



Fairer Fines

Ensuring good practice in the management of Parking and Traffic Penalties

Focus report: learning lessons from complaints

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Introduction

Local authorities in England issue around 10 million parking tickets a year¹. These are formally known as penalty charge notices, or PCNs². Many motorists feel genuinely aggrieved about the fairness or proportionality of the parking penalties they receive and they have a right of appeal to an independent parking adjudicator.

The Local Government Ombudsman (LGO) considers parking penalty complaints mainly where there is a question over whether the process was followed correctly. Our work investigating these cases suggests that sometimes motorists may be paying more than they need to because they have not been given the correct advice about how to challenge their tickets.

As a result, we conclude that councils should do more to inform motorists of their rights when issuing parking and traffic penalties. Providing clear and transparent information would improve the trust between motorists and authorities and save motorists from paying unnecessary charges.

This report looks at the complaints we receive and provides an insight into how councils could improve procedures and guidance when issuing and managing the payment of PCNs. It examines common reasons for complaints and includes anonymised case studies on individual cases.

¹ 4,664,281 Penalty Charge Notices (PCN) issued by London authorities (including Transport for London in 2015/16 and 5,998,934 PCNs issued by other English authorities in 2014/15. Source: London Councils and Traffic Penalty Tribunal annual statistics.

² In this report we refer generally to parking contraventions. However, local authority enforcement of parking also includes bus lanes - and in London - moving traffic contraventions.

Advice and Guidance

For parking authorities

We cover best practice in more detail later in the report. But in summary, local authorities and any contractors acting on their behalf, can follow these principles to improve the handling of complaints about penalty notices:

- > Listen properly to informal challenges
- > Explain fully motorists' appeal rights
- > Consider properly explanations about changes to vehicle keeper details
- > Be accessible to discuss motorists' enquiries
- > Ensure enforcement agents (bailiffs) follow best practice
- > Be open to consider exceptional circumstances

For motorists: Avoiding parking penalty problems

Paying a parking fine is a costly business; clearly we would advise motorists take all precautions to avoid a PCN in the first place. However, if a motorist feels a penalty is unfair and wishes to challenge it, our experience shows that they could avoid many problems by:

- > reading carefully and responding promptly to communications they receive
- > keeping their details up-to-date with the DVLA as the law requires (both driver and vehicle details)
- > not pursuing informal correspondence once an authority has explained what options are open to them. If the motorist is correctly told they must either pay or submit an appeal to a tribunal, there is no point in writing again to the parking department
- > making any payments, challenges or appeals within the time limits.

It is also helpful for motorists to be aware of the process - they have the right of appeal to an independent parking adjudicator even if the authority rejects their representations.

Getting a ticket: the background for parking and traffic enforcement

Legal context

Local authorities in Greater London took over parking enforcement from the police as a result of the Road Traffic Act 1991. In 2008, the Traffic Management Act (2004) extended these powers. The majority of local authorities in England now operate civil enforcement of parking, bus lanes and - in London - moving traffic regulations. Transport for London also enforces the London Congestion Charge and Red Routes.

While the 2004 Act provides the main legislation governing the enforcement of parking and other traffic contraventions by authorities in England, there are additional regulations for a variety of contraventions which may differ between London and the rest of England. Generally, however, the processes are very similar. Authorities must also have regard to statutory and operational guidance issued by the Secretary of State for Transport.

We refer to this collective guidance in this report as 'the Guidance'.

Exercising discretion

Importantly, although the processes are set out in law and regulations, councils have the discretion to decide NOT to pursue a penalty charge at any stage in the process. They should not lose sight of this.

The statutory part of the Guidance makes this clear. It says:

'Enforcement authorities have a duty not to fetter their discretion.... 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.'

Who is responsible?

The owner of the vehicle is responsible for any penalty charge, regardless of who was driving at the time of the contravention. This is most often the person registered as the keeper of the vehicle with the Driver and Vehicle Licensing Agency (DVLA). Parking authorities will first approach the DVLA when seeking to find out who owns a vehicle.

There is a period, usually 14 days, immediately after a PCN is issued when an authority can accept a payment of 50% of the penalty charge. However, there is no right to challenge a penalty charge if it is paid at the discount rate.

The vehicle owner has a right of appeal against a PCN to a statutory tribunal: the Traffic Penalty Tribunal or London Tribunals.

Our role in investigating complaints

The *Local Government Act 1974* says that we should not investigate a complaint where someone has a right of appeal to a tribunal, unless we decide there is a good reason to do so in a particular case. We cannot investigate if someone has already appealed, regardless of the outcome.

An appeal to London Tribunals or the Traffic Penalty Tribunal is free, the process is straightforward and decisions are legally binding.

For these reasons we can only look at a complaint about a penalty charge notice itself in certain circumstances, usually when there is a question over how the process was followed.

