



ROCHDALE
BOROUGH COUNCIL

PARKING ENFORCEMENT POLICY

INTRODUCTION

In 2003 Rochdale Borough Council applied to the Secretary of State for powers to carry out Decriminalised Parking Enforcement (DPE), as of 4th July 2004. The application was successful and the powers were awarded for enforcement in the Rochdale Borough. This meant that Rochdale Borough Council took over the responsibility for the enforcement of 'on street' and 'off street' parking areas from the police.

The notices issued are no longer breaches of the criminal law enforceable through the criminal justice system, but instead 'Penalty Charge Notices' (PCN's) are a debt owned by the Authority, enforceable through the civil justice system.

On 31st March 2008, the parking related sections of Part 6 of the Traffic Management Act 2004 were introduced and became effective. This changed the way in which parking enforcement was managed. One of the key changes of the act was the introduction of differential penalty charges to reflect the severity of the contravention. The Traffic Management Act 2004 allows the charges of £70, discounted to £35 for the higher value contraventions e.g. yellow line waiting restriction, and £50, discounted to £25 for the lower value contraventions e.g. parked without displaying a valid Pay and Display ticket. A full list of parking contraventions can be found in the 'Civil Parking Enforcement Annual Parking Report' which can be downloaded from the Rochdale Borough Council website.

CIVIL ENFORCEMENT OFFICERS (CEO'S)

The PCN's are issued by CEO's who are contracted by the Council to carry out 'on street' and 'off street' parking enforcement. The PCN's must be affixed to the vehicle, handed to the person who appears to be in charge of that vehicle or served through the post.

To protect the CEO's from allegations of inconsistency, favouritism or suspicion of bribery, they do not have the powers to exercise discretion. All appeals in relation to the issue of a Penalty Charge Notice are dealt with by the Council's Parking Services Team. This promotes greater consistency in the approach taken to enforcing the traffic regulations.

There are three circumstances in which a PCN may be served by post:

- (i) where the contravention has been detected on the basis of evidence from an approved device;
- (ii) if the CEO has been prevented, for example by force, threats of force, obstruction or violence, from serving the PCN either by affixing it to the vehicle or by giving it to the person who appears to be in charge of that vehicle; and
- (ii) if the CEO had started to issue the PCN but did not have enough time to finish or serve it before the vehicle was driven away and would otherwise have to write off or cancel the PCN.

Once a PCN has been issued, the Notice can either be paid or disputed by following the appeal process.

PAYMENT DETAILS

If payment is made within 14 days of the issue of the PCN, the discounted amount will apply. The day of service of the PCN is counted as day 1 of the 14 day period. If payment is not made within the 14 day period, the opportunity to pay at the reduced amount is no longer available and the full charge becomes due.

Payments can be made by:

Cash at Post Offices and Paypoint outlets ONLY Cheque/postal orders (payable to "Post Office Ltd").

Credit/Debit.

Telephone 01706 926180.

Automated payment line 01706 926180 24 hours a day.

Internet www.rochdale.gov.uk/pay

THE APPEALS PROCESS

Where a parking contravention occurs, it is the 'owner' of the vehicle involved who is legally obliged to pay the penalty charge. The 'owner' means the person by whom the vehicle is kept, which in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994 (c.22) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered at the DVLA. The only exception to this is where the vehicle was hired from a firm under a hiring agreement and the person hiring it had a signed statement of liability in respect of any Penalty Charge Notice served in relation to the vehicle during the currency of the agreement. If a PCN has been issued to a company owned vehicle, the Notice to Owner (NtO) will be sent to the company listed as the registered keeper of the vehicle.

Vehicle owners may dispute the issuing of a PCN at three stages:

1. Informal

An informal challenge or representation can be made before the Council issues a NtO. (This does not apply in the case of a PCN issued by post, as the PCN then also acts as the NtO). As a challenge at this stage will be made by the person who has received the PCN, it may be that the person submitting the challenge was the driver of the vehicle, rather than the vehicle's owner.

Challenges must be made in writing either by:

- Post.
 - ❖ Parking Services, Rochdale Borough Council, PO Box 50, Rochdale, OL16 1FL.
- Email.
 - ❖ Parkingservices@Rochdale.Gov.UK
- Appeals form, available from:
 - ❖ Customer Services, Number One Riverside, Smith Street, Rochdale.
 - ❖ www.rochdale.gov.uk

The PCN number should be included in the challenge along with reasons why the Notice has been incorrectly issued or compelling reasons why the PCN should be cancelled. Where applicable, include documentary evidence to enable the challenge to be fully considered.

If the challenge is accepted the case will be closed and payment will not be required. If the challenge is rejected and it was received within 14 days from the issue of the PCN, a further 14 days in which to make payment at the discounted rate will be given. Once the 14 days have expired the full charge will be applicable. If the challenge is rejected and it was received after the 14 day discount period, the full penalty charge will be due.

