

**The London Motorists' Action Group
& The Drivers' Alliance** in association with
The Motorists' Legal Challenge Fund



**MANIFESTO
ON THE REFORM
OF PARKING
AND
TRAFFIC ENFORCEMENT**

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A MANIFESTO ON THE REFORM OF PARKING AND TRAFFIC ENFORCEMENT

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**THE MOTORISTS'
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INTRODUCTION

WHO ARE WE?

The London Motorists' Action Group was formed in June 2005 by a group of professionals under the chairmanship of Lord Lucas of Crudwell and Dingwall in order to counter the increasing abuse by councils and by Transport for London of their powers under the Road Traffic Act 1991 (and other Acts) to issue penalty charge notices as a means of generating revenue. The fraudulent activities of some bailiffs was also targeted.

Since 2006 the members have won a number of cases at the Parking and Traffic Appeals Service and in the courts against local authorities and bailiff companies. Numerous individuals and companies have been helped to avoid the payment of unwarranted penalties or obtain refunds. Members have also helped to shape legislation and raise questions in Parliament.

The focus of the founder members was in the Camden area, but this quickly spread to the whole of London as the membership grew. Parking enforcement problems are not however confined to the London area, and currently cases as far afield as Sunderland and Hull are being supported.

The Drivers' Alliance began in July 2008 to oppose road pricing and congestion charging. This was shown to be deeply unpopular in 2007 when 1.8 million people signed an online petition against road pricing on the Downing Street website.

In the UK, motoring related taxes come to about £50 Billion a year, but only 12% of this is spent on our roads. This is not enough to provide the capacity needed to reduce congestion and with it, emissions. We need investment in roads as well as trains and buses.

We say that it is not fair to force people out of their cars through higher taxation, ever more stringent enforcement of minor traffic offences, deliberately caused congestion and limiting parking provision.

The Motorists Legal Challenge Fund was set up in 2008 with Lord Lucas and Tom Conti as trustees to help support individuals and groups fight precedent legal cases, involving parking matters, where there is a perceived injustice, unfairness or a lack of clarity with the law.

The Fund relies on donations from the motoring public and commercial sponsors in order to ensure that justice is seen to be done in a most high profile and public way. The Motorists Legal Challenge Fund has become recognised as the 'unofficial' parking watchdog.

By rights, justice ought not come with a large price tag attached. By standing up to the 'parking industry', the Fund, in association with other national groups, will eventually force change through the will of ordinary people.

The Motorists Legal Challenge does not intend to stop with a couple of cases. The aim is to create a substantial fighting fund to allow David to take on Goliath. Equality of Arms must become a reality and only then will there be an end the 'arrogance of office' by council officials who need to be reminded that they are there to serve the public and not to abuse their power.

Please help by donating to the Motorists Legal Challenge Fund of which Lord Lucas, Chairman of London Motorists' Action Group, and Tom Conti are trustees.

WHAT IS THIS ABOUT?

The London Motorists' Action Group, the Drivers Alliance and the Motorists' Legal Challenge Fund endorse the principle that sensible and fair parking and traffic management procedures implemented with commonsense are important to ensure the orderly use of parking space and road space and to contribute to road safety.

What we object to is the use of aggressive enforcement to produce parking budget surpluses, year after year, which some local authorities rely on to sustain an artificially low level of council tax.

WHY DO WE ALL HATE PARKING ENFORCEMENT SO MUCH?

Because it has become simply the enforcement of trivia in an effort to raise revenue.

Melanie Reid wrote in an article on bank charges¹ **"Being caught out for something trivial infuriates us."** She reasons that:

"...unauthorised overdraft charges are fair in the same way as...parking tickets from traffic wardens are fair. They trip up the undisciplined. They are, in fact, an inevitable by-product of a society that seizes every opportunity it can to capitalise on human frailty, while pretending it is all for the greater good. And while some may call [it] a form of idiot tax, and sneer at those who fall foul of them, by doing so they sneer at what it means to be human."

We are all human. However hard we try, we make mistakes. Why should we be relieved of hard earned money each time we do so?

The *reductio ad absurdum* of this triviality is illustrated by the case of Joan (now Baroness) Walmsley and Transport for London (TfL)². Ms. Walmsley paid the London Congestion Charge on two successive days giving the registration number of her car as W616 JBF when it was in fact W616 OJC; the letters JBF were those of her previous car. TfL insisted that she pay a penalty, so she went to the Parking and Traffic Appeals Service (PATAS) who upheld TfL on the grounds that as she had technically not paid for W616 OJC and that PATAS had no power to exercise discretion. She went to the High Court where Mr. Justice Burnton concluded that PATAS did have discretion and *"It is not a purpose of the Scheme to penalise those who make a genuine error as to their vehicle's registration number"*. TfL went to the Appeal Court who reversed the judgment – the rules are the rules are the rules.

The political commentator Peter Osborne³ confirms the widely held view that parking enforcement is yet another form of taxation. He describes the growth in the use of fixed penalties as:

"...a move away from formal justice to an improvised method of executive justice, thus sidestepping the due process of law that has always been a defining feature of the British system."

*"This form of causal justice was introduced for a variety of offences, for instance...certain motoring offences. The resultant move to fixed penalty notices means that **suspects could buy their way out of the formal process of punishment by paying the fine.** This new approach has started to mean that some kinds of offence...are effectively now subject to taxation rather than criminal punishment."*

It's not justice as we used to know it. You now pay the bully to stop hitting you.

Minette Marin also thinks it is sinister. **Everywhere we turn, nanny is there and ready to hit us**⁴ was the title of an article she wrote back in 2004. She looked at the various ways in which fixed penalties intrude on our everyday life, and had this to say about parking:

"When Gwyneth Paltrow said recently that one of the things she most dislikes about this country is the traffic wardens, few people took her seriously...Traffic wardens infuriate most of us out of all proportion to what they do. After all, illegal parking is something up with which we should not put, and they are only obeying orders. But somehow their officious bullying has come to stand for something significant in the public imagination; traffic wardens are the storm troopers of the forces of state interference."

Quite right. But take a second to spare a thought for the human being inside that "storm trooper" outfit. These men and women are not the cause of the problem, perhaps not even complicit. Their behaviour is merely a manifestation of a system that is rotten to the core.

Traffic wardens are reviled, and abused by their employers and the motoring public alike. If they work for an enforcement sub-contractor rather than being directly employed by a council they are quite likely to be underpaid and lacking in employment benefits. They can be poorly trained and have very little knowledge of the laws they are supposedly enforcing.

Some even lack communication skills and it is not unusual to encounter a warden whose command of the English language is fairly basic⁵. There have been reports of arrests for drug dealing⁶, and the employment of a convicted criminal⁷ and illegal immigrants⁸. None of this helps to project an image of competence, honesty and integrity as should be expected by people whose job it is to enforce the law.

But that's just it; it is no longer about law enforcement; it's about revenue raising. These unfortunate souls, desperate for a job, are daily thrust out on to the street to face the hostility of the motoring public and ordered to meet revenue targets⁹. It's the council's "generals" hiding safely and secretly in their town hall bunkers who must take responsibility for the current situation.

It is therefore hardly surprising that when Transport for London surveyed drivers about their attitudes towards parking and traffic enforcement in early 2009 they found that drivers believed there was a "Perceived eagerness to hand out PCNs and fines" and it was "understood as [a] money raising exercise". Drivers also thought that: some rules and their enforcement make no allowance for natural human error, and the use of cameras and 'unfair', heavy handed procedures exacerbates this view.

So, it's sinister, abusive, intrusive, trivial, an idiot tax, or a tax on being human and for what? Where is the benefit? If there is one it is not obvious. Minette Marin again:

All stick and no carrot makes Joe Public an angry boy. And angry boys and girls tend to turn upon nanny and tell her they don't love her any more.

REFERENCES

- ¹ **Bank charges criminalise us for being human**, Times Online, 23 Dec 2009
- ² Walmsley, R (on the application of) v Lane & Anor; [2005] EWHC 896 (Admin)
- ³ **The Triumph of the Political Class**, Peter Osborne, Simon & Shuster 2007
- ⁴ Sunday Times, 4 Jan 2004
- ⁵ Ealing Council Residents Panel Survey 2007: A point raised was that "Wardens all need to have a good command of English and rules of parking"
- ⁶ **Skunk-dealing traffic warden's shock as he's arrested after Daily Mirror investigation**, Mirror.co.uk 26 Jan 2010
- ⁷ **The terrorist who became a London traffic warden**, Mail Online 5 November 2007
- ⁸ **Wardens quit as visa checks begin**, BBC News 23 Sept 2008; **Drivers to appeal after traffic warden arrests**, thisiskent.co.uk 20 Oct 2008
- ⁹ **Parking warden vultures 'still given ticket targets' of seven per day**, Mail Online 11 Feb 2010

THE BACKGROUND TO PARKING AND TRAFFIC ENFORCEMENT

ORIGINS

1. Parking enforcement has been with us since its introduction by Ernest Marples MP in the 1960s. The legal foundation of today's parking regulation is in the Road Traffic Regulation Act 1984, which primarily confers a duty on local authorities:
"...to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway...".
2. The Act gives local authorities the power to place restrictions on road use by creating Traffic Orders. At that time the enforcement of any parking restrictions specified in these orders was the responsibility of the Police and it was carried out by traffic wardens. Motorists had a right of appeal to the magistrates courts (see Annex 1 for more detail).
3. When the Road Traffic Bill 1991 was introduced before Parliament the intention was that the Metropolitan Police would continue to enforce parking. However, the 1980s had seen a sharp growth in commercial traffic in central London and the Home Office would not countenance any increase in the number of traffic wardens.
4. Councils had the responsibility for ensuring that the traffic flowed freely, but had little authority to make it happen, so they lobbied Parliament for parking enforcement powers. As a consequence a decision was made to decriminalise parking enforcement and turn it over to the London Boroughs. The relevant measures were hastily introduced in the Committee stage of the Bill with so little time that neither the Home Office nor the London Boroughs were consulted in advance.
5. The 1991 Act was later amended to extend powers of enforcement as an option to provincial authorities.

FURTHER LEGISLATION

6. 1996 saw the introduction of decriminalised bus lane enforcement using CCTV cameras¹, initially by Transport for London and, following the Transport Act of 2000², this was rolled out to the London Boroughs and then some provincial Authorities in 2005³.
7. The Greater London Authority Act 1999 gave the necessary authority for the London congestion charge which was introduced in February 2003.
8. The Traffic Signs Regulations and General Directions was revised in 2002. This Statutory Instrument (**SI**) defines the appearance and purpose of all lines and signs used to regulate traffic. If a sign is not specified in this SI it must be specially authorised by the Secretary of State for Transport before it can be legally enforced.
9. In 2003 the London Local Authorities and Transport for London Act⁴ facilitated the decriminalised enforcement of various traffic signs such as no right/left turns and yellow box junctions.

THE POSSIBILITY OF REFORM

10. The next major piece of legislation to affect parking and traffic enforcement was the Traffic management Act 2004⁵ (the 2004 Act). This Act states the importance of:

"securing the expeditious movement of traffic..." and "the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic..."

11. A study of the Parliamentary records indicates that this Bill was hastily put together, poorly scrutinised and fast-tracked through Parliament. Among its most vociferous opponents was the then Chair of the Select Committee on Transport, the late Ms. Gwyneth Dunwoody⁶. The Transport Committee was scrutinising Parking Policy and Enforcement⁷, and Traffic Enforcement⁸ at the time, but its reports came out after the passage of this legislation.
12. The 2004 Act was wide ranging and it introduced some useful measures in areas other than parking. **It was hoped that it would deliver much needed reforms.** To quote the aspiration of the Chief Parking Adjudicator for London⁹:

"We have in the past drawn attention to the lack of coherence in the overall civil enforcement scheme that has resulted from its piecemeal legislative history. There are a number of inconsistencies between the enforcement of the different types of contravention for which there is no obvious justification... Such inconsistencies are liable to cause confusion to the motoring public and even to local authorities, and have the potential to bring civil enforcement into disrepute. We would reiterate our view that it is self-evident that all civil enforcement of traffic penalties should be enforced through a core set of principles and processes. Differences in detail may be necessary, but should be the result of need and planning, not accident. The implementation of the Traffic Management Act 2004 provides the opportunity for this coherent approach."

A WASTED OPPORTUNITY

13. Sadly, the implementation of this Act was a missed opportunity. The enforcement provisions were not implemented for four years and then only for parking. The bus lane and moving traffic provisions have not yet been implemented and the Department for Transport has no timetable for doing so¹⁰. The Chief Adjudicator again¹¹:

"We think it unfortunate that the Department chose to implement the Act initially in relation to parking only, rather than civil enforcement as a whole. As we understood it, the Act was intended, and certainly presented the opportunity, to introduce a single coherent regime for civil enforcement."

As matters stand, there is even a danger that the regime will be more fragmented rather than less, and in a way that is of direct concern to us. This will only increase complication to no-one's benefit."

14. The parking provisions alone in the primary legislation have spawned a further six Statutory Instruments¹² (a total of 48 pages), the Secretary of State's Statutory Guidance (30 pages), and the Department for Transport's Operational Guidance (166 pages). The whole system of enforcement has become labyrinthine in its complexity.

15. The main difference between the 1991 Act and the 2004 Act is that the operational detail is contained in the delegated legislation. It is obvious that in drafting the Statutory Instruments, the civil servants at the DfT simply copied large tracts of the 1991 Act verbatim and consulted little. Again, the Chief Adjudicator provides the common narrative¹³:

"One might therefore have thought that the sensible way for the Department to proceed in preparing new procedural regulations would be, before putting pen to paper, to consult us about the practical operation of the procedures, whether we had any suggestions for change and to seek our views on any ideas of their own for change. The exercise therefore got off on the wrong foot by the Department presenting to us draft regulations that contained substantial changes to the existing regulations without prior consultation and without any explanation of the rationale for the changes. The reason for many of the changes was difficult to divine. Some appeared to be mere drafting taste; others were matters of substance effecting unnecessary changes to our present procedures without any benefit. Some of the changes would have caused unnecessary operational disruption, with the attendant costs."

"The proposed regulations therefore caused us a great deal of concern. We are sorry to say that when we raised our concerns with the Department we were not met with a receptive response. As a result it took a great deal of effort and many months to obtain the changes that we regarded as the minimum to put them into an acceptable, if still less than ideal, form."

16. The switch from the 1991 Act to the 2004 Act on 31st March 2008 was rushed and, as the previous paragraph illustrates, badly handled by the Department for Transport (**DfT**). Local Authorities were supposed to apply to the DfT for Civil Enforcement powers, but many did not. Some operational guidance was not ready on time, so grace periods were granted to enable compliance¹⁴.
17. **Despite all that time and effort, nothing much has changed.**

REFERENCES

¹ London Local Authorities Act 1996

² Transport Act 2000 section 144. Note also that this act made provision for road user charging and the workplace parking levy. Neither have been implemented because of overwhelming public opposition.

³ Statutory Instruments 2005 Numbers 2755, 2756, 2757 & 2758.

⁴ [London Local Authorities and Transport for London Act 2003](#)

⁵ [Traffic Management Act 2004](#) Part 6.

⁶ Hansard 5th Jan 2004 Transport Bill 2004 second reading. Gwyneth Dunwoody starts at 5:34 pm.

⁷ Transport Committee 2005-6 Seventh Report "Parking Policy and Enforcement" (HC 748-I & II).

⁸ Transport Committee 2003-4 Sixteenth Report "Traffic Law and its Enforcement" (HC 105-I & II).

⁹ [Parking Adjudicators' Annual Report 2005/2006](#).

¹⁰ Dft [Revised Timetable for Implementation of the Traffic Management Act 2004 Regulations](#) dated June 2007.

¹¹ [Parking Adjudicators' Annual Report 2006/7](#).

¹² Statutory Instruments 2007 Numbers 3482, 3483, 3484, 3485, 3486 & 3487.

¹³ [Parking Adjudicators' Annual Report 2006/7](#).

¹⁴ The Statutory Guidance was published on 28th Feb 2008, the Operational Guidance was published on the 25th March 2008 and the act was implemented on 31st March 2008. The consultation on approved devices (CCTV) was still ongoing at this date.

WHAT THE LOCAL AUTHORITIES DID WITH THIS POWER

A NEW BEGINNING

18. As was mentioned previously the provisions for decriminalised parking enforcement by local authorities was introduced in haste to the Road Traffic Bill 1991. It was short on detail and there was perhaps a tacit assumption by the lawmakers that the local authorities would approach the task with the same integrity and competence as the Police. How wrong they were.
19. The implementation of the Road Traffic Act 1991 took a few years. For most local authorities it was a period of adjustment. Most of the London local authorities, particularly those with a large influx of vehicles during the day, began to realise that enforcement was capable of producing large amounts of revenue.
20. Outside London many smaller authorities did not take up the option and left the job of parking enforcement to the local police. Having costed the operation they realised that they would be unlikely to break even, let alone produce a surplus. This was particularly true in areas dependent on seasonal tourism such as Devon and Cornwall where parking needed to be regulated only for a few months in the Summer.
21. The 1990s was a honeymoon period. Companies that operated in Central London just treated parking tickets as a necessary operating expense. However, the accountants of some firms operating large fleets of vehicles began to realise that they were handing over in excess of £1 million per annum in parking fines. This was a significant entry on their profit and loss account.

COMING UNDER SCRUTINY

22. In the early 2000s there was a growing awareness that perhaps a few local authorities were being overzealous with their enforcement, and from this emerged a desire for reform.
23. Some individuals set up consultancies to help drivers and companies challenge PCNs. Their success rate was high, mainly because councils were ticketing indiscriminately on the basis that most drivers would just pay up and not make a fuss. This was the first time that the system had been seriously challenged.
24. In 2003 the Local Government Ombudsman (**LGO**) received over 300 complaints relating to the parking activities of some London local authorities. The LGO normally only deals with individual cases, but the sheer volume of complaints caused his office to investigate and issue a special report with recommendations for improvement¹.
25. Campaigners such as Neil Herron and campaign groups such as the London Motorists Action Group began to get involved with the politics at a local and national level.
26. The system was now coming under the spotlight. Local authorities were being handed more and more power to issue penalty charge notices for civil contraventions other than parking. In 2004 Fellow's Associates produced a highly critical report entitled **THE NEW ENFORCERS; Local authorities and the penalty notice system**². It found that there was rarely any consultation with the public and police, inconsistent practice, a lack of internal

written guidance and virtually no tracking of notices issued. The report issued this warning:

"...penalty notices will become a key part of the interaction between the local authority and the citizen. The penalty notice system is not, therefore, simply a matter of minor administration but forms part of the relationship between council and citizen. If this interaction is poor, the citizen's perception of the council may diminish. How authorities tackle penalty notice enforcement may affect their reputation within the community."

It was a bit late. The damage to their reputation had begun and it would only get worse.

27. In 2003 the London Local Authorities and Transport for London Act gave authorities the power to enforce a number of road signs and box junctions. A pilot scheme was hastily arranged by London Councils involving those authorities that had access to CCTV cameras in the right locations. The only data collected was the number of Penalty Charge Notices issued. Transport for London did manage to collect some traffic data *but it failed to show that CCTV enforcement had any impact whatsoever on flow rates.*
28. The report of this pilot study³ showed that it was easy to raise millions of pounds with Camden managing to issue 5,292 tickets for banned manoeuvres in the month of December of 2004 (approximate value £300,000) and 2,327 box junction tickets in October 2004 (approximate value £140,000). *There was no mention of the effect it had on traffic flow.*
29. When it came to vote on the formal adoption of these moving traffic enforcement powers the ALG (now London Councils) committee was split⁴. The Conservative group led by Cllr Moylan (Kensington & Chelsea) urged caution and pointed to the "public backlash from LB Camden's Holborn situation". This was the PATAS case of Greene -v- Camden⁵ where the Adjudicator ruled that the box junction at High Holborn was non-compliant. Cllr. Moylan was in the minority and the scheme was rolled out to all councils who wanted it. *It was a license to print money.*
30. Also in 2004 the Traffic Management Act passed through Parliament although its impact would not be felt for a few years afterward. However, around that time the House of Commons Transport Committee was scrutinising Parking Policy and Enforcement and it produced a comprehensive report in 2006⁶ that exposed a number of weaknesses in the system:
 - Many PCNs are cancelled because they are incorrectly issued by poorly trained staff – they waste people's time
 - *"Lines and signage meant to indicate the rules are often not clear, with the result that many drivers have difficulty in understanding and complying with the law".* We add that too often lines and signs are not compliant with TSRGD 2002. The law is quite clear that lines and signs have to comply exactly with TSRGD. (see Annex 1 in particular Davies v Heatley)
 - Some of the paperwork – the Traffic Regulation Orders - underpinning controlled parking zones (CPZs) and restrictions is a shambles *"and at worse illegal"*. The Annual Report of the Traffic Penalty Tribunal for 2007/8 confirms this:

"What can we say about TROs? They continue to bewilder adjudicators and some councils appear to give very low priority to consolidating their TROs and redrafting them in language and terms that are comprehensible to the drivers who must abide by them".

(We cite some examples in Annex 9)

31. Meanwhile the Greater London Authority's Transport Committee, chaired by Lynne Featherstone (now an MP) investigated "Parking enforcement in London?". The report was highly critical and made 20 recommendations. It was not well received by the councils. Ms. Featherstone later said that it "...got me into loads of trouble from those who did not want me poking my nose in⁸."
32. 2006 saw the start of consultation by the Department for Transport in preparation for the implementation of the parking provisions of the 2004 Act under the optimistic banner of "Better Parking – Keeping Traffic Moving". The perception that councils were enforcing parking just to raise money was now well established and the AA Trust's consultation response summarised the mood perfectly:

"The impact of decriminalised parking enforcement on the UK motorist has been highly significant. Parking income in Britain has exceeded £1bn and almost 8m Penalty Charge Notices (PCN's) are issued annually. Whilst on the one hand improved enforcement has led to clearer streets and more efficient parking control, a perception also exists that parking control under the decriminalised regime has been all about maximising revenue for local authorities through 'easy picking' enforcement often carried out by contractors. Some local authorities have also been less than fair in their dealings with people and have failed to comply with the Department's guidance and legislation. This has driven a wedge between some motorists and local authorities."

THE START OF LEGAL CHALLENGES

33. The motoring public was beginning to fight back. The turning point was the case against Barnet Council which went all the way to the High Court⁹ and proved that their PCNs were incorrectly worded. Many other councils were using the same wording. This should have been the signal for massive refunds because it proved that many councils all over the country had been issuing invalid PCNs for years. But no. One way or another they managed to wriggle out of it.
34. The Chief Adjudicator of the National Parking Adjudication Service, Caroline Sheppard wrote to 80 councils advising them that they should not be enforcing non-compliant PCNs. They ignored her advice. The Traffic Penalty Tribunal has refused to say which councils had not complied with the law.
35. Further malpractice came to light as the result of investigation and challenges:
 - In June 2008 Sheffield Council offered to refund PCNs when it was found that the signs for the so-called "tram gates" in the Hillsborough area were not clear enough.¹⁰
 - In August 2008 Guilford Council refunded PCNs when it was discovered that some of its Traffic Orders were incorrect¹¹.
 - In November 2008 Ealing Council was forced to refund money and tear up 6 yellow box junctions after it was discovered that the Department for Transport had advised them months earlier that these junctions were not correctly marked¹².

But, all too often councils devise devious reasons for holding on to money to which they are not entitled (see Annex 2)
36. Challenges against the abuse of power continue with mount with three court cases now pending. But it should not be the job of a handful of motivated individuals to police the

system. The Department for Transport does have reserve powers to take action against malpractice and malfeasance, but they have never been used.

37. In a recent debate in the House of Lords, the chairman of LMAG asked the government whether it would use its powers to ensure that road markings and signs are compliant with regulations, particularly where markings or signs create dangers for road users. The government representative stated:

“the government would consider using their powers to direct local authorities to remove traffic signs where there was sufficient justification”, but then said “the Act gives the Secretary of State power to direct a highway authority to remove traffic signs, and, where an authority fails to do so, to carry out the work himself and recover the cost from the authority. As the noble Lord says, however, these reserve powers have never been used because we take the view that it is far more appropriate for local and highway authorities to take the responsibility for this; it is impossible for the Department for Transport to police road signs over the whole country. It would be in only the most exceptional circumstances that the Secretary of State would consider using these power.”

38. Letters dated 21/11/06 and 26/1/08 from Ms. Rosie Winterton, then Minister of State for Transport, to Ms. Karen Buck MP also convey a distinct lack of interest:

“..although my Department is responsible for the Regulations that prescribe signs and markings for the use by Local Authorities, it is for the Local Authority to ensure that they comply with the regulations, and the government has no current plans to change this because Local Authorities are responsible for their actions to their electorate, their auditor and to the courts. If a Local Authority failed to discharge this duty adequately, it would ultimately be for the Courts or a Parking Adjudicator to decide in relation to specific markings at a specific location. Only they can decide whether the condition and appearance of the markings is adequate to indicate the restrictions in force in a particular case”.

“The Department has no power to intervene in the day to day affairs of local authorities except where specific provision is made in legislation”.

“Local authorities are expected to comply with relevant legislation and are responsible for their actions to their electorate, their auditor and to the courts”.

