

WIRRAL COUNCIL

CABINET

15 MARCH 2012

SUBJECT:	PARKING POLICY REPORT ON PARKING ENFORCEMENT
WARD/S AFFECTED:	ALL WARDS
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR DAVE MITCHELL STREETSCENE AND TRANSPORT SERVICES
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

1.1 This report reviews and updates the Council's Parking Enforcement Policy that was last reported to Cabinet on 13 March 2008 [Minute 534 refers]. Parking enforcement within Wirral is undertaken through the provisions of Part 6 of the Traffic Management Act 2004 (TMA 2004), enacted in March 2008 and which requires local highway authorities to produce and publish its policies and strategies on parking and enforcement.

2.0 BACKGROUND AND KEY ISSUES

2.1 On the 21st October 2003 the Secretary of State for Transport, Local Government and the Regions, in exercise of powers conferred by Schedule 3 to the Road Traffic Act 1991 (RTA 1991), gave Wirral Council powers of decriminalised parking enforcement through the following Order:-

The Road Traffic (Permitted Parking Area and Special Parking Area) (Metropolitan Borough of Wirral) Order 2003. The Order came into force on 17th November 2003.

2.2 As a consequence, on 17th November 2003, the responsibility for enforcing on-street parking restrictions transferred from Merseyside Police to Wirral Borough Council.

2.3 More recent legislation, which came into effect on 31st March 2008, has superseded the RTA 1991 and Civil Parking Enforcement (CPE), as it is now called, is now undertaken in accordance with Part 6 of the TMA 2004.

2.4 Wirral Council has adopted an Enforcement Concordat, which sets out general standards and principles that should be applied when undertaking any type of enforcement activity including parking. The principle of the concordat is that when enforcement or regulation is necessary it is undertaken in a firm but fair manner that is transparent, consistent and proportionate. The concordat was originally adopted by the Council on 5th April 2001 [Minute 150 refers].

- 2.5 Part 6 of the TMA 2004 provides for a single framework in England for the civil enforcement of parking, bus lanes and some moving traffic offences. The aim of CPE is to provide for a reasonable, transparent and proportionate system of parking enforcement that is applied consistently across the country. The objective is to increase public confidence by providing a system that can be seen to be balanced and fair to the motorists whilst satisfying the Council's transport and parking duties and its policy aspirations.
- 2.6 This report therefore sets out a framework for parking enforcement within Wirral based upon the above legislation and principles. The document will be reviewed on a regular basis and updated when necessary; for example to accommodate changes in legislation, corporate and departmental objectives, best practice and local parking needs.
- 2.7 The procedures and policies contained in this report are intended to ensure the Council delivers its parking enforcement service in a timely, fair and consistent manner in relation to all aspects from the issuing of penalty charge notices to dealing with any subsequent challenges or appeals.
- 2.8 The delivery of the parking enforcement service can be linked with the delivery of many of the broader aims and themes comprised within the current and draft Corporate Plans, including; having a safe highway network through reducing dangerous and inconsiderate parking, reducing Wirral's carbon footprint by assisting in maintaining a free flow of traffic and reducing congestion, improving the quality of life of residents by reducing non residential parking within residential areas, and ensuring compliance with on and off street parking controls to generate a turnover of parking space necessary for a prosperous local economy. Other benefits include maintaining access to facilities for persons with disabilities for example by ensuring that only valid blue badge holders park in designated spaces, ensuring that dropped crossing points are not obstructed and reducing the inconvenience and dangers posed by inconsiderate footway parking and parking across residential driveways.

2.9 PARKING ENFORCEMENT POLICY

2.9.1 Parking Enforcement is therefore undertaken to assist in:

- Delivery of an efficient and accessible transport system for all,
- Management of parking, traffic levels and congestion through effective parking controls to make making Wirral a safer place to live, work in and enjoy.
- Supporting and improving the effectiveness of measures introduced to prevent or reduce accidents.
- Improving public transport accessibility and reliability,
- Meeting the needs of disabled people by improving access to and availability of dedicated parking space.
- Reducing unnecessary parking and traffic in residential and other environmentally sensitive areas.

