

Decision Maker: Environment Portfolio Holder

**For pre-decision scrutiny by the Environment PDS
Committee on**

Date: 17th April 2012

Decision Type: Non-Urgent Executive Non-Key

Title: **PARKING APPEALS POLICY**

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Chief Officer: Nigel Davies, Director of Environmental Services

Ward: All

1. Reason for report

This report seeks Member endorsement of the guidance given to officers when considering appeals made against parking Penalty Charge Notices.

2. **RECOMMENDATION(S)**

That the Environment Portfolio Holder agrees -

2.1 To endorse the outline guidance set out in the Appendix for appeals against Penalty Charge Notices.

Corporate Policy

1. Policy Status: Existing policy. Parking Strategy
 2. BBB Priority: Quality Environment. Vibrant Thriving Town Centres.
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Financial

1. Cost of proposal: Estimated cost N/A
 2. Ongoing costs: Recurring cost. N/A
 3. Budget head/performance centre: Parking PCN processing/debt recovery team
 4. Total current budget for this head: £430k
 5. Source of funding: Existing revenue budget 2012/13
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Staff

1. Number of staff (current and additional): 15 fte (Parking/Processing)
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Non-statutory - Government guidance.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 30,000 appeals and representations p.a.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 This report seeks Member endorsement for the guidance given to Parking Services staff when dealing with appeals received after a Penalty Charge Notice has been issued. Internal Audit has advised that Member endorsement of these guidelines would demonstrate good practice. The guidelines are set out in the Appendix.
- 3.2 For a number of years the Council has published its policies, and guidance on how to appeal, in a document called 'How We Consider your Appeal'. This document, and our policies and procedures, have also been regularly reviewed to ensure we adhere to best practice and statutory guidance.

Penalty Charge Notices – Background information.

- 3.3 In October 1993, the control and enforcement of all on-street parking throughout the borough (except for designated red routes) was taken over by the London Borough of Bromley. The Police were responsible for control and enforcement before this date. Enforcement was carried out under the 1991 Road Traffic Act until 31st March 2008, when this was superseded by the Traffic Management Act 2004.
- 3.4 Penalty Charge Notices (PCNs) are issued on the Council's behalf by our parking contractor, Vinci Park Services UK Ltd. The Council is identified as the enforcement authority on Penalty Charge Notices. This ensures that there is no confusion about who is responsible for issuing the Notice and where any communication should be addressed.
- 3.5 In October 2003, we began using closed circuit television (CCTV) as a parking enforcement tool to issue penalties to motorists for bus lane contraventions. Since November 2005, CCTV has been used to enforce parking restrictions in congested areas. The experience of using CCTV has proved to be an excellent operational tool that complements more traditional methods.
- 3.6 Mobile CCTV enforcement units are vehicles fitted with recording equipment used in parking enforcement. This method of enforcement was first adopted in October 2007, with the primary aim of alleviating problems caused by vehicles parking incorrectly outside schools. We now have 4 mobile units actively enforcing not only outside schools, but also other parking contraventions.
- 3.7 All matters referred to within this report refer equally to PCNs issued by wardens, and those issued as a result of monitoring by CCTV and CCTV Mobile units.
- 3.8 With effect from 15th April 2011, the Mayor for London and the Secretary of State for Transport approved differential parking charges in London boroughs. Higher penalties are now imposed for more serious parking contraventions, for example; on a yellow line or on school 'Keep Clear' markings; or for parking in a controlled bay without displaying the appropriate permit or badge. Lower penalties are imposed for less serious contraventions, such as, overstaying time paid for in a pay and display bay, or parking outside bay markings.
- 3.9 The appeal process can understandably evoke strong views. Up to date technology supports the issuing of PCNs, and specialist software is used to process appeals. We aim to be responsive in our approach and to provide ample information to assist motorists with their appeals, which we appreciate, can sometimes be stressful and frustrating.
- 3.10 There is comprehensive information on our web page, which complements the statutory information set out on formal documents such as Penalty Charge Notices. Our Annual Report provides background information on why we enforce and how our approach reflects the

approved Parking Strategy. We also have the document 'How we consider your appeal', which explains the process in detail and explains how we reach our decisions.

- 3.11 To further assist motorists who have received a PCN, photographic evidence taken at the time of the alleged contravention is available online. The benefits include a reduction in administration and customer time and greater transparency in our actions. Motorists can also make a challenge or representation online and add attachments, such as j-peg images, which will be received by our back office within seconds. The benefits include a fast and efficient service for our customers, a reduction in the amount of correspondence we receive by post and the associated logging and scanning, which would otherwise be very time consuming.

