

The Independent Appeals Service (IAS) Annual Report 2020-2021

A REPORT PREPARED PURSUANT TO SCHEDULE 5 OF THE
ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER DISPUTES
(COMPETENT AUTHORITIES AND INFORMATION) REGULATIONS
2015.

His Honour Bryn Holloway
LEAD ADJUDICATOR | THE INDEPENDENT APPEALS SERVICE (IAS)



Independent Appeals Service

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Foreword by the Lead Adjudicator, His Honour Bryn Holloway

Introduction

This is my sixth report as the Lead Adjudicator of the Independent Appeals Service (IAS).

By way of recapitulation, the IAS is a free service for a motorist who wishes to appeal a parking charge administered by a parking operator who is a member of The International Parking Community's Accredited Operator Scheme (AOS).

A motorist can initiate an appeal to the IAS 21 days after the parking charge was issued and *only* after having their appeal rejected by the parking operator's internal appeals service. Provided that a motorist appeals to the IAS within 21 days of having their appeal rejected by a parking operator, an appeal to the IAS will be offered free of charge via the Standard Appeals service.

While Standard Appeals account for the majority of appeals to the IAS, the prescribed timeframes - for both a parking operator's internal appeals service and IAS Standard Appeals - also provide a degree of flexibility where a motorist can demonstrate exceptional circumstances that led them to being unable to meet the prescribed timeframes.

A Non-Standard Appeals service is also available to motorists as a safeguard and procedural safety net where a motorist cannot meet the Standard Appeal's prescribed timeframe for reasons or circumstances that cannot be defined as "exceptional." A detailed account of both IAS appeals pathways will be considered later in this report.

The Parking Act Awaits Its Code of Practice

While we still await the Parking Act's Code of Practice, the IAS continues to build on its position as the UK private parking industry's only independent appeals service mandated by The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015¹ and by the Chartered Trading Standards Institute (CTSI).²

¹ The IAS is also competent to adjudicate on any dispute initiated by consumers against traders (C2B), not just within the ambit of the UK private parking industry.

² <https://www.tradingstandards.uk/commercial-services/adr-approved-bodies/independent-appeals-service>

With such momentous regulatory upheaval to the UK private parking industry on the horizon, it must be accompanied with due care and consideration by government. This includes consulting all industry stakeholders to survey all viewpoints and anticipate all contingencies to avoid laws of unintended consequences.

While the future regulatory framework of the UK private parking industry is still being authored at the time of writing, it is not my role or that of the IAS to speculate on the forthcoming single Code of Practice. Instead, we must remain focused on our duties in hand. To this point, I am pleased that the IAS has continued to maintain high levels of legal competency, consistency, and efficiency at a very economical price.

Whatever path the appellate apparatus of the UK private parking industry will be required to take, with the possibility of a future single appeals service as determined by the Parking (Code of Practice) Act 2019, the IAS must continue its role unabated in the interim.

Indeed, the number of appeals processed by the IAS has remained very consistent over recent years, while the *Relevant Period* covered in this year's report recording a slight increase to 16,769 appeals – as opposed to 16,520 in last year's report.³

Mitigation Must Never Usurp Privity of Contract

The strength of the IAS has been that it has consistently maintained its fidelity to the cannons of common law and has never acted *ultra vires*. This has been achieved by only adjudicating on the lawfulness of a parking charge and assessing the strength and veracity of evidence to prove, or disprove, a breach of the contractual relations between a motorist and a parking operator.

Because of this, it has always been a conscious choice of the IAS to regard the admissibility of mitigation as evidence, as the exclusive domain of a parking operator's own internal appeals process. This, of course, is a motorist's first stage of the appellate process.

It is only right that the IAS should never interfere in the consumer relations between a motorist and a parking operator, above and beyond the adjudication of the lawfulness of a parking charge - should a motorist feel the need to appeal.

For the IAS to accept mitigation, with its inevitable protean propensities, would only serve to undermine confidence and strike at the heart of one of the central pillars of any legal system: namely certainty.⁴

³ The Independent Appeals Service (IAS) Annual Report 2019-2020, p. 11.

⁴ The German legal philosopher Gustav Radbruch (1878-1949) defined the three fundamental pillars of law as: "legal certainty, justice, and purposiveness."