So while the proportion of detailed investigations we carry out on parking complaints is smaller than in some other areas of our work, we see the same issues year on year in how authorities operate the enforcement and recovery process.

Common Issues and Complaints

Failure to listen at the 'informal stage'

A PCN issued at the scene (in other words placed on a vehicle) must state that the motorist can make an informal challenge to the authority which it must consider. This usually requires writing to the authority within a set period. These challenges are known as 'informal' because the authority does not send the statutory 'notice to owner' by post unless the penalty charge remains unpaid after 28 days.

The Guidance says that the authority must consider these challenges and, if it decides there are no grounds for cancelling the PCN, it should explain its reasons. All too often, we see cases where a council simply rejects the motorist's explanation of why they incurred the PCN, without giving reasons; or fails to consider them properly at all. This inevitably leaves the motorist feeling they have not had a fair hearing at the 'informal' stage.

Barbara's Story

Barbara was driving her elderly and infirm grandmother home and parked across the dropped kerb outside her house. While she was making sure her grandmother was safely indoors, the council issued a PCN to Barbara for parking on the pavement. Barbara believed she had parked legally and responsibly so she wrote to the council setting out all that happened. While she fully expected the council to cancel the penalty charge, she enclosed a cheque for £55 because she would have to pay the full penalty of £110 after 14 days.

Although it was clear Barbara was challenging the PCN, the council's response addressed none of the issues she had raised. It simply said she had accepted liability by paying and the matter was closed.

To comply with Government guidance - and good administrative practice - the council should have considered all that Barbara had said and decided whether it should cancel the penalty charge. If it was not persuaded to do this, it should have explained its reasons to Barbara and given her an opportunity to make formal representations against the full penalty charge or agree to pay the discounted amount. If necessary, Barbara could then have appealed to an adjudicator. By simply banking her cheque, the council denied Barbara her statutory right to have her case heard at an independent appeal.

We raised concerns with the council about Barbara's case and it agreed to refund the money she had paid. It also exercised its discretion to cancel the penalty charge and said it would take action to ensure the requirements of the guidance were met in future.

Cameron's Story

Cameron received two 'notices to owners' relating to parking contraventions which had not been paid, despite selling his car two weeks before the date of the offences.

He said he called the council and was advised to email them with proof that the car was no longer his; and the date when the car was acquired by the new owner. The council was unable to read his email so he faxed through a copy of the log book.

Over the next few months, Cameron sent his log book details to the council on at least four occasions, including sending it 'recorded' delivery through the post, but the council claimed it never received any of his communications.

Cameron received three bailiffs' letters demanding payment. He sent a further 'signed for' letter to the council and to the bailiffs, enclosing information about the log book.

Cameron complained to us. Shortly after, he received an email from the council confirming the PCNs were quashed.

We asked the council to apologise to Cameron for the delay in cancelling the penalties and pay him £100 in recognition for the unnecessary distress caused by the bailiff's letters.

Common Issues and Complaints

Failure to inform people of their appeal rights at the informal stage

The Guidance also states the authority must always make it clear that:

- > if the penalty charge is not paid it will issue a 'notice to owner' that enables the owner to make formal representations;
- > the authority must consider any formal representations, even where it has previously concluded that the evidence does not merit cancellation of the PCN;
- > if the authority rejects the owner's formal representations they can appeal to an independent parking adjudicator, who will consider whether the keeper's case falls within any of the statutory grounds for appeal. It is not possible to appeal to a parking adjudicator without going through the process of making a formal representation to the authority first.

However, we have seen many examples of authorities failing to give some or all of this information to people when rejecting an informal challenge.

Fran's story

Fran had driven to a local shopping centre and parked in a place she was quite familiar with. When she returned to her car, there was a sign saying the parking bay was suspended and a penalty charge notice had been placed on her car. Fran firmly believed the bay was not suspended when she parked in it and she wrote to the council to challenge the penalty charge.

The council replied to Fran with photographs showing her car parked in a bay where there were prominent signs showing the bay was suspended. It said she could pay the discounted amount of £55 or wait to get a notice to owner when she could make formal representations against the full penalty charge of £110. The council made no mention of Fran's right of appeal to an independent adjudicator.

Fran wrote back to the council to say the photographs only showed the suspension signs were there after she parked, not when she did so. However, she had little faith in the council reaching a different view, so she enclosed a cheque for £55. The council accepted the payment and closed the case. Fran complained to the Ombudsman because she felt she had not been listened to.

We asked the council to refund the money Fran had paid and put her in a position where she could appeal. The council agreed to our recommendation and it was then open to Fran to decide whether she wished to pursue her appeal to the independent adjudicator, now that she knew what options were open to her.

Authorities should communicate the motorist's options clearly and transparently when they reject a challenge.

