

# Parking Services

## How we consider your appeal



## Introduction

In this document we have attempted to explain the appeals process, given examples of documentation we may send to you and indicated how we are likely to deal with your appeal.

We acknowledge that receiving a Penalty Charge Notice (PCN) may be frustrating and the appeal process may seem confusing, even stressful.

Our aim therefore is to ensure that appeals are dealt with as quickly as possible, while maintaining a good quality of response and ensuring that all points raised are answered in full. Our staff are fully trained to deal with all aspects of the appeal process and quality checks are regularly undertaken.

We are aware that most individuals do not want to beat the system, but do want it to work. We therefore try to apply a common sense approach in the way we deal with appeals – each one is unique. Fairness, transparency and accountability are key factors in our procedures and decision making.

The demand for parking is high in Bromley, as it is geographically the largest of all the London Boroughs and car ownership levels are among the highest. This is reflected by the issue of approximately 95,000 PCNs between 01/04/14 and 31/03/15 and the receipt of approximately 23,000 appeals during this period.

For ease and convenience, we have used the word 'cancel' as a generic term for circumstances where we would withdraw, waive, write off, or cancel a PCN.

If you have any comments or suggestions, please contact:

Customer and Communications Officer  
Parking Services  
Civic Centre  
Rochester Wing R75  
Bromley  
Kent  
BR1 3UH



Ben Stephens  
Head of Parking Services

## Guidance used when considering your appeal

There are many legislative and procedural factors that must be borne in mind when dealing with Penalty Charge Notice appeals. Most importantly, each case must be considered on its own merits, taking into account all relevant factors and evidence.

The Department for Transport (DfT) operational guidance to local authorities on parking policy and enforcement sets out the issues facing local authorities when dealing with appeals. It states; *“An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it.”*

The guidance also states; *“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”*. Accordingly, all our parking appeals staff are fully trained and qualified. As of April 2012, all have a Level 3 NVQ qualification in Notice Processing from the regulated and accredited body; City & Guilds.

The guidance stipulates; *“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 (Civil Enforcement Officer’s) actions in issuing the PCN, but should always give challenges and representations a fresh and impartial consideration.”*

It would be almost impossible to list each and every parking scenario here, as each case is different in some way. However, we have attempted to group together many of the types of appeals we receive. We hope these examples will give you some guidance in understanding how we consider your circumstances and how we are likely to deal with your appeal.

### **Parking Officer Checks**

When a Parking Officer investigates a case, they will check all details in relation to the issue of the PCN, including:

- PCN details;
- CEO’s notes and any available digital images (only relevant if the PCN was issued by a CEO);
- body worn video camera footage (only relevant if the PCN was issued by a CEO);
- video footage of the contravention captured by a CCTV Operator (only relevant if the PCN was issued by a CCTV Operator);
- location details - where disputes arise, a site visit may be required to check the signs and lines;
- relevant Traffic Management Order if there is a query concerning regulations.

If a Parking Officer still has concerns after making the relevant checks, they will refer the case to a Senior Parking Officer for advice.

## The appeals process

### When a parking or bus lane PCN is issued, you must:–

Pay the full charge within 28 days (if you pay the PCN within 14 days, you will have the opportunity to pay the fine at the 50% discount rate),

**OR**

Make a challenge (an appeal before a Notice to Owner/Enforcement Notice is served) to the Council in writing enclosing any additional evidence to support your case. If your challenge is received within 14 days, but is unsuccessful, you will be given another opportunity to pay at the discount rate for a further 14 days from the date of our written response.

**Please note:** if you have been served a PCN by post for a parking contravention, the process is slightly different. In these circumstances, you can appeal by making a formal representation. If your representation is received within 21 days but unsuccessful, you will be given the opportunity either to pay the 50% discount amount for a further 21 days, or to appeal to an independent adjudicator at the Environment and Traffic Adjudicators (ETA) (formerly the Parking and Traffic Appeals Service (PATAS)). If your representation is received after 21 days of the PCN issue date (but before issue of a Charge Certificate), the full charge will apply and you will not be given another opportunity to pay the discount rate.

