

## Christmas Opening

The Parking and Traffic Appeals Service will be open as follows over the Christmas period:

Friday 23 December – Postal Adjudication & telephone enquiries (8.00-17.30)

Sat 24 – Tues 27 December – Closed

Wed 28–Fri 30 December – Postal Adjudication & telephone enquiries (8.00-17.30)

Sat 31 Dec- Mon 2 Jan – Closed

Tues 3 January – Postal Adjudication & telephone enquiries (8.00-17.30)

The Call Centre will be open between Wed 28 – Fri 30 December

## EDI (Electronic Data Interface)

PATAS is pleased to confirm that the long awaited EDI application has been successfully installed, and has been in use for Congestion Charging appeals since 14th November 2005.

EDI, which has been developed in partnership with Transport for London, enables correspondence, evidence and reports to the Congestion Charging Adjudicators to be submitted electronically. PATAS are also able to communicate with Transport for London electronically.

This application will be available for other local authorities to use in the New Year. More details about the facility will be sent to Parking Managers in January. The next PATAS seminar, planned for Feb/March 2006 will feature presentations on the project from our IT contractors and from TfL as authority users. Authorities will be invited to bring IT staff/contractors to the seminar. If any authority would like to see copies of the IT functional specification, please e-mail [Mark.Smith@alg.gov.uk](mailto:Mark.Smith@alg.gov.uk)

## Council on Tribunals Annual Conference

Johanna Fairman LeMaitre and Verity Jones attended the Council on Tribunals annual conference in November 2005 on behalf of Charlotte Axelson and Martin Wood respectively.

The conference was chaired by Lord Newton and discussed a number of issues mainly connected with the creation of the new Tribunals Service, the draft Tribunals Bill and key features of the Constitutional Reform Act 2005. Peter Hancock, Chief Executive designate of the Tribunals Service confirmed that the Service will launch on 1<sup>st</sup> April 2006 bringing together many tribunals under unified management with plans for other tribunals to join in 2008.

There are no plans at present for PATAS to join the Tribunals Service. Professor Genn's research "Tribunals for Diverse Users" was not presented at the conference, but will be available at [research@dca.gsi.gov.uk](mailto:research@dca.gsi.gov.uk) after 18<sup>th</sup> January 2006

## Statistics July – September 2005

## Parking

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
Barking and Dagenham	185	0	81	21	35	0	116	70%	18%
Barnet	579	112	319	102	267	4	586	54%	17%
Bexley	150	2	50	21	53	1	103	49%	20%
Brent	179	39	307	60	175	1	482	64%	12%
Bromley	254	30	135	64	104	1	239	56%	27%
Camden	479	17	145	31	229	3	374	39%	8%
Corporation of London	91	0	104	39	28	1	132	79%	30%
Croydon	146	38	42	12	105	4	147	29%	8%
Ealing	495	88	301	149	216	1	517	58%	29%
Enfield	103	23	36	16	74	0	110	33%	15%
Greenwich	128	0	36	22	100	2	136	26%	16%
Hackney	457	51	375	236	115	1	490	77%	48%
Hammersmith & Fulham	301	17	115	50	234	1	349	33%	14%
Haringey	221	0	158	49	110	0	268	59%	18%
Harrow	143	68	79	8	186	1	265	30%	3%
Havering	61	2	48	11	48	0	96	50%	11%
Hillingdon	160	7	89	69	57	2	146	61%	47%
Hounslow	86	24	171	46	217	8	388	44%	12%
Islington	745	11	735	407	370	7	1105	67%	37%
Kensington and Chelsea	919	0	321	135	322	5	643	50%	21%
Kingston Upon Thames	73	3	28	8	71	0	99	28%	8%
Lambeth	899	0	354	174	156	5	510	69%	34%
Lewisham	123	11	52	8	110	0	162	32%	5%
Merton	105	0	40	13	46	0	86	47%	15%
Newham	368	59	181	74	149	0	330	55%	22%
Redbridge	98	10	59	23	59	0	118	50%	19%
Richmond Upon Thames	148	21	51	14	53	0	104	49%	13%
Southwark	367	66	293	163	179	0	472	62%	35%
Sutton	166	11	39	8	113	1	152	26%	5%
Tower Hamlets	147	49	79	23	104	0	183	43%	13%
Transport for London	614	0	303	146	112	9	415	73%	35%
Waltham Forest	375	0	308	152	108	1	416	74%	37%
Wandsworth	894	1	409	268	290	9	699	59%	38%
Westminster	2247	125	1043	464	621	13	1664	63%	28%
<b>TOTALS :</b>	<b>12506</b>	<b>885</b>	<b>6886</b>	<b>3086</b>	<b>5216</b>	<b>81</b>	<b>12102</b>	<b>57%</b>	<b>25%</b>

