

The Independent Appeals Service (IAS) Annual Report 2018-2019

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)

Contents

Foreword.....	p.2
ADR Officials.....	p.5
Appeal Numbers.....	p.6
The Role of the IAS within the Private Parking Sector.....	p.7
The IAS’s Legislative Mandate as an Alternative Dispute Resolution (ADR) Body.....	p.8
The IAS Appeal Process.....	p.9
Adjudication Outcomes for Standard and Non-Standard Appeals.....	p.14
APPENDIX 1: Statutory Questions Pursuant to Schedule 5 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.....	p.17
APPENDIX 2: The Independent Appeals Service (IAS) Biennial Activity Report: 2017-19.....	p.20

Foreword by the Lead Adjudicator, His Honour Bryn Holloway

This is my fourth report as the Lead Adjudicator of the Independent Appeals Service (IAS), the UK private parking industry's only independent appeals service mandated by The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (The Regulations). In addition to providing truly independent free redress in matters pertaining to the issuance of a Parking Charge Notice (PCN), the IAS is also competent to adjudicate on any dispute initiated by consumers against traders (C2B).

The IAS appeals service is free to use if a motorist initiates the appeals procedure within the normal process of receiving a PCN from a parking operator 21 days after the charge was issued and following a failed internal appeal with the operator, they lodge their appeal with the IAS within 21 days of rejection. Both these processes allow for the timeframes to be extended where there are exceptional circumstances for the motorist failing to meet the prescribed timeframes. This is referred to as a Standard Appeal to the IAS and accounts for the vast majority of appeals considered by the IAS.

However, the IAS also offers a Non-Standard Appeal process when a motorist fails to submit an appeal within the prescribed timeframes and where exceptional circumstances do not exist for extending the usual Standard Appeal timeframe. A full description of the IAS appeals procedure will be presented later in this Report.

I welcomed the arrival of the Parking (Code of Practice) Act 2019 which was passed into legislation in March of this year. While the distractions of Brexit have meant that the Parking Act is still awaiting its Code of Practice, we can confirm that the British Standards Institute (BSI) has been appointed by the Ministry of Housing, Communities and Local Government (MCHLG) to oversee and develop the Parking Act's Code of Practice.

While the Parking Act 2019 still awaits its Code of Practice, I was pleased to see the unveiling of The IPC's new Code of Practice at the 2019 IPC Annual Conference. While anticipating many new features that we expect to see in the Parking Act's own Code of Practice, the latest edition of The IPC Code of Practice helps to clarify some of the occasional ambiguities born of the imprecise or unclear definitions found in previous editions. This is a step forward as one often finds that motorists and operators sometimes share contrasting assumptions when it comes to defining rudimentary terms like "Windscreen."

A matter that has been brought to my attention is the issue of insufficient photographic evidence provided by parking operators displaying parking signage *in situ*. This is

fundamental information that an adjudicator relies upon in adjudicating an appeal. Parking operators need to provide this information if an appeal is to be adjudicated fairly for all parties.

Motorists who appeal a parking charge, either through an operator's internal appeals process or through the Independent Appeals Service (IAS), will often raise issues or pose questions that are central to their appeal or as an accompaniment to their appeal. These questions from motorists very often go unanswered or unacknowledged.

It is my view that these sorts of enquiries from motorists should be answered by operators in the interests of good customer relations, common courtesy and raising the perceptions of the UK private parking industry in the eyes of the motoring public. Furthermore, maintaining good lines of communication with motorists comports with the spirit of the Parking (Code of Practice) Act 2019 which emphasises "good practice". Section 1(3) of the Parking Act defines "good practice" as: "such practice in the operation or management of private parking facilities as appears to the Secretary of State to be desirable having regard to the interests of persons using such facilities."

The anonymity of adjudicators is an IAS discussion topic that appears on a perennial basis and will no doubt be re-examined in the coming months regarding the Parking (Code of Practice) Act 2019. My position remains unchanged from previous discussions of the topic.

Anonymity of individual adjudicators is crucial to the integrity of the appeals process administered by the IAS or any parking appeals service. It is felt that adjudicator anonymity avoids pressure from interested parties, like parking operators and motorists, and guarantees impartiality. Of course, it is important to have external oversight which is achieved through the accreditation under The Regulations which give the IAS its mandate to function as an ADR body.

