

**The Environment and Traffic Adjudicators**

# **ANNUAL REPORT**

**2023 – 2024**





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## Chief Adjudicator's Foreword

The Adjudicators have continued to work effectively and efficiently.

There is a slight reduction in the overall number of appeals received. Parking and moving traffic appeals make up the bulk of the work for the Tribunal.

The balance of the workload has shifted towards parking where there was a 12 % increase in caseload. The increase in moving traffic appeals in the previous reporting year has been reversed. There is a 15% reduction in moving traffic appeals.

Adjudicators continue to conduct remote hearing of postal appeals when the workload permits. In the reporting year, remote hearings took place 1 day a week.

Parties are offered a choice of face to face or telephone hearings. Telephone hearings so that parties can chose to be heard without attending at the Hearing Centre.

Following a successful trial of the use of hearings by video (Microsoft Teams), we are working towards a roll out of video hearings before the end of 2024. We intend to preserve face to face hearings, but this will be available on application only.

The Adjudicators would like to take this opportunity of thanking the Proper Officer team who continue to provide able and dedicated administrative support, maintaining access to justice for tribunal users and allowing the Adjudicators to sustain their independence and focus on decision making.

**Anthony Chan**

*Chief Adjudicator*

*Environment and Traffic*

September 2024



## 1. Workload

There is a slight decrease in the number of appeals received, with the rise in parking appeals more than offset by the decrease in all other appeal types.

There has been an increase of just under 15% in the number of cases which the enforcement authorities choose not to contest an appeal. No reasons are given in many instances. We would encourage authorities to communicate their reasons for not contesting the appeal to the Appellants. This will help the Appellants understand whether the Authorities contest appeals under similar circumstances in the future. It will also help to avoid unnecessary hearings for costs applications.

Despite the loss of working days due to transport disruptions and Adjudicators offering fewer sitting days, Adjudicators have worked hard so that the number of determinations has increased. We hope to launch a recruitment exercise before the end of 2024 to increase turnover.

### Statutory Declaration and Witness Statement referrals

The witness statement declaration process at the Traffic Enforcement Centre at the County Court at Northampton provides a mechanism whereby motorists, who have not received statutory documents, or whose post has gone astray, can halt enforcement proceedings and return to the statutory appeal path.

There are, however, only limited grounds at law for making a declaration and the granting of the order by the Court simply reflects that a declaration has been made, not that the content of the declaration has been assessed by the Court and found to be true.

The grounds for making a witness statement declaration to the Traffic Enforcement Centre that are relevant to appeals are as follows:

1. I did not receive the
  - a. Notice to Owner (parking)
  - b. Enforcement Notice (bus lane)
  - c. Penalty Charge Notice (moving traffic)
2. I made representations about the penalty charge to the local authority concerned within 28 days of the service of the notice to owner / enforcement notice / penalty charge notice but did not receive a rejection notice.
3. I appealed to the parking Adjudicator against the local authority's decision to reject my representation within 28 days of service of the rejection notice but have had no response to my appeal.

The mandatory referral of the order issued by the Court to the Adjudicator is the responsibility of the enforcement authority. Once the order has been referred, the Adjudicator will consider whether a right of appeal has been established, allowing an appeal to be registered.

The belief that the order of the Traffic Enforcement Centre cancels the motorist's liability to the enforcement authority for the penalty charge notice is false. The authority remains entitled to enforce the penalty; the motorist having been returned to the part of the process where communication was interrupted. This limitation is clearly stated on the face of the order itself, but it remains an ongoing misunderstanding for motorists who received such orders.

The making and referral of an order does not automatically establish a right of appeal to the independent Adjudicator. The regulations require the Adjudicator to give directions as to the conduct of the proceedings unless it is considered that no such directions are necessary. The directions may include making an immediate payment order, listing the matter for appeal, or for the consideration of an order for costs.



When an appeal is registered in such circumstances, it is determined on the evidence then submitted, in the same way as any other scheduled appeal.

Most of the Witness Statements and Statutory Declarations are made under Ground 2 above. During the reporting year, Adjudicators were noticing that a number of these were not made appropriately. In some cases, this is caused by motorists believing mistakenly that their informal representations made before the service of the Notice to Owner entitled them to a Notice of Rejection. In other cases, especially those where the motorists have made repeated claims that they have not received a Notice of Rejection, Adjudicators have held that the motorists had not followed the correct procedure to preserve their rights to appeal. This has resulted in 3557 payment directions in this reporting year.

