

Chief Adjudicator's Foreword

On behalf of the Traffic Penalty Tribunal Adjudicators, I am presenting this report for the year 2010/11 that covers their work determining parking and bus appeals.

We were aware that the number of bus lane appeals was increasing as more authorities adopted those powers, but examining the statistics for this report it suddenly became apparent that some authorities issued a significant amount of bus lane Penalty Charge Notices (PCNs) compared to those issued for parking contraventions. In fact Bath issued more PCNs for bus lanes contraventions than for parking, and Liverpool issued an equal amount.

The statistics also show that in many authorities the number of PCNs issued for parking dropped. Looking at the table for authorities that also tow away vehicles (these being some of the larger authorities) it is clear that PCNs issued for parking have dropped considerably over the past few years.

Therefore this annual report focuses more on bus lane enforcement than parking.

Not surprisingly common issues arise in PCNs that have been issued by post for parking contraventions and this report also considers the impact of this new provision introduced in 2008 by the Traffic Management Act regulations. Most of the PCNs issued by post are as a consequence of camera enforcement, mainly CCTV vehicles that are increasingly in use in Local Authority areas outside London. We touched on the use of these vehicles in our last report and we have developed the theme this year highlighting some issues that arise as a result of this method of enforcement,

Telephone hearings have gone from strength to strength in the period covered by this report and at the time of writing have become the most popular method of an Adjudicator considering and determining an appeal. We have highlighted some of the feedback that we have received which demonstrates the effectiveness of this method of dispute resolution.

A very important fact in telephone appeals is that it enables Council Officers to participate in the hearing. This results in more balanced proceedings and ensures that both parties have a full opportunity to deal with the different issues that may arise in a hearing, but were not addressed in the earlier representations. Adjudicators have noticed that Council Officers have become more experienced in dealing with hearings and in particular are increasingly responsive to the issues being explained by the Appellant, who may find a discussion on the telephone is a better way to put forward their case than having to write it down. There are frequent instances of the Council exercising discretion either to waive the penalty or accept the reduced penalty where having heard the appellant it is clear that they should not proceed to enforce that penalty.

It is not surprising that telephones bring about financial benefits to all parties and the Tribunal. The travel costs associated with attending a hearing are saved, and Council resources where officer time is a precious resource means that they can fully participate in the adjudication process without having to make the decision as to whether to arrange for an Officer attend a hearing or simply to allow it to go ahead without their participation. From the Tribunal's point of view efficiencies have been achieved by moving to this type of hearing.

Having said that hearings still take place where the Adjudicators consider that it is necessary or either party informs the Tribunal that the issues involved in the case would be best determined at a more traditional hearing.

At the early stages of our piloting of the telephone appeals initiative I invited the Administrative Justice and Tribunals Council (AJTC) to make a 'virtual visit' to sessions of our telephone appeals, coming in to the conference call as a party observing or more accurately, listening in. We have reported their feedback in the section on telephone appeals.

It is with profound disappointment that we learned that the AJTC is one of the public bodies destined for abolition. From the very beginning of parking adjudication the AJTC (as it now is) has taken considerable interest in the developments in our tribunal, regularly attended hearings in their role of overseeing tribunals, and have consistently made helpful comments and suggestions that we have acted upon to improve the service and the user experience. They have visited hearings in the far-flung areas of our jurisdiction for example North Wales. The AJTC annual conferences (and I have attended every single one since 1993 when I was first appointed as Chief Adjudicator in London) provide an invaluable opportunity for representatives of the tribunals and administrative justice bodies to meet and discuss common issues and best practice.

We appreciate that many of the AJTC's functions will pass to a department in the Ministry of Justice, but parking and traffic adjudicators are uneasy that as a local government tribunal not under the auspices of the MOJ, there may not be time for that busy department to support tribunals and administrative justice bodies that do not directly come under Her Majesty's Courts and Tribunals Services. We will have to wait and see whether tribunals such as ours have access to a similar service of the quality and supportiveness of the AJTC.

I would like to take this opportunity on behalf of the adjudicators and staff at the Traffic Penalty Tribunal to thank the AJTC for the unswerving commitment and encouragement that they have offered to parking and traffic adjudication over the years.

It is also fitting for the adjudicators again to offer their thanks to Louise Hutchinson, the Head of Service, Andrew Barfoot, who is now the Traffic Penalty Tribunal Registrar, Lindsey Westwood, the Appeals Manager and her staff for the inspired and cheerful way that they organise the tribunal work. Their talents have developed in the true spirit of customer care, especially when dealing with our users on the telephone.

Finally, readers of this report will realise that this year there is not a separate section for Wales. This is because we have focussed on bus lane and CCTV enforcement neither of which is currently undertaken by Welsh authorities. We commented in the bus lane section that it is high time that English Ministers brought the TMA and moving traffic powers into force – however, the Welsh Government is doing so, and in the near future we understand. We await the impact of that important initiative and, no doubt, enforcement authorities in England will share that interest.

Caroline Sheppard
Chief Adjudicator

2. Bus Lanes

It is now some years since local councils took over responsibility from the police for enforcement of bus lanes in their area and although at first only very few adopted the new powers more are now doing so.

As the statistics included in this report show a large number of PCNs are issued for contraventions of bus lane restrictions. The term "*Bus Lane*" is generic and includes not only those traffic lanes used exclusively by buses and taxis but also bus only streets and bus gates which are short lengths of road which are restricted in order to allow access for buses and other authorised vehicles.

The Adjudicators have found that whilst bus lanes exclusively for the use of buses and other authorised vehicles on major roads are generally recognised the concept of a bus gate is less well known with the result that many appellants who appeal a PCN issued for this type of restriction have no idea what has happened.

