLEAF

If payment is made by post please detach this slip, complete the details on the reverse and return it with your payment to the address shown overleaf.

Issued by [redacted] for and on behalf of Birmingham City Council

This example dated 16 October 2006 is taken from **BM05555B**. The adjudicator said: *"There is a second issue relating to the validity of the Penalty Charge Notice itself. In September 2006 the High Court held in the **Barnet** case that a PCN must set out two separate dates: the date of issue of the Notice and the date of the contravention. Although these dates will usually be the same, circumstances may arise when they are not. This PCN appears at first sight to comply. It has a date at the top marked "date of contravention" and another date underneath marked "(date of issue)". It is clear to me however, that this second date is not the date of issue at all but the date of the contravention. Thus, the date of contravention has been inserted twice but the date of issue is missing. This means that the PCN does not comply with the Road Traffic Act 1991 and may not be enforced".* So far as the adjudicators can ascertain from the cases actually appealed, it seems that PCNs were issued in this form for a period of about a week.

By around 23 October 2006 the PCN wording changed again to a form that complied with the requirements of the **Barnet** decision. One of the first PCNs issued in the new format on 23 October 2006 came before the adjudicator in April 2007.



Penalty Charge Notice

Birmingham City Council

Penalty Charge Notice Number: BM76094054

Date of issue: 23/10/2006

Vehicle Registration Number: L400SJH

Make: LEXUS Colour: GOLD

was seen in:

Great Hampton St

on: 23/10/2006 at: 17:29

(Date of Contravention)

by Parking Attendant (number): BM650

Signature:

Who had reasonable cause to believe that the following parking contravention had occurred:

02 Parked or loading/unloading in a restricted street where waiting, loading/unloading restrictions were in force

You are therefore required to pay a penalty of £60.00 before the end of the period of 28 days, beginning with the date of issue of this Notice.

The charge will be reduced to £30.00 if payment is received before the end of the period of 14 days, beginning with the date of issue of this Notice.

DO NOT PAY THE PARKING ATTENDANT

Detach here — Detach here

PAYMENT SLIP

Penalty Charge Notice Number: BM76094054

Date of Issue: 23/10/2006

Date of Contravention: 23/10/2006

Vehicle Registration Number: L400SJH

FOR INSTRUCTIONS ON PAYMENT SEE OVERLEAF

If payment is made by post please detach this slip, complete the details on the reverse and attach it with your payment to the address shown overleaf.

Issued by Excelerate for and on behalf of Birmingham City Council

I can certify uploaded re

(Signed)

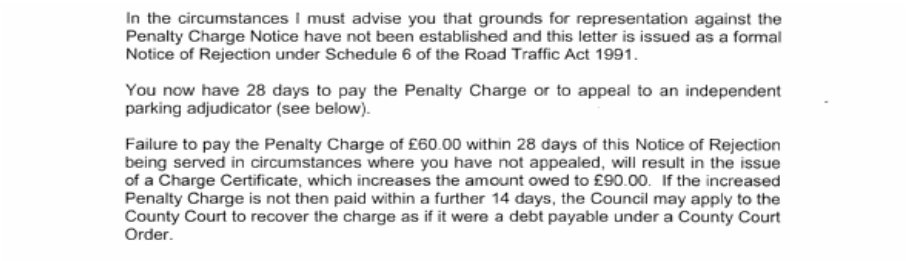
Regrettably, appeals concerning new-style **Barnet**-compliant PCNs were not the only ones from Birmingham still coming through the appeals system at this time. It became clear to the adjudicators that Birmingham was routinely continuing to enforce PCNs issued in the old, non-compliant style long after the full implications of the **Barnet** case were known. Many of these cases were exacerbated by extraordinary periods of delay, sometimes of a nature that would of itself have resulted in the appeal being allowed. It became commonplace to see appeals in which the council had taken the better part of six months to reject the appellant's representations on the Notice to Owner. NPAS received 248 appeals concerning PCNs issued in Birmingham between January and September 2006 where in each case the council continued the enforcement process, after becoming aware the PCN concerned was invalid, right up to the point at which an appeal was made. The following are merely examples.

BM05545J involved an old PCN and substantial delay. The PCN was issued on 8 February 2006 and the Notice to Owner all but six months later on 7 August 2006. The appellant made representations dated 26 August 2006, which the council did not reject until 25 January 2007. The ensuing appeal was no-contested with no explanation given. In **BM05637E**, although the PCN dated 7 July 2006 pre-dated the **Barnet** decision, the Notice to Owner was issued as late as 28 December 2006. The appellant's representations were rejected on 29 March 2007 and the ensuing appeal no-contested on 17 April 2007.

This conduct attracted considerable criticism from the adjudicators. In **BM05545J** the adjudicator said: *"Such delay would be unacceptable in most circumstances but is all the more so in this case because, as the council has known since September 2006 when the High Court published its decision in the **Barnet** case, the PCN issued did not comply with the Road Traffic Act 1991 and could not be enforced in any event. [The] appeal to the adjudicator was bound to succeed, so it is unsurprising that the council decided not to contest it."* In **BM05637E** she said: *"The council has known since September 2006, when the High Court published its decision in the **Barnet** case that the PCN issued did not comply with the Road Traffic Act 1991. This means that it may not now be enforced and that any appeal to the adjudicator was bound to succeed irrespective of the substantive issues between the parties. I consider that the council had already had ample time to digest the implications of the*

Barnet *decision when it issued the Notice to Owner on 28 December 2006. It was certainly perfectly well aware of the position on 29 March 2007 when it invited [the appellant] either to pay the penalty charge or appeal to the adjudicator. In the circumstances, I regard the council's conduct as being highly questionable*".

The Notice of Rejection issued by Birmingham City Council routinely contained the following wording.



In the circumstances I must advise you that grounds for representation against the Penalty Charge Notice have not been established and this letter is issued as a formal Notice of Rejection under Schedule 6 of the Road Traffic Act 1991.

You now have 28 days to pay the Penalty Charge or to appeal to an independent parking adjudicator (see below).

Failure to pay the Penalty Charge of £60.00 within 28 days of this Notice of Rejection being served in circumstances where you have not appealed, will result in the issue of a Charge Certificate, which increases the amount owed to £90.00. If the increased Penalty Charge is not then paid within a further 14 days, the Council may apply to the County Court to recover the charge as if it were a debt payable under a County Court Order.