## Appeals

**TOTAL of all:** (previous year in brackets)

42,193 (43,836) appeals registered

4,877 (7,143) statutory declaration/witness statement referrals

**47070 (50399)**

34,884 (32,765) appeals were determined

16,947 (14,757) appeals were allowed of which 8734 (7366) were not contested

17,937 (18,008) appeals were refused

Not all appeals received at the Tribunal can be registered. Appeals submitted to the Adjudicator that do not meet the requirements of the regulations may be rejected or returned to the appellant with a request for further or corrected information. It is only once the appeals have been checked and found to be valid under the regulations, that they are registered and scheduled.

To allow for the preparation and consideration of evidence by the parties, the regulations require 21 days to pass before a registered appeal may be listed for

hearing before the Adjudicator. The Adjudicators allow a further 7 days to pass in order to safeguard against postal or other delays. This timeframe means that an appeal that has been registered in one reporting year, may not be listed for hearing until the following reporting year.

Personal appeals in the reporting year were achieved by face to face or telephone hearings. Despite the increase in the number of appeals registered, there is no backlog in the determination of appeals resulting from the lockdown.

The individual appeal types (parking, moving traffic, bus lane, London lorry control, litter and waste) had the following receipt numbers and outcomes.

## Parking

21,881 (19,893) appeals were received

3,235 (3,825) referrals were made

**TOTAL: 25116 (23,718)**

**Parking** appeals decided

17488 (16,821) appeals were determined, of which

*Allowed*

9601 (8,129) appeals were allowed of which 5048 (4542) were not contested

*Refused*

7887 (8,692) appeals were refused

## Bus Lane

1,161 (1,293) appeals were received

97 (102) referrals were made

**TOTAL: 1,395 (1,803)**

**Bus lane** appeals decided

944 (980) appeals were determined of which

*Allowed*

648 (616) appeals were allowed of which 315 (354) were not contested

*Refused*

296 (364) appeals were refused

## Moving Traffic

19,039 (19,467) appeals were received

1,545 (1,927) referrals were made

**TOTAL: 20584 (21394)**

**Moving traffic** appeals decided

16,351 (15,749) appeals were determined of which

*Allowed*

6,642 (6,135) appeals were allowed of which 2702 (3,913) were not contested

*Refused*

9,709 (9,614) appeals were refused

## London Lorry Control

112 (68) appeals were received

0 (0) referrals were made

**London Lorry Control** appeals decided

101 (66) appeals were determined of which

*Allowed*

56 (46) appeals were allowed of which 30 (27) were not contested

*Refused*

45 (20) appeals were refused

## Litter and Waste

1 (0) appeal was received

0 (0) referral was made

**Litter and Waste**

1 appeal was determined and was refused

The Adjudicators' written determinations are published on our statutory register

that can be viewed online through our website at [www.londontribunals.gov.uk](http://www.londontribunals.gov.uk)

## Direct Vision Standards

303 (636) appeals were received  
2 (0) referrals were made

**Direct Vision Standards** appeals decided  
267 (612) appeals were determined of which

*Allowed*

186 (472) appeals were allowed of which 464 (337) were not contested

*Refused*

81 (140) appeals were refused

## Recommendations

Under the Traffic Management Act 2004 refused appeals may be returned to the enforcement authority by the Adjudicator for the consideration of compelling reasons. This applies to penalties issued under the Traffic Management Act 2004 only. Any outcome to the referral that the motorist considers to be unfavourable is not subject to appeal or review under the regulations.

**Refused with a recommendation:** 283 (228)

**Recommendation accepted:** 100 (75)

**Deemed accepted:** 90 (62)

**Recommendation Rejected:** 87 (91)

Adjudicators wish to remind enforcing authorities if an authority does not accept the Adjudicator's recommendation, its notification to the Appellant and the Adjudicator of its refusal must include the reasons for that decision.

## Personal / Postal Appeals

Of the 45199 hearings in the reporting year, just under 30% were personal (face to face or telephone) hearings. This is similar with the position last year. represents a slight drop in the proportion of personal hearings than in the previous reporting year.