39. Ms. Winterton mentions that the local authorities are responsible to their auditor, but our experience is that these auditors do little more than rubber stamp the accounts.
40. In an objection to the accounts of the Metropolitan Borough of Bolton for the year ended 31 March 2008 relating to £600,000, the district auditor was presented with extensive evidence of wrongly marked (and therefore unlawful) parking bays throughout the borough, including a report by the Council stating that “most of the Bolton parking bays” were signed with road markings prohibited by the Road Traffic Regulation Act. The auditor’s Provisional View was that this situation “may have given rise to an unlawful item of account”. In subsequent discussion with the objector he agreed to change the evasive wording to “was likely”, and also “was very likely to have given rise to an unlawful item of account”. In disregard of his agreement, and his stated intention of convening a further meeting to continue discussion of unresolved accounts issues, he then presented his Final Decision which left unchanged the non-committal wording of his Provisional View. **We are supporting the legal action of Moss v KPMG as District Auditor for Bolton Council.**

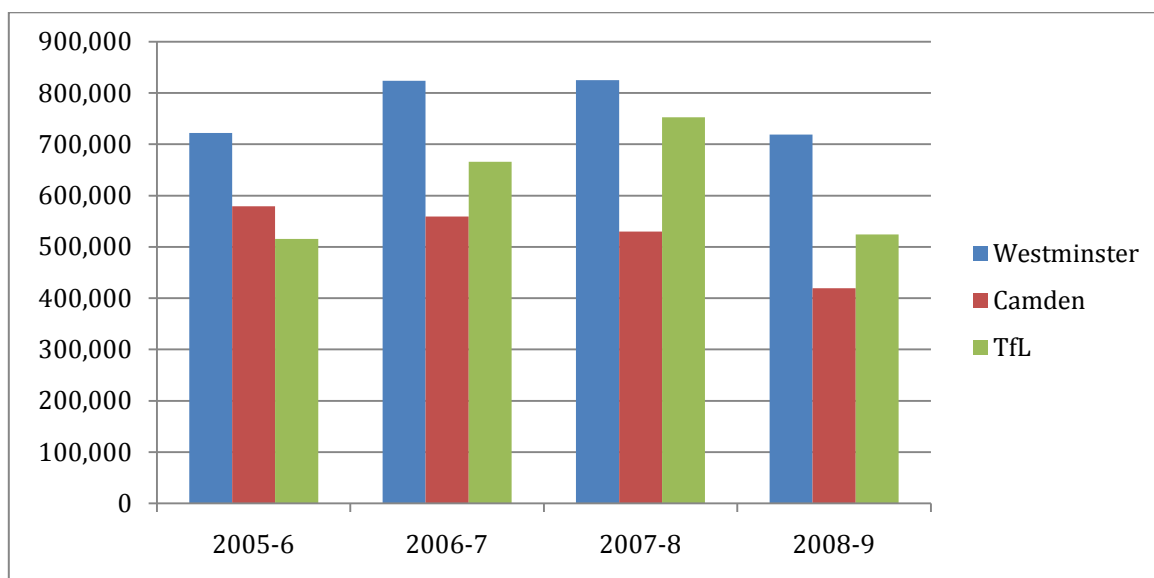
41. As campaigners we have won many representations and appeals; we have been to court and the Local Government Ombudsman against bailiffs on numerous occasions; we have demonstrated illegality in council proceedings; we have objected to the District Auditor on half a dozen occasions; we have been to the Department for Transport; we have asked Parliamentary Questions and had debates in the House of Lords; referred a bailiff company that defrauded several of us to two police forces and the Serious Fraud Office to no avail; and in the 2005 local elections we leafleted a ward in Camden and got rid of the councillor who initiated Camden's unpleasant enforcement operation. But, all to little effect – still the abuses continue. The government has created an unregulated bureaucratic monstrosity that is at best mildly aggressive, and is at worst – when bailiffs get involved and defraud people and deprive them of their cars – vile. **It should not be tolerated in a civilized society.**
42. The political commentator Andrew Rawnsley recently observed¹³:
- "Tighter rules and stricter regulations may help, but the unscrupulous, the greedy and the devious will always find loopholes...The most effective disinfectant of corruption is transparency."*
- His remarks were made in the context of MPs expenses, but the same principles apply. **The existing rules and regulations are sufficient. Local authorities need to be seen to be abiding by them.**

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CASE STUDIES

43. The three authorities that have for many years issued the most PCNs are Westminster, Camden and Transport for London. Together they issue 30% of all PCNs in London (and nearly one fifth of the England and Wales total). The quantities for the last 4 years are shown below.



44. To put these figures into context:
- In 1994/5 approximately 2 million PCNs were issued in London
 - This rose steadily to 6 million by 2003/4
 - The figure remained constant until 2008/9 when it fell to 5.5 million.
45. In 2007/8 around 10 million PCNs were issued in England and Wales which brought in £350 million to the local authorities.
46. We offer some observations on the way in which each of these "top three" authorities approaches the task of parking and traffic enforcement.

WESTMINSTER CITY COUNCIL

47. In 2008/09 Westminster issued 695,966 PCNs for parking contraventions and 23,000 for moving traffic contraventions. In 2007/08 it made a surplus of £38.7m on its parking account, which is 80% of the income raised from council tax which was £48m in 2008/09. £46.3m, representing 55% of the income in the parking account, was derived from PCNs.
48. Westminster's parking department appears to regard itself as innovative and a leader in the business of parking and its enforcement. In 2006 it formed "Partners in Parking" with a group of other councils to harmonise procedures and achieve economies of scale. The idea was pitched to London Councils' Executive in January 2007 by which time the venture had consumed over £500,000 of public money. It is known from council minutes that staff from Westminster parking department acted as consultants for Ealing Council during the wholesale restructuring of their parking department during 2008/9.

49. In the mid 2000s Westminster suffered a severe loss of parking revenue (around £100,000 per week) because criminal gangs began emptying the parking meters at night¹. The response to this crisis was to install pay and display (**P&D**) ticket machines that took cash or credit/debit cards as payment. In some locations it was only possible to pay by card which was a severe limitation
50. In 2006 Westminster piloted a pay by phone system intended to "help eliminate theft, fraud and vandalism to parking meters". The stated intention at that time was that it would compliment meters and P&D so that it would not discriminate against drivers who did not have a mobile phone and/or bank card².
51. However, a decision was subsequently taken to remove all meters and P&D machines. The transition was botched. The parking signs for pay by phone were non-prescribed and therefore had no legal force until they obtained special authorisation from the DfT. In many streets the P&D meters were still operational but CEOs were instructed to ignore P&D tickets and enforce only on pay by text³. This resulted in a large number of successful appeals to PATAS.
52. Pay by phone is not without its problems as was illustrated by the case of Joan Bakewell⁴ when she successfully appealed a PCN received after believing she had paid correctly. Westminster's attitude was that "the system is created for texting and if you can't operate it, then you should park elsewhere". We consider the pay by phone system to be highly discriminatory and socially exclusive for those without a mobile phone or credit card.
53. In response to public anger and dissatisfaction, in June 2008 Westminster hurriedly introduced an alternative method of payment; pre-paid parking scratch cards that can be purchased in advance - but only from Westminster's libraries⁵.
54. In November 2008 the legality of Westminster's Controlled Parking Zones (**CPZ**) was challenged at PATAS. The case⁶ was brought on the basis that all the entry points to the F3 CPZ did not have sufficient signs as required by law. The appeal was allowed, effectively declaring the whole of Westminster's parking operation unlawful because all their other CPZs had similar defects. Instead of stopping enforcement and refunding money the council continued to enforce - in the full knowledge that they were operating outside the law - while ordering additional signs at a cost of many thousands of pounds.
55. Commuting by motor bikes and other powered two wheelers (**PTWs**) has been encouraged for many years by the provision of free parking spaces in all London boroughs. In 2009 Westminster decided to charge for PTW parking. This has created outrage in the motorcycling community who view it as the thin end of the wedge. The No to Bike Parking Tax⁷ campaign was set up to challenge this and this issue is likely to figure prominently in the forthcoming council elections.
56. Like many other councils Westminster has invested heavily in CCTV equipment over the years. Since 2000 their cameras have been used for parking and moving traffic enforcement. One of the requirements of the Traffic Management Act 2004 is that parking enforcement shall only be legal if the images are captured using an "approved device". Type approval came in to force on 31st March 2009 and on that date Westminster was obliged to cease parking enforcement by CCTV because its cameras are not up to standard⁸.
57. We have a council report from summer 2009 that clearly states the revenue generation objective of "modifying the parking enforcement cameras as income levels will be

significantly impacted by the loss of the camera network”, see Annex 3. Although this report refers to “ticket targets” of 736,000 PCNs, business plans, loss of revenue of £0.5m for every 10,000 less tickets issued, there is no mention of the words “traffic management”, “traffic flow” or indeed anything whatsoever to do with what enforcement is meant to be about.

58. During 2009 a number of appeals were allowed at PATAS for delivery trucks that had received PCNs while unloading from bays marked "Diplomatic cars only". It was ruled that these so-called "Diplomatic Bays", usually sited outside foreign embassies, were unlawful as they were not prescribed by the legislation and had not received special authorisation from the Secretary of State for Transport⁹.
59. Westminster Council did then apply to the DfT, and on 4 November 2009 they were granted special authorisation. Council officials tried to claim that the GLC had received special authorisation many years ago, but they had no record of it and neither had the DfT. Again, there was no apology and no offer to refund motorists who had been penalised. Given the location of these bays it is quite likely that a number of vehicles had been towed away thereby incurring much higher penalties.
60. In order to generate revenue, Westminster City Council and 16 other London boroughs enforced parking restrictions on Boxing Day 2009 which fell on a Saturday, claiming it was not a public holiday. However, on checking we were told that Westminster's libraries and leisure centres were closed because they claimed it was a public holiday! In like manner Bristol and Liverpool claimed that Boxing Day was not a public holiday for parking enforcement, but it was treated as one in Manchester and Birmingham. The councils knew full well that many motorists would assume that as public holidays are not usually enforced and so they will be caught out by Westminster's Christmas unpleasantness. Because we created so much media publicity, Westminster was only able to issue 670 PCNs, a fraction of the 4,000 it issued two years ago when it played the same trick with New Year's day falling on a Saturday.
61. We have a current committee report (see Annex 3) *which was accepted* to extend parking controls in 2010 up to midnight Monday-Saturday for a range of specious reasons. One such reason is the Olympics in 2012, which lasts but a few weeks and is held in East London. The proposal will primarily inconvenience people who want to go to entertainments and restaurants¹⁰.
62. The report also refers to “harmonising” charges with adjoining zones in Westminster and Camden. Of course it only refers to adjoining zones where the charges are higher, and neglects to mention adjoining zones where charges are lower. “Harmonisation” therefore means increasing - in fact doubling some - charges. In St John's Wood Westminster wants to “harmonise” the charges with Marylebone which is more central and where charges have always been higher, doubling the St John's Wood charges of £1.10 per hour to £2.20 per hour. The report neglects to mention that Camden, which controls the other half of St. John's Wood, charges £1.60 per hour. However in Central London the report mentions Camden's charges of £4.80 per hour as a reason to “harmonise” charges (that were only recently increased to £4.40 per hour) further to £5 per hour.
63. The report carefully cites *Camden v Cran* to pretend that the charges are not about revenue generation, and claims (without giving reasons) that the “revenue implications are not relevant at this stage” and that “officers will develop budgeting projections”, *which they had already done to show an increased in annual income of around £8m p.a.* Briefing

notes for a political meeting 6 days before the committee state quite clearly that the “areas of Parking and Community Safety have been earmarked to contribute the majority of the £14m [p.a.]”. “It also says that “At the December meeting officers were asked to go away and look more closely at parking and community safety to find further reductions or additional income”.

64. One of our members leaked the reports to the media. Cllr. Danny Chalkey, the relevant cabinet member, then claimed in the Evening Standard¹¹ that “At the start of the new decade and with the London Olympics just two years away, now is a sensible time to re-examine parking policies”. He claimed on the BBC¹² that it was “not correct” that the proposals were intended to raise money, but the council’s sole objective was to protect limited kerb space. Without the furore following the leak of the report it would have been followed by Westminster’s customary consultation charade. But Cllr. Chalkley backtracked and stated that the decision was not final.
65. A complaint has been made to the Metropolitan Police, crime no 6507270/10 that alleges offences under the Fraud Act and Gross Misconduct in Public Office against 2 senior Westminster City Council (WCC) officers regarding the authority by which NSL came to perform the £14m annual WCC parking enforcement contract in March 2007. The subject of the National Car Parks Ltd. ‘transfer’ of contracts to NCP Services Ltd. (subsequently NSL Ltd.) is the subject of investigations by the District Auditor in several other areas.
66. In February a memo from NSL staff was leaked to the press¹³. This memo shows clearly that CEOs are still expected to achieve targets (see Annex 7). However it is also known that the NSL contract will end in April 2010 and that Mouchel will take over enforcement.
67. Around the same time Westminster released a story saying that in future enforcement would be less harsh. The Telegraph¹⁴ reported that:

“In some cases a first-time offender will get a warning, perhaps for overstaying at a parking bay.”

Have they learned their lesson or is this just another PR damage limitation stunt?

LONDON BOROUGH OF CAMDEN

68. In 2008/09 Camden issued 320,000 PCNs for parking contraventions and 99,000 for moving traffic contraventions. It made a surplus of £14m on its parking account, which is somewhat more than a fifth of the income raised from the council tax of £96m in 2008/09.
69. The major part of the income (£26.3m, 59% of the total) is derived from PCNs. In 2008/09 the council issued PCNs to 40% of the vehicles which have parking permits in the borough.
70. Camden is also targeting builders in the borough. It increased the builders’ permission to park from £5 per day in 2005 to £33 on 1 April 2008. This increase is clearly not justified by inflation.
71. The Council issues around 40,000 bailiffs warrants of execution annually, of which about two thirds are issued to residents and Camden based vehicles – an average of about 1 in 3 vehicles - gets a warrant every year. It is a bizarre performance implemented by people who appear to neither know nor care what they are doing to the residents and businesses of the borough – except collecting money.

72. Camden's PCNs from the beginning of this year included a surcharge when making payment by credit card. One of the statutory grounds for appeal is that the penalty charge exceeded the amount applicable in the circumstances. An adjudicator decided that:

"the local authority are neither entitled nor empowered to impose any sum, whether for the method of payment or anything else, in addition to the statutory penalty charge imposed"

"...although I do not need to determine the issue it must follow that this is the same for any penalty charge notice or, where relevant, on any notice to owner or enforcement notice issued under the road traffic act 1991, other of the London Local authorities acts 1990 to 2003 or the traffic management act 2004."

This matter is now before the court. If the judgement goes against Camden it will lead to the refund of many PCNs¹⁵.

TRANSPORT FOR LONDON

73. We are pleased that Transport for London (TfL) has made a significant effort to improve its enforcement performance¹⁶ and the number of PCNs it has issued has reduced from 188,000 in the three months November 2007 to January 2008 to 82,000 in the three months August to October 2009, a reduction of 56%. It has achieved this with its Drivers' Charter which aims to have "TfL working together with drivers to improve conditions on the road" (see Annex 4). As a result TfL is:

- Suspending enforcement at locations with high levels of complaint/confusion while it investigates signage and road markings¹⁷;
- Introducing telephone representatives who are authorised to deal with representations;
- Engaging with companies that incur frequent PCNs with a view to establishing memoranda of understandings regarding enforcement policy to avoid unnecessary issuing of PCNs;
- Providing feedback and advice to companies to encourage driver training, leading to increased compliance;
- Scrapping Mobile Patrol Units and Traffic Enforcement Smart cars;
- Issuing Warning Notices instead of a PCN for first time offences and at new or revised locations;
- Not issuing PCNs to vehicles that accidentally 'clip' bus lanes or are only slightly covering yellow box junctions and not causing an obstruction.

74. **Put simply, TfL is exercising the discretion of commonsense, which all authorities should exercise They have been advised to do by the Local Government Ombudsman¹⁸:**

"There can be no doubt that councils are required to consider representations which are not made on the statutory grounds and must not fetter their discretion to do so. The process for considering mitigating circumstances should be transparent: it should be clear to motorists that they have this right and how it can be exercised."

And in Para 85 of the Secretary of State's Statutory Guidance¹⁹:

"An authority has a discretionary power to cancel a PCN at any point throughout the CPE process. It can do this even when an undoubted contravention has occurred if the authority deems it to be appropriate in the circumstances of the case. Under general principles of public law, authorities have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest".

Regrettably some councillors and their officers do not understand this.

75. We are pleased to note that the consultation and cooperation during the development of TfL's "Drivers' Charter" has led to in mutual increase in respect. As a meeting note²⁰ says:

"The Charter has been invariably warmly approved, with previously implacable opponents such as the London Motorists Action Group offering to support and promote TfL's efforts."

76. However, the same briefing note also indicates that when the Drivers' Charter was presented to other London parking managers:

*"Support here was mixed. Some boroughs supported TfL's proposal, while others **were concerned there would be a negative impact on** both the network and **income**."*

(Our emphasis) Need we say more?

A FOOTNOTE

77. The leviathan London authorities could perhaps learn a lesson from their diminutive, rural counterparts. Consider this success story from the sleepy town of Reepham in Norfolk (pop 2,500) from the Dereham Times, 1 Feb 2010:

A police crackdown on motorists parking illegally on double-yellow lines in Reepham has been hailed a success. Officers from the Reepham Safer Neighbourhood Team accompanied by a traffic warden carried out a day of enforcement following weeks of educating drivers about the parking restrictions along Ollards Road, Reepham.

The clampdown on parking offences, on Thursday, was in response to complaints from residents, at a priority setting meeting, about motorists flouting parking regulations.

During the day of enforcement, only one motorist ignored the double-yellow road markings and received a £30 on-the-spot fine.

PCSO Paul Webb said: "The majority of motorists have taken onboard our advice and parked in designated parking areas and not on double-yellow lines." He added: "The education we have given to motorists leading up to the enforcement has proven successful with only one driver being fined."

The recipe for success - **Education and Enforcement** working together. TfL understands this.

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THE USE AND ABUSE OF ENFORCEMENT POWERS

IT'S NOT A TAX AS WE KNOW IT

78. An important High Court judgement - *Regina v Camden Borough Council ex parte Mark Dyson, Gordon Cram and Others*, 1995 - ruled that "the 1984 Act is not a revenue raising Act". Subsequently the Statutory Guidance documents issued by several Secretaries of State have cited the case and made it clear that revenue raising is not a proper objective of parking enforcement. Yet, some councils, especially in London, are generating surplus revenue to supplement or reduce their council tax.
79. In theory, surplus income from on-street parking and PCNs is meant to be ring fenced. But the categories of expenditure are so wide that few councils are likely to generate sufficient surplus to exceed expenditure on the categories, and so, for practical purposes, the greater the surplus the less demand there is on the council tax. Furthermore under TMA 2004 councils ranked as "excellent" under Comprehensive Performance Assessment can spend enforcement surplus on anything they wish, which is the case with both Westminster and Camden.
80. Practice is too often far from precept, and the legislation has been abused by some councils in order to generate revenue by over-zealous and unpleasant enforcement. Westminster and Camden are not alone; we have examples from around the country including:
- For four years **Bournemouth** council had issued PCNs in a road for which there was no Traffic Regulation Order (TRO) in force. It did not pay back the fines, nor did it take steps to notify the public that they may have a right to reclaim the fines. Management told the parking attendants to issue tickets "irrespective of whether there was a valid TRO in place". A parking attendant who was constructively dismissed said "he did not consider it appropriate that he be asked to do something unlawful or fraudulent", and he asked for the instruction in writing. This was refused. The management made it clear that "employees who were unhappy with the instruction could look for alternative work", see Annex 5.
 - In appointing APCOA as its enforcement contractor, **Croydon** treats enforcement as a business, defining as one of the key objectives in its selection procedure. **"To protect and, where possible, enhance the financial performance of the service so that it continues to deliver sustainable surpluses to the Council"** (emboldening added), see Annex 6
 - In September the **Liverpool** Echo reported that:
"Council bosses are predicting that parking income to the city council will fall by £1.7m during this financial year due to the effects of the recession. Parking chiefs believe that £200,000 can be recouped by stepping up parking enforcement in the football parking zone around Goodison Park and Anfield. In April, the Echo revealed how fans will see their cars towed away from residential streets near the grounds during matches if they breach parking rules. It is understood that people will be charged between £150 and £200 if their car is removed – plus a fee for each day of storage. The council is now also hoping to raise a similar amount by issuing more tickets in district retail centres, and £500,000 by bus lane enforcement...A council spokesman said...that the authority had taken on 25 additional parking staff."

- **Hampshire County Council** introduced new parking restrictions at Fleet in May 2006 using irregular signs that required a DfT special direction. The signs confused to drivers from the outset with a massive increase in PCNs issued. The adjudicator of a 2010 parking appeal quoted at length from a County Council communication of February 2008 which admitted their knowledge that drivers regularly misunderstood the inadequate signs which failed to achieve their objective. She agreed that the 11-fold increase in PCNs when the restrictions commenced was more than enough indication that the signage was not effective and criticised the DfT for failing to deal with the fact that the misleading signs they had approved *“were clearly not doing the job”*. This episode was inevitably more about raising revenue (some £300,000) than managing kerb space.

81. ***Councils are de facto treating parking enforcement as a tax, which is an abuse of the purposes of the legislation.*** Many councils outside London do not, however, make a surplus, but too often their motivation is to generate PCNs to minimise their deficit.

TRIVIALITIES WE CAN DO WITHOUT

82. The financial driver leads to the harassment of private motorists and commercial operators with trivialities regardless of commonsense and with no concept of proportionality.

The Traffic Penalty Tribunal’s Annual Report for 2007/8 observes:

“the Chief Surveillance Commissioner, commented that councils have ‘a serious misunderstanding of the concept of proportionality’”

– in plain English, they have the limited minds of petty bureaucrats.

83. This lack of a sense of proportionality is illustrated in extreme form by the truly disgraceful treatment of a woman who unintentionally infringed the congestion charge zone in order to avoid an accident on a roundabout (full details in Annex 7). She objected to paying £8 congestion charge. TfL had her car impounded by bailiffs. PATAS accepted her version of events and recommended TfL waive the PCN. It refused, claiming it did not believe her version of events and speciously claiming that it could not refund PCNs. Eventually, 16 months after taking her car it was returned “as a gesture of goodwill” in a damaged condition which cost at least £1,560 to repair. Bereft of her car she had spent £12,000 on taxis. She now says:

“I fear missing signage; I fear mistaking which day of the week it is or knowing the exact time and whether restrictions apply; I fear overstaying a few moments in a parking space; I fear misunderstanding the meaning of signs; I fear getting caught in a yellow box junction if someone were to stop unexpectedly in front of me; I fear that CEO’s don’t know the loading regulations; and I fear those that govern me”.

Just what has happened in our society? Just what did the officers involved in this disgraceful episode think they were doing? They should be ashamed of themselves

84. Worse than ticketing trivialities are crass stupidities such as:

- Ticketing cars blocked by a fire engine attending a fire (Camden);
- A Thames Water vehicle providing men to work on a burst water main (Camden);

- Yellow lines painted under a car and then ticketed (Salford);
- Funeral cortege vehicles (Westminster);
- Bus company engineers attending a road traffic accident involving a bus (Westminster)

85. A report from the GLA transport committee¹ commented:

“We received considerable evidence that motorists are being fined for minor breaches of regulations, such as overstaying pay and display bays for a few minutes, cars parked inches outside marked bays or with a wheel barely on a kerb”

86. We show a scooter parked in Westminster that collected half a dozen tickets (costing a significant proportion of the scooter’s value) for having one wheel slightly over the line.



87. CCTV cameras and CCTV equipped Smart cars are deployed to catch motorists in difficult situations. Although the Department for Transport has issued guidance that camera enforcement should be limited to where enforcement is “difficult or sensitive and CEO enforcement is not practical”, this guidance is widely ignored. In Annex 8 we give examples of CCTV cameras in Westminster and Camden which ignore this advice.
88. Builders and delivery operators, for instance, legitimately need road space and kerb space to go about their business. Many are issued with invalid PCNs because CEOs are not adequately trained about loading and unloading exemptions.
89. We provide numerous examples in Annex 8, none of which had anything to do with parking and traffic management; they all incontrovertibly demonstrate the councils’ revenue generation objective. They all involve people and companies wasting time and significant expense in dealing with vexatious PCNs. The enforcement contractors are also driven by money, and this translates directly into pressure on CEOs to issue PCNs without proper evaluation of the situation, see Annex 9.

¹ **Parking enforcement in London**; Investigation into parking controls and their enforcement in London, published June 2005

THE RISE OF THE BAILIFFS

THE TRAFFIC ENFORCEMENT CENTRE

90. The Traffic Enforcement Centre (TEC) is an administrative office attached to Northampton County Court which processes the paperwork associated with the recovery of unpaid penalties.
91. TEC was designed for another world, (see Annex 10). The original concept was of an administrative service for local authorities and TEC developed – and retains - a mindset that it is acting solely for them. Originally there was no idea of the volume of out of date DVLA records (8% of the total), nor was it envisaged that the volumes of Out of Time Statutory Declarations would be significant. Over time, the volumes have increased for various reasons, and now staff at TEC have delegated judicial authority to accept or reject Out of Time Statutory Declarations and the similar Statements of Truth.
92. Unlike their colleagues in county courts who also make orders, TEC staff are not constrained by established, objective, written criteria but are allowed to act subjectively on their own discretion and wrongly continue to function as though they provide the service for local authorities only. (On 14/1/2010 an officer of TEC informed one of our members that “TEC’s clients are the local authorities”). They even go so far as to expedite the process of enforcement by informing local authorities of rejected applications before they inform motorists, thereby increasing the possibility that enforcement can be completed before an N244 Application Notice (which is in effect, an appeal from the court staff’s order to a District Judge sitting at the motorist’s local county court) can be lodged.
93. In the 5 month period from 1 April 2008 to 1 September 2008, TEC received 20,138 Out of Time applications. Of these, staff rejected 9,297 (almost half) and 5,200 motorists appealed the refusals by completing an N244 Application. This is a clear indictment of the inadequate operation and performance of TEC.
94. In Annex 10 we give three examples of TEC refusing Out of Time Declarations that should clearly have been granted. One involved a deaf woman who had stopped her car on a double yellow line because a young child was very sick. The second involved LB Southwark sending paperwork to the wrong address, even though it had been informed of the correct address.
95. The Ministry of Justice has not helped the cause of fair treatment by imposing a fee of £75 to file an N244 Application. A Freedom of Information Request revealed that the fee has led to a 90% reduction in Applications. This is the unrecoverable cost to a motorist, merely to establish the wrongful nature of his penalty charge, a self-evidently unacceptable situation in which motorists are penalised whether right or wrong – it is a tax on justice.

THE BAILIFF COMPANIES

96. Before the mid 1990s there were very few bailiff companies in the UK. They were engaged mainly in the recovery of unpaid rents and poll tax. The recovery of unpaid parking penalties changed all that. Bailiffs are issued with a warrant of execution that has the name and address of the person and his or her vehicle’s registration number on it. The bailiff can now levy distress on the vehicle, remove it and sell it for a knock-down price at

auction. As the vehicle will most likely be parked somewhere near the property in the street or on a driveway, gaining entry to a property is not an issue.

97. Around 1.7 million warrants of execution are issued per year, which amounts to about 1 in 7 of all PCNs issued. It was intended that bailiffs would be employed as a last resort, but it has become routine.
98. To save money some councils outsource enforcement procedures – printing and dispatching Notices to Owners, Charge Certificates, the processing of warrants of execution, statements of truth to reject out-of-time witness statements, and even attend court to oppose N244 Applications. This practice – which the Department for Transport has advised against, (see Annex 10) - provides an obvious incentive to companies with affiliated bailiffs to abuse the integrity of the procedure to maximise the latter's profitable work. We have ample evidence of abuse where the companies do not handle procedures fairly but create work for their bailiff affiliates.
99. Local authorities place total reliance on the vehicle ownership details provided by the DVLA at the time that the PCN was issued, yet there is a significant possibility that the information supplied by the DVLA is erroneous or outdated. There is also a possibility that the vehicle owner/keeper's address will change during the period of the enforcement process. There are even documented cases of authorities being notified of a change of address which have not been transferred to their computer system.
100. For many reasons the probability of false information being supplied to TEC is extremely high and this often leads to cases of injustice. It is not the job of bailiffs to check that the facts of the case are correct. Their job is to single mindedly act on the information supplied and recover the money. Once this recovery process is underway it is very hard to stop. Obtaining compensation after the event is even harder.
101. There are currently just over 2,000 certificated bailiffs in the UK. Some bailiff companies handle parking cases exclusively and many have sophisticated ANPR equipment which they deploy in order to catch defaulters. There have been recorded instances of the police stopping vehicles on behalf of bailiffs which we believe to be unlawful. Some police authorities have stopped this practice, notably Greater Manchester.
102. Many local authorities are lax and incompetent in controlling bailiffs. Bailiffs frequently visit motorists wrongly, without warning and fraudulently demand fees which are far in excess of the permitted statutory level. Their unlawful demand is sometimes made with duress by either threatening to take goods, or clamping a vehicle and threatening to remove it unless an extortionate fee is paid. Then, if challenged, they may conjure up phantom visits and phantom vehicles in attendance to inflate their fees. Although councils are required to use certificated bailiffs, some are not certificated. Yet, a person who impersonates a certificated bailiff and levies goods is trespassing.
103. The consequences of people's unfamiliarity with bailiff procedures, lack of effective regulation, and the increased financial risk from court action – judges are increasingly awarding costs to bailiffs (see Annex 11) - is that many bailiffs and bailiff companies ignore reprimands and continue misbehaving. Many appear to think they are above the law, and treat the occasional appearance before a court as a cost of doing business. The profit in this approach can be seen from the extraordinary financial figures for 2006 for one of the largest bailiff companies:

	(£m)
Sales turnover	20.6
Pre-tax profit	7.0
Capital employed	6.1
(excluding £3.6m cash at bank and in hand)	
Return on capital employed	115%

Very, very, very nice work if one can get it – but how much of it is ethical?

