

Parking Control

Appeals Processes and Discretion Policies



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1. BACKGROUND

The Road Traffic Act 1991 introduced the concept of local authorities undertaking enforcement of parking management schemes. This system was called Decriminalised Parking Enforcement. Parking 'offences' became 'contraventions' and parking attendants employed by the relevant Local Authority, issued [civil] Penalty Charge Notices.

The subsequent introduction of the parking related sections of Part 6 of the Traffic Management Act 2004 on 31st March 2008 changed the legal framework. It widened the scope of local authority parking enforcement and harmonised the regulations applicable to authorities inside London with those pertaining to authorities outside of the Capital. Under the new Act decriminalised parking enforcement became Civil Parking Enforcement (CPE) and Parking Attendants were re-named Civil Enforcement Officers (CEOs).

North Tyneside Council's Powers of Enforcement

On 23 May 2007 the Secretary of State for Transport, Local Government and the Regions, in exercise of powers conferred by paragraphs 1(1), 2(1) and 3(3) of Schedule 3 to the Road Traffic Act 1991 and of all other powers enabling him in that behalf, made the following Order:-

The Road Traffic (Permitted Parking Area and Special Parking Area) (Metropolitan Borough of North Tyneside) Order 2007. This Order came into force on 24 June 2007.

Statutory Instrument 2007 N° 1511

The area for which the Council has been granted Permitted Parking Area and Special Parking Area status, is the whole of the Metropolitan Borough of North Tyneside except –

- (a) The entire length of the A19 within the borough, including its on and off slip roads and the length within the Tyne Tunnel; and
- (b) The A1058 from the eastern borough to its junction with the A1108, including its on and off slip roads and the junction with the A1108.

As a consequence of the above legislation, as from 24 June 2007, the responsibility of enforcing on-street parking restrictions moved from Northumbria Police to North Tyneside Council. For the purpose of clarification, the Council had always been responsible for enforcement of its off-street facilities.

Legislative changes (effective from 31 March 2008) have superseded the above regulations and Civil Parking Enforcement within North Tyneside is now undertaken in accordance with Part 6 of the Traffic Management Act 2004.

In addition to the above, on 1st November 2005, the Statutory Instruments came into force under the Transport Act 2000 enabling Council's undertaking decriminalised parking enforcement to issue Penalty Charge Notices to vehicles which are illegally driven in bus lanes.

Priority lanes have been a feature of Tyne and Wear's transport system for many years. Their aim is to assist in the efficient management of the highway network by giving priority to more sustainable modes of travel. They enable buses to operate more quickly and reliably, which helps to make public transportation an attractive alternative mode of transport for people. One of the main barriers to the reliability of services is prohibited vehicles travelling in and using the bus lanes, and adversely affecting the ability of buses to travel efficiently.

North Tyneside Council have undertaken enforcement of bus lanes, bus gates and bus only streets utilising static CCTV cameras since 2013.

2. RESPONSIBILITIES OF PARKING CONTROL

The Parking Control team are responsible for:

- Enforcement of waiting, loading and permitted parking restrictions in on- and off-street (Car Park) locations;
- Operation of Mobile CCTV Enforcement Vehicle;
- Operation of Static Bus Lane Enforcement Cameras;
- Dealing with appeals to penalty charge notices issued in relation to the above enforcement;
- Management and maintenance of public car parks (42no.);
- Management and maintenance of controlled on-street parking places;
- Cash Collection and banking service from P&D machines (162no.);
- First line response to P&D Faults and management of external maintenance contract;
- Administration of Parking Permit Applications;
- Processing of applications for temporary dispensations and suspensions;
- Maintenance of all regulatory lines/signs associated with parking facilities and Waiting/Loading restrictions;
- Management of Traffic Regulation Consolidation Orders relating to Waiting/Loading, Permitted Parking, Off-Street Parking and Bus Lane restrictions in the borough.

Requests for new parking restrictions, new permit restrictions, amendments to existing restrictions, white H-bars and advisory disabled bays are dealt with by the officers in the Traffic team. Requests for any of the above can be sent by e-mail to traffic@northtyneside.gov.uk or submitted via the Council's website at www.northtyneside.gov.uk .

3. GLOSSARY OF TERMS

ADJUDICATION - The process by which an Independent Adjudicator decides an appeal.

ADJUDICATOR - Independent lawyers with at least five years' experience whose appointment has been agreed by the Lord Chancellor, a government law minister. Adjudicators are independent of any council or the Highways Agency. They decide appeals against penalty charge notices issued under the Traffic Management Act 2004, and the Transport Act 2000.

APPEAL - The act of referring a dispute concerning a PCN to an Independent Adjudicator. A motorist may only appeal after the Council has rejected a Formal Representation, via a Notice of Rejection (NoR). Appeals may only be made on certain, specified grounds and must be made within 28 days of the date of the NoR.

APPELLANT - The motorist or vehicle owner who receives a penalty charge notice (PCN) and appeals to the Traffic Penalties Tribunal (TPT).

CERTIFIED DEVICE - A device, such as a static CCTV camera or Mobile CCTV Vehicle, that is approved by the Secretary of State for use by the Council in an enforcement capacity.

CERTIFIED ENFORCEMENT AGENTS (previously known as BAILIFFS) - If a PCN remains unpaid following the Order for Recovery, the Council may apply to the Traffic Enforcement Centre (TEC) for authorisation to prepare a Warrant of Execution. When granted, the Warrant is produced, and the debt will be passed to a Certified Enforcement Agent (CEA) to collect the outstanding amount. The CEA will apply additional fees to cover their costs in line with The Taking Control of Goods (Fees) Regulations 2014. At this stage, the Council is no longer responsible for the collection of the unpaid debt and the debtor should contact the CEA to discuss the case.

CHALLENGE (or INFORMAL REPRESENTATION) – An objection to the issue of a PCN sent to the issuing authority before the time when formal statutory representations can be made i.e. before the issue of a Notice to Owner (NtO).

CHARGE CERTIFICATE – A notice issued to motorists who have received a PCN and subsequent NtO (for parking only) but have not paid the penalty charge within the statutory time limits.

A Charge Certificate increases the full penalty charge by 50%. The motorist has to pay it within 14 days from its service if they are to avoid the debt being registered.

CIVIL ENFORCEMENT - Control of parking and moving-traffic (bus-lane) contraventions by a council under the Traffic Management Act 2004 or Transport Act 2000.

CIVIL ENFORCEMENT OFFICERS (CEOs) - A uniformed officer employed by or on behalf of a council to issue penalty charge notices for parking contraventions under a civil enforcement scheme.

COMPELLING REASONS - Special reasons (that fall outside the grounds of appeal) for cancelling a penalty imposed by a council for a parking contravention.

CONTRAVENTION - A motorist's failure to comply with parking or bus lane regulations that are in operation.

COUNTY COURT - The court where a debt is registered following non-payment of a penalty charge notice 14 days after the service of a charge certificate. Such debts are registered at the Traffic Enforcement Centre (TEC), attached to Northampton County Court.

DATE OF SERVICE - In relation to correspondence that is posted (first class) by Parking Control to an appellant/vehicle keeper etc, the date of service, *i.e.* the date when a letter is deemed to have been delivered to the recipient, shall (unless the contrary is proved) be taken to have been affected on the second working day after the day of posting. In terms of working day, this means any day except a Saturday or Sunday, New Year's Day, Good Friday, Christmas Day, or any other day which is a bank holiday in England and Wales.

DEBT REGISTRATION – The process of recording a parking or bus-lane PCN with the Traffic Enforcement Centre (TEC) at the county court, not less than 14 days after the council has served a charge certificate because the penalty charge has not been paid. Debt registration is automated, and motorists cannot be represented during the process.

DECRIMINALISATION – Formally, under Road Traffic Act 1991 and now under the Traffic Management Act 2004, the Secretary of State for Transport can make orders such that motorists who do not comply with the parking controls covered by the orders no longer commit a criminal offence subject to a Fixed Penalty Notice. The controls are said to have been decriminalised. Contraventions then must be enforced through civil procedure using PCNs.

DISCOUNT RATE - A 50% reduction in the penalty charge due if a PCN is paid within 14 days from the date of issue.

In cases where a Regulation 10 PCN is issued on the basis of evidence from an approved device (a mobile enforcement camera), the discount period will be extended such that if a (Regulation 10) PCN is paid not later than the last day of the period of 21 days, beginning with the date on which the PCN was served, then a discount of 50% will apply to the penalty charge.

DISCRETION - The administration of parking controls must always be proportionate and fairly administered. The basis of the control is laid down in the relevant Traffic Regulation Orders, which have been drafted to make the rules as clear and precise as possible. Thus, it should be clear in any situation whether a breach has occurred or not, and the extent to which there is liability for the penalty. In addition, the council owes a duty to the residents and businesses to enforce the rules which have been lawfully accepted in the public interest and adopted after appropriate consultation. Thus, the starting point is that any PCN will be enforced.

Nevertheless, in order for enforcement to be fair to the motorist and to use the powers proportionately, the council may nevertheless decide that a PCN should be cancelled because of the particular circumstances of the case and exercise its discretion accordingly.

It is important to appreciate that the CEO has no discretion once the PCN is issued, and those receiving a PCN should not seek to persuade the CEO to rescind it. Prior to that, the CEO can take into account any evidence supplied by the motorist in deciding whether to issue the PCN, such as production of a valid parking ticket which was not displayed properly, but the CEO is

not obliged to seek out individuals, or otherwise corroborate any statement, as requested in a notice placed in the vehicle. The content of such notices will be recorded by the CEO and will be considered at the later stage.

DVLA - Driver and Vehicle Licensing Authority at Swansea.

EXEMPTION - Certain vehicles are exempt from some parking restrictions, often when carrying out activities listed in the Traffic Regulation Orders. Examples of these vehicles are those of the statutory undertakers when on operational duty, removal lorries, vehicles involved in loading or unloading.

FALSE DECLARATION - It is a criminal offence to 'knowingly and wilfully' make an untrue statement in connection with an appeal to the Independent Adjudicator or the county court. Anyone committing such an offence risks conviction and a fine.

FORMAL REPRESENTATIONS - Formal objection to liability for a penalty charge, provided for in legislation and made to the authority which issued the PCN following the issue of a NtO.

HIRE VEHICLE - Vehicles are normally hired under a contract that conforms with the Road Traffic (Owner Liability) Regulations 2000. This transfers liability for any PCN (and other contraventions or offences) from the hire company, as the vehicle's owner, to the vehicle's hirer

MOTORIST - The use of the word 'motorist' throughout this document includes driver, owner or keeper of a vehicle depending on the context.

NOTICE OF REGISTRATION OF DEBT – A notice saying that a debt has been registered at county court.

NOTICE OF REJECTION OF REPRESENTATION (NoR) – A letter from the council to a motorist saying they have rejected the motorist's formal representations. The motorist may appeal to the adjudicator once they have had one of these.

NOTICE TO OWNER (NtO) – A statutory notice served by the council on the person they believe is the owner of a vehicle against whom they have issued a parking PCN that remains unpaid after 28 days. The NtO requires the owner to:

- make payment of the full penalty charge within 28 days, or
- make formal representations within 28 days against liability for the charge on one of the grounds of appeal allowed.

A separate NtO is not issued for bus-lane contraventions.

ORDER OF RECOVERY - A statutory notice issued to the motorist that an unpaid penalty charge has been registered as a debt at the Traffic Enforcement Centre (TEC) at the county court.

PENALTY CHARGE NOTICE (PCN) - A notice issued by an authority to a motorist appearing to be in charge of a vehicle that the authority believe was contravening its Traffic Regulation Order. The notice must include a description of the alleged contravention.