As things stand, appeals to the IAS are apportioned arbitrarily to each adjudicator. The only exception to the IAS's aleatoric system is if a single motorist appeals multiple times with different PCNs. It is felt that in this instance it is better if the same adjudicator is part of the same ongoing appeal to ensure consistency, while being fully conversant with antecedent fact patterns that might be contradicted or confirmed by new evidence brought forward by either the parking operator or the motorist.

The IAS is the United Kingdom's only private parking appeals service to be directly mandated under the ambit of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, and The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015, in accordance with the powers conferred by section 2(2) of the European Communities Act 1972.

It is the IAS principle of allowing motorists the ability for swift redress that lies behind the reason behind offering both Standard and Non-Standard Appeals. Non-Standard Appeals are available where a motorist has not followed the procedure of a Standard Appeal by

appealing to the parking operator in time or has subsequently appealed to the IAS out of time and there are no exceptional reasons for extending the timeframes.

This has been a particular issue for motorists heeding advice from internet parking experts who propagate the perpetual myth that PCNs are not legally enforceable. This is patently false and has led to many motorists ignoring parking charges until many months after they were issued, resulting in an increased number of cases being taken through the civil courts relating to parking charges.

While that process can be long and sometimes stressful, it is felt that the IAS offers a more effective and speedy resolution for both operators and motorists who ultimately decide they would like adjudication on a parking charge.

Non-Standard appeals differ from Standard Appeals in two other ways:

1. An appellant must pay a non-refundable fee of £15.00.
2. Unlike a Standard Appeal, the appellant must agree to be bound by the decision of the IAS. Thus, adjudication morphs into arbitration under a Non-Standard Appeal.

These two key differences are put in place to encourage the motorist to engage with the appeals process quickly where they feel that they have strong grounds to contest a PCN by challenging its lawfulness.

While the motorist's right to appeal a PCN is inviolable, it is only fair to govern the timeframe under which an appeal can be lodged. "Justice delayed is justice denied" should be the mantra for both motorists and parking operators in dealing with appeals. While the Non-Standard appeal is available in extenuating circumstances, the motorist should appeal to the IAS sooner rather than later - if their attempt to appeal a PCN through the parking operator's internal appeals process was unsuccessful.

The next 12 months will be, arguably, the most important in the history of the UK private parking industry. As the Parking Act awaits its Code of Practice, I will be interested to see what role the IAS can play in a parking industry landscape presided over by one pan-industry single code of practice.

It is always possible to improve any service and with that in mind I would like to invite and encourage any interested party to contact me by emailing leadadjudicator@theias.org.uk with suggestions for improving the appeals process in general terms without specific reference to an individual appeal. This will assist the IAS in finding ways to improve its levels of service to the UK motoring public.

ADR Officials

IAS appeals are considered by independent adjudicators, known as 'ADR Officials'. There are several ADR Officials who consider appeals which are all overseen by a Lead Adjudicator whose role it is to maintain the integrity of the service. All Officials are qualified solicitors or barristers who are appointed under a contract of self-employment of open duration. With the exception of the Lead Adjudicator, none of the IAS's ADR Official's identities are published in order to maintain security, avoid undue influence and maintain impartiality.