## Statistics July – September 2005

## Bus Lane

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
Barnet	56	26	19	8	47	1	66	29%	2%
Bexley	12	0	6	2	8	0	14	43%	14%
Brent	8	0	13	5	14	0	27	48%	19%
Bromley	25	5	9	4	15	1	24	38%	17%
Camden	18	1	8	2	14	1	22	36%	9%
Croydon	4	3	0	0	5	0	5	0%	0%
Ealing	44	3	29	11	38	0	67	43%	16%
Enfield	7	0	1	0	2	0	3	33%	0%
Hackney	37	0	16	13	0	0	16	100%	81%
Hammersmith & Fulham	19	3	4	1	25	0	29	14%	3%
Haringey	48	0	10	3	7	0	17	59%	18%
Harrow	11	6	3	0	9	0	12	25%	0%
Hillingdon	8	2	9	5	6	0	15	60%	33%
Islington	42	2	23	8	30	0	53	43%	15%
Lambeth	34	0	21	5	19	0	40	53%	13%
Merton	17	0	2	2	2	0	4	50%	50%
Newham	30	14	20	5	38	0	58	34%	9%
Richmond Upon Thames	25	1	4	0	11	0	15	27%	0%
Southwark	14	8	4	3	14	0	18	22%	17%
Transport for London	199	52	69	21	163	2	232	30%	9%
Waltham Forest	5	0	3	2	5	0	8	38%	25%
Wandsworth	14	0	3	2	6	0	9	33%	22%
<b>TOTALS :</b>	<b>677</b>	<b>126</b>	<b>276</b>	<b>102</b>	<b>478</b>	<b>5</b>	<b>754</b>	<b>37%</b>	<b>14%</b>

## Statistics July – September 2005

## Moving Traffic

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
Camden	181	1	25	12	56	2	81	31%	15%
Croydon	38	0	1	1	11	2	12	8%	8%
Ealing	49	0	11	8	5	0	16	69%	50%
Newham	23	0	40	36	4	1	44	91%	82%
Transport for London	97	3	37	20	25	1	62	60%	32%
Wandsworth	7	0	1	1	2	0	3	33%	33%
<b>TOTALS:</b>	<b>395</b>	<b>4</b>	<b>115</b>	<b>78</b>	<b>103</b>	<b>6</b>	<b>218</b>	<b>53%</b>	<b>36%</b>

## Statistics July – September 2005

## Lorry Ban

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
ALG TEP	13	0	13	3	3	0	16	81%	19%

## Statistics July – September 2005

## Total (All categories)

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
TOTALS:	13578	1012	7239	3245	5770	91	12900	56%	25%

## Statistics July – September 2005

## CC Adjudicators

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
Transport for London	3190	1860	2523	1358	4604	84	7127	35%	19%

## Statistics July – September 2005

## Congestion Charge - Clamp &amp; Remove

	Rec'd	Stat Dec Rec'd	Allowed	Of which DNC	Refused	Of which W'drawn	Total Sealed	% Allowed (inc. DNC)	% DNC
Transport for London	1	0	2	0	1	0	3	67%	0%

## Statistics July – September 2005

## PATAS Performance

	July	August	September
<b>Parking Adjudicators</b>			
Average weeks delay - Postal	17.8	17.9	19.3
Average weeks delay - Personal	11	11.2	12.2
Average weeks delay - Total	15.9	15.9	17.5
<b>Congestion Charging Adjudicators</b>			
Average weeks delay - Postal	41.9	40.2	39.3
Average weeks delay - Personal	33.2	10.4	6.7
Average weeks delay - Total	40.2	38.9	37.5

Pages 5-8 contain precedent cases related to the following:

- Parking without clearly displaying a valid ticket or voucher;
- 'Drive Aways' and Prevention of Issue of Penalty Charge Notice;
- Bill of Rights 1689 – whether Bus Lane enforcement is contrary to Human Rights Act 1998; whether unlawful

## PRECEDENT – OPERATION OF VOUCHER SCHEME

**David Callaghan**

-v-

**London Borough of Waltham Forest**

**Case No.: 2050413235      PCN: WF73431001**

***Parked without clearly displaying a valid pay & display ticket or voucher***

**Decision: Allowed**

**Adjudicator: Martin Wood**

Reason for Decision: The Appellant parked in a voucher parking place to visit a shop across the road.