- The economic sustainability of shops and businesses by encouraging a turnover of use of parking space, and hence maximising the available use of existing parking space.
- Ensuring that designated areas are kept clear for specific road users, i.e. loading, blue badge holders, goods vehicles, taxis etc.
- Ensuring that access for emergency vehicles, delivery and service vehicles is maintained.

2.9.2 The procedures and policies contained in this document will be regularly reviewed to ensure:

- a) Changes in legislation, statutory and non guidance, national and local policy are properly considered.
- b) That the service continues to support corporate and departmental aims and objectives.
- c) That the service continues to support and meets the needs of Wirral businesses, residents and partner agencies.

2.9.3 It is not practical or feasible to enforce all types and areas of restrictions in all parts of the Borough, all of the time. Therefore, an outline enforcement regime as indicated below was adopted by the Council in 2008 and remains supportive to the service aims and objectives outlined above:

- Waiting, parking and loading restrictions on principal or primary routes, will be enforced daily.
- Waiting, parking and loading restrictions within the Birkenhead Controlled Parking Zone, will be enforced daily.
- Waiting, parking and loading restrictions centred around outer Birkenhead, Liscard, Heswall and West Kirby shopping centres, will be enforced on a regular basis, no less than 3 times per week.
- Waiting, parking and loading restrictions centred around the secondary shopping centres including Bromborough, Bebington, Upton, Hoylake, etc will be enforced on a regular basis, no less than once per week.
- Waiting, parking and loading restrictions in and adjacent to public service and amenity facilities, industrial and business areas, will be enforced on a regular basis, and subject to demand.
- Residents parking zones in Liscard and Birkenhead, will be enforced daily
- Residents parking zones in other areas will be enforced on a regular basis, no less than once per week.
- Residents parking zones in Tranmere will be enforced on all match days
- School Keep Clear markings throughout the Borough will be enforced with a rolling programme and in response to specific demands.
- Waiting, parking and loading restrictions within other environmentally sensitive areas, will be enforced subject to demand.
- Waiting, parking and loading restrictions in areas of seasonal demand will be enforced subject to demand.
- Waiting, parking and loading restrictions in areas not covered in any of the above, will be enforced in response to identified problems and requests
- Temporary or permanent restrictions for special events will be enforced as necessary.

2.9.4 To ensure an efficient and effective operation the exact frequency and times of patrols are left to the Director of Technical Services and his appointed contractor to determine. These frequencies and times will be reviewed regularly.

2.9.5 *The following sections set out the general principles and processes through which parking enforcement is undertaken in Wirral.*

2.10 Civil Enforcement Officers:

2.10.1 Civil Enforcement Officers (CEO's) are the public face of parking enforcement. Within Wirral this part of the service is contracted out to an external parking enforcement service provider under a term contract. The current contract is with NSL Limited and is due for renewal in 2015. CEO's are deployed to enforce parking restrictions both on-street and off-street within Council car parks. When undertaking enforcement they must wear a uniform identifying them as CEO's.

2.10.2 The hours and days of operation and patrols are determined through the contract but may be varied to address local parking issues and demands. Regular reviews and meeting take place to ensure that the service continues to meet these demands.

2.10.3 In addition to planned patrols and beats the Council will endeavour to respond to individual requests for enforcement in response to issues highlighted by partner agencies, MPs, Councillors and members of the public. Priority will be given to requests received from the Police to address particular traffic management or road safety issues.

2.11 Use of Discretion by CEO's:

2.11.1 A CEO should only issue a PCN when there is sufficient evidence to show that a parking contravention has occurred. To prevent CEO's being left open to claims of inconsistency, favouritism or bribery, it is not normally appropriate for them to be able to exercise discretion. The only exception to this is on occasion where a driver returns to the vehicle before the CEO has recorded details of the contravention. In this situation, advice or a warning may be more appropriate.

2.12 Observation Period:

2.12.1 The observation period is the length of time, immediately prior to issue of a PCN, during which a CEO will visually determine whether a specific contravention has occurred or not. When a contravention is first observed details of the vehicle are entered into the CEO's hand held computer (HHC), at this point the observation period will commence and the computer will prevent issue of a PCN until the relevant observation period for the contravention has elapsed.

