

Appendix 15: Process by which the Council deals with appeals against PCNs

Discretion and Mitigation

If a Penalty Charge Notice (PCN) is contested the Council, initially via our enforcement partner (NSL), will consider any grounds for cancellation put forward. It is suggested that as much documentary evidence as possible is submitted in support of the case. The Council will consider each and every case on its individual merits taking account of the supporting data received. We will take into account any evidence that a motorist tried to park legally but we will not generally cancel a PCN where a driver made an error, did not understand the regulations or has received a PCN after failing to renew a permit.

The council will take account of the following factors when considering representations:

- The effect of the motorists' parking on traffic and safety
- The extent to which the motorist could have parked legally
- Whether there was an absolute need to park

The following provides a list of the types of issues which are most likely to be considered as an appropriate reason for mitigation to be accepted, however this is just provided as a guideline and not a general rule, as the decision will ultimately be dependent on the area in which the contravention occurred and the adverse impact arising:

- A medical emergency
- Forced to contravene in order to avoid an incident, such as a traffic accident
- The driver was directed to contravene by a police officer
- The vehicle had broken down and this can be proven beyond doubt
- The signs and lines were changed while the vehicle was parked

CEOs are not given the discretion whether or not to issue PCNs; if a contravention occurs they are obliged to issue a PCN. This is important to ensure that CEOs are not subject to pressure or persuasion about the issue of a PCN or open to accusations of corruption or influence in the exercise of their duties. Furthermore a CEO is not able to cancel a PCN once it has been issued.

The process for appealing or contesting a PCN is set out below.

Process relating to Representations and Appeals

A driver in receipt of a PCN may lodge an objection and in so doing should follow the procedure which is explained on the reverse of the PCN.

The process for representations is broken down into two stages:

Informal representations

Any contact made with the Council requesting cancellation of a PCN up to 28 days from the date of issue is classed as an 'informal representation' or typically referred to as a pre –NTO enquiry, where NTO stands for 'Notice to Owner'. This period, like others below, is prescribed by the 'Road Traffic Act 1991'. If payment is made within 14 days of issue then the amount to be paid will be at a discounted rate. If objectors write within 14 days of issue and the Council rejects the basis on which

the objection is made then the Council will provide a further 14 days for a discount payment to be made from the date of responding to the pre-NTO enquiry. There is no legal obligation to do this, however it is considered good practice and shows the Councils' desire to deliver good customer service. Objections can be received up to 28 days from the date of the PCN, though after 14 days the discount will no longer apply.

Formal representations

After 28 days in the absence of payment the Council will obtain the registered keeper details and sends a 'Notice to Owner' to the registered keeper of the vehicle in question, who has legal responsibility for paying or making representations. This gives the registered owner another chance to pay the PCN or to send in reasons for cancelling the PCN together with any evidence to support the objection.

The legal grounds on which owners can make representations are limited and dependent on the nature of the contravention and applicable legislation. However, the Council must consider all mitigating circumstances; it does not necessarily need to accept any or all cases where there are mitigating factors, but it must consider them.

After consideration the Council must issue a formal notice of acceptance and cancel the PCN or issue a formal notice of rejection. The latter would be accompanied by an appeal form and a full explanation of the next stages of the process, and how to lodge an appeal. The full penalty is due at this stage, but the council is able to exercise discretion and offer the opportunity to pay the discounted amount in certain circumstances.

It is important to note that, under the TMA, elected members (Councillors, MPs and MEPs) cannot influence the outcome of representations against a PCN: their role is defined as contributing to the reviewing and setting of overall policies. Therefore in order to avoid undue influence over the process, an appeal should only be lodged by the vehicle keeper and once submitted only an officer trained in the relevant legislation should liaise directly with the appellant to determine the outcome. It is therefore necessary for elected members who are contacted by drivers who are aggrieved at having received a PCN to make this point known and to simply explain that the appellant should follow due process as explained on the reverse of the PCN and on the Council's website.

Formal appeals

The registered keeper can lodge a formal appeal with the adjudication service within 28 days of receiving a 'Notice to Owner'. This is a straightforward process and free of charge to the appellant. The Parking and Traffic Appeals service (PATAS) hears cases in London.

Appellants can request either a postal or attended hearing. Attended hearings are held at the Haymarket in London. The Council may choose to send a representative to the hearing although generally it does not.

The Council and the appellant are notified by the adjudication service and are expected to abide by the decision. There are limited grounds for a review and similarly limited grounds for costs to be awarded against either party.

If an appeal is allowed by the adjudicator the Council will be instructed to cancel the PCN. Where an appeal is refused the appellant has 28 days from the date the decision is made to pay the full penalty. In the absence of payment after 28 days the council can increase the penalty by 50% and issue a Charge Certificate.

As above assuming that a penalty charge is not paid or contested within 28 days of the Notice to Owner, it becomes a debt, which the Council can confirm by sending a Charge Certificate. It can then recover the outstanding amounts by issuing warrants to bailiffs as per the Enforcement of Road Traffic Debt (Certified Bailiffs) Regulations 1993 and related legislation.