Telephone hearings continue to be popular, with Adjudicators being able to consider and assess oral evidence and submissions using a conference call facility where necessary, allowing both parties to attend without the necessity of travel.

## Reviews

Either party can seek a review of the Adjudicator's decision, but a review can only be allowed under limited circumstances for example, when a party failed to appear or be represented at a hearing for some good reason; or when there is new evidence and the existence of this could not have been reasonably known of or foreseen before the decision.

The Adjudicators received 1,576 (1,103) applications for a review across all jurisdictions in the year. 457 applications were rejected. The reviewing Adjudicator overturned 122 original decision (7.7%).

## Costs

*The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007* Schedule Part 2, Regulation 13 and *The Road Traffic (Parking Adjudicators) (London) Regulations 1993* Part II, Regulation 12.

Under each set of regulations governing the Tribunal, the Adjudicator shall not normally make an award of costs or expenses and may only do so if the party against whom the order is made has acted in a way that is frivolous, vexatious or wholly unreasonable with regard to the appeal. The jurisdiction has no application fee for appellants and as reflected by the limited number of awards, costs under our regulations are not the norm.

Appellants made 55 applications in the reporting year down from 118 in the previous year. Enforcement authorities made 62 applications down from 83 in the previous years.

27 of the Appellant's applications were successful. The Authorities received costs in 62 cases.

## 2. Judicial Review

The judicial decision of the independent Adjudicator, including a case management decision, cannot be investigated by way of a complaint, but may be challenged by review and thereafter, judicial review by the High Court.

In a Judicial review, a judge reviews the lawfulness of a decision or action made by the Adjudicator. In other words, judicial reviews are a challenge to the way in which the Adjudicator's decision has been made, rather than the rights and wrongs of the conclusion reached.

The Adjudicators received 7 applications for review from an Appellant and one from an enforcing authority. 5 of the 7 Appellant applications were refused by the High Court. The Applicant had not made progress of her application in one case, and one case is pending.

The Authority was successful in its application in *R (on the application of Transport for London) v London Tribunals (Environment and Traffic Adjudicators) [2023] EWHC 2889 (Admin)*. The review established the power of an authority to enforce parking bay restrictions on a red route with the use of a recording device.

## 3. Recurring Issues

### **Proportionality**

The aim of the adjudication scheme set up by the Road Traffic Act 1991 is to provide a relatively cheap and expeditious appeal from a refusal of an authority to accept a motorist's representations against a penalty. Whilst the high levels of feeling amongst motorists that penalty charge notices can engender cannot be underestimated, the appeal procedure was and is designed to be appropriate and proportional to the subject matter involved.

Internet forums and an increase in Appellants using representatives have brought about more challenges to the enforcement process. There is an increasing tendency for parties to serve and counter-serve lengthy "skeleton arguments" the focus of which are often on fine procedural detail which has little to do with whether a contravention has occurred.

While this Tribunal is not bound by the Civil Procedures Rules, Adjudicators will have regard to the overriding objective of the Rules which is to deal with cases justly and at proportionate cost. The parties will be expected to help the Tribunal to further the overriding objective.

### **Notice of Rejection**

Legislation for parking, moving traffic and bus lane oblige authorities when rejecting representations from motorists to serve on the recipient an enforcement notice of its decision which states whether or not it accepts the representations made by the recipient.



Many Appellants and their representatives argue that the legislation impose an obligation to give detailed reasons for the rejection. The legislation does not state their reasons need to be given.

However, it can be argued that public law requires decision-makers must act fairly, rationally and for proper law purposes especially as authorities exacting a penalty are seen as quasi prosecutions. We invite enforcement authorities to note the following Supreme Court cases.

In *Nzolameso v Westminster [2015] UKSC 22*, The Supreme Court held that the duties on local authorities to evidence and explain their decisions. It must be clear from the decision that proper consideration has been given to the relevant matters required by legislation. The Supreme Court found that the courts below were too ready to assume that Westminster had properly complied with its statutory obligations, which had the effect of immunising from judicial scrutiny automatic decisions.

In *South Bucks District Council v Porter [2004] UKHL 33*, Lord Brown said:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated...The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn...A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.’

## **Mental health issues**

There is an increase in frequency of Appellants claiming that their mental health conditions mean that they should not be made liable for the penalty. While the Tribunal and Adjudicators accept that it should offer reasonable adjustments in the appeal process, there is very limited scope to argue that a diagnosed mental (or physical) health condition should lead to the cancellation of a penalty.