2.12.2 The first observed time is printed on the face of the PCN and recorded in the HHC.

2.12.3 Observation periods range in time, dependent upon each specific contravention, from 'nil' or instant issue ticket for loading bans or parking on school or pedestrian crossing zigzag markings to 15 minutes for exceeding

the allowed time in a limited waiting bay. There is a three minute period for most yellow line contraventions.

2.12.4 **Appendix A** attached to his report shows the observation periods for each of the contravention types enforced in Wirral.

2.13 Penalty Charge Notice Amounts:

2.13.1 Since March 2008 two levels of penalty charge amounts have applied in addition to the early payment discounts. PCN's are now issued with a higher or lower penalty amount depending upon the type of contravention, as determined by the legalisation. A full list of parking contraventions together with the appropriate current penalty charge amount is shown in **Appendix A** to this report.

2.13.2 For both higher and lower rate penalties a discount of 50% still applies if the penalty is paid within 14 days of issue, or 21 days for postal PCN's.

2.14 Penalty Charge Notice (PCN) Content:

2.14.1 Legislation requires that PCN's must contain certain minimum information, this includes;

- The date on which the notice is served.
- The name of the enforcement authority.
- The registration mark of the vehicle involved in the alleged contravention.
- The date and time of the alleged contravention.
- The grounds upon which the CEO serving the notice believes that the penalty charge is payable.
- The amount of the penalty charge.

The notice must also include information relating to the payment period and discount payment rate and period, the methods of payment available and information relating to the service of a Notice to Owner, appeals, challenges and the adjudication service

2.14.2 The CEO records this and all other relevant details onto the HHC including tax disc number and tyre valve positions if appropriate. The CEO will also record photographs of the contravention typically including images of the vehicle registration number, the parking contravention and the PCN attached to the vehicle.

2.15 Service of a Penalty Charge Notice by post:

2.15.1 Although in most circumstances PCN's are served on a vehicle or to the driver 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 (i.e. a camera);

ii) If the CEO has been prevented by threat or violence from serving the PCN conventionally to the vehicle or to the person who appears to be in charge of that vehicle;

iii) If the CEO had started to issue the PCN but did not have enough time to serve it before the vehicle was driven away and would otherwise have to write off or cancel the PCN.

2.15.2 In any of these circumstances a PCN may be served by post on the owner following a DVLA enquiry. The Postal PCN also acts as the Notice to Owner (NtO). Postal PCN's must be sent within 28 days of the contravention occurring, and in accordance with good practice the Council aim to send Postal PCN's within 14 days.

2.16 Enforcement by Approved Devices (Cameras)

2.16.1 The TMA 2004 gives authorities the powers to issue PCN's for contraventions detected with a camera and associated recording equipment. Prior to using such equipment the Council must apply to the Secretary of State for the device and its associated processes and systems to be certified. The mobile CCTV car used within Wirral has been through this process and certified as an approved device for parking enforcement.

2.16.2 The discount payment period for a PCN issued on the basis of evidence from an approved device is increased from 14 to 21 days. This is because the postal PCN also serves as the NtO and hence motorists only have one opportunity to make a formal representation, as the informal challenge stage only occurs when a PCN is placed on a vehicle.

2.16.3 The Council's mobile CCTV vehicle is deployed to places where enforcement is difficult or sensitive such as outside school entrances or locations with a high turnover of persistent, but generally short term parking, which creates traffic problems but is difficult to enforce by conventional means.

2.17 Prevention of Service of the PCN

2.17.1 The TMA 2004 gives authorities the power to serve a PCN by post if the CEO is prevented from issuing the PCN conventionally to either the vehicle or the driver.

2.17.2 Prevention of Service by threat or violence.

2.17.3 A PCN may be served by post if the CEO attempts to serve it but is prevented from doing so by some person. This includes situations where the person who appears to be in charge of the vehicle is abusive or prevents service indirectly through intimidation or directly through threats or actual physical force.