104. In Annex 12 we give 23 case examples of bailiffs:-

- Unlawfully demanding settlement from vulnerable people and a charity organisation;
- Insisting on the payment of unlawful and fraudulently high charges
- Illegally forcing entry
- Pursuing cases despite administrative mistakes

Case 2 describes how a widowed pensioner was harassed by bailiffs acting for Camden due to the council's administrative incompetence. She commented: ***"The city is turning against its people"***.

105. The use of bailiffs is out of all proportion to the trivial nature of the overwhelming majority of contraventions. It can have a devastating effect on members of the public.

THE FAILINGS OF PARKING AND TRAFFIC ENFORCEMENT

106. Parking and traffic management enforcement *as currently practiced too often:*

- Results in some CEOs, some enforcement contractors, many bailiffs, and from our direct experiences some local authorities faking and fabricating evidence. There is currently a criminal complaint being conducted by Devon Police against Exeter City Council;
- Reduces respect for the law and engenders contempt for authority – too often more effort is put into pursuing road trivialities than into more serious crimes;
- Creates stress for some people which is out of all proportion to the trivial nature of the overwhelming majority of contraventions;
- Results in significant abuse; often racial abuse of, and even violence against, CEOs, who have an unpopular job because of the perceived widespread unfairness of parking enforcement. This is exacerbated by the use of private contractors. CEOs are not afforded local authority worker protection, pensions, pay scales and are therefore exploited by the companies using low paid poorly trained staff who come and go;
- Damages the national and local economy both in the resources of time and money that goes into dealing with trivialities by local authorities, enforcement contractors, and motorists, and in some locations undermining retailing businesses by making it difficult for motorists to park e.g.
 - Thus far DG Builders in Camden has spent £8,790 worth of time getting Camden or PATAS to cancel 441 PCNs, see Annex 8.
 - The chairman of the Kentish Town Business Association in Camden has run a sports shop in Kentish Town Road for 25 years. There are now 2 CCTV cameras in the road, which is only 150 yards long. In 2007-08 they collected £450,000, see Annex 8. Since 1999, when controlled parking was introduced, his turnover has reduced from £750,000 p.a. to £240,000 p.a. because people cannot park without undue risk of being penalised by cameras or CEOs. Over that period some 20 shops have closed and/or moved away to be replaced by fast food, betting shops, estate agents and hairdressers, which are businesses that rely mainly on locals rather than people travelling to the high street. Several of the parting owners wrote to him to say that a major reason for leaving was the difficulties over parking. During Christmas 2009 the Brent Cross shopping mall put up an advertisement in Kentish Town promoting “5000 free parking places”
 - An article in the Evening Standard of 30/3/06 reported traders in Stoke Newington claiming that their turnover had dropped by 30-50% since a zero tolerance parking enforcement policy was adopted.

107. In practice, decriminalised enforcement is one sided and encourages unfair and in some cases possible fraudulent (if not criminal) behaviour by local authorities, some of whom are grossly incompetent. Too often it violates principles of truth, honesty, fairness and justice in equitable relations between members of a community. We strongly object to a system that disciplines citizens for trivialities, while excusing local authorities for sloppiness, incompetence, and illegality.

108. Directly correlated with over-zealous enforcement and sloppy performance is the great number of wrongly issued PCNs that are subsequently withdrawn because they are flawed (17% in Camden, 25% in Islington), or they fail at PATAS – in 2008 20,390 appeals were lodged against Westminster of which 19,007 (93%) were upheld in favour of the appellants; Westminster (which is the worst case¹) did not contest three quarters of the appeals. We do not regard it as acceptable that councils put people to the trouble of making a representation and appealing, then do not bother to contest the appeal. **This behaviour is a disgraceful waste of people's time.**

109. There are six fundamental reasons for the failings we have identified:

110. The **first** and most egregious, problem is that too often revenue generation rather than parking and traffic management drives enforcement.

111. Second, the regulations relating to parking and traffic management are so complex that not only very few motorists understand them; often local authorities and their enforcement contractors and their employees know little better. In part the regulations are complex because so much money hangs on them, and so rules must be created to handle as many situations as possible to reduce discretion. In 2005 the GLA Transport Committee commented²:

"The existence of so many different regulations between boroughs, and within the same boroughs, is a source of confusion which leads to many unintentional violations of parking controls".

Three years later, in the Traffic Tribunal's Annual Report for 2007/08, the Chief Adjudicator commented of TMA 2004 and its associated paperwork that the:

"Adjudicators were somewhat disappointed at the complexity of the new legislation"

112. Third, the level of managerial and administrative competence of many local authorities leaves a great deal to be desired. Parking enforcement does not generally attract municipal high flyers. Too often it is a slovenly operation run by people who appear to have forgotten that councils exist to help people, not to discipline and harass them for trivialities. They take little or no notice of guidance issued by the Department for Transport, nor of decisions by adjudicators. In consequence, too often the standard of administration is slovenly (see Annex 13).

113. Fourth, some local authorities want something for nothing in debt collection and, without instituting proper controls, outsource to some companies whose methods are less than scrupulous – some debt collection/bailiff companies are fraudulent

114. Fifth, the checks and balances on the local government processes are wholly inadequate both to discipline them and to force them to improve performance.

PATAS and the Traffic Penalty Tribunal are neither sufficiently independent of local authorities (see Annex 14) nor do they have adequate powers. Their decisions do not have precedent and they cannot require local authorities to abide by the law. The Chief Adjudicator commented:

"That Adjudicators' Decisions have been ignored lends support to the impression we are often left with that neither party to our proceedings properly understands the judicial function of Adjudicators"

In a case cited in the Annual Report of PATAS for 2008/09 an Adjudicator wrote:

“Local authorities have had a succession of warnings in a number of cases going back many years about the need to comply with the statutory requirements, culminating in the High Court’s decision in the Barnet case. It is really quite astonishing and reprehensible that despite this some local authorities still fail to get their documentation in order. This results in the time of this tribunal being taken up quite unnecessarily in dealing with such technical matters”

Judicial reviews can be expensive, and run the risk of award of costs. Consequently they are rarely a practical route for redress for individual motorists. The jump between a failed appeal and judicial review is too great and prohibitive due to cost implications.

Our now extensive experience of the District Audit Service shows unequivocally that it has little or no wish to cause any embarrassment to councils against whom objections are made that their parking enforcement is resulting in them collecting and keeping money to which they are not entitled. Indeed in the current round of objections some district auditors appear not only to be failing to fulfil their duties under the Audit Commission Act 1998 to properly express an opinion on the accounts by requiring a provisional and/or note of contingent liability for unlawful items of account, they are supporting the propositions that:

- Local authorities can demand money to which they are not entitled, then keep it unless individual payees ask for their money back;
- If a local authority is taking steps to rectify past mistakes, then it would “not be in the public interest” to pursue matters, which should be swept under the carpet;

The system is weighted in favour of councils and against individual motorists, who too often, feel entrapped and cheated as they slither from pillar to post seeking a remedy for what they regard as injustice.

The GLA Transport Committee³ concluded:

“The challenge process has been described by many members of the public in their evidence to this Committee as confusing, intimidating and inefficient. Many members of the public have called for compensation to be paid when appeals are upheld to reflect the time and effort required to “prove one’s innocence”. PATAS has itself voiced concerns about how many people give up having their representations rejected when in fact they have well-founded grounds for contesting liability”.

115. **Sixth**, the Department for Transport appears not to know or not to care about what goes on at the “roadface”. It did not take the opportunity afforded by the TMA 2004 to review and simplify enforcement, but made it more complex. Parking and traffic enforcement have low status in Whitehall. Ministers do not necessarily understand the system and there is a clear reluctance to get involved in the problems that result from the legislation which the government runs through the legislative mill. Although the Department covers its bureaucratic back by publishing Statutory and Operational Guidance in profusion, including that local authorities should:

- refrain from setting numeric and financial targets for enforcement;
- use CCTV cameras only “where enforcement is difficult or sensitive and CEO enforcement is not practical”;
- not outsource formal representations; “enforcement authorities should remain responsible for the whole process”;

- ensure TROs are valid, up-to-date, and properly indicated with traffic signs and road markings;

- the Department makes no attempt to monitor what goes on and does nothing to ensure the advice is followed. As we have shown, local authorities frequently ignore the guidance. To our knowledge Westminster ignores all four of the above points (yet City Hall is only half a mile from the Department for Transport), Camden two, and Croydon at least one of the above injunctions.

When faced with criticisms of what happens at the road face, like Pontius Pilate it washes its hands of the issues by claiming that matters are for the local electorate, the district auditor, the local government ombudsman, or the court. When the BBC raised the issue of councils repaying monies gained from invalid PCNs it had a spokesperson say that it expects councils to “seriously consider” repayments of illegal fines. How evasive can you get?

¹ The average is that 40% of the appeals before PATAS are not contested.

² **Parking enforcement in London**; Investigation into parking controls and their enforcement in London, published June 2005

³ *ibid*

REFORMING PARKING AND TRAFFIC ENFORCEMENT

PRINCIPLES OF REFORM

116. We believe that for a penalty system to be acceptable, the authority that administers it must be independent and unbiased, and its enforcement operation should be devoid of profit motive:

- The public must have confidence that when an allegation of a contravention is made, that it is based on sound evidence
- The alleged contravener should be presented with clear and acceptable evidence that the contravention has occurred, and must be served at his or her correct address with a proper notice
- The enforcement system must not place unqualified reliance on the content of electronic databases that in all probability contain numerous errors

• Enforcement must be:

Justified Restrictions leading to enforcement must only be used to solve genuine traffic management problems when all else fails, not just to raise money. Traffic problems must be identified and quantified before the commencement of enforcement. Data must be collected to demonstrate the continuing efficacy of enforcement.

Fair Motorists must be able to see all signs clearly and be able to safely comply with them. The system must acknowledge that as human beings we all make mistakes (this applies equally to both sides). There must not be total reliance on the content of electronic databases that in all probability contain numerous errors¹.

Lawful Road signs and lines must conform to the legislation and be well maintained. Traffic Orders must be current and lawful. The enforcement documentation and procedure must conform to the legislation.

117. A fundamental change needed is to remove the incentive to generate a surplus from parking and traffic enforcement by transferring any surplus (taking one year with another) from parking and traffic management enforcement to the Treasury. The prohibition on using enforcement to generate revenue should be stated in primary legislation. The Secretary of State's Statutory Guidance should explain clearly to councils that they have been provided with powers to help their citizens, not to discipline and harass them with bureaucratic trivialities.

118. The provisions in the Road Traffic Act 1991 introducing decriminalised parking enforcement were introduced in haste. The Traffic Management Act 2004 failed to deliver much needed reform. We need in due course a fundamental review of the legislation to ensure that parking and traffic management regulations focus on the core objective of reasonable and sensible parking and traffic enforcement, and take realistic account of:

- what it is reasonable to expect motorists to know about the rules, and
- the limited competence of local authority administration and of the abilities of the people generally recruited as CEOs.

119. Councils should have a *duty* to be reasonable and appropriate in their approach to enforcement stated in primary legislation. Furthermore, there must be a *duty* on councils to accommodate the requirements of those whose livelihoods are dependent upon working on the roads.
120. Next, the system of signs, parking regulations and procedural rules should be radically simplified. The quid pro quo of simplification is that in return for councils not enforcing trivial contraventions, motorists would no longer get off contraventions for minor technicalities – **common sense should prevail on both sides; parking and traffic enforcement should be about the spirit of the law, not the minutiae of the law, and must acknowledge that mistakes can occur (on both sides) and that there can be mitigating circumstances.** The enforcement system should recognise that there is a difference between unintentionally breaking the law and deliberately breaking the law.

REDUCE THE NUMBER OF PCNS

121. Contracts with enforcement contractors should not incorporate either explicitly or implicitly targets for PCNs and for financial delivery to the council. CEOs should be required to exercise limited discretion and commonsense and not penalise stupidities. Our view is that motorists should not be put to the trouble of making challenges and representations when common sense clearly dictates that a PCN should not be issued.
122. The back office should be required to exercise *generously* the discretion of common sense, a concept which some councillors do not appear to understand.
123. The current provision that a PCN may be issued by post if a person drives off before it can be attached to the vehicle should be nullified. This provision can be – and has in our direct experience been – abused, see para 1 of Annex 8.
124. There should be a grace period of 10 minutes for pay and display bays and car parks both to allow people who only require to park for a few minutes (e.g. go into a shop) to do their business without the bother of finding money or using their mobiles, and to allow people a little leeway if they misjudge time. Such a period is clearly *not* interfering significantly with the objective of ensuring a reasonable turnover of parking spaces. Furthermore, consideration should be given to the Madrid approach (see below) of charging a higher – but not penal – rate (e.g. twice normal) for overstaying by up to an hour. *The occupation of Pay and Display bays should be regarded as a motorist renting space for a service (viz provision of road space) for which (s)he has already paid through taxes, and not as misbehaviour comparable to parking in a resident's bay to which (s)he is not entitled.*
125. A Statutory Instrument should explicitly limit the use of enforcement by CCTV and Smart cars to locations where CEOs are not reasonably able to operate and where there are safety issues. They require proper signage indicating their deployment.
126. In locations generating a statistically significant number of PCNs the council should have an obligation to suspend enforcement and investigate what measures can be taken to reduce the numbers. Often locations that generate a large number of PCNs do so because they are poorly signed².

127. In locations that are not lawfully signed or marked or the Traffic Management/Regulation Orders are not correct enforcement should be suspended immediately until the signage is corrected and PCNs should be reimbursed *ab initio*.
128. Councils should significantly reduce the issuing of PCNs which are subsequently nullified. To this end councils should be required to make payment to motorists in respect of PCNs that are vexatious. Say £15 for those cancelled on challenges and representations to the council; £25 for those which go to a tribunal where the council fails to contest the appeal; and *at least* £35 where the council loses and the case is clearly vexatious, see para 31.

REDUCE THE CHARGES FOR PCNS

129. The cost of a PCN for overstaying time in a pay bay should be half the current rate. There is no reason why the penalty in London should be up to 50% higher than in other towns and cities nor so much higher than in Madrid where the basic pay and display charge is €2/hour with a penalty of €3 payable at the meter for staying an extra hour. If a motorist exceeds the hour the fine is €40 with a discount of 30% for paying quickly. At £120 the London penalty for waiting on a single yellow line in a quiet side street is 50% higher than the fixed penalty for shoplifting, which is a criminal offence.
130. The current perception that the charge is doubled for either late payment, or if a motorist appeals to an adjudicator and loses the case, should be eliminated. The penalty charge should remain constant throughout the enforcement process.
131. The “draconian” (as described by the Chief Parking Adjudicator) much-abused removal of vehicles should be abolished excepting only for vehicles that are either parked dangerously, or have been parked “illegally” for a significant period, or are owned by persistent evaders³.
132. **No motorist should have any financial liability to an enforcing authority if the statutory conditions for lawful parking or traffic enforcement are not in effect. Accordingly a Statutory Instrument should enforce the repayment of all penalties monies taken by councils that issued PCNs which were invalid for any reason (incorrect signage, incorrect enforcement documentation, invalid Traffic Orders etc).**

ENSURE THE INTERESTS OF THOSE WHO USE THE ROAD IN THEIR BUSINESS ARE TAKEN ACCOUNT OF

133. Councils should, where necessary, overhaul their dealings with trades people whose livelihoods depend upon them operating in the streets. Councils should actively seek to understand their requirements, to cooperate with them, and to make the parking regime for them as convenient as possible. There should be clear and commonsense publicised guidance about unloading and loading applicable in all areas. The facility of free permits to park should be reinstated for the benefit of businesses who need to be at a specific location at a certain time for longer than the standard 20-minute limit.
134. Councils should sign Memoranda of Understanding with relevant trade groups - builders, couriers, delivery fleets, etc. – agreeing enforcement practices. This approach has been successfully trialled between the Brewery Logistics Group and Westminster City Council

and by Transport for London. (We are aware, however, of the possibility of preferential treatment for larger companies and discrimination against smaller ones. This should be guarded against).

135. Councils should not profit from permits/waivers and exemptions.

STRENGTHEN CHECKS AND BALANCES ON LOCAL GOVERNMENT PERFORMANCE

136. The Select Committee on Transport recommended (at para. 139):

“The government needs to unlock the full potential of the parking adjudication service. The independence of the service needs to be emphasised in its funding arrangements. At present participating local authorities fund the service. This projects an unfortunate appearance that the service may be under the control of the councils. It certainly does not convey the impression of independence that is the basis for raising its status and profile. The government should review the funding of the service and propose arrangements that emphasise its separate judicial status and its independence from the councils.”

PATAS and the Traffic Penalty Tribunal should be restructured to be entirely organisationally independent of councils, and their powers should be extended:

137. The grounds on which appeals to adjudicators should be extended to allow for an “other” tick box on the Appeal Form. They should have the power to exercise discretion instead of the present unsatisfactory situation where reference back to the council has to be made to invite the council to exercise discretion, when it had failed to do so in the first instance – the case of Annex 7 is a salutary reminder of the unpleasant manner in which bureaucracies behave when face is at stake.
138. When it becomes clear that there is a generic problem resulting in a number of appeals (e.g. faulty/obscure signage), a panel of three adjudicators should be convened and their decision should set precedent and be binding (subject to judicial review).
139. The Select Committee on Transport said “We encourage parking adjudicators to be fully alert to their powers to award costs. Where motorists have been unduly inconvenienced by poor council performance some financial award can help to alleviate the sense of injustice”. Where appropriate adjudicators should award more than the £35 recommended in para 17.
140. The Select Committee on Transport recommended (at para 73) that **“The Audit Commission must be able to scrutinise local authority parking departments. In order to provide an incentive to councils to raise the standard of their parking enforcement operations, civil parking enforcement should be given more prominence in the Comprehensive Performance Assessment...”**. We go further - District Auditors should have a duty to check the accuracy of a council’s parking enforcement in relation to statutory requirements and, in particular, to ensure that a council’s enforcement operations does not constitute revenue raising. It should be made crystal clear to the District Audit Service that they have a duty to motorists to ensure that money is not taken from them without legal validity, and that any so taken is returned.

141. There should be a provision for a motorist to appeal on a point of law to a County Court presided over by a District Judge, with permission to appeal being given either by an Adjudicator or District Judge on application in writing. There should be no award of costs.
142. There is an institutional culture of secrecy and obfuscation by officers in some councils who systematically attempt to obstruct exposure of the truth of what is going on in their councils. The only way to achieve a proper regime of parking enforcement which has the confidence of motorists is for councils to be absolutely open; it is only with full information that debate can take place⁴. To this end, councils should be required to:
- Publish online a comprehensive database updated daily of all PCNs and moving traffic contraventions detailing the location, the date and time, the contravention, the means of enforcement used and the outcome of the PCN. The hot spots should be identified so that the public can see if there is a problem that needs addressing. It is an easy task to publish a database in a display format i.e. iDashboards;
 - Publish in full the results of all of its PATAS/Traffic Penalty Tribunal appeal decisions in a way that is searchable by date, time, contravention code and location;
 - Establish a committee of members of the public who will have a right of unannounced entrance and inspection of the CCTV monitoring facilities and the offices and marshalling facilities of any contractors used;
 - Publish the names, job descriptions and contact numbers of all senior management who work in Parking Services.
143. The availability of this information will shine a very bright light into any dark corners and put all participants on the same footing when debating parking and traffic issues. Abuses will very quickly be exposed and dealt with. The publication of the names of those in parking services will encourage a duty of care towards the public in fairly administering schemes, rather than the cloak of anonymity that currently hides abuse and failure.
144. The “Operational Guidance to Local Authorities: Parking Policy and Enforcement”⁵ provides at several sections (notably s. 13.6 and in the Annexes E and F) the requirement that all local authorities seeking civil parking enforcement powers for the first time under the TMA 2004 must demonstrate strict compliance with all regulatory requirements in respect of Traffic Orders and signage, or the Secretary of State will not grant them enforcement powers. Pre-TMA enforcing authorities which are not in the strict compliance specified for grant of enforcement powers to new applicant authorities should have their powers of enforcement suspended until 6 months after they have achieved compliance.
145. There should be an Inspectorate with the power to investigate reports of repeated malpractice by a local authority and with the power to suspend civil enforcement powers until non-compliance is rectified. We sketch in Annex 15 the information that should be provided by councils to the Parking Inspectorate and the powers it should have.

REQUIRE THE RETURN OF MONIES TAKEN ULTRA VIRES FROM MOTORISTS

146. Adjudicators should be empowered to require councils to repay past invalid PCNs

147. Local authorities should have a legal obligation defined in a Statutory Instrument to return monies collected when lines or signs or Traffic Orders are invalid.

RECTIFY THE PROBLEMS RELATED TO TEC

148. The following urgent action is necessary:

- Remove all delegated judicial discretion from TEC staff. Every application for an Out of Time Statutory Declaration should be heard by a District Judge, preferably at the applicant's local County Court.
- As applications for Out of Time Statutory Declarations are decided on paper, there should be no fee charged to the motorist for filing an N244 to have a rejection reviewed.
- Orders accepting or rejecting Out of Time Statutory Declarations should be sent to the applicant and the local authority *at the same time*.
- Local authorities should be prohibited from delegating to *any* contractor responses to Out of Time Statutory Declarations and N244 applications
- Orders accepting Out of Time Statutory Declarations should require the local authority to refund *all* enforcement fees and charges, not just the amount of the penalty. (Local authorities can seek to recover these costs from their bailiffs, if they wish.)
- Whenever a new address is found for a defaulter after the service of a Notice to Owner, the local authority should cancel the TEC registration and serve a new Notice at the new address

REGULATE BAILIFFS TO MINIMISE THE RISK OF FRAUD

149. We endorse the advice of the Select Committee on Transport (at para. 50):

"The use of bailiffs must be carefully regulated by the local authority however. Their use in collecting unpaid fines can easily undermine further public confidence in decriminalised parking enforcement. Local authorities must take the greatest care to ensure they use only reputable bailiffs. Bailiff's charges and operational practices must be transparent and subject to prior approval and close monitoring as part of any contractual agreement. These charges must be as widely publicised as possible and freely available to the public."

150. Bailiffs should be used only as a last resort. Councils should drastically reduce the number of warrants of execution issued by introducing a first stage office-based debt collection operation, which a council may run itself or pay to outsource it – *but it should never be undertaken for "free"*. An increasing number of local authorities are indeed adopting debt collection tactics in order to collect payment before a penalty is registered at TEC. Although this has been widely applauded as a 'softer' approach to default, there is some concern about the legality of the procedure.
151. Unlike enforcement of Warrants of Execution, debt collection must comply with the Debt Collection Guidance issued by the Office of Fair Trading. Among other things, this Guidance prohibits *any* fee being charged to a debtor, unless agreed with the debtor in

advance. A common example of this is a consumer credit agreement that specifies precisely what charges will be added to the amount due in the case of default (see, for example, the terms and conditions of a credit card). In the case of parking and traffic penalties, there seems no mechanism by which a local authority can agree debt collection charges with people in advance of them incurring penalties.

152. Local authorities often appoint debt collectors but do not pay them or allow them to retain a percentage of the debt recovered. It follows that the debt collectors must either illegally charge fees to debtors or work without remuneration, in the hope of recovering their costs later under the enforcement procedure. In the latter case, this will further inflate the enforcement costs paid by defaulters. Either way, it seems that local authorities ignore any legality or inflated enforcement fees.
153. Many of the problems with the bailiff system arise from actions taken by councils. If they took proper care of their residents and visitors, and took steps to establish debtors' true addresses and to check whether they are vulnerable, then many of the unpleasant problems we have found would have been avoided. Particular points that we would like to see taken up are that councils should:
 - Maintain high administrative standards and demand high administrative standards of bailiffs.
 - Publish details of the bailiffs they use on their parking section on the council website along with the scale of fees and bailiffs registration details.
 - Not delegate to bailiff contractors responsibility for liaison with the Traffic Enforcement Centre and the courts.
 - Not incentivise bailiff contractor by income alone but facilitate the identification of vulnerable people and instances where correct procedures have not been followed.
 - Ensure that a notice of the amount due has been received by the owner at their actual address.
 - Ensure that the vehicle owner is not known to them as a vulnerable person.
 - Ensure that the owner understands the consequences of a refusal to pay, and that time and easy facilities (including payment by instalments) are made available to them.
 - Provide a debt advice helpline. Bailiffs should be mandated to hand over details of the council's website and helpline number along with a guide to the scale of fees.
 - Proactively monitor bailiff performance and respond positively to complaints.
154. Any complaints system must bite on councils as well as on bailiffs; councils must be held liable for the actions of their bailiffs and other enforcement agents.
155. We call on the government to introduce effective regulation of bailiffs so that people who consider they have been badly treated can obtain speedy and cheap redress.

IMPROVE THE PERFORMANCE OF THE DEPARTMENT FOR TRANSPORT

156. We have seen little or no evidence that the Department has made any significant effort to improve the performance of local authorities; no evidence that it troubles to help citizens enmeshed in the enforcement bureaucracy; and still less it has shown any interest in

structuring legislation to give citizens the means to take action themselves. This is a profoundly unsatisfactory situation.

157. Either the government should act proactively to prevent abuses of parking enforcement, or it should ensure that citizens can act – which as we have found is currently prohibitively expensive and exposes individuals to great financial risk. We prefer the latter approach of devolving power to local authorities and to citizens. We have little faith in the competence, let alone benevolence, of Whitehall.

REFERENCES

¹ Reducing Vehicle Crime; National Audit Office; 28/1/2005. This estimated that 25% of the DVLA database was inaccurate. An attempt was made by the authors to obtain a more up to date figure from the DVLA, but this was not forthcoming.

² We note that “Parking Enforcement in London” recommended this 5 years ago. Apart from TfL we are not aware of any other council that has implemented this recommendation.

