

## **Appendix A**

### **Parking**

# **Supplementary Enforcement and Appeals Policy**

**January 2018**

## 1. Introduction

- 1.1 On the 5<sup>th</sup> Nov 2001 the county of Herefordshire became a Special Enforcement Area by virtue of The Road Traffic (Permitted Parking Area and Special Parking Area) (District of Herefordshire) Order 2001. This Statutory Instrument enables Herefordshire Council to enforce on and off street parking restrictions across the county under the provisions contained within the Traffic Management Act 2004.
- 1.2 This policy aims to clarify the council's enforcement and decision making process, whilst promoting consistency and transparency in parking operations.
- 1.3 Parking enforcement operates under decriminalised (civil) legislation where different enforcement protocols, policies and / or procedures may be followed to that of criminal proceedings. It is important to note that on the whole discretion, in respect of the enforcement of parking contraventions and any subsequent Penalty Charge Notices that may be issued, lies with the appeals office. This is in accordance with the relevant statutory guidance and legislation, and may be different to other areas covered by the Single Enforcement Policy, particularly where criminal investigations take place.

## 2. Scope

- 2.1 This policy covers the following areas of parking enforcement;

- Parking contraventions
- Appeals and representations
- Blue badge enforcement
- Persistent evaders
- Dispensation waivers

## 3. Parking Contraventions

- 3.1 All vehicles are subject to the provisions of a Traffic Regulation Order, Off Street Parking Order or statutory parking contravention. Any vehicle parked in contravention of a parking restriction are subject to the issue of a Penalty Charge Notice (PCN) by a Civil Enforcement Officer (CEO).
- 3.2 CEOs will follow all operational guidance when issuing PCNs.
- 3.3 CEOs have no discretion to cancel a PCN once it has been issued.

## 4. Appeals and Representations

- 4.1 In accordance with the Department for Transport's operational guidance to local authorities, Civil Enforcement Officers have no discretion to cancel or withdraw a PCN once it has been issued. This discretion remains with the back office who will apply the relevant operational guidance in the decision making process.
- 4.2 Herefordshire Council may exercise its discretion and cancel a PCN at any point in the process. It may do this even where a contravention has been proved, in doing this consideration will be given to the public interest to pursue such matter and its duty to act fairly and proportionately.

- 4.3 Appeals officers may exercise discretion when assessing the facts involved in the issue of a PCN and in the absence of any other information may accept the version of events presented by the appellant on the first occasion.
- 4.4 If a driver feels that a notice should not have been issued or there are mitigating circumstances, then they can challenge the penalty charge notice.
- 4.5 **A challenge can be made** by:
- Sending a letter: Parking Enforcement Team, Plough Lane, Hereford, HR4 0LE
- Email: [parking@herefordshire.gov.uk](mailto:parking@herefordshire.gov.uk)
- Online: [https://www.herefordshire.gov.uk/info/200168/parking/105/parking\\_fines/2](https://www.herefordshire.gov.uk/info/200168/parking/105/parking_fines/2)
- 4.6 Please note that a decision cannot be made regarding a challenge over the telephone. A challenge and a decision can only be made in writing.
- 4.7 Once a challenge to a notice has been received the PCN will be placed on hold pending a response.
- 4.8 If a challenge is received within 14 days of the date the PCN was issued, and the challenge is unsuccessful, a further opportunity to pay the discounted amount within 14 days of the response will be given.
- 4.9 If a penalty charge is not paid or challenged within 28 days of the penalty charge being issued, the DVLA will be contacted for the registered owner/keeper details. A Notice to Owner will then be issued to that person. A Notice to Owner gives the owner/keeper the opportunity to pay the penalty charge in full or make a formal representation to Herefordshire Council within 28 days.
- 4.10 If a formal representation is received and subsequently rejected a formal Notice of Rejection will be issued. This will provide details of why the representation has been rejected, the amount to be paid and that payment is required within 28 days.
- 4.11 If a representation is rejected the registered owner/keeper will have the opportunity to appeal to the Traffic Penalty Tribunal (TPT). This is an independent body that will look at evidence provided by the owner/keeper and Herefordshire Council and make an unbiased decision based on this evidence. Appeals to the TPT are carried out on-line and a pin number will be provided on the Notice of Rejection. For further information on the TPT you can visit their website at [www.trafficpenaltytribunal.gov.uk](http://www.trafficpenaltytribunal.gov.uk).
- 4.12 If full payment or representation is not received, the penalty charge increases by 50%, and a Charge Certificate is issued; full payment is required within 14 days. Failure to pay within this time will result in the debt being registered at the Traffic Enforcement Centre (TEC) at Northampton County Court, with an additional fee of £7 being added and an Order for Recovery is issued. Any further lack of response is referred to the council's Enforcement Agents.
- 4.13 The Council will aim to reply to all correspondence within 10 working days of receipt. If a full reply cannot be sent in that time an acknowledgement letter will be sent within five days of receipt.