2. Formal

If payment is not received within 28 days of the date the PCN is issued, the Council will make an enquiry of DVLA to obtain the vehicle owner details. A NtO will then be served requesting payment of the PCN. At this stage the owner has 28 days in which to make formal representations to the Council. The NtO sets out specific grounds on which formal representations may be made. However, representations may also be made on the basis that, in the particular circumstances of the case there are compelling reasons for the cancellation of the penalty charge.

If the formal representation is accepted the case will be closed and payment will not be required. If the representation is rejected the full charge will be applicable and a 'Notice of Rejection of Representation' will be sent.

1. STATUTORY GROUNDS TO MAKE REPRESENTATIONS (TRAFFIC MANAGEMENT ACT 2004, PART 6)

Important note:
 Although the following are the nine Statutory Grounds to make representation following the service of a 'Notice to Owner' letter, full consideration will be given and account taken of all representations received, whether or not they fall within the description of '**Statutory Grounds**'. It is for this reason that a 10th Ground of appeal has been included to allow the motorist or owner/ registered keeper to provide other information for the Council to consider.

- 1.1 The contravention did not occur**
- 1.2 The penalty exceeded the relevant amount**
- 1.3 The Traffic Order was invalid**
- 1.4 The recipient was not the owner/ keeper of the vehicle at the time of the contravention**
- 1.5 The vehicle was parked without the owner's consent**
- 1.6 The vehicle was a hire vehicle, on hire under a formal hire agreement**
- 1.7 There has been procedural impropriety on the part of the Council**
- 1.8 The Notice to owner should not have been served**
- 1.9 Where a PCN was served by post on the basis that a CEO was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle**
- 1.10 Any other information that the motorist/vehicle owner wants the Council to take into consideration**

1. The contravention did not occur.	
2. The Penalty Charge exceeded the amount properly due.	The amount is more than you are legally liable to pay – not that you feel the charge is too much.

3. The traffic order was invalid.	If the Traffic Regulation Order prescribing the restrictions that the vehicle concerned contravened is defective in some way i.e. is ultra vires, or was not made in accordance with relevant procedures or is inaccurate or incorrect in terms of detail.
4. The recipient was not the owner/ keeper of the vehicle at the time of the contravention.	Proof of sale or purchase will be required. If the vehicle has been sold, the name and address of the person buying the vehicle must also be supplied, it is not acceptable to simply say the vehicle was sold to somebody else without proof. A letter from DVLA confirming you was not the owner at the date of event may assist the Council in making a decision.
5. The vehicle was parked without the owner's consent.	<p>This does not cover cases such as lending the vehicle to a friend who then parks illegally; or to a vehicle which is parked illegally whilst in the hands of a vehicle repair or service business.</p> <p>If the vehicle has been stolen, the Council will require details of the crime reference number and the name of the police station to which the crime was reported or a letter from an insurance company.</p>
6. The vehicle was a hire vehicle, on hire under a formal hire agreement.	A copy of a signed hire agreement, which includes the start and end dates will be required.
7. There has been procedural impropriety on the part of the Council.	Only where there is clear evidence the Council has failed to observe any requirement of the legislation of the Traffic Management Act 2004 i.e. service of any document before authorised to do so.
8. The Notice to owner should not have been served.	<p>If the PCN has already been paid in full or by the amount of any discount allowed under TMA 2004 regulations i.e. 50% discount if paid within 14 days of issue of the PCN.</p> <p>Proof of payment is required.</p>
9. Where a PCN was served by post on the basis that a CEO was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle.	The decision to cancel the PCN will only be made if the CEO has made an error or lines and signs are unclear.

10. Any other information that the motorist/vehicle owner wants the Council to take into consideration.	The decision whether or not a Penalty Charge Notice should be cancelled will only be taken following very careful consideration, taking into account all of the evidence available.
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Representations may also be made on compassionate grounds or “compelling reasons” and Councils have a duty to act fairly, proportionately and apply discretion where appropriate. Each case will therefore be considered on its own merits and all mitigating circumstances will be taken in to account.

2 MITIGATING CIRCUMSTANCES

2.1 The motorist claims to have become unwell while driving

May accept representations	May reject representations
If the motorist provides proof of a medical condition, temporary or permanent, that is consistent with the conditions described.	If the motorist cannot provide some proof of a medical condition, temporary or permanent, that is consistent with the conditions described. Where other evidence contradicts the motorist’s claim.

2.2 The motorist claims that the vehicle had broken down.

May accept representations	May reject representations
Evidence of breakdown is required such as, an authenticated garage repair/vehicle recovery bill.	If the motorist is unable to provide satisfactory evidence of a breakdown. If the cause of the vehicle ‘break down’ was due to negligence on the part of the motorist i.e. the vehicle had not been properly maintained, had run out of petrol or water or a similar reason. If the CEO’s handheld notes contradict the motorist’s version of events.