He went to the shop and saw a "P" in the window, indicating that it participated in the (voucher) scheme. The shop assistants were attending to customers. After a short time the Appellant interjected and said he needed a voucher. One of the shop assistants got a voucher and completed it for the Appellant by scratching the relevant details. The time scratched was 2.55.

The Appellant then returned to his vehicle to find the parking attendant next to it, apparently taking notes. The Appellant showed him the voucher. The parking attendant said it was too late. The Appellant said he had done everything you are supposed to do and the parking attendant said you are allowed 5 minutes. The Appellant said he had been in the shop about 3 minutes. The parking attendant said he had not.

The Appellant returned to the shop to ask them for a witness statement. The shop assistant agreed and they had a discussion about how long the Appellant had been in the shop. He then returned to the vehicle to find the Penalty Charge Notice on the windscreen and the parking attendant gone.

The Adjudicator said that, where there is a voucher scheme, the motorist plainly is allowed a reasonable time to obtain a voucher. There is no precise provision as to the maximum time allowed. Of course, in obtaining the voucher the motorist must do only that and not engage in any other activity. It is inherent in such a scheme that a motorist may be delayed somewhat by the fact that the shop assistants are engaged with other customers, as was the case here. In this respect the variations in time taken to get a voucher are likely to be more variable than where tickets are purchased from a pay and display machine.

In its Case Summary the local authority said that, although signs indicated that vouchers could be purchased from shops displaying the "P" it was expected that a supply of vouchers be kept in the vehicle.

**Continued...**

**David Callaghan -v- London Borough of Waltham Forest (Continued)**

This latter expectation had no justification in law and if the local authority were dealing with representations on this basis it must cease doing so at once.

The scheme was that vouchers were sold by shops and that was the source of them for motorists.

The Adjudicator was satisfied that the Appellant acted within the requirements of the scheme; he went to the shop to obtain a voucher and returned to his vehicle with it as soon as he had obtained it. In the context the time taken to do so was entirely legitimate. He considered it more likely the time was about the 3 minutes stated by the Appellant, bearing in mind that the Penalty Charge Notice was issued and fixed to the vehicle after the Appellant had returned with the voucher. So the 5 minutes given in the parking attendant's notes between the first observation and the issue of the Penalty Charge Notice includes time after the Appellant had returned with the voucher. This was corroborated by the time scratched out - 2.55. The Appellant plainly would have only then taken a short time to return to the vehicle and must have been there before 2.57, the time at which the Penalty Charge Notice was issued.

In any event, whatever the precise time, the Adjudicator was satisfied the Appellant complied with the requirements of the scheme.

**Direction to LA: cancel the Penalty Charge Notice and the Notice to Owner.**

**PRECEDENT – DRIVE AWAYS AND PREVENTION OF SERVICE OF PCN**

**Yoni Lamina**

**-v-**

**Transport for London**

**Case No.: 2050307012      PCN: GF01291318**

**Adjudicator: Martin Wood**

**Arising from a review request from Transport for London (Refused)**

The Chief Parking Adjudicator found that merely driving away did not amount to preventing service of the PCN so as to permit service by post under section 5 of the London Local Authorities Act 2000, as amended. He said that the contention that it did implied an obligation on the motorist to remain at the scene whilst the parking attendant effected service. There was no such obligation in law.

**PRECEDENT – BILL OF RIGHTS ACT 1689; WHETHER BUS LANE  
ENFORCEMENT SCHEME IS IN BREACH OF HUMAN RIGHTS ACT 1998;  
WHETHER ENFORCEMENT IS CRIMINAL**

**Robin Townsend**

-v-

**Transport for London**

**Case No.: 2050330626      PCN: GT10236871**

**Decision: Refused**

**Adjudicator: Martin Wood**

Mr Townsend claimed that the penalty charge was a "fine" and that he could not be fined without having first been convicted of a criminal offence. He referred to the following declaration in the Bill of Rights 1689:

*"All grants and promises of fines and forfeitures of particular persons before conviction are illegal and void".*

The Adjudicator said that the question was whether the sensible meaning of this declaration precluded any financial penalty without conviction and whether the category of proceedings under the 1996 Act, having regard to the principles of Human Rights, could be considered as imposing a penalty in breach of the spirit of the Bill of Rights.