Since the inception of decriminalised parking enforcement Adjudicators have had to consider appeals relating to the signing and the principles for the signing of parking restrictions are now well established both by the Tribunal and in a number of High Court decisions.

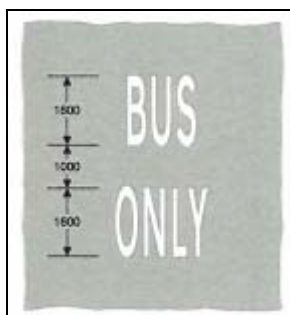
It seems to the Adjudicators that the principles of the signing of bus lanes are less well established and that there is a wide variation in the way councils across the country sign a particular restriction. This can lead to unnecessary confusion on the part of drivers who tend to associate a bus lane restriction with the blue and white signs in the form set out in Schedule 5 of the Traffic Signs Regulations and General Directions 2002.

The 2002 Regulations require the use of both roadside signs and carriageway markings to show the extent of the bus lane restriction.

For example, diagram 953 in Schedule 5 (the blue roundel with a white bus and cycle symbol on a blue background)



requires that it is used with diagrams 1048.3 and 1048.4 in Schedule 6



so that the carriageway is marked with the words "*Bus Lane*" or "*Bus Only*" with a variation to show that it can be used by cycles.

The Guidelines issued by the Department for Transport in the Traffic Signs Manual recognise that the use of a carriageway marking is an important part of the signing of traffic regulations because it is more likely to be seen by drivers.

However the Guidance also suggests that where a bus only street or bus gate does not apply at all times or where there is an exemption for access the sign in the form of diagram 619 in Schedule 2 of the Regulations ("*Motor Vehicles Prohibited*") should be used. This sign includes a black car and motorcycle symbol on a white background inside a red circle.

The point of the use of this particular sign is that it does not require the use of any carriageway markings. The Adjudicators understand the recommendation about the use of the sign may be because where the restriction only applies at certain times it is thought that it would be misleading not to add the times to the carriageway markings which would become too complicated if they were included. The Guidance says that sign 619



is to be used in conjunction with the sign shown at diagram 620 which, in black writing on a white background, states "*Except for Access*".

The Adjudicators have found that councils are using a number of variations of plate 620, often without there being any evidence of authorisation by the DfT, which give the times when the restriction operates (a variation permitted by the Regulations) and stating appropriate exemptions for taxis, authorised vehicles or for access.

Further variations occur because some councils, with or without DfT authorisation, are using carriageway markings in conjunction with sign 619. Those councils which do not have specific authorisation may regard this signing as "advisory" but in the Adjudicators' view the use of carriageway markings does make the extent of the restriction much clearer.

For example, Leeds City Council uses sign 619 in conjunction with carriageway markings stating "*Bus and Taxi Only*" but Oxfordshire County Council uses carriageway markings for some restrictions but not others. Sheffield City Council does not use sign 619 for the part time bus gate on Middlewood Road but rather has chosen to use a variable sign which shows the blue and white roundel at times when the restriction operates but is changed electronically at times when the restriction does not operate to show a sign which prohibits heavy vehicles. Carriageway markings stating "*Bus and Taxi Only*" are used with the variable sign.

During the course of the evidence to the High Court in *Oxfordshire County Council v. The Parking Adjudicator* it was said that the City Council had been refused permission to use sign 619 in conjunction with carriageway markings in the High Street but it now appears that Reading Council has in fact been granted permission to use both sign 619 and a carriageway marking.

It seems to the Adjudicators that this lack of consistency does given rise to genuine confusion on the part of drivers, particularly when visiting an area with which they are not familiar.

A further problem with the use of sign 619 is that the recipient of a PCN alleging the vehicle was "in a bus lane" has no recollection of having seen a bus lane. Many PCNs include a photograph of the vehicle, for example stopped at traffic lights, where

there is no evidence of a bus lane in the photograph. This is a particular issue with PCNs issued for contraventions in Oxfordshire and Bath. This anomaly must provoke a considerable number of representations since the vehicle owner has no idea why the penalty is being imposed because there was no evidence of the type of bus lane that motorists recognise and understand at the location.

A number of appeals have been brought by visitors to the tourist city of Bath. Traffic flow around this old city is undoubtedly difficult but the Council uses a variety of signing for its bus lane restrictions including the blue and white signs and sign 619 with and without carriageway markings.

In the Adjudicators' view the use of consistent signing would certainly help drivers recognise the various restrictions. It is suggested that sign 953, when used in conjunction with the relevant carriageway markings, is likely to be the clearest signing. The use of these signs should be extended to all bus lane restrictions whether or not they apply at all times or where there are exemptions for access.

Although the Adjudicators recognise the principles set out by the High Court in the Oxfordshire case that it is essentially the signing at the beginning of a bus lane restriction with which they are concerned it is undoubtedly the case that clear advisory signing on route to the restriction is important and is likely to reduce contraventions.

A clear example of this is in Sheffield at the "Wicker" bus lane restriction which gained some notoriety in the local press and gave rise to a large number of PCNs issued over a short period of time. The Adjudicators identified one of the main problems as being that the alternate route for traffic not permitted to use the bus gate was not clear. After many appeals had been allowed the Council decided that it would change the signing, particularly the carriageway markings directing traffic away from the restriction, and the Tribunal was then informed by the Council's Transport Department that the changes had resulted in a substantial reduction in the number of PCNs issued.

Often advisory signs are placed some distance away from the start of the restriction so that although drivers might be alerted to the fact that the restriction exists they have no idea what to expect when they come across it. An example of this is the Oxfordshire Castle Street bus lane where the advisory signing is sited just after vehicles have left the main ring road. If drivers do not see or do not understand it they are then in a traffic system which they can only get out of by turning round or going through the restriction, which is a complaint made in a number of the appeals.