The adjudicators have no way of knowing how many appellants decided to pay up after receiving this letter. They are only aware of those who did not accept the council's invitation to pay the penalty charge but instead appealed to the adjudicator. None of these appeals was actually decided on its merits. Every one was promptly no-contested by the council. At first, the council chose to indicate that it had decided to exercise discretion in the appellant's favour, an explanation that the adjudicators tended to question. In **BM05450D** the Chief Adjudicator said *"The Council were well aware of this judgment in September and therefore it was wholly unreasonable of them to reject the Appellant's representations on 6 December. Since they knew the penalty charge could not be enforced they should have accepted the representations at that stage without requiring the Appellant to appeal. Furthermore, for the council to claim that are exercising discretion in not contesting the appeal is questionable to say the least".* In later cases, the council tended to offer no explanation at all.

It is beyond regrettable that despite criticism from the adjudicators over a period of several months, the practice of continuing to enforce invalid PCNs continued unabated. Birmingham were still rejecting representations in cases involving non-compliant PCNs as recently as March 2007, six months after publication of the **Barnet** decision.

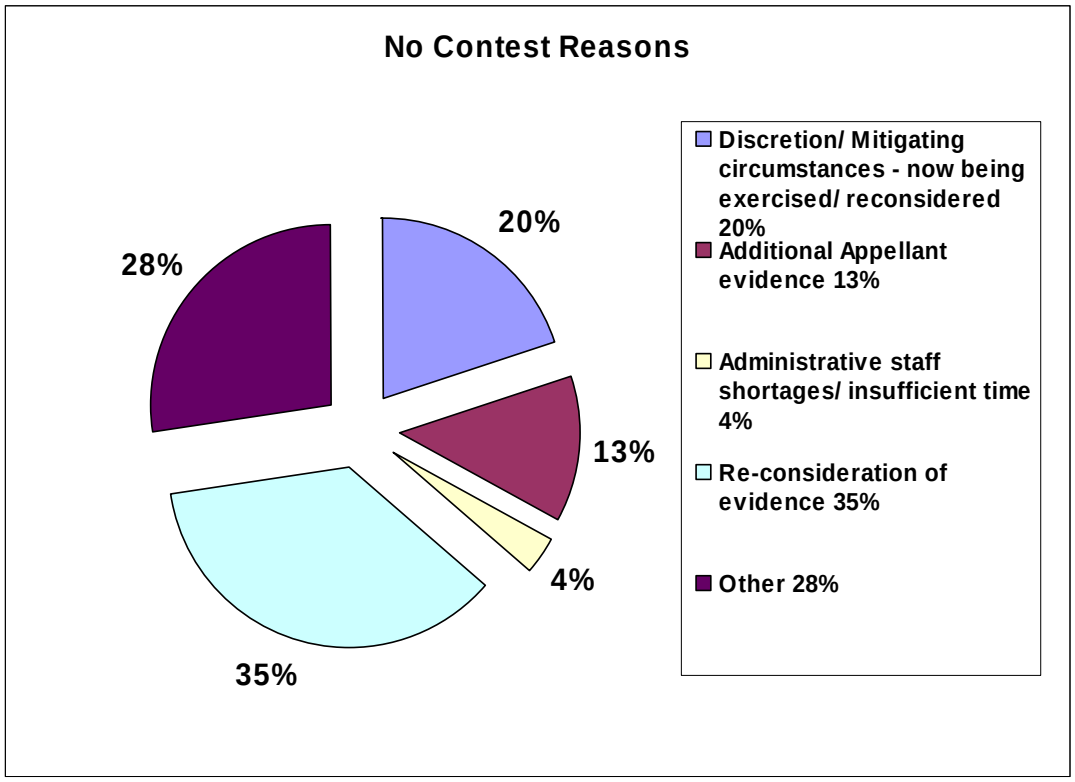
APPEALS WHICH THE COUNCIL DO NOT CONTEST

Councils can decide not to contest an appeal made to the Adjudicator, resulting in the appeal being allowed without the Adjudicator needing to consider the merits of the parties' submissions. Adjudicators have, in previous Annual Reports, expressed concern about the number of appeals which the councils choose not to contest.

Adjudicators recognize that there will inevitably be cases which it is appropriate for the council to concede only at the appeals stage. The appellant is not confined, when making an appeal to the Adjudicator, to the representations submitted to the council prior to such an appeal. This means the appellant can put forward a new point in the appeal which the council has not previously had the chance to consider, or support an existing point with new evidence. The council may well, in such circumstances, find that its decision to pursue the Penalty Charge Notice, which was up to that point a reasonable one, has to be reconsidered. This will lead to the council not contesting the appeal. This is the appropriate step in such cases, so bringing the appeal to a quicker conclusion, and councils cannot be criticized for it. Appellants are encouraged to present their case in full to the council at the earliest possible stage. However, historically the proportion of appeals which councils do not contest, around one-third, has seemed to Adjudicators to be too high to be accounted for solely by new information from the appellant.

Adjudicators are concerned where the council decides not to contest an appeal for reasons other than new evidence. In the absence of anything new, the question arises why the appellant has been obliged to appeal to the Adjudicator before the council decides not to pursue the Penalty Charge Notice. Councils should be considering the representations made to them fully and in doing so should have identified the reason not to pursue the Penalty Charge Notice at that stage, not when the same representations are made to the Adjudicator. It is undesirable for appellants to be obliged to appeal to get a proper consideration of their case by the council.

In light of this concern, the Adjudicators have undertaken analysis of the reasons given by the councils, when notifying the Adjudicators of their decision not to contest an appeal, for that decision. This analysis is set out in Table A below.



This shows that additional evidence from the appellant since the council rejected their representations, whether specifically in relation to ownership or otherwise, accounts for only 13% of appeals which the councils do not contest. However, in slightly in excess of one-third of the appeals which are no contested the reason is that the existing evidence is reconsidered and either the appellant's evidence is now accepted or a problem in or with the council evidence identified. In addition to this, nearly one-third are accounted for by reasons not falling into the other broad categories identified in Table A. Since, however, these must be reasons other than additional evidence from the appellant; the appellant's case cannot have changed from that put to the council to that presented to the Adjudicator. The information provided by the council, therefore, confirms the Adjudicators' concern that appellants are being obliged to take cases to appeal which could and should have been resolved at an earlier stage.

