

The Independent Appeals Service (IAS) Annual Report 2017-2018

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



**Independent
Appeals
Service**

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

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Foreword by the Lead Adjudicator, His Honour Bryn Holloway

This is my third 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 2015 Regulations). The IAS is competent to adjudicate on any parking dispute initiated by consumers against traders.

The IAS is a free appeals service for motorists if the following conditions are met:

1. The parking operator is a member of the IPC's Accredited Operator Scheme (AOS) or is willing to take part in the IAS scheme
2. The motorist appeals to the parking operator, in accordance with the operator's internal appeals procedure, within 28 days of receiving a PCN
3. The motorist initiates an appeal to the IAS within 21 days of their appeal to the operator being rejected by the operator
4. In exceptional circumstances, the motorist can also lodge an appeal with the IAS within 12 months of their initial appeal being rejected by the operator, but only with the consent of the operator.

The process outlined above is referred to as a Standard Appeal. Standard Appeals account for the vast majority of appeals considered by the IAS. The Standard Appeal process does, however, allow for the timeframes to be extended where there are exceptional circumstances for the motorist failing to meet the prescribed timeframes.

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.

As the IAS continues to consolidate its position within the UK parking industry, we all observe the passage through Parliament of Sir Greg Knight's Parking (Code of Practice) Bill with great interest. The manifest benefits of a pan-industry code of practice cannot be overstated as this will provide certainty, clarity and consistency for motorists and parking operators alike.

A topic for discussion surrounding a proposed single code of practice is whether to divulge the identities of IAS adjudicators to the general public. The position of the IAS is that anonymity of individual adjudicators is crucial to the integrity of the appeals process administered by the IAS. It is felt that adjudicator anonymity avoids pressure from interested parties like parking operators and motorists guaranteeing impartiality. Of course, it is important to have external oversight which is achieved through the accreditation under The Regulations.

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 2015 Regulations

The IAS is also the only appeals service on private or public land to offer its services to motorists who receive parking charges in Scotland and Northern Ireland, as well as in England and Wales. It is my fervent belief that every appellate body serving the UK private parking industry should have the same legislative mandate as the IAS and extend the same ability for motorists to contest a parking charge wherever it is issued. It is hoped that Sir Greg Knight's Parking Bill will help remedy this situation.

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 with motorists reading advice from individuals posing as experts on internet forums and has led to many motorists ignoring parking charges until many months after they were issued. There has been 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 with the parking operator was unsuccessful.

I look forward to the next 12 months which should see the IAS consolidate its already enviable position within the UK parking industry by providing fair, impartial and cost-effective redress for parking operators and motorists alike.

ADR Officials

IAS appeals are considered by independent adjudicators, known as 'ADR Officials'. There are a number of ADR Officials that 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.

