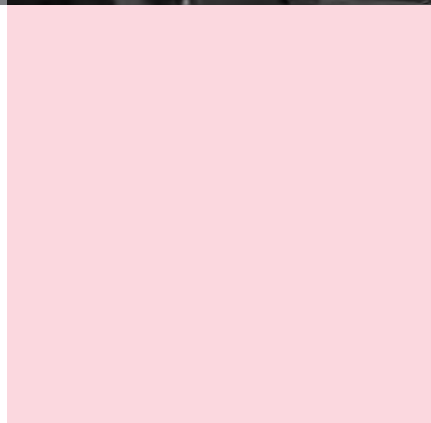


POPLA

PARKING ON PRIVATE
LAND APPEALS



FINAL REPORT OF THE LEAD ADJUDICATOR

2015



Foreword

I began my first Annual Report by suggesting that everyone had a parking story and that it may be the one time most people ever engage in any sort of appeal process. Over the past three years it has become obvious that this has not changed.

We have certainly seen a substantial increase in the number of appeals being received. Indeed growth continued right up to the last appeal being registered at POPLA by the current service provider, London Councils.

As announced earlier this year, the contract to provide the service will change with effect from 1 October 2015.

I indicated in my last full Annual Report that I intended to publish a short Report at the time of the transfer and I am therefore pleased to present this, my Final Report.

Henry Michael Greenslade

Lead Adjudicator

POPLA

Conclusions

Parking on Private Land Appeals started completely from scratch. Appeals at first began to trickle in from November 2012. Recently, the number of appeals being received each week has averaged nearly 1,000. Apart from the original London one, POPLA has grown to be not only the largest traffic tribunal in the United Kingdom but is larger than all of them combined. That is something that everyone involved in POPLA can be very proud of.

In February of this year the British Parking Association (BPA) announced that the contract to provide POPLA would change and, with effect from 1 October 2015, Ombudsman Service Ltd would be the new provider.

However, London Councils had stopped registering POPLA appeals on 21 August. In an arrangement requested by the BPA, appellants registering online were advised that their verification code would be accepted as an intention to appeal and each was informed separately upon receipt of their application, as was the operator. This ensured that the operator did not pursue the charge any further until a final determination. Ombudsman Service Ltd started to consider appeals on 21 September.

The sharp increase in appeal numbers coincided with a change of premises across London for POPLA. Combined with a completely new administration team, this provided obvious challenges of its own but the service continued to function properly and effectively throughout.

When POPLA was created in 2012, it was based on the statutory traffic tribunals which had been familiar to motorists for many years. The party seeking the charge, in this case the operator, had to show on the civil standard of proof, that is a balance of probabilities, often explained as 'more likely than not', why the appellant was liable. The burden of proof, as it is called, was on them but might shift when, for example, the motorist claimed an exemption applied in their particular case.

At its inception, the Government's requirements for an independent appeals service were that:

- It was free to the motorist
- It was to be funded by the private parking industry
- It was binding on operators
- It was independent and seen to be independent
- It was available for all tickets issued by a member of an ATA

POPLA met all this criteria. In particular, I made it a touchstone of POPLA that it must not only be clearly independent but also manifestly seen to be so. It was properly an issue that much exercised some in the early stages but, although

established by the British Parking Association (BPA) and funded by the parking industry, POPLA was operated independently and administered on behalf of the BPA by London Councils, who already provided two of the statutory tribunals for parking and traffic enforcement.

The agreement made between London Councils and the BPA to provide the appeals service has ensured that the BPA had no involvement in the procedures, appointments or decisions made by POPLA. Assessors were neither appointed, reappointed nor paid on the basis of whether appeals were won by either the appellant or the operator. Since POPLA does not charge either party to an appeal, there was no question of different charges for different results, whatever may happen elsewhere.

However POPLA, having no statutory backing, did not replace access to the County Court for legal enforcement in the way that PATAS (now the Environment and Traffic Adjudicators) and TPT replaced motorists' previous access to the Magistrates' Court for on-street parking enforcement, where an appeal is made. For this reason, the POPLA processes were simpler but based on the same principles.

I will deal briefly further on with some issues arising during the short period from my last Annual Report up until the present but one matter that has arisen recently in the press, concerning so called 'unlawful' tickets, is worth addressing.