4.14 If you have made a formal representation in response to a Notice to Owner, as detailed in 4.9 above, the Council is obliged to let you know its decision in writing within 56 days of receiving the formal representation.

4.15 For more information on civil parking enforcement, visit [the PATROL website](#).

**Statutory Grounds to make a formal representation**

4.16 The **statutory** grounds to make a formal representation against a Notice to Owner are prescribed by The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007. Grounds for informal representations against the issue of a Penalty Charge Notice will be considered against the appeals officers’ operational guidance.

4.17 Formal representations made against a Notice to Owner under the following **statutory** grounds will be considered against the following policy:

4.18 **The contravention did not occur.**

<b>Cancel</b>	<b>Uphold</b>
<p>Cancellation grounds will be considered in accordance with appeals officers’ operational guidance.</p> <p>The criterion set out in the <b>operational guidance</b> is for guidance only as each case must be considered on its own merits, taking into account all the circumstances.</p>	<p>Cancellation grounds will be considered in accordance with appeals officers’ operational guidance.</p> <p>The criterion set out in the <b>operational guidance</b> is for guidance only as each case must be considered on its own merits, taking into account all the circumstances.</p>

4.19 **The penalty charge exceeded the amount applicable in the circumstance of the case.**

<b>Cancel</b>	<b>Uphold</b>
<p>The PCN or Notice to Owner showed the incorrect amount of penalty charge, i.e. the wrong differential penalty level.</p>	<p>The PCN or Notice to Owner showed the correct amount of penalty charge.</p>

4.20 **That there has been a procedural impropriety on the part of the enforcement authority.**

<b>Cancel</b>	<b>Uphold</b>
<p>Where it is established that the enforcement authority has failed to observe any requirement imposed on it by the Traffic Management Act regulations in relation to the imposition or recovery of a penalty</p>	<p>Where it is established that the enforcement authority has observed any/all requirements imposed on it by the Traffic Management Act regulations in relation to the imposition or recovery of a penalty charge.</p>

charge. The taking of any step in advance of the time scale set out in the regulations.	All time scales set out in the regulations are adhered to.
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**4.21 The relevant Traffic Regulation Order (TRO) is invalid.**

<b>Cancel</b>	<b>Uphold</b>
If the relevant order was found to be invalid. This does not apply to orders to which Part VI of schedule 9 to the Road Traffic Regulation Act 1984 applies.	If the relevant order was found to be valid.

**4.22 The appellant did not own the vehicle when the alleged contravention occurred.**

<b>Cancel</b>	<b>Uphold</b>
Where the DVLA confirms that the vehicle was not registered to the recipient on the date of the contravention.  Where, if the driver is claiming to have sold / transferred the vehicle before the contravention, they provide documentary proof that the vehicle had been sold / transferred / disposed of to another party before the contravention.  Where the current registered keeper, that is claiming not to have acquired the vehicle until after the contravention, provides documentary proof that the vehicle was purchased / transferred / disposed of the vehicle to them after the contravention.	Where the DVLA confirms that the vehicle was registered to the recipient on the date of the contravention.  Where the driver is proven to have hired the vehicle for the day on which the contravention occurred and signed an agreement to take responsibility for PCNs incurred, subject to the time of hire.