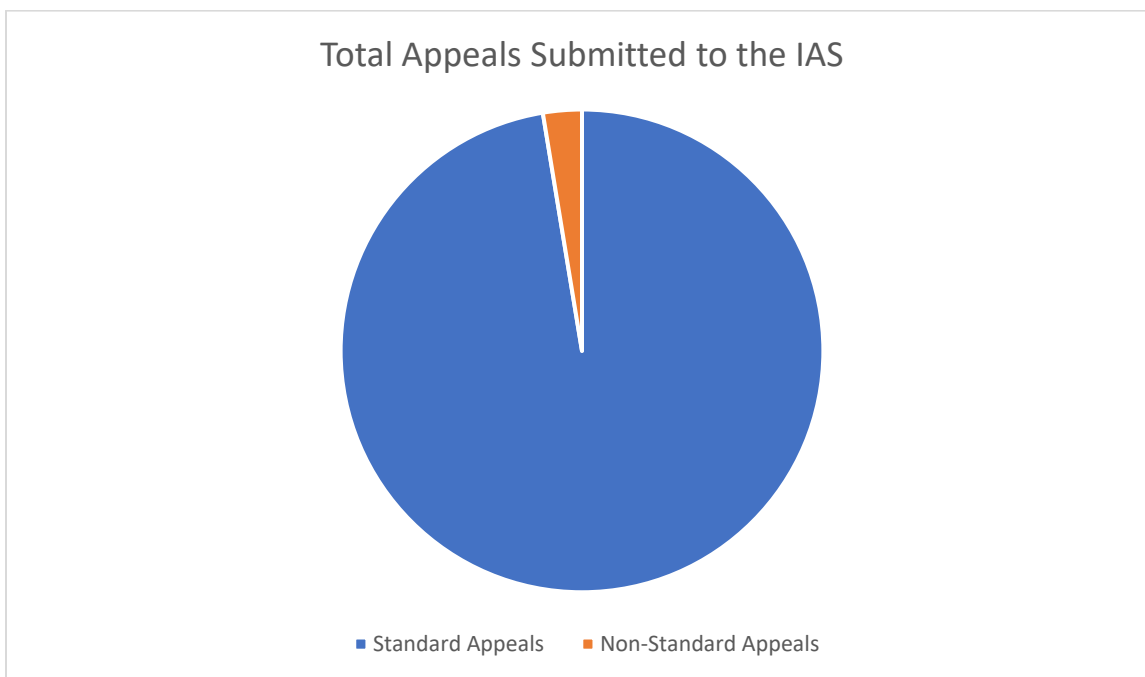
Lead Adjudicator

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

Adjudicators

There are currently 9 Adjudicators.

Appeal Numbers



Between the 1st of October 2017 and the 30th of September 2018, the 'relevant period', there were 17,539 Standard Appeals (97%) submitted to the IAS. There were 470 Non-Standard Appeals (3%) during the same period.

What the statistics tend to show is that the vast 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.

In one notable case, there is a British Parking Association (BPA) AOS member who offers motorists in Scotland the opportunity to appeal a PCN with the IAS. This certainly shows a desire by operators to offer ADR to motorists even where the BPA and Parking on Private Land Appeals (POPLA) refuse to do so.

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 2015 Regulations. 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.

The only other appeals body serving the UK private parking industry is administered by Ombudsmen Services Limited. While they have the same approval under The Regulations as the IAS, they choose to administer the BPAs appeals service, POPLA, outside of the accreditation and does not allow appeals outside of England and Wales. It can only be hoped that they will be forced to improve the service they offer to the standard of the IAS by meeting the threshold required by the Regulations and extending the appeals to motorists beyond England and Wales.

It is also important to note that until recently the IAS was the only appeals service to allow appeals where parking charges had been issued on land governed with byelaws. Our approach was recently confirmed as correct and it is now believed POPLA have amended their practices to bring that aspect in line with our view that a motorist should still be given the ability to appeal to an independent body.

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 parking related consumer dispute initiated by a consumer against a trader in the UK.

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 wrongdoing by the IAS will come under scrutiny from the CTSI's Professional Conduct Committee.

The IAS are cognisant of the criticisms expressed by the British Parking Association (BPA) regarding the reasons why they felt compelled to decommission their Independent Scrutiny Board for Appeals on Private Land (IPSA), through a perceived lack of "a level playing field." IPSA was apparently established to provide oversight for Parking on Private Land Appeals (POPLA), the BPA's parking appeals service.

It is the IPC's contention that the level of scrutiny afforded by 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. We actively encourage the BPA to strive for the same level of legislative legitimacy with POPLA, as the IPC has achieved with 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:

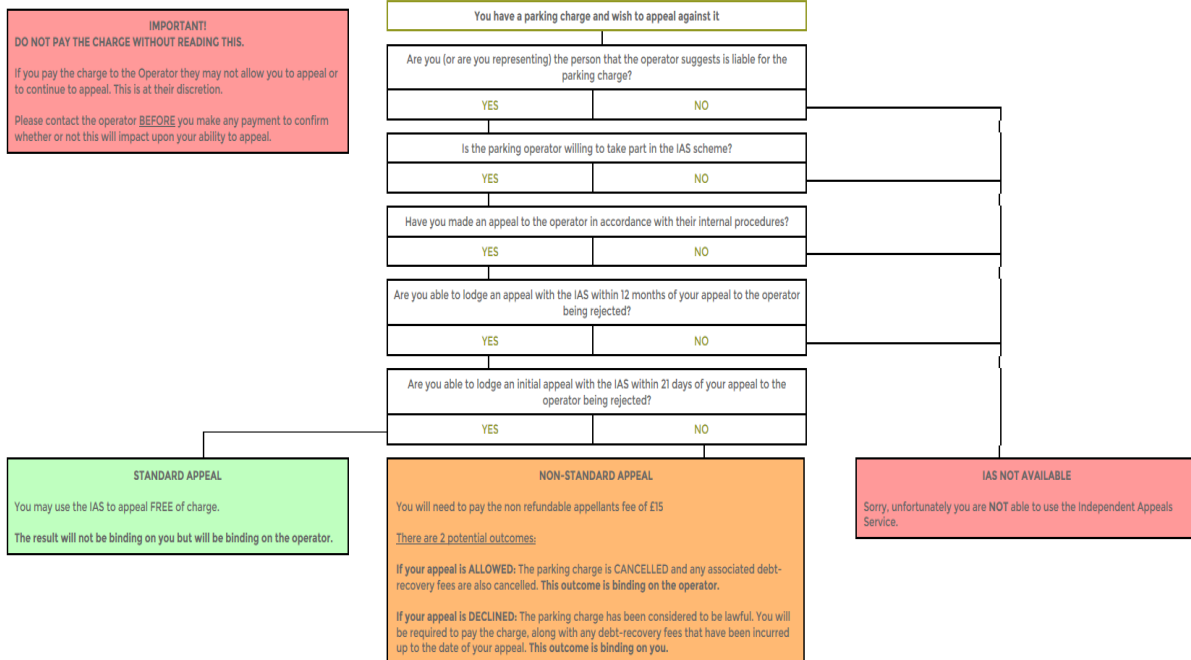
1. the motorist appeals to the Parking Operator that issued the parking charge in accordance with the Operator's own internal appeals procedure;
2. the motorist registers their appeal to the IAS within 21 days of that appeal being rejected by them;

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 the 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 the 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.

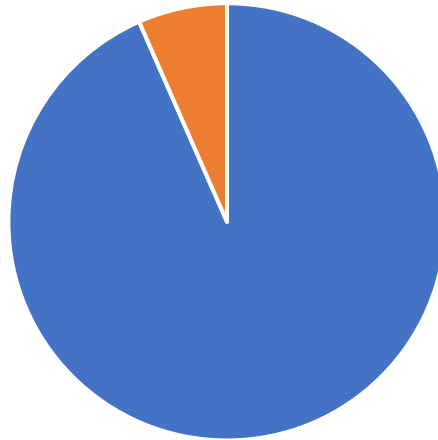
Before a motorist can use the IAS, they must register their details. Once an appeal has been initiated, the motorist cannot withdraw from the process. If the motorist stops engaging with the process, then it will continue without the input that the motorist/appellant may otherwise have provided, and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

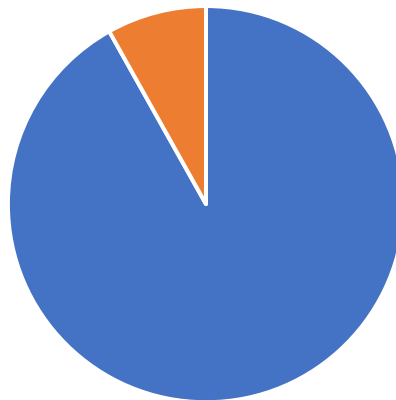
The IAS is very proud to offer this facility to make sure that no one feels marginalised and has the opportunity to have their appeal heard by the IAS. We are extremely pleased that the option of third-party representation has been so actively embraced by appellants. 8% of Standard Appeals and 9% of Non-Standard Appeals were adjudicated by the IAS where appellants were represented by a third-party.

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 19 days. It is pleasing to see that this is within our 21-day time frame. POPLA, the BPA's appeals service, operates on a 28-day time frame.