As I have said, being modelled on the statutory schemes, where the rules of natural justice apply, POPLA Assessors decide cases on the evidence and application of relevant law. It is therefore incorrect to a most worrying extent that anyone should think that if a motorist wins an appeal, the Assessor has found that the charge is unlawful. It is for the operator, as the party seeking the charge, to show on a balance of probabilities that the appellant is liable. This is the civil standard of proof, as already explained. The fact that on such a test the Assessor finds, for example, that a disputed voucher was clearly validated, does not mean that the parking charge notice was 'unlawful'.

At POPLA, Assessors consider the evidence produced by each party, all of which evidence the other party has the opportunity to see and comment upon. I might add that each case is carefully considered, not by an anonymous decision maker but rather by a named Assessor. I really do not see how anything less could be considered fair and open. Assessors at POPLA have no contact with parties or with the BPA, who are in fact located in a different part of the country. Quite simply, we are as completely removed and independent of the BPA and its members as the statutory Environment and Traffic Adjudicators are of enforcement authorities and their associations.

When the then Parking Appeals Service started well over two decades ago there was no Internet, at least not in the form we know it now. All this has changed and today it is very much part of everyday life. When people want information almost

the first place they now turn to is the web. Anyone receiving a parking (or indeed penalty) charge notice will have no difficulty in finding a vast amount of advice and explanation, sadly not all of it accurate or correct.

Various forums and blogs do provide a running commentary on both local authority and private parking operator affairs. This obviously involves appeal services. Not surprisingly, at the beginning, there was a great deal of scepticism about how independent POPLA could be. This was natural and healthy. Many bloggers will have a particular view that they wish to put forward but most do seem to want to do their best, genuinely to assist the motorist. There is however one blogger that for some time has regularly kept POPLA, and more recently another appeals service, under scrutiny. He certainly appears to have a particularly professional approach to the whole issue. I have valued the constructive criticism, although not always accepting it to be correct; enjoyed the refreshing style; and taken on board anything it has been appropriate so to do. No person or body in the public eye can be above criticism. Such criticism is indeed a healthy sign and I wish that particular blogger well for the future.

As I repeat often, at the core of POPLA remain the legally qualified Assessors who decide the appeals. Following a further recruitment round, two new Assessors were appointed during the period covered by this Final Report. Other Assessors have since moved on to the next stage in their legal careers and I wish them all the very best for the future. Indeed, I would like to thank each of the Assessors who considered appeals during the last three years. They have, without exception, demonstrated their impartiality, despite occasional wholly misplaced, and often completely inaccurate, criticism.

I would again like to acknowledge the Senior Assessors, Shehla Pirwany and Christopher Adamson, for their continuing help in the training and mentoring of Assessors, their invaluable assistance to me with the functions that fall to the judicial leader of an appeals service, as well as for deputising so efficiently in my absence. They will go far as they progress through the undoubtedly glittering careers that await them.

As regards diversity, we finished as we began and indeed maintained throughout; of the twelve Assessors at the time of this final Report, seven are women, five are from a BAME background, one identifies as LGBT and one has a declared disability within the meaning of the Disability Discrimination Act 1995.

I would again like to thank Caroline Hamilton, the Chief Parking and Road Traffic Adjudicator, for agreeing to assist in the recruitment process, by kindly acting as the independent judicial member on the selection panel.

As already noted, the workload has continued to increase up until the very end, even as we approached the transfer of the service. The continuing rise in appeal numbers, with a consequent expansion in the numbers of queries from both appellants and operators, meant even more work for our small administration team. IT Lead Tristan Patey continued skilfully to manage this ever increasing workload on our manual database system. He was joined by new Admin Lead Mwansa Tembo, together with administrative assistants Sophie Dodd, David

Reece and Namakau Muwela. I thank each of them, as well as all the others who have helped maintain the service throughout these past years.

I would again like to pay tribute to the continuing support and professional work of the Independent Scrutiny Board for Parking Appeals on Private Land (ISPA) and especially its Chair, Nicola Mullany. Users of POPLA, whoever provides it, can therefore remain assured that it is an open service, subject to the scrutiny that all such services should be.

I would also like to thank Spencer Palmer of London Councils, especially for all his hard work in co-ordinating an efficient transfer of the POPLA service with Ombudsman Service Ltd and the BPA's appointed project manager, so as to ensure as little interruption as possible.