³ Note that this would require careful definition and take account of the fact that the DVLA database is at best 92% accurate and so the ownership of 3 million vehicles are wrong at any time. Someone who has bought a vehicle may be inconvenienced due to these inaccuracies. Do 3 PCNs constitute a persistent evader? If so, does that include PCNs in the system being appealed or those at warrant stage? etc., etc.

⁴ We note that recently Wycombe District council ejected the press when discussing parking on 27 January 2010.

ANNEX 1 - THE LEGAL FRAMEWORK TO PARKING AND TRAFFIC ENFORCEMENT

THE PRIMARY LEGISLATION

1. The legal basis of parking regulation is the Road Traffic Regulation Act 1984. Section 122 subsection (1) as amended sets out the purposes of the powers provided in the Act:
"It shall be the duty of every local authority upon whose functions are conferred by or under this Act so to exercise the functions conferred on them by this Act (so far as practicable having regard to the matters specified in sub-section (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway..."
2. Under the Act the police were responsible for enforcement using traffic wardens, and motorists could appeal to magistrates courts. Traffic and parking management was not a high priority for the police and so the 1991 Road Traffic introduced decriminalized enforcement by local authorities undertaken by "parking attendants", with the income from enforcement accruing to the authorities. The Act made decriminalized enforcement mandatory in London and optional elsewhere. It set up an adjudication service called the Parking and Traffic Appeals Service (PATAS) to handle appeals in London, and the National Parking Appeals Service – recently renamed the Traffic Penalty Tribunal – to handle appeals outside London. Neither PATAS nor the National Penalty Tribunal rulings set precedent which, as we will show, adversely influences the behaviour of some local authorities. An important case established that adjudicators have no power of discretion to exercise common sense¹, but the Traffic Management Act 2004 now empowers an adjudicator to refer a case back to an enforcement authority for reconsideration when (s)he thinks that the council should have used its discretion to cancel a Notice to Owner.
3. 1996 saw the introduction of decriminalised bus lane enforcement using CCTV cameras², initially by Transport for London and, following the Transport Act of 2000³, this was rolled out to the London Boroughs and then some provincial Authorities in 2005⁴.
4. In 2003 the London Local Authorities and Transport for London Act⁵ facilitated the decriminalised enforcement of various traffic signs such as no right/left turns and yellow box junctions. Ostensibly these measures are designed to reduce congestion and increase safety, but there is no theoretical argument nor empirical data to substantiate this. Some limited (and poorly designed) research was carried out on yellow box junction enforcement by Transport for London. It showed that CCTV enforcement made no detectable difference to the traffic flow⁶. The conclusion must be that these are simply more "back door" revenue raising devices.
5. The next major piece of legislation to affect parking and traffic enforcement was the Traffic management Act 2004⁷ (TMA 2004). A study of the Parliamentary records indicates that this Bill was hastily put together, poorly scrutinised and fast-tracked through Parliament. Among its most vociferous opponents was the then Chair of the Select Committee on Transport, the late Ms. Gwyneth Dunwoody⁸. The Transport Committee was scrutinising Parking Policy⁹ and Enforcement and Traffic Enforcement¹⁰ at the time, but its report came out after the passage of the legislation. The Chief Adjudicator observed¹¹:

"One might therefore have thought that the sensible way for the Department to proceed in preparing new procedural regulations would be, before putting pen to paper, to consult us about the practical operation of the procedures, whether we had any suggestions for change and to seek our views on any ideas of their own for change. The exercise therefore got off on the wrong foot by the Department presenting to us draft regulations that contained substantial changes to the existing regulations without prior consultation and without any explanation of the rationale for the changes. The reason for many of the changes was difficult to divine. Some appeared to be mere drafting taste; others were matters of substance effecting unnecessary changes to our present procedures without any benefit. Some of the changes would have caused unnecessary operational disruption, with the attendant costs.

The proposed regulations therefore caused us a great deal of concern. We are sorry to say that when we raised our concerns with the Department we were not met with a receptive response. As a result it took a great deal of effort and many months to obtain the changes that we regarded as the minimum to put them into an acceptable, if still less than ideal, form."

6. Part 6 of TMA2004 replaced Part II and Schedule 3 of the Road Traffic Act 1991 and some London Legislation. The Act came into operational effect on 1 April 2008. The Act renamed "Decriminalised Parking Enforcement" as "Civil Parking Enforcement"; renamed Special Parking Areas as Civil Enforcement Areas; and renamed parking attendants "civil enforcement officers" – an unpleasant Orwellian name to which we object¹². The Act was accompanied by 6 Statutory Instruments (48 pages)¹³, plus Statutory Guidance by the Secretary of State (30 pages) plus Operational Guidance by the Department for Transport (166 pages). The Operational Guidance rightly comments "Parking policies and their enforcement are complex" (para 51). A difference between the 1991 Act and the 2004 Act is that the operational detail is contained in the delegated legislation. It is obvious that in drafting the Statutory Instruments, the civil servants at the DfT simply copied large tracts of the 1991 Act verbatim. The legislation has become labyrinthine in its complexity. The Chief Adjudicator commented of TMA 2004 and its associated paperwork that "Adjudicators were somewhat disappointed at the complexity of the new legislation"
7. According to A10 of the Operational Guidance "The Arrangements under Part 6 of the Traffic Management Act 2004 largely replicate those under Part II of the Road Traffic Act 1991. The more significant changes to regulations were:
 - Different parking penalties depending on the seriousness of the contravention
 - Power to serve PCNs by post if a PA has started to issue but the motorist leaves with the vehicle before it can be served
 - Authorities must not immobilize within 30 minutes of the issue of a PCN in a parking place, with the exception of persistent evaders who may be clamped after 15 minutes of the issue of the PCN
 - Authorities must consider informal representations
 - Adjudicators have the power to decide cases where procedural irregularity has taken place (for example, where a Charge Certificate has been issued before an appeal has been decided)

- Adjudicators have the power to refer back to the authority for reconsideration cases where a contravention took place but in mitigating circumstances

There were also changes in procedures, and changes to the bureaucratic aspects of Guidance (e.g. Authorities should publish parking policies and certain items of financial and statistical information).

8. The switch from the 1991 Act to TMA 2004 on 31 March 2008 was rushed and badly handled by the Department for Transport. Local Authorities were supposed to apply to the DfT for Civil Enforcement powers, but many did not. Some operational guidance was not ready on time, so grace periods were granted to enable compliance¹⁴.
9. TMA 2004 was wide ranging and it introduced some useful measures, but to quote from a report by the Chief Parking Adjudicator of PATAS¹⁵:

"We have in the past drawn attention to the lack of coherence in the overall civil enforcement scheme that has resulted from its piecemeal legislative history. There are a number of inconsistencies between the enforcement of the different types of contravention for which there is no obvious justification... Such inconsistencies are liable to cause confusion to the motoring public and even to local authorities, and have the potential to bring civil enforcement into disrepute. We would reiterate our view that it is self-evident that all civil enforcement of traffic penalties should be enforced through a core set of principles and processes. Differences in detail may be necessary, but should be the result of need and planning, not accident. The implementation of the Traffic Management Act 2004 provides the opportunity for this coherent approach."

10. Regrettably, this Act was a missed opportunity. The enforcement provisions were not implemented for four years and then only the parking enforcement. The bus lane and moving traffic provisions have not yet been implemented and the Department for Transport has no timetable for doing so¹⁶. The Chief Adjudicator again¹⁷:

"We think it unfortunate that the Department chose to implement the Act initially in relation to parking only, rather than civil enforcement as a whole. As we understood it, the Act was intended, and certainly presented the opportunity, to introduce a single coherent regime for civil enforcement."

As matters stand, there is even a danger that the regime will be more fragmented rather than less, and in a way that is of direct concern to us. This will only increase complication to no-one's benefit."

THE KEY HIGH COURT JUDGMENT PROHIBITING REVENUE GENERATION

11. In his 1995 judgement *Regina v Camden Borough Council ex parte Mark Dyson, Gordon Cram and Others*¹⁸, Mr. Justice McCullough examined the policy and objects of the 1984 Act. He observes (at p23) "Doing this [viz looking at the objectives of the 1984 Act] makes clear that the 1984 Act is not a fiscal measure. It contains no provision which suggests that Parliament intended to authorise a council to raise income by using its powers to designate parking places on the highway and to charge for their use. To adapt words used by Nolan LJ in *R v Manchester City Council ex p King* (1991) 89 LGR 696 at 712, had this been the intention of Parliament to the extent of the fund-raising powers conferred on the council would be enormous, since they have a monopoly over the granting of permits for

on-street parking within their area and would have golden opportunities to augment their revenue...(at p24). All its provisions, leaving aside section 55(4) for the moment, are concerned in one way or another with the expeditious, convenient and safe movement of traffic and the provision of suitable and adequate parking facilities on and off the highway. This is reflected in the wording of section 122(1). There is its policy; there are its objects". McCullough observes (at p34) that "the fact that the 1984 Act is not a revenue raising Act. Where there is ambiguity the citizen is not to be taxed unless the language of the legislation clearly imposes the obligation".

12. Subsequently the Statutory Guidance documents issued by several Secretaries of State have made it clear that revenue raising is not a proper objective of parking management. The latest Statutory Guidance issued in 2008 stated "Raising revenue should not be an objective of CPE, nor should targets be set for raising revenue or the number of PCNs to be issued" (para 14), and the Operational Guidance cited the Camden case (para 3.7)¹⁹.

TO SIGN OR NOT TO SIGN THAT IS THE QUESTION – TSRGD 2002

13. There are a number of basic principles that should be understood:
 - Local authorities have very limited powers, which are set out in Statute and Regulations. A local area highway authority is only empowered to place prescribed 'traffic signs'²⁰ or signs that are authorised by the Secretary of State for Transport on or near roads in its area.
 - Statute and Regulations define in law exactly what a 'traffic sign' is
 - Regulations and the Secretary of State for Transport set out a series of parameters by way of permitted variants that allow a council to modify signs within specific boundaries, a legislative *de minimis*
 - When a sign has no permitted variant, it cannot be changed to suite the whim of a councilor or council officer.
 - Government guidance states that an authority that uses signs that are non prescribed (without the written authority of the Secretary of State) acts beyond its powers and also the signs are no more than obstructions of the highway

Signing should not be viewed as a side issue. A traffic sign is the only means of giving precise indication as to the effect of an applied restriction, requirement, prohibition or speed limit. The format of the signing employed is therefore mandatory, allowing the message to be clear, uniform, unambiguous and recognisable throughout the United Kingdom.

14. To ensure that authorities understand their legal obligations and the range of their abilities the government has for decades produced the Traffic Signs Manual. This publication comprises a series of chapters each of which deals with specific areas of signing and, following recent revisions, the message remains clear: If the sign or the guidance for the use of signage differs from the legislation, the law takes precedence and Regulations (notably the Traffic Signs Regulations General Directions 2002 (TSRGD, which is a Statutory Instrument)) and statute *must* be complied with. Case law clearly supports the principle that if a sign is not as prescribed no one can offend against it; this has stood continual test since the early 1970s including the following noteworthy cases:

- *Davies v Heatley* [1971] R.T.R. 145. If a sign has not been placed in accordance with statute and regulation, even if a sign is clearly recognisable to a reasonable man as being a sign of that kind, if it does conform to regulations then no offence (or contravention) is committed
 - *MacLeod v Hamilton* 1965 SLT305. If signs to indicate the effect of a "No Waiting" order have not been erected, or signs have been erected not conforming to s.64 of the RTRA 1984 and TSRGD 2002 (SI 2002/3113), no offence against the "No Waiting" order is committed
 - *Hassan v DPP* [1992] RTR 209, Divisional Court. The absence of a sign specifying the prescribed hours of restricted parking in a road marked with a single yellow line is fatal to a successful prosecution for a no waiting offence
 - Road Traffic Scotland states "Unless an authority which makes a traffic control order complies with the requirements imposed on the making of such an order and the publication of the order is adequate, any offence which it purports to create cannot be effectively prosecuted"
15. The primary role of signing is to give effect to a Traffic Regulation Order. It is the legal duty of the traffic authority not only to erect traffic signs to give effect to Traffic Regulation Order before the Order comes into effect, but also to maintain those traffic signs throughout the life of that Order. These obligations are set by the Secretary of State for Transport in Regulations specifying the obligatory processes that encompass the making of Orders.
 16. For more than a decade some council officers have promoted a view that if each authority employs non-prescribed 'signs', the government would be forced to de-regulate signing because there would not be enough money to correct the errors. This begs the question: should the legislation providing signing controls be relaxed further? Given the 'adventurous' signing present today in an atmosphere of tight legal control, what hope would there be for improving road safety and the duty of an authority to serve the community? Too often councilors and officers introduce schemes that fail to meet basic standards, ignoring the guidance and advice of the government, using confusing signs and ambiguous restrictions to generate revenue, and in some cases as a consequence increasing the risk of accidents.
 17. The Department for Transport has indicated that in their view an authority that chooses to ignore the law will be left to fall by its own decisions. Although the government has the power to intervene, as yet it has never done so. Local councils are therefore left to act with impunity, relying upon the ignorance of the public. Too often investigative/enforcement bodies are led to believe that signing constraints are too complicated for authorities to apply, even though they have access to the Department, legal departments, professional engineers, and employ specialist consultants.
 18. Revisions to TSRGD are currently being considered. There is pressure from authorities to de-regulate many of the basic standard formats of signs to a 'substantially compliant' requirement. Such a subjective approach to signing can only add to confusion, and will lead to road safety issues and prosecutions/fines of road users that are inappropriate and avoidable.
 19. Decades of research, years of refinement has produced a set of 'rules' that are unambiguous. The requirements are not confusing to those within the industry and they

provide a benchmark that should be aspired to, not ignored for what some will see as ulterior motives, namely raising revenue.

GENERAL PUBLIC LAW

20. Para 85 of the Statutory Guidance states: “Under general principles of public law, authorities have a duty to act fairly and proportionately, and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.”

REFERENCES

¹ Westminster, R (on the application of) v Parking Adjudicator [2002] EWHC 19007 (Admin) (22 May, 2002).

² [London Local Authorities Act 1996](#)

³ [Transport Act 2000](#) section 144. Note also that this act made provision for road user charging and the workplace parking levy. Neither have been implemented because of overwhelming public opposition.

⁴ Statutory Instruments 2005 Numbers 2755, 2756, 2757 & 2758.

⁵ [London Local Authorities and Transport for London Act 2003](#)

⁶ Traffic Enforcement: Impact Analysis and Future Strategies, Transport for London, June 2006.

⁷ [Traffic Management Act 2004](#) Part 6.

⁸ Hansard 5th Jan 2004 Transport Bill 2004 second reading. Gwyneth Dunwoody starts at 5:34 pm

⁹ Transport Committee 2005-6 Seventh Report "Parking Policy and Enforcement" (HC 748-I & II).

¹⁰ Transport Committee 2003-4 Sixteenth Report "Traffic Law and its Enforcement" (HC 105-I & II).

¹¹ [Parking Adjudicators' Annual Report 2006/7](#).

¹² The Operational Guidance refers to them “as a uniformed figure of authority”!!

¹³ Statutory Instruments 2007 Numbers 3482 – 3487.

¹⁴ The Statutory Guidance was published on 28th Feb 2008, the Operational Guidance was published on the 25th March 2008 and the act was implemented on 31st March 2008. The consultation on approved devices (CCTV) was still ongoing at this date.

¹⁵ [Parking Adjudicators' Annual Report 2005/2006](#).

¹⁶ Dft [Revised Timetable for Implementation of the Traffic Management Act 2004 Regulations](#) dated June 2007.

¹⁷ [Parking Adjudicators' Annual Report 2006/7](#).

¹⁸ High Courts of Justice, Wednesday 11 January 1995.

¹⁹ The Operational Guidance also states:

3.6 CPE is a means of achieving transport policy objectives. For good governance, enforcement authorities need to forecast revenue and expenditure in advance. But raising revenue should not be an objective of CPE, nor should authorities set targets for revenue or the number of Penalty Charge Notices (PCNs) they issue. **4.12** As far as possible, the performance of contractors and of staff should be judged according to how far desired transport objectives have been achieved. An enforcement authority should base performance measures and rewards or penalties, wherever possible, on outcomes rather than outputs. Performance and rewards/penalties should never be based on the number of PCNs, immobilisations or removals.

But targets become Key Performance Indicators – as shown in a (Historic)Kensington & Chelsea Contract “*Schedule 3... specifies the Council requirements with regard to the annual initial Contract Threshold number of PCNs to be issued.*”

and that *"This element of the KPI will be deemed to have been met if... the Service Provider achieves, as a minimum, the seasonally adjusted Contract Benchmark for PCN issuance applicable during the monthly period in question."* *"Failure to meet the required service standards in any monthly period will result in a deduction from the amount payable to the contractor for the monthly period in question."*

"Having set realistic benchmarks, the Council is entitled to expect that the Service Provider meet them. Any shortfall against the benchmark not only prejudices the attainment of the required level of compliance but also reduces the Council's reasonable income expectations, and creates a budget shortfall."

²⁰ Signs comprise lines on the road and upright plates.

ANNEX 2 - REFUSAL TO REFUND UNLAWFULLY TAKEN PENALTY MONIES

1. The collection of money from PCNs that are non-compliant with the Road Traffic Acts or are issued at parking bays that are not compliant with the TSRGD, or in relation to incorrectly drafted Traffic Management Orders, is inherently unlawful. With a few honourable exceptions (e.g. in 2008 Sheffield County Council repaid £350,000 after signage was found to be inadequate), the responses have been to refuse to identify who has wrongly paid and then to repay motorists:
 - Between June and August 2004 Camden issued 3,190 PCNs from a newly-installed fixed camera, which primarily surveyed a bus lane in Haverstock Hill. The council was informed that the signage of the bus lane was not compliant with TSRGD, but enforcement was not suspended until 19 August. Despite knowing that enforcement at this location was unlawful the council continued to process unpaid PCNs, all of which should have been immediately cancelled. The council illegally collected £132,953 from PCNs issued during this period, of which £49,123 was received **after** 19 August, the council fraudulently accepted these penalty payments in the full knowledge of its illegality. After 19 August 2004, the council even issued 267 Enforcement Notices, 223 Charge Certificates and obtained 176 Warrants of Execution for PCNs issued **prior to** 19 August. The Council not only wilfully retained these unlawfully-taken penalty monies but took aggressive and deliberate steps to collect further revenue in the full knowledge that it had no lawful power to do so. *This episode clearly illustrates Camden's revenue generation objective.*
 - Following a complaint that some loading bays were not compliant with TSRGD 202, Camden undertook an audit. In response to an FOI inquiry the council stated that "During 01/08/06 a total of 5086 PCNs were issued within loading bays that have been amended during the past year". The response to a request to repay these non-lawful PCNs was that they "were issued in good faith"¹ and "the council will not be repaying motorists retrospectively and outside of the statutory appeals process offered to them by the Road Traffic Act 1991 (as amended)".
 - Since February 2009 Westminster enforced dropped kerbs with a single yellow line on a Sunday, although it says you can park on a Sunday on a single yellow line. One of our members objected to this practice. Westminster said it did not want to pay the £2000 per kerb for installing a second yellow line. Between February and September it issued 5,500 PCNs, so he went to the BBC. He also obtained an email from the DfT confirming that in order to legally enforce on a Sunday Westminster must install a double yellow line. Now Westminster say they will paint double yellow lines, but will not refund the motorists who they have already ticketed.
 - Westminster refused to refund money for the 20,000 illegal tickets it issued from the time which an adjudicator advised it that the signage for the CPZ north of Oxford Street was non-existent until it had created them, see **Annex 9**. It likewise refused to refund PCNs issued for parking in incorrectly marked diplomatic bays, see **Annex 9**.
 - London Councils falsely advised the boroughs that if a motorist pays a PCN then it implies (s)he thereby has accepted liability to make the payment² – this proposition has no basis whatsoever in law

- London Councils advised after the Barnet case that “Boroughs...do not need to refund any payments already made”. This mischievous advice has no lawful basis because the boroughs were not in lawful ownership of the monies taken from motorists who had no financial liability to the boroughs. *This further illustrates the revenue generation objective of parking enforcement in disregard of lawful procedures*
2. Councils employ supposedly qualified and competent staff who are responsible for the preparation of traffic orders and the signing of roads and parking places, yet these elements of parking enforcement are widely contrary to statutory requirements that are not difficult to understand or implement. The story by some councils that motorists should recognise when and where parking enforcement situations are incorrect is little short of fraudulent. It is preposterous to expect that motorists will be familiar with, let alone know of, the existence of the TSRGD 2002, the Secretary of State’s Statutory Guidance, or the Department for Transport’s Operational Guidance.

¹ Letter 22/01/08 to Alex Henney.

² Letter of 9/8/06 by Nick Lester, then Director, Transport, Environment and Planning, London Councils. In an earlier letter to Borough Parking Managers dated 03/05/06 commenting on a decision by PATAS, Lester stated:

“Where the PCN has been paid (except in current cases of formal representations following clamping or removal), the council may wish to take this payment as an acceptance of liability by the keeper and, therefore, resist requests for repayment on this basis. The nature of the decision is such that it would be hard to argue that any unamended PCNs had misled vehicle keepers into paying the penalty when otherwise they might have challenged it. I need hardly remind you, in any case, that adjudicators’ decisions apply only to the specific PCN being contested and do not create legal precedents. A rejection of such a request lies entirely with the council as there is no right of appeal to the adjudicator”.

ANNEX 3 - EXTRACTS FROM WESTMINSTER REPORTS

This Annex comprises extracts from 3 reports:-

- Westminster Cabinet Report of 10 June 2009
- Westminster Cabinet Report of 18 January 2010
- Briefing Note - Minority Party Budget Briefing, 12 January 2010

Cabinet Member Report

Date: 10 June 2009

Subject: Upgrade of the City Council's wireless camera network to meet the Department of Transport's approved devices certification requirements.

Summary

This report seeks approval for capital expenditure in the sum of £825,000 to upgrade the existing software to process camera enforced Penalty Charge Notices, and modifications to the existing wireless city cameras to ensure that they meet the legislative requirements of the Traffic Management Act 2004 for cameras to be certified to enforce parking contraventions. This will be funded from the existing capital budget for hand-held devices which will in turn be funded either by the successful bidder for Lot 3 of the Enforcement contract re-let or through savings expected on technical refresh costs under the Vertex TOPS contract.

Recommendations

That the Cabinet Member for City Management and the Cabinet Member for Finance:

1. Approve capital expenditure in the sum of £495,000 for modifications to the existing wireless cameras and additional data storage to ensure that all wireless cameras obtain Department for Transport approved device certification
2. Approve capital expenditure in the sum of £330,000 to bring forward the software upgrade for the Wireless City camera network to support the upgraded cameras
3. That the Assistant Director of Parking be authorised to agree any variations or changes to the existing Wireless City contract with Vertex

Cabinet Member Report

Approval is sought for a total of £825,000 capital expenditure (to be funded using the existing capital budget for hand-held devices) comprising £495,000 for modifications to the existing wireless cameras and £330,000 to 'bring forward' the Wireless City software upgrade.

If the investment in the CCTV network is not made, the City Council will incur additional costs of £1.9m to achieve the anticipated enforcement level for 2009/10 of 736k PCNs (assuming this number of PCNs exists). If deploying additional CEOs on-street (to replace CCTV enforcement) does not succeed in delivering the anticipated enforcement levels, for every 10,000 PCNs not issued, income will be £0.5m below anticipated levels.

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Provision of a parking service that is firm, fair and excellent

10 June 2009

All

Kevin Goad

Assistant Director of Parking Service

Cabinet Member for City Management

Cabinet Member for Finance

For General Release

Wireless camera network upgrade

1. Background

1.1 Following the introduction of the Traffic Management Act 2004, all local authorities who used cameras for parking enforcement of stationary parking offences were required to seek approved device certification from the Department for Transport (DfT) for their cameras by 31 March 2009. This was a statutory requirement and if approval was not granted, cameras could not be used until such time as the certification requirements had been satisfied.

1.2 Whilst the City Council was part of a DfT task group responsible for drafting the specification for the 'Approved Devices', a change was made between the final version of the specification and the earlier consultation document. As a result, the City council's wireless cameras do not meet the minimum image resolution requirements. To summarise, the final camera resolution standard moved from an industry recognised standard 'PAL' (Phase Alternating Line) (to a specific resolution of 720x576 pixels. Whilst this specific resolution is the equivalent to the analogue broadcast standard for PAL, the digital PAL standard is fractionally lower at 704 x 576 pixels (a difference of 16 pixels with no loss of image resolution). The WCC Wireless City system is based on this digital PAL standard. The City Council's cameras and CCTV operation meet all the other requirements of the approved device specification.

1.3 Delays in submitting the City Council's approved device application resulted in a failure to identify the resolution issue until March 2009. Despite discussion with the DfT and its certification agency (the VCA) over the interpretation of the resolution standard, no concession was granted for Westminster to continue to use its cameras resulting in their withdrawal from stationary parking offence enforcement from 31 March 2009. Cameras are still being used for the enforcement of moving traffic contraventions, community protection and city management.

1.4 Parking Services are seeking to resolve this in three ways: firstly, by requesting a waiver from the DfT to continue enforcement with the system as it stands. This is unlikely to be granted as the DfT have already required that other boroughs make changes to their systems to comply with the standard. Secondly, to re-establish the DfT working party with the purpose of changing the legislation to include the digital standards, it is anticipated that, if successful, this will take 12 to 18 months as it will require a change to the legislation. Thirdly, to modify the City Council's systems to meet the certified device standard.

1.5 There is a compelling business case to invest in modifying the cameras as income levels will be significantly impacted by the loss of the camera network for enforcement and additional costs will be incurred to deploy more resources on-street to enforce those areas primarily covered by cameras. (Emboldening added).

1.6 It is therefore proposed that the City Council invests in modifying its existing cameras to ensure they meet or exceed the DfT resolution standard. This will also

require bringing forward the planned software upgrade from 2010/11 to support the capture of higher resolution images.

4. Financial implications

4.1 The capital cost of undertaking the camera modifications and software upgrades, including street works and contingencies is set out in the table below:

4.2 The following table shows the 2009/10 enforcement budget and a comparison of how much it will cost to achieve the same level of enforcement and hence the anticipated number of PCNs (736k) using only on-street CEO enforcement and Smart cars.

* 736k PCN profile assumes no CCTV for the full year. The profile assumes 08/09 productivity levels for CEO and Smart car PCNs.

** Assumed productivity levels are based on the actual outturn level for 08/09

4.3 The 2009/10 budget assumes a surplus from enforcement activities of £11.4m. Income of £37.6m is based on c.736k PCNs being issued at an average value of £71 and an average recovery rate of 72%. To achieve the same level of income without CCTV for the full year, NCP enforcement costs would have to increase by £1.9m due to the lower productivity levels historically achieved by CEOs compared to CCTV enforcement.

4.4 The CCTV capital investment required is therefore less than 50% of what it will cost the City Council in 2009/10 alone, to deploy additional CEOs instead of using CCTV enforcement.