Indeed, the remaining cases, 20% are accounted for by the council deciding to exercise its discretion. It is welcome that even at the stage when an appeal is made councils are still prepared to consider and to exercise discretion to waive a penalty charge. Nevertheless, the council can exercise this discretion at any time, so that such a high proportion of cases being no contested for this reason again raises the question as to why the discretion has not been exercised much earlier.

Of even greater concern to Adjudicators is the proportion of appeals involving vehicles which have been clamped or removed which the councils do not contest. In these cases the appellant has had to pay the penalty charge and release fee to get their vehicle back so there is an even greater onus on the council to identify as quickly as possible those cases where the charges should be reimbursed. Yet the proportion of appeals involving the clamping or removal of a vehicle which the councils do not contest is 41%. This is higher than the proportion of appeals involving

only the issue of a Penalty Charge Notice which are not contested. Furthermore, the receipt of new evidence from the appellant accounts for only 7% of these cases not being contested. The reconsideration of existing evidence is given as the reason for not contesting 45% of these cases. The exercise of discretion accounts for a further 36% of these cases. The incidence of cases which could have been resolved before the appeal stage is higher in cases involving the clamp or removal of vehicles, rather than lower as should be expected. This should be of particular concern to those councils which clamp or remove vehicles.

The Adjudicators remain of the view, therefore, that the volume of appeals which are not contested by the councils is a cause for concern. Motorists are entitled to expect that their representations are considered fully by the council at the earliest possible stage and given equal consideration regardless of whether an appeal is made to the Adjudicator. If this is seen not to be the case then it can be anticipated that more motorists will appeal to ensure that their case receives proper consideration by the council. Conversely, the public perception of decriminalised parking can only be enhanced by councils identifying at the earliest possible stage those penalty charges which cannot be, or ought not to be, enforced. This would be reflected in a decrease in appeals to the Adjudicators which the councils do not contest.

CASE DIGEST

TRO issues

CV05124M

The nature and history of the important statutory distinction between a permitted parking area, where parking is permitted on certain terms and a special parking area, where parking is restricted subject to certain exceptions, was discussed in detail in the annual report for 2005. The adjudicators cited **BI74**, a case in which the TRO was held to be invalid when the council sought to use the mechanism of a residents-only (permitted parking) scheme to create what was in effect an area where parking was not permitted at all. In this case, the situation is reversed. The adjudicator allowed the appeal on the grounds both that the contravention stated on the PCN did not occur and also that the TRO was invalid.

The council sought to create a residents-only parking scheme. The appellant parked without a permit and the PCN was issued under code 15 – parked in a residents' parking place without clearly displaying a valid resident's parking permit. Where such schemes apply the road should be marked in accordance with diagrams 1028.3, 1032 or 1033 in Schedule 6 of the Traffic Signs Regulations and General Directions 2002 together with roadside plates in the form of Diagram 660.3 in Schedule 2. This was not the case. Instead, the council marked the carriageway with a double yellow line. Diagram 1018.1 in Schedule 6 to the Regulations indicates that this marking is to be used where the waiting of vehicles is prohibited at any time. The TRO, by reference to plans annexed to the order, suggested that parking is prohibited at any time except for permit holders. Permits were indeed issued to residents. The adjudicator held, first, that the PCN had in fact been issued for breach of the yellow line restriction. It therefore displayed the wrong contravention and did not comply with section 66 of the Road Traffic Act 1991.

In addition, the adjudicator said: *"In the present case the Council has in effect decided to create a special parking area and a permitted parking area along the same length of road despite the fact that in the interpretation section a restricted or prohibited road is defined as a length of road which does not include any parking place. It is this mixing of special and permitted parking areas which gives rise to the obvious confusion in the relevant signing and the reason given for the issue of the PCN. Indeed, although I have allowed the appeal for other reasons I would question whether this blurring of the distinction between permitted and special parking areas is valid given that it is difficult to see that any part of Brade Drive can be both a parking place for resident permit holders and a restricted or prohibited street. It seems to me the intention was to create the residents' parking scheme but it is entirely unclear why the Council did not simply use the signing which is required by the 2002 Regulations".*

NW05011

The TRO required a ticket to be "attached" to the windscreen. However, the tickets issued from the machine were not sticky and could not be "attached" although they could be displayed on the dash. The appellant contended that her ticket was so displayed and that the attendant could have seen it if he had inspected the dash as well as the windows. A second point arose as to whether the appellant had been obliged to display a ticket at all. Parking was free for the first two hours, yet the drafting of the order referred exclusively to tickets being "paid for" and to the placing

of coins into a machine. The adjudicator was *"not satisfied that a contravention occurred by the Appellant failing to display a ticket for free parking".*

EE05011C

The PCN was issued under code 85 – parked in a permit bay without clearly displaying a valid permit. A parking attendant may only issue a penalty under paragraph 3 of Schedule 3 of the Road Traffic Act 1991 where there has been a contravention of a provision of a TRO. In this case there was no TRO governing the use of the Town Hall car park where the appellant parked. Therefore there was no power to issue a PCN and the appeal was allowed. The Chief Adjudicator said: *"This basic principle is so fundamental to decriminalised parking enforcement that it is astonishing that Epson and Ewell Council has failed to grasp this basic point. This failure must be regarded as wholly unreasonable, particularly since the council has continued to pursue [the appellant] for payment of a penalty charge that it had no power to require"*.

The owner is liable

It is equally fundamental to decriminalised parking enforcement that primary liability for a PCN lies with the owner of the vehicle, whether or not he was actually the driver at the time. A penalty charge is of a very different nature from (say) a fine for speeding, which is the personal (criminal) responsibility of the individual behind the wheel. The only exceptions concern certain categories of vehicle hire agreement and vehicles taken (as opposed to parked) without the owner's consent. Many motorists are surprised to learn this, even though "I was not the driver" is clearly absent from the listed grounds for appeal.

ST05024M

It was undisputed that the appellant's son, who was insured to drive the vehicle, was actually using it when the PCN was issued. The appellant believed that, in the interests of justice and in accordance with natural justice, his son should be held responsible for payment of the charge. When this argument was rejected by the original adjudicator, the appellant requested a review of his decision. The reviewing adjudicator said: "*With respect to the Appellant, I disagree. Paragraph 3(2) of Schedule 3 of The Road Traffic Act 1991 provides that "A penalty charge shall be payable with respect to the vehicle, by the **owner** of the vehicle" (the emphasis is mine)*" and continued, "*The Appellant may well not have consented to his son committing a parking contravention but that is not the issue. The issue is whether or not the son was in possession and control of the car with the Appellant's consent. In this respect, he clearly was….It follows, therefore, as a matter of law that the person responsible for payment of this penalty charge under the 1991 Act is the owner of the vehicle ie. the Appellant, even though the contravention was not committed by him."*.