Adjudicators have had to consider a number of appeals where drivers complain that the signing of the restriction only became clear once the vehicle had already passed the start of it so that there was then no way of avoiding it except by doing a "U" turn which in the busy traffic conditions of a city centre was considered impractical. For example, in Nottingham a short length of tram gate is placed in the middle of a long road. Although vehicles are directed away from the road once drivers have missed the advisory signing there is then no way of avoiding the restriction except by doing a "U" turn.

Often advisory signing is part of a much more complicated sign directing traffic along various routes and of necessity they are often placed close to junctions in busy streets where they are less noticeable, particularly at night or in poor weather conditions. Unlike signs relating to parking those giving information about bus lanes must be able to be clearly read from a moving vehicle in the busy traffic conditions.

Whilst the Adjudicators recognise the need for councils to introduce those measures it considers appropriate to assist traffic flow in the area problems can arise when restrictions, particularly short lengths of bus gate, are placed in unsuitable locations. Appeals have shown that the Bradford Market Street bus gate begins at a point where there is a pedestrian crossing with the result that the signing is placed against the background of traffic lights. The zigzag markings in front of the crossing have resulted in the carriageway markings being placed some distance in front of the point where the restriction begins. The Adjudicators have found, both at first instance and on review that these markings are insufficiently clear for the restriction to be enforced because the roadside signing and the carriageway markings are not used together.

In Bath there are two short lengths of bus lane in the High Street and North Street which are signed with diagram 956 but because of the location of the restriction in a short length of road between a pedestrian build-out and a traffic light controlled junction, neither the carriageway markings nor the roadside signs are easily visible. At both locations in order to accommodate deliveries to local businesses a short area of the carriageway immediately before the restrictions begin permits loading and unloading with the result that high sided vehicles actually obstruct the roadside signs. The Council recognises that this is a problem and says that in appropriate cases where a challenge is made and a review of the CCTV evidence demonstrates that the signs were obstructed the PCN will be cancelled, but that does not take into account those PCNs which are never challenged.

In the Adjudicators' view there should be a review of the signing, particularly for bus gates and bus only streets, to ensure that there is some consistency in the use of roadside signing together with carriageway markings and it is suggested that it might be useful to amend the Guidance on the use of sign 619.

The procedure for the imposition of and appeals against penalty charges for bus lane contraventions are set out in the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005. The Adjudicators note one important difference between these Regulations and the 2007 Representations and Appeals Regulations which relate to parking contraventions.

The 2007 Regulations came into force as a result of the introduction of the Traffic Management Act 2004 and include as a ground of appeal the concept of "*procedural impropriety*" on the part of a council, which is defined as a failure to comply with any requirements of the Regulations. There is also a provision in the 2007 Regulations for Adjudicators to refer cases back to a council's chief officer in cases where although the appeal is not allowed it is considered that there is compelling mitigation. Those powers do not exist in the Bus Lane Regulations and the Adjudicators see this as an important omission. Whilst councils do have a duty under the 2005 Regulations to consider representations made the Adjudicators' powers are more limited in cases where it is considered that insufficient consideration has been given or where, contrary to the view of the council, the Adjudicator considers that mitigation is compelling.

The Traffic Management Act 2004 was intended to apply a common the civil enforcement regime to minor traffic contraventions including parking, bus lanes and minor moving traffic. However the decision was taken only to implement the parking provisions, and therefore there exists inconsistent process and procedure. Adjudicators also note that many of the problems highlighted in this report are because Councils are having to enforce traffic contraventions as bus lane contraventions, because they have not been given the appropriate powers. For example, failure to comply with sign 619



Constitutes a moving traffic offence that could be enforced under TMA if the powers are brought into force. The would enable council to issue PCNs that allege the contravention that the driver might recognise, as opposed to be issued with a PCN showing the vehicle but without any indication of bus lane where the vehicle was photographed.

Also, as we have discussed, often the mistake that was made was before the vehicle reaches the bus gate, for example, by turning left against a 'no left turn' sign. If that is where the contravention occurred, then it would be better to issue the PCN for that.

3. Penalty Charge Notices sent by post

We have already discussed the impact of Civil Enforcement of Bus Lanes and since that enforcement is undertaken through camera enforcement all the PCNs in that jurisdiction can only be issued by post.

The Traffic Management Act powers enabling councils to issue penalty charge notices for parking contraventions by post are referred to as Regulation 10 Penalty Charge Notices. These can be issued for the following reasons:

Regulation 10 (1) (a) on the basis of a record produced by an approved device (that is a camera device), the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area.

Regulation 10 (1) (b) a civil enforcement officer attempted to serve a penalty charge notice on a vehicle or its driver but was prevented from doing so by some person.

Regulation 10 (1) (c) a civil enforcement officer had begun to prepare a penalty charge notice for service on a vehicle or its driver, but the vehicle concerned was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing the penalty charge notice or had served it on the vehicle or its driver.

The authority is required to state on the PCN which of the three circumstances applied in the particular case (they may not cite two or all three of the circumstances in the alternative).

Adjudicators have in their annual reports regularly called for Councils themselves to publish annual reports giving details of their Civil Enforcement activities. Many Authorities have risen to the challenge of entering their annual reports for the PATROL annual reports award. However there are still a significant number of authorities that do not appear to publish annual reports. We mention this here because the Adjudicators consider that the authorities should report the number of PCNs they have sent using the Traffic Management Act provisions introduced in 2008 for a PCN to be sent by post.

A recent survey of councils suggests that of the councils which responded around 40% issue PCNs by post under these regulations, with the majority of these councils utilising the powers stipulated in Regulation 10 (1) (b) and (c). From our survey, only a small proportion of councils outside London, around 5%, issued penalties whereby a contravention was captured on an approved device i.e. camera enforcement. Our survey also indicates that of the total number of parking PCNs issued by local authorities (4,262,342) only a small fraction, around 50,000 (1.2%) were issued by post.