PROCEDURAL IMPROPRIETY - An authority's failure to follow the proper procedure laid down in law for issuing a penalty charge notice or a Notice to Owner.

REGISTERED KEEPER - The person or organisation recorded at the Driver and Vehicle Licensing Agency as being a vehicle's keeper. Because of 'owner liability', authorities may assume that the registered keeper is also the vehicle's owner for enforcement purposes unless there is clear evidence to the contrary or the registered keeper proves this assumption wrong.

REGULATION 10 PCN - A Regulation 10 PCN is a Penalty Charge Notice that has been served by post rather than, in the case of a Regulation 9 PCN (a 'normal PCN'), by affixing to a vehicle or serving to the driver.

REVIEW - Either party to an appeal considered by the Independent Adjudicator can apply for a review of an adjudicator's decision. However, there are few grounds for having such a review.

STATEMENT OF LIABILITY - Part of the contract signed by the hirers of a vehicle agreeing that they accept liability, as if they were the owner, for PCNs issued to the vehicle during the hire period. A hire contract must contain the details required by the Road Traffic (Owner Liability) Regulations 2000 to enable the hire company to transfer liability like this.

STATUTORY DECLARATION – A legal statement from a motorist in response to an Order for Recovery saying that the council had not complied with an earlier stage in the enforcement process. A valid statutory declaration cancels the charge certificate and the associated 50% increase in the penalty charge and causes enforcement to revert to an earlier point giving the opportunity to either pay or appeal to the adjudicator. Statutory Declarations only relate to bus-lane penalties issued in England (outside London).

TRAFFIC ENFORCEMENT CENTRE (TEC) – A centre at the county court at Northampton where unpaid penalty charges are registered as debts. (See debt registration.) This is an automated process and the motorist cannot be personally represented during it.

TRAFFIC PENALTIES TRIBUNAL (TPT) – An independent organisation that deals with appeals when the council has issued a Notice of Rejection of Representation (NoR). It is not possible to appeal to the TPT until a NtO has been issued and your subsequent representation to the council has been rejected.

TPT adjudicators are wholly independent lawyers and are supported by a small team of administrative staff, who provide customer support.

The TPT adjudicators look at the facts, ensure that the PCN has been correctly issued and a Traffic Regulation Order is in place. The Appellant completes the form sent by the Council to them with the NoR and then send it directly to the TPT, who then notify the Council who can decide whether to contest or allow the appeal.

The decision made by the TPT is final and binding. The hearing can be either by post, in person or by telephone, with the evidence considered by the TPT being submitted via their online portal.

TRAFFIC REGULATION ORDER (TRO) – A legal order made under the Road Traffic Regulation Act 1984 for controlling and regulating the movement of traffic.

WARRANT OF EXECUTION - A county court's authority to enforce an unpaid debt after debt registration. The warrant must be held by a CEA when trying to recover the debt.

WITNESS STATEMENT – A signed written document completed by a third party as evidence about the parking of a vehicle. It can be used by a motorist to support their challenge or appeal against a PCN or NtO.

A Witness Statement is also a motorist's legal statement responding to a county court Order for Recovery. A valid Witness Statement cancels any Charge Certificate and the associated 50% increase in the penalty charge. It causes enforcement to revert to the NtO or appeal stage. It is a criminal offence to make a false Witness Statement.

4. INTRODUCTION

- 4.1 The Secretary of State for Transport, under section 87 of the Traffic Management Act 2004, has published Statutory Guidance for which Enforcement Authorities must have regard to when interpreting, managing and deploying Civil Enforcement legislation.
- 4.2 Part of the Statutory Guidance relates to the exercise of discretion. The Secretary of State considers that the exercise of discretion in such circumstances should rest with back-office staff and not with CEOs, so as to protect them from allegations of inconsistency, favouritism or suspicion of bribery. It also gives greater consistency in the enforcement of traffic regulations.
- 4.3 The Statutory Guidance notes that an Enforcement Authority must not fetter discretion and should publish a policy on the exercising of discretion and that the policy should be used flexibly with each case being judged on its merits. Additionally, an Enforcement Authority should be ready to depart from its published discretion policy if the circumstances of a case warrant it.
- 4.4 The Secretary of State has clearly noted in the Statutory Guidance that the considering of challenges, representations and defence of appeals is a legal process that requires officers dealing with those aspects to be trained in the relevant legislation and how to apply it.
- 4.5 Additionally, the Statutory Guidance notes that elected members and unauthorised staff should not, under any circumstances, play a part in deciding the outcome of an individual challenge or representation so as to ensure that only fully trained staff make decisions based on the facts presented.
- 4.6 The policies in this document are intended to inform the public and provide guidance to council employees working in the enforcement of parking regulations. The policy document, when read in conjunction with the council's complementary "**Enforcement Activities and Policies**" guidance document is consistent with current best practice and aims to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the Traffic Penalties Tribunal (TPT) and the Local Government Ombudsman (LGO).
- 4.7 The Council's Appeals Officers will act fairly and proportionately when exercising their discretionary powers to cancel a PCN at any point throughout this process, if it deems it to be appropriate based on the individual circumstances of the case.
- 4.8 These policies will be applied with some flexibility and the officers may depart from its normal policies if the circumstance of the case allows it.
- 4.9 This guidance document is designed in two parts. The first part is intended to give the reader an understanding of the council's back-office processes and the appeals options available to motorists under the legislation. It also explains the subsequent process available to the council should motorists choose not to appeal or pay the PCN. The second part of this document provides clarity on the Discretion Policies that the Appeals Officers may apply in certain situations when considering a Challenge or Formal Representation.

5. BACK-OFFICE PROCESSES

5.1 Payments of PCN's

- 5.1.1 PCN's are usually payable by the owner or registered keeper of the vehicle, unless the vehicle was hired at the time of the contravention.
- 5.1.2 A range of payment options are available to the motorist, which are outlined on the rear of the PCN or within any statutory documentation sent by the council.
- 5.1.3 The motorist should not make payment if they intend to dispute the Notice. Once a penalty charge has been paid the Notice cannot be challenged as this is an admission of liability.

5.2 Self-Serve System (pre-check whether an appeal is likely to be successful)

- 5.2.1 Due to workload demands, it can take some time for officers to consider and respond to an appeal to a PCN. The council appreciate that this delay can be stressful for motorists.
- 5.2.2 Motorists who feel that a PCN has been issued unfairly and are considering making an appeal can check in advance the likely outcome and if they choose to appeal, the type of evidence required to consider it further.
- 5.2.3 The interactive system learns from users, understands parking and knows the councils' policies. Which means motorists can get on-the-spot answers and advice. This helps motorists make an informed decision about whether to subsequently challenge their PCN.
- 5.2.4 To use the self-serve system, the motorist will require the penalty charge number and the contravention code used. They can access the system on the Council website at <https://northtyneside.self-serve.co.uk/Welcome>

5.3 Informal Challenges, Formal Representations and Appeals

- 5.3.1 An important aspect of the decriminalisation of parking contraventions is the ability of motorists and registered keepers to have their objections heard and considered fully and impartially. The person responsible for the vehicle (usually the vehicle owner) may dispute the issuing of a PCN at three stages of the process:
- **Challenges** (or Informal Representations) can be made against the PCN before the Council has served an NtO;
 - Once an NtO has been served, the vehicle owner may make a **Formal Representation** to the Council;
 - If a formal representation has been rejected by the Council, the vehicle owner may make an **Appeal** against the Notice of Rejection (NoR) to an independent adjudicator (Traffic Penalties Tribunal)
- 5.3.2 Challenges must be made in writing and can be made by anyone, not just the registered keeper of the vehicle. The Council would recommend that any Challenge is submitted through its online portal titled '**Manage your PCN**' on the Council website at

<https://ocmlive.xrxpsc.com/NorthTyneside/OCM-FE/OCM/> as the system will generate an automated acknowledgement to provide re-assurance that the Challenge has been received. The site also enables the motorist to view the photographic evidence captured by the CEO, which may explain better why a PCN was issued.

- 5.3.3 If a Challenge is submitted within 14 days of the date that the PCN was issued, then the discount rate will be frozen. If the Challenge is rejected, then the council will re-offer the 14-day discount period.
- 5.3.4 If a Challenge was received after the 14-day period from the date that the PCN was issued, the penalty charge will be at the full value. If the Challenge is subsequently rejected, then the penalty charge will be at the full value. If a Challenge is rejected the council will provide information about the next stage in the process and explain why the decision has been made.
- 5.3.5 Some motorists make payment of a PCN at the same time as submitting a Challenge, in the hope that the council will accept the discount rate if the subsequent appeal is rejected. Please note that the council cannot consider a Challenge when the PCN is showing paid. If a payment is received within 28 days of the PCN being served and the motorist indicates that they also want to Challenge the PCN, then they will be offered the opportunity of a refund. The council will only consider the Challenge once they receive confirmation that the motorist wants the payment returned. The council will not review the Challenge prior to refunding the payment to determine whether the Challenge is likely to be successful. The council would therefore recommend that the motorist tries the online Self-Serve facility detailed in **paragraph 4.3** before requesting a refund, to avoid any confusion.
- 5.3.6 Second Challenges are not accepted. However, if the council requests more evidence or details, a letter requesting the information within 14 days will be sent to the motorist. If the evidence is not received within 14 days, the Challenge will be rejected. Alternatively, the Appeal's Officer may reject the Challenge based on the evidence available but indicate that they are happy to review the decision if named evidence is submitted within 14 days.
- 5.3.7 If a payment of the penalty charge is made following receipt of the Challenge decision, then the case is closed, and the motorist will be unable to submit a further representation at a later stage of the appeals process.
- 5.3.8 If a Challenge is accepted, the PCN will be cancelled, and a letter will be sent to the motorist confirming closure of the case.
- 5.3.9 **Formal Representations** must be made in writing and can only be made by the registered keeper of the vehicle. The council would again recommend that any Formal Representation is submitted through the online portal titled '**Manage your PCN**' on the Council website at <https://ocmlive.xrxpsc.com/NorthTyneside/OCM-FE/OCM/> as the system will generate an automated acknowledgement to provide re-assurance that the Representation has been received.
- 5.3.10 There are statutory grounds for representations that can be made to a council at this stage. The council are not however constrained to these grounds and may exercise discretion as to whether or not to cancel PCNs on other grounds.

- 5.3.11 If the representation is rejected, the council will issue a Notice of Rejection (NoR), which will:
- state the reason for rejection, dealing with and answering all points raised in the representation and providing a clear explanation for the decision;
 - state the amount owed and timescales for payment;
 - state that a Charge Certificate may be served, unless before the end of the period of 28 days, beginning with the date of service of the NoR, either payment is received, or an appeal is made to an adjudicator;
 - advise of general form and manner in which an appeal to the adjudicator should take.
- 5.3.12 If a payment of the penalty charge is made following receipt of the NoR, then the case is closed, and the registered keeper of the vehicle will be unable to submit a further representation at a later stage of the appeals process.
- 5.3.13 If a representation is accepted, the PCN will be cancelled, and a letter will be sent to the registered keeper of the vehicle confirming closure of the case.
- 5.3.14 Following the receipt of a NoR sent by the council, if the registered keeper of the vehicle is not satisfied by the outcome of a representation, they are entitled to make an **Appeal** to the Traffic Penalty Tribunal.
- 5.3.15 The Traffic Penalty Tribunal is an independent body which has been set up to ensure that unresolved legal disputes between the registered keeper of the vehicle (known as the appellant at this stage) and the council can be heard at a formal tribunal hearing. This body is independent of the council.
- 5.3.16 The appellant can request that any appeal hearing is held in person, online, by telephone or that the hearing is heard in their absence (a postal appeal). The council may send representatives to appeal hearings, if they wish.
- 5.3.17 Decisions made by Independent Adjudicators will normally be considered as final and any directions given by adjudicators must be complied with immediately. Although the regulations do allow for reviews of decisions to be requested, the grounds for these are often quite limited.
- 5.3.18 In general, a review would only be requested where fresh evidence has become available, which was not available at the time of the original hearing. No further challenges can be made other than on a point of law, through an application to the High Court for judicial review.
- 5.3.19 If an adjudicator allows an appeal, he/she may make such directions to the council as he/she feels appropriate. Usually this will be to cancel the PCN and NtO.
- 5.3.20 Where the evidence confirms that a contravention has taken place, but the adjudicator feels that the council should have used its discretion to cancel the NtO, the adjudicator may refer the case back to the council to reconsider. Such cases will be directed to Chief Executive's Office to ensure that proper consideration is given of the facts presented.