2.17.4 In such circumstances, the PCN printed by the CEO will be cancelled and a Postal PCN, containing further information, will be served following a DVLA enquiry to obtain keeper details. This will only be done after checks to ensure there is sufficient primary and supporting evidence to deal with any

subsequent representations or appeals. In these circumstances a 14 day discount payment period will apply.

2.17.5 Prevention of service by “drive away”

2.17.6 A PCN may also be served by post if the CEO had begun to issue it, but the vehicle was driven away before the CEO had finished issuing the PCN or been able to serve it. ‘Begun to issue’ is defined as having completed all observations and entered sufficient data such that the PCN would otherwise have to be cancelled.

2.17.7 In such circumstances, the PCN printed by the CEO will be cancelled and a Postal PCN, containing further information, will be served following a DVLA enquiry to obtain keeper details. This will only be done after checks to ensure there is sufficient primary and supporting evidence to deal with any subsequent representations or appeals. It is recommended that the CEO records the excise license number of the vehicle and if possible informs the motorist of the contravention before they drive away. The Council shall keep a record of which CEO’s ask for a Regulation 10 PCN to be issued and will consider whether there is anything in the manner in which the officer is working that has contributed to this. In these circumstances a 14 day discount payment period will apply.

2.17.8 A PCN may not be served by post if the motorist returns to the vehicle before the CEO has started to issue the PCN. Jotting down details is not classed as starting to issue the PCN.

2.18 Exemptions to contraventions:

2.18.1 There are a number of vehicle types and circumstances for which exemptions from waiting restrictions may apply, depending upon the provisions contained within the relevant Traffic Regulation Order (TRO), typically these are:

- Vehicles used for Police, Fire Brigade and Ambulance purposes.
- Vehicles carrying out statutory authorised powers and duties if they cannot be used for such purposes in any other road.
- Vehicles involved in contracted highway maintenance, improvement or reconstruction where there is a need for them to be parked adjacent to the work site.
- Vehicles involved in building, industrial or demolition operations.
- Post Office and other vehicles engaged in the delivery of postal packets and bearing a livery used by a universal service provider within the meaning ascribed by the Postal Services Act 2000. This does not include private vehicles used by postmen/women whilst carrying out letter deliveries.
- Electricity Board, Gas Board, Water Authority, British Telecom or other telecommunications (and/or their appointed contractors), whilst actively laying, altering or undertaking repairs to pipes, cables or other apparatus.
- Vehicles used in the connection of the loading or unloading of goods.

- Vehicles displaying a valid disabled person's badge (blue badge) and a parking disc on which the driver or the person in charge of the vehicle at the time it was parked has marked the time at which the period of waiting began, and where permitted by the prevailing parking restrictions.
- Vehicles used as an official vehicle for the purpose of a wedding or funeral at a church or place of worship.
- Vehicles used in connection with the posting, or removal, of any advertising material in poster form, or is being used for cleaning windows or chimneys in, or on, premises adjacent to that parking space.
- Any vehicle (typically bullion vehicles or specially adapted Security vans) involved in the delivery or collection of cash and other high value goods at a bank or other premises.

2.18.2 PCN's will not normally be issued to vehicles falling within the above categories, however, if a PCN is issued it will only be cancelled on appeal if sufficient evidence is provided to prove that an exemption applies.

2.19 PENALTY CHARGE NOTICE APPEAL PROCESS AND FLOWCHART

2.19.1 Councils must review and publish their policies on how they deal with appeals, challenges and representations against PCN's. The following details outline the main stages of penalty notice processing from initial issue through to debt recovery.

2.19.2 The flow chart included in **Appendix B** shows the various stages of progression and appeal for conventionally served PCN's and in **Appendix C** for postal PCN's.

2.19.3 **PCN stage** – Following the issue of a PCN, the notice can either be: paid, challenged, or cancelled. If payment is made then a discount of 50% is applied if paid within 14 days (21 days if the PCN was served by post), beginning with the date on which the PCN was served.

2.19.4 **Informal Challenge stage** - an informal challenge is an appeal made in the period of 28 days between the issue of a PCN and the issue of an NtO.