PCNs Administered on Land With Byelaws

Some IPC AOS members are contracted to manage car parks on land where byelaws exist, as in the example of railway land. The IPC and the IAS always held the view that a motorist should have recourse to a free appeals service to contest a PCN, irrespective of where the parking charge has been administered.

The IAS's view, on making an appeal process accessible to motorists in a *sui generis* parking situation like railway land, was by no means a widely held view by the parking industry at large. It was apparent that some companies, operating car parks under these sorts of contractual conditions, had not provided motorists with any access to an independent appeals process.

In a letter to the IPC, dated 18th June 2018, the Department for Transport (DfT) confirmed that the position of the IAS was entirely correct. The DfT stated:

It is the view of the department [Department for Transport] that if a person is issued with a parking ticket then, as a matter of good industry practice, they should be provided with the opportunity to appeal against it to a body which is independent of the parking operator. There is nothing stated in the Byelaws which prohibits parking operators from providing an avenue of appeal. The department would therefore encourage parking operators to re-instate their independent appeals processes with immediate effect. The department also recommends that parking operators take this opportunity to ensure that their car park signage clearly displays the applicable charges and that customers are made aware of the appeals process.

While the legal interface between land controlled contemporaneously under byelaws and managed under a commercial contract could lead to potential ambiguities, the IAS's position has never wavered. It is the motorist's inviolable right to be able to seek redress in an independent appeals forum free from the financial burden associated with litigation through the court system. The IPC was extremely pleased to have its position ratified by the DfT.

Mitigation

In considering an appeal, the role of an IAS adjudicator is to determine the lawfulness of a parking charge. What constitutes lawfulness largely pertains to the validity of the contractual basis under which the contract between the parking operator and the motorist is formed. Under the legal doctrine of *contra proferentem*, terms and conditions on a parking sign that are unclear or ambiguous will be decided against a parking operator seeking to enforce a contract under those terms.

The IAS will also view terms and conditions on a parking sign within the context of consumer protection legislation like the Consumer Rights Act 2015. Older legislation like the Unfair Terms in Consumer Contracts Regulations 1999 and the Unfair Contract Terms Act 1977 have been absorbed into the Consumer Rights Act.

Parking on private land is largely based in contract law. Provided that contractual terms and conditions are clear and unambiguous, the motorist will demonstrate their intention to enter into a contract (with the parking operator) by entering and remaining on the land or parking their vehicle. Therefore, a valid contract between a parking operator and the motorist is formed.

If a motorist breaches the terms and conditions, it is incumbent on the parking operator to prove this via a range of different types of evidence. An IAS adjudicator will uphold appeals where the parking operator has not satisfied the evidential burden required to prove a breach of terms and conditions by the motorist.

Mitigation, or mitigating circumstances, can be defined as any reason that might have led the motorist to breach the terms and conditions of the contractual agreement with the parking operator yet, does not render a PCN unlawful or extinguish the motorist's legal liability. The IAS does not accept mitigation as this can be open to abuse and lead to unnecessary ambiguity and uncertainty for both motorists and parking operators.

In considering parking on private land, the operative word is "private". When a motorist enters private land, they are there at the pleasure of the landowner. It would be wrong to undermine this principle by taking away a landowner's right to protect and manage their own property. As the saying goes: "An Englishman's home is his castle."

It must always be for a landowner to decide how they wish to manage land which can include anything from private residential bays, hospital carparks to large multi-storey parking buildings. While the IAS does not consider mitigation as part of its adjudication process, we do encourage parking operators to be sensitive both in how they manage private land and in their interactions with motorists. They also need to consider mitigation within a broader business context along with consumer relations. These, however, are decisions that only a parking operator can make and not the IAS.

The IAS encourages consumer-friendly behaviour by not charging parking operators if they cancel an appeal or a PCN before it goes to adjudication. To this end, our annual statistics show that a significant proportion of appeals are cancelled by operators because of mitigating circumstances. The IAS statistics do not include appeals that were cancelled as part of the parking operator's internal appeals process.

While mitigation is always a parking operator's decision, an IAS adjudicator can make confidential recommendations to an operator. These sorts of recommendations are an adjudicator's opinion and may ask a parking operator to reconsider their position in certain situations. For example, the IAS has asked parking operators to reconsider innocent typographical errors like mistaking a "0" for an "O", when a motorist enters their car registration number at a parking kiosk.