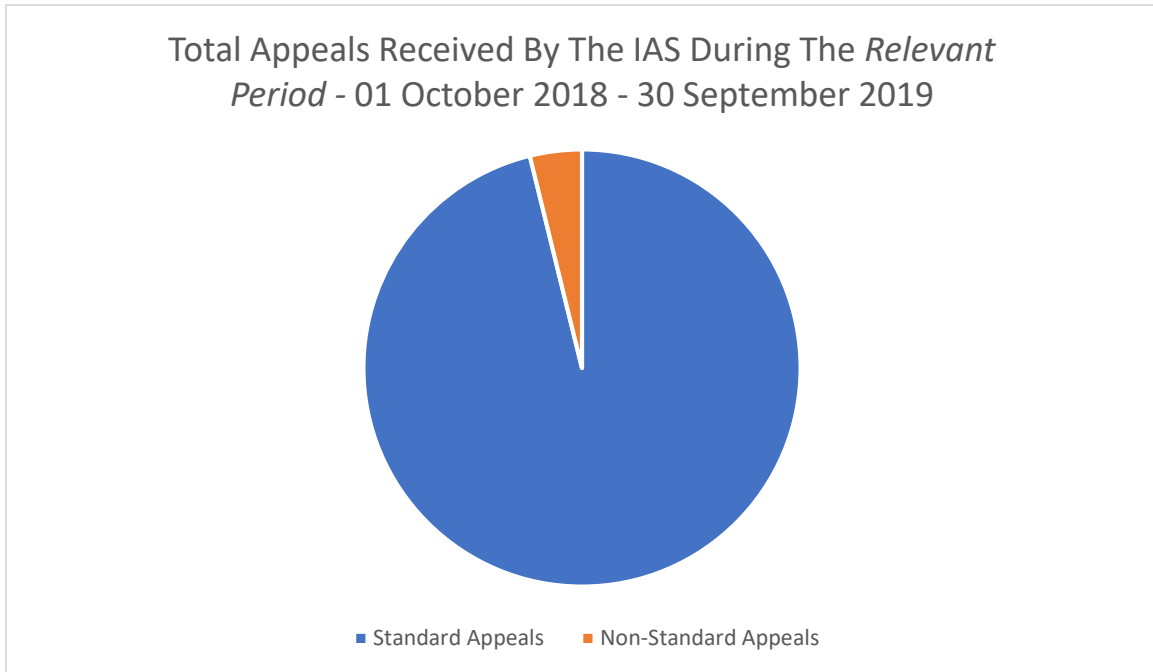
Lead Adjudicator

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 7 Adjudicators.

Total Appeal Numbers



Between the 1st of October 2018 and the 30th of September 2019, the *relevant period*, there was a total of 17,158 appeals submitted to the IAS. A breakdown of these figures reveals that there were 16,499 Standard Appeals (96%) and 659 Non-Standard Appeals (4%) during the *relevant period*.

What the statistics tend to show is that the majority of people are able to engage with ADR in a timely fashion by making use of the IAS Standard Appeal procedure. While the Non-Standard Appeal pathway is available, it is heartening to see that so relatively few motorists feel the 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).

From 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 a free appeals service. For parking operators who are members of the IPC's Accredited Operator Scheme (AOS) this means access to the IPC's Independent Appeals Service (IAS).

The IAS is a 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 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 EU legislation, constitutes a more than adequate level of oversight on the operations of the IAS.

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:

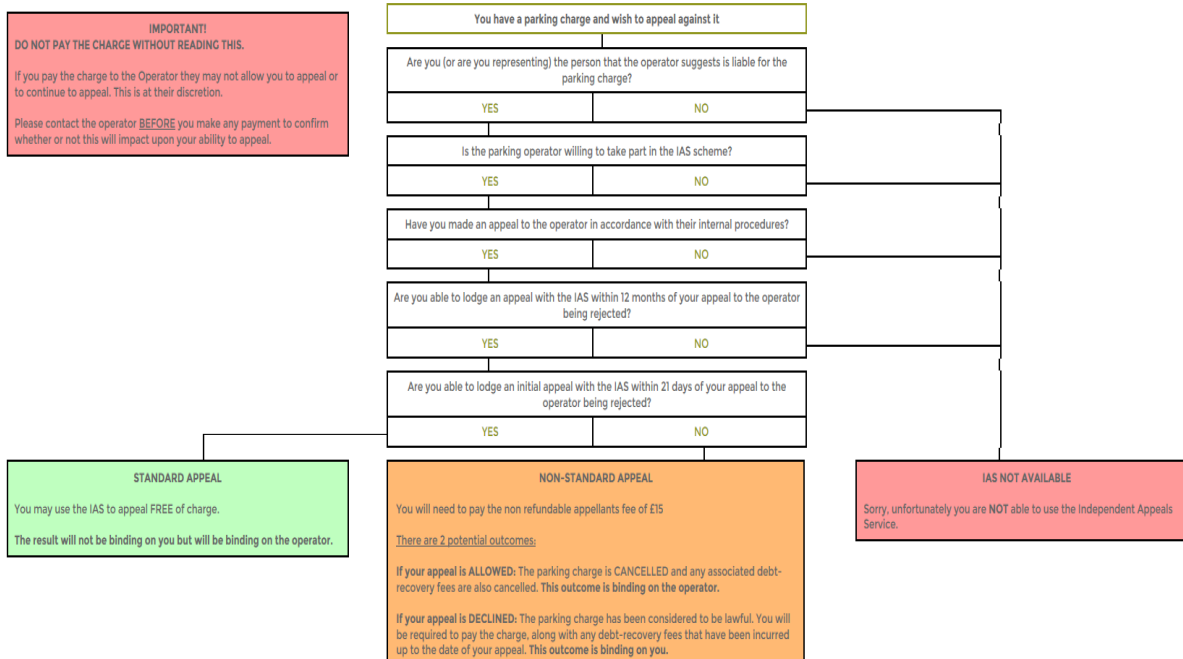
1. the motorist appeals to the Parking Operator that issued the parking charge in accordance with the Operator's own internal appeals procedure;
2. the motorist registers their appeal to the IAS within 21 days of that appeal being rejected by them;