- 5.3.21 A decision must be reached within the period of 35 days, beginning with the date on which the direction was given. If the council does not reach a decision within this period, it is deemed to have accepted the adjudicator's recommendation and must cancel the NtO. Where it does not accept these recommendations, it must notify the adjudicator and the appellant of the reasons for its decision before issuing the Charge Certificate.
- 5.3.22 If the penalty charge is not paid after a period of 28 days, beginning with the date on which the authority notified the appellant that it does not accept the adjudicator's recommendation, the authority may issue a Charge Certificate.
- 5.3.23 If the authority decides to accept the recommendation of the adjudicator, it must cancel the NtO.

5.4 Charge Certificates

- 5.4.1 The Charge Certificate informs the registered keeper of the vehicle that the penalty charge has increased, and action will be taken through the County Court if it is not paid before the end of the period of 14 days, beginning with the date on which the certificate is served.
- 5.4.2 A Charge Certificate may be served by an authority if the following situations apply:
- the penalty charge has not been paid and no representations have been made to the authority before the end of a period of 28 days, beginning with the date the NtO was served;
 - where representations have been rejected and neither full payment nor an appeal to the adjudicator has been made before the end of a period of 28 days, beginning with the date on which the NoR was served;
 - where full payment has not been made before the end of a period of 28 days, beginning with the date on which the adjudicator's decision rejecting the appeal was served on the appellant;
 - where full payment has not been made following a period of 14 days, beginning with the date on which a withdrawal of an appeal was made by the appellant.
- 5.4.3 A Charge Certificate must not be issued until all processes have been completed. If a council issues a Charge Certificate before an appeal is decided, the adjudicator may then allow the appeal on the grounds of procedural impropriety. In all cases, if a part payment has been made within the timescales mentioned, a Charge Certificate may be issued in respect of the outstanding balance.
- 5.4.4 Where a **Charge Certificate** remains unpaid, an authority may apply to Northampton County Court Traffic Enforcement Centre to register the unpaid penalty as a debt. Where this happens an Order for Recovery will be sent by the authority to the registered keeper of the vehicle along with a Witness Statement or Statutory Declaration form. A fee of £8 is payable for the registration of each PCN and this is included to the penalty charge payable by the registered keeper of the vehicle.
- 5.4.5 A motorist's credit rating will not be affected by enforcement proceedings, as the debts will not be entered onto the Registry of County Court Judgements either when the case is at the TEC or transferred out to another County Court.

6. DEBT REGISTRATION - WITNESS STATEMENTS / STATUTORY DECLARATIONS

- 6.1 If a penalty is not paid or appealed within the correct time frames the authority which issued the PCN may register it as a debt with Northampton County Court Traffic Enforcement Centre. If they do this, they must send a Witness Statement or Statutory Declaration form with the Notice of registration of debt to the registered keeper of the vehicle. These forms give them the opportunity to challenge this debt registration.

Witness Statement (applies to parking penalties)

- 6.2 If the registered keeper of the vehicle feels that there are reasons why a PCN should not have progressed to this stage they must complete and send the Witness Statement to the Traffic Enforcement Centre within 21 days. The address to do this will be on the form. The registered keeper of the vehicle may only complete this if the one of the following grounds apply.

1. The registered keeper of the vehicle did not receive a Notice to Owner (NtO)

If no NtO was received, then there was no opportunity to make formal representations to the authority which issued the penalty.

If a successful Witness Statement is made, the authority must set the penalty back (put it on hold) and send the registered keeper of the vehicle a new NtO allowing them the opportunity to follow the proper appeals process or pay.

This ground also applies if the authority sent the penalty by post, but it was not received.

2. The registered keeper of the vehicle made representations about the penalty but did not receive the rejection notice.

If the registered keeper of the vehicle made formal representations against the NtO and this was rejected, but the Notice of Rejection of Representations was not received by the registered keeper of the vehicle, this means that there was no opportunity to appeal to the adjudicator.

If a successful Witness Statement is made the authority which issued the penalty must forward all documentation to Traffic Penalties Tribunal. The adjudicator will then decide what happens next.

3. The registered keeper of the vehicle appealed to the adjudicator against the authority's decision to reject my representations, and:

- ***The registered keeper of the vehicle has had no response to their appeal; or***
- ***A Charge Certificate was sent by the authority before the appeal had been determined; or***
- ***The registered keeper of the vehicle's appeal was successful.***

If an appeal was made to the adjudicator but the registered keeper of the vehicle did not hear anything, there may have been no opportunity to pay the penalty before it increased by 50% and a Charge Certificate was issued.

A Charge Certificate should not be issued before the appeal is decided.

If the registered keeper of the vehicle appeal was successful, the authority should not have issued a Charge Certificate.

If a successful Witness Statement is made, the case is regarded as a formal appeal. The authority must forward all documentation to Traffic Penalties Tribunal. The adjudicator will then decide what happens next.

4. The registered keeper of the vehicle has already paid the penalty to which the Charge Certificate relates

- A Charge Certificate should not have been issued if the penalty had already been paid.
- If a successful Witness Statement is made on this ground, the case is regarded as an appeal to the adjudicator. The authority must forward all documentation to the Traffic Penalties Tribunal. The adjudicator will then decide what happens next.

Statutory Declarations (applies to bus lane penalties)

6.3 If the registered keeper of the vehicle thinks that there are reasons why a bus lane PCN (England only) should not have progressed to this stage they must complete and send the Statutory Declaration to the Traffic Enforcement Centre within 21 days. The address to do this will be on the form. The registered keeper of the vehicle may only complete this if the one of the following grounds apply.

1. The registered keeper of the vehicle did not receive a Notice to Owner (NtO)

If no NtO was received, there was no opportunity to make formal representations to the council against the penalty.

If a successful Statutory Declaration is made, the authority must set the penalty back (put it on hold) and send the motorist a new NtO allowing them to follow the proper appeals process or pay.

2. The registered keeper of the vehicle made representations about the penalty to the council concerned but did not receive the rejection notice.

If you made formal representations against the NtO and this was rejected, but the Notice of Rejection of Representations was not received, this means that there was no opportunity to appeal to the adjudicator.

If a successful Statutory Declaration is made, the council must forward all documentation to us. The adjudicator will then decide what happens next.

3. The registered keeper of the vehicle appealed to the adjudicator against the council's decision to reject their representations but has had no response to the appeal.

If an appeal was made to the adjudicator but the registered keeper of the vehicle did not hear anything, there may have been no opportunity to pay the penalty before it increased by 50% and a Charge Certificate was issued.

A Charge Certificate should not be issued before the appeal is decided.

If the appeal was successful, the council should not have issued a Charge Certificate.

If a successful Statutory Declaration is made, the case is regarded as a formal appeal. The council must forward all documentation to us. The adjudicator will then decide what happens next.

7. CERTIFIED ENFORCEMENT AGENTS (BAILIFFS) AND OUT OF TIME WITNESS STATEMENTS

- 7.1 The council may use certificated Enforcement Agents to recover debt for unpaid PCNs. Before this recovery action takes place, the registered keeper of the vehicle will have been issued with the following statutory documents by the Parking Control team:
- a Notice to Owner;
 - a Charge Certificate; and
 - an Order for Recovery.
- 7.2 If an Order for Recovery has been served and if no payment or Witness Statement OR Statutory Declaration has been subsequently filed in the time allowed, the Council can request authority from the Traffic Enforcement Centre (TEC) to use an Enforcement Agent to recover the outstanding debt arising from the PCN. This is done with a legal document called a Warrant of Execution.
- 7.3 Once a Warrant of Execution is obtained by the council, the debt will be passed to the Enforcement Agent so that they may recover the debt on behalf of the council. The debt outstanding now includes:
- The amount due for the PCN; plus
 - Statutory and reasonable fees which have been incurred as a result of the Enforcement Agent's action.
- 7.4 Once the warrant is with the Enforcement Agent, payment must be made directly to them using the reference and details provided on their correspondence. The value of the collected amount due for the PCN is transferred to the council and the Enforcement Agent retains any additional fees collected to cover their actions.

Out of Time Witness Statement

- 7.5 If the registered keeper of the vehicle has received a letter or visit from a bailiff/enforcement agent in relation to a PCN that they were unaware of, it will usually be because all correspondence had been sent to a previous address. If so, legislation is in place to address these situations. The registered keeper of the vehicle can request that the debt (including bailiff fees) be cancelled by submitting either an Out of Time witness statement (TE7 and TE9) or statutory declaration (PE2 and PE3) to the Traffic Enforcement Centre (TEC). Provided the registered keeper of the vehicle informs the Enforcement Agent of their actions, all bailiff enforcement will be suspended while a decision is being made. If accepted, a new PCN will be issued.
- 7.6 Motorists should be aware that completing the forms will not automatically result in a new penalty charge being issued. In a high percentage of cases, these applications are rejected by TEC.
- 7.7 Once the TEC receive the application, they will acknowledge receipt of the forms and will notify the council, that they must inform their relevant Enforcement Agent to

suspend enforcement for a few weeks while a decision is reached as to whether or not to accept your application and cancel the debt.

- 7.8 The the registered keeper of the vehicle will receive a decision from the TEC approximately 4 weeks after submitting the forms. If accepted, the letter will advise the motorist that the Order for Recovery has been revoked. The the registered keeper of the vehicle will receive a new PCN from the council a short while after.
- 7.9 If the Out of Time witness statement (late appeal) is refused, the the registered keeper of the vehicle will receive a letter from the TEC advising that permission had not been granted to allow them to file the witness statement late (out of time) and that the warrant can be pursued and the Enforcement Agent's recovery action restarted.

8. SERVICE OF STATUTORY NOTICES

- 8.1 The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 states that any notice (not including a Regulation 9 PCN) or Charge Certificate may be served by first class post but not second-class post. Where the person on whom it is to be served is a corporate body, it is duly served if it is sent by first class post to the secretary or clerk of that body. Service of a notice or Charge Certificate contained in a letter sent by first class post which has been properly addressed, pre-paid and posted shall, unless the contrary is proved, be taken to be on the second working day after posting. Full details defining the working day can be seen in the above regulations.
- 8.2 Where the DVLA does not have information on the keeper, it may be that other sources of information may help. The TMA 2004 regulations only make the registered keeper, the presumed keeper and if the authority has better information, this can supplant any DVLA files. Such information may come from resident parking permit applications, CEAs or neighbours (subject to any data protection limitations). The council will use all available avenues to identify a keeper, while taking care not to enforce against an innocent party, bearing in mind the possibility of a vehicle being cloned or something similar.
- 8.3 It may be the case that some keepers cannot be traced. In these circumstances, the council will consider writing off the penalty as a bad debt (subject to internal rules about writing off debt), rather than keeping such PCNs open indefinitely.