4.5 Without CCTV enforcement, the overall net contribution from enforcement will be £9.4m (£1.9m below budget). This assumes that the target level of CEO PCNs is actually achieved and that CEO productivity remains at 08/09 levels despite an increase in the number of CEOs that would be deployed on-street. Experience shows that this is not likely so a lower PCN issue rate could be assumed. For every 10,000 less PCNs issued, income will decrease by c.£0.5m.

4.6 If the recovery rate continues to be in line with 2008/09 (70%) and not the budgeted rate of 72%, income will reduce by £1m thus reducing the net contribution to £8.4m (excluding any shortfall in issued PCNs). This is not shown in the table above.



City of Westminster

Cabinet Report

Date: 18 January 2010

Classification: For General Release

Title of Report: Parking Policy Options 2010/11

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Recommendations

1. That Cabinet notes the recommended policy direction set out in the report; and
2. Considers whether to give 'in principle' approval of the following six options for further development, consultation and Cabinet Member decision as appropriate:
 1. Extending hours of operation in the Inner Zones Monday - Saturday until midnight;
 2. Extending hours of operation in the Outer Zones Monday - Saturday until 10pm;
 3. To harmonise the tariffs charged for casual visitor parking in St John's Wood and the surrounding areas by increasing the former from £1.10 to £2.20 per hour;
 4. To harmonise the tariffs charged for casual visitor parking in the Inner zones with those in neighbouring Camden zones by increasing them from £4.40 to £5.00 per hour;
 5. Increasing the cost of a resident parking permit above inflation; and
 6. Increasing the tariff for suspensions above inflation
6. **OPTION 1. EXTENDING THE HOURS OF OPERATION IN THE INNER ZONES, MONDAY - SATURDAY UNTIL MIDNIGHT**
 - 6.1 Demand for road space within the centre of London is high throughout the day. Traffic volumes are generally lower during the evening, with a further reduction after midnight. However, there is increased activity of cars and other vehicles seeking to park

and wait on the streets in the West End and across central London at the end of the hours of controlled parking (Monday to Saturday 8.30 am to 6.30 pm) due to permitted parking occurring on single yellow lines.

6.4 Introducing this change at least one year in advance of the Olympics would enable the impact to be monitored and the scheme further modified if necessary to assist with improvements to journey time reliability on the Olympic Route Network.

6.5 This change would result in the loss of parking (paid for visitor spaces and single yellow line) currently used free of charge by residents, as well as visitors, during the evening. Resident Permit holders could be allowed to park in paid for spaces between 6.30 pm and Midnight and a Visitor Permit Scheme could be considered for their visitors.

6.6 An underlying principle of any extension in controlled hours should be a concomitant extension of the protection afforded to Respark bays: under no circumstances should it be possible to park free in a Respark bay at a time when on-street casual parking is paid for.

[Comment - the Olympics lasting a few weeks in 2012 is no justification for extending parking hours and eliminating free evening parking on single yellow lines. Still less is it justified to introduce the scheme a year in advance to collect more money.]

7. OPTION 2. EXTENDING HOURS OF OPERATION IN THE OUTER ZONES, MONDAY - SATURDAY UNTIL 10PM

7.1 To some extent the arguments in Option 1 above can be applied to an extension in the hours of control across the City of Westminster. However, the main benefits would be found on strategic and distributor roads, although for ease of administration and clarity to users it would be best applied following the existing zonal system as it would be very difficult and complicated to devise a scheme restricted to such roads.

[Comment - a specious claim.]

8. OPTION 3. TO HARMONISE THE TARIFFS CHARGED FOR CASUAL VISITOR PARKING IN ST JOHN'S WOOD AND SURROUNDING AREAS BY INCREASING THE FORMER FROM £1.10 TO £2.20 PER HOUR

8.1 The tariff in the St Johns' Wood area for casual visitor parking is lower than that charged in surrounding zones.

8.2 Furthermore, occupancy is above 80%, the generally accepted level at which car parking space becomes increasingly difficult to find thus resulting in searching and delay. This is therefore the 'trigger' level which should prompt consideration of a further constraint on demand.

[Comment - more tax farming.]

9. OPTION 4. INCREASING THE TARIFF CHARGED FOR CASUAL VISITOR PARKING IN THE INNER ZONES FROM £4.40 TO £5.00 PER HOUR

9.1 This would increase the tariff closer to that charged in the adjacent zones within LB Camden. At the current rate we could be attracting traffic visiting LB Camden, but seeking to pay less for parking. Kerbspace is in heavy demand and it is appropriate to harmonise rates.

9.2 The rate charged by Camden is £4.80, so consideration should be given to whether to increase the charge in Westminster:

- At that £4.80 rate; or
- A £5.00 rate

Subject to the views of members about this option, subsequent consideration should be given to extending this proposal to the whole of the Inner Zones F and G which border Camden.

[Comment - it is scraping the barrel to claim that 50p/hour is going to make a difference, other than to Westminster's coffers. In any case Camden's rate is undoubtedly higher than needed for purely parking purposes.]

13.3 The provisions of section 122 were considered in the leading case of **Cran -v- London Borough of Camden**, in which residents of Hampstead challenged the designation of their area as a controlled parking zone. Even though SA.122(2)(d) allows a local authority to take into account any other matters appearing to it to be relevant, the High Court was very clear that this did not allow the Council in setting the charges for parking to take account of extraneous financial matters such as the aim of generating income for other Council projects, however worthy such projects might be. As long as the Cran case remains the law, Westminster therefore cannot set or increase its charges with the motive of generating income, though the generation of income is legitimate if it is merely incidental to the setting of charges for other reasons such as traffic restraint.

[Comment - in the circumstances of the following briefing note, the foregoing is a hypocritical example of back covering and to pretend that the measures are not revenue generation.]

14. FINANCIAL IMPLICATIONS

14.1 Implementation of the options set out in the report will have consequences both in terms of cost and revenue, but as set out above they are not relevant at this stage. Depending on which options Cabinet approves, officers will then develop budgetary projections for inclusion in the next financial cycle. At this preliminary stage and subject to subsequent Cabinet Member approval it is considered that some, if not all, of the proposed options should be capable of implementation in the 3rd and/ or 4th quarter of the 2010/11 year.

[Comment - why are the implications of increasing income by £14m p.a. not relevant at this stage? It is not rocket science to cost out the options.]

Briefing Note - Minority Party Budget Briefing Date - Tuesday 12th January 2010

Key Drivers

The key drivers for the budget are:

- The Present Comprehensive Spending Review (CSR) finishes in 2010/11. 2011/12 and 2012/13 would be part of a new 3 year CSR. At the moment we are assuming that government grants will increase by 1.5% in 2010/11 and that there are no increases in

future years. There is the possibility that Government funding might decrease in real terms over the planning horizon

- The Present Overspend Position - The Council had planned to support the 2009/10 budget with the use of £11m of reserves. At the present time given the issues around parking, and despite the staunching measures being undertaken, the Council will overspend by £22m - an £11m increase over the original forecast
- Given the present overspending position in respect of parking, it is key that a sustainable ongoing position here is budgeted for. As this is service has circa £100m turnover, changes in this area affect all other areas

The areas of Parking and Community Safety have been earmarked to contribute the majority of the additional £14m highlighted in the Further Commissioning Savings line and work is being undertaken at the moment to finalise the positions to ensure they are robust and achievable in future years. [Emboldening added].

ANNEX 4 - MANCHESTER AND TRANSPORT FOR LONDON ARE IMPROVING

1. We are pleased to find that some councils are taking steps to improve their performance. Manchester imported the London enforcement model, which resulted in growing public disillusionment with the parking enforcement service¹. The public regarded it as “draconian”, “financially driven”, and with “no common sense”. In a commendable response the council introduced a “Service Improvement Strategy” whereby it:-

- Retrained and rebranded parking attendants;
- Introduced **discretion, reasonableness and proportionality** (our emboldening);
- Introduced Parking Liaison Officers, the ‘Customer champion within the service’;

This resulted in:

- Public acceptance (if not necessarily support);
- Enhanced profile (internal and external);
- A ‘Reasonableness and Proportionate’ regime;
- **Application of common sense enforcing rules and not issuing PCNs for trivial offences** (our emboldening);
- A fairer service.

2. According to the Mayor of London, Transport for London (TfL) operates²:

“The most punitive, most draconian fining regime in the whole of Europe”.

Major Boris Johnson, February 2008

According to another critic:

“You’re all money grubbing thieves ands”.

Member of public, March 2009

Research shows that neither private motorists nor professional drivers believe TfL acts in their best interest.

- Motorists had a low perception of TfL and its contribution to managing traffic for road users.
- Motorists felt they were treated unfairly, enforcement was merely another form of taxation, representations and complaints were not considered fairly (or at all!).
- Motorists felt penalised for simple mistakes or errors, because they did not understand the regulations with signage being unclear and confusing.
- Enforcement through PCN issue was widely perceived as being heavy handed, inconsistent, unfair and just a revenue generating process.
- The survey reported that about 70% of motorists found that some signs were difficult to read or understand, and some rules and restrictions were unclear.
- TfL concluded that “Delivery of Traffic Enforcement had, to some extent, been ‘heavy handed’ with a rigid application of policy and built around a continuous expansion of CCTV enforcement and activity”

3. In response TfL developed a “Drivers’ Charter” which aims to have TfL working together with drivers to improve the conditions on the road. “The Charter consists of four main themes, each supported by specific actions:
- i. We are going to deliver a more commonsense approach to help drivers
 - ii. We are making it easier for drivers to stop where they need to and use loading bays without worrying about being issued with a penalty
 - iii. Where we do issue a penalty we will make the process as simple and straightforward as possible
 - iv. If we make a mistake we will apologise and automatically cancel the penalty”

To those ends TfL:

- Suspends enforcement at locations with high levels of complaint/confusion while it investigates and reviews the under-lying reasons, signage and road markings
- Has introduced telephone representatives who are authorised to deal with complaints *over the phone*. An average of 1,300 PCNs are now cancelled this way every month. This avoids unnecessary representations, wasted costs for TfL and the motorist, and favourably enhances the motorist’s perception of parking enforcement
- Is engaging with companies that incur frequent PCNs with a view to establishing memoranda of understanding regarding enforcement policy to avoid unnecessary issuing of PCNs to such companies
- Has scrapped the Congestion Charging On their Street Removal contract, Mobile Patrol Units and Traffic Enforcement Smart cars. (TfL had been intending to buy more Smart cars)
- Issues Warning Notices instead of a PCN for first time offences and at new or revised locations
- Does not issue PCNs to vehicles that accidentally ‘clip’ bus lanes or are only slightly covering yellow box junctions with their back or front wheels and not causing an obstruction
- Allows taxis to stop on red routes to allow customers to use cash machines
- Has extended the observation period from 5 minutes to 20 minutes before issuing a PCN
- TfL has reorganised the enforcement functions and implemented a ‘Change Programme’ to alter their culture from presuming that motorists are guilty until proven innocent to the converse. In a meeting with LMAG the TfL’s Deputy Director of Congestion Charging repeatedly stressed the importance of their “**exercising discretion in the interests of commonsense**”.

4. TfL is achieving significant savings through:
- Ending London wide removal services
 - Majority of vehicles removed from parking and loading bays
 - Removals will now only be undertaken for vehicles causing a serious obstruction
 - Scrapped the Congestion Charging On Street Removal contract and Mobile Patrol Units
 - Re-let of CC/LEZ combined services agreements

¹ Presentation by Manchester to Camden council on 22 September 2004.

² Presentation to LMAG on 9 June 2009 by John Mason, Deputy Director, Congestion Charging and Sean Conroy, Stakeholder & Partnerships Manager, TfL, Congestion Charging and Traffic Enforcement. Centrecomm Forum, 27 November 2009.

Case No: 3100983/05



EMPLOYMENT TRIBUNALS

AT: Southampton

BETWEEN:

Claimant

and

Respondent

Mr A Whittick

Bournemouth Borough Council

Represented by:

Represented by:

Mr G Harrison of Counsel

Mr A Browning, Solicitor

On: 6 and 7 February 2006

Chairman: Mrs C M Green

**Members: Mr W C Brina
Mr R C Starck**

JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The Claimant made a qualifying protected Public Interest Disclosure. The Claimant suffered a detriment as a result of making that Public Interest Disclosure.
2. The Claimant was constructively dismissed as a result of the detriment arising from the Public Interest Disclosure. That dismissal was unfair.

3. Facts

- 3.1 The Claimant was employed by the Respondent as a Parking Attendant from 22 April 2003. There were no complaints about his work and he was considered to be a good employee.

- 3.4 Parking Attendants worked with a "beat book". That book detailed streets in which no PCN's should be issued and also other streets in which they could issue a PCN subject to certain conditions. There was also a "white board" in the office that showed streets in respect of which there was no valid TRO or the sign was invalid. Since an outside company drew the parking lines on roads from maps and put up the notices it was the case that accidents happened and some lines and notices were incorrectly placed. Thus a motorist could apparently be illegally parked when in fact he was not. It was only when a valid TRO coincided with the lines and notices that the person parking in contravention was illegally parked. A situation had occurred in Bournemouth in Norwich Avenue when for four

years between 2001 and 2005 Bournemouth Borough Council had issued PCN's when there was no supporting TRO in force. The Respondent had not paid back the fines inappropriately paid by motorists nor taken any steps to notify the public that they may have a right to reclaim the fine. The Claimant, being a man of principle, believed that a PCN should only be issued where there was a contravention of a valid TRO. Further his training had confirmed that this was the way he was required to perform his job.

- 3.5 At a meeting on 18 January 2005 the Parking Attendants were told by Mrs Leslie, the Operations Manager, to issue PCN's irrespective of whether there was a valid TRO in place. The "white board" was to be wiped clean and there were no "no go areas". The Claimant and other Parking Attendants at the meeting queried this.
- 3.6 The Claimant informed Mrs Leslie that he did not consider it appropriate that he be asked to do something unlawful or fraudulent. The Claimant stated he was conscious that there had been occasions when tickets had been issued in areas where there was no TRO and the Respondent had made thousands of pounds from issuing unlawful PCN's. Further, those citizens had not been refunded their unlawful fines when it came to light that there was no TRO in force and the PCN's were unlawful. While motorists could themselves check whether there was a valid TRO in force and challenge the PCN, in reality they were unaware of their rights and would pay the PCN to get the benefit of the early payment discount.

- 3.7 Mrs Leslie and Mr Bolland had arranged in advance that if there was any difficulty at the meeting over the instruction to ignore TRO's Mr Bolland would attend and restate the Respondent's case. Mr Bolland was called to the meeting and repeated Mrs Leslie's instruction. The Claimant asked for the instruction in writing. Mr Bolland then addressed the Claimant. Firstly he refused to confirm the instruction in writing. There was a conflict of evidence as to whether Mr Bolland then raised his voice and hit the table. The Claimant stated he did and Mr Frost detailed in a note book that Mr Bolland banged the desk. Unfortunately Mr Frost who was still employed by the Respondent was not called to give evidence. Two of the other parking attendants at the meeting gave evidence to the effect that Mr Bolland had spoken very strongly to the Claimant but did not state Mr Bolland had banged the desk. We find, on the balance of probabilities, having heard and seen the witnesses give their evidence and having regard to their demeanour, that we prefer the evidence of the Claimant that Mr Bolland did raise his voice and hit the table. Indeed, while giving evidence on this point Mr Bolland hit the witness table. It was not denied by Mr Bolland that he had stated that employees who were unhappy with the instruction could look for alternative work and he also stated that he considered that an appropriate thing to say to staff.
- 3.8 There was a conflict also as to whether ensuring there was a TRO in place formed part of the Claimant's job description. The Claimant's job description stated he should issue "Parking Charge Notices where vehicles are parking in contravention of the relevant controls." Having regard to the job description and the fact that five other Parking Attendants who had received the same training as the Claimant were concerned about ignoring TROs, and given that Parking Attendants had avoided in the past issuing PCN's in areas where there was no TRO in force, we find it more likely than not that it had formed part of the Parking Attendants' duties to ensure that TROs were in place up until that point.

Croydon Council

REPORT TO:	SCRUTINY AND OVERVIEW COMMITTEE
AGENDA ITEM:	6
SUBJECT:	PARKING SERVICES MANAGEMENT & ADMINISTRATION PROJECT (PSMA)
LEAD OFFICER:	DIRECTOR OF ENVIRONMENT, CULTURE AND PUBLIC PROTECTION
CABINET MEMBER:	ENVIRONMENT AND HIGHWAYS
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: This report addresses the Council's corporate priorities in enabling better environment, fairer access to all and ensures value for money.	
FINANCIAL SUMMARY: There are no financial considerations arising from this report	
FORWARD PLAN KEY DECISION REFERENCE NO: 139	

1. RECOMMENDATIONS

1.1 The Scrutiny and Overview Committee is asked to consider and comment upon the award of the Parking Services Management & Administration contract to APCOA for seven (7) years, with the option, at the end of the 3rd year, to extend the contract by yearly increments, up to a maximum of 12 years, commencing the end of the third anniversary subject to the Delivery Partner (DP), the Contractor, achieving its critical performance indicator (CPI) targets and delivering its investment plan, and upon terms and conditions satisfactory to the Council Secretary and Solicitor. The longevity of the contract enables the DP to make the necessary investments in the parking infrastructure and obtain a reasonable return on this investment.

3. DETAIL

3.1 Introduction: Service Scope and Objectives of the PSMA Contract Procurement.

3.1.3 Four key objectives were established for the PSMA market-testing project, and these are as follows:-

b) **To protect and, where possible, enhance the financial performance of the service so that it continues to deliver sustainable surpluses to the Council** (emboldening added).

3.1.4 These key objectives were established to ensure that the Council continues to use parking, traffic and related services management to support its strategic responsibilities under the Traffic Management Act 2004 for effective road network management and complimentary environmental services **whilst benefiting from increases in surpluses generated from the paid-for activities contained within the Contract. These key objectives were cascaded down in to specific evaluation criteria for the purposes of the procurement process.** (Emboldening added).

This risk is mitigated by the fact that the Council will establish a three-year business plan with the DP for the service. This plan will identify all foreseeable changes to the prevailing circumstances, both financially positive and negative, and will use this mechanism to reduce the negative impact of any significant changes. (Emboldening added).

a) **Delivery Partner's failure to achieve income and/or cost projections**

- **If the DP has significantly over-estimated the income projections and/or under-estimated its costs then the DP could experience major financial problems which could impact service quality and partnership relationship. However, this risk is mitigated by requiring the successful bidder to have their financial model independently audited and an opinion provided to the Council** (emboldening added)

SUMMARY OF BIDS

APCOA

- Strong technical solution
- Business systems and technology are better than NCP
- Accepted significantly greater operational risk **and used the proposed numbers suggested by the Council (e.g. number of PCNs)** (emboldening added)

ANNEX 7 - DISGRACEFUL TREATMENT OF MS. AMANDA FREEMAN BY TRANSPORT FOR LONDON

1. On 26 May 2006 Amanda Freeman, a teacher, briefly entered the Congestion Charge Zone from a roundabout at Elephant & Castle. She claims that she entered Newington Causeway in order to avoid a collision with a lorry. She rang Transport for London (TfL) and explained what happened. She asked for the call to be recorded – it was not. The call centre operator said that she should pay the charge as there were no exceptions. No mention of the possibility of a refund was made. She was annoyed and was not minded to pay the congestion charge of £8 without question.
2. She sent a representation to TfL on 2 June, but did not receive a reply, nor did she receive a rejection of her Representation. She received a Charge Certificate dated 10 August 2006 from TfL and a letter from their bailiffs dated 11 October demanding payment. This was misdelivered to the flat upstairs and she did not receive it until sometime in November. She responded to TfL on 19 November (copy to bailiff) following finding another misdelivered letter from the bailiff dated 6 November 2006 stating that a bailiff had attended to levy. (Note that there was a sign on the door instructing people to deliver to her in the basement. She did not receive a reply to either of these letters).
3. She received another letter dated 30 November 2006 from the bailiffs company saying her query had not been upheld and demanding payment. On 13 December 2006 the bailiff removed her car from her drive without making contact, leaving documents again through the wrong door. The bailiff claimed a fee of £594.55 which included a fee for attending with a vehicle to clamp on the first visit, and then for clamping the vehicle before removing it. The bailiff claimed that she was at home when they called, had called the police and locked herself in the car. None of this happened. She contacted the bailiff and TfL to assert that the vehicle was required for her work, and that it contained her work equipment.
4. On 20 December 2006 she made an out of time Statutory Declaration which TfL contested. She therefore completed a form N244 to get the case before a judge. Her case was heard at Lambeth County Court on 30 May 2007, when the judge found in her favour and the case was put back to the PCN stage. Consequently the instruction to the bailiff was null and void. She wrote to TfL on 31 May 2007 asking for the return of her car to the garage she used in Wiltshire as her car was not roadworthy (no tax, no MOT, no insurance). She wrote to TfL a number of times reminding them that she was hiring a vehicle and it was costly, but merely received letters advising her “you must contact the bailiffs regarding the vehicle’s release”. Eventually the car was delivered to the garage on Monday 21 April 2008. It was undriveable and had some damage from removal.
5. She appealed to PATAS and there was a hearing on 8 January 2008. the case was deferred for a month, but a letter from the Clerk explained the adjudicator’s thoughts following the hearing “The Adjudicator considers that there is compelling mitigation and directs Transport for London to reconsider the exercise of its discretion, taking into account the following matters:
 - The Adjudicator accepts the Appellant’s evidence and finds as a fact that on the date of the alleged contravention, the Appellant’s intended route did not require her to enter the Congestion Charge Zone. Further, the Appellant was forced to manoeuvre her

vehicle into the Congestion Charge Zone on account of her vehicle being obstructed by a lorry on a busy roundabout and so as to avoid a road traffic accident.

- Transport for London's Notice of Rejection dated 13 June 2006 contains several incorrect statements.
- The Adjudicator considered that there is compelling mitigation. The Adjudicator will assume that the appeal is no longer contested unless TfL files a written explanation as to why it sees fit to pursue it..."

TfL made a lengthy submission that claimed it had considered the matter carefully, and was not minded to exercise its discretion. Its submission included much nit picking and surmise about what happened. On 5 February the Adjudicator refused her appeal because the contravention had taken place and the adjudicator had no discretion.

6. She sought a review of the decision at PATAS. She made a lengthy and complex submission. The Review Application was heard on 7 April 2008 and a decision was deferred until 21 April 2008. A new adjudicator heard the case 21 April and on 7 May decided that a contravention had taken place (which was not in dispute); that TfL had considered her representations and notwithstanding the adjudicators' opinion on her veracity, refuted her version of events. Also, its representative claimed that TfL were not empowered to make refunds under any circumstances (this clearly false assertion was contradicted when a friend received a refund on 19/1/2009), and there was no ground under the legislation to allow him to exercise mitigation. As a "gesture of goodwill" her car was subsequently returned to her garage in damaged condition and needed substantial work estimated at least £1,560 to make it roadworthy.
7. As a consequence of this episode Ms. Freeman was deprived of the use of her car for 16 months and it was now not roadworthy, and she has incurred £12,000 in car hire charges. Also the episode caused her considerable distress. She wrote on 23/1/2010:

"There is not a day goes by that I do not give the issue, the wrongs experienced and the grinding frustration some thought. I have explored at length all legal avenues possible, including LMAG's advice. Not one of very many legal firms approached was even prepared to consider advising me on Congestion Charge related matters, I could not even find the opportunity to give any detail on the issues. This is especially depressing. Even though I can demonstrate that the matter was handled incorrectly, it seems there is nothing I can do about it other than to attempt to change the law through the government that created it. It is of great concern that TfL can issue fines and have no greater authority to rein them in when they are wrong or act improperly. If TfL can be handed these powers, then so can any other minor authority, and this worries me greatly as a citizen, and I feel it needs to be challenged..."

When I opened the large file to address your request for an update I felt physically sick. Even though in July 2007 I won 1st place in a World Award for what I do, I have changed my employment as it necessitated travelling frequently by car, I now largely stay at home. I don't drive very much at all any more, I fear going out, I fear missing signage, I fear mistaking which day of the week it is or knowing the exact time and whether restrictions apply, I fear overstaying a few moments in a parking space, I fear misunderstanding the meaning of signs, I fear getting caught in a yellow box junction if someone were to stop unexpectedly in front of me, I fear that CEO's don't know the loading regulations and I

fear those that govern me. They have been proved to be thoroughly unreasonable and unanswerable”.

ANNEX 8 - HARASSMENT OF MOTORISTS TO GENERATE PCNS

1. The means of generating the income is to *implicitly*¹ encourage CEOs to issue PCNs for real or imagined trivial contraventions, which results in harassing private motorists for trivialities and regardless of commonsense, e.g.:
 - Tyres outside the outer line of a bay which is too narrow. We showed in para 11 of the main text a motorcycle that collected PCNs from Westminster for having its wheels marginally over a line.
 - Motorists who stop at an ATM machine early morning near a CCTV camera – this generates considerable money in Kentish Town Road in Camden.
 - PAs on scooters who come round the roads in suburban areas just after 10am when control starts to catch people who have forgotten to pay for a ticket or to move from a residents' parking bay.
 - A motorist scratches the date and time but not the day of the week on a visitor scratch card.
 - In April 2005 our secretary posted a cheque and application for a resident's parking permit in Camden. The council said it wanted some more documentation, which was posted. The day before expiry of the permit he discovered the documentation had not arrived because one digit of the post code was wrong. The missing document was faxed. The following day his car was ticketed. PATAS upheld the council (£100). **This episode was nothing short of municipal theft.**
 - We helped with two Camden cases where the lines on parking bays were not compliant with TSRGD. Although the council corrected the lines it insisted on persisting with the cases to PATAS before dropping them at the last moment.
 - Between May 2009 and January 2010 the LMAG Secretary and his secretary had to waste time on 4 examples of Camden's incompetence:
 - * The council claimed he was "Entering and stopping in a box junction when prohibited" in the well known money trap at the top of Shaftesbury Avenue, which collected £398,000 in 2008/09 and is the second most profitable camera the council owns. Yet when he entered the box his way was clear, and so it was not a contravention². On appeal to PATAS the council withdrew its case *having wasted his time*.
 - * A PCN was issued to his car at 8.30am on a Saturday when it was parked across the dropped curb exit to his drive on a day when there is no controlled parking. A representation was rejected even though the TMA 2004 makes it abundantly clear that parking across one's driveway is not a contravention. *Further waste of time*.
 - * When he came out of a shop he saw a CEO ticketing his car. His time had expired at 11.02am; the CEO started ticketing at 11.05 and completed at 11.07. Although the Parking Attendant's Handbook advises that the *minimum* observation time for Code 5 should be 5 minutes. Camden's time is 2 minutes. The parking bay was not compliant with TSRGD 2002. *A further waste of time*
 - * His secretary received a Notice to Owner claiming she had not paid a PCN that (allegedly) had been issued to her for stopping "on a restricted bus stop/stand".

