

**ENVIRONMENT AND TRAFFIC APPEAL ADJUDICATORS
LONDON TRIBUNALS**

PRACTICE DIRECTION No. 3 of 2004

SUBJECT: WITNESS STATEMENTS AND STATUTORY DECLARATIONS

COMMENCEMENT DATE: 28 November 2024

This practice direction set out the referral processes as the result of a Witness Statement or a Statutory Declaration. It replaces ETA guidance no.1 of 2016 and guidance in an email to Enforcing Authorities dated 18 May 2017.

The legal framework

Authorities should familiarise themselves with:

Regulation 23 of the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 for parking appeals;

Paragraph 10 in Schedule 1 to the London Local Authorities Act 1996 for bus lane appeals;

Paragraph 7 in Schedule 1 to the London Local Authorities and Transport for London Act 2003 for moving traffic appeals.

Interpretation

For the purposes of this Practice Direction:

A “declaration” refers to a Statutory Declaration or a Witness Statement.

Ground 1 refers to a declaration that the Declarant has not received a penalty charge notice, a Notice to Owner, or an Enforcement Notice as appropriate;

Ground 2 refers to a declaration that the Declarant has made representations within 28 days but did not receive a Notice;

Ground 3 refers to a declaration that the Declarant had made an appeal to the Adjudicator but has not had a response;

Ground 4 refers to a declaration that the Declarant has paid the penalty charge to which the charge certificate relates. This Ground applies only to parking contraventions.

The need to refer

1. As a matter of law, where a declaration is served under Ground 2, 3 or 4, the enforcement authority must refer the case to the adjudicator, who may give such direction as the adjudicator considers appropriate. This may be a direction to schedule the matter as an appeal, or that the declarant must pay the penalty.
2. A referral must be made even if the Authority does not seek a direction from the adjudicator (See paragraphs 10 and 17). Where no direction is sought, the authority should indicate this in the referral (see paragraph 18).
3. There is no need to make a referral if the declaration is made under Ground 1. Authorities should nevertheless indicate in their case summaries in any ensuing appeal that a Ground 1 Declaration had been made to explain the re-service of the PCN and the interval between the alleged contravention and the Notice of Rejection.

Making a referral

4. A referral must be made using a Witness Statement or Statutory Declaration Creation Form. The Authority should supply clear and legible copies of the documents indicated below, apply for the payment order sought and apply for any cost orders where appropriate.
5. Depending on the circumstances of the referral, the documents to be produced to the Adjudicator when a determination is requested would include:
 - The witness statement or statutory declaration (Form TE9 or PE3)
 - Any out of time application (Form TE7 or PE2)
 - The County Court order (TE5B)
 - The penalty charge notice
 - The notice to owner or enforcement notice
 - The original representations to the enforcement authority
 - Any notice of rejection
 - Any communication requesting copies of representations or appeal
 - Any response to the above
 - Case history
 - Any previous Direction

6. These should be submitted under category J together with the appropriate forms. It is up to the Authority to decide whether it would submit at this stage the full evidence pack for an appeal. If it decides not to do so, it must remember to serve the full evidence pack when an appeal is scheduled.

Referral after a Ground 2 Declaration

7. Submit the creation form and evidence pack and refer to the tribunal in the usual manner described in paragraphs 4 to 6 above.
8. The Proper Officer will write to the Declarant to advise that the referral has been received and request evidence that the Declarant had made representations in the manner and time prescribed under the appropriate legislation. The referral and any response from the Declarant will be put before an adjudicator who will determine whether the matter should be listed as an appeal. The parties will receive notification that an appeal has been scheduled, or the parties will receive a direction. Where the Declarant does not respond to the request for evidence, the Proper Officer will issue a standard Payment Direction.
9. Where the adjudicator has issued a previous direction or decision in the case before the declaration, authorities should indicate clearly in the case summary and the creation form that there is already one or more direction/decision in the case, and whether the authority wish to pursue a costs application.