9. DISCRETION POLICIES

This Discretion Policy represents a foundation upon which fairness, openness, transparency and discretion can be applied and provides information and guidance on the following:

- **The statutory grounds upon which representations may be made.**
- **Mitigating circumstances.**

The Traffic Management Act 2004 requires there to be nine Statutory Grounds to make representations, however, in accordance with a directive issued by the Local Government Ombudsman, full consideration will be given, and account taken of all representations received, whether or not they fall within the description of “**Statutory Grounds**” or not. It is for this reason that a tenth Ground, encompassing any other information the motorist or owner/keeper would like the council to consider, has been included.

The following section of the document sets out the grounds specified in regulations on which a PCN can be cancelled following representations made by a motorist. Under each specified ground, guidance is given on the factors which will influence the council in deciding whether or not that ground is satisfied.

The guidelines set out in this document provide direction only. Each case shall be considered on its own merits, taking into account all the evidence available and the individual circumstances.

Specified Ground 1 (G1) - The alleged contravention did not occur.

G1.1 - Where the motorist claims he/she was loading/unloading:

MAY ACCEPT REPRESENTATIONS

On a waiting prohibition or in a controlled bay and evidence is available or provided to show:

- Goods being delivered or collected were heavy, bulky, or numerous and it would be unreasonable to expect them to be carried from a 'legal' parking place;
- The loading/unloading activity was adjacent to the premises concerned;
- The loading/unloading activity was timely (includes checking goods and associated paperwork), but not delayed by unrelated activity).
- If in the course of business, including commercial delivery/collections, multi drop parcel carriers, removal services etc.

MAY REJECT REPRESENTATIONS

- On clearways;
- On school zig zag markings;
- On bus stop clearways;
- On Taxi ranks;
- On Police bays;
- On disabled bays;
- Where loading/unloading is prohibited i.e. kerb blips;
- In car parks: (except where there is evidence that the depositing of materials in recycling bins was taking place);
- In goods vehicle only loading bays where the vehicle is not a goods vehicle.

G1.2 - Where the motorist claims that a parking pay & display machine was faulty:

MAY ACCEPT REPRESENTATIONS

- Where service records confirm a fault or that the machine had been taken out of service at the time of the contravention;
- If there is reasonable doubt because evidence not available to confirm that a machine was working at the time (test ticket) and where directed by a notice in the machine, that there was not another ticket machine nearby which was operating correctly.

MAY REJECT REPRESENTATIONS

- If there was another ticket machine nearby that was working correctly at the time;
- If there is no record of the machine being faulty or taken out of service;
- If there is reasonable doubt because evidence confirms that other visitors had been able to purchase tickets during the relevant period.

G1.3 - Where motorist claims that the restriction is not clearly signed or marked:

MAY ACCEPT REPRESENTATIONS

- If signs and/or markings are missing or unclear;
- If signs and markings are inconsistent with each other and/or with the Traffic Regulation Order or other legislation.

MAY REJECT REPRESENTATIONS

- If site visit records or photographs establish that signs and/or markings are correct and consistent with each other and/or the Traffic Regulation Order or other legislation.

G1.4 - Where motorist was carrying out building works:

MAY ACCEPT REPRESENTATIONS

- If evidence confirms that the motorist was loading/unloading;
- If a dispensation notice to park at the location in question had been issued and was on display in the vehicle;
- If works are of a statutory nature or are exempted from restrictions by a Traffic Regulation Order or other legislation;
- If it can be proven that works were an emergency.

MAY REJECT REPRESENTATIONS

- On Police bays;
- On disabled bays;
- Where loading/unloading is prohibited;
- In car parks (except when depositing materials in recycling bins);
- In goods vehicle only loading bays where the vehicle is not a goods vehicle;
- In all other circumstances.

G1.5 - Where motorist claims that a PCN was not served (i.e. PCN not found attached to vehicle or handed to driver):

MAY ACCEPT REPRESENTATIONS

- Where the CEO's computer notes and/or photographic evidence confirm that the CEO was prevented from serving the PCN – in circumstances where the PCN should have been cancelled and replaced by a new PCN which was served by post in accordance with Regulation 10 of The Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

MAY REJECT REPRESENTATIONS

- If the CEO's computer notes or photographs confirm that a PCN was correctly served, i.e. handed to the motorist or fixed to their vehicle;
- If the CEO has issued a Regulation 10 PCN by post.

G1.6 - Where the motorist claims that their vehicle was not parked in the location at the time and or the date the alleged PCN which was issued:

MAY ACCEPT REPRESENTATIONS

- If evidence is supplied which confirms the vehicle owned by the registered keeper is not the same vehicle recorded in the contravention;
- If evidence is supplied that the vehicle was elsewhere on the day/time the PCN was issued.

MAY REJECT REPRESENTATIONS

- If the motorist does not provide a crime reference number after being given a further opportunity to submit such a copy;
- If there is no evidence or if the evidence presented does not support the claim or is inconclusive.

G1.7 - Where the motorist claims that a valid authorisation to park had been issued:

MAY ACCEPT REPRESENTATIONS

- If a copy can be provided to show that the motorist holds a valid authorisation to park.

MAY REJECT REPRESENTATIONS

- If the motorist cannot provide evidence of a valid authorisation to park or if there is no record of any issue of the authorisation;
- If the motorist did not park in accordance with the authorisation;
- Where the vehicle was parked in such a manner that it is causing an obstruction.

G1.8 - Where the motorist claims that a pay & display ticket was purchased and displayed:

MAY ACCEPT REPRESENTATIONS

- Where a valid Pay and Display ticket is produced, and it is the first contravention of this kind.

MAY REJECT REPRESENTATIONS

- If the motorist is unable to produce a valid pay & display ticket;
- The motorist has made a similar representation before and had a previous PCN cancelled, after giving them the benefit of the doubt;
- The CEO noted that the motorist obtained their ticket from another motorist in the car park.

Specified Ground 2 (G2) - That the recipient was not the owner/keeper of the vehicle at the time of contravention.

G2.1 Where the motorist claims that they never owned the vehicle:

MAY ACCEPT REPRESENTATIONS

- If the DVLA confirm, by letter, that the motorist was not the registered keeper at the time of the contravention.

MAY REJECT REPRESENTATIONS

- If the previous registered keeper provides proof that the motorist bought the vehicle before the contravention, or the subsequent registered keeper provides proof that the motorist sold the vehicle after the contravention;
- If the motorist 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 (See Specified Ground 4).

G2.2 – Where the current registered keeper claims that the vehicle was disposed of before the contravention occurred:

MAY ACCEPT REPRESENTATIONS

- If the current registered keeper is able to provide proof that the vehicle was disposed of before the contravention, i.e. a bill of sale, registration documents, insurance documents or a letter from the DVLA; and/or
- If the current registered keeper provides acceptable evidence of the full name and address of the person to whom they transferred the vehicle and the date of the transfer.

(ATTENTION POINT - A new Notice to Owner will be sent to the person named by the current registered keeper).

MAY REJECT REPRESENTATIONS

- If the current registered keeper is unable to prove that they disposed of the vehicle before the contravention or provide evidence of the name and address of the person to whom they transferred the vehicle to;
- If the person named by the current registered keeper as the person to whom they transferred the vehicle to, either does not exist or is for some other reason not considered to be bona fide.

G2.3 – Where the current registered keeper claims that the vehicle was purchased after the contravention occurred:

MAY ACCEPT REPRESENTATIONS

- If the current registered keeper is able to provide proof that the vehicle was purchased after the contravention, i.e. an invoice, registration documents, insurance documents or a letter from the DVLA; and/or
- If the current registered keeper is able to provide acceptable evidence of the full name and address of the person from whom they purchased the vehicle and the date of that purchase.

MAY REJECT REPRESENTATIONS

- If the current registered keeper is unable to prove that they purchased the vehicle after the contravention nor provide evidence of the name and address of the person from whom they bought the vehicle;
- If the person named by the current registered keeper as the person to whom they transferred the vehicle to, either does not exist or is for some other reason not considered to be bona fide.

G2.4 - Where the current registered keeper claims that a contracted third party was responsible for the vehicle at the time of the contravention:

MAY ACCEPT REPRESENTATIONS

- Only when a hire agreement exists (See Specified Ground 4).

MAY REJECT REPRESENTATIONS

- In all other circumstances because the registered keeper is always liable, including when the vehicle was left in the care of third party, such as a garage.

Specified Ground 3 (G3) - That the vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner.

G3.1 - Where the current registered keeper claims that the vehicle had been stolen:

MAY ACCEPT REPRESENTATIONS

- If the registered keeper provides a valid Police crime report reference number which directly relates to the theft or unauthorised use of the vehicle in question.

MAY REJECT REPRESENTATIONS

- If the current registered keeper is unable to provide any proof of theft or unauthorised use;
- If the police crime report reference number provided by the current registered keeper does not exist or it does not match the theft or date of the alleged theft.

G3.2 - Where the current registered keeper claims that the vehicle was driven by a third party (i.e. a friend, relative or estranged partner):

MAY ACCEPT REPRESENTATIONS

- In no circumstances.

MAY REJECT REPRESENTATIONS

- In all circumstances because the registered keeper is always liable, save for when a hire agreement exists (See Specified Ground 4).

Specified Ground 4 (G4) - That the recipient is a vehicle hire firm and was hired out to someone other than the registered keeper at the time of the contravention

G4.1 – Where the registered keeper is a vehicle-hire firm and claims that a contracted third party was responsible for the vehicle at the time of the contravention:

MAY ACCEPT REPRESENTATIONS

- If the vehicle is on short-term hire and the hire company are able to provide suitable evidence that conforms with the relevant statutory instrument.

(ATTENTION POINT - A new Notice to Owner will be sent to the person named by the Hire Company).

MAY REJECT REPRESENTATIONS

- If the hire company are unable to prove that they hired out the vehicle on the date of the contravention or provide the name and address of the person to whom they hired the vehicle;
- If the hire company's agreement does not have a driver liability clause.

Specified Ground 5 (G5) - The penalty charge exceeded the relevant amount

5.1 – The penalty charge exceeded the relevant amount:

MAY ACCEPT REPRESENTATIONS

- If the PCN and/or Notice to Owner showed the incorrect amount of penalty charge, i.e. the wrong penalty charge band.

MAY REJECT REPRESENTATIONS

- If the PCN and/or Notice to Owner showed the correct amount of penalty charge.

Specified Ground 6 (G6) - That there has been a procedural impropriety on the part of the enforcement authority.

G6.1 – Where there has been a procedural impropriety on the part of the Council:

MAY ACCEPT REPRESENTATIONS

- If any requirements imposed by the TMA 2004 or the TMA Regulations in the relation to the imposition or recovery of a penalty charge has not been observed;
- If any document has been served in advance of the time scale set out in the TMA regulations.

MAY REJECT REPRESENTATIONS

- If all requirements imposed by the TMA 2004 or the TMA Regulations in the relation to the imposition or recovery of a penalty charge has been observed;
- If all documents have been served in accordance with the time scale set out in the TMA regulations;
- If the motorist merely considers the restrictions to be unfair.

Specified Ground 7 (G7) - That the Traffic Regulation Order (TRO) which is alleged to have been contravened in relation to the vehicle concerned is invalid.

G7.1 – The TRO was invalid:

MAY ACCEPT REPRESENTATIONS

- If the TRO which prescribes the restrictions that the vehicle was parked in contravention of was not constructed correctly, i.e. the legal processes in making this order was not followed correctly.