This is the first survey of its type and further detail is required to arrive at specific conclusions. However the Adjudicators would urge councils to communicate the scope of their enforcement by breaking this down into penalty charge notices issued on street and by post and presenting this data within their annual report.

Of the responses received, six councils indicated that in 2010/2011 they were undertaking camera enforcement. The table below shows the number of Regulation 10 PCNs issued as a proportion of their total PCNs issued for the year:

Basildon	4017 of 10.256
Medway	20,783 of 54.089
Nottingham	65 of 63.239
Plymouth	7615 of 37.975
South Tyneside	1334 of 12.866
Wirral	1393 of 29.090

It can be seen that nearly half of the PCNs issued by Medway were as a result of camera enforcement.

Last year in our annual report we described the two versions of CCTV car that are used – the first type, used in Medway, is operated by the driver and an assistant sitting in the car. This has given rise to the vehicle being parked for up to five minutes whilst the operators point the periscope mounted camera at the contravening vehicle. Appellants, perhaps not surprisingly, comment on the apparent inconsistency of this approach.

The other type of vehicle, used for example in Basildon, is programmed to recognise the parking regulations, and therefore identify vehicles that appear to be parked in contravention.

Some of the recurring issues that emerge in cases where the PCN has been served by post:

- The driver has no notice to look for signs, lines and the location until significantly after the event
- In many cases it is clear that the CEO could have served a PCN by placing it on the vehicle
- The authority has not examined the film evidence sufficiently carefully to confirm the vehicle is stationary and to check vehicle owner's explanation of what happened.
- Some authorities appear to believe that a loading ban was a ban on stopping; they have not remembered that a vehicle may stop to set down or pick up a passenger.

One of the difficulties of sending PCNs by post is that the vehicle owner does not receive the PCN until some time after the alleged contravention. In those cases where the driver was not aware that the vehicle was parked in contravention of any regulation then they have no means of knowing what has been alleged until sometime later, and therefore may well have parked in the same position again.

If a PCN setting out the alleged contravention is not sent, for example, for a week or ten days, the driver would have had no cause to reflect on what occurred and therefore will almost certainly not remember the precise details of what happened. Furthermore, if the driver did not realise that he had driven or parked in contravention, then, they could continue to park or drive until such time as they see the PCN which indicates to them that they have done something wrong.

A case is MW06281B. The Appellant lives at the end of a cul-de-sac which is an unrestricted street. The council CCTV vehicle stopped at the far end of the street for five minutes at 07.39 on a Sunday morning just before and apparently remained there with the camera pointing down the cul-de-sac featuring on the Appellant's car at the far end. A PCN was subsequently issued for parking further than 50 metres

from the edge of the carriageway (the allegation being that although the vehicle was parked with its front up to the end of the cul-de-sac it was in fact more than 50 centimetres away from the pavement on either side of the street).

Because the alleged contravention was identified before Christmas in fact the Appellant did not receive the PCN until 29 December. She had continued to park in a similar position, and explained in her appeal that that is how the residents of that street park and they were in the habit of contacting one other if a vehicle needed to be moved. It was not evident from the Council's evidence in the case that there had been a complaint about the parking however it was apparent from the Appellant's evidence that the Council had returned on further Sundays and photographed her vehicle from the end of the street, again without getting out and attaching a PCN to her vehicle, which would have alerted her to the fact that the Council regarded the parking as contravening the Prohibition of parking further than 50 centimetres from the end of the road.

This case calls into question why the Council chose to use their car at this time in the morning to detect this alleged offence. They consistently submit that they only use the vehicle in accordance with the Secretary of State's guidance in "sensitive" areas, but it is clear from the photographs that at 07.30 on a Sunday morning there are few residents around and it can hardly be a justification for not approaching the vehicle and attaching a PCN in the normal manner. It therefore raises the question of whether the CCTV vehicle is being used in order to keep it busy.

Several cases have involved people with disabilities, for example EI05155B where the Appellant was dropping off his disabled parents to catch the bus that can be seen in the video. His father is virtually unable to walk. There is no provision of parking for the disabled, and there is no crossing to reach the bus stop. The Council should have recognised the difficulty of dropping off disabled passengers and their luggage at a reasonable distance from the bus.

In case EI05108B the Appellant's wife has a disability and the Appellant had set her down and waited for a reasonably short time to pick her up; an activity which in the case of a person with disabilities, may take longer than the usual two minutes. The adjudicator found that the vehicle was parked for the purposes of picking up a disabled person and that the appellant was preparing to pull out when the CCTV car passed by.

In MW 06263L the Appellant, who was the holder of Blue Badge had just pulled over while a disabled bay was being vacated.

It is crucial to examine the video evidence carefully to see what can be seen and what can not and particularly that the CCTV cars cannot always show the position of the signs in relation to the parked car. In EI 05134B there was no evidence of the positioning of the sign and the council, despite representations as to where the signs were, the council did not subsequently point out to the Appellant where the sign is positioned and that that she should have read it.

On the other hand in EI 05140E the video footage showed that the private hire vehicle was stationary in a bus stop and the driver could be seen in the car reading a magazine while he waited for a pre-booked fare.

The time of the contravention is crucial: in EI 05131D the Appellant's car was first detected by the camera in a frame timed at 9:29:38 some 22 seconds before the loading restriction ceased at 9:30. The Council, unnecessarily cynically, stated in

their submission “there is no knowing how long the vehicle had been there”. It cannot have escaped the Council’s attention that had their CCTV car patrolled the High Street a little sooner than 30 seconds before the restriction is lifted they would have evidence to substantiate their assertions.