She had stopped for a short time, but did not leave her vehicle at any time and received no PCN (nor in fact saw any CEOs in the vicinity). None of the photographs on the Notice to Owner showed her car, let alone parked in a bus stop. *Contesting this wasted time*

- Among the most crass Camden examples of issuing PCNs were to:
 - * cars blocked in by fire engines on duty on 7/7/2007;
 - * a Thames Water vehicle in Kentish Town High Street on 16/9/2007 when the men were working on a water main;
 - * a single mother went to Sardinia to visit her mother who had Parkinson's disease. She returned to find her car, which had been parked in a residents' bay displaying a resident's permit, had been towed to the car pound. Camden wanted a release fee of £500. The council had suspended the bay for a day for tree cutting.

- Philip Johnston, deputy editor of the Daily Telegraph, wrote an article on 19 July 2009 "How to get revenge for your parking ticket" in which he described how LB Merton had "painted a confusing array of white and yellow lines everywhere, removing around a dozen spaces where cars used to be able to park. Near our home, the bay is so badly drawn that, in order not to obstruct a neighbour's access, we parked a few feet over the line, as everyone does and we have done many times:

"A ticket was issued. We appealed to the local borough and they said: "We must advise that when using parking bays you must make sure your car is fully within the parking bay or space before you leave it. If it is beyond the end of a bay, straddling two bays or obstructing the clearway you may get a ticket even if you have paid to park, or have a valid permit allowing you to park."

"When we pointed out that the lines were not easy to discern, and that if we parked within the lines the car would block a neighbour's access, we were told that "the law does not require that the yellow line must be in good condition. Enforcement can take place as long as the signage reasonably indicates a restriction".

- The Sun reported on 6/10/2006 that a car was ticketed in Salford *after* a workman painted a yellow line under it
- The Evening Standard of 10/6/2005 reported the case of a Westminster parking attendant who put PCNs on two cortege cars at a funeral outside a church

2. The drive to generate revenue also leads to harassing companies that legitimately need road space to function:

- One of LMAG's directors ran a waste recycling business in Camden (it was an approved council contractor), collecting waste materials from offices. Over a two year period 2003-05 he received 114 PCNs whilst loading waste from offices. 110 were cancelled on representation or appeal including 5 at PATAS. *Dealing with these PCNs wasted a great deal of time, and continued to waste a great deal of time 6 months after the sale of the business.*
- A florist delivering flowers early in July 2009 was wrongly advised by a CEO in Camden that she was allowed only 10 minutes waiting time for delivery because her van was small - 20 minutes is permitted for all vehicles

- A group of three building companies, E&D Roofing, E&D Scaffolding and DG Builders & Construction Management, which work out of the same address in Camden, have received 579 PCN's from Camden over the period 2006 to 2009. The CEOs and back office staff are often not aware of exemptions for the building industry (and the delivery/freight industry) in all of the Acts - 1974, 1984, 1988, 1991, 1998, 2000, and 2004 – that concern traffic and parking management. The exemptions are either not written in the council's Traffic Orders or are written unclearly. CEOs frequently say after issuing invalid PCNs "well you will have to write a letter", even when they know full well that they should not have issued the PCN. The company has paid 5 PCNs since April 2008 which were fair:
 - * it has paid 133 other PCNs but seeks restitution because they should never have been paid. The total owed by Camden is £8,790
 - * Camden have cancelled 441 PCNs. For these the companies are going to sue for £9,775 for waste of office time and time spent dealing with PATAS appeals in person

It is going to issue proceedings at the Central London County Court to recover £18,565.

- DG Builders ran a building site in Westminster and paid £36,170 for the use of suspended parking bays between 30/01/2006 and 23/07/07. After the first quarter of 2006 Westminster increased the cost of the daily suspension by 50% without any warning from £24 to £36 per day. (Westminster made the builder pay for Sundays even though no building works are permitted after 13.00 hours on Saturday until 08.00hrs on Monday). By 30/06/2007 the building company's vehicles had received 134 PCNs. A total of 32 were issued between midnight and 05.30hrs and have no possible connection with parking/traffic management. All 134 PCN's have been cancelled, but not without a great deal of aggravation, stress and wasted office time spent dealing with representations and appeals. Westminster made DG Builders go to such lengths with correspondence that it had to fill in PATAS forms 45 times and received correspondence from PATAS regarding each of the appeals. On no occasion did Westminster contest the appeal, which brings out Westminster's disgraceful record at PATAS. It seems clear that Westminster strings out the process in an attempt to get motorists to pay the PCNs, and then having caused inconvenience in the majority of cases they do not contest (DNC) the appeal. Westminster's figures are as follows:

	Appeals	Allowed	DNC	(%)
2008 – 2009	21,892	19,007	13,947	73
2007 – 2008	17,507	16,254	12,001	74

It is not acceptable that a council rejects an informal challenge to a PCN, then issues a Notice of Rejection of a formal representation, then provides an application form for appeal to the independent PATAS tribunal, and then (after incurring a substantial waste of time and money and interference with the recipient's business and without an apology) declines to contest the appeal a few days before the hearing .

3. Westminster and Camden flout the Department for Transport's Operational Guidance which states (paras 8.78 and 8.79): "The Secretary of State recommends that enforcement by approved devices are used only where enforcement is difficult or sensitive and CEO enforcement is not practical. The primary objective of any camera enforcement system is to ensure the safe and efficient operation of the road network by deterring motorists from

breaking road traffic restrictions and detecting those that do. To do this the system needs to be well publicised and indicated with lawful traffic signs”:

- Westminster installed over 120 wireless cameras and issued around 100,000 PCNs in one year. The council had no intention of using the cameras sparingly; it invested £ millions to make more £ millions. Initially the council erected very few signs to warn motorists. Following a complaint to the Information Commissioner’s Office by one of our members, Westminster eventually installed the essential signage in January 2009. However, it was contrary to the statutory specification for such signage; the text was smaller than the minimum prescribed size, thereby rendering the notices that were placed high up on lamp posts illegible to motorists.
 - In all areas where Westminster have CCTV cameras, enforcement by CEOs is not only practical, but continues. Westminster ignores the Guidance because the government has no powers to intervene in the case of wrongful enforcement.
 - Gerrard Place in Westminster is a dead end road with a Westminster car park at the end. Westminster has a No Right Turn restriction from Gerrard Place into Shaftesbury Avenue, but installed only one sign which is often obscured. Their Smart cars have issued thousands of tickets despite protests from drivers regarding the lack of signage. Rather than help motorists comply by removing a misleading white arrow on the road and installing an additional sign, Westminster continued to reject protests from motorists and continued to issue thousands of PCNs. They even issued some PCNs for a completely different contravention which did not exist at this location. Westminster were not legally allowed to issue the PCNs in the first place, but has refused to refund the motorists.
4. The income generated by Camden’s cameras that collected more than £100,000 in 2007-08 was as follows:

Location	Revenue generated (£)	Comments
Southampton Row	1,111,841	
Southampton Row	340,964	
Grafton Road	517,980	(see below)
Kentish Town Road	269,937	the cameras have damaged shopping
Kentish Town Road	177,604	
Haverstock Hill	177,781	by no conceivable stretch of the imagination
Heath Street	170,501	is Hampstead a traffic problem area – CEOs
Hampstead High Street	138,793	regularly patrol the streets
Drake Street	395,042	
Lambs Conduit Street	257,029	a money trap
Bloomsbury Street	241,674	
Clerkenwell Road	228,558	
Byng Place	211,265	an off pitch location where a CEO ticketed LMAG’s Secretary
Kingsway	164,078	
Fortress Road	159,682	
Endell Street	108,034	

In **none** of these locations is enforcement “difficult or sensitive and CEO enforcement is not practical” - **the CCTVs are a cheap method of generating tax revenue.**

- Camden placed retractable bollards in the Grafton Road rat run to stop traffic during certain hours of the day. It claimed – but is unable to provide evidence – that the bollards were vandalized, which given how strong they are is an unlikely story. The council stopped using the bollards and installed a camera which collected £517,000 in 2007-08. Clearly if the objective were to stop motorists it would use bollards – but it prefers collecting money from a road which by no stretch of the imagination could be described as busy
 - Camden operates Smart cars that systematically wait to issue PCNs at flytrap locations. One was parked near St. Pancras Station to catch cars unwittingly entering the car park 50m south. We have been advised by a councillor that it netted about £600,000 in about six months
5. Westminster and Camden are not alone in using CCTV cameras to generate revenue. Neil Bennet reported in the Daily Mail on 18 December 2009 how he received 2 PCNs from one of Wandsworth’s 1300 CCTV cameras when he picked up (22 seconds) and dropped off (14 seconds) a pensioner friend at Clapham Junction when no vehicle or pedestrian was impeded. This camera has issued 6119 PCNs over the last year raising nearly £300,000.
6. Furthermore, councils wrongly penalise motorists who enter yellow box junctions when their exit was initially clear but they become subsequently blocked through no fault of their own. Some such junctions are merely money traps. The case of our Secretary and the yellow box junction at the top of Shaftesbury Avenue cited in para 1 of this **Annex** is but one of many.

¹ Many councils are now (unlike Westminster and Croydon) smart enough to avoid explicit targets. But setting the number of CEOs in a contract and a nod and wink to an enforcement contractor is generally sufficient to get the desired result. The contractor will have in mind an implicit level of tickets/day.

² There are several PATAS cases on this issue.

ANNEX 9 - PRESSURE ON CEOS

1. Enforcement contractors are driven by minimising costs, and this translates directly into pressure on CEOs to issue as many PCNs using both carrots (notably extra overtime) and sticks (dismissal for “under-performance”). A number of CEOs have informed us that:

“The greatest pressure is brought to bear on illegals who are operating in a vulnerable position.” In the first 3 months of probation – comments are made such as: your name is written in pencil and can be removed at any time.”

“The Performance Indicator is 1.6 tickets/hour; issue less and you are in trouble”. In some enforcement companies there is a culture of bullying management.”

“Hotspots favoured for the issuing of PCNs are badly-marked pay and display/residents bays which catch the unwary”. Neither CEOs nor local authorities have an incentive to report and correct defective signs and markings.”

“The hand held computer is open to abuse, tricks of trade in how to issue dodgy PCNs, pressing the button to indicate observation underway prior to finding target vehicle. When you find a target you already have 5 minutes observation on clock and can issue an instant PCN.”

We include in a pdf file a letter purported to come from the CEOs in Westminster to councilors and the media which alleges the pressure they are under.

2. A TV programme **Cutting Edge: Confessions of a Traffic Warden**, Channel 4, on 19 November 2009 brought out the target culture of the enforcement contractor working for Westminster City Council. As one of the CEOs commented “whenever CEOs return to base they just talk about numbers of tickets”. The programme also showed the unpleasant verbal treatment some CEOs receive from some motorists.
3. The Mail Online of 11 February 2010 reported a leaked memo dated November 2009 from Miss Emma Collins, one of NSL’s top managers, to Jeff Myles, in charge of CEOs in Kensington and Chelsea. She wrote “There are still a significant number of people issuing at a rate of below 0.9 [PCNs] per hour”. She lists seven wardens who are not booking enough motorists and asks for the relevant paperwork to be sent to her office, urging: “We should not be uncomfortable about using the disciplinary process”.
4. Bad behaviour is, however, a two way street. The Mirror on 3 October 2009 reported the arrest of two CEOs in Islington “for allegedly breaking a man’s jaw in a fight over a parking ticket. The motorist, 28, was apparently arguing he had a permit for his VW Golf. But shoppers said the wardens would not listen and laid into him”.

ANNEX 10 - THE TRAFFIC ENFORCEMENT CENTRE

1. The Traffic Enforcement Centre (TEC) was created in 1993 as the Parking Enforcement Centre: an administrative centre for local authorities to use electronic means for registering unpaid parking penalties decriminalised under the Road Traffic Act 1991. It was located at Cardiff County Court because there was available space in the building but later moved to Northampton County Court to merge with the County Court Bulk Centre. TEC assumed its current name when its remit was widened to process all road traffic penalties processed in the same way as parking penalties. Although TEC was set up as an administration centre, and expressly not a court (as the Lord Chancellor explained to the House of Lords at its creation), staff there now have delegated judicial functions.
2. An on-going consequence of this evolution is that TEC was created in order to provide a service to local authorities, which it regarded as its 'clients', but it retains this bias even though it now has delegated judicial authority and should act impartially. One indication of this is the limited circulation of its newsletters. In a recent telephone conversation with Bailiff Advice Online, a staff member at TEC specifically referred to local authorities as TEC's clients.
3. Some terminology and procedures at TEC changed under the Traffic Management Act 2004. Not all of these changes are reflected in the guidance given on Her Majesty's Court Service website and documentation used by TEC and, consequently, obsolete terms remains in use. Most notably, Witness Statements replaced Statutory Declarations but they are still referred to as Statutory Declarations almost universally. For ease of reference, this Annex adopts the common usage.
4. This Annex explains not only the operational problems at TEC, and the consequent capacity for injustice, but also the potential for institutionalised abuse by local authorities and bailiff companies.

TEC PROCEDURES AND THEIR DEFICIENCIES

5. When a road traffic penalty remains unpaid, a Charge Certificate or Notice to Owner is served by post on the motorist (strictly, the registered keeper of the vehicle involved). If within 28 days the penalty is neither paid nor formally challenged using the dedicated adjudication procedure, the local authority can register the penalty at TEC. TEC authorises the local authority to issue an Order for Recovery.
6. The local authority serves the Order on the motorist and encloses a blank Statutory Declaration form. If the Statutory Declaration is completed and submitted to TEC within the time limit, the registration and Order are automatically cancelled, allowing the motorist to challenge the penalty using the dedicated adjudication procedure referred to above.
7. A Statutory Declaration can only be submitted on one of four grounds. They are that the motorist:
 - Did not receive the Notice to Owner
 - Made representations to the enforcement authority about the penalty charge but did not receive a rejection

- Appealed to the parking adjudicator but the appeal has not be decided
 - Paid the penalty charge in full
8. If the Order remains in force but unpaid after 21 days, the local authority can ask TEC for authorisation to issue a Warrant of Execution. Although issued by local authorities and executed by Certificated Bailiffs engaged by them, they are County Court Warrants of Execution.
 9. A motorist can submit an application to file a Statutory Declaration 'out of time' – that is, late. This procedure is necessary when the local authority sent all documentation to a wrong or old address but the bailiff company, as part of its 'data cleansing', finds the correct or current address. It follows that the first a motorist learns of the legal proceedings is a visit by a bailiff.
 10. In these cases, the motorist may be a victim of oversight or error but sometimes the motorist will have contributed to this problem by failing to notify DVLA of a new address and/or not having post forwarded to a new address. Whatever the cause of the problem, however, none of the necessary paperwork connected to the penalty or to the subsequent legal proceedings will have been served on the motorist. In such cases, this will be the first opportunity for motorists to challenge a penalty or the subsequent legal proceedings and therefore they should have an undeniable right to have an Out of Time Statutory Declaration accepted by TEC. Unfortunately, this is not the case because of the 'bias' mentioned in paragraph 2.
 11. The application for an Out of Time Statutory Declaration is sent by the motorist to TEC. TEC notifies the local authority of the application by e-mail and the local authority has 19 days in which to respond. This procedure is explained on the HMCS website, as follows:

'There is no prescribed time limit in which you can apply to file the Statutory Declaration out of time. On receipt of an acceptable application the Traffic Enforcement Centre will notify the Local Authority concerned and give them 19 working days to either accept or reject the application.'

'If the Local Authority accepts the application it will be treated as an in time Statutory Declaration and the Court registration will be revoked (cancelled). The matter is referred back to the Local Authority to decide what action they wish to take next.'

'If the Local Authority rejects the application, it will be referred to a senior officer of the Court at the TEC. This is for an impartial decision on whether the application should be granted or refused. Both parties will be informed of the result.'

It should be noted from the above that 19 working days is effectively one month.

12. As TEC sends a copy of the application to the local authority by post, and as this may not arrive until a fortnight or longer, the local authority has very limited time in which to consider merit of the motorist's application. As a consequence, many local authorities automatically reject applications and submit generic responses that set out their understanding of the history of the penalty and legal proceedings but do not address the motorist's reason for making the application:
 - When a local authority accepts the application, TEC will automatically accept it and cancel the registration, Order for Recovery and Warrant of Execution.

- Where the local authority rejects the application, a member of staff at TEC has delegated judicial authority to accept or reject it. *It is the experience of many that where this happens, the staff member at TEC will not exercise discretion or act impartially but automatically reject each and every application.*
13. In answer to a Parliamentary Question, the Ministry of Justice has confirmed that no statistics are kept to show how many Out of Time Statutory Declarations rejected by local authorities are accepted by TEC.
 14. Applications for Out of Time Statutory Declarations used to be considered by District Judges at TEC's adjacent courts (that is, originally Cardiff and then Northampton County Court). Since this judicial function has been delegated to TEC staff, they exercise unfettered discretion. In answer to a Parliamentary Question, the Ministry of Justice (MoJ) has confirmed that staff exercising this delegated judicial discretion are given no guidance.
 15. If the staff member at TEC rejects an Out of Time Statutory Declaration, the motorist may file an N244 application, which is a *de facto* appeal from the rejection. The case is transferred to the motorist's local County Court, where he or she will attend before a District Judge. If the District Judge accepts the Out of Time Statutory Declaration, the Warrant, Order and registration are cancelled
 16. In September 2008, the MoJ imposed a fee of £75 for filing an N244. Where a District Judge accepts the application, *there is no basis on which the fee can be refunded*. Many motorists are unable to afford this fee, particularly if they have already paid significant sums to a bailiff and/or been deprived of the vehicle and put to the expense of using public transport. *In consequence of the fee, there has been a 90% reduction in N244 applications.*
 17. It seems that often local authorities will not attend N244 hearings or submit papers to oppose the application. This is done for cost considerations alone, in the knowledge that if the District Judge accepts the Out of Time Statutory Declaration no costs order will be made against the local authority.
 18. It has been known for a local authority to instruct its bailiff company to represent the authority at an N244 hearing. At least one bailiff company publicly advertises this service. It is unclear on what basis a bailiff company can represent its local authority client at a court hearing but, in any event, it creates a lack of objectivity and conflict of interest for the bailiff company.

NEW ADDRESSES

19. An important issue that is repeatedly, if not routinely, overlooked by both local authorities and their bailiffs is the appropriate action necessary when a new address is found for the motorist. As stated above, this is usually a result of 'data cleansing' by bailiff companies.
20. The Department for Transport has issued Operational Guidance that is clear about what should happen but both local authorities and bailiff companies are casual about compliance. The Guidance states:

'10.70 ...If the name or address on the county court order Warrant was incorrect the name or address on the Notice to Owner and the Charge Certificate may also have been incorrect, and neither have been served on the motorist. If the Notice to Owner and/or the Charge Certificate were never served the Warrant of Execution should not be served. A Notice to Owner (or Charge Certificate) should be served to the name or the address established by the bailiff.

'10.71 If the Notice to Owner and the Charge Certificate were served, the order should be reserved...'

21. To comply effectively with this Guidance, a bailiff company should return to its local authority client *each and every* Warrant where it finds a new address. Only if the local authority is certain that that paperwork relating to the penalty and the subsequent legal documents were all served on the motorist at the correct address, *and that the motorist's changed address subsequently*, should enforcement continue: these exceptions will be very rare.

OMITTED DOCUMENTATION

22. Allegorical evidence indicates a steady increase in documentation not being sent to motorists in accordance with the legal procedures and/or the procedural guidance:
 - When informal and formal representations made against penalties are rejected, often no further documentation is sent to motorists. It is as if the procedure that is suspended while the representation is considered is not wholly resumed and therefore no Notice to Owner or Charge Certificate is sent and no Order for Recovery after the penalty is registered at TEC. *From the motorists' perspective, it as if the case goes from the rejection of a representation to bailiff enforcement in a single step: there is no opportunity for the motorist to use the formal appeal procedure or to file a Statutory Declaration*
 - When Orders for Recovery are sent, blank Statutory Declaration forms are not enclosed and therefore motorists are put to considerable trouble finding out the correct procedure to challenge the legal proceedings and to do so within the time permitted
23. These and similar problems may be due to simple software problems, or because local authorities are cutting corners in order to reduce costs. But some observers believe that they are more likely a consequence of outsourcing, especially to bailiff companies with a vested commercial interest in seeing as many cases proceed to enforcement as quickly as possible. This potential for abuse is explored further, below.

POTENTIAL ABUSE

24. The operational problems at TEC facilitate the potential for abuse by local authorities and bailiff companies. The Department for Transport Guidance states the following:

'11.18 Many enforcement authorities contract out on-street and car park enforcement and the consideration of informal representations. Enforcement authorities should not contract out the consideration of formal representations. Enforcement authorities

remain responsible for the whole process, whether they contract out part of it or not, and should ensure that a sufficient number of suitably trained and authorised officers are available to decide representations on their merits in a timely and professional manner.'

'11.19 Where CPE on-street and car park enforcement and associated operations are done by in-house staff, there should be a clear separation between the staff that decide on the issuing and processing of PCNs and the staff that decide on representations. This is particularly important for cases referred back by the adjudicators. It ensures that decisions are seen to be impartial'

25. Contrary to this guidance, a number of local authorities outsource these activities to bailiff companies or their affiliates (for example, Westminster City Council to Philips Collection Services). Furthermore, some bailiff companies compete for these services:
- Philips Collection Services confirm in their sales literature for local authorities that, 'We also scan any appeals received and upload them to your Client Web area...' and that they 'Provide a dedicated 24-hour automated telephone line at no cost. The line is answered in your name only...'
 - Equita Ltd advertise that, 'Equita are also able to produce, print and post all manner of documents which include production of bespoke Notice to Owners, (NtO), Charge Certificates, also PE2 & PE3 [application to file out of time statutory declaration and statutory declaration forms, respectively] when appropriate'. Also, 'Assistance with late statutory declarations, completion of statements of truth and where necessary, represent the council at any subsequent hearing'
26. Such arrangements as this are open to abuse:
- It is misleading for staff at bailiff companies to answer the telephone by stating that they are the local authority. This is most deceptive when it creates a false sense of security for callers who complain about the bailiff company, especially where they think their complaint is rejected by a competent third party expected to operate in the public interest
 - Not only do bailiff companies print and dispatch Notices to Owner, Charge Certificates and crucially Warrants of Execution – in effect running the procedure that leads to work for themselves – *they consciously create the illusion of being the local authority*
 - This is a particular problem when bailiff companies respond to Out of Time Statutory Declarations on behalf of their local authority clients, sometimes with no oversight of the procedure. These bailiff companies have a vested financial interest in enforcement continuing uninterrupted

LOSS OF VEHICLES

27. When an Out of Time Statutory Declaration is sent to TEC, all enforcement action is 'frozen' until the acceptance or rejection. If a vehicle has been clamped, it remains clamped; if it has been removed, it remains in the bailiff's pound. *This deprives the motorist of the vehicle for at least one month and usually for very much longer (see paragraph 11, above).* If an N244 application is necessary, the vehicle is effectively out of use for three or four months, at least. This is an unacceptable situation.

28. When an Out of Time Statutory Declaration is accepted after payment has been made to a bailiff, a particular injustice arises. Although the local authority will refund the original penalty charge, few if any will take responsibility for refunding the enforcement fees charged by the bailiff:
- Bailiff companies usually argue that they were acting on a valid Warrant; that they were not responsible for any of the errors that led to its issue; and that the fees are payment for work necessarily done
 - Local authorities, although legally responsible for the errors that led to the issue of the Warrant, often claim that their bailiffs are responsible for refunding fees
 - It is often the case that a motorist will only receive payment only after issuing a County Court claim against the local authority and/or bailiff company. *This situation is unacceptable and there should be a simple and unarguable means of redress.*
29. The perversity of this situation is all the more unjust because bailiffs have to factor into their fees more than just the cost of enforcement against the defaulter named on the Warrant:
- Local authorities expect a free service from their bailiff companies and so it follows that defaulters who pay subsidise the enforcement action taken against all the people who do not pay. Usually these are the people who have developed an expertise evading enforcement, not people who have to deal with penalties that should never have been applied or who are generally law-abiding people who inadvertently contravene or genuinely overlook payment. *As bailiffs expect to be paid in less than 15% of cases, the mark-up in is a considerable burden*
 - After payment by credit card, defaulters can apply for chargeback many months later and a long time after the bailiff company has forwarded payment to the local authority. The credit card company recovers payment direct from the bailiff's client account. Where local authorities refuse to refund the payment to the bailiff company, but expect it to bear the loss as acceptable business risk, this loss much also be factored into the fees charged

SELECTED CASE STUDIES

30. In the past two years, Bailiff Advice Online has assisted approximately 800 motorists with applications to file Out of Time Statutory Declarations and has provided the following case studies in order demonstrate some of the problems described above.

CASE STUDY A

After Mr A received a PCN left on his vehicle, he personally visited the local authority's parking office to hand deliver a letter of appeal. The appeal had his new address. He heard nothing further from the local authority and assumed that his appeal had been accepted and the PCN cancelled.

Nine months later, a bailiff visited Mr A's, demanding over £500 on threat of his car being removed immediately.

When contacted, the company that leased Mr A's car confirmed it had received a copy of the Penalty Charge Notice in December 2008 and had replied in writing to the local authority with Mr A's new address, enclosing a copy of the lease agreement as proof.

Mr A then contacted the local authority, where staff confirmed that they had rejected his appeal but that the rejection had been sent to his previous address. All subsequent legal documentation has also gone to the previous address.

The local authority has repeatedly refused to explain why it continued writing to Mr A's previous address, despite receiving his appeal with the new address and written confirmation of his address from the leasing company.

Mr A contacted Bailiff Advice Online for assistance in completing an Out of Time Statutory Declaration. The application was submitted to TEC and six weeks later TEC replied that the local authority rejected it and a member of staff at TEC had therefore rejected it also. No reasons were given.

Mr A had to pay £75 for an N244 application to have this rejection reconsidered by a District Judge in his local County Court, even though there is clear evidence that the local authority served all documents at a wrong address.

The N244 application has not been decided.

CASE STUDY B

After Ms B received a parking ticket, she appealed. She subsequently telephoned the local authority to confirm receipt of the appeal and to advise the council of her new address. As a precaution, she also asked if she had any other tickets outstanding. Ms B was assured that the appeal had been received, that there was just the one penalty that was 'on hold' (pending the resolution of her appeal) and asked to write to confirm her new address. Two days later, she sent a letter to confirm her new address and enclosed a copy of her driving licence and a utility bill, both with the new address, as proof. She later wrote a further letter to say that if her appeal was rejected she would like to pay the penalty by instalments.

Ms B heard nothing further on the matter and assumed the penalty had been cancelled. Seven months later, her car was taken and when she reported what she assumed was a theft was told by the police that it had been removed by a bailiff enforcing a Warrant of Execution. The bailiff company demanded £1037.49 for its release.

The local authority confirmed that it had rejected her appeal and had offered to let her pay the penalty at a reduced rate but that all correspondence, including the documentation connected with the legal proceedings, had gone to her previous address.

Ms B submitted an application for an Out of Time Statutory Declaration on the basis that she had not received the Penalty Charge Notice, Notice to Owner, Order for Recovery or any other documentation in connection with the penalty and the legal proceedings. The application set out clearly the facts of the matter, including the local authority's admission that it had used an obsolete address.

The local authority rejected the application and a member of staff at TEC rejected it: no reasons have been given. In an unacceptable gesture of supposed good will, the bailiff company offered to reduce the total amount due to £943!