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, 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 these circumstances. These are cases where the PCN was correctly issued and the Council has acted properly, but the adjudicator believes the mitigating circumstances are sufficient to be reconsidered. In all such cases, the decision is reviewed by the Chief Executive with advice from Parking Services and the Assistant Director of Environment and Community Services.

### How to make your challenge/representation

The quickest and easiest way to make a challenge/representation against a PCN is online at: [www.bromley.gov.uk/parking](http://www.bromley.gov.uk/parking)

Alternatively you can make a challenge/representation:

By post to: Parking Services  
PO Box 376  
Bromley  
BR1 3XJ

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October 2015*

Please include any supporting evidence with your challenge/representation. If you are submitting a challenge or representation by post, please ensure that you provide the following details with any correspondence:

- the PCN number;
- the vehicle registration; and
- your name and full postal address.

Without this information, we may be unable to trace the parking contravention or respond.

### **How to pay**

If you pay within 28 days of the PCN issue date, the charge will be at the full PCN rate. If you pay within 14 days of the PCN issue date, the charge will be at the 50% discount rate.

**Please note:** if your PCN for a parking contravention was issued by post, you will receive a 50% discount if you pay within 21 days from the date the PCN was served.

There are several ways to make payment:

By phone: 0845 508 7050 (24hrs debit/credit card)

On-line at: [www.bromley.gov.uk/parking](http://www.bromley.gov.uk/parking) (24hrs debit/credit card). You can make payments using this secure site with most major credit or debit cards (excluding Diners Card or American Express)

By post to: London Borough of Bromley  
PO Box 376  
Bromley  
BR1 3XJ

Cheques and postal orders should be made payable to  
**“London Borough of Bromley”**

In person at: Civic Centre, Stockwell Close, Bromley, BR1 3UH  
(during office hours)

**Please do not send cash by post**

## Documentation you may receive

### Notice to Owner/Enforcement Notice

A Notice to Owner will be issued if the PCN was served by a Civil Enforcement Officer (CEO). An Enforcement Notice will be issued if the PCN was served for a bus lane contravention.

You will be sent a Notice to Owner/Enforcement Notice if:

- 1 your challenge was unsuccessful, and;
- 2 you have not paid in the time stated in the rejection letter, or;
- 3 a challenge has not been made and 28 days have elapsed from the date the PCN was served.

An appeal received at this stage is known as a formal representation.

### Notification of outcome after a formal representation to the Council

If you make a formal representation to the Council after a Notice to Owner/Enforcement Notice has been sent to you, we will consider your circumstances and write to inform you of our decision. If we accept your representation, we will cancel the Penalty Charge Notice. If we reject it, a Notice of Rejection will be sent to you, giving you the opportunity to pay the full charge within 28 days or to appeal to Environment and Traffic Adjudicators (ETA) (formerly the Parking and Traffic Appeals Service (PATAS))

### Notification of outcome after an appeal to ETA

If you appeal to a Parking Adjudicator at ETA, your appeal will be considered and you will be informed of the outcome by post. You can appeal to the adjudicator in person or by post and your option should be made clear on your application to ETA. If the adjudicator allows your appeal, you will not have to pay anything. If your appeal is refused, you will have a further 28 days from the date of the outcome to make payment of the full charge.

### Charge Certificate

If the charge is not cancelled as a result of making a formal representation or an appeal to ETA and it remains unpaid after 28 days, a Charge Certificate will be sent to the registered keeper of the vehicle indicating a 50% increase to the outstanding charge.

At this stage, the opportunity to make an appeal of any kind against the issue of the Penalty Charge Notice has passed. If we do not receive the amount due before the end of the period of 14 days beginning with the date of service of the Charge Certificate, we will apply to the County Court to register the outstanding debt.

## **Order for Recovery of Unpaid Penalty Charge**

This is a County Court order for recovery of an unpaid penalty charge that has been registered as a debt at the Traffic Enforcement Centre (TEC). If you receive an Order for Recovery of Unpaid Penalty Charge, you must either:

- pay the charge within 21 days, or
- file a Statutory Declaration or Witness Statement.