"Fine" and the Intent of the Declarations

The Bill of Rights Act needs to be understood in the light of the contemporary language and the meaning of the context. The preamble declarations were very plainly addressing the limitation of the Crown prerogative and the imposition of law only by consent of Parliament. Mr Townsend argued that the use of the word "conviction" must mean that the Act was denying entitlement by any authority to impose any financial sanction without a criminal conviction and that any subsequent legislation so creating an imposition breached the entrenched nature of the constitutional statute without a provision for express repeal.

The Adjudicator did not think that this narrow interpretation was sustainable. What the declaration was doing was describing a general intent that the Crown had no power to impose fine or forfeiture without the consent of Parliament and the Rule of Law by the courts.

There have, in this country, been many situations where a financial sanction could be imposed by Law without the situation being a criminal one.

He had regard for the extract of Judgement of the Divisional Court of the Queens Bench dated February 2001 (*Thoburn -v-Sunderland City Council et al*) to which Mr Townsend referred. However the Court was not there dealing with the provisions herein or considering the meaning of the 1689 Act. In any event he entirely accepted the proposition that, as a constitutional statute, the Bill of Rights Act 1689 was not subject to the principle of implied repeal.

His attention was drawn to a number of decisions of Adjudicators in the National Parking Adjudication Service. In the case of *Higgins-v- Sefton (NPAS SF272)* the Adjudicator (Stephen Knapp) stated:

*" The intention of the 1689 Act was to provide the citizen with certain rights and to prevent the imposition of any financial penalty without there being a right of challenge, which certainly in the areas of criminal law, is one purpose of the more modern European Convention on Human Rights. ...To that end the Road Traffic Act 1991 provides for a system of challenge and, if appropriate, appeal to this tribunal against the issue of the Penalty Charge Notice.*

*It is clear therefore that the 1991 Act does clearly establish a right of challenge to the Penalty Charge Notice which, it must be recognised, is to be regarded as a civil debt and not a fine."*

He found this view of the scheme for the enforcement of parking penalties to be persuasive as it was analogous to the decriminalised scheme for the enforcement of bus lanes. He was not persuaded that the 1689 Act imposed any entrenched prohibition upon the imposition of a financial penalty for breaches of Traffic Management Orders or other laws relating to traffic - even if such penalties were considered to be penal in nature. They were subject to a legal regime of independent judicial scrutiny created by Statute and compatible with the European Convention.

## Robin Townsend -v- Transport for London (Continued)

He therefore regarded the question of repeal as not having relevance here. The intention of the Bill of Rights was applied by the current law. He did not think that the Bill of Rights prohibited the imposition of a financial penalty other than by conviction.

### Was the Scheme a criminal one for purposes of Human Rights?

Even if the 1689 provision did provide for criminal penalties only after criminal convictions would it have application here?

In *Williams -v-City of Stoke on Trent (NPAS SK690)* Adjudicator Mark Hinchliffe stated :

*"The fact of decriminalisation means that the penalty charge is neither a fine nor a forfeiture requiring conviction. It is a civil penalty, with the penalty going to the council rather than to the Crown and it lacks many of the features of a criminal sanction. For instance, a penalty charge cannot result in imprisonment even if not paid."*

Moreover an understanding of the nature of a penalty charge must have regard for the realities of modern life. London citizens in 1689 would have had no concept of the essential need for traffic management to the extent required today. It was appropriate to look to more modern constitutional principles. In the leading Human Rights case of *Engel-v- Netherlands (1980 1 EHRR 706)* the European Court of Human Rights considered that the question of whether or not a person was facing a "criminal charge" would be assessed by reference to three criteria:

- 1 the classification of the proceedings in the law of the country concerned,
- 2 the nature of the offence or conduct in question,
- 3 the severity of the penalty.

In the instant case, Mr Townsend had driven in a bus lane in contravention of a bye-law and the enforcement of the bye-law was expressed by Statute to be by the imposition of a fixed penalty (currently at £100) enforceable by civil means.

It was instructive to compare this scenario with that in the case of *Air Canada -v- U.K (1995 20 EHTR 150)* where the Court determined that the impounding of an aircraft of several million pounds value was not evidence of criminal proceedings.

The imposition of this penalty was not a criminal charge and the liability arose other than by a conviction.

## Walmsley v Transport for London & Others

As notified in the previous issue of our Newsletter, the Court of Appeal was due to give judgement on the case of *Walmsley v Transport for London & Others* on 15<sup>th</sup> November.

In the event this was given on 17<sup>th</sup> November and the approved judgement has now been made available.

An electronic version of this will be sent to all local authorities shortly and will also be made available on our web site early in the New Year.