MAY REJECT REPRESENTATIONS

- If the TRO which prescribes the restrictions that the vehicle was parked in contravention of was constructed and made correctly;
- If the motorist merely considers the restrictions to be unfair.

Specified Ground 8 (G8) – Invalid service of the PCN by post

G8.1 - Where a PCN was served by post, (not a CCTV penalty), on the basis that a CEO was prevented by some person from affixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, but that the CEO was not actually prevented from doing so:

MAY ACCEPT REPRESENTATIONS

- If the motorist can produce evidence that the CEO was not prevented from serving the PCN by affixing it to the vehicle or by handing it to him/her.

MAY REJECT REPRESENTATIONS

- Where it cannot be proven that the CEO was prevented from serving the PCN by affixing it to the vehicle or by handing it to him/her.

Specified Ground 9 (G9) – The Notice to Owner (NtO) should not have been served because the PCN had been paid

G9.1 - Where the NtO should not have been served on the keeper of the vehicle because the penalty charge had already been paid in full or had been paid at the discounted rate within the discounted period:

MAY ACCEPT REPRESENTATIONS

- If the owner can produce a receipt or bank statement to show that the PCN was paid in time;
- If the payment was not received in time but the owner can provide adequate evidence to explain why the post may have been delayed i.e. postal strikes.

MAY REJECT REPRESENTATIONS

- If no payment has been received;
- Payment in full was made out of time or made at the discounted rate but outside the discounted period and the motorist is unable to produce any evidence that the payment was made before the deadline and/or suitable justification as to why it was delayed in the post.

Specified Ground 10 (G10) - Any other compelling reason why the penalty charge should be cancelled

The decision on whether a PCN should be cancelled will only be taken following very careful consideration taking into account all of the evidence available. If further information is required to enable the decision to be made, the Council may write to the motorist to request further information or evidence be provided.

The following issues are examples of “compelling” issues that have been cited in previous representations:

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BANK HOLIDAYS – RESTRICTIONS APPLICABLE

Unless signs on display at the location specifically state otherwise, parking restrictions (whether they relate to waiting, loading, resident parking or any other type of restriction) are in force throughout the year, *including* Bank Holidays. For clarification, if a regulatory sign does not specify a day or time then the motorist should assume that the restriction applies All Days and at All Times.

In view of this, any PCN issued on a Bank Holiday will normally be upheld, unless it falls into the normal criteria for cancellation or the Council accepts that mitigating circumstances existed at the time.

BANK AND BUILDING SOCIETY VISITS

Only security vehicles can normally claim a loading/unloading exemption when carrying cash and other valuables, due to the very significant quantities that are normally involved. Unless the Council accepts that extenuating circumstances existed, there is no exemption for other vehicles visiting the bank.

Claims from individuals or companies that money was being taken to or collected from the bank will not normally be accepted for cancellation of the PCN. Whilst it is appreciated that difficulty may be experienced when visiting banks, the normal loading/unloading, delivery & collection rules apply. It should be noted that the value of the money involved does not in itself give rise to an exemption from the parking regulations.

Although the value of the money is not itself normally a consideration, if the delivery or collection involves large volumes of coinage this activity would be considered under the “heavy or bulky items” exemption for loading/unloading. In such cases, the PCN may be cancelled upon suitable supporting evidence being received where the Council is satisfied that the coins concerned were of such a quantity as would be covered by the loading exemption.

No dispensation to park on a yellow line will be given to allow drivers to stop whilst obtaining money from an ATM (cash machine). In such instances, PCNs will be pursued.

BLUE BADGES

Appeals tend to fall into two general categories – the first is that there must be a valid blue badge being used properly, in order to ensure the underlying purpose of the adopted scheme; the second is that the badge must be properly displayed in order to facilitate proper management and enforcement of the system of control.

Valid use

Use by someone other than holder

In relation to a valid blue badge being used properly, there are clear rules, such as it being improper for someone else to use the blue badge to go to collect shopping, prescriptions etc for the holder of the badge who remains at home, even if it is another family member. Without further mitigating circumstances, the Council is unlikely to cancel a PCN for use by another person in these circumstances.

Badge being invalid/out of date

It is essential to the operation of the blue badge system that the badge is properly issued and valid. Use of invalid badges will not normally be condoned by the Council. However, it will accept some mitigating circumstances such as when the appellant was given wrong advice by the Council's one-stop shop to continue using an old badge.

Display

Failure to display at all

An appellant may claim that a valid blue badge had been issued but it was simply not displayed, and in support provide a copy of a valid blue badge. While the Council can understand that it may appear to such appellants that the primary purpose of the scheme has been met by their having a valid badge, the Council takes the view that it must be displayed since otherwise the cost of enforcement to the public purse increases significantly. Without a further explanation for why it was not displayed the Council will not normally cancel a PCN.

Badge wrong way up

An appellant may claim that a valid blue badge had been issued but it was simply displayed incorrectly, and in support provide a copy of a valid blue badge. While the Council can understand that it may appear to such appellants that the primary purpose of the scheme has been met by their having a valid badge, the Council takes the view that it must be displayed correctly since otherwise the cost of enforcement to the public purse increases significantly. The Council is also aware of the widespread misuse of the blue badge system and it seeks to enforce this stringently to protect those for whom the scheme was created. Without a further explanation for why it was not displayed properly the Council will not normally cancel a PCN.

Forgetfulness/old age

A common ground of appeal is that the badge was not displayed because the holder is of old age and/or has become forgetful. The Council takes the view that if a person retains the faculties sufficient to still have a driving licence and be driving, then (s)he can be expected to be able to display a badge properly. This in itself will not usually be accepted as a reason to cancel the notice, but if there is additional evidence such as medical evidence, e.g. to show why medication may have affected memory, then the Council may cancel the PCN.

BROKEN DOWN VEHICLE

A broken-down vehicle that cannot be moved is covered by the exemptions contained in Traffic Regulation Orders. Claims of alleged breakdown will normally be accepted as part of the challenge/appeal process if the Authority is satisfied that the circumstances were beyond the driver's control and if satisfactory supporting evidence is produced. Such evidence would include one or more of the following:

- A garage receipt, on headed paper, properly completed and indicating repair of the alleged fault within a reasonable time of the contravention.
- A till receipt for purchase of seemingly relevant spare parts purchased on or about the date of the contravention.
- Written confirmation letter from the AA, RAC or other motoring organisation.

- The Civil Enforcement Officer has noted in the pocket or on the hand-held computer that the vehicle had obviously broken down.

In cases falling under this heading, the nature of the fault must be clear. The Council will need to be satisfied that the driver could not reasonably have expected it to occur before starting the journey and that the fault was not a result of a failure to carry out basic maintenance. Where the breakdown was due to a fault with a part that is subject to normal wear and tear and can reasonably be expected to need replacing over time, the Council may request evidence that the vehicle had been properly serviced within the preceding 12 months.

Similarly, the Council is unlikely to take a sympathetic approach to any challenge on these grounds where a previous PCN issued to the same vehicle has been challenged on the same grounds. It is not reasonable knowingly to take an unroadworthy vehicle on the road and then expect discretion when it breaks down.

A note left in the windscreen, stating that “the vehicle has broken down”, will not by itself be accepted by the CEO as a reason for not issuing a PCN. Neither, on its own, will it normally be accepted as grounds for cancellation of the PCN.

The main areas of contention associated with the alleged breakdown of vehicles are listed below, along with guidelines on how the enquiry should be dealt with.

Removal of vehicle by a garage or breakdown service

If a vehicle has broken down, it is not reasonable for the driver simply to leave it indefinitely before arranging for it to be removed. The Council would expect the driver to arrange for the vehicle to be removed as soon as reasonably possible, and certainly by the end of the following working day. If the vehicle cannot be removed within this time, the Council would expect to see some evidence that the driver has contacted a breakdown service or garage in good time but been unable to obtain a speedier recovery. We would also expect the driver to make contact with us to let us know about the delay and the reason for it, particularly if it is affecting other traffic.

Flat Battery

A receipt for the purchase of a new battery, or to replace parts which could cause a flat battery, should be requested. Normally a faulty alternator, solenoid or fan belt would cause a flat battery. If no evidence is forthcoming, the PCN will be upheld.

In cases where it is alleged that the vehicle was bump/jump started and no other evidence is received, the PCN will normally be upheld.

The Council will also take into account how the vehicle came to be illegally parked before it failed to restart. If a vehicle had been left in a place where it was not entitled to park and the vehicle would not start when the driver returned to it, the PCN is unlikely to be cancelled regardless of the fault. Unless the Council accepts that there were mitigating circumstances, it should not have been parked there in the first instance.

Flat Tyre

In the event of a flat tyre, the Council thinks it reasonable to expect the driver to stay with the vehicle and make efforts to change the wheel using its spare. If the vehicle is left unattended, a PCN will normally be issued, regardless of any notes in the windscreen. However, it may be

cancelled if it subsequently transpires that the driver was elderly, disabled or infirm and had gone to obtain assistance. In such cases, evidence will normally be required from the party who provided the assistance.

If the wheel could not be changed because of mechanical difficulty, evidence must be produced from the attending breakdown service supporting this.

Where a vehicle has a “slow puncture”, we would not expect this to lead to the vehicle needing to be parked in a place where it is not allowed to park. A PCN issued in such circumstances will normally be upheld.

Overheating

Where it is claimed that the vehicle had overheated due to lack of water, the PCN will be upheld unless there is evidence of an unexpected mechanical failure, such as a broken fan belt, faulty radiator or hose.

Consideration will not normally be given to any claims that the vehicle had overheated through heavy traffic or hot weather, since these conditions in themselves will not cause overheating in a properly functioning engine.

Running out of fuel

A correctly functioning fuel gauge will indicate when the tank is running low. A PCN will therefore normally be upheld, unless the driver has provided evidence that there was an unforeseen electrical or mechanical fault which prevented the correct functioning of the fuel gauge.

BUS LANES

Vehicles using bus lanes to gain advantage over queuing traffic, or as shortcuts, cause disruption to vehicles making legitimate use of the bus lanes.

The Transport Act 2000 provides for authorised local authorities to issue a PCN by post to the owner/registered keeper of a vehicle seen in a bus lane. The contravention is “**being in a bus lane**” which means that the Council can issue a PCN to *any* unauthorised vehicle seen in a bus lane (stationary or moving). The contravention is identified by an approved fixed or mobile camera device and the PCN is served on the person or company notified by the Driver and Vehicle Licensing Agency (DVLA) as being the registered keeper.

There are, however, certain exceptions provided for within the Traffic Regulation Orders, some of which apply throughout the Borough and some of which apply in certain bus lanes but not in others.

Where one or more of the above circumstances applies, this will usually be apparent from the camera footage. Where it is not apparent, the Council will expect any Representations to be accompanied by satisfactory evidence before consideration will be given to cancellation.

CARE ORGANISATIONS

Numerous care organisations are now operating within the Borough as a result of sub-contracting by social services and the local health authorities, as well as privately arranged care. Each may display badges issued by the various organisations, but due to the variety of badges in circulation

these are *not* recognised by the Council as valid authorities to park. Only permits or temporary vouchers issued by the Council's Parking Control team are valid for these purposes

A vehicle displaying a Care Service badge is not exempt from the parking regulations. However, a degree of leniency will usually be applied when considering appeals, particularly if the individual has not received a similar PCN before and the Council is satisfied that the parking infringement has not had significant traffic management implications. The Council is mindful that this is a voluntary service for the benefit of the sick and elderly. In addition, the Council realizes that the driver may need to escort the patient and await their return.