Suspended bays

BS05191

The PCN was issued under code 21 for being parked in a suspended bay/space or part of bay/space. A bay may only be suspended by statutory provision (Direction 7(1) Traffic Signs and General Directions Regulations 2002), including an Act, order, regulation, byelaw or notice. The Council indicated that the bay was suspended upon the request of, and for the convenience of, another resident. The council did

not produce the relevant authorisation. In its absence, no contravention was established.

Inconsistent enforcement

Motorists may be very put out to receive a PCN in an area where they have seen others park, or have themselves parked (albeit knowingly in contravention of the regulations) unpenalised.

BM05617H

The appellant regularly parked in a free space outside her own house for longer that the one hour permitted but received a PCN on average only once a month. The original adjudicator dismissed the appeal. She said: *"It is very frustrating for [the appellants] that they cannot be certain whether or not they will receive a PCN if they leave their car in contravention of restrictions. However the only certainty is not to contravene the restrictions".* The appellant requested a review of this decision, arguing that it is unfair that PCNs are sometimes issued and sometimes not because local residents using the parking places could never be sure if they would receive a penalty charge notice or not. The appellant said this inconsistency was unjust and that none of the PCNs issued in these circumstances should be enforceable. The reviewing adjudicator disagreed. She said "*Parking by the Appellant in contravention of the regulations in this case is plainly a deliberate act and one that the Council would be entitled to enforce strictly on a daily basis (except perhaps Sundays, as I understand it). That the Council do not issue tickets daily is a matter for them, governed no doubt by resources and other priorities*".

WL05078F

The PCN was issued for parking on a single yellow line. The appellant parked only for about 4 minutes and was clearly unlucky to receive a PCN. He argued that he was a law-abiding person. It was unfair that he received a PCN when others who he had seen abusing the disabled badge/ space concession by parking when no disabled person was in the car, went unpenalised. Although in the light of the circumstances described, the adjudicator adjourned the matter to allow the council to reconsider the exercise of its discretion, she eventually dismissed the appeal when it declined to do so. The application for review was also refused.

Evidence

The council has the burden of proving on the balance of probabilities that the contravention occurred and that a penalty is payable. *"Appellants are entitled to expect that contraventions are supported by sufficient evidence and that issues raised are addressed".* So said the adjudicator in

EL05011M

In that case, the adjudicator criticised the council for incompetent preparation of the appeal evidence and for failing to address the appellant's legitimate points. The council failed to complete the case summary or to identify the TRO relied upon as having been breached. The evidence as to the contravention was contradictory: the attendant's note recorded "AWC" to show that all windows were checked whilst the Notice Details document stated: "All windows checked - No". Furthermore, the appellant said that he returned to the vehicle to find an empty envelope attached but no PCN, yet council did not address the question of whether the PCN had been

served. The appeal was allowed for each of these reasons. The adjudicator said: "*If this was the first occasion where this Council had failed to deal properly with an appeal, by for example identifying the basis of the contravention they relied upon by reference to a specific article in an identified TRO, or by failing to address relevant issues raised by an Appellant, it would perhaps be unreasonable to highlight the shortcomings. However, this is another of a long line of appeals known to me where these or similar points have arisen".*

SS05278

The appeal was not contested because the council accepted that the appellant had a permit for the car park. However, the adjudicator did make the following point relating to the evidence*. "Originally the Council resisted the challenge to this PCN and relied on photographs of the vehicle taken on a previous occasion when a PCN was issued. In the Notice of Rejection letter …, the Council states that these photographs were used to demonstrate that the permit was not displayed as required on this occasion…. [It] is important to make absolutely clear to the Council that only evidence obtained in relation to the alleged contravention can be used to prove it. All Adjudicators would reject any attempt by a Council to bolster its case by evidence pertaining to a previous alleged contravention".*

The council's exercise of discretion

BC05063H

The manner in which councils exercise discretion is another matter raised in the 2005 annual report. In this case, the PCN was issued because the appellant's valid disabled person's blue badge was obscured by other papers on the dash. The council had a policy of cancelling the first PCN issued in these circumstances and the council contended that the application of this policy did not fetter it in the exercise of its discretion in respect of subsequent PCNs. The reviewing adjudicator disagreed. When the Appellant first wrote to the Council, he received a reply saying: *"Unfortunately, as the badge has been produced previously on 15 September 2005, I am unable to consider cancelling the above Notice"*. A subsequent letter said *"I cannot consider this case for cancellation"* and the council's advisory leaflet to disabled drivers stated: *"If you have already had one or more penalty notices whilst using this disabled parking badge, we will not cancel this one*". The tenor of these documents pointed to the fact that the possibility of exercising discretion on a second occasion had been excluded. The reviewing adjudicator said: *"The Council always have a discretion whether or not to pursue payment of a penalty charge, even if a contravention occurs. However, that discretion must be exercised properly and fairly in each individual case and any policy, formulated to assist in the exercise of that discretion, must be flexible and should not fetter the discretion in any way*". While making it clear that, in any case, the Council is entitled to exercise its discretion and that, if it does so properly, an adjudicator has no power or authority to interfere, and also accepting that the adjudicator himself has no similar power to exercise discretion and allow an appeal on the ground of mitigating or extenuating circumstances alone, the reviewing adjudicator concluded that in the circumstances and on the evidence before him in this case, the Council did not exercise its discretion *"properly, fairly and with flexibility and, accordingly, the exercise by the Council of its discretion was unlawful".*

The Notice to Owner

WL05088K

A Notice to Owner must have a date. *"Under The Road Traffic Act 1991, Schedule 6 paragraph 1 (2):* "A notice to owner must state…(c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date on which the notice to owner is served;" *The Notice to Owner sent to the Appellant is undated instead the words* "As Postmark" *appear. In the case of* ***R v The Parking Adjudicator ex parte Barnet Council [2006] EWHC (Admin) 2357*** *Mr Justice Jackson decided that to comply with Section 66 (3) of The Road Traffic Act, a PCN must have a date. Under Section 66 (3):* "A penalty charge notice must state…(c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;" *The Court decided that a PCN without a date cannot be enforced. It therefore follows that a Notice to Owner must also have a date…I find that the Notice to Owner issued to the Appellant does not have a date of issue and therefore does not comply with the requirements of the 1991 Act".*