2.3 The motorist claims to have been delayed due to unforeseen circumstances and the parking time purchased had expired i.e. detained in police custody.

May accept representations	May reject representations
Proof from the Police, including the time of arrest will be required.	If the motorist cannot provide evidence as required.

2.4 The motorist claims the Pay and Display machine was faulty.

May accept representations	May reject representations
If service records confirm a fault or that the machine was out of service at the time of the contravention.	<p>If there was another machine nearby working correctly at the time of the contravention.</p> <p>If there is no record of the machine being faulty or out of service.</p> <p>If there is reasonable doubt because evidence confirms that other motorists had been able to purchase tickets during the relevant period.</p>

2.5 A Blue Badge being displayed incorrectly (photo image on display).

May accept representations	May reject representations
Copies of both sides of the badge will be required to check against our records. If a PCN has not previously been cancelled for a similar reason, a first offence waiver is likely to be given.	If a Penalty Charge Notice has previously been cancelled for the same reason.

2.6 A displayed Blue Badge has expired.

May accept representations	May reject representations
Where a displayed Blue Badge has expired within 28 days prior to the date of the contravention.	<p>If a Penalty Charge Notice has previously been cancelled for the same reason.</p> <p>If the Blue Badge had expired more than</p>

	28 days prior to the date of the contravention.
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2.7 A Permit (season ticket) was not clearly displayed.

May accept representations	May reject representations
Where a permit valid for one specific vehicle and purchased in advance is not clearly displayed, a first offence waiver is likely to be given.	Where a permit is valid for more than one vehicle registration. If a Penalty Charge Notice has previously been cancelled for the same reason.

2.8 The vehicle was on police, fire brigade or ambulance duties.

May accept representations	May reject representations
Where supporting evidence by a senior officer on letter headed paper is supplied.	If the motorist cannot provide evidence as required.

2.9 The owner liable for payment of the PCN is said to have died or the motorist claims to have been recently bereaved.

May accept representations	May reject representations
The circumstances will be confirmed by sensitive enquiry.	

2.10 Circumstances that fall into the category of a statutory exemption due to provisions within the Traffic Regulation Order.

The above list is not exhaustive and there can be many reasons to take into account when considering challenges or representations.

A PCN IS UNLIKELY TO BE CANCELLED ON THE FOLLOWING GROUNDS:

- The parking restrictions are unfair.
- Pay and display ticket / permit not on display.
- You claim to be unaware of the restriction.

- You had gone to get change for a pay and display machine.
- You had only parked for a few minutes.
- You were not causing an obstruction.
- There was nowhere else to park.
- You are a Council Officer or Elected Member attending Council business.

The above list is by no means exhaustive.

The process of dealing with challenges and representations against the issue of PCN's is well documented and will be carried out in a fair, unbiased and consistent manner. These procedures include the ultimate right of all appellants to refer the matter to an independent arbitrator – The Traffic Penalty Tribunal.

To preserve the integrity of these procedures, they will be managed and carried out by the administration and processing staff in Parking Services and no undue external pressure shall be brought by either Members or senior officers of the Council, designed to unduly influence the decisions by virtue of their position alone.

APPEAL TO THE TRAFFIC PENALTY TRIBUNAL

Following a 'Notice of Rejection of Representation', the owner (or hirer, if the vehicle was on hire when the PCN was issued) may, within 28 days from the date of issue of the 'Notice of Rejection of Representation' appeal to the Traffic Penalty Tribunal. The form to make the appeal is included with the Council's rejection letter. The adjudicators have a judicial position and are appointed with the agreement of the Lord Chancellor. They are independent of the Council and their decision is final (subject to their own power to review a decision).

The appellant has the choice of a postal decision, a personal hearing at the town or city of his/her choice, from the locations listed on the appeal form, or a telephone hearing. If the appeal is accepted the case will be closed and payment will not be required. If the appeal is dismissed the full penalty charge is payable.

CHARGE CERTIFICATE

If payment is not received a Charge Certificate may be issued which increases the original charge by 50%. It occurs, not less than 28 days beginning with the date on which:

- The NtO is served and no formal representation has been received.
- A Notice of Rejection of Representation is sent and no appeal is made to the Traffic Penalty Tribunal.
- The adjudicator's decision to dismiss the appeal is served on the appellant.

DEBT REGISTRATION

If, after 18 days from the issue of the Charge Certificate, payment is not received, the Council will register the debt at County Court. This could ultimately lead to the issue of a warrant which is recoverable through an independent bailiff where their fees will also apply.

To obtain copies of this policy in a different format, please contact Parking Services either by:

Telephone: 01706 924589

Email: parkingservices@rochdale.gov.uk