Ms B has lodged an N244 application that is pending.

CASE STUDY C

While a passenger in his car, Mr C's mother cut her hand seriously. Mr C parked outside a chemist and while buying something to treat his mother he was issued with a parking ticket. When the situation was explained to the parking attendant, he replied that it was too late to cancel the ticket but that Mr C should write to the local authority.

Mr C wrote to the local authority asking for the parking ticket to be cancelled. He was asked to provide evidence of his mother's injury and sent a letter from the hospital that confirmed his mother had needed stitches. Mr C then heard nothing from the local authority and assumed the ticket had been cancelled.

Two years and five months later, Mr C received written notice that his appeal had been rejected. He then received no further documentation until contacted by a bailiff a further three months later.

Mr C did not receive a Notice to Owner and was thereby deprived of formally appealing the penalty; he did not receive an Order for Recovery and was thereby deprived of the opportunity to file a Statutory Declaration that would have cancelled the Order and allowed him to use the formal appeal procedure.

His application to file an Out of Time Statutory Declaration was rejected by both the local authority and a member of staff at TEC.

Mr C's N244 application is pending.

ANNEX 11 - THE ISSUE OF JUDGES AWARDING COSTS FOR UNSUCCESSFUL FORM 4 COMPLAINTS

1. The Statutory Regulations regarding the certification of bailiffs are contained within the Distress for Rules 1988, which provides for a debtor to make a formal complaint about the conduct of a bailiff to the court that granted his certificate using a statutory form called a Form 4 (Complaint against a Certificated Bailiff).
2. In July 2009 the Ministry of Justice amended the Distress for Rent Rules 1988 to introduce the much needed online certificated bailiff register enabling a debtor to search for confirmation that a bailiff is certificated and to obtain details of which court granted their certificate. The explanatory notes contained within the Distress for Rent (Amendment) Rules 2009 state that the introduction of an online certificated bailiff register will “*make it easier for members of the public to make complaints about the conduct of certificated bailiffs*” (our italics). The Ministry of Justice have provided no guidance notes for the public on completing a Form 4 Complaint, and in consequence debtors are unaware that by making a Form 4 Complaint they are in fact instigating litigation against the bailiff. Consequently they can find themselves at risk of having substantial costs orders made against them in the event that the District Judge dismisses their complaint at the hearing.
3. It is now commonplace for a bailiff company to instruct solicitors or even barristers to attend court on behalf of the bailiff, and we have had recent reports that judges have imposed costs orders on 4 debtors (for £3,000, £1,875, £1,000 (reduced on appeal from £3,500) and £750) following the dismissal of their Form 4 Complaints.
4. The Ministry of Justice should provide a guidance leaflet on their website to advise the public that if they have a complaint about the conduct of a bailiff they must first write to the bailiff company with a copy to the local authority to allow them the opportunity to address the complaint without the necessity of formal Form 4 Complaint being issued.
5. The Ministry of Justice should also provide guidance to District Judges to advise them that if they are considering imposing costs orders for complaints against bailiffs, they should first consider the conduct of the debtor to ensure that they have directed their complaint to the bailiff company and the local authority before taking action through the courts. Then they should consider the conduct of the bailiff company in addressing the complaint.

ANNEX 12 - UNPLEASANT AND FRAUDULENT BAILIFF CASES

ROBBING THE ELDERLY, DISABLED AND A CHARITY

Case 1

A bailiff robbed a 77 year old widow of £500 due to administrative incompetence by Camden council. She had paid a PCN and the cheque was cashed. At 7.45am on 12 February 2007 a bailiff visited her home asking for £500 for non-payment of the penalty charge. He said that if the money was not paid he was empowered to take goods from her home to that value. The bailiff claimed that a letter would have been sent to her explaining his impending visit. She received no such letter. She was very frightened and distressed, and paid the £500 on her debit card. On 14 February 2007 she sent copies of the original cheque, the bailiffs receipt and a letter requesting a full refund of the £500 to Camden Parking Services by special delivery guaranteeing next day delivery. On 23 February Parking Services claimed it did not have details of the letter. Her daughter took up the matter and made a fuss, and got the money back (A).

Case 2

On 30/10/2007 a widow pensioner was visited by bailiffs acting on behalf of Camden to recover a PCN related to an alleged contravention in West Hampstead in 2006. She signed a Statutory Declaration stating she had not received any paperwork, and sent it to Camden. On 5/12/2007 bailiffs came again, clamped her car, forced entry, and demanded £600. She rang Camden and the officer said the case should have been on hold. She commented "There is no way I can ever take back those two hours of my life. It was utterly humiliating having my car clamped in front of all my neighbours...I cannot believe I was being treated as some sort of amazing criminal for turning the wrong way down a street". The Hampstead and Highgate Express reported (13/12/2007) that "Since the second visit she has been unable to sleep properly". Subsequently she e-mailed LMAG's secretary and commented "The city is turning against its people".

Case 3

Camden issued a PCN on 13 June 2006. The owner of the car telephoned Camden Parking and explained that the car had a blue badge – he has multiple sclerosis - and was advised that the PCN would be dropped. He subsequently received no more notices from Camden. Around the 7 or 8 February 2007 he received an "Auction Notice" from a bailiff company with the address c/o Motability Finance Limited, which clearly indicated that the registered keeper was disabled. He again telephoned Camden Parking, stated that the registered keeper was disabled, and was advised that the Notice was a mistake.

On 27 April 2007 his wife drove him to a hospital and parked in a disabled bay displaying a blue badge. When she returned the car was hemmed in by a van. A bailiff stated that they were collecting a debt to Camden and that if she paid £475 either in cash or with a credit card they would release the vehicle immediately. She said that she had neither cash nor card and would have to go home. The bailiff gave her a Notice of Seizure of Goods and Inventory demanding £575.88.

Her son, briefed by a director of LMAG, went to the car and asked the bailiffs for their warrant of execution which is required by Camden/s bailiff contract. The bailiff replied aggressively that

the Notice of Seizure of Goods and Inventory acted as the warrant of execution. He then asked for evidence that they were bailiffs, to which the bailiff responded that he did not need to show bailiff identification, and that unless the money was paid the vehicle would be removed. He asked for a breakdown of the costs, and was told it was on the Notice of Seizure, which was not correct. His mother rang and paid with a card.

Following the incident the son telephoned Camden Parking and eventually got return of most of the money.

Case 4

TV actress Linda Robson of 'Birds of a Feather' fame reported in the Camden New Journal in November 2009 that she paid a £450 fine to bailiffs, working for Transport for London, on behalf of her stepfather aged 79, who is virtually bed-bound with prostate cancer, over the alleged non-payment of an £8 congestion charge. Ms. Robson commented "When the bailiffs arrived we tried to explain that my stepdad was very ill in bed and the car was hardly used. But you can't appeal to or argue with them. They wanted my mum's furniture. My mum had never seen bailiffs before. Now she's absolutely petrified every time she walks out of the house. I believe there should be some kind of system where people who are extremely elderly or ill are at least given the opportunity to explain their circumstances before the bailiffs are sent in." It was then discovered that the fine had not been registered with TfL. TfL finally admitted that a mistake had been made and were forced to apologise, but only after the case went to Clerkenwell County Court. Ms Hutchinson, who is standing in the town hall elections in 2010, took the case to the court and a judge granted an injunction against the bailiffs. She also managed to win £1,000 back, including the original fine and compensation.

Case 5

The Rye and Battle Observer reported on 15/8/2008 that a 72 year old retired university professor sold his ex-wife's car to a Kent car dealer when they separated and she returned to Thailand. He went to Thailand and returned in January to find several parking tickets had arrived while he was away. He discovered that the new owner had been on a "parking spree" around London before the car was officially transferred from him by the DVLA. Although he made representations to Southwark Council, it continued to enforce. Two burly bailiffs appeared at his house and demanded £560. He called police for advice, and when they arrived the bailiffs made a complaint of assault against him, even though he is a pensioner due for a heart operation.

A spokesman for Southwark Council said: "Southwark Council carried out two separate checks with the DVLA to confirm who was responsible for the vehicle on the date the ticket was issued. One of these checks took place after the previous owner advised us that he had sold the vehicle and was overseas when the ticket was issued. On both occasions, DVLA information confirmed the sale of the vehicle after the ticket was issued. The Council doesn't hold driver registration information - it's sourced from the DVLA - and any discrepancies about this information need to be raised with the DVLA. A vehicle owner has a legal duty to notify the DVLA of any change of ownership."

Case 6

In July 2007 a bailiff took a vehicle belonging to a charity providing health related treatments to children and adults. A trustee contacted the bailiff and was informed that she had to pay about £2441.63 for 4 PCN's issued by Islington Council. The bailiff refused to provide a breakdown of the charges despite three telephone calls from the trustee and refused as well to provide details of the PCN numbers.

She contacted Bailiff Advice Online who advised her to call the bailiff one more time to advise that the charity refuse to make payment unless they know what they are paying for and to advise the bailiff that they had filed Statutory Declarations against some PCNs and needed to know the PCN number to see whether they related to the Statutory Declarations. The bailiff responded by saying that: "Look love, I'm not telling you again, we're not getting anywhere, we are going round in circles. Stop ringing me, do you understand. The car is being sold in 2 days. I don't have any details, if you want your car back I need the long number across your card".

In the evening he provided her with details of 3 Islington parking PCNs and 1 Transport for London congestion charge PCN. All the Islington PCNs had been confirmed as being on hold and should not have been enforced and the TfL PCN was the subject of a late Statutory Declaration and should not have been the subject of bailiff enforcement.

The client made a Form 4 Complaint against the bailiff on the basis that he had attempted to charge multiple charges for each PCN and a date was set at Northampton County Court. Solicitors for the bailiff company attended and apologised to the Court for the absence of their client and asked for an adjournment. The Judge asked the client for her consent but the client stated that the bailiff knew of the importance of the hearing and that unless a good reason was provided, she would not consent to the request for an adjournment. The Judge ordered the solicitor to provide a reason, and after much debating, they were eventually forced by the Judge to confirm that their client had been arrested overnight on a separate matter and was currently being held in custody. No details were provided as to the reason for the bailiffs arrest.

The Judge continued with part of the Form 4 Hearing and confirmed that a bailiff cannot apply multiple charges when pursuing more than one PCN at a time; he can apply just one clamp fee and one removal fee. She also confirmed that the bailiff must provide a Notice of Seizure and a breakdown of fees and stated to the solicitors "You have been before me in this court a number of times on this very same point and if any of your bailiffs continue charging multiple charges I will not hesitate in taking their certificates away from them.....do I make myself clear"?

Case 7

Mr. M is a retired farmer of 72 who has had three hip replacement and one carotid bypass operations in the last two years. He went to the Caribbean for a holiday to recuperate. While away he lent his car to a friend who travelled to London and acquired two PCNs from Transport for London (TfL). On his return in Feb 2008 he missed responding to the PCNs in the statutory timescale, and then submitted an Out of Time Declaration giving details of the driver and his address. The driver submitted his details to the Traffic Enforcement Centre (TEC) confirming that he was the driver of the vehicle.

The TEC declined to accept the declaration. The bailiffs who appeared at Mr. M's door did not comply with the three requirements of the decision issued by Justice Advent in *Anthony Culligan & Defendants v J Simpson and Marstons*, 8/12/06. They did not produce proof that they

were certificated bailiffs; they did not produce a warrant of execution with which to levy distress; they did not produce an itemized account of the total sum required which could be checked against the statutory tariff of charges. All the bailiff produced was the sum due of £346; the correct amount should have been no more than £200.25. Fortunately Mr. M took advice and sent the bailiff off. Not deterred, TfL instructed another bailiff, who did not produce the correct paperwork and threatened to call the police, which a bailiff should only do if he has reason to believe that the defendant will be a threat to him or others. Mr M was still on crutches; clearly he was no threat.

The case was presented to the Deputy Director of Enforcement for TfL at an LMAG meeting, where he said he was appalled at the bailiff's behaviour and asked for a copy of the paperwork left by the bailiff and a statement of events, which was duly done. TfL have replied and said that under Data Protection Legislation, they are not prepared to discuss the case. Mr M is now instructing solicitors to issue proceedings against TfL for the money paid, the excess costs involved and restitution.

Case 8

The Ministry of Justice have contracted with 4 bailiff companies to pursue unpaid magistrate court fines on behalf of Her Majesty's Court Service. These are typically for using a TV without a valid licence, unpaid speeding fines or using a mobile telephone while driving. During 2009-10 approximately 700,000 such Warrants will be passed to bailiffs with the vast majority being Distress Warrants.

On 9 June 2009 a bailiff came to Mrs. X's house for an unpaid fine by her son of £45 and a bailiff fee of £225. Her son suffers from severe panic attacks and cannot talk to strangers without stuttering. Allegedly her son had committed an offence by walking on the hard shoulder of the M62 at 4.30 in the morning. As her son rarely ever goes out this would have been impossible but the bailiff refused to listen to her explanation and said that she had to "sort it out with a court"

She explained to the bailiff that her son was on benefits and he then asked if she could pay the fine. She advised the bailiff that she was also in receipt of benefits and that she had recently come out of hospital and could not stand at the door because she had large ulcers on her feet after she caught MRSA in hospital.

The bailiff refused to leave, and the mother was forced to sit on the hall floor to prove her injuries to the bailiff. With this, the bailiff said that unless the mother could provide receipts for all items in her house he could assume that they belonged to her unemployed son, and that if the debt was not paid he would be removing all of the goods. The bailiff said that he no alternative other than to call a removal vehicle to empty her house. Her neighbour who had witnessed this incident offered to lend her the money so that she could pay this debt on behalf of her son.

The following day Mrs. X went to court with her son, and filed a Statutory Declaration which was accepted by the Court thereby cancelling the fine. The Magistrates Court refunded the amount of the fine of £45 and advised Mrs. X that it was the responsibility of the bailiff company to repay the bailiffs fees of £225. They replied that they had acted legally and would not refund the fees, and they considered the case closed.

Shortly after this Mrs. Harding, who runs the Bailiff Advice Online website, wrote to the Ministry of Justice for clarification of who is responsible for bailiff fees when a Statutory Declaration has

been accepted by the Magistrates Court. Over a period of 4 months Mrs. Harding pursued the Ministry of Justice for a response, and finally in January 2010 HMCS confirmed that their legal department has concluded that the bailiff company is responsible for repayment of fees when a Statutory Declaration has been filed. However, the Ministry of Justice did say that they consider that the number of situations where a Statutory Declaration is made after the bailiff fees have been paid should be minimal. Mrs. Harding reminded the Ministry of Justice that the Traffic Enforcement Centre issued approx 1.7 million Warrants each year and approx 45,000 “Out of Time” Statutory Declarations had been filed! (A).

FABRICATING FRAUDULENTLY HIGH CHARGES

Case 9

Oliver Mishcon, a practicing barrister, challenged the fees of a bailiff company. The Judge was scathing about the way in which the company made numerous charges for items that it could not account for and which were not permitted under the relevant regulations. The case was a landmark decision which finally clarified beyond all doubt the maximum fee levels permitted when two or more warrants are executed at the same time. The bailiffs had claimed approximately £1500 and Mishcon successfully persuaded the court that the correct amount was £104. The judge awarded Mishcon his costs on the “indemnity basis”, which is usually only awarded as a punitive measure where the paying party has conducted itself in an unreasonable or unscrupulous manner.

Case 10

Richard Chaumeton is a builder. On 15 September 2006 a bailiff clamped his van at 06.40hrs. The bailiff (White) had no warrant of execution and could not tell him how much he owed until the office opened at 07.30. When the office opened he was advised he owed £2,453.55 for 5 Transport for London PCNs, but no breakdown was provided. Chaumeton calculated that he was being overcharged by £1,339.35 supposing the PCNs were valid, which he disputed. Following a conversation with a manager in the office the clamp was removed and no money was paid. Subsequently Chaumeton made a Form 4 Complaint against the bailiff. In the course of the hearing the judge ascertained that:

- the bailiff attended without a warrant;
- the bailiff claimed that the office manager (Langley) set the fee;
- the office manager claimed the fee was “done at high level management”;
- the fee charged 5 times for a tow truck.

The judge commented “There are a number of matters that trouble me. For example, we finally dragged out of Mr. Langley what the enforcement charge of £225 was. That was the attendance for the bailiff and the cost of the tow truck. And then that is multiplied by 5. The bailiff did not attend five times and there were not five tow trucks”.

The upshot was that Chaumeton paid nothing, but because the bailiff was following instructions, his certificate was renewed. The same bailiff was subsequently involved in cases 3 and 6.

Case 11

Anthony Culligan went to court after bailiffs arrived at his house on 10 March 2008 at 6am (although the bailiff contact with Camden prescribes an earliest call of 7am) and clamped his car before knocking at the door and demanding £417.19 from his wife (he was in Australia), threatening to tow the car and charge more. The £417.19 consisted of the money due on a PCN of £125 and bailiff fees totalling £249.34 (with some fanfare Camden set a maximum fee of £250):

- The first letter is £11.20
- The first visit is £38.14
- The clamp (which they can apply at any time after the letter, according to the contract) £100
- Attendance to Remove (which can be applied as soon as they 'decide' to call a truck) £100

No pre-action letter was received; the fee was carefully constructed to comply with Camden's requirement in the contract that the bailiff fee should not exceed £250 before VAT. Following unsatisfactory correspondence with Camden, which tried to cover its back and the back of the bailiff, Culligan went to court. District Judge Advent ruled that Culligan should have his money back, and that the costs and the fees for clamping and attendance to remove were not only not justified as "reasonable" (charges which are not defined in the statutory fee scale have to be cost reasonable), but they were illegal.

Case 12

Franklin Price, LMAG's lawyer, has had two run-ins with a bailiff company:

- On 4/2/2006 Franklin Price discovered that his car had been clamped by a bailiff and a Notice of Seizure had been attached relating to two Camden PCNs with an alleged debt outstanding of £310 that had been addressed to Ms. Lisa Hyams at another address. She had not received the PCNs because she had married Price and moved into his home. The Notice demanded payment of £825.68 to release the car, with £515.68 representing the bailiff's fees; a proper explanation of the fees was not provided. Price called the bailiff, who appeared, released the car, but said that he knew Hyams was married to Price and he would return to execute the warrant. Price explained that it was his car, his home, and the goods in it were his not Hyams. The bailiff rang her and said he would return and take goods because "as Mr. Price's wife under Matrimonial Law you own half of the furniture and contents which I can take...". This is legally incorrect. Price faxed the bailiff seeking written confirmation that he would not come back to his home for the time being. When he did not receive it, he applied to the court for an injunction to prevent the bailiff from attempting to execute the warrant of execution. The court issued an injunction and awarded costs of £770.
- On 18/8/2006 he discovered that without notice a bailiff clamped his car. When the bailiff came to his home he claimed a charge of £571 (which was not detailed either when the bailiff appeared or subsequently despite request from Price's law firm) for what he first stated was a Camden PCN, but subsequently corrected to a TfL PCN which had been sent to an incorrect address, nor did he have a detailing of the charges. Subsequently Price sought a breakdown of the charges, which was not provided by the bailiff company's office. Price

sought a detailed assessment of the charge together with the costs. The court upheld the claim, issued an injunction, and awarded costs.

Although he paid £138 on receipt of a pre-enforcement letter, a bailiff sent a bailiff to levy distress on a car and demanded £341. The bailiff claimed that the £138 was received late, and he would have to pay the whole amount. Then followed an administrative shambles by LB Havering which ended with an official of Her Majesty's Court Services commenting on the council's "misinformation and indecisiveness...The defendant has been dealt with in a way that I would personally deem unacceptable from any council". The motorist has now recovered his money, and a court gave an order in his favour .

Case 13

Simon Aldridge is a businessman who has had two run ins with bailiffs over Transport for London PCNs. In the first the bailiffs attempted to charge a fee of £704.11 to collect 4 Penalty Charge Notices, basing its fee on claims that it had sent or delivered various bailiff letters and visited his house on several occasions but failed to collect because he was not in. (Under the statutory scale fee such unsuccessful visits increase the fee a bailiff can charge). On 31 May 2005 two bailiffs called at his home. They demanded £450.85 in settlement of one PCN and stated that if he did not pay they would remove his car, which would incur £150 further charges. On requesting a copy of the court order he was given a Warrant of Execution on company headed paper. He took the bailiffs to court claiming that he had not received letters and a bailiff had only visited his house once. The judge found "that the defendant did not, in this instance, automatically generate this correspondence, nor did the claimant receive visits from the levy bailiff". He ordered repayment of the bailiff's fee.

The second run in occurred on the morning of 6 October 2006 when a man silently posted Aldridge a letter through his letterbox which purported to be from a certificated bailiff. The letter claimed that he had visited the premises, and had not been successful in collecting the debt. He accosted the person who was delivering the letters. His name was X; he was not a certificated bailiff; he said he was delivering letters as he had been told to do. The company was fabricating bailiff visits by sending a courier round to drop off letters.

Later that day Y, a certificated bailiff, came to his house with incorrect paperwork. He there and then wrote on company paper a (so called) warrant of execution demanding £1,962.84 for 4 PCNs. Aldridge threatened to ring the police. After ringing his office, X wrote another "warrant" for £490.71, saying that 3 of the 4 debts had been cancelled.

X returned the following day and silently posted a letter through the door. On being challenged why he made no effort to call, he replied that he was making sure Aldridge cannot accuse him in court that he has not visited three times. Aldridge asked for proof of authority to collect the debt; X replied he does not have to show any, and that Aldridge would have to ring the office to find out what the matter related to. The following day Aldridge received a pre-enforcement letter relating to the above matter asking for £171.10, which he paid. Although he made a Form 4 complaint it was not accepted because he lost no money.

Case 14

Alex Henney is an international electricity consultant. On 6 July 2005 two bailiffs arrived unannounced and demanded £1060 for a debt to Camden council of £310 for 2 PCNs, and

threatened that if they were not paid they would get a warrant, return, break the lock, and charge another £140. The bailiffs had no warrant (which is required) nor an itemised list of their charges of £750 (which they should have by the government's "National Standards for Enforcement Agents"). They claimed to be "local authority bailiffs" – in fact they were private "certificated bailiffs".

When challenged, the Parking Manager for Camden came up with a schedule of visits that were priced out to "justify" the fee. Separately a request of the bailiff company under the Data Protection Act produced a computer schedule of letters allegedly posted and visits allegedly made when letters were left. The Camden story had 6 phantom visits when letters were allegedly left; the bailiff company's computer record had only 3 phantom visits. While both cannot be right, both can be wrong; the bailiff company could not even lie consistently. The only visit that actually took place was the one on 6 July.

When challenged further to detail the charges, given that the bailiff company's computer record had not recorded some of the phantom visits it had to fill a hole in the charges. So it claimed there was a charge of £260.85 for "attending with a vehicle to remove goods". This phantom vehicle was fabricated to balance the charge with the lower number of visits shown in their computer schedule as compared with the Parking Manager's schedule.

Henney complained to the Local Government Ombudsman (LGO) that the council had been maladministrative in not controlling its agent. On 20 October 2006 the LGO wrote his "provisional views" which stated "The council says it is minded to believe the bailiff company's assurances that letters were left and visits made on the disputed dates. But I am not convinced there are sufficient grounds to be satisfied on this point...I am recommending the council...give you a formal apology; refund the remaining bailiff's charges...".

Case 15

Duncan McGowan is a freelance engineer. On 25 February 2006 he received a notice from a bailiff company demanding £362.46 for a PCN issued by Westminster City Council and stating that his vehicle would be removed immediately if he did not pay. He wrote querying the charge, and received a reply on 1 March which itemised 3 further PCNs and now demanded £977.58. On 7 March he received two further demands for £290.80 each, and on 8 March 2006 a bailiff appeared and demanded £2084.32, which he was unable to explain. McGowan paid under duress. The bailiffs did not comply with the contract it has with Westminster, which among other things prohibits removal of a vehicle on a first visit, and also requires compliance with the National Standards for Enforcement Agents which requires that letters are left on visits and charges are detailed. McGowan issued a summons against the bailiff company in the Small Claims court, and it swiftly repaid £1,426.44 (B)

ILLEGALLY FORCING ENTRY

Case 16

On 28 July 2006 two bailiffs came to Mark Howell's house out of the blue to collect on one Kensington & Chelsea PCN he had appealed against two years earlier but had had no response. They forced their way past him into the house, and would not leave until he paid them £607 in cash.

Following a 2½ hour court hearing in which the bailiff company's evidence of previous visits and correspondence and the bailiffs' evidence of peaceable entry witnessed by the police was demolished, the Judge delivered a formal judgement which lasted 10 minutes, going through the evidence and arguments including several damning phrases. Regarding documents produced by the bailiff company as evidence the Judge stated "The document itself contains contradictions...I do not have to go through them in great detail...but it is quite clear to me that these are not contemporaneous documents and, most importantly, I do not believe for one moment that letters were sent beforehand". Criticising the bailiff's witness statements and evidence he said "I do not believe a word of it". The bailiff lost his certificate and the bond was returned.

Case17

We have a sequence of photographs of a bailiff forcing entry into a house by sticking his foot in the door, then kicking the woman who came to the door. The first case was against the council (which is in Surrey) which issued the PCN. The court ruled on 30/06/2007:

- i. The bailiff used unreasonable force when enforcing a PCN.
- ii. The bailiff called at an unreasonable time 06:11am.
- iii. The Council did not apply due diligence when contending that parking tickets cannot be appealed after enforcement and did not cooperate to put things right when asked.
- iv. The bailiff was not certificated at the time he called to enforce the PCN even though the bailiff company contended in writing that he was certificated.
- v. The court accepted the ticket was invalid as per *Moses -v- London Borough of Barnet*.

Judgment for Claimant: The Defendant pays the claimant the sum of £1,000 within 28 days to include costs and damage to buildings. She subsequently sued the bailiff company for injury and settled with a gagging order.

Case 18

In November 2007 the Croydon Guardian reported that a bailiff who forced their way into a Croydon family's home when they were asleep early morning had his licence revoked. The bailiff was looking for the previous residents who had failed to pay a £50 parking fine issued by Croydon council. They unplugged electrical appliances and threatened to take them away, despite being told repeatedly that the people they were looking for had gone. It was only when the police were called the men left the house. The family was awarded £2,000 compensation.

COLLUSION BY THE POLICE WITH BAILIFFS

Case 19

Shortly after midnight on 7 February 2009 Mr. Locke, a taxi driver for 40 years, was stopped by police in Charing Cross Road. He was told he had been stopped because his vehicle number plate had been identified on an ANPR equipped vehicle as having an unpaid parking ticket with Westminster. The police officer then introduced a bailiff, and provided Mr Locke with a Form

5090X which is a Stop and Search Document, with the Warrant Number of 51 47 51. It states that the Team Unit is ORB BOCU and at the bottom of this form against the outcome code it states: "Bailiff Dealing". The police officer highlighted on the form that the "Stop Code" is "H" stating the reason as terrorism with the "Outcome" Code is "S", again for terrorism.