You will have the opportunity to file a Statutory Declaration (Under the Road Traffic Act 1991), or Witness Statement (Under the Traffic Management Act 2004), if one of the following grounds applies to you:

- you did not receive the Notice to Owner/Penalty Charge Notice;
- you made a representation about the penalty charge to the enforcing authority concerned within 28 days of the service of the Notice to Owner/Penalty Charge Notice, but did not receive a rejection notice;
- you appealed against the Local Authority's decision to reject your representation within 28 days of service of the rejection notice, but you had no response to your appeal;
- The PCN has been paid in full (this ground is on a Witness Statement, but not on a Statutory Declaration).

If the charge remains unpaid, a warrant may be issued to a bailiff to recover the debt.

## Types of appeal

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### Bank holiday restrictions

**Appeals** sometimes state that:

- the motorist assumed that restrictions did not apply on Bank Holidays;
- the motorist assumed that a particular day was a Bank Holiday;
- the sign did not state that Bank Holidays were being enforced; or
- the motorist disputes the benefit of enforcement in a residential bay on a Bank Holiday.

Action – A PCN may be cancelled with a warning (provided no previous warnings have been given) if an appeal is received and it is clear that the motorist:

- was confused,
- misunderstood,
- made an assumption based on press coverage, or
- followed practices of another borough where parking is permitted on an official Bank Holiday or day reasonably assumed to be a Bank Holiday.

Our parking contractor will continue to issue PCNs as and when they observe a contravention on a Bank Holiday for the following reasons:

- to demonstrate that permit holders are getting full protection for their fee;
  - to prevent shoppers and commuters from parking in residents' bays;
  - traffic management responsibilities in respect of traffic flow and road safety, which are being actively managed through appropriate enforcement, ultimately resulting in improved compliance.
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### Blocked access (obstruction)

If a motorist receives a PCN for **parking across someone else's drive**, the PCN will not normally be cancelled. Please note: we often issue PCNs on marginal cases if an enforcement request is made by the owner of a property, but on receipt of an appeal, we may cancel it with a warning not to park in such a way again.



### Blue Badges

If a **Blue Badge is incorrectly displayed**, but we can establish that it is a valid badge, the PCN may be cancelled.

If a **Blue Badge holder fails to display their badge**, it may be submitted to support an appeal. We will normally cancel the PCN for a first contravention on no more than one occasion in a rolling 12 month period.

A PCN will be cancelled on no more than one occasion in any rolling 12 month period if a parking disc (clock) has been:

- **incorrectly set;**
  - **not displayed when required; or**
  - **the motorist/Blue Badge holder has overstayed the allotted time.**
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## Broken down vehicles

In circumstances where a motorist claims their vehicle had **broken down**, the PCN may be cancelled if supporting evidence in the form of a confirmation letter from the AA or similar motoring organisation, or a repair invoice/receipt from a garage is produced.



The PCN will not be cancelled if the breakdown appears to have been avoidable, e.g. running out of petrol/water, etc.

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## Change of enforcement method/times/area

Occasionally traditional **enforcement methods are amended or changed**. This may be for policy reasons or as a result of an enforcement request by a member of the public. PCNs may be cancelled, if there are local or long standing parking arrangements in place.

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## Disputes about the issue of a PCN

Often a motorist will only appeal once a Notice to Owner (NTO) has been served. The claim may be that **'they did not receive a PCN on their windscreen and they would have paid it if they had known'**. We will only consider accepting such a statement and allowing payment at the discounted rate in **exceptional circumstances** and documentary evidence should be provided where possible. If there are no grounds to cancel the PCN and we have evidence that demonstrates the PCN was served to the vehicle or handed to the driver, we generally reject this type of claim and the full charge will apply to the penalty.



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## Dropping off or picking up passengers

A vehicle is allowed reasonable time, i.e. approximately 2 minutes, to **drop off and pick up passengers**, irrespective of any waiting or loading restrictions in place (except on designated clearways, bus stops, pedestrian crossings, or on the footway). Those who have a disability are allowed extra time. A PCN should not be issued if activity of this nature is observed.

A PCN may be cancelled if it can be demonstrated that the driver was picking up or setting down a passenger in a timely manor.