Taxis

MC 05009L

The PCN was issued under code 45 for parking for parking in a taxi rank. the council said that the rank was for licensed hackney carriage drivers only and made available for hackney carriages to wait to be hired by members of the public. The appellant, a private hire driver, said he believed he was entitled to park there. He was wrong. The adjudicator said: *"in my view it is common knowledge even amongst members of the public that there is a distinction between hackney carriages and private hire vehicles and that ranks are there for hackney carriages to ply for hire. In my view as a private hire driver the Appellant should have been aware of the distinction and should have been aware that he was not entitled to park in a rank".*

BO05006J

The usual exemptions permitting vehicles to wait on single or double yellow lines (loading / unloading, passenger alighting, disabled badge etc) do not apply in a taxi rank. The appellant, a professional courier making a delivery to a solicitor's office, was unaware that he could not leave his vehicle on the taxi bay in these circumstances. Rule 215 of the Highway Code states that: "You MUST NOT stop or park on…taxi bays as indicated by upright signs and markings". The appeal was dismissed.

SQ05010H

The appellant's vehicle was a licensed hackney carriage. He left it for a few moments while he went to the lavatory. The council contended that he was not entitled to wait in the taxi rank because the vehicle was unattended and not available for hire and therefore not "a hackney carriage" as defined in the TRO. The appeal was allowed. The adjudicator said: *"I do not interpret that to mean that it ceases to be a hackney carriage for every minute that it is not in such use. Any common sense view of [the appellant's] vehicle would say that it was a vehicle used in standing or plying for hire and it had the required number plate fixed on it. I am also satisfied on the facts that the vehicle was available for hire except that the passenger would have to wait to depart until [the appellant] returned from the toilet*".

TW05036J

The appellant, a licensed hackney carriage driver, left his taxi in the rank while he escorted his elderly passenger to the shops, waited while she shopped then escorted

her back to the cab. Although the appeal was allowed or a different reason, the adjudicator held that the vehicle could not be held to be available for hire in those circumstances and was not entitled to wait in the rank.

MC05437F

The PCN was issued for parking in a city centre taxi rank and subsequently removed. The adjudicator found that the PCN had been issued correctly and said: *"Once the PCN was issued the Council had the power to remove the vehicle and on the particular facts of this case bearing in mind this is a city centre taxi bay in my view towing away was proportionate"*.

Restricted zones

ET05061E

This case examines the unique signing requirements in restricted zones. Restricted zones are relatively uncommon. A Restricted Zone applies to an area with heritage status where it is considered necessary for environmental reasons to keep the carriageway and roadside signings to a minimum. A uniform restriction should apply within the zone. An authority wishing to establish a restricted zone must obtain permission from the Department for Transport. Such authorisation permits the Council to erect signs which are a variant of diagram 666.3 in Schedule 2 of the Traffic Signs Regulations and General Directions 2002, indicating entry to the Restricted Zone where waiting is prohibited at all times. Further the authorisation requires that smaller roadside plates, in much the same form, are put up throughout the zone "in sufficient numbers to give adequate information to road users of the waiting restrictions in force …..". The usual double yellow lines are not then The combination of an inconspicuous entry sign, a stray length of yellow line and the absence of a roadside plate led him to believe that parking was unrestricted. The adjudicator said: "I think the Council should recognise that the concept of a Restricted Zone is not necessarily widely known amongst drivers, because the use of the Zones is so limited. Whilst such lack of knowledge may not be a defence the Council must recognise that it may be necessary to reinforce the message that waiting is prohibited at all times by, for example, the use of roadside plates which do appear throughout the Zone".

Payment going astray

Sometimes the appellant says he paid the penalty charge (usually within the 14 day period at the discounted rate) but the council denies receiving it. The PCN will specify the various methods by which payment may be made. Motorists are well advised not to substitute methods of their own.

Cash

Paying in cash otherwise than in person at the relevant desk is inherently troublesome.

SK05008B

The appellant said he put £30 in cash in an envelope and pushed it through the council's letter box the day after the PCN was issued. Although a thorough search was carried out, no trace of it was found. The adjudicator considered the investigation carried out by the Council to locate the money and was satisfied that it

employed a robust system. She said *"It is the responsibility of the motorist to ensure the payment is received by the Council before the penalty is discharged… Accordingly, as the money has not been received, the penalty has not been discharged and the amount is outstanding".*

NN05034C

[The appellant] said he paid the penalty at the reduced rate on the day the PCN was issued by pushing an envelope containing £30.00 cash through the letter box of the Guildhall Council House when that building was closed. The Council said that when the envelope was opened in the post room it contained the original PCN but no cash. The envelope has been produced in evidence. The adjudicator said : *"I am not satisfied on the balance of probabilities that cash was ever posted. The PCN makes it clear that cash should not be sent; anyone wishing to pay in cash should visit the banking hall during business hours. The letter box itself has a plate positioned conspicuously above it saying that cash should not be inserted. These restrictions are sensible security precautions. If despite these very clear injunctions the appellant did indeed post cash which went astray, he has only himself to blame. I am satisfied that no cash payment in respect of this PCN ever reached the parking department. Accordingly, the penalty charge remains unpaid".*

BB05012K

The appellant sent cash in the post but it was not received. Again, the adjudicator looked into the council's procedures for checking payments and found them to be sufficient. *"[The appellant] has consistently maintained that the day after she received the ticket she sent £30 in cash to the address as requested. She does not have a cheque book or any means of paying on the telephone. … [She] suggests that the money has been stolen. She has not produced any certificate of posting. The PCN in this case sets out on the reverse the methods of payment of the penalty charge which include postal payment by cheque or postal order and payment in cash at the parking office. It is not suggested that cash should be sent in the post. The Council's position is simply that cash payment was not received. The Council has explained how the relatively few cash payments are dealt with and has produced a printout of all payments received between 30 December 2005 and 14 January 2006. The majority of payments were made by cheque and none of the 7 cash payments received relate to this PCN. I have considered the evidence submitted by both parties. I am satisfied to the required standard and find as fact that the Council did not receive the cash payment. Accordingly I dismiss the appeal. … posting cash is inherently risky and it was [the appellant's] decision to take that risk…"*

Cheques

SK05011G

The PCN was issued on 3 December 2005. He posted a cheque to the council within 14 days but they did not receive it. It transpired that the envelope had remained with the post office until 30 March 2006 before being returned to the appellant because it did not have a stamp on it. The council agreed to accept the reduced sum of £30 and the adjudicator ordered this to be paid.