NB where the motorist appeals to the 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.



The IAS will not consider appeals in the following circumstances:

1. Where the motorist has not attempted to resolve the dispute directly with the Operator.
2. Where another ADR entity or a court has already begun to deal with the matter.
3. Where an appeal is considered to be 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.

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.

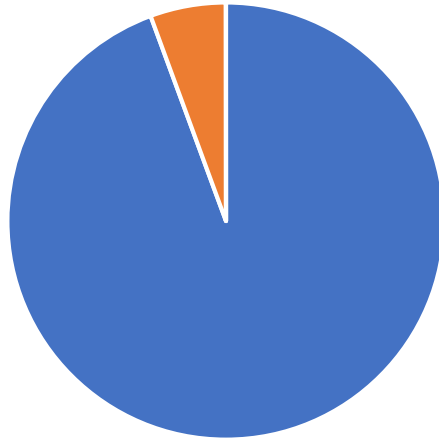
Before a motorist can use the IAS, they must register their details. Once an appeal has been initiated, the motorist cannot withdraw from the process. If the motorist stops engaging with the process, then it will continue without the input that the motorist/appellant may otherwise have provided, and 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.

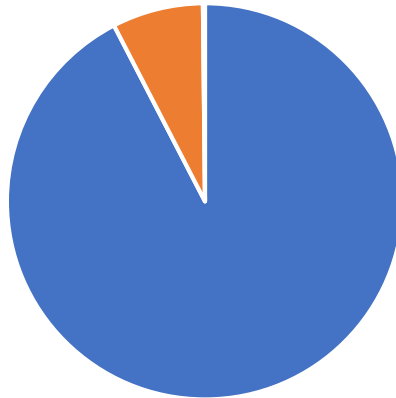
The IAS is very proud to offer this facility to make sure that no one feels marginalised and has the opportunity to have their appeal heard by the IAS. We are extremely pleased that the option of third-party representation has been so actively embraced by appellants. 979 Standard Appeals (6%) and 53 Non-Standard Appeals (8%) were adjudicated by the IAS where appellants were represented by a third-party during the *relevant period*.

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 adjudication time for an IAS appeal is 20 days during the *relevant period*. It is pleasing to see that this duration is below our 21-day time frame. POPLA, the BPA's appeals service, operates on a 28-day time frame.

Adjudication Outcomes for Standard and Non-Standard Appeals

4,441 (26%) of all appeals to the IAS were found in favour of the motorist either because the adjudicator upheld the appeal, or because the operator conceded the appeal prior to adjudication. This figure does not include the many parking charges that were voided through the operator's internal appeals process. As mentioned earlier, it is for the operator, and not the IAS, to consider mitigating circumstances.