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## Health care workers

PCNs issued to **doctors, nurses or midwives while on duty** will be cancelled if evidence of an emergency is provided. PCNs will not simply be cancelled due to the nature of their work.

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## Hospital/dental/doctor/optician appointments

In circumstances where an appointment is delayed or the **treatment took longer than anticipated**, we will not normally consider cancelling the PCN. However, if the delay was caused for reasons outside the driver's control and written confirmation from the medical practitioner is provided, the PCN may be cancelled.



Please note: a reasonable amount of time should also have been purchased/allowed for the appointment before restrictions started.

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## Legally detained

If a PCN is issued to a vehicle when the **owner/driver was legally detained**, the PCN may be cancelled if supporting evidence is provided.



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## Loading and unloading

In locations where **loading and unloading** is permitted, vehicles will be observed for a period of time to establish whether the activity is taking place. (It is acknowledged that the driver may have been away from the vehicle when the PCN was issued).



- A PCN will normally be cancelled if the appellant has provided evidence, such as a delivery invoice that confirms loading or unloading took place at the time. This includes drivers who claim that they were collecting/delivering high value cash/jewels.
  - Choosing then purchasing items from a store is considered shopping, not loading/unloading and PCNs issued in these circumstances will not be cancelled. However, if pre-order and payment can be proved and the activity was undertaken in a timely manor, the PCN may be cancelled.
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## Lost keys



Where it is claimed that **car keys have been lost, stolen or locked inside the car** preventing removal from a parking place, the PCN may be cancelled, providing there is supporting evidence from the police or motoring organisation. If the vehicle was parked in contravention before the keys were lost, stolen or locked inside, the PCN will not be cancelled.

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## Medical and emergency cases

We will consider cancelling a PCN in circumstances where the appellant believes that a **valid emergency situation/medical emergency** caused them to park incorrectly, or to be delayed back to their vehicle.



Documentary evidence confirming the reason for the delay is of great help, but we acknowledge that this is not always possible.

These types of appeals may include:

- (1) a child being sick in the car causing the driver to pull over;
- (2) an elderly relative being taken ill;
- (3) a child falling over and hurting themselves.

Below are examples of appeals where cancellation may be considered if a medical condition is known.

- If a motorist claims they had an **urgent need to use the toilet because of a known condition**, a PCN may be cancelled if there is sufficient documentary evidence to support the claim.
- **Mental Health issues** – a PCN may be cancelled on receipt of documentary proof from an independent body.
- **Temporary mobility problem** (e.g. broken leg/on crutches) – a PCN may be cancelled on receipt of medical proof from a qualified medical practitioner.
- **Prescribed medication** - if the appellant can demonstrate that they are taking new or amended medication and a medical practitioner can confirm that the effect would not have been known by the individual, the PCN may be cancelled.
- **Acute asthma attack, diabetic hypoglycaemic episode, angina attack, cardiac rhythm disorder, severe migraine attack, acute neurological event** – we will only consider cancelling a PCN on medical grounds in circumstances where a chronic condition, such as diabetes mellitus or asthma, exacerbates an attack, episode, disorder or event, as described above. If the appellant is pregnant, we will only consider cancelling a PCN if there are further mitigating circumstances.

Given the often sensitive nature of this category of appeal and the common lack of supporting evidence, officers will continue to make a considered judgement, or refer the case to a more senior officer for a decision.

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## Mitigating circumstances

We will consider appeals based on mitigating circumstances and cancel a PCN if we are satisfied that the grounds are sufficient. Evidence to support such appeals is required. A PCN will be cancelled if it was issued as a result of error.

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## New/changed restriction

If a new restriction has been implemented, or an existing one amended, for appeals received within 1 month, a PCN may be cancelled if it is established that the motorist was genuinely confused or simply not aware of the change.

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## Pay and display

### a) Driver returns just after a PCN has been issued

In some cases, we may cancel a PCN in circumstances where the motorist **returns to the vehicle as the PCN is being issued** or very shortly after. There may be a genuine discrepancy in terms of the time shown on a pay and display machine compared to a motorist's watch and the time on the Civil Enforcement Officer's handheld computer terminal (used for issuing PCNs).