In EI 05131D the appellant had a vehicle specifically adapted for disabled use so had a CEO been patrolling on foot then the adapted nature of the Appellant’s vehicle would have been apparent.

In EI 05079F the Appellant has hit on a fundamental problem with CCTV enforcement. He had to park his van where there was a loading ban because he was making his regular delivery and the loading bays were occupied by cars that were not loading. Their number plates could not be read in the film. The adjudicator commented that if there had been a CEO patrolling the street the loading bay contraventions could have been enforced first and the CEO would have realised the problem encountered by the Appellant and the driver of the other van shown on the camera footage.

In MW 06275K the Council provided three still images from the CCTV car, however none of them established precisely where the bus stop was in relation to the Appellant’s van. The road marking of the bus stop can vaguely be discerned but it was possible from the angle of the pictures that the van is just outside the bus stop. The adjudicator was not satisfied that the van was in fact stopped on the bus stop.

In MW 06170M the flaws in the Council evidence about the signing stem from the curious decision to enforce the alleged contravention with a camera. Not only are the signs and carriageway markings not recorded clearly but there can be little justification for the CCTV vehicle itself to wait in the street for more than three minutes to film a car, the owner of which is then sent a PCN by post nine days later. Had the CEO got out of the car and issued the PCN on-street by fixing it to the car the Appellant could have looked at the signs when she returned to her car and there would be clear evidence from the CEO.

In MW 06082F it appears that the Council’s CCTV car was itself hovering around for five minutes and did not film any activity. It is not clear why the Civil Enforcement Officer did not get out of the car and attach a penalty charge notice to the car in the usual manner. Had that happened the Appellant would have been put on immediate notice of the alleged contravention and would have had evidence of the unloading to hand. However, because the Council chose to send the PCN by post eleven days later it is not surprising that the Appellant no longer had any supporting evidence

In MW 06282E the pictures were too indistinct to establish the contravention.

Conclusion

1. Care should be taken that camera enforcement is only used where appropriate, especially where exemptions apply. There must be a good reason not to issue the PCN by fixing it to the vehicle at the time. It follows that if the CCTV car has to hover in the vicinity for 5 minutes, the CEO could have got out and issued a Regulation 9 PCN.
2. The video footage must be properly analysed to ensure that the vehicle is stationary. This particularly applies where the CCTV car is itself moving as it films.
3. Still images taken from the camera footage must be clear.
4. The approach to considering representations must be focussed to take into account the delay in sending the PCN so that it is more difficult for the driver to provide evidence or examine the signs or location without going back.
5. Where a PCN has been sent by post the representations are 'formal representations' (as opposed to what is known as 'informal' representations made after a PCN has been attached to a vehicle, but before the Notice to Owner has been served consideration of representations is a quasi-judicial process that should be considered by Council Officers and not contractors.

4. Car Parks – Local Authorities with the Private Sector

Councils may provide off-street car parks which are subject to Civil Parking Enforcement. Appeals have arisen in relation to these car parks where councils have entered into arrangements with third parties.

A motorist received a PCN from Swindon Borough Council whilst parked at the Great Western Hospital, Swindon. The adjudicator allowed her appeal and Swindon Borough Council applied for review. This was rejected by the Chief Adjudicator who upheld the decision to allow the appeal.

The case, SI05445E, involved an arrangement between Swindon Council and the local NHS Trust for Civil Enforcement Officers to issue PCNs to vehicles in a hospital car park. In this case the Council accepted that there was a Service Agreement and that it regarded itself as a contractor which received a fee for its services. The terms of the Agreement provided that the Trust would be responsible for maintenance of the service of the car park and the provision of all signing.

The decision turned on the provision of Section 33(4) of the Road Traffic Regulation Act 1984, which gives local authorities additional powers in relation to their power under Section 32 of that Act to provide off-street parking places, and which states:

“33(4) A local authority may on such terms as it thinks fit:

(b) arrange with any person for him to provide such a parking place on any land of which he is the owner or in which he has an interest.

The appeal was allowed on the basis that the evidence showed that the car park was not provided by the Council and so it had no power to issue the PCN. The Chief Adjudicator upheld that decision in review stating:

“It is clear that this is no more than a contract for the Council to provide services to the Trust on a commercial basis in connection with the Hospital Car Park established under the Trust’s own terms and conditions. The evidence does not support the contention that this contract constitutes the Council arranging with the Trust for them to provide a car park.”

Swindon Borough Council applied for permission to apply for judicial review of the Chief Adjudicator’s decision. Mr Ockelton, sitting as a Deputy Judge of the High Court, refused, in March 2011, to permit Swindon Borough Council to seek judicial review of the decision

The High Court stated:

“Whether the “arrangements” between the NHS Trust and the authority are arrangements falling within the wording of s33(4)(b) is a question of applying a statutory description consisting solely of ordinary words to the evidence available in an individual case. It does not appear that the decision either of the Parking Adjudicator or of the Chief Parking Adjudicator on review is a decision that was not open to each of them respectively on the evidence.”

In another case, WU05026CSD, involving an appeal against a PCN issued Christmas Eve 2010 by West Sussex County Council (with Worthing BC) the adjudicator found that, while this particular car park was in fact owned by the Local

Authority it was actually operated by a contractor and the signage only made reference to this private contractor and not to the local authority.

The adjudicator allowed an appeal against a PCN issued by the council in that car park and stated:

“the reference to the standard terms and conditions of NCP is a clear indication that the entitlement to use this car park derives from the law of contract, as it does in any other private car park. That area of law prohibits the imposition of a penalty charge for a contravention of regulations and only allows for breaches of the contract conditions to be recompensed....the signs do not therefore reflect the legal position and fail to make clear to the motorist both their obligations when using the car park and the consequences of a contravention.” The appeal was allowed by the adjudicator.