We have seen cases where the authority has rejected an informal challenge and told the motorist they can pay or make formal representation when they receive a notice to owner. But the motorist was not informed there is a further right of appeal to an independent adjudicator if the authority rejects formal representations. Here the motorist needs to decide whether to pay the discounted amount or 'risk' the full penalty if the authority again rejects their representations. It seems many choose the cheaper option, however they may have decided to carry on contesting the penalty knowing someone other than the authority could consider their case.

We consider there is fault if an authority does not provide the required information, and we will consider whether it should take action to remedy any injustice.

Our recommendations will largely depend on whether the motorist would have wished to appeal had they been properly informed.

Derek's Story

Derek wrote to the council explaining why he thought his PCN should be cancelled.

The council replied, rejecting his request, in a letter which told him if he wanted to dispute the charge he should wait for a 'notice to owner' to be issued so he could make formal representations. The council said it would send this to the registered keeper if the charge remained unpaid. The notice would also explain the courses of action available.

Derek paid the penalty charge and the council considered the matter closed. However, the letter sent by the council to Derek did not contain any mention of how he could appeal the PCN with independent adjudicator. Derek told us that he would have appealed had he known about this right.

The council agreed to refund Derek's money and reissue the 'notice to owner' to allow Derek the chance to appeal.

Common Issues and Complaints

Unpaid penalty charges

An enforcement authority cannot simply instruct enforcement agents (bailiffs) to collect an unpaid penalty charge if there is no payment or successful challenge. A formal process must be followed. This is:

- > If no payment is made within 28 days of the 'notice to owner', the authority can issue a charge certificate to the owner which increases the penalty charge by 50% and warns that the authority may take recovery action through the courts.
- > If a penalty charge remains unpaid 14 days after a charge certificate is issued, the authority can apply to register the charge certificate with the Traffic Enforcement Centre (TEC) at Northampton County Court, which deals with these matters for the whole county. This enables the authority to recover the unpaid penalty charge as if it were payable under a County Court order.
- > When it registers the charge certificate, the TEC authorises the authority to issue an 'order for recovery'. The authority must then send an order telling the owner that they must either pay the amount outstanding or make a witness statement to the TEC within a further 21 days from receipt of the order. The witness statement must explain why the owner refutes the need to pay the penalty charge; and request that the TEC revokes the registration of the unpaid penalty charge as a debt. There are specified limited grounds on which the owner can make a witness statement.

Julie's story

A debt for an unpaid parking penalty charge was registered with the Traffic Enforcement Centre (TEC) at Northampton County Court. The TEC issued an order for recovery which allowed enforcement agents (bailiffs) to act on the council's behalf. Julie paid the bailiffs the outstanding penalty charge and the bailiffs' own fees.

Julie made a witness statement to the TEC, saying she had been unaware of the original PCN and had not received a 'notice to owner'. The council contested this, but the TEC decided to accept it and ordered that the order for recovery be revoked. This took the matter back to the 'notice to owner' stage. The TEC made it clear it had not cancelled the original PCN. Julie asked the council to refund the money, including the bailiffs' fees she had paid on top of the penalty charge, and complained to us when it refused to do so.

We decided that when the TEC revoked the order for recovery it withdrew the basis for the bailiffs' fees. Similarly, by taking the matter back to the 'notice to owner' stage, the TEC decided that additional penalty charges should not be paid. For these reasons, we have in this and similar cases taken the view that councils should refund everything except the original penalty charge.

The council accepted our view and refunded a total of £382, including bailiffs' fees of £310.

Common Issues and Complaints

Ignoring information about changes in owner details – including returned documents

Authorities should send documents to the person they believe to be the owner of a vehicle. They initially use the address provided by the DVLA but should not do this slavishly.

We have seen cases where authorities have refused to take notice of credible information about the owner's address and have continued to send documents to an old address.

In some cases authorities have said an address must be correct because nothing it sent was returned. In others they said they take no notice if letters are returned because the real owner may just be sending them back.

Councils should properly consider the information they are given and respond accordingly.

Callum's story

The council fixed a PCN to an unlawfully parked car. It was not paid or challenged so the council asked the DVLA for details of the owner. The address provided by the DVLA was Callum's but he was not the named owner. The council sent a notice to owner in the post. After it received no response to this, the council obtained a warrant to recover the charge and passed it onto enforcement agents (bailiffs) who called at Callum's home.

Callum was not in, so the bailiffs left a letter. Once he saw the letter, Callum contacted the council and explained that the person it was writing to was the previous owner of the property. Callum told the council that he had returned all of the previous owner's post.

The council advised Callum to provide details to the bailiffs to show he hadn't incurred the PCN. He wrote to them explaining the situation but they requested evidence he lived at the property. After further correspondence the bailiffs returned the debt to the council to investigate further. Neither the council nor its bailiffs contacted Callum again.