### b) Not aware of pay and display scheme

Claims from motorists that they **did not see signs or realise they parked in a pay and display location** will not be accepted as grounds for cancelling a PCN.

### c) Machine fault

Where it is claimed that the **machine was not working**, a check will be made to determine whether or not a fault was reported or observed at the time the PCN was issued. If this is found to be the case, the PCN will be cancelled. However, a PCN will not be cancelled if it is found that there is another pay and display machine nearby that they could have used.

### d) Getting change

A PCN will not be cancelled in circumstances where the motorist left their vehicle parked in a pay and display facility without displaying a valid ticket to **get change**. Motorists intending to use these facilities are expected to ensure they have sufficient change before parking.



### e) Delayed return

We will not cancel a PCN if the driver returns after a pay and display ticket has expired unless documentary evidence proves the delay was unforeseen and beyond the driver's control.

### f) Incorrect display

Often pay and display tickets are displayed with the **expiry details face down**. In these circumstances, the Civil Enforcement Officer will issue a PCN, as he/she cannot establish validity. The serial number on the reverse of the pay and display ticket will be recorded by the Civil Enforcement Officer and photographs may be taken.

A PCN will be cancelled if a copy of the pay and display ticket is provided and on checking the officer's records/photographs taken at the time of the contravention, proves to have been valid at the time.

### **g) Non display**

Total failure to display a pay and display ticket will not result in a PCN being cancelled. However, if a copy of the pay and display ticket purchased prior to the PCN issue is provided, a penalty may be cancelled on the first occasion within a 12 month period.

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### **Paying to park by mobile phone**

The concept of **using a mobile phone to pay for parking** may be new to some motorists and mistakes can be made. For this reason, we will cancel a PCN on the first occasion if the appellant tried but failed to start their parking time using a mobile phone provided that our systems confirm the attempted payment. Enforcement should only have taken place if a CEO is satisfied that a valid pay and display ticket was not displayed.



### **Residential/business parking permits and visitors' vouchers**

**Failure to display a valid residential or business permit** will result in the issue of a PCN. However, if we receive an appeal and our records confirm that a valid permit is held, the PCN will be cancelled.

If a valid visitors' voucher was not displayed in the car when a PCN was issued, it may be submitted to support an appeal. We will normally cancel the PCN for a first contravention on no more than one occasion in a rolling 12 month period.

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### **Signs and lines**

If a PCN is issued and the driver claims the **lines were too worn to be seen or the sign was missing**, the PCN will be cancelled providing a site inspection confirms this to be the case.



A PCN will also be cancelled if it can be established that signs/markings were covered by snow, foliage, fallen leaves or similarly affected by flooding.

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### **Suspended bays**

We will only consider cancelling a PCN if the motorist can demonstrate that they could not have reasonably known about a **bay suspension**.

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### Vehicle not at scene

In circumstances where the registered keeper of a vehicle receives a Notice to Owner and claims their **vehicle was not parked in the area at the time**, the keeper will be asked to verify the vehicle details. A PCN will not automatically be cancelled in these circumstances; this will depend on the evidence provided by the registered keeper.

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### Weddings, funerals and bereavement

Exemptions apply for **hearses and wedding cars**, but vehicles belonging to mourners or wedding guests must park in accordance with regulations.

Where a motorist claims that they have been **recently bereaved**, we may cancel the PCN if the bereavement was a primary reason for receiving the PCN and evidence has been provided.



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## Other policy guidance

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### Beginning of restriction – parking bays on and off street (car parks)

In some cases, the motorist may return to their vehicle as the PCN has been or is being issued. If this occurs during the first 10 minutes after the start of a restriction a PCN should not be issued and will be cancelled on appeal.

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### Beginning and end of restriction – yellow lines

In some cases, the motorist may return to their vehicle as the PCN has been or is being issued. If this occurs within 5 minutes of either the **beginning or end of a restriction** and an appeal is made, the PCN may be cancelled.

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## **Communications and correspondence**

If at any stage it is believed by a senior officer that a motorist has **received unreasonable or unsatisfactory service**, or the motorist has been unduly or avoidably inconvenienced, the PCN may be cancelled.

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