

# **Leeds City Council**



## **Parking Services**

### **Procedures**

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## TRAFFIC MANAGEMENT ACT 2004

### GENERAL

Under the Traffic Management Act 2004 Regulations, which commenced across England and Wales on 31 March 2008, there are a number of changes to parking enforcement across the city. The new regulations attempt to strike a balance between ensuring as much national consistency as possible, while allowing parking policies to suit local circumstances and offer a system that is fair to the motorist, but also effective in enforcing parking regulations.

The main changes are described as follows:

### TERMINOLOGY & ABBREVIATIONS

<b>Term</b>	<b>Abbreviation</b>	<b>Formerly Known As</b>
Charge Certificate	CC	-
Civil Enforcement Officer	CEO	Parking Attendant
Civil Enforcement Area	CEA	Special Parking Area (SPA)
Civil Parking Enforcement	CPE	DPE
Decriminalised Parking Enforcement	DPE	-
Notice of Rejection of Representations	NoR	Notice of Rejection
Notice of Acceptance of Representations	NoA	Notice of Acceptance
Notice to Owner	NtO	-
Senior Enforcement Officer	SEO	Senior Parking Attendant
Special Enforcement Area	SEA	Special Parking Area (SPA)
Traffic Enforcement Centre	TEC	-
Traffic Management Act	TMA	-
Traffic Penalty Tribunal	TPT	National Parking Adjudication Service (NPAS)
Traffic Regulation Order	TRO	-

The word 'appeal' now specifically applies to cases referred to the TPT. A letter disputing a PCN is described as follows:

Objection	If the NtO has not yet been issued
Representation	In reply to the NtO
Appeal	After the representation has been rejected
Appellant	Person who appeals (as above)

DPE and TMA regulations mean that terminology from criminal law is no longer appropriate:

Officers try NOT say:	Officers do try to say:
Parking offences	Parking contraventions
Parking fines	Penalty charges
Guilty	Liable

## DIFFERENTIAL CHARGING

A system of differential charging will be introduced in Leeds. This means that less serious contraventions will incur a lower penalty charge of £50.00 but a more serious contravention of parking regulations will mean a higher penalty charge of £70.00. The government believes that this will be a fairer system where the punishment is 'more likely to fit the crime' (please note that these new regulations remain decriminalised).

The table below shows the differential charging levels for Leeds:

<i>Higher level penalty charge</i>	<i>Lower level penalty charge</i>	<i>Higher level penalty charge paid within 14 days</i>	<i>Lower level penalty charge paid within 14 days</i>	<i>Higher level penalty charge paid after charge certificate issued</i>	<i>Lower level penalty charge paid after charge certificate issued</i>
£70	£50	£35	£25	£105	£75

The higher level contraventions which result in PCNs issued in Leeds are listed here:

<i>Code</i>	<i>Description</i>
01	Parked in a restricted street during prescribed hours
02	Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force
12	Parked in a residents' or shared use parking place without clearly displaying either a permit or voucher or pay and display ticket issued for that place
16	Parked in a permit space without displaying a valid permit
21	Parked in a suspended bay/space or part of bay/space
23	Parked in a parking place or area not designated for that class of vehicle
25	Parked in a loading place during restricted hours without loading
40	Parked in a designated disabled person's parking place without clearly displaying a valid disabled person's badge

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42	Parked in a parking place designated for police vehicles
45	Parked on a taxi rank
47	Stopped on a restricted bus stop or stand
48	Stopped in a restricted area outside a school
49	Parked wholly or partly on a cycle track
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways
62	Parked with one or more wheels on any part of an urban road other than a carriageway (footway parking)
85	Parked in a permit bay without clearly displaying a valid permit
87	Parked in a disabled persons bay without clearly displaying a valid disabled persons badge (Orange/Blue Badge)
89	Vehicle parked exceeds maximum weight and/or height permitted in the area
91	Parked in an area not designated for that class of vehicle
92	Parked causing an obstruction
99	Stopped on a pedestrian crossing and/or crossing area marked by zigzags

