



# BRIEF, *BALANCED* *and* TO THE POINT

*Continuing our series of articles on decision-writing in different tribunals, MARTIN WOOD considers the methods used by Parking Adjudicators, for whom brevity is a necessary virtue.*

Under the Road Traffic Act 1991, parking enforcement in London is now decriminalised. Parking control is enforced by the local council. A parking contravention is a civil wrong for which the sanction is the imposition by the council of a penalty charge, recoverable as a civil debt.

A council parking attendant who believes that a contravention has occurred may issue a Penalty Charge Notice (PCN) to the vehicle concerned.

As part of decriminalisation, it was plainly necessary for there to be a judicial forum for adjudicating upon disputed liability to penalty charges; and so the office of Parking Adjudicator was born.

The administrative infrastructure required to support the parking adjudicators is provided by a joint committee of the London councils. This support organisation is named the Parking and Traffic Appeals Service (PATAS).

Decriminalisation is being adopted by an increasing number of councils elsewhere.

Appeals are the responsibility of separate bodies: the National Parking Adjudication Service in England and Wales outside London, and the Scottish Parking Appeals Service in Scotland.

The establishment of the new tribunal in 1993 presented the opportunity for a pioneering initiative: the operation from its inception of an end-to-end computerised adjudication process – the first and, I believe, still the only one of its kind in this country.

The appeal form and all other documents and evidence,

other than unscannable items such as videos, are scanned into the computer system. Adjudication is carried out almost entirely through the system – although this does not include site visits!

Since 1999, adjudicators have also heard appeals concerning bus-lane violations under a similar decriminalised scheme. However, there are at present few such appeals. This article concentrates on parking appeals.

## Liability

Subject to certain exceptions, it is the owner of the vehicle who is liable for penalty charges, irrespective of who was driving the car. There is a rebuttable presumption that the registered keeper is the owner.

If a penalty charge is not paid within 28 days of the PCN being issued, the council may serve a Notice to Owner (NTO) on the person appearing to it to be the owner of the vehicle, seeking payment. That person may then make representations to the council contesting liability.

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The Act specifies seven grounds on which representations may be made:

- The contravention did not occur.
- The recipient of the NTO was not the owner at the date of the contravention.
- The vehicle was parked by someone in control of it without the owner's consent.
- The owner is a hire company and the vehicle was the subject of a hire agreement.

- The penalty exceeded the relevant amount.
- The order creating the restrictions is invalid.
- The parking attendant was not prevented from serving the PCN (councils may serve a PCN by post if someone prevented the attendant from serving it on the street).

As well as considering representations on these grounds, the council must consider whether any mitigation put forward warrants cancellation of the PCN as a matter of discretion. If the council rejects the representations, it must serve a Notice of Rejection on the person making the representations. That person may then appeal to an adjudicator.

### Appealing

The Act provides that the adjudicator 'shall consider the representations in question and any additional representations which are made by the appellant on any of the above grounds and may give the London authority concerned such directions as he considers appropriate'. The adjudicator's function is therefore primarily to consider whether any of the grounds for contesting liability are made out. However, adjudicators will also consider collateral challenges to liability, such as that the council has failed to comply properly with its duty to consider the representations.

Where the appellant succeeds, the adjudicator gives appropriate directions to the council: for example, if the adjudicator allows the appeal on the ground that the contravention did not occur, the direction will be to cancel the PCN and NTO.

Adjudicators are concerned with legal liability: they do not have discretion to direct cancellation because of mitigation, which is solely a matter for the council. However, claims that the council has erred in its approach to the exercise of the discretion – for example, has failed to consider the discretion at all – may form the basis for a successful appeal as a collateral challenge.

The parties may choose for appeals to be dealt with either at a personal hearing or as a postal case. Adjudicators sit alone. Normally they take cases from a general list and will not have seen the case beforehand. Personal hearings are informal. Generally only the appellant attends. Parties are rarely legally represented. The adjudicator and the appellant view the imaged documents on the computer and the adjudicator hears the appellant's oral evidence and representations. The adjudicator normally gives the decision immediately and keys it into the computer. When the adjudicator closes the case, the decision notice is automatically printed for the appellant to take away. The decision in postal cases is automatically generated overnight and dispatched next day.