2.19.5 **Notice to Owner (NtO) stage** - If a PCN is not paid within a period of 28 days, beginning with the date on which the PCN was served, or it is not successfully challenged within that period, the Council may serve a NtO on the owner of the vehicle, requiring payment of the PCN.

2.19.6 **Formal Representation stage** - Following the issue of an NtO the vehicle owner may make formal representation to the Council within a period of 28 days.

2.19.7 **Appeal stage** – If a formal representation is rejected, a vehicle owner may further appeal through the Traffic Penalty Tribunal Service (TPT) to have the appeal heard by an independent parking adjudicator.

2.19.8 **Charge Certificate stage** - Charge Certificates are issued in circumstances where no payment has been received to either PCN or the subsequent NtO, or where an appeal has been rejected and no payment received before the end of the period of 28 days, beginning with the date of the notice of rejection. A charge certificate increases the standard PCN charge by 50%.

2.19.9 **Debt Registration stage** - If a Charge Certificate is not paid within 14 days the authority may apply to the Traffic Enforcement Centre at Northampton County Court to register the debt as a debt recoverable by Bailiffs. Within Wirral an additional stage, the pre-debt registration letter, has been introduced to give motorists a further opportunity to make payment. The process of registering a debt attracts a small charge, levied by the Court, which is subsequently added to the overall total debt. Once a debt is registered the debtor is sent an Order for Recovery and Witness Statement allowing a further 21 day period to either pay the debt or file a Witness Statement.

A witness statement may be filed on one of four grounds.

1. The Notice to Owner was not received.
2. A formal representation was made to the local authority but the rejection notice was not received.
3. An appeal was made to the Parking/Traffic Adjudicator but no response has been received.
4. The penalty charge has been paid in full.

2.19.10 A witness statement can be rejected by the court and the Council has the right to challenge the truthfulness of the ground on which the statement has been filed.

2.19.11 **Warrant Registration stage** – Following debt registration, failure to either pay the debt in full or complete a valid Witness Statement will result in the authority applying for a Warrant of Execution from Northampton County Court, Traffic Enforcement Centre. Once a Warrant of Execution has been obtained an instruction will be given to the Councils Bailiff Service provider for certificated bailiffs to collect the outstanding debt.

2.20 Challenges, Representations and Appeals

2.20.1 This section contains information on the process and decision making when considering appeals. This is framework for guidance; however each case will be considered on its own merits.

2.20.2 The Council has discretion to cancel a PCN at any point in the process even if it is established that a contravention did occur. Where a decision has been made not to cancel a penalty; a written explanation will always be provided together with information on how to challenge the penalty further, if such a stage is available.

2.20.3 When a PCN is issued it contains advice on how the motorist may appeal if they wish to do so. In the first instance, this is termed an informal challenge.

2.20.4 It is important to note that given the quasi judicial role of the statutory appeals process, elected members and unauthorised officers should not play a part in deciding the outcome of individual challenges or representations.

2.21 Challenge (informal):

2.21.1 An informal written challenge may be made to a PCN at any time prior to the issue of an NtO. The challenge should state the grounds on which it is being made together with any mitigating circumstances and supporting evidence. The Council will give full and proper consideration to such representations in accordance with the following paragraphs and respond in a timely manner. If a challenge is received within 14 days of the PCN being served, and if the Council subsequently reject the challenge, a further 14 days discount period will normally be allowed. If a challenge is rejected the Council will provide reasons as to why.

2.21.2 Making an informal challenge does not affect the right of the vehicle keeper to make a subsequent formal representation against the issue of a PCN.

2.22 Representations (formal challenge):

2.22.1 A formal challenge or representation can only be made after the NtO has been sent to the registered keeper. There are a number of statutory and non statutory grounds on which a representation can be made. These are also the same grounds on which a Parking Adjudicator may consider an appeal against the Council's rejection of these initial representations.