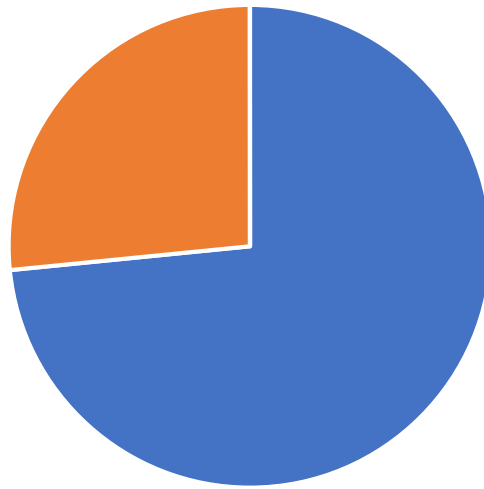
As mentioned earlier, mitigation is an issue pertaining to customer relations and not the lawfulness of a parking charge. Mitigation is considered by operators during their internal appeals process. However, it is fair to say that a large proportion of appeals lodged with the IAS are ultimately conceded at this stage because of mitigation.

Closer analysis reveals that 3,517 (21%) of all appeals to the IAS were conceded by the parking operator. A total of 924 (5%) appeals that reached adjudication were found in favour of the motorist.

12,273 (72%) of all appeals to the IAS were found in favour of parking operators. This figure does not include the 440 appeals (3%) where the motorist elected to pay the parking charge before their appeal reached adjudication.

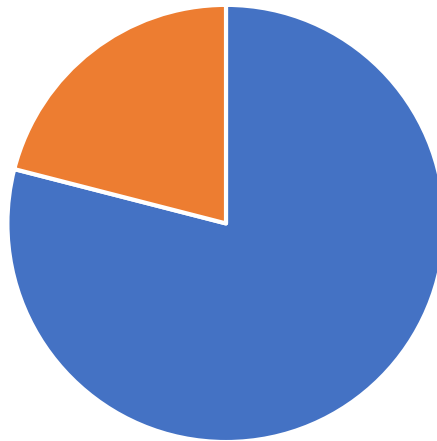
2 Standard Appeals (0.01%) and 0 Non-Standard Appeals (0%) received by the IAS were still in process and awaiting adjudication at the conclusion of the *relevant period* and at the time of publication for this report.

Outcomes Of All Appeals To The IAS



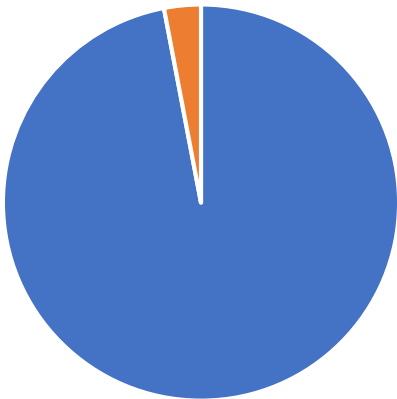
■ Appeals In Favour of Operators ■ Appeals In Favour of Motorists

Breakdown Of Appeals To The IAS In Favour Of The Motorist



■ Appeals Conceded By The Operator Before Adjudication ■ Appeals Found In Favour Of The Motorist

Breakdown Of Appeals To The IAS In Favour Of The Operator



- Appeals Found In Favour Of The Operator
- Appeals Conceded & Paid By The Motorist Before Adjudication

APPENDIX 1:

The Independent Appeals Service (IAS) Annual Activity Report: 2018-19

This report is published pursuant to Schedule 5 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and covers the period from the 1st of October 2018 to the 30th of September 2019.

A) The number of domestic disputes and cross-border disputes the ADR entity has received?

17,158 disputes were received during the relevant period, all of which related to domestic disputes. A breakdown of this total reveals 16,499 Standard Appeals and 659 Non-Standard Appeals.

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 issue 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 could 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 systematic or significant problems that occurred frequently and proved indicative of an ongoing trend leading to disputes between consumers and traders.

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 apparent systemic problems or issues indicative of any prevailing trends. Any issues encountered were resolved on a case-by-case basis.

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

No complaints were declined to be considered during the relevant period according to the criteria articulated in paragraph 13 of Schedule 3.

F) The percentage of alternative dispute resolution procedures which were discontinued for operational reasons and, if known, the reasons for the discontinuation?