I have written elsewhere⁵ that for the IAS to admit mitigation as evidence would do a great disservice to, and ultimately distort, the juridical hierarchy in England and Wales. As the County Court is the next stage of legal redress for a motorist after exhausting their appellate options with the parking operator and the IAS, any measure by the IAS to admit mitigation would serve to usurp the County Court.

While the Parking (Code of Practice) Act 2019 makes provision for a single appeals service, any such future appellate body must not admit mitigation as evidence, save the inevitable consequences of juridical distortion.

In addition, the potential ramifications and response from the private parking industry will likely manifest itself in two significant ways: 1/ circumvention and 2/ the erosion of confidence.

While no one disputes the regulatory⁶ and moral need for a free independent appeals service for a motorist wanting to contest a parking charge, an appellate body must always be a paragon of legal certainty. Any move to the contrary would come at a much greater cost to the motorist as well as creating a logjam for the court system in England and Wales.

Mitigation may well also create a crisis of confidence for parking operators. The Parking (Code of Practice) Act 2019 was welcomed to raise industry standards and eliminate rogue elements from the industry. Forthcoming regulatory reform will come at great operational upheaval and incur significant costs for parking operators.

There is arguably nothing more corrosive than to place a heavy regulatory burden on an industry and then having an adjudication body succumb to capricious decision making based on mitigation. This would surely incentivise a parking operator to seek a business model to function without access to DVLA data and, by implication, operate outside the ambit of a single Code of Practice. This is hardly what Sir Greg Knight would have envisaged when he introduced his Private Members' bill to the House of Commons on the 17th of July 2017.

Whatever future independent appeals service presents itself, it must uphold the regulatory integrity of the UK private parking industry and only concern itself with questions of law. Apart from in the most exceptional of circumstances,⁷ mitigation must remain the sole preserve of the customer-vendor relationship.

⁵ The Independent Appeals Service (IAS) Annual Report 2019-2020, pp. 5-6.

⁶ *Guidance on Section 56 and Schedule 4 of the Protection of Freedoms Act 2012: Recovery of Unpaid Parking Charges*, 15 Appeals, 15.2, p. 21.

Protection of Freedoms Act 2012, Schedule 4, Section 7(2)(d).

⁷ *2017 IAS Report Annual Activity Report*, p2. During the 2016-2017 *Relevant Period* I issued guidance regarding *de minimis* errors like trivial typographical mistakes when a motorist inputs a 'O' instead of an 'O' for example. I suggested that it was unfair to impose a parking charge in these sorts of scenarios and issued guidance to all IAS adjudicators in support of this view.

Viewed in a broader societal context, maintaining the integrity of contractual relationships is essential for social and economic cohesion. Discretion should be the exclusive domain of contracting parties and not imposed by an adjudication body through accepting mitigation.

New Legal Developments

If a motorist receives a parking charge, the importance of engaging early with the parking operator cannot be overstated for two main reasons: 1/ start the appeals process as early as possible, and 2/ pay the parking charge at a discounted rate if there are no grounds for appeal. A recent County Court decision adds further weight to this point of view.

The case of *Vehicle Control Services v Percy* considered whether it was lawful for a parking operator to impose an additional fee if a parking charge was advanced to the debt recovery stage. Mandated by The International Parking Community (IPC) Code of Practice, the County Court ruled that the addition a debt recovery fee was permissible. Furthermore, Clause 15.3 of The IPC Code of Practice states:

Where a Parking Charge becomes overdue a reasonable sum may be added. This sum must not exceed £60 unless Court Proceedings have been initiated.

The County Court decided that the imposition of this sum did not breach Part 2 of the Consumer Rights Act 2015 which covers unfair contractual terms. Just as in the Supreme Court case of *ParkingEye Limited v Beavis*⁸, a DVLA Accredited Trade Association Code of Practice was deemed to be an effective guardrail. Specifically, the case of *Vehicle Control Services v Percy* further demonstrated that an Accredited Trade Association (ATA) Code of Practice was a highly effective deterrent against potential dissolute debt recovery practices on the part of a parking operator.

There is no doubt that this decision will be welcomed by the parking industry. However, for reasons mentioned earlier, the main lesson for motorists is that they should always engage with a parking operator as early as possible if they receive a parking charge.

⁸ [2015] UKSC 67, 04 Nov 2015.