**4.23 The owner of the vehicle is a hire firm and:**

- (i) the vehicle was on hire under a qualifying agreement; and**
- (ii) the hirer has signed a statement of liability for any PCN issued during the hire period.**

<b>Cancel</b>	<b>Uphold</b>
The hire company is able to provide documentary proof that the vehicle was hired at the time of the contravention.	If the person named by the hire company as the person to whom they hired the vehicle, <u>without documentary proof</u> , either does not exist, cannot be traced or denies

<p>The hire company is able to provide the full name and address of the person to whom they hired the vehicle.</p> <p>(Notice to Owner will be issued to the person named on the hire agreement)</p>	<p>responsibility for the contravention.</p> <p>If the vehicle was being used as a courtesy car without an agreement that had been signed to accept responsibility for any Penalty Charges Notices.</p> <p>If the hire company is unable to prove that they neither hired out the vehicle on the date of the contravention nor can provide the name and address of the persons to whom hired the vehicle.</p>
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**4.24 The vehicle was taken without the owner's consent.**

<b>Cancel</b>	<b>Uphold</b>
<p>Where the registered keeper of the vehicle provides a valid police incident and / or crime reference number.</p>	<p>Where the registered keeper of the vehicle cannot provide a valid police incident and/or crime reference number or cannot prove the vehicle was taken / stolen.</p> <p>Where the crime number does not exist or match the details of the date of the contravention.</p>

**4.25 The penalty has been paid.**

<b>Cancel</b>	<b>Uphold</b>
<p>Where the records show that the PCN has been paid, or the appellant can provide satisfactory proof of payment.</p>	<p>Where the records show that the PCN has not been paid, or the appellant cannot provide satisfactory proof of payment.</p> <p>Where payment was made outside of the discount period to allow a reduced settlement.</p>

**5. Blue badge enforcement**

- 5.1 The Disabled Persons Parking Badges Act 2013 gives local authorities powers in relation to the inspection, retention and cancellation of disabled persons parking badges (blue badges).
- 5.2 Officers authorised by Herefordshire Council will carry out inspections at the roadside and in council car parks, these officers may be in uniform or in 'plain clothes'. On approaching a member of the public these officers will produce a photographic identification card.

- 5.3 An enforcement officer may require any person that is in a vehicle, or appears to have been in or about to get into a vehicle displaying a blue badge to produce the badge for inspection. The enforcement officer will establish that the badge is valid and may make some background enquires.
- 5.4 Where an enforcement officer has established reasonable grounds that a blue badge is invalid or being misused it may be retained by that officer.
- 5.5 A Penalty Charge Notice (PCN) may also be issued to the vehicle if it is established that the badge is not being used legitimately. Any PCN issued will be treated separately to the offences related to the misuse of a disabled persons badge; these can be paid or challenged using the appropriate methods outlined on the notice itself and in this policy.
- 5.6 In circumstances where the badge has been retained by an enforcement officer because reasonable grounds were established to consider that it was being **misused** it will be returned to the rightful badge holder, or to the issuing authority.
- 5.7 In circumstances where the badge has been retained by an enforcement officer because the badge is **invalid** Herefordshire Council will destroy the badge.
- 5.8 Consideration for prosecuting drivers found to be abusing the blue badge scheme will be given to all cases where the badge is being **misused**. It is accepted that not all seizures of blue badges will result in a prosecution. Drivers can be dealt with by the following means:
- I. Warning letter – a driver will not be issued a second warning within 2 years of receiving the first
  - II. Simple Caution
  - III. Criminal prosecution