PR05018B

Although he produced no corroborating evidence, the appellant was consistent in saying that he sent a cheque for £30 seven days after the PCN was issued. The

council did not receive it. The adjudicator said. *"Having considered all the evidence I can find no reason to doubt the Appellant's evidence that the cheque was sent, I therefore direct that he be permitted to pay the reduced fee of £30 on the basis that through no fault of his that payment was not received, and as a result he should not be prejudiced by the fact that the payment was not received"*

SN05034D

The adjudicator did not accept that the appellant had posted her cheque in time but restated the usual rules on when post is deemed to be received. *"Obviously, in a situation like this [the appellant] cannot produce evidence that the cheque was received by the council unless she physically gave it to a council official. She says that she posted it, but does not give any details of when or where or of the postage rate which she paid. Had she done so, she might have been able to take advantage of the general legal principle, most clearly embodied in the Civil Procedure Rules, that a properly addressed letter sent by first-class post is deemed to arrive with the recipient on the second day after posting".*

Telephone and computerised payments

ET05018F

The appellant's previous correspondence and submissions said nothing about any attempt to pay but focused on the circumstances of the contravention; the council did eventually offer a further opportunity to pay at the discounted rat but this was not taken up. On appeal, the appellant said she tried to pay by telephone shortly after the PCN was issued but that the payment did not go through because of a fault with the system. The adjudicator said: *"I am not convinced by this explanation of events. Not only is it inconsistent with the documented events but the appellant has provided very little information about the attempt to pay. I believe it to be more likely than not and find as a fact that no valid payment was made. The full amount of the penalty charge is now due"*.

TB05107H

The appellant tried to pay online within the 14 day period and believed her payment had gone through. This explanation was supported by a witness statement from a colleague who helped her attempt that process and who confirmed that the payment appeared to go through. The adjudicator said: *"I am satisfied by the Appellant's evidence that she did make a genuine attempt to pay and it is just as likely that a fault in the Council system prevented the payment going through as to believe that the Appellant was somehow at fault. I am surprised that the Council in such circumstances on receiving the representations did not renew the offer to accept the reduced penalty. I expect it has cost more than £30 to contest the appeal*".

LOCAL AUTHORITIES WORKING TOGETHER TO SHARE BEST PRACTICE AND DEVELOP GUIDANCE

I was delighted to receive a report from the Kent Parking Managers' Group entitled "Guidance policies for the enforcement and cancellation of Penalty Charge Notices. The document includes a wide range of policies for the purposes of informing the public and providing guidance to council employees working in the enforcement of parking regulations.

The document, quite rightly, cautions that each case must be considered on its own merits, taking into account all of the evidence available and the exceptionality of the circumstances and goes on to explain that:

"What is important about these policies is that they represent a foundation upon which fairness and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be fettered by being unduly formulaic."

The policies address the following areas of operation:

Observation times for enforcement staff
The statutory grounds upon which representations may be made
Mitigating circumstances
The acceptance or rejection of representations

By way of example, the table below is taken from the guidance and considers the representation from the motorist that a pay and display ticket was purchased and displayed.

Council may accept representations	Council May reject representations
If the motorist produces a Pay & Display parking ticket that was valid at the time the Penalty Charge Notice was issued **and the Parking Attendant confirms that a face down ticket or a ticket that was displayed but concealed in some other way was seen** and it is the first contravention of this kind.	• If the motorist is unable to produce a valid pay & display ticket • **The Parking Attendant was unable to confirm that a face down ticket or a ticket that was displayed but concealed in some other way was seen** • The motorist has made a similar representation before and had a previous PCN cancelled, after giving them the benefit of the doubt; or • The parking attendant noted that the motorist obtained their ticket from another motorist in the car park; or • Where digits have been entered

	on the face of the ticket and do not match those of the motorist's vehicle registration, subject to some latitude being allowed for errors.

"It is important to recognise that each case will be considered on its own merits, matters of proportionality, objectivity, fairness and reasonableness should be paramount."

The Adjudicators are encouraged by such cooperation between councils on projects which provide clarity, consistency and transparency within the parking enforcement process. I understand that these policies will be subject to ongoing review and would welcome feedback on their implementation.

HEAD OF SERVICE
AN OVERVIEW OF THE NATIONAL PARKING ADJUDICATION SERVICE

I welcome the opportunity to assist in the introduction to the Adjudicators' 2006 Annual Report having joined the National Parking Adjudication Service (NPAS) in June of that year following the retirement of Bob Tinsley. 2006 was a significant year for NPAS with the increase of its area of jurisdiction to include the civil enforcement of bus lanes. The introduction of civil bus lane enforcement is set out in the Bus Lane Adjudication Service Annual Report.

I have been particularly impressed by the level of commitment to customer service at NPAS. In 2006, 10,000 Penalty Charge Notices were appealed. Whilst the Decision is the ultimate objective for the tribunal and its parties this is supported by an effective case management system and staff who liaise with parties involved in the appeal. I would like to take this opportunity to set out how NPAS handles these appeals from the Notice of Appeal to the Decision.

The journey of an appeal

The process of challenging a Penalty Charge Notice (PCN) is quite complex and so a considerable part of our communication role with potential appellants is to ensure that they are at the correct point in the process. They are advised that:

1. They can contact the council immediately after receiving a PCN and state their case.
2. If the council rejects their challenge and they don't pay the charge, the council will, after contacting the DVLA, send a Notice to Owner to the person believed to be the owner of the vehicle.
3. If they receive a Notice to Owner, they can use the form to make formal representations against the PCN to the council.
4. They must make their representations in writing within 28 days of receiving the form (whether on a Notice to Owner form or otherwise).
5. If, having considered the formal representations sent in, the local authority reject them, they will issue a Notice of Rejection explaining why.
6. With this Notice of Rejection the owner of the vehicle will receive an appeal form which they can use to appeal to the independent Adjudicator at NPAS. They must do so within 28 days of receiving the Notice of Rejection.