Afterword

While I am not at liberty to discuss or comment on individual appeals to the IAS, I invite constructive criticism from motorists on how the IAS can provide a better service for the UK motoring public.

While access to the IAS is *gratis* for motorists, there is nothing free about a service that is suboptimal and fails to offer clarity regarding the application of law within the UK private parking industry.

I invite interested parties to contact me directly. Submissions can be made via my email: leadadjudicator@theias.org.uk.

ADR Officials

Appeals to the IAS are considered by independent adjudicators, known as ADR Officials. There are six ADR Officials who adjudicate appeals which are all overseen by a Lead Adjudicator whose role it is to maintain the integrity of the service.

All ADR Officials are qualified solicitors or barristers who are appointed under a contract of self-employment of open duration. Apart the Lead Adjudicator, the identities of IAS ADR Official are not disclosed to the public to uphold security, avoid undue influence, and maintain impartiality.

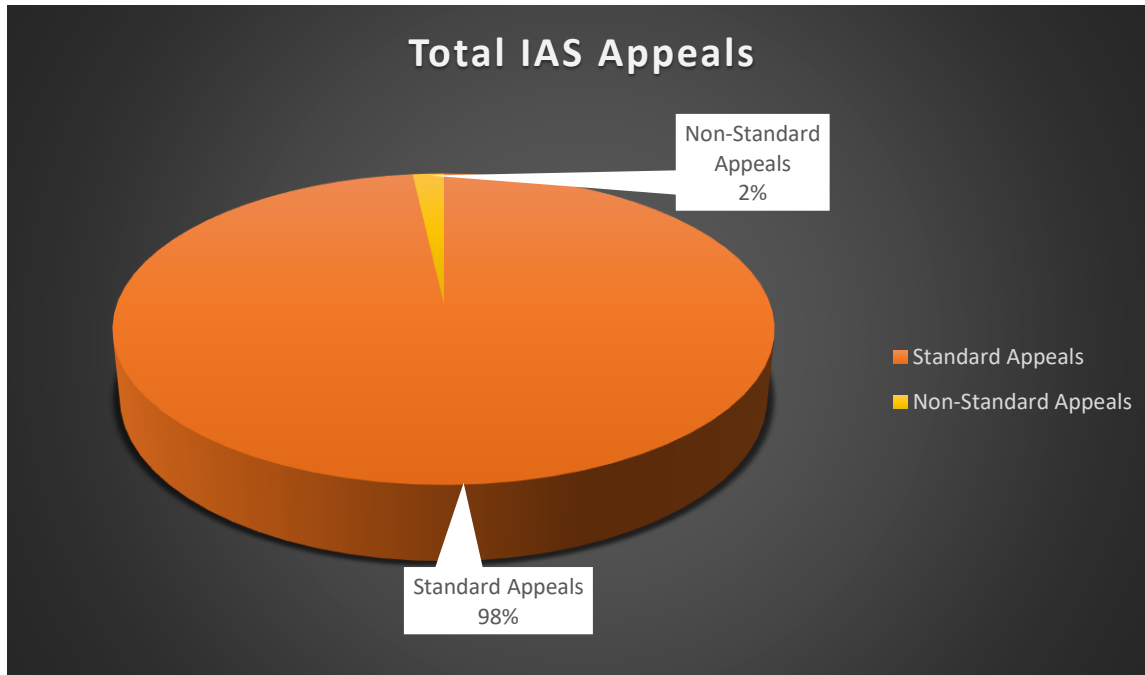
Lead Adjudicator

There is one Lead Adjudicator: His Honour Bryn Holloway, Barrister. The role of the Lead Adjudicator is to oversee independence and to promote consistency.

Adjudicators

There are currently seven adjudicators.

Total IAS Appeals Numbers



The IAS received a higher number of appeals compared with last year. A total of 16,769 appeals were received during between the 1st of October 2020 and the 30th of September 2021 (the *Relevant Period*) by the IAS. This total can be sub-divided into 16,471 Standard Appeals (98.2%) and 298 Non-Standard Appeals (1.8%).

These numbers reflect that most motorists are able to appeal within the allotted timeframe. However, while the Non-Standard Appeal pathway is available, it is encouraging to see that so few motorists need to use it.