The same consideration should apply to other people who are engaged in this activity but not necessarily part of the scheme.

Parking in Council Car Parks: It is not felt that carers ought to have a need to park within Council car parks free of charge. Consequently, PCNs issued to such vehicles not displaying a valid ticket will normally be upheld.

Parking on Yellow Lines: Carers are not exempt from yellow line restrictions and must not contravene them. No dispensation will be issued to carers to enable them to park on a yellow line, unless there is evidence of a medical emergency. It should be noted that anyone with significant and permanent mobility difficulties is likely to qualify for a Blue Badge, enabling vehicles in which the badge holder is travelling to park in some places that they would not otherwise be able to do.

CERTIFIED ENFORCEMENT OFFICERS (formally BAILIFFS)

Certified Enforcement Officers are agents of the Court and perform many functions. Executing Warrants is the function that is likely to require their vehicles to be parked for any length of time and this is when they are most likely to receive a PCN.

Warrants of Execution are Court Orders for the collection of money or goods of sufficient value to produce the required amount. The Certified Enforcement Agent will always have a vehicle nearby as they may have to remove goods from the property to cover the value of the warrant they are enforcing.

They do not need a vehicle nearby for their other activities i.e. if they are serving a summons or serving a Warrant (not actually enforcing it).

Certified Enforcement Agents carrying out Orders of the Court are not exempt from the legislation and an official badge of identification should be displayed in the vehicle. However, when they are taking goods or high values in cash, discretion can be given, where it appears reasonable.

Once a Certified Enforcement Agent has seized goods, they have to be listed before the Certified Enforcement Agent leaves the premises and this can take some time. In these circumstances the CEO should ask for a Warrant number identification, confirmation of the nature of the goods seized and the address from which they were taken before cancelling the PCN.

Where it is known that extensive and time-consuming loading/unloading is to take place, a Dispensation Notice should be obtained from the Council in advance to cover parking.

COUNCIL OFFICERS ON DUTY

Some Council vehicles will be exempt from the parking restrictions due to the duties they are involved in.

All Council officers on duty, (whether social workers, housing officers, highways inspectors, environmental health inspectors etc), are expected to observe the parking regulations. No dispensation will be given to allow staff or members to park on a yellow line. In such instances, PCNs will be issued and pursued.

A request for cancellation of a PCN will only be considered if an emergency arose, which prevented the officer from removing the vehicle after the expiry of paid for parking time or necessitated the leaving of the vehicle parked illegally. (This criteria applies to all motorists). A letter or e-mail a Senior Officer must support any request for cancellation in these circumstances.

Requests for cancellations due to delays in meetings, case conferences, seeing clients etc., will not normally be considered unless there are mitigating circumstances that would justify the use of discretion.

COURT ATTENDANCE

JURY SERVICE OR WITNESS: The length or timing of any court hearing or trial cannot be guaranteed and often Jury members and/or witnesses find that they are unable to leave court to purchase further pay & display time in a car park. This often leads to overstay and to PCNs being issued.

To counter this, Courts issue clear instruction to all Jury members and witnesses advising them as to how and where they should park. They do not recommend the use of pay & display car parks. Jury members and witnesses who nevertheless decide to use one of our Pay and Display facilities may wish to use the pay by mobile phone option, instead of buying a Pay and Display ticket.

The courts will not pay any PCN issued to a witness or Jury member whilst carrying out their legal duties' even if they are delayed by the court.

In such circumstances the Council will enforce PCNs against the keeper unless evidence is produced to support the fact that they were delayed to an extent that could not have been reasonably foreseen, e.g. moved to a hotel overnight.

DEFENDANTS: The conditions applying to jury members and witnesses equally apply to defendants. Defendants in a court case should seek advice (normally from their solicitor) as to whether or not it is possible that a custodial sentence may be handed down or that bail may be refused, even if those outcomes are unlikely. If so, it would be very unwise to park in a charged or time limited car park or bay.

There have been instances when a defendant received a custodial sentence unexpectedly and, as a result, could not remove his/her vehicle from the car park. In such instances the Council will expect to be informed immediately by someone and for the vehicle to be removed as soon as is possible by the defendant's family, friends or legal representatives. Any PCN issued will not be enforced providing the defendant's legal representative supplies supporting evidence and the vehicle is moved within a timescale that the Council thinks is reasonable.

DENTAL/DOCTORS APPOINTMENTS

When attending for a pre-arranged appointment, motorists are expected to allow sufficient time to be able to park their vehicles correctly, bearing in mind that parking spaces around doctors' or dentists' surgeries and hospitals are often busy and/or in short supply. It is unwise to arrive for appointments at such places with little time to spare, expecting to find a space immediately outside the premises.

If the claim is that an appointment was delayed or that treatment took longer than could reasonably have been expected, consideration should be given to the time of the appointment and the time purchased upon arrival. *It is common for such appointments to be delayed and it is sensible for people to allow for this and over-estimate the amount of time required.*

No dispensation will normally be allowed where vehicles park on yellow lines. However, if an emergency situation arises or the patient has unexpectedly needed immediate and extensive treatment, the Authority is likely to exercise discretion upon production of appropriate supporting evidence. For these purposes, we will consider a case to be an emergency where it clearly required medical attention and could not reasonably have been foreseen.

If consideration is to be given to the cancellation of the PCN, in all cases a letter of confirmation on official stationery, signed by the dentist/doctor, should be supplied to the Authority by the person making the request. A PCN will not normally be cancelled without this.

DRINK DRIVING OR OTHER ARREST

If the Police have arrested the driver of the vehicle and the vehicle has been left in contravention of the regulations, the PCN should not be enforced unless the driver had ample time (at least 12 hours after being released from custody) to remove the vehicle.

In all cases of arrest claims, the driver should be asked to provide the date and time of arrest, the custody number and the Police Station involved. The relevant Police Station should be contacted to substantiate any information given by the driver before the PCN is cancelled.

This also applies in cases where a person has been to visit a doctor or a hospital and is subsequently detained and sectioned under the Mental Health Act. The PCN should be cancelled after confirmation is received from the GP or doctor concerned.

It is the responsibility of the driver/owner of the vehicle to supply this information to the Authority. Failure to provide supporting evidence will lead to the PCN being upheld.

DVLA INCONSISTENCIES

The only piece of vehicle information which must be shown correctly on the PCN is its registration number. Whilst it is obviously helpful if all of the information is correctly recorded, if any other details are wrong (such as the colour, make or model) this does not invalidate the PCN and it will still be pursued.

The DVLA supplies the majority of the information about vehicle ownership electronically. The misspelling of a name and address on an Notice to Owner does not invalidate it (provided that the

details are sufficient to identify the registered keeper) nor discharge the liability of the person receiving it.

ESTATE AGENTS

Estate agents visiting a client's property within a residential parking zone should either display a valid Visitors Permit (Obtainable from the resident).

Estate agents are not exempt from parking restrictions and PCNs issued under these circumstances will normally be upheld.

EXEMPT VEHICLES

The following vehicles are exempted from the regulations in all circumstances, if they are being used for their proper purpose, and for as long as reasonably necessary –

- Vehicles being used for fire brigade, police or ambulance purposes.
- A vehicle being used in the service of a local authority in pursuit of its statutory powers or duties, providing that it is necessary for the vehicle to park there.

The following vehicles are exempted in the circumstances shown below. However, in all cases there should be evidence that the exempted activity is taking place and that the vehicle concerned is actively engaged in this activity. If no exempted activity was seen to be taking place by the CEO, the PCN should be upheld on the basis that the attendant observed the vehicle for a reasonable length of time and saw no indication to suggest that the activity was taking place.

- Universal Postal Service vehicles whilst engaged in the delivery or collection of postal packages;
- Vehicles belonging to "Statutory Undertakers" (electricity, gas, water, telecommunication companies) whilst engaged in laying or undertaking repairs to pipes or cables etc. in connection with their *statutory* functions;
- Passenger carrying vehicles (PCVs, formerly known as PSVs) whilst waiting at an authorised stopping place, terminal or turning point;
- Furniture removal vehicles whilst actively removing or delivering furniture.
- Formal vehicles being used in connection with a wedding or funeral;
- Vehicles engaged in building, excavation or demolition works whilst the vehicle is actively in use for that purpose;
- Vehicles being used in connection with the removal of any traffic obstruction.

All exempt vehicles should usually be liveried, not private cars or vans, and the exemption does not automatically extend to contractor's vehicles unless specified.

There are other exemptions in the Traffic Regulation Orders that do not relate to specific vehicles but apply to any vehicle in particular circumstances. These are :-

- Where the driver is prevented from circumstances beyond his control from moving the vehicle. (This obviously covers a vehicle breakdown but may cover other circumstances too – each case will need to be assessed on its own merits);
- Where the vehicle needs to wait in order to avoid an accident;

- Where the vehicle is parked to enable someone to get in or out. (This is usually limited to 5 minutes except where the person getting in/out of the vehicle needs longer, i.e. is elderly, suffering from a disability which impairs their ability to walk, is blind, carrying luggage or heavy shopping etc. In these circumstances the vehicle may wait for as long as is necessary);
- Where the vehicle is waiting to load and unload. (See **LOADING AND UNLOADING OF GOODS**).

Adjudicators have held that where a driver receives a PCN and is claiming an exemption from the Regulations, as listed above, the burden of proof rests with the driver and he should be able to produce evidence that supports the appeal.

If the Council is satisfied that the exemption applied, the PCN will normally be cancelled. However, it is not always possible for a driver to produce proof and each case will need to be considered on its own merits.

FUNERALS / WEDDINGS

The Council recognises the importance of weddings and funerals. However, this has to be balanced against the needs of other road users and residents. Only the official wedding cars (i.e. the bridal party) are covered whilst the wedding ceremony takes place. Similarly, only the official hearse and any other official car provided by the Funeral Director are covered whilst the funeral takes place.

Weddings and funerals are planned events. Guests should arrange to park in an appropriate nearby parking place and not in contravention of any waiting/loading restriction, and they should therefore ensure that they arrive in good time to do so. However, where vehicles stop on single or double yellow lines only to allow passengers to embark/disembark, they will be covered by a general exemption.

GARAGES – VEHICLES LEFT FOR ATTENTION

Whilst a PCN will usually be paid by the driver who left the vehicle in contravention of the regulations, legal responsibility under Traffic Management Act rests with the vehicle owner. If the garage will not pay the PCN, the vehicle owner is legally liable for the payment of the penalty and cannot avoid payment on the basis that he/she was not in control of the vehicle at the time. However, the first that many drivers will know of a PCN is when they receive the Notice to Owner document, and it may be reasonable to offer the discounted amount again if Representations are made with appropriate supporting evidence provided.

GLAZIERS

For safety reasons and for the secure transportation of glass, glaziers' vehicles will often need to be parked close to the premises on which they are working. Where glaziers' vehicles are parked adjacent to the premises and restrictions apply, CEOs will observe if the glass is of a size (e.g. a shop window) which would warrant adjacent parking. Glaziers will be exempt from the regulations in these cases whilst the window is made safe. Otherwise, the vehicle should be parked in an appropriate parking place in line with the restrictions.

GOVERNMENT DEPARTMENTS

Unless evidence in the form of a letter on headed notepaper from a senior officer can be provided to confirm that the purpose for leaving the vehicle illegally parked was exceptional, the PCN should be upheld. The types of exceptional circumstances where discretion may be appropriate are; vehicles used for security purposes or vehicles used for observation and surveillance (mainly applicable to police or customs and excise).