Re-service of Notice of Rejection after a Ground 2 Declaration

10. The Authority may re-serve the Notice of Rejection on the Declarant *and allow a further 28 days to appeal*. To comply with the Regulations, the Authority is required to refer the declaration to the Adjudicator under these circumstances, even though no action is required of the Adjudicator.
11. Where the Authority has re-served a Notice of Rejection after a Ground 2 Declaration in line with the process described in the paragraph above, and the Declarant appeals against the re-served Notice of Rejection, the Authority should ensure that the case summary indicates that there had been re-service. The date of the re-service must be indicated in the verification code and the Notice of Appeal form to enable the Proper Officer to ascertain whether the appeals are made in time.

Referral after a Ground 3 Declaration

12. Submit your creation form and evidence pack and refer to the tribunal in the usual manner.
13. Where there is no record of the appeal having been received, the Proper Officer will write to the declarant to advise that the referral has been received and request evidence that an appeal had been made. Where evidence is received it will be put before an adjudicator who will determine whether it should be listed as an appeal. The parties will receive notification

that an appeal has been scheduled, or the parties will receive a direction. Where the Declarant does not respond to the request for evidence, the Proper Officer will issue a standard Payment Direction.

14. Where there had been a previous direction or decision, clearly indicate on the creation form whether the Authority wishes to pursue a costs application and provide details of the claim with the Authority's submission as well as providing the previous appeal case number. These will be considered, and directions will be issued. If the Authority does not indicate that they wish to pursue a costs application the Proper Officer will send a copy of the previous decision to the parties with a standard Payment Reminder.
15. If the case is to be scheduled as an appeal, the parties will receive notification from the tribunal.

Referral after a Ground 4 Declaration

16. The Authority should seek to deal with any issue raised by the Declarant before the referral. For example, if the statement maker shows that payment was made to the Authority, but the Authority says it was applied to another penalty charge notice. It may be that the matter can be resolved by either a further payment or reallocation to the correct notice. The matter will still have to be referred but no direction will be needed and there will be no charge for the referral. See paragraph 18.
17. If a referral is made, the Proper Officer will contact the Authority to establish if the Declarant has made payment in the time between the Charge Certificate being sent by the Authority and the Declaration. If no payment has been made, a direction will be issued.

Referrals where no determination is sought

18. Where the Authority does not require a direction by the Adjudicator (see paragraphs 10 and 17), a simple email to the Tribunal indicating the PCN number, appellant name, VRM, and date of County Court order will suffice, and no other documents need be produced.
19. *There is no charge to the enforcement authority when using this procedure.*

Referral scheduled as an appeal

20. If the adjudicator determines that the referral is to be scheduled as an appeal, parties will receive notification from the Tribunal, and they will be provided with the opportunity to submit additional evidence e.g. a full evidence pack.

Declarations after an appeal

21. Declarants, from time to time, seek to have a second appeal by making Ground 1 or Ground 2 declaration after their appeals have been refused. Authorities should deal with this robustly in the subsequent Notice of Rejection. Should the Declarant persist and pursues a second appeal, this should be made known to the Proper Officer forthwith. The Authority may wish to consider the Adjudicator's power to award costs under the circumstances.

The penalty

22. The direction that a penalty must be paid, whether it is a payment direction without an appeal, or a direction made after an unsuccessful appeal, is the amount payable as stated in the PCN. The adjudicator does not have the power to add the 50% Charge Certificate uplift to the penalty.

Costs

23. It must be accepted that from time to time, communication break downs may occur, and the declaration process is a bona fides attempt to remedy the breakdown. On the other hand, costs may be considered if there is evidence that the Declarant is abusing the process. Where costs associated with the referral are claimed, Authorities should provide details of the claim with its referral, providing any previous appeal case number where appropriate. These will be considered, and directions will be issued. If the matter is to be scheduled as an appeal, you will receive notification from the tribunal and you will be provided with the opportunity to submit additional evidence e.g. a full evidence pack.

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