The Role of the IAS Within the Private Parking Sector

Parking operators who are members of the IPC's Accredited Operator Scheme (AOS) are required to give the motorist the opportunity to contest a PCN. This is mandated by The IPC's Code of Practice. If the motorist feels that the PCN has not been resolved to their satisfaction, the parking operator needs to provide access to a free and independent appeals process – this role is carried out by the Independent Appeals Service (IAS).

Since the 1st of October 2012, any parking operator who is a member of a DVLA Accredited Trade Association (ATA) must offer the motorist access to an independent free appeals service. For parking operators who are members of the IPC's Accredited Operator Scheme (AOS), this means access to the Independent Appeals Service (IAS).

The IAS is a free and complimentary appeals service to help consumers and IPC AOS members resolve PCN disputes expediently and inexpensively. When a parking operator is not a member of an ATA, and a motorist is unable to resolve a PCN informally, the only further appellate stage is to take the matter to court with the associated financial costs.

When a motorist receives a PCN from an IPC AOS member, they have 21 days to make any representations if they wish to appeal the PCN, otherwise the outstanding charge may be escalated to debt recovery or taken to court. Any PCN issued by an IPC AOS member must fully inform the motorist about how to appeal and what procedure to follow.

The IAS's Legislative Mandate as an Alternative Dispute Resolution (ADR) Body

The Independent Appeals Service (IAS) is an Alternative Dispute Resolution (ADR) body approved by Government under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. The IAS is legally competent to adjudicate on disputes between parking operators and motorists within the UK parking services industry. The IAS is the UK parking industry's only parking appeals service approved under The Regulations.

The IAS is also one of only 29 approved ADR bodies sanctioned by the CTSI in the UK. Other ADR bodies include Ombudsmen Services-The Consumer Ombudsmen, the Federation of Master Builders (FMB) and The Royal Institution of Chartered Surveyors (RICS), to name just a few.

It is important to note that both sets of Alternative Dispute Resolution for Consumer Disputes Regulations are statutory instruments dedicated to the protection of consumer rights through ADR. The IAS is legally competent to adjudicate on any consumer dispute initiated by a consumer against a trader in the UK, not only within the confines of the parking industry.

Parking operators, who are members of The International Parking Community's Accredited Operator Scheme (AOS), are compelled to engage with the IAS in disputes pertaining to Parking Charge Notices (PCNs), and as AOS members, are bound by any decision handed down by the IAS.

The consumer is not automatically bound by any decision of the IAS and is still at liberty to seek redress in court if they see fit. The one exception to this is with a Non-Standard Appeal where a motorist elects to relinquish their rights of redress through the court system.

Oversight of the IAS is provided by the CTSI through the IAS's adherence to the CTSI Code of Conduct. Any malfeasance by the IAS will come under scrutiny from the CTSI's Professional Conduct Committee. The CTSI's Professional Conduct Committee, along with a mandate firmly established by UK legislation, constitutes a more than adequate level of oversight on the operations of the IAS.

The IAS entry on the CTSI website can be accessed here:

<https://www.tradingstandards.uk/commercial-services/adr-approved-bodies/independent-appeals-service>

The IAS Appeals Process

The Standard Appeals Procedure

A motorist may use the Standard Appeals procedure free of charge and the result will not be binding on the motorist if:

1. the motorist appeals to the parking operator that issued the parking charge in accordance with the operator's own internal appeals procedure
2. the motorist registers their appeal to the IAS within 21 days of that appeal being rejected by them

NB: where the motorist appeals to the parking operator, or the IAS, outside of the normal time frame, and where there are exceptional circumstances for doing so, they are still able to use the Standard Appeal procedure.