Adjudicators understand that there are increasing examples of local authorities making arrangements with private companies to providecar parks. These cases demonstrate that care needs to be taken and the detail of the arrangements of enforcement is to be undertaken using the Traffic Management Act process.

5. Witness Statements and Statutory Declarations

5.1. Introduction

An Enforcement Authority (EA) may enforce an unpaid Charge Certificate by seeking an order from the County Court¹. This has the effect of treating the sum owed as if it were a debt payable under a County Court order.

Such a County Court order may be set aside by the making of a Witness Statement by the person against whom the order was made (referred to here for the sake of consistency as the vehicle owner²).

In parking cases Witness Statements replaced Statutory Declarations although bus lane cases still follow the Statutory Declaration procedure as they are not yet within the Traffic Management Act 2004 in England or its Welsh equivalent.

5.2. Statistics

Since the change of legislation the Tribunal has seen an increase in the number of cases that have previously been the subject of enforcement in the County Court.

One of the reasons for the increase may be that the making of a Witness Statement is free, whilst Statutory Declarations carried a small fee. In 2009/10 the number of Witness Statements/Statutory Declarations received by the tribunal was 1586 by 2010/11 this number had risen to 2497, an increase of over 50%.

Year	Witness Statement/Statutory Declarations Received	No Appeal	Case Considered
2009/10	1586	698	888
2010/11	2497	819	1678

5.3. Grounds for making a Witness Statement

The Witness Statement must be made within 21 days of service of the court order³, although this time may be extended if the District Judge considers it to be appropriate⁴. The Tribunal sees cases that have had time extended but do not, of course, have any statistics on how many cases may be refused by the County Court because of delay.

¹ Regulation 22 of The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 ("the General Regulations")

² For the purposes of this guidance "vehicle owner" includes anyone who falls to be treated as the vehicle owner by virtue of General Regulations Reg 5(3)

³ General Regulations Reg 23(1)

⁴ General Regulations Reg 23 (3),(4)

A Witness Statement may be made on one of four grounds⁵; that the vehicle owner⁶:

1. did not receive the notice to owner (NtO) (which includes a Regulation 10 PCN issued by post⁷);
2. made representations to the EA but did not receive a rejection notice (NoR); or
3. appealed to a parking Adjudicator and:
 - i. has had no response to the appeal;
 - ii. the appeal had not been decided when the Charge Certificate was served;
 - iii. or won the appeal;
4. has paid the penalty charge

A Statutory Declaration may be made on similar grounds but excluding 4.

5.4. Effect of Witness Statement

In response to a Witness Statement the Court may issue a Revoking Order which causes⁸:

- Revocation of the County Court Order (so no further recovery action e.g. using bailiffs);
- Cancellation of the Charge Certificate (so penalty returns to the original full rate); and
- Cancellation of the NtO (only where the ground was that the NtO was not received – Ground 1).

In every case the vehicle owner's liability for the 50% increase in the penalty charge imposed by the Charge Certificate, the court fee and any bailiff's costs is cancelled. The sum due is reduced back to the original full penalty charge.

Once notified by the court that this has happened, a choice must be made by the EA, depending upon the ground chosen in the Witness Statement. The legislation states, "the EA **shall** refer the Witness Statement to the Adjudicator"⁹ if made on Ground 2, 3 or 4. "Shall" generally indicates a mandatory action. Nevertheless the EA does have a choice as the requirement only applies if payment of the penalty charge remains in dispute and is to be pursued.

⁵ General Regulations Reg 23 (2)

⁶ For the purposes of this guidance "vehicle owner" includes anyone who falls to be treated as the vehicle owner by virtue of General Regulations Reg 5(3)

⁷ General Regulations Reg 23 (9)

⁸ General Regulations Reg. 23(5)

⁹ General Regulation 23(7)

Accordingly, the choices faced by the EA, depending upon the ground of the Witness Statement, are:

Ground	Option 1	Option 2
1. No NtO (or Reg. 10 PCN)	Waive the penalty/accept payment	Reissue Notice to Owner/ Reg 10 PCN ¹⁰
2. No NoR	Waive the penalty/accept payment	Send to Tribunal
3. No Adjudicator's Decision	Waive the penalty/accept payment	Send to Tribunal
4. Paid in full	Waive outstanding payment/ accept payment (NB Charge Certificate increase and costs no longer payable)	Send to Tribunal

The EA *always* has the discretion to waive a penalty charge or to accept payment at a reduced rate. If the EA decides to waive the penalty charge it does not need to refer the case to the Tribunal first. The EA should simply notify the vehicle owner of its decision.

Conversely, if, having made the Witness Statement, the vehicle owner agrees to pay the full penalty charge, the EA can accept payment and need not refer the case to the Tribunal. This is often the subject of complaint or frustration from an EA but the Tribunal cannot find an Appellant to be liable for more than the standard amount of the penalty charge: all enforcement increments and fees are removed by the County Court's Revoking Order.

Where the EA accepts that the full standard penalty charge has been paid there is no purpose in referring the case to the Tribunal as there is no longer any dispute with the vehicle owner requiring resolution by the Adjudicator.

Many Appellants still misunderstand the County Court's Revoking Order and believe the entire penalty charge has been revoked but of course this is not the case. The Revoking Order places the parties in the position whereby the EA is demanding payment of the full penalty charge, and the Appellant is disputing that demand. That is the point upon which the Tribunal will concentrate.

¹⁰ These circumstances provide an exception to the general time limit for service of a PCN by post- General Regulations Reg. 10 (5); or of an NtO – Reg 20(2)

This point is important in choosing whether to refer the case to the Tribunal. The EA should not refer a case to the Tribunal simply because it disputes the Witness Statement itself. The Regulations are very clear that only one ground may be specified in a Witness Statement; experience shows however that often more than one ground is chosen, and not necessarily one that is appropriate in any event. However, there is little purpose in an EA focusing on such errors or inconsistencies or in seeking to challenge the validity of the specified ground in their representations to the Tribunal. Once the County Court has made the Revoking Order the Adjudicator has no jurisdiction to interfere with it.