The Appeal Process and considerations

- 3.12 The appeal process may seem quite complex to motorists. There are many legislative and procedural factors that must be borne in mind. Most importantly each case must be considered on its own merits, taking into account all relevant factors and evidence. Benchmarking figures continue to show that Bromley is efficient in dealing with Challenges, Representations, and debt recovery, and it is considered that current processes continue to work well.
- 3.13 Below is an extract from the 'DfT Operational Guidance to Local Authorities: Parking Policy and Enforcement', revised November 2010, which sets out the issues facing Local Authorities when dealing with appeals.
- 3.14 *It is in the interests of the authority and the vehicle owner to resolve any dispute at the earliest possible stage. Authorities should take account of the CEO's (Traffic Wardens) actions in issuing the PCN, but should always give challenges and representations a fresh and impartial consideration.*
- 3.15 *An authority has a discretionary power to cancel a PCN at any point throughout the Civil Parking Enforcement Process (CPE). It can do this even when an undoubted contravention has occurred if the authority deems it to be appropriate in the circumstances of the case. Under general principles of public law, authorities have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.*
- 3.16 *Enforcement authorities have a duty not to fetter their discretion, so should ensure that PCNs, NtOs, leaflets and any other advice they give do not mislead the public about what they may consider in the way of representations. They should approach the exercise of discretion objectively and without regard to any financial interest in the penalty or decisions that may have been taken at an earlier stage in proceedings. Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits. An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it. The process of considering challenges, representations and defence of appeals is a legal process that requires officers dealing with these aspects to be trained in the relevant legislation and how to apply it.*
- 3.17 *Elected members may wish to review their parking representations policies, particularly in the area of discretion, to ensure consistency with published policies. However, elected members and unauthorised staff should not, under any circumstances, play a part in deciding the outcome of individual challenges or representations. This is to ensure that only fully trained staff make decisions on the facts presented. The authority's standing orders should be specific as to which officers have the authority to cancel PCNs. There should also be a clear audit trail of decisions taken with reasons for those decisions.*

3.18 In adhering to the aforementioned guidance and as further detailed in the DfT guidance, the status of a PCN issued in LB Bromley will be described as follows:

1. Paid (when full payment has been received)
2. Open (payment has not been received and the case has not been closed).
3. Written-off (when we are unable to pursue the PCN and the case has been closed)
4. Cancelled (when we consider that the PCN was incorrectly issued)
5. Waived (when we receive an appeal and accept the mitigating circumstance)
 - o 5a Waived - TMO exemption (See 3.23)
 - o 5b Waived – Mitigation, often medical in nature (See 3.25)
 - o 5c Waived – Guidance (See 3.26)

In respect of Paid, Open, Written Off and Cancelled cases there are statutory procedures that must be followed and these are set out in the Traffic Management Act 2004.

3.19 We receive about 30,000 appeals annually. Our aim is to deal with each of them effectively and address all relevant points raised in each communication. We often request further information in order to resolve each case as efficiently as possible. If we do not feel that there is sufficient evidence to warrant cancelling a case and if an appellant remains dissatisfied with our decision, of course they have the right to go to the London-wide independent adjudicator known as the Parking and Traffic Appeals Service (PATAS). During 2011/12 only 1% of all PCNs issued were heard by PATAS, a proportion which compares well with other authorities.

3.20 An adjudicator may only allow an appeal if one of the statutory grounds for appeal applies. They are unable to make a decision based on mitigating circumstances. However, where a contravention has taken place but the adjudicator considers that the enforcement authority should have used its discretion to cancel the NTO, the adjudicator may refer the case back for the enforcement authority to reconsider. Such referrals are rare; perhaps about a dozen cases per year are referred to the Chief Executive in such circumstances. These are cases where the PCN was correctly issued and the Council has acted correctly, but the adjudicator believes there are sufficient mitigating circumstances for the decision to be reconsidered. In all such cases, the decision is reviewed by the Chief Executive with advice from Parking Services and the Assistant Director CSS.

3.21 The adjudicator's decision is final, provided it is consistent with their statutory powers. No further challenges can be made other than on a point of law through an application to the High Court for judicial review.

3.22 The Appendix outlines in more detail the guidance used by Parking Services staff when dealing with appeals. These guidelines set out the approach currently being taken when considering appeals. The criteria listed are in no way an exhaustive list. Many are governed by clear legislative requirements and therefore do not need to be set out in detail. Some specific categories (3, 12, 14, 17d and 19) have recently been reviewed and amended.

3.23 **Waive – TMO** Within the various Traffic Management Orders (TMOs) there are a number of exemptions from the restrictions set out in the respective schedules. In many of the appeals dealt with, motorists are able to demonstrate that they were exempt from the parking restriction at the time the PCN was issued. These include emergency services (unmarked vehicles) or statutory bodies undertaking statutory duties. PCNs would have been issued as, at the time of the contravention, the exemption would not have been evident to the Traffic Warden. On receipt of an appeal accompanied with appropriate and acceptable supporting evidence, the case would be waived and closed.