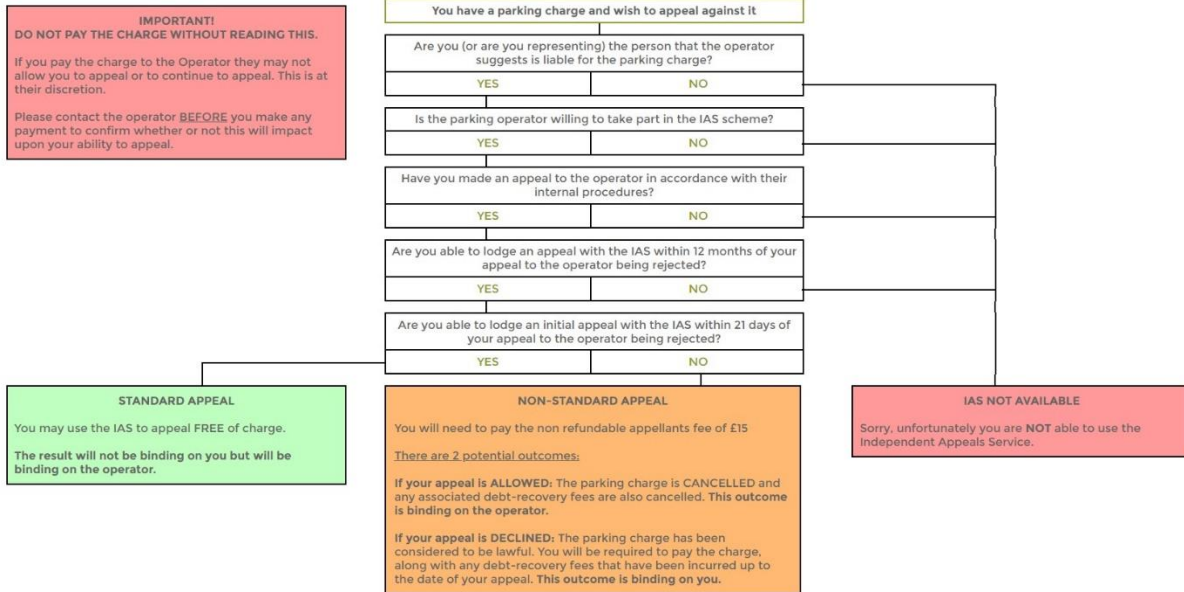
The Non-Standard Appeals Procedure

The motorist may use the Non-Standard Appeals procedure if:

1. they have not, and are not able to, use the Standard Appeals procedure
2. the operator has advised the motorist that they will engage with the Non-Standard Appeals procedure
3. the motorist pays a nominal charge of £15 towards the cost of the appeal, which is non-refundable whether the appeal is successful or not, and
4. the motorist agrees to be bound by the decision of the IAS

Can I Appeal Flow Chart

You may use the following flowchart to check whether you're able to appeal using the Independent Appeals Service.



The IAS will not consider appeals in the following circumstances:

1. Where the motorist has not attempted to resolve the dispute directly with the Parking Operator
2. Where another ADR entity or a court has already begun to deal with the matter
3. Where an appeal is viewed as vexatious
4. Where dealing with such a type of dispute would seriously impair the effective operation of the IAS

Appeals (at all stages) will only be conducted in writing and in the English language.

The Terms of Reference of the Appeals procedure

Both Standard and Non-Standard Appeals apply the same considerations. The Adjudicators only role is to determine whether the charge is lawful or not. Adjudicators will only have regard to the legal principles that apply in any matter and *not* to any other feature.

Features that amount purely to mitigation (i.e. something that amounts to a reason for incurring the charge, but that does not remove your legal liability for it) cannot be considered as a ground to cancel a charge, nor can the simple fact that there has been a breach of a provision of the Code of Conduct that the parking operator may subscribe to.

IAS adjudicators will apply the civil standard of proof: the balance of probabilities. Otherwise, the normal civil rules of evidence do not apply.

Once a motorist has registered an appeal with the IAS, it is for the parking operator to provide a prima facie case that the charge is payable by the motorist. This means that they must provide sufficient information or evidence to show that, on the face of it, the charge is lawful according to the canons of contract law in the UK.

Once a parking operator has uploaded their prima facie case, it is incumbent on the motorist to show that the PCN charge is not lawful by providing evidential proof.

Before a motorist can use the IAS, they must register their details. Once an appeal has been initiated, the motorist cannot withdraw from the process. If the motorist stops engaging with the process, then it will continue without the input that the motorist may otherwise have provided, and it is possible that if the evidence is insufficient the motorist would still have the charge cancelled.