The lower level contraventions which result in PCNs being issued in Leeds are listed here:

<i>(1) Code</i>	<i>(2) Description</i>
5	Parked after the expiry of paid for time at a pay and display or voucher bay
6	Parked without clearly displaying a valid pay and display ticket or voucher
7	Parked with additional payment made to extend the stay beyond expiry of time initially purchased
22	Reparked in the same parking place within one hour (or other specified time) of leaving
30	Parked for longer than permitted
80	Parked for longer than the maximum period
81	Parked in a restricted area in a car park
82	Parked after the expiry of time paid for in a Pay and Display car park
83	Parked in a Pay and Display car park without clearly displaying a valid Pay and Display ticket
84	Additional payment made to extend beyond time first purchased
85	Parked in a permit bay without clearly displaying a valid permit
86	Parked beyond the bay markings
89	Vehicle parked exceeds maximum weight and/or height and/or length permitted in the area
91	Parked in a car park or area not designated for that class of vehicle
92	Parked causing an obstruction
93	Parked in car park when closed

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## **HOW PENALTY CHARGE NOTICES (PCNs) ARE ISSUED IN LEEDS**

Another main change to the regulations means that in addition to PCNs being fixed to windscreen or handed to driver, there are now three circumstances when a PCN can be served through the post.

- When the contravention is detected on the basis of evidence from an approved device (CCTV camera). (NB - The council will not be using CCTV to enforce parking restrictions).
- When the Civil Enforcement Officer (CEO) is prevented by threat 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 the vehicle.
- When the CEO had started to issue the PCN but did not have enough time to serve it before the vehicle was driven away.

In these three circumstances the PCN is served by post on the owner/registered keeper (whose identity is obtained from the DVLA), and also acts as the Notice to Owner (NtO).

## **A GUIDE TO WHAT HAPPENS AFTER PCNs ARE ISSUED IN LEEDS**

### **TELEPHONE CALLS**

Incoming calls are answered in the Parking Services enquiry centre staffed by a team of Customer Service Officers Monday to Friday 8.30am to 5.00pm. There is also an emergency out of hours help line.

The regulations say it is not possible for challenges, representations or appeals to be made over the telephone. This must be done in writing so that there is an audit trail.

Details of telephone calls about PCNs are recorded on the computer system, in many cases, while the conversation is taking place.

### **CUSTOMER CARE**

We aim to provide all road users within the Leeds Special Enforcement Area (SEA) with a firm, fair and consistent approach to parking enforcement. This ensures good traffic flow, improves road safety and the local environment. It also improves the quality and accessibility of public transport, better meets the needs

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of people with disabilities and deals with the competing demands for kerb space around the city.

According to the regulations, we have the option to cancel PCNs at any stage of the process when evidence together with local policies shows that this should be done.

## **CORRESPONDENCE**

All letters sent into us receive a reply. Correspondence is opened, date stamped and logged as post received in and any letters referring to PCNs are sorted and passed to Appeals Officers for investigation and reply.

Usually, all the information required to answer the letter is available on the computer system or in the office. If this is not the case the letter is retained until a full reply can be sent. If there is any undue delay, we send out an acknowledgement letter.

It is not the responsibility of Council officers to chase up information from third parties when considering a case. For example, if a customer says that hospital records will support their argument, they must supply them within any time limits we set or the case will progress to the next stage after the time limit has elapsed.

Occasionally, it is necessary to put a case on hold because a letter cannot be answered straightaway. However, cases are not put on hold for an indefinite period and this prevents cases being lost in the system.

All relevant records for each case (apart from the Traffic Regulation Order (TRO)) are linked to the computer system. If an e-mail is received it is printed and dealt with in the same manner as letters in the post. We do not have to provide proof of posting for any documents we send out.