2.22.2 The statutory grounds for representation against a PCN are as follows;

(a) that the recipient —

- (i) was never the owner of the vehicle in question;
- (ii) had ceased to be its owner before the date on which the alleged contravention occurred; or
- (iii) became its owner after that date;

(b) that the alleged contravention did not occur;

(c) that the vehicle had been permitted to remain at rest in the parking place by a person who was in control of the vehicle without the consent of the owner;

(d) that the relevant designation order is invalid;

(e) that the recipient is a vehicle-hire firm and —

- (i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

- (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any PCN fixed to the vehicle during the currency of the hiring agreement;
- (f) that the penalty charge exceeded the amount applicable in the circumstances of the case;
- (g) that there has been a procedural impropriety on behalf of the authority;
- (h) In the case where a PCN was served by post on the basis that a CEO was prevented by someone from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle that the CEO had not been so prevented; or
- (i) The NtO should not have been served because the PCN had already been paid.

2.22.3 In addition to the statutory grounds for appeal the Council is also obliged to consider any non statutory or mitigating circumstances. The owner/keeper is required to give full details and supporting evidence of any such circumstances.

2.22.4 If a representation is rejected the Council will issue a formal Notice of Rejection (NoR), this will also detail the reasons for the decision. The Council will also state the amount outstanding and allow a further period of 28 days in which to pay. Guidance and an application form detailing how to further appeal to the Traffic Penalty Tribunal are sent out with the NoR.

2.22.5 Further details on grounds for appeal are given in section 4.27 below. Representations made outside the period of 28 days beginning with the date on which the PCN is served, may be disregarded; however, the Council will make allowance in exceptional circumstances.

2.23 Appeals to the Traffic Penalty Tribunal

2.23.1 The Traffic Penalty Tribunal (TPT) is the independent tribunal set up to consider appeals by motorists and vehicle owners whose vehicles have been issued with a PCN, and whose representations have been refused by the Council. It is free for motorists to use the TPT and cases are considered by Parking Adjudicators, who are specialist impartial lawyers appointed by the tribunal service.

2.23.2 When the TPT receives a Notice of Appeal they will notify the Council to submit its evidence to the adjudicator within a period of 21 days. The appellant can choose to have the appeal considered in a number of different manners.

2.24 Postal Hearings - The Adjudicator will consider the appeal based solely on the written evidence the appellant and the Council have supplied. A written decision will be sent to both parties, normally within a week of the case being decided.

2.25 Personal Hearings- An appellant may choose to attend in person and have their appeal heard in any of a number of locations listed on the Notice of Appeal form. Typically Wirral hearings are held in Liverpool.

2.25.3 Although a formal process, personal hearings are undertaken in a relatively informal manner to put the appellant at ease. Those attending normally include the Adjudicator, the appellant and the Council representative. The appellant will have the opportunity to put his case to the Adjudicator and to clarify or answer any questions put to them. Although those attending are not required to give their evidence under oath, all parties are reminded of their duty to tell the truth.

2.25.4 The Adjudicator will normally give their decision at the end of the hearing, which will be confirmed in writing to both the appellant and the Council. In all cases the adjudicator's decision is binding on both the appellant and the Council.

2.25.5 In exceptional circumstances, the adjudicator may refer a case back to the Council for reconsideration. These cases are directed to the Chief Executive and must not be dealt with by the team who considered the original representations. If the Council does not accept an adjudicator's recommendation it must notify the adjudicator and the appellant of the reasons for its decision before issuing a charge certificate.

2.25.6 If the Council accepts the recommendation of the adjudicator it must cancel the NtO and refund any sums already paid.

2.25.7 Although a Parking Adjudicator has powers to award costs against either party, this is unusual. Costs will only be awarded if in the opinion of the Parking Adjudicator either party has behaved in a frivolous, vexatious or wholly unreasonable manner. Costs are normally limited to out of pocket expenses such as postage and stationary costs.

2.26 Telephone Hearings

2.26.1 Telephone hearings follow a similar process as personal hearing except that they take place by telephone using a conference call facility. They have the benefit that the appellant can make a personal representation without the need to travel to and from a hearing venue.

2.26 Appeal grounds and decisions

2.26.1 This following section covers the grounds for appeal and the framework for decision making when considering these. It provides advice on dealing with

mitigating circumstances for a range of scenarios. It also recognises that each case is different and that sometimes situations are beyond the control of the motorist. The list cannot provide guidance on every possible scenario and is therefore not exhaustive.