I particularly want to acknowledge Nick Lester-Davis, Corporate Director of London Councils for all he has done in ensuring that the service began, and continued throughout, to run smoothly. Parking and all things connected with it, as anyone reading this Report will be aware, can be a lively affair and one that arouses strong feelings. Nick has held similar roles since the inception of the Parking Appeals Service, more than twenty years ago. Naturally the general running of the various services provided by London Councils, and traffic in its widest sense, is a legitimate area of concern and a matter for comment by him. However, having myself sat as an Adjudicator for well over twenty years and worked with Nick in similar capacities throughout that time, I can confidently state that his professional approach has meant that the line between service provider and decision maker has never been blurred. Whilst this important principle is clearly accepted by those involved in the law, it has sometimes been misunderstood elsewhere and is thus well worth emphasising.

Neither I nor any of the Assessors, nor indeed any of the administration staff, will be transferring to the new service provider in Warrington. This will mean that Ombudsman Service Ltd will have effectively a clean slate with which to continue on the firm foundation we have built.

The new provider for POPLA may be moving away from a lawyer based appeals service which has, I would venture to suggest, served all parties well for the last three years. Of course, that is not to imply that a different approach will be any less effective and Ombudsman Service Ltd has great experience in other forms of dispute resolution. Additionally, POPLA has the distinct advantage of the ISPA to ensure that the highest standards continue to be maintained.

Finally, I would add that it has been a challenge but also an immense privilege to lead this new national service from its inception and I offer any successor, howsoever styled, every good wish for the future.

I am pleased to commend this, my Final Report.

Henry Michael Greenslade

Lead Adjudicator

September 2015

Current issues

As in all previous Reports, when I have looked at the main issues coming before Assessors, they remain those involving signage, whether unclear, missing or confusing, as well as tickets and vouchers that were invalid or somehow not properly displayed. The latter are now less common than issues about signage, which remain a constant theme.

As I explained in my last Report, most appeals can still be determined on the facts. Issues such as the subject of the case below are determinative in only a small percentage of appeals.

ParkingEye Limited -v- Beavis

Since my last Report the case of ParkingEye Limited -v- Beavis has been heard at the Supreme Court of the United Kingdom¹ and a decision is now awaited.

The hearing took place at the Supreme Court at the end of July, linked to another case² concerning penalty clauses in contract.

Once the decision of the Supreme Court is known, parties will naturally have an opportunity to make further representations before the matter is finally determined. Accordingly, all affected POPLA cases are currently being adjourned to a provisional date after the start of the new legal year this Autumn.

As is usually the position, there is no indication at this stage exactly when the Supreme Court's decision will be handed down. It may well not be for some time but, equally, could be within weeks.

In the meantime, all appeals at POPLA, where the issue of genuine pre-estimate of loss arises, stand adjourned to a provisional date of 9 November 2015. This means that the appeals will not be determined by the current Assessors. It also appears to be the position that these cases will not be determined by Ombudsman Service Ltd either. All case papers will therefore be securely transmitted to the BPA on 30 September, until an appropriate time for the appeals to be decided. This will take place under the overall supervision of the ISPA.

In the meantime, as I have pointed out in my last Report, no enforcement action can proceed once a case is registered at POPLA, before the POPLA appeal is determined. Further, there is absolutely no requirement to pay any sort of 'administration charge' to the operator, in order for the case to be taken out of the list.

Of course, the only party that can withdraw an appeal at POPLA is the appellant who registered it in the first place.

¹ UKSC 2015/0116

² Cavendish Square Holding BV -v- Talal El Makdessi [2013] EWCA Civ 1539 UKSC 2013/0280

Complaints

During the last month we received complaints and indeed a number of press enquiries about one particular operator. A formal complaint was also made to the ISPA. This involved allegations that parking charge notices had been improperly issued in certain car parks, based on allegations relating to the time stamping of digital images.

Following the formal complaint, and without making any findings whatsoever, I temporarily suspended determination of appeals from that company and asked them to provide me with an explanation. After some days the company indicated that they had checked all pending appeals and there were only five that they wished to discontinue, effectively offering no evidence. In fact, one had been decided, having been allowed the previous month, and one had not been registered. The other three were formally allowed and I directed that appeals could therefore continue.

Unfortunately, within a short space of time it appeared that another appeal we had received was at the same location and, on the face of it, the same issues were present as in the disputed cases. I therefore informed the operator, the BPA, and the ISPA that I would have to again suspend determination of the company's appeals until I received a further explanation. None has yet been received.