The motorist may only appeal to the independent Adjudicator if they have first made representations to the council in response to the Notice to Owner and have received their Notice of Rejection of Representations.

Once our staff have established that the appellant has reached the correct point at which to appeal to NPAS, they explain the role of The Notice of Appeal form. This sets out the grounds on which the owner of the vehicle can make an appeal. There are six such grounds:

- The alleged parking contravention did not occur
- When the vehicle was parked, it had been taken without my consent
- I was not the owner at the time the alleged parking contravention occurred
- We are a vehicle hire firm and have supplied the name and address of the hirer
- The penalty charge exceeded the relevant amount

- The Traffic Regulation Order was invalid

The appellant is then advised to use the Notice of Appeal form to set out details of their appeal. In some local authority areas, appellants are able to lodge their appeal using our on-line facility. The Notice of Rejection of Representations from the council will highlight if this facility is available. NPAS is actively encouraging this facility with councils and can report that at the time of publication of this report, the number of councils has increased to fifteen: Bath, Bedford, Bournemouth, Brighton, Brentwood, Bristol, Denbighshire, Gwynedd, Isle of Anglesey, Manchester, Oxford, Stockton on Tees, Thanet, Tandridge, Tonbridge. NPAS would like to see all councils take up this facility to improve choice and accessibility for the appellant.

On completing the Notice of Appeal form the appellant is asked for their choice of hearing type.

- Appellants can opt for a **personal hearing**. NPAS has hearing venues across England and Wales. So, irrespective of where the PCN was issued, the appellant may request a hearing at a venue local to them from the venues that are listed on the Notice of Appeal form and within this annual report. The appellant is also advised to specify a second and third choice venue. In the vast majority of cases, the hearing will be offered at one of the preferred venues. All of our venues are wheelchair accessible and a hearing loop is available.
- Alternatively, appellants may wish to choose to have a **postal decision**, whereby the Adjudicator comes to a decision based upon the documents and evidence that have been submitted.
- More recently, NPAS has introduced **telephone hearings** where the appellant can take part in the hearing via a conference call with the Adjudicator and representatives from the council.

NPAS recognises that most appellants will not be familiar with the idea of adjudication nor of the judicial processes associated with this. By assigning one of our Appeals Coordinators to each case, we aim to provide a consistent point of contact for both appellants and councils. The Appeals Coordinator can be contacted by telephone, email or in writing and will be able to answer any queries appellants and councils have about the appeals process, but to outline this briefly:

The Appeals Coordinator will:

- acknowledge the appellant's appeal
- confirm receipt of that appeal to the local authority who issued the PCN
- invite the appellant and the local authority to submit evidence.
- confirm arrangements for the hearing.

Personal Hearings

A personal hearing provides an opportunity for all parties to state their case in person and enables the Adjudicator to explore the facts in detail and explain the relevant law and decision-making process to the parties.

Appellants are entitled to bring a member of their family, a friend or a personal assistant to assist and support them at the hearing which will last approximately 15 minutes and may also be attended by a representative from the local authority. These are public hearings and anyone is entitled to attend to observe.

Appellants and representatives from the local authority are met by a Hearing Centre Supervisor who will be able to assist in relation to general enquiries about the hearing.

The hearing room is set out to provide the formality which is appropriate to the judicial proceeding but should not be confused with a courtroom. Hearings are quite informal and there are no complicated rules of evidence or procedure. Hearings may also be recorded by NPAS. The Adjudicator is responsible for ensuring the hearing is conducted properly.

At the hearing parties to the appeal can expect that:

- the Adjudicator will introduce himself or herself and explain how the hearing will proceed
- the parties present will be given the opportunity to explain their case to the Adjudicator
- the Adjudicator will normally advise of his or her decision at the end of the hearing
  (In a few cases this will not be possible, in which case the Adjudicator will explain why, and when the decision can be expected)
- the Adjudicator will explain clearly the reason for his or her decision

We aim to hold a personal hearing within 56 days of receiving the Notice of Appeal. The Adjudicator may provide the parties to the appeal with his or her decision at the hearing but we aim to send the written decision within 10 working days.

Postal Decision

If the appellant has opted for a postal decision, a hearing does not take place so neither party is present. The Adjudicator considers all the submissions and evidence presented by both parties to the appeal and comes to a decision based on these documents only. NPAS aims to have postal appeals decided within 42 days of receipt of the Notice of Appeal and to have written decisions posted out to both parties to the appeal within 10 working days.

Telephone Hearings

NPAS has recently introduced telephone hearings. These have the advantage of providing an opportunity for all parties to state their case but without having to attend a specific venue. Quite simply, NPAS arranges a telephone conference call at a pre-arranged time. This allows the Adjudicator, the appellant and the local authority to conduct the hearing in the same way as in a personal hearing but without the need for interruption or travel for both parties. Feedback on our early telephone hearings has been extremely positive from both parties and NPAS will now be rolling this pilot out. As a first step, any appellant who states that they require assistance at the hearing will be offered this as an option for their hearing.

How are we doing?

Our commitment to customer service is backed up with a robust performance framework.

For 2006, with some 180 local authorities party to the NPAS Joint Committee agreement and a slight increase in appeals from 9,449 to 10,000, our performance standards were as follows:

- Answer 90% of telephone calls within 15 seconds
- Acknowledge 95% of Notice of Appeals within 2 days
- Decide postal decisions within 42 days of receipt of the Notice of Appeal
- Hold personal hearings within 56 days of receipt of the Notice of Appeal

The tables below indicates how we have performed against these standards.

Table 1

PERIOD	% OF POSTAL APPEALS DECIDED WITHIN 42 DAYS	TARGET	% OF PERSONAL APPEALS HEARD WITHIN 56 DAYS	TARGET
Year 2000/1	57%	80%	59%	80%
Year 2001/2	80%	80%	82%	80%
Year 2002/3	78%	80%	89%	80%
Year 2003	77%	80%	91%	80%
Year 2004	79%	80%	88%	80%
Year 2005	73%	80%	93%	80%
Year 2006	**71%**	**80%**	**62%**	**80%**

It will be noted that the performance reported for personal appeals reduces significantly in 2006. In investigating the reasons for this reduction, there has been a fundamental change in the way in which not contested appeals were handled (which constituted around 30% of appeals in 2006).