Representation

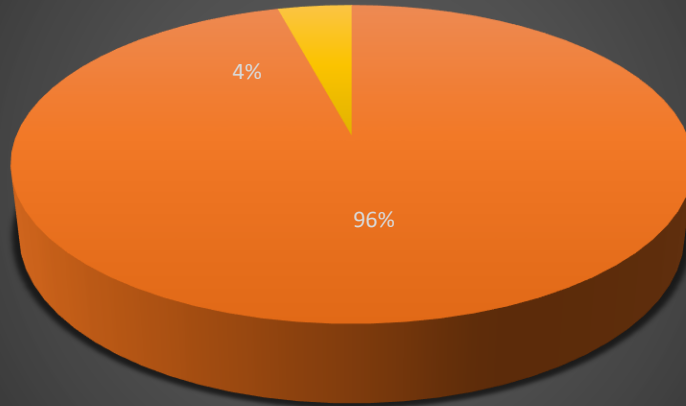
A motorist may appoint a third-party to assist them at any stage of an appeal to the IAS. Where a motorist elects to appoint a representative, the third-party must register their details as a representative, and provide evidence that the motorist has given their consent for them to act on their behalf.

The IAS is very proud to offer this facility to make sure that no one feels marginalised and provides the opportunity to have their appeal heard by the IAS. We are extremely pleased that the option of third-party representation has been so actively embraced by appellants.

730 Standard Appeals (4.3%) and 14 Non-Standard Appeals (4.7%) were adjudicated by the IAS where appellants were represented by a third-party between the 1st of October 2020 and the 30th of September 2021 - the *Relevant Period*.

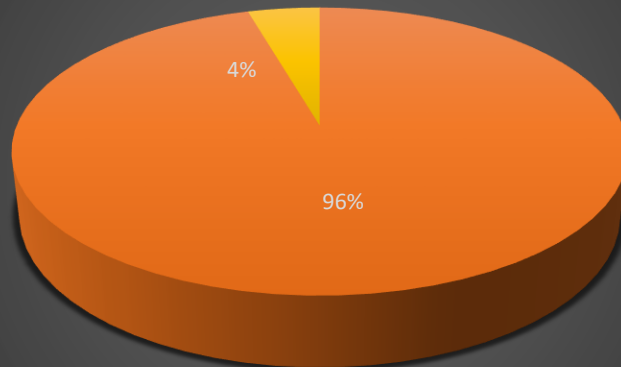
A statistical breakdown of the two different modes of representation is illustrated below. It is interesting to note that there is an overall reduction of motorists requiring third-party representation compared with the last IAS report which recorded 5% and 6% of Standard and Non-Standard Appeals respectively.

Standard Appeals Where The Appellant Was Represented By A Third-Party



■ Total Standard Appeals ■ Standard Appeals Where The Appellant Was Represented By A Third-Party

Non-Standard Appeals Where The Appellant Was Represented By A Third-Party



■ Total Non-Standard Appeals
■ Non-Standard Appeals Where The Appellant Was Represented By A Third-Party

Length of Procedure

Because the parties to an appeal are each given set periods of time within which to upload their case; the overall length of the ADR procedure contains some inherent delay to accommodate this. However, once all the parties to an appeal have submitted their evidence, the IAS endeavours to deal with all appeals within 21 days.

The total maximum time from an initial appeal is as follows:

1. 5 working days for the operator to upload prima facie case
2. 5 working days for the appellant to upload appeal
3. 5 working days for the operator to respond
4. Steps 2 and 3 above are repeated until all evidence has been submitted
5. 21 working days for adjudication

The average completion time for IAS appeals during the *Relevant Period* is laid out below:

Standard Appeals: 9 days

Non-Standard Appeals: 14 days

These results are extremely pleasing with a combined average falling well below the 21-day maximum since Standard Appeals account for 98.2% of all IAS appeals. Non-Standard Appeals account for only 1.8%.

It is important to note that both completion times are a substantial improvement on the figures quoted in last year's report which were 13 days and 25 days for Standard and Non-Standard Appeals respectively.

The reason for this disparity is invariably linked to assorted lacunae associated with the coronavirus lockdowns that were especially disruptive during the 2019-2020 *Relevant Period*.

