

Policy for Considering Penalty Charge Notices - Challenges and Representations

Parking Controls in Chichester District are essential to keep traffic moving and provide access for residents and visitors. Chichester District Council's policy for Civil Parking Enforcement (West Sussex Parking Policy) aims to ensure that it provides a system that is fair to the motorist but effective in enforcing parking regulations.

This Policy for Considering Challenges and Representations provides an overview of the process in place to assist with any appeals made against Penalty Charge Notice's (PCN's).

In this Policy, references to *correspondence* will include, appeals, challenges and representations and other written communications which may have been completed on behalf of the motorist.

Staff employed by Chichester District Council (the council) to undertake enforcement or to consider and respond to challenges and representations will be provided with the skills and training required to undertake their roles effectively. Along with formal training, supervision of staff will be undertaken when first appointed to the role and then on an ad hoc basis. A monitoring process will also be carried out to ensure the quality of responses.

Motorists will be dealt with professionally and within any required timeframe and annual appraisals of all staff will ensure that any training or other issues are considered, along with regular review of team performance by management.

All correspondence should be in writing so that the council has record of the query but also to support a decision to cancel a PCN and for further evidence in the case of representations or Adjudications. In the case where the motorist is unable to complete a challenge, arrangements can be made by contacting the council and informing the member of staff.

Independent legal advice may be sought from time to time from the Legal Services team where this is felt appropriate.

The service will report on performance through the annual parking report which will be published each year on the authority's website along with the PATROL (Parking and Traffic Regulations Outside London) website. This will include the percentage of PCNs which have been cancelled.

Decision making

The Traffic Management Act 2004 allows councils discretion in how correspondence is dealt with and decisions relating to PCN's can only be made by trained members of the Parking Services Team. The council has a legal duty to consider correspondence and the proof of whether this has happened or not lies in the quality of the response.

Any guidelines will only provide a framework within which consistent decision making is undertaken, although each case must be considered on its own circumstances.

- Notice Processing staff are encouraged to clarify with others where they are uncertain about the decision relating to a particular case.
- Commonly, different Notice Processing Officers will review a case during the different stages of appeal.

The council's discretion

An authority has a discretionary power to cancel a PCN at any time throughout the process, even when an undoubted contravention has occurred if the authority deems it appropriate in the circumstances of the

case. The authority has a duty to act fairly and proportionately and is encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.

- Discretion will be objective and without regard to any financial interest and each case will be judged on its own merits.
- The authority will depart from policies if it is considered that the particular circumstances of the case warrant it.

Errors in a PCN

All Notice Processing Officers check that a PCN has been issued correctly prior to reviewing correspondence. If it is found that the PCN itself contains an error or defect, or if a specified procedural error has taken place, the PCN will be cancelled in line with the regulations and the motorist will be informed, where possible.

Considering mitigation

Some cases will not fall precisely within a specific category / circumstance or will have mitigating factors that will need to be taken into account. Where such cases arise they will be discussed with another Notice Processing Officer or line manager in order that an agreed decision can be reached based on the evidence which is available.

- Mitigating circumstances may often be unexpected / unforeseen and will often be unavoidable too. The Notice Processor will consider the circumstances described by the motorist carefully whilst also reviewing the contravention and evidence gathered by the Civil Enforcement Officer.
- Notice Processing staff are able to ask for evidence to substantiate a challenge or representation if compelling information has been provided by the motorist.
- The council does not have to accept evidence if it not felt to be relevant or sufficient to support the reasons for appeal.

The council will always:

- Work in line with the regulations (Traffic Management Act 2004, The Civil Enforcement of Parking Contraventions (England) General Regulations 2007, The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.)
- Check the PCN to ensure it has been issued and processed correctly.
- Consider all first challenges and representations from the owner of the vehicle in accordance to the regulations.
- Read and understand the correspondence and seek further clarification if the information is unclear.
- Evaluate any evidence which is available.
- Decide whether further investigations are required (checking previous PCN's, maps, machine faults, permit records etc).
- Provide an explanation as to why the PCN was issued to prevent further PCN's being issued. (Information may later be referred to should a customer receive further PCN's which are issued in similar circumstances.)
- Provide clear timescales within which action must be taken before the PCN progresses.
- Tell you what the next step is and describe how the charge will increase

The council won't:

- Seek to obtain records from third parties on a motorists behalf, such as Doctors Surgeries, Hospitals, the DVLA (Driver Vehicle and Licensing Agency), or Insurance Companies
- Share data with anyone outside of those who are permitted
- Tolerate abusive behaviour or language

- Respond to unreasonably persistent correspondence which hinders the consideration of a case, affects resources or where a full response has already been served and the matters raised have been responded to.