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There are currently about 40,000 appeals annually. With such a workload, time is at a premium. Even apart from the demands of the workload, parking contraventions are minor matters and the time devoted to them should be proportionate. On the other hand, they do concern the State, in the shape of the council, imposing a penalty on the citizen. Parking enforcement is an emotive subject and appellants frequently feel deeply

aggrieved. The need for expedition must be balanced against ensuring that the appellant feels that, if he loses, he has had a fair opportunity to put his case and received a fair trial.

### Drafting

The need for balance applies to the writing of the decision as to other elements of the appeal. The skill is to produce as brief a decision as quickly as possible while satisfying the principle of giving adequate reasons that are intelligible and deal with the substantial points raised. This is perhaps no different as a principle from decision-writing in tribunals in general, but the PAS environment give it added emphasis. The spirit is very much in line with Lord Clyde's guidance in *Stefan v*

*General Medical Council* [1999] 1 WLR 1293: '[Reasons] need not be elaborate nor lengthy. But they should be such as to tell the parties in broad terms why the decision was reached. In many cases . . . a very few sentences should suffice to give such explanation as is appropriate to the particular situation.'

The decision notice contains three elements:

- Whether the appeal has been allowed or refused.
- Any directions to the council.
- Reasons.

The first two are automatically generated: for the first the adjudicator clicks on the 'allow' or 'refuse' button and for the second selects from a drop-down list.

As to the reasons: brevity is fostered by the technical constraints of the computer system, which allows a maximum of 1,500 characters to be entered in the reasons box. This equates to roughly 250 words, so economy of language and plain English are the order of the day. The limitations of space therefore promote a highly disciplined approach to decision-writing. The benefits of this feed back into the process of decision-making, because the need for brevity means that adjudicators must be rigorous, even ruthless, in identifying the essential issues and discarding irrelevancies.

There are a number of situations that arise repeatedly and with which adjudicators rapidly become familiar.

For example, appellants will often:

- Claim an exemption, such as for loading.
- Appeal on grounds that are only mitigation.
- Be the registered keeper but claim not to have been the owner at the time of the contravention.

Adjudicators tend to have their own standard way of explaining these common situations. Indeed, many save these in Word as AutoText, which allows a lengthy passage to be rapidly reproduced with only a few

keystrokes. It can then be tailored if necessary to the particular case.

Cases sometimes concern appeals against a number of PCNs with a common issue: for example, several PCNs may have been issued to a vehicle that the registered keeper claims to have sold before the contraventions. In such cases, it may well be possible to draft reasons applicable to all the appeals. Once entered into one appeal, the reasons can then be copied to the others.

But I should not like to leave the impression that the technological tail wags the judicial dog. The decision must of course satisfy the basic requirement of including the essential elements of any well-written decision: a summary of the issues, relevant findings of fact and the

reasons why the decision follows from the facts. There are cases that, perhaps because of complexity or novelty, do require longer reasons than can be accommodated in the reasons box. The adjudicator then prepares the reasons as a separate document, which is issued with the decision notice. In fact, this has only been necessary in 66 cases

since the beginning of 2001. Far from being a straitjacket, the word limitation encourages adjudicators to adopt a disciplined approach and economical style that meets the needs of their jurisdiction.

Computer literacy and keyboard skills have not been an issue. With proper training, new appointees and experienced adjudicators have adapted readily to the computerised adjudication process.

A new adjudication system is due to be installed later this year which will allow an unlimited number of characters in the reasons. Freed from the constraints of the existing system, it will be important for adjudicators to avoid drifting into becoming more expansive and to maintain the discipline that the present system has instilled in them.

MARTIN WOOD is Chief Adjudicator at the Parking Appeals Service.

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