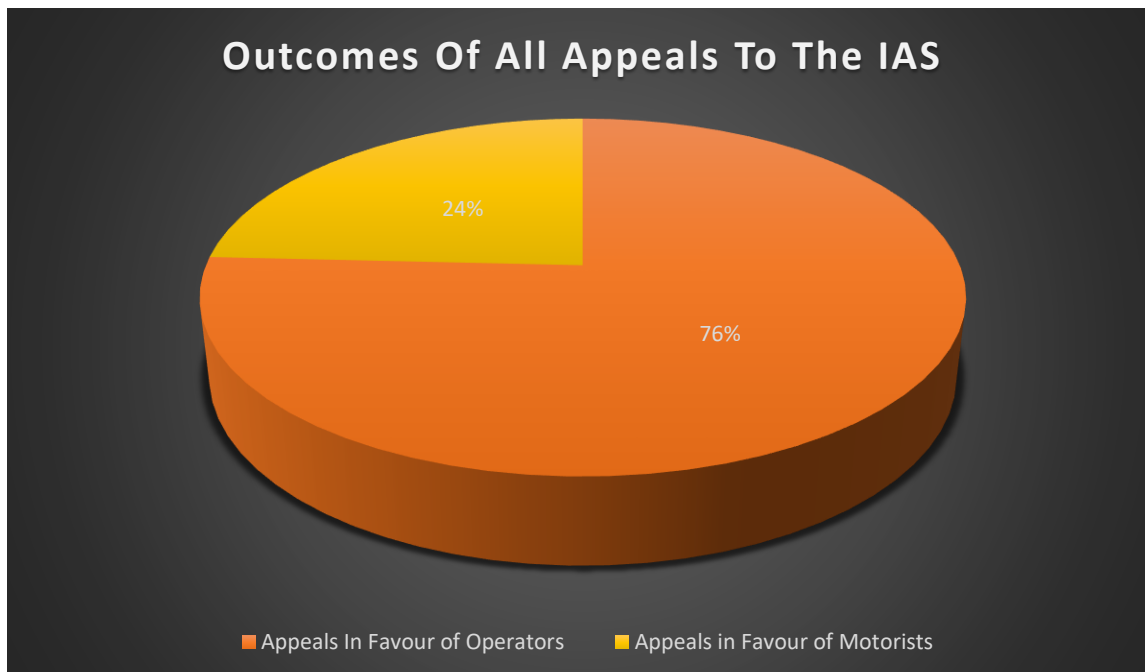
Adjudication Outcomes for Standard and Non-Standard Appeals

3,970 (24%) of all appeals to the IAS were found in favour of the motorist. This is a slightly higher number than last year's report which saw a total of 3,953 appeals decided in favour of the motorist. In contrast, this accounted for 25% in last year's report.

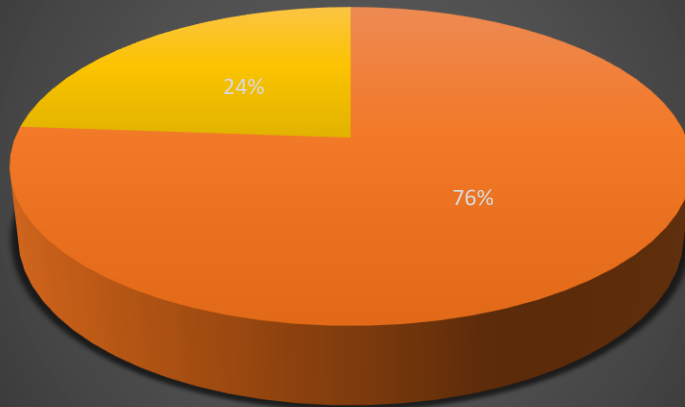
Both report totals discount the sizeable number of parking charges that are voided during a parking operator's internal appeals service where mitigation is admissible and forms part of the client-customer relationship.

Closer analysis reveals that 3,023 (18%) of all appeals to the IAS were conceded by the parking operator. A total of 947 (5.6%) appeals that reached adjudication were found in favour of the motorist in this year's report.

11,899 (71%) of all appeals to the IAS were found in favour of parking operators. This figure does not include the 513 (3%) where the motorist elected to pay the parking charge before their appeal reached adjudication. This year's figure is slightly lower than last year's number of 12,083 (72%) of appeals found in favour of parking operators.