2.26.2 It is the responsibility of the person making the representation to support their claim. The Council will not normally engage in evidence gathering on behalf of the person who is appealing.

2.27 Statutory Grounds for Appeal:

2.27.1 There are a number of statutory grounds on which a motorist can appeal. If proved the appeal should be allowed and the PCN cancelled. Such grounds include:

2.29 Claims that the contravention did not occur:

2.29.1 If proved this would mean that the PCN was issued incorrectly because no parking contravention took place. Examples could include:

a) The motorist was **loading or unloading** at a time when it is allowed but the CEO did not notice this.

Representations should be accepted if it can be shown that the goods being delivered were heavy, bulky or so numerous that it would be impractical to legally park elsewhere. Loading should be taking place close to the premises concerned and be timely, i.e. not spread out over an unreasonably long period of time. However, where the Traffic Regulation Order specifically prohibits loading, such as taxi ranks and bus stop clearways or in car parks where a valid ticket has not been purchased, then the PCN is unlikely to be cancelled.

b) The motorist had a **permit or ticket** but the CEO did not see it.

If a valid permit or P&D ticket is produced and the CEO confirms that a permit or ticket was in evidence but could not be clearly seen; for example details obscured by wiper blade; then representations would normally be accepted. However, appellants should note that this reason will only be accepted if it is the first such representation on these grounds from that person. Repeat claims for subsequent PCN's for the same contravention are unlikely to be cancelled.

c) The motorist had a **disabled badge on display** but the CEO did not see it.

As with P&D parking tickets, it is the motorist's duty to ensure that disabled badges are clearly displayed so that the expiry date and serial number are clearly visible. However, if a valid disabled persons badge is provided and it is a first occasion for that contravention then representations would normally be accepted even if the disabled badge was not correctly displayed at the time the PCN was issued. Repeat

claims for subsequent PCN's for failing to display or correctly display a disabled persons badge are unlikely to be cancelled.

d) Claims the **signs / markings** were not in the correct position or had been damaged or were not visible.

If, following investigation, a significant or material error is found with the signs, lines or the traffic regulation then representations would normally be accepted. In such cases action will also be taken to prevent further PCN's being issued in those circumstances and to rectify the error. Partially worn lines, utility gaps or minor departures such as missing end bars will be considered on a case by case basis but will not normally be accepted if the purpose and intent of the lines is obvious to a motorist acting in a reasonable manner.

e) The **date or registration number on the PCN** is incorrect.

If it can be shown that the date or registration number is incorrect the appeal will be allowed.

f) A **PCN was never served** on the vehicle.

Occasionally a PCN may be removed from a vehicle either by a third party or by adverse weather conditions. If the CEO has photographic evidence to show the PCN was originally served correctly and/or where evidence supports the claim that the PCN was removed, the motorist will normally be given a further opportunity to pay the PCN at the discounted rate. Similar repeat claims for subsequent PCN's are unlikely to result in the discount being re-offered.

g) Claims that the adjacent **pay and display machine was not working**.

Claims of this nature will be checked against service records for the relevant machine and any complaints or enquires received. If validated the appeal will be allowed, however, if there is another nearby ticket machine which could have been used then the representation may not be allowed.

h) The motorist was **carrying out building works nearby** and had a **valid dispensation** issued by Streetscene.

As with other tickets and disabled badges, proof of a valid dispensation that matches the details of the vehicle is likely to result in the representations being accepted for a first offence for this contravention. Repeat claims for subsequent PCN's for the same contravention are unlikely to be cancelled.

2.30 **Vehicle Ownership:**

a) **The recipient has never been the owner of the vehicle in question**

Representations will be accepted if the DVLA confirms that the motorist was not the registered keeper at the time of the contravention.

b) The recipient had ceased to be the owner before the date of the contravention

Representations will be accepted if the registered keeper is able to provide proof that the vehicle was sold or otherwise disposed of before the date of the contravention. Accepted documentation could include a bill of sale, registration or insurance documents or a letter from the DVLA. The registered keeper would be expected to provide details of the new owner, to whom a new NtO may be sent.

c) The recipient had become the owner after the date of the contravention

Similarly, representations are likely to be accepted if the current registered keeper is able to provide proof that the vehicle was purchased after the date of the contravention. Such documentation could include an invoice, registration or insurance documents or a letter from the DVLA. The new owner should be able to provide details of the previous owner to whom, a new NtO may be sent.