3,517 Standard Appeals and Non-Standard Appeals were discontinued during the *relevant period*. The main reasons why these appeals were discontinued was because the motorist paid the parking charge or based on mitigation which was provided.

G) The average time taken to resolve domestic disputes and cross-border disputes?

The average time taken to resolve disputes lodged with the IAS during the relevant period was 20 days. Enquiries to the IAS were resolved in 2 days on average.

H) The rate of compliance, if known, with the outcomes of the alternative dispute resolution procedures?

It is not known how many consumers complied with the outcomes of disputes during the relevant period. There are, however, no reports of any parking operator failing to comply with the outcomes. Parking operators who are members of The IPC's Accredited Operator Scheme (AOS) know that failure to comply with a decision of the IAS will mean a breach of the IPC Code of Practice and the activation of The IPC's sanctions scheme.

l) The co-operation, if any, of the ADR entity within any network of ADR entities which facilitates the resolution of cross-border disputes?

The IAS is not part of any network of ADR entities.

APPENDIX 2:

The Independent Appeals Service (IAS) Biennial Activity Report: 2017-19

This report is published pursuant to Schedule 6 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and covers the period from the 1st of October 2017 to the 30th of September 2019.

A) The number of disputes received by the ADR entity and the types of complaints to which the disputes related?

35,167 disputes were received by the Independent Appeals Service (IAS) between 01/10/2017 and 30/09/2019. All disputes dealt with related to the lawfulness, or otherwise, of the issue of a parking charge on private land and the liability of the Consumer to pay the same.

B) The percentage of alternative dispute resolution procedures which were discontinued before an outcome was reached?

20% of all appeals to the IAS (Standard and Non-Standard Appeals) were discontinued by the operators resulting in a positive outcome for motorists.

2% of all appeals to the IAS (Standard and Non-Standard Appeals) were discontinued by the motorist since they elected to pay the parking charge before adjudication resulting in a positive outcome for operators.

C) The average time taken to resolve domestic disputes and cross-border disputes?

The average time taken to resolve disputes lodged with the IAS during the relevant period was 19.5 days.

D) The rate of compliance, if known, with the outcomes of the alternative dispute resolution procedures?

It is not known how many consumers complied with the outcomes of disputes during the relevant period. There are, however, no reports of any parking operator failing to comply with the outcomes. Parking operators who are members of The IPC's Accredited Operator Scheme (AOS) know that failure to comply with a decision of the IAS will mean a breach of the IPC Code of Practice and the activation of The IPC's sanctions scheme.

E) Any recommendations the ADR entity may have as to how any systematic or significant problems that occur frequently and lead to disputes between consumers and traders could be avoided or resolved in future?

The IAS has encouraged parking operators to disregard trivial typographical errors made by motorists when entering their vehicle registrations using a keypad interface at a parking terminal to pay for or validate their parking session. In particular, innocent typographical errors like mistaking a '0' for an 'O' should not result in a motorist receiving a parking charge.

F) Where the ADR entity is a member of any network of ADR entities which facilitates the resolution of cross-border disputes, an assessment of the effectiveness of its co-operation in that network?

The IAS is not a member of any cross-border network of ADR entities.

G) Where the ADR entity provides training to its ADR officials, details of the training it provides?

All IAS adjudicators are qualified barristers or solicitors. IAS adjudicators meet biannually to discuss topics that have arisen pertaining to adjudication, highlight any discernible trends and receive industry updates including all applicable legislative changes and any new relevant new case law.

A good example of the latter was *VCS v Ward*, a parking case heard earlier this year. *VCS v Ward* extends the legal principles expounded in *ParkingEye Limited v Beavis* to “No Stopping” zones.

H) An assessment of the effectiveness of an alternative dispute resolution procedure offered by the ADR entity and of possible ways of improving its performance?

The IAS continues to provide motorists with a free and independent appeals service whose adjudicators are all qualified practicing barristers or solicitors. It is believed the service provides effective ADR in an extremely emotive arena. It is always possible to improve any service and with that in mind I would like to invite and encourage any interested party to contact me by emailing leadadjudicator@theias.org.uk with suggestions for improving the appeals process in general terms without specific reference to an individual appeal. This will assist the IAS in finding ways to improve its levels of service to the UK motoring public.