The bailiff advised Mr Locke that he required an immediate payment of £660 and if this payment was not made immediately an additional charge of £230 would be applied to cover the removal of his vehicle to the pound. Mr Locke had five passengers in his vehicle, and they had to find alternative means of getting to their destination.

Mr Locke did not have sufficient funds to pay the fee and he was then asked to hand his keys to the bailiff and given until 5am to return with £660 to avoid his taxi being removed. Mr Locke had to pay £75 for a taxi to take him to his home in Hertfordshire to get the money. He returned to London by 5am only to find that his vehicle had been removed. He went to Charing Cross Police Station, but it had no knowledge of the whereabouts of his vehicle. He was not able to get his vehicle released from the pound in Park Royal until later that afternoon after paying the bailiff £949.16. In addition he paid taxi fares and lost several hours working time.

Mr Locke's vehicle was clearly a "tool of his trade" which the Statutory Regulations have ruled are exempt from seizure. The police stopped Mr Locke's vehicle to assist a bailiff illegally seizing an "exempt vehicle" to recover an unpaid civil debt.

Case 20

A man purporting to be a bailiff appeared without any documentation. The police assisted him to obtain entry. The company got £1,359 off the person's mother by misleading her that she had to pay her son's debt. The bailiff was not certificated.

Case 21

On 21 May 2009 a bailiff came to Mr. Y's house and told him that he wanted payment of a fine of £75 that was issued against his son together with bailiff fees of £300. Mr. Y said his son was away at University and that the fine had already been paid to court 3 months ago. The bailiff said that unless he was paid he would take the man's car, which he clamped. Notwithstanding being shown a copy of the car registration document; the man's mortgage statement; and his passport, the bailiff kept repeating that unless he was paid £375 he was taking the car. The police were called and they said that because a Distress Warrant had been issued by the court they could do nothing. The father argued that the bailiff cannot take his car to settle his son's debt and that the bailiff must ring the court who would confirm that the debt had been paid. Instead, the bailiff called a tow truck. The father tried to stop his car being taken and was arrested and taken to the police station. He was unable to work for a further two weeks because his hand had been injured when the police had tried to put handcuffs on him.

He contacted Wimbledon Magistrates Court, who confirmed that the debt had been paid and that the bailiff should not have been to his premises, and the Court would advise the bailiff company to return his vehicle. When the car was returned it was found to have multiple scratches and a large dent. A complaint has been made to the Contracts Manager and is currently being investigated.

Case 22

Mr. X, a bailiff working for a large enforcement company, held a valid bailiff's certificate that was due to expire at the end of October 2008. He was aware that a Form 4 Complaint had been made against him which was due to be heard at the end of September 2008 in the court where his certificate had originally been granted. His certificate was cancelled because of "his misbehaviour in carrying out his duties in levying distress".

Six weeks before this hearing this bailiff applied to a different court for a renewal of his certificate and a hearing date was set for the end of October. As required, his renewal application was supported by two references one of which was apparently from his employer. He failed to inform the court that the certificate which he was applying to "renew" had been cancelled 4 weeks earlier, and the court granted him a new bailiff certificate. It appears that he resumed working for the same enforcement company.

A member of the public contacted Bailiff Advice Online after a bailiff had levied against a neighbour's car in connection with a unpaid council tax. The bailiff refused to provide his name to the debtor so she called his company who were able to assist her with a name. The debtor searched the online bailiff register and was surprised to see that it recorded details of Mr. X holding a certificate that had been granted to him at a different court; the employer's details were identical. A letter was sent to the bailiff company requesting further details on the bailiff's identity but they responded to say that: "we need at least 90 days to compile a response".

Subsequently, a further complaint was made to the Court about this bailiff and he was summonsed to Court where he claimed that he had not worked as a bailiff since September 2008. The judge ordered that the bailiff certificate granted to him October 2008 be declared void.

The judge was highly critical of the references that had been provided by the director, which he stated were "not just incorrect but deliberately false", and directed that Her Majesty's Court Service send a copy of the judgment and all relevant correspondence to the Crown Prosecution Service to consider proceedings for contempt against the Director. He allowed either party 21 days to appeal to the High Court. Bailiff Advice Online contacted the Ministry of Justice to enquire whether an appeal has been made, but they responded to say that they could not discuss the matter. An e-mail was sent to the solicitor representing the company, and they responded in January 2010 to advise that they are not aware of whether an appeal was made or not.

ANNEX 13 - SLOVENLY ADMINISTRATION

1. The increasing harassment of motorists has led some people (including ourselves) to scrutinise more closely the legality of council's parking and traffic management enforcement activities. We find:

- The DfT's Operational Guidance states (para 8.35) "Authorities should not issue PCNs when traffic signs or road markings are incorrect, missing, or not in accordance with the TRO. If a representation against a PCN shows that a traffic sign or road marking was defective, the authority should accept the representation...An authority may be acting unlawfully...if it continues to issue PCNs that it knows are unenforceable". Many of the lines and signs are not compliant with the Traffic Signs Regulations and General Directions 2002, which prescribes precisely how parking bays, yellow box junctions, controlled parking zones must be laid out and signed. For example:-
 - * one survey of 200 parking bays in Camden found that only 4 were compliant with TSRGD, while in a second survey there were 815 non-compliant bays, about two thirds of the total¹. Notwithstanding his written profession of concern to one of our members that the council's parking bays be compliant, the bays outside the mansion block where the leader of the council had lived were not compliant;
 - * Sunderland applied for decriminalised parking enforcement (DPE) powers in 2002 and reassured the Department for Transport that "all the lines, signs and Traffic Regulation Orders would be compliant". Based on this reassurance, the Secretary of State granted the council DPE powers on 3 February 2003. Following a series of accusations, an internal investigation was initiated in 2005 by the council titled "DPE: Post Implementation Review". The report revealed massive failings in the implementation and operation of the parking regime. The Exceptions Report prepared by consultants detailed a list of errors which were required to be corrected prior to DPE, but had not been acted upon. The 377 'listings' included missing Traffic Regulation Orders, and each listing contained numerous physical errors; very few of the potential errors identified were addressed before the implementation of the DPE scheme. By August 2005 (when a Post Implementation Review was commenced) approximately 45% of the errors were still outstanding, thereby conflicting with the reassurance given to the Secretary of State. In effect many of the PCNs issued were not valid.
- The Secretary of State's Statutory Guidance states at para. 32:

"It is particularly important to check that the [parking] policies are properly underpinned by TROs that are valid, up-to-date and properly indicated with traffic signs and road markings. Flawed orders may be unenforceable."

Some of the traffic orders are a shambles:

- * Westminster operate Controlled Zones in all areas of the borough. Their signage is extremely poor and in some zones completely nonexistent. Westminster have been advised of this since 2003 in letters from the Department for Transport, and from one of our members. Finally, in the autumn of 2008, and after adjourning a hearing on two occasions for Westminster to provide evidence, a parking adjudicator decided to see for himself what Controlled Zone signs were installed in Westminster Zone F3, which covers an area north of Oxford Street. He did not find one of the

legally required Controlled Zone signs and ruled the signage unlawful. **Despite this decision, Westminster issued up to a further 20,000 tickets before the new and correct signage was installed several months later**

- * Westminster created a 'Restricted Zone' in Lisle Street behind Leicester Square. A Restricted Zone is a concept that does not exist anywhere in statute – it is seemingly a Department for Transport extra legislative invention, designed to be used in special areas where normal parking/loading signage would be inappropriate. Westminster asked for, and got, the necessary authorization from the Secretary of State for the use of non-statutory signing. We asked Westminster how motorists were expected to know what the applicable parking/loading restrictions are as there is no guidance available in The Highway Code or anywhere in statute. After no less than six times of asking, despite being repeatedly referred to Westminster's 'ParkRight' publication which does not mention Restricted Zones, we never received a satisfactory answer
 - PCNs have been invalid for non compliance with the requirements prescribed by TMA 2004 and the prior Road Traffic Act 1991:
 - * A company director won his appeal at PATAS by showing that Westminster's PCNs were invalid because they did not show "date of issue". Lambeth, Tower Hamlets, and Barnet's PCNs were also ruled invalid. Barnet took PATAS to a judicial review, and lost².
 - There are 346 diplomatic parking bays in Westminster, Kensington and Chelsea, Camden, and Islington reserved for foreign embassy staff. Because they are not "standard" bays, councils have to get authorization from the Secretary of State for Transport before installing road signs. The councils have all admitted they did not have authorization, which means their signs did not comply with the law. Consequently every parking fine and car-towing carried out in these unauthorised bays since the 1970s is unenforceable. Westminster has 196 diplomatic parking sites. Mr. Kevin Goad, Westminster's Assistant Director of Parking, said: "If any of our bays were not approved by the Department for Transport in the intervening period this was an oversight that has been corrected". *But Westminster is not keen on accepting "oversight" from motorists who park wrongly by mistake or stay a little over time. Westminster is refusing to refund tickets.*
 - Camden and Sunderland had enforcement contracts with National Car Parks Limited, which was split into two entirely separate companies on 13 March 2007 of which NCP Services Ltd (subsequently renamed NSL) provided the parking enforcement service. Neither council novated the contract properly, indeed Sunderland investigations are still ongoing as to what actually happened with the National Car Parks contract. Camden did not novate the contract in written form until January 2008, but claimed (without evidence) that there had been a 'verbal agreement'. But such an agreement contravened the council's standing orders which limit the value of contracts that can be signed by officers under delegated powers to a fraction of the value of the enforcement contract
2. Councils systematically and enthusiastically issue PCNs for alleged contraventions of their TROs while they themselves are often in contravention of statutory requirements for lawful enforcement. Other than wear of some road markings over time, there is no excuse

for non compliance – the lines and signs should not be rocket science to those professionally involved. **We accept that some of the examples of mistakes such as the incorrect bay markings and the incorrect wording on PCNs could be said to be trivial. But as councils enforce trivialities - what is sauce for the goose is sauce for the gander.**

3. Councils frequently and wrongly disregard the decisions of the adjudicators where their traffic orders or signage have been found defective because their decisions do not create legal precedent. The Transport Select Committee reported at para 205: “Alarming, we heard evidence from the Chief Parking Adjudicator for England and Wales that councils often fail to act on instructions from the Adjudication Service to correct Traffic Regulation Orders, or associated signs and lines, to achieve compliance. She illustrated the point:

We had a recent case with a council where 15 different adjudicators had all found the same bay to be inadequately signed and not only did the council carry on as before, for some extraordinary reason they kept allowing them to come to appeal. In none of the appeal summaries did they say, “By the way, 14 adjudicators have already allowed appeals on this but nevertheless we want to keep going,” and ultimately the whole thing was refused.”

4. An Adjudicator commented of a Traffic Regulation Order in St. Albans that “Many of the provisions of the TRO were out of date and flawed rendering it substantially ineffective almost from the moment it came into operation. The PCN fails to comply with it, at least in relation to the amount of the penalty charge payable. I agree with Mr. Davies and conclude that the PCN based upon this TRO is unenforceable”³.
5. On 20/8/2008 The Huddersfield Daily Examiner reported that the Department for Transport had sent the council a letter in February 2006 stating “The controlled parking zones (CPZ) in Huddersfield and Dewsbury are seriously flawed. This is due to the use of entry signs that do not conform to diagram 663 of the regulations and have not been placed in the correct manner as only one has been used where two are required...There are also uncontrolled lengths of carriageway within CPZs, which is not allowed...A large number of parking bays have been marked incorrectly...double end lines have been used, which is not permitted.” The Examiner had learned that “neither the DfT nor the Local Government Authority have been monitoring the situation or have any duty to make sure the council plays by the rules. In fact, it seems there is no authority monitoring the council’s parking enforcement as the Government Office, the British Parking Association and the National Parking Adjudication Service (NPAS) all said it wasn’t their job. A spokeswoman for the Government Office said: *The Government Office can only advise transport authorities to use the correct signage as required by the regulations. We cannot force them to do so*”.
6. Some councils even disregard judgments of the High Court. Following the Barnet case, 80 councils ignored the Barnet ruling despite being expressly told by the Chief Adjudicator of NPAS/National Penalty Tribunal. London Councils (the association of all London Boroughs) advised “Boroughs may continue to receive payments made against non-compliant PCNs”.
7. The Annual Report of the Traffic Penalty Tribunal for 2007/08 written by the Chief Parking Adjudicator mentioned that she had told councils across the country to make sure their tickets complied with the High Court judgment, but at least 80 had failed to do so. In effect these councils - all outside London - kept issuing invalid PCNs, rather than pulping

and reprinting them. David Millward of the Daily Telegraph (article of 15 June 2009) asked who these councils were. "Answer came there none. I tried the Freedom of Information Act and, much to my surprise, I was told that tribunals were not covered by its provisions. So we are left with a situation where thousands of motorists have been fined illegally but there is no way they can get redress because the adjudication service will not cough up the names of the councils who were breaking the law. Freedom of Information? They are having a laugh".

8. In the Annual Report of the Parking and Traffic Appeals Service for 2007/08 we read:

Loading/unloading; boarding/alighting

VP Coaches v Transport for London (PATAS Case No. 2070215438) is not the first case we have reported where the Authorities' staff apparently did not understand the distinction between the exemptions for loading/unloading and for boarding/alighting. This failure could prejudice the proper consideration of representations. Authorities need to ensure that their staff are adequately trained to enable them to consider representations properly.

¹ Letters from Alex Henney to Deloitte & Touche, District Auditor, 3/9/10 and 31/10/08.

² Op.cit.

³ Roy Rowley, Adjudicator, 23 October 2009.

ANNEX 14 - THE INADEQUATE INDEPENDENCE OF PATAS AND THE NATIONAL PENALTY TRIBUNAL

1. We do not believe that either PATAS or the Traffic Penalty Tribunal are sufficiently independent of the enforcing councils that finance them; we believe that the present relationship with the councils is contrary to European law. Article 6(1) of the European Convention on Human Rights for “the determination of civil rights and obligations” provides that there should be an “independent and impartial tribunal established by law”. Yet (to quote para. 100 of the Statutory Guidance) “Adjudicators are appointed jointly by all the relevant local authorities with parking enforcement powers, with ‘the consent of’ the Lord Chancellor”. Notwithstanding those relatively few occasions on which it does appear act independently, we firmly believe that PATAS is not adequately independent – but is too closely linked with London Councils:-
 - The Chief Adjudicator was de facto reappointed by Mr. Nick Lester, Director – Transport, Environment and Planning of London Councils^{1,2}. The recommendation of a report dated 17 March 2005 by Lester reads “Members are recommended to reappoint the Parking Adjudicator³. The Head of PATAS has advised “that in the past 5 years, 312 parking adjudicators have been reappointed. No recommended appointments have been over-ruled by the Lord Chancellor⁴ – clearly appointments are de-facto made by London Councils
 - London Councils Transport and Environment Committee’s Report to the Secretary of State on the Parking and Traffic Appeals Service 2004/2005, was prepared by Nick Lester. After ritually referring to independence, the report baldly states “London Councils also provides, via PATAS and on behalf of the Greater London Authority, an Adjudication service for motorists appealing to the Road User Charging Adjudicators against congestion charge penalties issued in central London”. The report also stated “London Councils’ external auditors, Price Waterhouse Coopers (PWC), provided a review of PATAS as part of their audit plan for 2004-5”⁵
 - London Councils TEC Executive Sub-Committee sets the budget of PATAS⁶
 - By law PATAS provides its Annual Report to London Councils before publishing it, and the London Councils provides it to the Secretary of State. This is an idiosyncratic responsibility
 - London Councils’ Transport and Environment Committee Report to the Secretary of State on PATAS for 2008/09 states “The Committee is responsible subject to the consent of the Lord Chancellor for the appointment of parking and traffic adjudicators”

2. The **Annex** to the Report of the Commons Select Transport Committee describes a visit of the Transport Committee to PATAS. It stated:

“The Committee was met at the Parking and Traffic Appeals Service Hearing Centre by Nick Lester, Director, Transport of Environment and Planning at London Councils, Martin Wood, the Chief Adjudicator for London, Charlotte Axelson, Head of Parking and Traffic Appeals Service, and Richard Messingham, Public Affairs Officer, London Councils”.

The proposition that the appeals tribunal is independent of the London boroughs and their umbrella organisation London Councils is not tenable to any reasonable observer.

3. The Traffic Penalty Tribunal is solely funded from PCN revenue of 60p/PCN. The Tribunal staff (including the Tribunal Manager, who is responsible for the Tribunal's operation) *and the Chief Parking Adjudicator* are employees of Manchester City Council. The adjudicators are 'remunerated' by Manchester City Council but are not employed by it. The adjudicators are initially appointed by the Joint Committee of Local Authorities with the consent of the Lord Chancellor. The Joint Committee delegated responsibility for appointments to the Chief Adjudicator. As consent has never been refused, the appointments are de facto by the Chief Adjudicator (who is an employee of Manchester City Council). After their initial appointment for a five year term the Chief Adjudicator can reappoint them without reference to the Lord Chancellor⁷.
4. The Annual Report of the Traffic Penalty Tribunal written by the Chief Parking Adjudicator mentioned that she had told councils across the country to make sure their tickets complied with the High Court judgment, but at least 80 had failed to do so. In effect these councils - all outside London - kept issuing invalid PCNs, rather than pulping and reprinting them. David Millward of the Daily Telegraph (article of 15 June 2009) asked who these councils were. "Answer came there none. I tried the Freedom of Information Act and, much to my surprise, I was told that tribunals were not covered by its provisions. So we are left with a situation where thousands of motorists have been fined illegally but there is no way they can get redress because the adjudication service will not cough up the names of the councils who were breaking the law. Freedom of Information? They are having a laugh". The protection of councils by the Chief Adjudicator prima facie indicates bias in their favour.
5. Although tribunal adjudicators are empowered to award costs against councils, they very rarely do so. In 2008/09 PATAS made a mere 16 awards totalling £123.33. Para 1 of **Annex 6** refers to a case where Camden pursued enforcement when a bay was incorrectly marked. Although the council corrected the bay, it continued to contest the PCN to PATAS, which held a hearing. The adjudicator asked the council for the information, which it could not be bothered to provide, and so the adjudicator cancelled the PCN. The appellant asked for costs, received an unsatisfactory response from the adjudicator, so sought a review. The Chief Adjudicator ruled "that it is not appropriate for there to be a review of the costs decision in this case for the following reasons:

As the adjudicator correctly stated, the requirement that the party has acted frivolously, vexatiously or wholly unreasonably is a stiff test. The adjudicator was entitled to take the view that the test had not been satisfied. The decision not to award costs therefore discloses no error of law. In any event, the decision whether to award costs is a matter of discretion for the adjudicator. There is accordingly no basis for overturning the decision".
6. Why should motorists be put to all this trouble by the vexatious behaviour of a council seeking to generate revenue? Surely if PATAS is bothered, if not concerned, that councils are too often slovenly, it should be making an example of them. The Select Committee on Transport commented at para 110:

"We encourage parking adjudicators to be fully alert to their powers to award costs. Where motorists have been unduly inconvenienced by poor council performance some financial award can help to alleviate the sense of injustice. The definition of 'wholly unreasonably' as a criterion for the award of costs should be

interpreted by adjudicators with this in mind, particularly in cases where frustration and inconvenience is caused unnecessarily to innocent parties”.

REFERENCES

¹ At this time London Councils was called the Association of London Government.

² Nick Lester has been the London Council’s Director of Transport, Environment and Planning since the start of 2001. Prior to that he had set up and been Chief Executive of the Transport Committee for London, and previously established the decriminalised parking enforcement regime in London as London Parking Director.
<http://www.alg.gov.uk/doc.asp?doc=6808&cat=1000>

³ http://www.alg.gov.uk/upload/public/Files/1/Item_12_Reappointment_Parking_Adjudicator_17_Mar_05.doc.

⁴ Letter from Miss C. Axelson, Head of PATAS to Alex Henney, 4/8/06.

⁵ http://www.alg.gov.uk/upload/public/attachments/587/Item_13_PATAS_Committee_report_20-10-05.doc

⁶ http://www.alg.gov.uk/upload/public/attachments/613/Item_14_TEC_EXcc_Revenue_Budget_2006-07_17-11-05.doc

⁷ Letter from Caroline Sheppard, Chief Adjudicator for England & Wales, to Appointments Manager, Department for Constitutional Affairs, May 2005.

ANNEX 15 - THE ROLE OF A PARKING INSPECTORATE

1. Currently each council operating civil enforcement is required to provide the following:
 - An annual report to the Secretary of State for Transport that includes the following information:-
 - * Total income and total expenditure on the authority's on-street parking account
 - * The total surplus or deficit on the on-street parking account
 - * The action taken with respect to the surplus or deficit (i.e. amounts transferred to or from the on-street parking account and where transferred to or from). In order that the Secretary of State is able see to which of the purposes provided for in Section 55 Road Traffic Regulation Act 1984 any surplus has been put
 - The council will have to supply The Home Office, Crime and Criminal Justice Unit, with the following information:-
 - * Number of PCNs issued for on-street parking contravention
 - * Number of PCNs paid within 14 days
 - * Number of PCNs paid after 14 days but before service of charge certificate
 - * Number of PCNs paid after charge certificate served
 - * Number of cases going to adjudication
 - * Number of charge certificates registered
 - * Number of cases where no further action is taken (e.g. PCN is written off or is cancelled due to parking attendant error or successful representation).
2. This information would also be sent to the Parking Inspectorate together with the following:
 - The council's current parking policy and the date of approval by councilors
 - The council's current traffic management strategy and the date of approval by councilors
 - A short note of new traffic regulation orders, the reason for making and how they meet the objectives in the policy and strategy
 - The council's traffic enforcement policy
 - The council's parking management performance measures, whether they have been attained during the previous year and observations on performance
 - The number of CEOs employed by the council, whether directly or indirectly, and how this number was achieved
 - The number of PCNs issued by each CEO together with how they were decided
 - In addition to the number of PCNs uncollected a summary of the reasons why there were uncollected
 - The council's debt collection policy
 - A report on the cases sent to TEC

- A report on actions taken by bailiffs on behalf of the council
3. In addition, the Inspectorate should make periodic visits to each Council to examine the following:-
 - The wording of the traffic regulation orders
 - The condition of the traffic signs and road markings and whether or not they meet the requirements of the Traffic Signs and General Directions Regulations 2002 and the various Chapters of the Traffic Signs Manual
 - The parking enforcement specification
 - The activities of the parking manager to ensure that the CEOs work to the specification
 - The appearance of a CEOs and whether they are correctly uniformed
 - The deployment of CEOs and the evaluation of their performance
 - The employment records of CEOs are correctly maintained
 - That the CEOs have been fully trained and are aware of their duties and responsibilities
 - The recording of PCN information at all stages
 - The policies in respect of representations
 - The speed and accuracy with which administrative staff deal with correspondence from the public
 - The debt collection policies and performance
 - Any other aspect of the council's parking management operation worthy of comment
 4. Where the Inspectorate finds deficiencies it may offer a council advice and assistance on how to make improvement, and has the authority to require a council to make changes should that become necessary. If a council fails to make the necessary improvements the Inspectorate has the power to take over the operation, at the council's expense, until the improvements are satisfactorily put in place at which stage the council may take over again.
 5. The Inspectorate should have a duty to examine any complaints of a council's operations made by member public.

Alex Henney, secretary of LMAG, was the lead author of the Manifesto. He has had a varied career including being chief officer of a London Borough and spending time in the civil service. For the last quarter of a century he has been involved in restructuring electric industries in various countries. In 2005, although he had just paid the council, he was robbed by bailiffs from Equita acting for Camden, where he lives. Then council officers fabricated fairy stories to cover their backs and that of Equita. This unpleasant experience, following on several vexatious tickets, stimulated him and others to set up LMAG.

Jim Douglas edited the Manifesto. He now works as a freelance computer programmer, and before that was a stage technician working on productions in the West End and at the National Theatre. In November 2006 Jim received a PCN from Islington Council for stopping in a yellow box junction. The research he conducted while contesting this ticket led him to the conclusion that many councils were unlawfully issuing PCNs at yellow box junctions. Since then he has helped individuals and companies contest parking and moving traffic PCNs and forced many councils (notably Ealing) to remove or modify their yellow box junction road markings.

Neil Herron is a campaigner against injustice. He successfully led the Metric Martyr's Campaign and also led the 'No Campaign' that delivered a referendum defeat for John Prescott's regional assemblies. He is a national expert and consultant to the BBC and commercial operators on parking and related matters. He has worked with the national press and media on a number of exposés into the parking industry including Dispatches, ITV's Tonight and BBC's Inside Out. He is also a regular on TV and Radio news programmes and has been a columnist for London Independent newspapers. A North East ambassador and an entrepreneur specialising in the field of innovative technology and new business start ups. He has also developed and patented the concept of Virtual Parking Solutions using GPS/GPRS telemetry technology for the intelligent management of restricted kerbspace and has been engaged in successful operational trials with Westminster and DHL Tradeteam with solutions being developed for the management of Red Routes for Transport for London.

Since 1997 **Paul Pearson** has been campaigning against unfair and often illegal enforcement of parking restrictions, particularly in Westminster. He is often in the press, and on the television and radio highlighting alleged wrongdoings on the part of councils. He has two websites www.penaltychargenotice.co.uk and www.buslanes.com. He spends a substantial amount of time in writing to and meeting ministers and councillors, attending scrutiny panels and helping individual motorists.

Peter Ashford is a retired Chartered Mechanical Engineer. Formerly a designer of special-purpose machinery and control systems for two international companies and own company, his work included the preparation of detailed technical manuals and information research. He has become incensed in recent years by persistent and blatant dishonesty and fraudulent conduct in council's parking enforcement. Peter is active in successful parking appeals and other involvements to bring it to an end.

Sheila Harding set up Phoenix Consulting in 1990 as a Debt Counsellor specialising in assisting Lloyds of London "names" who had suffered financial losses. In 1997 she and her husband set up a computer training company, which was sold in 2001. She continued working as a debt counsellor and with various voluntary organisations. Realising that there was little information available to the public on bailiff matters, she set up the website Bailiff Advice Online

(www.bailiffadviceonline.co.uk) in 2007. She is a member of the Enforcement Law Reform Group seeking regulation of the bailiff industry, and a member of the London Motorist Action Group.

Chris Leithead held a number of positions of responsibility in the Metropolitan Police most recently within the Headquarters Traffic Branch where he was responsible for developing policy, supervising central traffic functions and co-ordinating operational traffic policing throughout the Metropolitan Police District. He resigned from the police to become a traffic consultant. He has since assisted numerous local authorities in England, Wales, Scotland and the Republic of Ireland to introduce decriminalised parking enforcement and other parking and traffic management schemes.

Richard Bentley has a background of over 20 years of road policing with North Yorkshire Police. For seven years he was a traffic management officer representing the Chief Constable at executive level on all aspects of road safety, signing, regulations collision analysis. He advised on legislation and signing for the Crown Prosecution Service, police officers, the Central Ticket Office, media and the public. His task was to ensure all imposed restrictions were both lawful and enforceable. Since retirement he has worked as an independent consultant, assisting the courts as an accredited expert witness, and has reviewed revisions to legislation and guidance publications for the Department for Transport, and contributed to the Commons Select Committee on Transport.

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