2.31 Vehicle Taken Without Consent:

Claims that the vehicle had been left by a person who was in control of the vehicle without the consent of the owner

Representations on these grounds should be accompanied with a valid police crime report reference number and will normally be accepted. It is the vehicle keeper's responsibility to control use of a vehicle and claims that an unknown family member or friend had left the vehicle will not normally be accepted unless there is evidence to supporting the matter being reported to the police at the time of the incident.

2.32 Recipient is a Vehicle-Hire Firm and;

(i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

(ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any PCN fixed to the vehicle during the currency of the hiring agreement;

Representations will be accepted if the hire company can provide proof that the vehicle was hired at the time of the contravention and the company can provide the full name and address of the person who hired the vehicle. In these instances, a new NtO will be sent to the person named by the hire company.

2.33 The Traffic Regulation Order was Invalid

Claims made on these grounds are infrequent and are usually concerned with the correct legal procedure for the making of the TRO. Representations will be allowed if it can be proven that the process for making the traffic order or the content of the order was flawed in some way.

2.34 Non-Statutory Grounds for appeal – Mitigation and Discretion

There are no statutory grounds for appeal where the recipient acknowledges that a contravention has occurred but argues that extenuating circumstances apply, however, best practice and guidance indicates that Councils should still consider such appeals.

2.36 A schedule of the more common circumstances encountered by motorists and/or raised in appeals, together with information and guidance on how the Council will consider each, is contained within **Appendix D** to the report.

3.0 RELEVANT RISKS

3.1 Failure to review regularly and publish policies on parking enforcement would be contrary to the statutory guidance issued by the Secretary of State.

3.2 In order to ensure that the service continues to deliver Council aims and objectives a regular review of the policy is required. It is also a means of demonstrating accountability and transparency in how the service is delivered.

4.0 OTHER OPTIONS CONSIDERED

4.1 None available.

5.0 CONSULTATION

5.1 No consultation was undertaken for the production of this report.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 There are no specific implications under this heading.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 There are no financial implications arising out of this report. The report reviews and updates existing policies. The service is managed so it remains cost neutral to the Authority.

7.2 The policies contained in the report are implemented by existing staffing and contracted partners as part of their normal duties.

8.0 LEGAL IMPLICATIONS

8.1 There are no implications under this heading.

9.0 EQUALITIES IMPLICATIONS

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes and impact review is attached – <http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010/technical-services-0>

10.0 CARBON REDUCTION IMPLICATIONS

10.1 There are no specific implications under this heading; however, effective control of parking can have an impact in reducing the effects of transport on the environment.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 There are no implications under this heading.

12.0 RECOMMENDATION/S

12.1 It is recommended that Cabinet approve the procedures and policies as set out in the Report. Cabinet are also requested to approve the publication of the details of the report on the Council's website.

13.0 REASON/S FOR RECOMMENDATION/S

13.1 The Council is required to produce and publish its policies and strategies on parking and enforcement to comply with the statutory guidance relating to Part 6 of the TMA 2004, and to carry out regular reviews of those policies and strategies.

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APPENDICES

APPENDIX A - Contravention Codes, Observation Periods and Penalty Charge Amounts
APPENDIX B - Conventionally Served PCN - Flowchart
APPENDIX C - Postal Served PCN – Flowchart
APPENDIX D - Schedule of circumstances

REFERENCE MATERIAL

Statistical information contained within this report has been obtained from the Si-Dem Debt Management system used by the Council to manage and administer parking enforcement cases. Further information can be obtained by contacting the Parking Services Team.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet report Traffic Management Act 2004 - Interim Parking Strategy	13 March 2008
Cabinet report Annual Report on Parking Enforcement	3 February 2011
Cabinet report Annual Report on Parking Enforcement	2 February 2012