“False Statements”

Whilst it may be an offence to make a false Witness Statement¹¹, complaints about the veracity of a declaration may be dealt with only by the criminal courts. For conviction of such an offence the court would have to be satisfied that the declaration was both false **and** made *“knowingly or recklessly”*.

Bear in mind that many people have little understanding of the relevant law or court procedures and that the making of a “false” statement may not be criminal even if it is obviously inappropriate to others looking at the case. The form presented to the Appellant by busy court staff is usually of the “tick box” variety, surrounded by legalese, and many individuals simply choose one or more boxes to tick with little or no understanding of what the document means. Some individuals may attempt a cynical manipulation of the system, but many are merely attempting to do what they think is required of them.

The Adjudicator has no jurisdiction to deal with the investigation or punishment of a false statement. An EA may wish to point out that a statement is not correct in the particular circumstances of the case, but it is inaccurate and purposeless to inform the Adjudicator that it “is an offence to make a false statement”.

The EA should, instead, concentrate on the question of whether, taking into account all the information it has from the vehicle owner either prior to or with the Witness Statement, the vehicle owner is liable for the penalty charge. In particular, if the vehicle owner has produced with the Witness Statement information not previously disclosed or explained to the EA they should consider the case afresh before simply referring it to the Tribunal.

¹¹ Civil Procedure Rules Part 22

If the circumstances are such that the EA, taking into account all the information it now has from the vehicle owner, would have waived the penalty at the representations stage there is little reason for them not to do it at this later stage.

Equally, the EA is entirely at liberty to attempt to resolve the case directly with the vehicle owner. It may seek further evidence or invite explanation, particularly if it appears that earlier correspondence may not have been received.

5.5 Tribunal Procedure following referral

Under the Statutory Declaration procedure the form used at the County Court had a space where the motorist could fill in details of the case; this was useful for the Adjudicator to see what the case was about so that a decision could be made promptly whether the case was suitable for full registration as an appeal.

Regrettably the forms introduced since the Traffic Management Act 2004 do not contain space for explanation. Sometimes the Council is able to supply sufficient information for the Adjudicator to understand the nature of the case. If it is not clear from the documents sent, however, then the Tribunal will invite the vehicle owner to explain their case.

Upon receipt of further information from the vehicle owner, or after the expiry of the time allowed for its return, the case will go to the Adjudicator for directions indicating what will happen next.

The Adjudicator shall “*give directions as to the conduct of proceedings unless he decides that no such directions are necessary*” upon receipt of a Witness Statement referral. The Adjudicator has greater powers than in an ordinary appeal and is *not limited* to the standard statutory grounds of appeal.

The Adjudicator may direct that the case proceed as an ordinary appeal, or that the EA should cancel the penalty charge altogether, or that the vehicle owner is liable to pay the penalty charge.

6. Telephone Hearings

The number of appellants requesting a telephone hearing has risen (21.67%), now overtaking the number of requests for a personal hearing (17.43%), the Adjudicators are encouraged by the increasing take up of telephone hearings.

Feedback on telephone hearings continues to reflect high levels of customer satisfaction (some examples below):

Appellant Feedback

“It is a fair system which allows both parties to put their point of view across without interruption”

“Whilst my appeal was not upheld, I was very impressed with the honesty and integrity of the adjudicator. I felt the adjudicator was totally and truly unbiased in his treatment of both myself and the council. A rare and shining example of proper and exact fairness in an evermore unjust world.”

“The hearing itself was refreshing in that it was totally unbiased. I felt at ease the whole time, it was presented in layman’s terms so very easy to follow.”

“I felt it was fair, gave me a chance to give my side and took into consideration why I disagreed with the decision”

“I thought it was conducted fairly and clearly. It was hugely convenient for me to do it this way and I didn’t feel anything was lost that might otherwise have been covered in a personal hearing”

“I would like to offer my thanks for the fair way in which the adjudicator handled my appeal”

“It saved me a lot of time and expense with a telephone hearing. It must be the way forward”

“fair and intelligent and much more efficient than going to court”

“Very professional and fair balance provided to both sides”

At the time of writing this report the percentage of telephone hearings as a proportion of all appeals heard stands at 16%.

Appellants and councils in Wales have quickly adopted telephone hearings as a modern, convenient and cost effective way of deciding appeals with around 10% percent of appeals being decided by telephone in 2010/11.

This trend would appear to continue in Wales as between July and September 2011, no personal hearings took place with cases relating to Welsh councils being heard by either telephone hearings (18%) or paper hearings (that is a decision made on the basis of the papers submitted by the parties only, without an oral hearing).

Guidance is provided to appellants and councils to help them prepare for a telephone hearing and this is summarised below:

Telephone Hearings 'The process'
<p>What is a Telephone Hearing?</p> <p>A telephone hearing takes place by means of a telephone conference call facilitated by the Tribunal. The telephone hearing will involve the Adjudicator, the appellant and the council (should they choose to participate).</p> <p>How is a Telephone Hearing arranged?</p> <ol style="list-style-type: none">1. The Tribunal will contact the appellant to arrange a suitable date and time for the hearing to take place.2. The council will be advised of this date, and if no objections are made, both parties will be sent written confirmation.3. An SMS reminder will be sent to the appellant reminding them of the time of their hearing.4. Both parties should provide the name and number of the person who will be taking part in the hearing during this initial call. <p>How does a Telephone Hearing work?</p> <ul style="list-style-type: none">• Tribunal staff will contact the appellant.• Tribunal staff will then contact the council officer on the number provided.• Both the parties will then be transferred to the Adjudicator. This is in accordance with the established procedure in the court system.• If either party can not be contacted then the Adjudicator will decide if the case is to proceed in their absence.• The Adjudicator will hear the case and may record the proceedings.• A telephone hearing will normally last around 20 minutes, however we ask both parties to allow 30 minutes for their hearing.• The Adjudicator will normally give their decision at the end of the hearing and both parties will receive this in writing after the hearing.