Adjudicators think that authorities need to be address these claims in the Notices of Rejection (see above).

In most of the cases where a mental health condition is claimed, the Appellants are referring to conditions which are notifiable to DVLA and some of the symptoms described are concerning. However, there is invariably an absence of information that DVLA has been informed or that the impact of the condition has been discussed between the motorists and their doctors.

It is not the Adjudicators' role to determine whether a person is medically fit to hold a driving licence. On the other hand, Adjudicators are unlikely to be persuaded that a medical condition can amount to a defence to the contravention when a person with the condition should not be driving in the first place.

## **Number plate Cloning**

Claims of registration number being cloned remains to be a reason for appeals. Appellants have reported that they can receive multiple PCNs due to cloning of their number plates. Photographic or CCTV evidence particularly in moving traffic and bus lane cases are often inconclusive. In many cases, the only evidence that the motorist can bring is a reference number of a report made to the Police or Action Fraud. Neither the authorities nor the Adjudicator can access the reports. This tends to act against motorists who are unable to provide evidence that their number plates have been cloned. Adjudicators suggest that the Government should

issue guidance to local authorities, the police, DVLA and motorists as to what actions should be taken when cloning occurs.

## 4. Training And Appraisal

### Training

Adjudicators have an annual training event when current issues are discussed. In view of the increase in complex issues being raised in appeals the Tribunal will consider adding another event each year.

### Appraisal

Most courts and tribunals have in a place an appraisal scheme to maintain judicial standards and ensure consistency of practices.

Environment and Traffic Adjudicators will normally be appraised one year after appointment and then in three yearly cycles. Thus, those Adjudicators who were appraised in 2020 will next be appraised in 2023. However, as appointments have been made over the years, the cycles are not uniform, and a further round has taken place in 2021.

As explained in previous Annual Reports, the appraisal scheme helps maintain public confidence in judicial performance and ensures that all Adjudicators keep up to date with law and regulations and are able to demonstrate the competences necessary for their role.

The appraisal scheme used by the tribunal is based on the former Judicial Studies Board's *Tribunal Competences: Qualities and Abilities in Action*, tailored for this particular Tribunal, and updated to reflect the March 2021 *Appraisal Standards and Appraiser Competences in Tribunals* reflecting the judicial skills and abilities framework.

A typical appraisal will involve observation of one or more personal hearings (conducted by telephone in the previous round) as well as detailed feedback discussions on this and other written decisions and then on wider performance matters.

As well as identifying any individual training and development needs, the appraisal scheme also provides Adjudicators themselves with an opportunity to raise issues relating to training and procedures.

Adjudicators generally find the whole process helpful and beneficial, providing positive feedback and taking the opportunity to make suggestions that add to the efficiency of the tribunal.

Issues arising from appraisals can also inform the Tribunal training programme where they can be shared and discussed with the Adjudicators as a collegiate body.

As is widely known, a number of Adjudicators hold judicial appointments in other jurisdictions, and the appraisal scheme in this Tribunal allows them to share court and tribunal processes that have already been found to promote justice and efficiency.

Adjudicators regard the appraisal scheme as an important part of their appointment and recognise the benefits of sharing and exploring best practice.

## 5. The Environment and Traffic Adjudicators

### Chief Adjudicator

Anthony Chan

### Adjudicators

1. Philippa Alderson
2. Jane Anderson
3. Michel Aslangul
4. Teresa Brennan
5. Michael Burke
6. Joanne Coombes
7. George Dodd
8. Cordelia Fantinic
9. Henry Michael Greenslade
10. Natalie Goffe
11. Caroline Hamilton
12. Andrew Harman
13. Monica Hillen
14. Martin Hoare
15. Edward Houghton
16. Anju Kaler
17. Michael Lawrence
18. John Lane
19. Herjinder Mann
20. Alastair McFarlane
21. Gerald Mohabir
22. Kevin Moore
23. Dharmesh Patel
24. Mamta Parekh
25. Belinda Pearce
26. Anita Reece
27. Sean Stanton-Dunne
28. Gerald Styles
29. Carl Teper
30. Richard Thompson
31. Timothy Thorne
32. Jack Walsh