- 3.24 There will always be occasions when the motorist receiving the PCN claims to have been entitled to a waiver for reasons set out in the TMO. Officers are required to make a considered judgment, sometimes in the absence of full supporting evidence. These cases can be referred to the Processing Manager, the Head of Parking, or the Assistant Director, as appropriate, for a decision. Factors may include broken down vehicles, persons undertaking statutory functions or legally detained, dropping off or picking up passengers, and loading/unloading.
- 3.25 **Waive – Mitigation.** A type of appeal also exists for which there is no Traffic Management Order exemption, but it is considered reasonable to waive or cancel a PCN, given the ‘mitigating’ circumstances that have been described. Ideally, the appeal would include supporting evidence that may be considered sufficient to close the case. In a number of cases however, officers will be required to make a considered judgement based on the guidance shown in the Appendix, or refer to a more senior officer (see 3.24 above) for a decision, if there is insufficient evidence. Many of these cases are in relation to medical conditions.
- 3.26 **Waive – Guidance.** Given the frequency of the appeal type and content, procedures have been put in place to ensure a sensible, fair and reasonable position is taken. These are given in more detail in the Appendix, but include: confusion over bank holiday restrictions; incorrectly displayed Blue Badges; return to vehicle just after PCN issued; PCN issued at very start or end of restriction times; late back from a doctors appointment; lost keys; etc.
- 3.27 **Cancelled** cases are those that have been found to have been incorrectly issued. This may be for a variety of reasons, such as incorrect vehicle details or incorrect street being recorded at the time of the contravention. Our criteria for cancellations and cases which we have not been able to collect are not included in the Appendix. This is due to our procedures being primarily governed by the need to meet prescriptive legislative requirements.
- 3.28 In approximately 10,000 cases per year, a PCN has been issued and neither an appeal nor payment received. Often such cases progress and a warrant is issued to a bailiff company to collect the debt. Debts are collected for approximately 25% of these cases, but despite extensive checks, some are returned to LB Bromley as uncollectable. These cases may be written off by the Head of Finance, in accordance with financial regulations.

4. POLICY IMPLICATIONS

- 4.1 The proposals in this report are consistent with the objectives of the Council’s Parking Strategy, agreed by the Environment Portfolio Holder following Environment PDS Committee on 18th January 2012.

5. FINANCIAL IMPLICATIONS

- 5.1 The proposed clarification of some of our policies may result in a reduction in the number of cases being referred to PATAS or the Chief Executive, as explained in 3.19. The proposed changes may prevent some appeals being received in some cases, and allow for an earlier decision to waive a PCN on others. On balance it is therefore believed that the proposed changes will probably have a neutral cost effect on the Council overall.

5.2 As can be seen from the table below detailing the total amount of PCN debt written off/waived during the last three financial years, that the amount has decreased during the three year period.

Year	£'000
2008/09	1,535
2009/10	1,441
2010/11	1,364

6. LEGAL IMPLICATIONS

- 6.1 Civil Parking Enforcement (CPE) is a legal process. Enforcement authorities should make sure that their employees and contractors who operate CPE regimes have a clear and full understanding of what the law requires. If enforcement authorities are themselves uncertain about any aspects of these requirements, they should get the appropriate legal advice.
- 6.2 Part 6 of the Traffic Management Act 2004 (TMA) provides for the civil enforcement of most types of parking contraventions. It replaces Part II and Schedule 3 of the Road Traffic Act 1991 and some local legislation covering London only. The legal framework for enforcement authorities in England comprises Part 6 of the Traffic Management Act 2004 and the regulations to bring Part 6 into effect.

Non-Applicable Sections:	Personnel Implications
Background Documents: (Access via Contact Officer)	<p>Environment PDS Committee, 1st June 2009, 'Report of the Member Parking Working Group'</p> <p>http://sharepoint.bromley.gov.uk/Public%20Docs/07%20ENV%20PDS%20010609.doc</p> <p>http://sharepoint.bromley.gov.uk/Public%20Docs/07%20ENV%20PDS%20010609%20-%20Appendix.pdf</p> <p>Parking Strategy' 18th January 2012 http://sharepoint.bromley.gov.uk/ielistDocuments.aspx?Cid=127&Mid=3753&Ver=4</p> <p>DfT Operational Guidance to Local Authorities: Parking Policy and Enforcement, revised November 2010 http://assets.dft.gov.uk/publications/tma-part-6-cpe-guidance/parkingenforcepolicy.pdf</p> <p>How we consider your appeal http://www.bromley.gov.uk/info/471/street_parking-enforcement_and_fines/334/challenging_a_penalty_charge_notice_and_making_representations</p> <p>London Councils guidance http://www.londoncouncils.gov.uk/policylobbying/transport/parkinginlondon/default.htm</p>