It should be remembered, however, that government departments are not normally exempt from the parking regulations.

HACKNEY CARRIAGES / PRIVATE HIRE VEHICLES

Hackney Carriages and Private Hire Vehicles operating within the Borough are licensed by the relevant licensing authority and carry a numbered license plate that must be displayed on the rear of the vehicle.

There is a distinct legal difference between Hackney Carriages and Private Hire Vehicles (PHVs). Where exemptions expressly apply to “taxis”, these apply only to licensed hackney carriages and **not** to PHVs. For example, PHVs are not allowed to ply for hire on the street or park in a dedicated Taxi bay.

Like all vehicles, hackney carriages and PHVs may stop on double or single yellow lines to allow passengers to board or alight for as long as is necessary for the purpose.

It is not normally an exempt activity to assist passengers into premises and to leave the vehicle unattended, but if the person is elderly or frail this will be taken into account and may be treated as part of the process of picking up and dropping off passengers, depending on the circumstances and the nature of the restriction. If a licensed hackney carriage or PHV is left unattended, it is liable to receive a PCN.

Each case (especially where there is evidence that there were elderly, infirm or disabled passengers in the vehicle) should be considered on its merits. Whilst such PCNs will not automatically be cancelled, we will make allowances where we think it appropriate in these instances.

There may be occasions when minicabs are used to carry essential medical supplies, e.g. blood, organs, emergency equipment. In these cases, the PCN may be cancelled, upon production of suitable evidence.

HAZARDOUS CHEMICALS/SUBSTANCES

Claims by companies that toxic or dangerous substances are being delivered to, collected from or used in nearby premises need to be given careful consideration. On the first occasion, the company concerned should be asked for evidence that the activity was taking place. If this is provided, the PCN *may* be cancelled. The Council’s reply should advise the company that a waiver/dispensation should be obtained if deliveries or work is to be carried out on a regular basis.

Claims by companies that toxic or dangerous substances are being delivered to or collected from premises and, as a result, a PCN was incorrectly issued to the vehicle being used should

be given careful consideration, but once again supporting documentation is likely to be required.

If the PCN was issued for contravention of a “no waiting restriction” it can be established from the CEO’s notes whether any loading/unloading activity was apparent. If so, the PCN may be cancelled.

If no loading activity was apparent, the PCN is likely to be upheld. There is no reason to distinguish between toxic and non-toxic deliveries in such cases, because it is the driver’s responsibility to ensure that the vehicle is moved as soon as the loading or unloading activity is complete. (See **LOADING AND UNLOADING OF GOODS** for further guidance).

If the PCN was issued for contravention of a “no loading” restriction, whether or not loading or unloading was taking place will not normally be relevant because such activity is not permitted. However, once again, the CEO’s notes will indicate whether the loading activity was taking place. If so, consideration will be given to the cancellation of the PCN **if there were clear health and safety implications**.

Any such representation will have to be accompanied by documentary evidence showing the nature of the goods being loaded or unloaded so that the Council can satisfy itself as to whether or not cancellation is justified.

HIRE AGREEMENTS

The legislation makes the *owner* of a vehicle liable for any PCN issued to it, regardless of who was driving or otherwise in control of it at the time. However, where a vehicle is owned by a hire company and was on hire at the time, the legislation provides for the transfer of that liability to the hirer, subject to certain conditions. Those conditions are:

- The owner is a vehicle hire company; **and**
- There is a valid, signed hire agreement, a copy of which is sent to us; **and**
- The hirer specifically accepts responsibility within that hire agreement for any “Penalty Charges” incurred during the hire period. (*Note that Fixed Penalty Notices are not the same as Penalty Charge Notices*).

Where all three of these conditions are met, the liability then transfers to the *hirer* and not the hire company (providing the hire company makes formal representations to the Council on that basis within 28 days of the date on which the Notice to Owner is deemed as having been served upon them).

Where a company have made representations on the ground that they are a hire firm and have supplied details, the provisions relating to hiring agreements as contained in the Road Traffic (Owner Liability) Regulations 2000, will apply.

As with vehicles which are not on hire, *who was driving or otherwise in control of the vehicle at the time is irrelevant*. Where a company has hired a vehicle for use by one or more of its employees, it is the *company* which is responsible for paying or appealing the PCN (although it may have a contractual right to recover any amounts paid from the driver subsequently). Where the hiring period is for a fixed period less than 6 months, the hiring agreement must also contain **all** of the following information for it to be valid:

A. Particulars of the person signing the statement of liability

- Full name
- Date of birth
- Permanent address
- Address at the time of hiring (if different from above)
- Details of driving licence - serial number or driver number, issuing authority (normally DVLA), expiry date.

B. Particulars of hiring agreement

- Registration number of the hire vehicle
- Make of hire vehicle
- Registration mark of any substitute vehicles
- Make of any substitute vehicles
- Time and date of commencement of hiring period
- Time and date of expiry of hiring period
- Time and date of commencement of any extension
- Time and date of expiry of any extension

In *all* cases the hirer must sign a statement of liability in respect of Penalty Charge Notices if liability for such PCNs is to be transferred to him/her.

Where the hirer is a company or corporate body, it is not necessary to provide the driver's date of birth or details relating to the driver's licence.

These provisions are mandatory and failure to comply with *all* of the above requirements will result in liability remaining with the owner of the vehicle. The above requirements also apply where a courtesy car is "loaned" to a driver.

The Council will not refuse to accept the transfer of liability on the grounds of minor discrepancies in the documentation which have no legal impact. What is important is that the requirements are substantially complied with and that the Council is able to pursue the person named in the hire agreement in respect of the PCN.

A computerised print out of the hire details is not sufficient.

Where the hiring/leasing period is in excess of 6 months, the hire company should make it clear that this is the case. This will then be considered as a long-term lease agreement and there will be no need for the hire/leasing company to provide a copy of the agreement. However, they are required to provide the name and address of the hirer/lessee together with the details of the period and term of lease including the date of commencement and, if applicable, termination date.

Note – although many hiring companies are reluctant to supply the agreement, and some local authorities do not require it, *the Adjudicators have made it plain that Councils are entitled to see the agreement if they wish to*, with the particulars listed above, before they transfer liability.

HOSPITAL VISITS

If a vehicle is parked in a permitted parking area longer than permitted or in a charged parked after expiry of the paid for time, then they may receive a PCN.

In cases where the driver of a vehicle is claiming an *emergency* visit to a hospital, the PCN may be cancelled on appeal where sufficient details have been provided for this to be validated and the emergency is considered to be genuine.

If the patient was admitted, confirmation should be sought in the form of a letter from the GP or the hospital (this is normally readily available). Similarly, where a driver is visiting a sick relative as an *emergency* visit, proof of a similar nature should be sought. *It is important to ensure that the date(s) of the hospital visits/stay cover the date on which the PCN was issued.* If there is a discrepancy, the PCN will normally not be cancelled.

Where there is a pre-arranged appointment and the driver claims that they were delayed in returning to the vehicle, the PCN will normally be upheld, unless an emergency had developed during the appointment, in which case the driver should provide further evidence as set out above.

LAPSED PARKING PERMITS

In situations where a parking permit has lapsed beyond its expiry date, a PCN will be issued to a vehicle parked in contravention whilst displaying such a permit. It is the holders' responsibility to ensure renewal of a permit. The excuse that the Council did not send out a renewal reminder will not, of itself and without additional relevant factors, be accepted as valid reason for an out of date permit.

LOADING AND UNLOADING OF GOODS

The basic position is that specified loading/unloading bays are provided but also that in other locations it is permitted to load/unload at certain times. In regard to both of these there must be active loading/unloading, which is taken to mean some activity in relation to this within a reasonable period of observation by the CEO. Where loading/unloading takes place on a single or double yellow line, the CEO will observe for at least 5 minutes before serving a PCN. This observation period will be extended to 10 minutes where loading/unloading takes place within a designated loading bay. In relation to this, a number of issues arise.

No activity witnessed during the observation period but still loading/unloading

The Council appreciates that in some instances only one person will be with the vehicle and so in order to load/unload it is necessary to lock and leave the vehicle. The Council also appreciates that while in the vast majority of instances the observation period is sufficient to deal with this, in some instances the delivery location may be some way from the parking location and, for example, involve the use of a lift. If the Council receives written proof of the time and place of the delivery, and of the reason for the observation period not being sufficient, then it may exercise discretion to cancel the PCN.

Moving in/out of residential premises

A common issue is that in relation to moving home the loading/unloading cannot always be continuous. Again, with written evidence as to the address and date of moving, the Council may exercise discretion to cancel the PCN.

Remaining in loading bay after loading/unloading completed

The Council takes the view that such use of the bay is not permitted since it ties up the resource which should be available to others needing to load/unload. In the absence of other mitigating circumstances, the Council will not cancel a PCN in these circumstances simply because some loading/unloading took place within the initial period of being parked.

Picking up/setting down passengers

A common source of appeal is that in the process of picking up/dropping off passengers the driver was engaged in conversation with the parents or another person. The Council takes the view that if this is normal social contact then the appellant should seek to park elsewhere to facilitate such contact. Only if there are other exceptional mitigating circumstances, will the Council cancel the PCN. Similarly, the picking up/dropping off of elderly or infirm passengers can normally be done within a 5-minute period, and/or some evidence of this will usually be seen by the CEO. The Council would require further exceptional mitigating circumstances before cancelling a PCN for this reason. Most "no waiting" (single or double yellow line) restrictions do not include a restriction on loading.

Loading and unloading is ***not*** allowed: –

- In bus stop clearways, taxi ranks, or in other places where stopping is prohibited e.g. in doctor/hospital/ambulance bays;
- Where signs and/or kerb markings indicate that a loading ban is in place;
- On zig-zag markings either on an approach to a pedestrian crossing or outside a school;
- In suspended bay;
- In areas specifically reserved for other classes of vehicle (including where different restrictions apply at different times);
- In an area where parking is likely to cause an obstruction.

Any PCN issued to a vehicle claiming they were loading/unloading at one of these locations will be upheld.

PAY AND DISPLAY BAYS

These are bays that are controlled by a pay and display machine, which will usually cover several bays in the road. Many of the Council's car parks are also controlled by various types of pay and display machine. The regulations regarding paying and displaying, whether on street or in a car park, are generally similar. In all the car parks, it is also possible to pay by Mobile Phone, in which case there will be a computerised record of payment having been made for the vehicle concerned.

Payment Issues

Claims that the machine was out of order

Appeals of this nature may be accepted provided other elements are satisfied. First, if there is no other machine in the line of sight of the motorist, which is working and from which a ticket should be purchased as advised on the ticket machines. Secondly, if there is corroborating evidence in the form of the records from the machine, if the claim is that the machine took the money but did not issue the ticket. Thirdly, if there is corroborating evidence in the form of the records of the CEO, who checks each machine in the locality at the time of the PCN being issued.

Ticket purchased from machine which operates either for another zone or in relation to off-street parking when parked on-street, or vice versa.

This ground will not be accepted if the cost of the otherwise valid ticket purchased is less than that applicable to where the vehicle is parked, without any other mitigating circumstances. Otherwise, this would allow deliberate underpayment by the motorist. However, if the sum paid for an otherwise valid ticket is greater, then discretion may well be exercised to cancel the notice since this does not undermine the purpose of the control.

Claim that getting change for a cash payment machine

There is no general rule that this in itself constitutes a valid excuse. Indeed, it will usually require special justification, because before issuing the PCN the CEO must not only allow a 5 minute observation period in which it would be possible for the motorist to obtain change, but the CEO must also check whether there is anyone purchasing a ticket at a machine within eyesight or appears to be on the way back to the vehicle. Thus, someone who deliberately parks without payment and leaves the vehicle for more than 5 cannot avoid the PCN simply by claiming that they were getting change for the machine.