Adjudication

There are three stages to the appeals process and the third enables an appeal to the Traffic Penalty Tribunal to be submitted. Upon deciding the case, the Adjudicators decision will be fed back to Notice Processing staff and discussed at team meetings to ensure that challenges are being dealt with correctly and to make improvements to the service.

Complaints

The council takes its responsibilities very seriously and should we have failed to provide a service in the correct manner, a motorist can follow the Council's Complaint Procedure. However, complaints regarding the outcome of a challenge or representation will not be accepted and motorists should follow the prescribed Parking Penalty Enforcement Process by appealing to the Traffic Penalty Tribunal if dissatisfied with the council's decisions.

The following 'Questions and Answers' may be useful when considering whether to challenge or make representations to the council against a PCN.

Q. The details on the PCN are incorrect, will the PCN be cancelled?

A. If the Vehicle Registration Mark, the location or the Contravention Code is incorrectly recorded on the PCN, the Council will cancel it. All the other details that the Officer records on the PCN are supportive and therefore if they noted incorrectly, would not justify cancelling the PCN.

Q. I was arrested so couldn't move my vehicle, will the PCN be cancelled?

A. If you can supply evidence of the arrest which covers the time in which the PCN was issued, the Council may be able to cancel the PCN.

Q. I was loading or unloading, will the PCN be cancelled?

A. Depending on the restriction you were parked on, what you were loading or unloading and if you can supply evidence of this, the Council may consider cancelling the PCN. The Civil Enforcement Officer must carry out an observation period when issuing a PCN under certain contravention codes and this is to determine whether an exempt activity is being carried out. For example, a Civil Enforcement Officer will allow at least 5 minutes observation before issuing a PCN to a vehicle parked on a yellow line restriction.

Q. I ran out of petrol, will the PCN be cancelled?

A. It is the responsibility of the motorist to make sure that the vehicle has sufficient petrol for a journey. As running out of petrol could be avoided the PCN may not be cancelled.

Q. My car broke down, will the PCN be cancelled?

A. If your car was parked on the street and you can supply evidence of the vehicle breaking down the council may consider cancelling the PCN. If your vehicle was in a car park, payment for parking can be

made even if you have no access to your vehicle and therefore the PCN may not be cancelled. In these circumstances the council would expect contact to be made by the vehicle owner to advise that the vehicle has broken down.

Q. I was delayed arriving back to my car, will the PCN be cancelled?

A. Although it is recognised that delays do occur; it is the responsibility of a motorist to take into consideration any unforeseen delays which may occur. For example, it is likely that there could be a queue in a shop or in a bank and therefore the appropriate place and charge for parking should be arranged to cover a possible delay. A PCN may not be cancelled unless evidence is provided which demonstrates that the delay was unexpected, such as an emergency situation arising.

Q I have a valid Blue Badge but I didn't display it, will the PCN be cancelled?

A. For a blue badge to be considered as a valid exemption it must be clearly displayed continuously on the dashboard of a vehicle. If this was not the case, then the PCN may not be cancelled. The conditions relating to Blue Badges are described in 'The Blue Badge Scheme: rights and responsibilities in England' book which is provided when every Blue Badge is issued.

If the Blue Badge had fallen from view but the Civil Enforcement Officer was able to see an identifiable item on a badge in the vehicle, this will be noted and a challenge may be accepted and the PCN cancelled if a copy of the badge is provided.

Q. I didn't set my Blue Badge Clock/Disc correctly, will the PCN be cancelled?

A. For a Blue Badge to be deemed a valid exemption the clock must be displayed correctly with the Badge itself and set to the time of arrival. If this was not the case, then the PCN may not be cancelled. The conditions relating to Blue Badges are described in 'The Blue Badge Scheme: rights and responsibilities in England' book which is provided when every Blue Badge is issued.