## 6. **Persistent evaders**

- 6.1 *“A vehicle owner can be classed as a ‘persistent evader’ if there are three or more recorded contraventions for the vehicle and the penalties for these have not been paid, represented against or appealed against within the statutory time limits, or their representations and appeals have been rejected but they have still not paid.”*  
– Department for Transport Traffic Management Act 2004 - Operational Guidance to Local Authorities: Parking Policy and
- 6.2 Vehicle may be removed, stored and disposed of in accordance with the provisions set out in Sections 99-101 Road Traffic Regulation Act 1984 and The Removal and Disposal of Vehicles Regulations 1986. Regard has been given to the statutory guidance under S87 Traffic Management Act 2004.
- 6.3 Once classed as a persistent evader, if the vehicle parks in contravention of any parking restriction for longer than 15 minutes after a PCN is served by a Civil Enforcement Officer (CEO) it may then be removed.
- 6.4 The police will be notified of the removal of the vehicle to enable them to deal with queries from motorists who may report their vehicle as stolen.
- 6.5 If the vehicle is in fact parked where parking is prohibited (such as on double yellow lines), then the vehicle can be removed as soon as the PCN has been served.

- 6.6 If vehicle is not collected within 10 working days from the date of the above letter the council will dispose of the vehicle in accordance with s.101 Road Traffic Regulation Act 1984 and The Removal and Disposal of Vehicles Regulations 1986.
- 6.7 The vehicle may be sold to recover the cost of the removal.
- 6.8 If the vehicle is disposed of or sold, the council will inform the registered keeper of this in writing and of their right to make representations and their subsequent right to appeal against representations that are rejected (see below). Where a registered owner / keeper makes an appeal against the issue of the PCN whilst the vehicle is in still in storage, the process for disposing of the vehicle will be put on hold until such time as the council has considered the ground for appeals and advised the keeper/owner of the outcome.
- 6.9 Where a vehicle is sold, the excess money from the sale of the vehicle will be held in council bank accounts for up to one year from the date of sale. If a person satisfies the council that they were the owner of the vehicle at the time of the sale the council will pay any sum by which the proceeds of the sale exceed the amount of the relevant charges. Contact must be made by the owner within one year from the time of the sale in writing to the council at the address below.
- 6.10 If it is felt that the Penalty Charge Notice should not have been issued, or there are mitigating circumstances, a challenge can be made however this must be in writing. This can be done whilst the vehicle is in storage or after the vehicle has been released or disposed of with the statutory time-limits. See above for ways to make a challenge.
- 6.11 If the PCN is not paid within 28 days of the issue date enquires will be made to the DVLA as to the registered keeper at the time of the contravention and a Notice to Owner will be sent to the registered owner/keeper of the vehicle. At that stage a formal representation can be made, by the registered owner/keeper, on up to six grounds, which are detailed above and on the reverse of the Notice to Owner.
- 6.12 All representations are carefully considered and if successful, a Notice of Acceptance will be sent. However, if unsuccessful, a Notice of Rejection will be issued, along with details of how to appeal to the Traffic Penalty Tribunal (TPT). This is an independent body that considers appeals throughout the county. The owner/keeper/hirer can only appeal to TPT once a formal Notice of Rejection has been received.
- 6.13 All operational guidance will be followed by staff applying this policy.

## 7. **Dispensations**

- 7.1 Herefordshire Council recognises that sometimes it is necessary for a member of the public to park a vehicle in contravention of a Traffic Regulation Order in order for the driver to perform an essential task or activity
- 7.2 Without authority to do this the driver risks receiving a Penalty Charge Notice (PCN) as a Civil Enforcement Officer (CEO) on patrol who sees a vehicle parked in contravention will generally not know where the driver is or what they are doing.
- 7.3 The current charges for the issue of a dispensation permit is listed on the application form, and can be viewed on the dispensations page of Herefordshire Councils website. There is a charge to replace a lost permit or to change the vehicle details.
- 7.4 All charges will be reviewed annually as a part of the general parking charge review.

7.5 Applications will be considered and officers will assess them against the operational guidance.