The Traffic Penalty Tribunal comes under the supervision of the Administrative Justice and Tribunals Council (AJTC) and Adjudicators have invited their representatives to observe telephone hearings in practice. Some of the feedback from the AJTC can be seen below.

Feedback on telephone hearings from the Administrative Justice and Tribunals Council

“I thought the whole process was very well run, and was an appropriate method of dealing with the types of cases brought to this tribunal. It seems to be an effective and efficient way to administer justice. It allows the appellants to participate without having to give up too much of their time, or have too much disruption to their lives. It is useful for appellants who may live along way from hearing centers”

“Effective and efficient way of administering justice. For the appellant the investment of 30 minutes of their time on the day of their hearing allowed them to participate without any significant disruption to their daily life.”

“Very positive and effective way to access administrative justice. Could there be an opportunity for other tribunals to consider using this way of managing hearings?”

7. Tribunal Summary

7.1 Overview

During 2010/11 parking and bus lane appeals to the Tribunal rose from 14,912 to 16,595, representing an increase of 11%. Whilst parking appeals have stabilised over this period, bus lane appeals increased by some 70%. A significant factor in this increase was the number of councils which commenced bus lane enforcement during or shortly before the start of this period. The councils include Bradford, Liverpool, Stoke, Coventry, Gloucestershire and Bristol. The tribunal has also an increase of over 50% in the referral of witness statements compared with the previous year, from 1474 to 2299 in 2010/11. Further information on appeals is included in the statistical tables

7.2 Service Standards

It is the aim of the Tribunal to be as efficient as possible when deciding cases, however it must be borne in mind that the process of appealing is a judicial one and circumstances may arise where certain cases take longer to decide than others. The figures below show how the Tribunal has reduced the average time taken from registration to decision in cases. The average waiting time between the tribunal receiving an appeal and issuing a decision has reduced significantly from 11.75 weeks (2009/10) to 7.8 weeks (2010/11).

Parking

Type of Hearing	Decision Without a Hearing (postal)		Personal Hearing		Telephone Hearing	
	April 2010 to March 2011	April 2009 to March 2010	April 2010 to March 2011	April 2009 to March 2010	April 2010 to March 2011	April 2009 to March 2010
Average no of weeks between registration and decision issued	5.15 weeks	5.55 weeks	10.58 weeks	12.80 weeks	7.13 weeks	8.70 weeks

Bus Lanes

Type of Hearing	Decision Without a Hearing (postal)		Personal Hearing		Telephone Hearing	
	April 2010 to March 2011	April 2009 to March 2010	April 2010 to March 2011	April 2009 to March 2010	April 2010 to March 2011	April 2009 to March 2010
Average no of weeks between registration and decision issued	5.73 weeks	7.34 weeks	10.58 weeks	15.38 weeks	7.73 weeks	10.76 weeks

Wales

Type of Hearing	Decision Without a Hearing (postal)		Personal Hearing		Telephone Hearing	
	April 2010 to March 2011	April 2009 to March 2010	April 2010 to March 2011	April 2009 to March 2010	April 2010 to March 2011	April 2009 to March 2010
Average no of weeks between registration and decision issued	4.4 weeks	5.33 weeks	11.63 weeks	16.23 weeks	8.15 weeks	8.20 weeks

The civil enforcement process is a time bound process and an early priority for the tribunal is to register appeals and notify the parties involved to ensure that the council does not continue enforcement of the PCN until the Tribunal has reached a decision. 2010/11 witnessed, for the second year in a row, an increase in the proportion of appeals acknowledged within 2 working days to 98% against a target of 95%.

Customer service is of paramount concern to the Tribunal and during 2010/11, the target time for answering the telephone was increased to 95% of calls within 15 seconds. Despite an increasing number of appeals, tribunal staff retained an overall performance of 96%

7.3 Communication

The Tribunal has witnessed an increase in electronic communication with the parties, which can be summarized as follows:

	2010/11	2009/10
Councils offering appeal on line	138	80
Councils engaged in electronic transfer	86	48
Councils submitting TROs to Tribunal's online library	201	190
Councils receiving correspondence by email	212	0

7.4 Administrative Complaints

The Tribunal is committed to continuous improvement. 2010/11 witnessed an increase in administrative complaints from 16 to 29 (excluding requests for reviews of decisions). However this must be seen in the context of increased staff training in handling and recording customer complaints. Comparing 2009/10 and 2010/11 provides some context:

	2010/11	2009/10
Complaints received	29	16
Complaints acknowledged within 5 working days	27	16
Complaints resolved within 20 working days	25	14

Of the complaints received, 9 were upheld, 14 rejected and 3 were partially upheld. During the same period the number of recorded compliments increased from 10 in 2009/10 to 41 in 2010/11. Again, this will reflect increased prominence of the compliments and complaints recording procedure

7.5 Applications for Review

Paragraph 12 of the schedule to The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 allow for a party to apply to the tribunal for review of an Adjudicator's decision.

During 2010/2011, the tribunal received post-decision correspondence in respect of 495 cases (373 from appellants and 122 from councils). Of these, 73 were accepted as an application for review from appellants and 48 from councils. In 23 of 73 cases (appellants) the original adjudicator decision was upheld on review. In 6 of 30 cases (councils) the original adjudicator decision was upheld on review.