If the role of the IAS is to adjudicate on the lawfulness of a parking charge and the veracity of evidence, mitigation is all about customer service and public relations for a parking operator. In the words of the Roman writer Publilius Syrus: "A good reputation is more valuable than money."

Adjudication Outcomes for Standard and Non-Standard Appeals

25% 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.

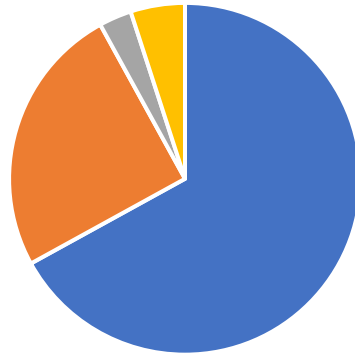
Mitigation is an issue pertaining to customer relations and not the lawfulness of a parking charge. This is done by operators at an earlier stage. However, it is fair to say that a large proportion of appeals lodged with the IAS are ultimately conceded at this stage because of mitigation.

A closer inspection of the statistics reveals that 25% of Standard Appeals and 27% of Non-Standard Appeals were decided in favour of motorists. Once again, this does not include mitigation or appeals allowed under a parking operator's internal appeals process.

67% of Standard Appeals and 64% of Non-Standard Appeals were found in favour of operators. This does not include 3% of Standard Appeals and 2% of Non-Standard Appeals where the motorist elected to pay the parking charge before their appeal reached adjudication.

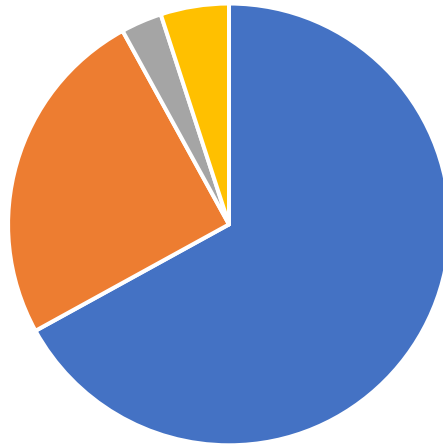
5% of all appeals were still in process and awaiting adjudication at the conclusion of the 'relevant period'.

Adjudication Outcomes for All Appeals



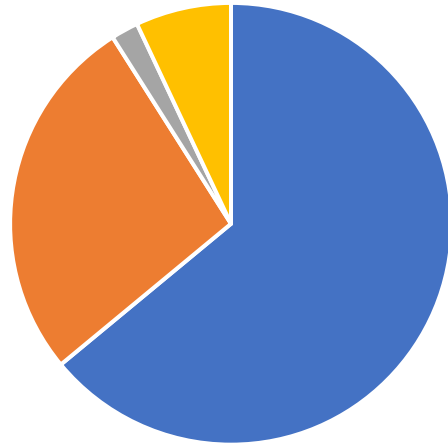
- In Favour of the Operator
- In Favour of the Motorist
- The Motorist Paying Before the Appeal Reaches Adjudication
- Appeals in Awaiting Adjudication

Standard Appeals



- In Favour of the Operator
- In Favour of the Motorist
- Paid by the Motorist before Adjudication
- Awaiting Adjudication

Non-Standard Appeals



- In Favour of the Operator
- In Favour of the Motorist
- Paid by the Motorist before Adjudication
- Awaiting Adjudication

APPENDIX:

The Independent Appeals Service (IAS) Annual Activity Report: 2017-18

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 2017 to the 30th of September 2018.

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

18,009 disputes were received during the relevant period, all of which related to domestic disputes. A breakdown of this total reveals 17,539 Standard Appeals and 470 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) 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.

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

19% of Standard Appeals and Non-Standard Appeals were discontinued by car park operators during the relevant period resulting in a positive outcome for the Consumer.

F) 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 days. Enquiries to the IAS were resolved in 2 days.

G) 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 Accredited Operator Scheme 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.

H) 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.