Q. I didn't realise that my Blue Badge had expired, will the PCN be cancelled?

A. For a Blue Badge to be deemed a valid exemption it must be in date and displayed clearly. If this was not the case, then the PCN may not be cancelled. The conditions relating to Blue Badges are described in 'The Blue Badge Scheme: rights and responsibilities in England' book which is provided when every Blue Badge is issued.

Q. I parked in a loading bay but I had displayed my Blue Badge, will the PCN be cancelled?

A. Blue badges are not valid for use on loading restrictions, and therefore the PCN may not be cancelled. This was not the case, then the PCN may not be cancelled. The conditions relating to Blue Badges are described in 'The Blue Badge Scheme: rights and responsibilities in England' book which is provided when every Blue Badge is issued.

Q. I became sick/ill, will the PCN be cancelled?

A. Some situations are unforeseen and therefore the council may consider cancelling the PCN if evidence is provided to support the circumstances which are described.

Q. I lost my car keys, will the PCN be cancelled?

A. If you can supply evidence that you lost your keys and/or purchased another set the council may be prepared to cancel the PCN.

Q. I had a Pay and Display (P&D) ticket but it flipped over / fell off the dashboard, will the PCN be cancelled?

A. A Civil Enforcement Officer will check a vehicle thoroughly when patrolling. If they can see the serial number on a P&D ticket inside a vehicle they will log it in their notes. The council may consider cancelling a PCN on the first occasion if the P&D is supplied and if it was valid at the time the PCN was issued and has a matching serial number.

Q. I forgot to display the P&D ticket, will the PCN be cancelled?

A. The P&D ticket is only valid when displayed clearly on the dashboard of the car. As it is the responsibility of the driver to display the P&D ticket before leaving the vehicle parked, cancelling the PCN is not felt to be justifiable in these circumstances.

Q. The P&D machine was out of order/didn't accept my money, will the PCN be cancelled?

A. The council acknowledges that occasionally faults can occur, however, there are at least two pay and display machines in all of the car parks and machines on street too. The council may therefore not consider cancelling a PCN as it would be reasonable to expect a customer to use another machine or a different payment method. We would always request that customers report faults at the time if a problem arises.

Q. I didn't have any change to pay, will the PCN be cancelled?

A. It is necessary for motorists to arrive at a parking place with adequate change or means to pay for parking as soon as the vehicle is parked and alternative parking should be found if this isn't the case. If this was not the case, the council may not cancel the PCN.

Q. I didn't know I had to pay / display a P&D ticket to park, will the PCN be cancelled?

A. To make sure that the conditions of parking are clear, there are signs in off street and on street parking places. Having ensured that all the information is clear, it is then the responsibility of the motorist to observe all signs and lines/road markings and charges boards prior to leaving the vehicle parked. As there is sufficient information to alert motorists of the hours that the pay and display charges are operative, the PCN may not be cancelled.

Q. I thought I put the right amount of money in to the pay and display machine, will the PCN be cancelled?

A. The payment machines enable customers to check the value of the coins which has registered and it is the responsibility of the motorist to check this and the ticket prior to leaving the vehicle. If you can supply the pay and display ticket that you purchased and it would have been valid at the time the PCN was issued the Council may be prepared to cancel the PCN.

Q. I forgot to display / renew my permit or season ticket, will the PCN be cancelled?

A. We do provide a reminder email to help customers to remember to renew season tickets or permits, however, it remains the customer's responsibility to ensure that it's valid when parking and if it is not, then the council may not cancel the PCN.

Q. I didn't receive my renewal reminder will the PCN be cancelled?

A. Whereas the council choose to send reminders to help customers remember to renew, it remains the customer's responsibility to ensure that the season ticket or permit is valid when parking. The council may not therefore, cancel the PCN.

Q. My permit / season ticket was displayed but it fell from view, will the PCN be cancelled?

A. The council will check records and if only one Vehicle Registration Mark is logged against the season ticket / permit, we may consider cancelling a PCN on the first occasion.

Q I had a valid permit / season ticket displayed but it didn't have the correct vehicle registration mark assigned to it, will the PCN be cancelled?

A. Permits and season tickets are vehicle specific therefore the correct registration marks must be logged against them. Forgetting to change a registration or logging the incorrect registration would not usually justify the cancellation of the PCN.