Following our investigation, the council said it had not received the returned documents; but even if had, it would not have caused it to change the address to which it corresponded. This was to avoid a genuine registered keeper dishonestly returning documents.

We decided, however, that the council should have done more to help Callum. It should have been mindful that he may have been anxious about dealing with bailiffs, and it was not fair to expect him to do so once he had explained the wrong person was being pursued. The council agreed to our recommendation to review its policy on this point.

Common Issues and Complaints

Accessibility to the public

Good customer service by councils can prevent unnecessary worry and distress for the public and complaints to the Ombudsman. However, we often see cases where people come to us simply because they are unable to discuss an issue with the authority involved.

In some instances, the only telephone number that appears to be available is that for paying a penalty charge, rather than discussing it.

We have also seen the use of a premium rate number which incurred additional costs for callers. This practice may be quite common and it is perfectly legal. However, it does not appear to us to be good practice, as it may discourage people from contacting their council with valid enquiries.

Dan and Kirsty's story

Dan and Kirsty received a penalty charge notice by post from the council for a moving traffic contravention. The notice contained a photograph of the car involved, but its vehicle registration mark was not the same as that on the notice itself. The council had clearly sent the notice to the couple in error and they wrote to point this out.

Although it was correctly addressed, Dan and Kirsty's letter was returned marked 'addressee gone away'. The couple say Royal Mail told them that this was because the council had not paid for the PO Box. Despite several letters and phone calls, the couple could not resolve the matter and complained to us.

The council accepted it had been at fault and cancelled the penalty charge. It agreed to pay Dan and Kirsty £25 to recognise their time and trouble. It confirmed that the issues with the PO Box had been rectified.

The error was readily apparent, and there seems no reason why a phone call or letter did not result in the immediate cancellation of the penalty charge notice.

Getting Things Right First Time

From our investigations we have identified many examples of good practice. It is encouraging to see enforcement authorities that:

- > consider 'informal challenges' properly and respond to them in good time explaining the reasons for decisions made
- > have suitably trained staff to handle 'informal challenges' who demonstrate empathy and have the appropriate level of authority to deal with them
- > fully explain the motorist's appeal rights at the informal stage, clearly setting out all of their options. In particular making them aware they can appeal to an independent adjudicator even if formal representations are later rejected
- > properly consider information from motorists about changes to owner details and respond accordingly
- > provide fair access for motorists to discuss valid enquiries – advertised phone lines should not be solely for taking payment
- > have suitable arrangements in place to ensure enforcement agents (bailiffs) follow best practice and handle any complaints to them effectively. The authority retains overall accountability for their agents' actions
- > do not fetter their discretion to consider individual circumstances by slavishly following policies or processes without question

Getting things right first time - questions for Councillors

Councils and all other bodies providing local public services should be accountable to the people who use them.

The LGO was established by Parliament to support this. We recommend a number of key questions that councillors, who have a democratic mandate to scrutinise the way councils carry out their functions, can consider asking.

How does your authority:

- > fully advise motorists of their appeal rights at all stages of the parking and traffic enforcement process; particularly when issuing PCNs at the scene?
- > always make it clear motorists can appeal to an independent adjudicator even if their representations are rejected by the authority?
- > provide suitably trained staff, with the appropriate authority, to properly consider 'informal challenges', and explain the reasons for decisions when responding to these?
- > ensure motorists have fair access to discuss valid enquiries with the council about their penalty charges?
- > any enforcement agents (bailiffs) it employs follows best practice; and how does it retain oversight of complaints made to and about these agents?
- > learn from the outcomes of complaints to improve services, and share this with the public?
- > use the Ombudsman's reports and decisions to develop its own policy and practice?
- > promote transparency and greater understanding of the objectives of civil parking enforcement by publishing an annual parking report?

About the Ombudsman

For more than 40 years the Ombudsman has independently and impartially investigated complaints about councils and other bodies within our jurisdiction. Our services are free of charge.

If we find something wrong, we ask the council to take action to put it right. What we ask the council to do will depend on the particular complaint, how serious the fault was and how the person was affected.

We have no legal power to force councils to follow our recommendations, but they almost always do.

How we remedy injustice:

Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems do not happen again

About the Independent Tribunal

The Traffic Penalty Tribunal deals with appeals against PCNs issued by enforcement authorities outside of London. London Tribunals: Environment and Traffic Adjudicators deals with those in London.

The independent lawyer adjudicator of the relevant tribunal will decide if the motorist is liable to pay the penalty charge. The grounds of appeal are set out in the regulations and there is the right to have compelling reasons considered.

The adjudicators give reasons for their decisions which are intended to be helpful for motorists and appellants alike. The service is free and costs are seldom awarded.

www.trafficpenaltytribunal.gov.uk

www.londontribunals.gov.uk

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