Additionally, as I write this, it is reported that the Driver and Vehicle Licencing Authority (DVLA) have suspended access by the same operator to the vehicle keeper data that the Authority holds. The effect of this is that the operator will not be able to obtain details of the registered keepers of any vehicles which are the subject of parking charge notices that the operator has issued.

Mitigation

Assessors have always decided appeals by making findings of fact based on evidence produced by the parties and application of relevant law. Mitigating circumstances have not been a ground of appeal. This is exactly the same position as in all the statutory parking and traffic tribunals.

The operator should have considered mitigation at the original representations stage but the Assessor could refer appropriate cases back to the operator if he or she considers there are compelling reasons for doing so.

Whether this is to change in the future will be for others to decide and, if it does change, everyone involved should very clear as to exactly what the changes mean. I do, however, believe that the present scheme has brought certainty to the parties.

Hospitals

In my last Report I noted that charges for parking in hospitals in England were perhaps another lively political issue but that appeals at POPLA continued to be decided on the facts and the law as it stands at the time of the event.

I also gave some examples where motorists issued with parking charge notices in hospital car parks in England had put forward extremely strong mitigation but the operator had decided still to pursue the charge. This was picked up in some sections of the press.

I welcome the BPA's stated intention to reinvent their Healthcare Parking Charter, which is apparently to be launched later this year. Without doubt, this is an area of widespread public concern.

Recommendations

As has previously been explained, in appropriate cases Assessors can make recommendations to the operator that the parking charge notice should be cancelled or at least that liability for the charge itself be cancelled.

At the time of the last Annual Report, I recorded that there had been thirty-nine such recommendations. There are obviously fewer in the much shorter period covered by this present Report.

The details are set out in the Appendix.

The criteria that we have used for such recommendations remains the same as exists for some penalty charge notices in the statutory schemes, in other words where there are 'compelling reasons'.

Under the present scheme, Assessors only make such recommendations where there are compelling reasons to do so.

Operators reported to the BPA

I have reported one operator to the BPA for a potential breach of the Code of Practice.

Once the matter is reported to the BPA it is then a matter for them and their procedures but the BPA have notified their resulting actions to me in this regard, to the extent that they are completed.

The brief details of the case are set out in the Appendix but my concern related to the operator's notice of rejection, suggesting as it did that the motorist should 'think carefully' about appealing to POPLA and even implying that the motorist would have to pay if they lost their appeal POPLA.

As previously explained, POPLA will consider a valid appeal if the operator was a member of the BPA Approved Operator Scheme at the date of the disputed parking event. To do otherwise would leave an appellant with no recourse. However, in the one case to be reported in this short period, the operator has subsequently left the BPA's Approved Operator Scheme and thus the BPA may have no effective sanction.

Parking on Private Land Appeals 2015

Lead Adjudicator
Henry Michael Greenslade

Senior Assessors
Christopher Adamson
Shehla Pirwany

Assessors
Farah Ahmad
Amber Ahmed
Jessica Hunter
Marina Kapour
Angharad Marshall
Christopher Monk
Ricky Powell
Aurela Qerimi
Raivi Shams Rahman
Nozir Uddin

Administrative Team
Tristan Patey – IT Lead
Mwansa Tembo – Admin Lead
Sophie Dodd
David Reece
Namakau Muwela

Recommendations by Assessor for exercise of discretion by operator

ParkingEye Limited	May 2015	Accepted
East Kent Hospitals University NHS Foundation Trust	July 2015	Accepted
Local Parking Security Limited	July 2015	Accepted
County Parking Enforcement Agency Limited	August 2015	Accepted
ParkingEye Limited	September 2015	Accepted
ParkingEye Limited	September 2015	Accepted
Wing Parking Limited	September 2015	<i>pending</i>

Operator reported to the British Parking Association by the Lead Adjudicator

Operator	Potential breach	Date notified	BPA response
Athena ANPR Limited	Wording of rejection letters stating 'Please think very carefully that you have adequate grounds before submitting an appeal to POPLA.' Paragraph 22.12	September 2015	The operator has now left the BPA

POPLA

PO Box 70748
London EC1P 1SN

Telephone: 0845 207 7700
Email: enquiries@popla.org.uk



Publication date: September 2015
Cover image: Thinkstock