Prior to 2006, not contested appeals had been handled administratively and swiftly. From 2006 onwards they were considered by an Adjudicator and the new Case Management System automatically classifies what originally would have been a personal hearing as a postal decision as there is no further requirement for the parties to be present at a hearing. The buffer of not contested personal appeals prior to 2006, provided by the swift administrative closure of appeals balanced out those appeals which took longer to reach a hearing e.g. because of, for example, a rural location for the hearing or the complexity of the case.

By way of comparison, where not contested appeals are removed from the 2005 personal hearing data, this has the impact of reducing the performance reported in Table 1 from 93% to 53%. This is more consistent with the performance reported for 2006.

This change in reporting has prompted a more thorough review of the targets which were introduced in 1999, based on standards for the London adjudication service where personal appeals are held in one central location with adjudicators based there on a permanent basis. Clearly the London adjudication service has a concentrated high level of appeals in a relatively small area which enables this arrangement to work effectively.

The National Parking Adjudication Service is providing a very different type of service to the parties to the tribunal. It provides access to personal hearings across England and Wales to ensure local accessibility. In some rural areas the number of appeals will be relatively small and it can prove difficult to establish a viable list of hearings. In these circumstances some appellants opt for a postal decision, or more recently a telephone hearing. However some prefer to wait for the opportunity to present their case in person to the adjudicator. In this respect, the performance targets associated with a national service need to reflect these differences in delivery.

These findings will be drawn to the attention of the National Parking Adjudication Service Joint Committee in their review of performance standards for 2007.

Table 2

PERIOD	**%of phone calls answered within 15 seconds**	**TARGET**	**% of appeals acknowledged within 2 working days**	**TARGET**
2002/3	96%	80%	99%	80%
Year 2003	96%	80%	99%	80%
Year 2004	97%	80%	99%	80%
Year 2005	97% (up to Aug 05)	90%	99%	95%
Year 2006	**98% (Since October)**	**90%**	**92%**	**95%**

Note 1: The availability of telephone monitoring information has been affected by a change in systems within the Lead Authority Information Technology section.

Listening to our Stakeholders

NPAS aims to be adaptable and responsive as a tribunal and values the feedback it receives from stakeholders in terms of how our processes can be improved.

Appellant User Group

NPAS meets on an annual basis with the Appellant's User group and we are delighted that this group is currently chaired by Pete Tynan from Which? The group is made up of representatives from the AA Motoring Trust, RAC Foundation, British Vehicle Rental and Leasing Association, Road Haulage Association, Disabled Drivers' Association the Department for Transport Mobility and Inclusion Unit, Freight Transport Association and Citizens Advice. The group is particularly interested in how information about the adjudication service can be communicated to the public and their role in this, including the potential for staff within their organisations to receive specific training.

Enquiries to NPAS

Many appellants and potential appellants regard NPAS as a source of information on the whole process of decriminalised parking. Whilst we are not able to act as a general advice line to the motoring public, information collected from these enquiries helps to mould the type of information we make available in the future and our recommendations to other relevant organisations about the information they could provide to assist motorists.

Councils

NPAS holds a council induction day for new councils operating decriminalised parking enforcement. This event aims to ensure that councils are fully aware of the judicial nature of NPAS, the independence of the Adjudicators and the way in which they reach decisions and the process that the council must follow when a motorist makes an appeal. NPAS has received extremely positive feedback from the councils who have attended this event. Equally, this has reduced the number of process related queries from councils to Appeals Coordinators. NPAS's main concern is that those who attend the induction ensure that those staff who are handling appeals either attend the event or the information is relayed to them.

The People behind NPAS

The nationwide role of NPAS determines our approach to judicial and support staff recruitment and management.

There are currently 30 Adjudicators who work part-time and are based around England and Wales whilst the Chief Adjudicator and a further part-time adjudicator are based at our offices in Manchester. This allows a responsive and localised service.

NPAS recognises the value which motorists place on personal service particularly when this is likely to be their first and potentially only experience of a judicial hearing.

The Adjudicators are supported by a team of Hearing Centre Supervisors, again based across England and Wales, who greet the parties to the appeal at personal hearings. NPAS particularly values their services and receives extremely positive comments on their approach to the task. As a "front line" team, their annual conference provides extremely valuable feedback on the organisation of personal hearings.

This remote working is supported by 16 staff at NPAS's headquarters. This includes the Tribunal Manager who, with his seven case management staff, liaise with the parties to the appeal in the run up to the postal decision or hearing. The Adjudicators and staff team are supported by two IT staff. There are also two staff focusing on information management and service development and a small finance and administration team.

The technology behind the people

Our 2005 Annual Report made reference to the introduction of a **new case management system**. This has proved extremely valuable to the service and modifications continue to be made to assist in the smooth handling of appeals and communications with parties to the appeal.

The Adjudicators are able to access the system remotely which allows postal decisions to be made on an ongoing basis around the country. Where Adjudicators are attending personal hearings, **laptops allow evidence to be viewed with the parties to the appeal.**

NPAS is actively encouraging councils to offer **appeal on line** and is modifying its case management system to enable more **email communication** with both appellants and councils. The next significant step is for councils to be able to submit their **council evidence electronically** and NPAS is working with the councils' IT suppliers to facilitate this.

Telephone conference calls have facilitated the successful pilot of telephone appeals with extremely positive feedback from parties to the appeal.

The **NPAS web site** www.parking-appeals.gov.uk continues to attract significant numbers visitors. Whilst the site houses large amounts of useful information, feedback from staff and stakeholders points to substantial difficulties in navigating around the site. As a result, in the run up to mandatory changes we will make to the site to coincide with the introduction of the Traffic Management Act 2004 regulations, we are reviewing what information would best support our stakeholders and how this might best be presented for ease of navigation.

In summary

NPAS has tried and tested methods for ensuring that parties to appeals across England and Wales are able to access the Adjudicator's decision on the case as swiftly and effectively as possible. NPAS systems have proved equally successful in the introduction of civil bus lane enforcement in England in 2006. Our next challenge is to be able to respond to the new requirements of the Traffic Management Act (2004) in 2008. Like any organisation, NPAS must not become complacent and we will seek to improve our approach wherever possible to ensure that we are able to meet our objective of providing a tribunal service which is user-focused, efficient, timely, helpful and readily accessible with regard to best value.

Louise Hutchinson
Head of Service