Credit card payment not working at card payment only machines

For convenience, some payment machines accept payment by debit/credit card. If this is not working, it will not normally be a valid reason for cancelling the PCN since payment via use of mobile phone is available.

Claims that the wrong registration was used for Payment by Mobile Phone

In circumstances in which the user has paid for parking using the Mobile Phone Payment option and has mistakenly paid for the wrong vehicle, this would not normally be an acceptable reason for cancellation of a PCN. In using the Mobile Phone Payment system, the user will be presented with details of the transaction (which include the vehicle registration details) prior to requesting approval to then process the transaction for payment. Failure to correct any mistake at that stage (such as a wrong registration) is avoidable and therefore the Council is unlikely to cancel a PCN in these circumstances. However if the error was a single digit mistake then discretion will be exercised favourably to cancel the PCN for the first occasion that a PCN is issued for this reason, but given that the error is then identified action to remedy the mistake should be taken to avoid PCNs being issued in future which may not be cancelled.

Display

No explanation given for failure to display

An appellant may claim that a valid ticket was purchased but it was simply not displayed, and in support provide a ticket which was valid at that time and purchased from a nearby machine. While the Council can understand that it may appear to such appellants that the primary

purpose of the scheme has been met by their having paid for a valid ticket, the Council takes the view that it must be displayed since otherwise the cost of enforcement to the public purse increases significantly. The Council is also aware that many motorists take a calculated risk and do not pay, but once they have received the PCN they obtain a valid ticket from a nearby motorist who has paid. Without a further explanation for why it was not displayed the Council will not normally cancel a PCN for a failure to display.

Ticket has no adhesive so it fell off the dashboard

The Council used to operate a system with parking tickets with an adhesive back for attaching to the windscreen. As a result of complaints and feedback by the public that the adhesive was ineffective in sunny conditions etc and could fall off, the Council has responded to the requests and has moved to tickets which have no adhesive fixing, and require display on the dashboard. Given this change, it is made clear to motorists that they must ensure that the ticket is displayed properly. Where no ticket is properly displayed, the CEO will seek to see if a ticket is present on the floor of the vehicle or has slipped down the windscreen, but given that this will be a partial view at best it will not usually be possible to ascertain whether the ticket is valid. This will, however, be noted by the CEO. Without further mitigating circumstances it is unlikely that the Council will cancel the PCN for this reason.

The Council has accepted a variety of explanations and cancelled the PCN. For example, the Council has accepted that, in the process of removing a baby cot, the ticket was knocked off the dashboard because of the particular design of the vehicle. Again, the CEO will seek to see if a ticket is present on the floor of the vehicle or has slipped down the windscreen, but given that this will be a partial view at best it will not usually be possible to ascertain whether the ticket is valid. This will, however, be noted by the CEO and may be considered to be supporting evidence for the appellant.

Rushing for an appointment

It will not normally be accepted as a valid reason to cancel the notice that the appellant did not leave sufficient time to return to the vehicle to display the ticket. While this may be accepted in a genuine emergency, the view is taken that for routine medical appointments etc, lateness is not a sufficient reason to cancel a PCN.

Fell when closed door

The ticket must be displayed on the dashboard and it is sometimes claimed that the ticket must have been knocked off from where it had been placed when the motorist closed the door. The Council takes the view that it is for the motorist to ensure that the ticket is placed in a secure and visible position, and to check that it is in such a position after (s)he has secured the vehicle, so this will not normally be accepted as a reason for cancelling the PCN. The CEO will seek to see if a ticket is present on the floor of the vehicle or has slipped down the windscreen, but given that this will be a partial view at best it will not usually be possible to ascertain whether the ticket is valid. This will, however, be noted by the CEO and the presence or absence of such a ticket will be considered in the decision.

PERMIT HOLDERS (RESIDENT SCHEMES)

As with Pay & Display or blue badges, it is important to appreciate that this involves two elements, with related purposes. The first element is that the resident must obtain a permit, in order to ensure the underlying purpose of the adopted scheme. The second is that the permit

must be properly displayed in order to facilitate proper management and enforcement of the system of control.

The Council comes under significant pressure from residents who perceive the enforcement system to be too weak. The Council therefore has to strike a balance between making the system effective and respecting the ability of a resident to park. This gives rise to common issues.

Delay in applying for/renewing a permit

The Council appreciates that some residents think that because they are entitled to a permit it does not matter if they do not have a permit or display it. The Council takes the view that it must be obtained and displayed since otherwise the cost of enforcement to the public purse increases significantly. It also considers that the process for obtaining a permit is simple and this can be done quickly.

Without further mitigating circumstances as to why it was not obtained or displayed, the Council will not normally cancel a PCN. It is appreciated that because no charge is made, no reminder is sent out for renewal. Provided it is applied for or renewed promptly, the Council will consider cancelling a PCN if there are other mitigating circumstances. However, this must be done promptly.

Display

- Lost/stolen permit; and
- Vehicle changed or replacement vehicle while other repaired

The Council has provided a system for these eventualities and, again, while some residents think that because they are entitled to a permit it does not matter if they do not have permit or display it, the Council takes the view that it must be obtained and displayed since otherwise the cost of enforcement to the public purse increases significantly. The process is simple and can be done quickly. Without further mitigating circumstances as to why the replacement was not obtained or displayed promptly, the Council will not normally cancel a PCN.

Attending funeral/wedding etc

A common reason given is that the person visiting was attending a function of a family member or friend who is a resident, such as a funeral or wedding reception, and so parked in a residents' bay, without a permit. The Council takes the view that sufficient non-resident bays have been provided in these localities for this situation, albeit not necessarily next to the residence in question, and so this will in the absence of other factors not normally be accepted as a reason for cancelling the PCN.

Application forms and Notes for Guidance relating to all the current annual permit types and temporary permit types are available on the Council website at

<https://my.northtyneside.gov.uk/category/161/parking-permits>

General Terms and Conditions associated with the permits

- The Council cannot guarantee a parking space will always be available to you;
- It is the motorist's responsibility to ensure their vehicle is legally parked at all times;
- The motorist must ensure the permit is valid at all times and clearly displayed on the windscreen or on the dashboard so it can be readily seen from the outside of the vehicle (unless the permit is a Virtual Permit);
- The motorist may not park in suspended parking bays.

Vehicle Terms and Conditions applicable within permit zones

- The vehicle must be able to fit within the markings of the parking place, if applicable, AND be:
 - a passenger vehicle that can carry no more than 13 people including the driver
 - a vehicle that does not exceed six metres in length;
 - has an unladen weight not exceeding 3.5 tonnes (with the exception of vehicles utilising the business permit).
- The permit/voucher cannot be used on trailers or caravans;
- The vehicle must have a valid road tax license. The permit is not valid if the vehicle is untaxed.

If the motorist has not complied with the above terms and conditions, then the PCN will normally be upheld.

PLUMBERS

Emergency call out

It is considered that an emergency of this nature lasts only for so long as necessary to turn off the mains supply, whether gas, water or electricity and make things safe. The vehicle should then be moved to a permitted parking place before more routine repairs are performed.

Appeals against such PCNs will be considered on their merits. However, the above guidance should be borne in mind and PCNs will normally be upheld in the absence of supporting documentary evidence.

Heavy Equipment

Claims that a vehicle had to park close to the emergency as it was carrying heavy equipment should be dealt with as delivery and collection/loading and unloading.

However, further consideration will be given to pump-out situations, where the equipment needs to be connected to a generator in the vehicle

POLICE OFFICER ON DUTY (or other emergency services personnel)

PCNs will not be issued to marked police vehicles where they are clearly attending an incident, as they are covered by an exemption in such circumstances. However, this exemption does not apply unless the vehicle is being used in connection with operational policing activities. For example, a police vehicle parked outside a sandwich shop or at a cash point, where the officers appear to be purchasing food or getting cash, is not covered by the exemption.

Many police officers use unmarked cars, and sometimes even their own vehicles, whilst on duty. It must be appreciated that the Civil Enforcement Officer cannot be expected to know that such vehicles are being used on police business (or even that they are police vehicles) and may issue a PCN.

Any request for cancellation of a PCN must be endorsed by an officer who holds a more senior substantive rank than the officer who received the PCN. It must be submitted either by email from a force email address or by letter on official headed stationery to the Parking & Regulation Manager for consideration.

The endorsing officer must certify that the vehicle was being used for operational policing purposes at the time the PCN was issued and that it was *necessary* for the vehicle to be parked where it was for the purposes concerned. Without the appropriate endorsement, the PCN will not be cancelled.

Similar provisions will apply to vehicles being used for operational fire brigade, ambulance purposes and RNLI duties.

PREGNANCY AND MOTHERS WITH YOUNG CHILDREN

Unless there are complications, pregnancy is considered to be a normal condition, not a disability. Delays caused by pregnancy or the demands of young children would not usually warrant the cancellation of a PCN. However, this is a sensitive area and each case should be treated on its own merits.

If a delay is short and unavoidable or is caused by a minor medical emergency (child being sick, mother feeling unwell), the PCN *may* be cancelled. However, formal proof of pregnancy will normally be required as part of the challenge/representation.

Where the driver claims that the delay or reason to park in contravention was caused by pregnancy complications or other difficulties relating to the pregnancy, a letter of confirmation from the GP or hospital should be provided before cancellation is considered – as with other medical emergencies.

ROAD SIGNS/MARKINGS – MISSING, OBSCURED, BROKEN

Yellow Lines

There is no requirement for lines or signs to be in pristine condition at all times. It is a question of fact and degree and Councils cannot be expected to repaint them every time road repairs, or wear and tear may have created small gaps or minor deviations. What is important is whether quality of the lines at any one time make it clear to motorists that there are in fact double yellow lines there.

Parking Bays

There should be a sign adjacent to the parking place (bay or group of bays), which gives details of whom the bay is available to (e.g. resident or business permit holders and/or visitors displaying permits or using pay and display machines). Most bays also give details of the hours and days of control.

Claims that the driver did not realise where he/she had parked or used the wrong type of bay will not normally be entertained when the correct signage is present; that is why the signs are present.

As with time plates, if road markings are missing or shown to be substantially incorrect, the PCN should be cancelled and arrangements made for rectification. The exception to this is if the photograph taken by the CEO demonstrates that the marking was correct and legible at the time that the PCN was served.

Pay and Display Bays

It is not necessary for additional signs to be placed above pay and display bays. Instructions for use are on the front of the machine itself (the side facing the pavement).

Claims that a driver did not realise there was a machine in the bays will not normally be entertained unless there are other circumstances that need to be taken into consideration.

Obscured Signs/Missing 'T' bar markings

If the time plate is shown to exist but was temporarily or partly obscured, each case will need to be considered on its own merits, depending on the degree of obscurity and whether the relevant details could still be seen. If it is alleged that meter plates, signs etc. were not visible due to inadequate street lighting, the PCN will be upheld.

Where a yellow line is placed next to another restriction, the absence of the 'T' bar does not always mean that the restriction cannot be enforced, if it is clear where the yellow line applies. Furthermore, the further away from the missing T-bar a vehicle is parked, the less likely it is for its absence to be relevant.

SECURITY VANS

Secure cash vans are occasionally required to park close to the premises where large volumes of cash is being delivered or picked up, for safety reasons. However, security vans delivering other 'lower value' items, such as recorded mail, should park in accordance with the regulations.

PCNs issued to security vans may be cancelled, providing that the security company provides suitable proof.