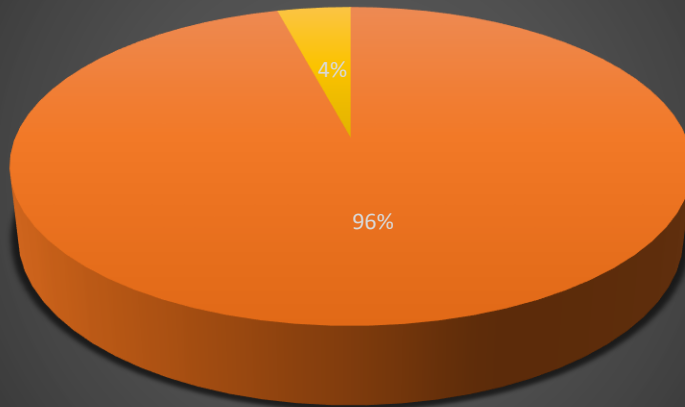


Breakdown Of IAS Appeals In Favour Of The Motorist



■ Total Appeals Conceded By The Operator ■ Total Appeals In Favour Of The Motorist

Breakdown Of IAS Appeals In Favour Of The Parking Operator



■ Total Appeals Found In Favour Of The Parking Operator ■ Total Appeals Conceded By The Motorist

APPENDIX

Schedule 5

The Independent Appeals Service (IAS)

01 October 2020 – 30 September 2021

(a) the number of domestic disputes the ADR entity has received;

No. enquiries received (domestic)	No. enquiries received (cross-border)	No. disputes received (domestic)	No. disputes received (cross-border)	No. disputes accepted (continued to case) (domestic)	No. disputes accepted (continued to case) (cross-border)
4,369	n/a	18,319	n/a	16,769	n/a

(b) the types of complaints to which the domestic disputes and cross-border disputes relate;

All disputes dealt with related to the lawfulness, or otherwise, of the administration of a parking charge on private land and the liability of the Consumer to pay the same.

(c) a description of any systematic or significant problems that occur frequently and lead to disputes between consumers and traders of which the ADR entity has become aware due to its operations as an ADR entity;

There were no problems encountered by the IAS, during the *Relevant Period* that could be described as systemic or significant. Any problems were “one-off” situations, confined to their own facts and dealt with as required.

(d) any recommendations the ADR entity may have as to how the problems referred to in paragraph (c) could be avoided or resolved in future, in order to raise traders’ standards and to facilitate the exchange of information and best practices;

There were no fact patterns which indicated any problems that were systemic. The IAS continues, as it has always done, to look for service improvements and actively

solicits feedback from motorists and parking operators on how we can do things better.

(e) the number of disputes which the ADR entity has refused to deal with, and the percentage share of the grounds set in paragraph 13 of Schedule 3 on which the ADR entity has declined to consider such disputes;

Total no. of disputes rejected	0
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Reason	No. rejected	Percentage of rejected
a) the consumer has not attempted to contact the trader first	Data not available	
b) the dispute was frivolous or vexatious	0	
c) the dispute had been previously considered by another ADR body or the court	0	
d) the value fell below the monetary value	n/a	
e) the consumer did not submit the disputes within the time period specified	1,550	
f) dealing with the dispute would have impaired the operation of the ADR body	0	
g) other (enquired too early, not yet complained to trader, trader not member, advice call etc...)	n/a	

(f) the percentage of alternative dispute resolution procedures which were discontinued for operational reasons and, if known, the reasons for discontinuation;

	No. discontinued	Percentage of discontinued
Discontinued for operational reasons	3,536	21%

Reasons for discontinuation:

3,536 appeals to the IAS were conceded by the parking operator prior to adjudication, while 513 motorists elected to pay the parking charge before their appeal reached adjudication. This makes a combined total of 3,536 (21%).

(g) the average time taken to resolve domestic disputes and cross-border disputes;

	Domestic	Cross-border
Average time taken to resolve disputes (from receipt of complaint)	9 days	n/a
Average time taken to resolve disputes (from 'complete complaint file')	14 days	n/a

Total average time taken to resolve disputes	9 and 14 days respectively
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(h) the rate of compliance, if known, with the outcomes the alternative dispute resolution procedures (amongst your members, or those you provide ADR for)

As any non-compliance with a decision from the IAS by a parking operator would fall under the ambit of The IPC's sanctions charter, the rate of compliance is extremely high.

It is not known how many motorists elect to seek redress in the County Court if they are unhappy with a decision by the IAS.

(i) This point has been removed in amendments on 1 January 2021