## **THE APPEALS PROCESS** (Please refer to the terminology guide above)

If you receive a PCN, you have 3 options; you can pay it, you can ignore it or you can challenge it:

### **1 PAY**

You should pay the PCN within 28 days of the date of issue. If it is paid within 14 days, you will only have to pay the discounted rate (50%). Details of how to pay are printed on the back of the PCN and on the Council's website. There is no option to pay in person. If we detect any overpayment of penalty charges we will refund them.

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Occasionally people send in a letter challenging the issue of the PCN and enclose a payment because they do not want to pay the full amount of the PCN. The regulations say that you cannot 'pay and appeal' at the same time. If you send us a letter challenging the issue of a PCN within 14 days, the clock will stop and you will be offered a further 14 days should your PCN be found payable. If we are unable to cancel the PCN you will get a reply telling you so and offering you another 14 days to pay the discounted amount.

There is no argument about the date that a telephone or internet payment is received. If there is any doubt regarding a postal payment then the date of the postmark is accepted as the date of posting, if this is within 14 days then the discount amount is the correct charge. The computer system is set so that the correct charge is shown automatically.

Our officers do not have the power to accept the discount amount when the system shows the full amount is owing. Exceptional cases are referred to the supervisor.

### **After 14 days**

If you pay the discount amount after the discount period has ended, your payment will be accepted and a NtO sent to the owner/registered keeper of the vehicle, showing the remaining amount due.

## **2 IGNORE**

If we do not receive a payment, the system automatically amends the amount due to the full amount after 14 days.

Then we contact the DVLA for the details of the owner/registered keeper and, after 28 days have elapsed, we send the NtO out (see below).

## **3 APPEAL**

### **CHALLENGE STAGE**

Motorists often try to appeal over the phone to our Customer Service Officers. As the decision to issue the PCN cannot be overturned unless a written challenge or representation is received, they will check the case records and explain to you why the PCN was issued rather than advising you to write in. They will also advise you if the circumstances of your penalty charge do not affect its issue and you will then have an opportunity to pay the PCN over the telephone. The officer you talk to makes a note on the computer system as to what is said or agreed.

If you decide to write in a letter challenging the issue of the PCN you must include all the information you have so that we can make sure that all letters are

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dealt with properly and replied to in full. Any additional correspondence will not be entered into unless we receive a representation in response to a NtO. We aim to answer all challenges and representations within 10 days.

Specific features of the challenge phase are:

- An challenge can be made by anyone, not just the owner
- All cases are dealt with in line with these policies, our procedures and government regulations

An challenge will 'stop the clock' on the discount amount if we receive it within 14 days from the issue of the PCN. If the objection is subsequently rejected, the case is reset so that it progresses to the full amount in a further 14 days.

### **Example**

01.04.08 - PCN issued - progression to the full amount will be on 15.04.08  
14.04.08 - objection received - case suspended until a reply is sent  
18.04.08 - objection rejected - progression to the full amount reset to  
02.05.08

NtOs are sent out as soon as possible once the initial 28 day payment period and before 6 months have elapsed. The timing of this usually depends on when owner/registered keeper information is supplied to us by DVLA.

### **REPRESENTATION STAGE**

The legislation allows 28 days for the person named on the NtO as the owner/registered keeper to dispute the issue of the NtO and/or the issue of the PCN. This is called a representation and, unlike the objection, this stage is covered by the legislation.

As with challenges, representations must be in writing. They do not have to be written on the NtO form itself, although the majority are.

Legislation allows the following statutory grounds for cancelling a PCN:

- The person on the NtO was not the owner at the time
- The contravention did not occur
- The vehicle was stolen or TWOC'ed (Taken Without Owners Consent)
- The traffic order was invalid
- The car was hired and the hirer accepts liability
- The PCN has been charged at too high an amount

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- There has been procedural impropriety on the part of the enforcement authority
  - the penalty charge had already been paid in full

These grounds are considered as follows:

### **The person on the NtO was not the owner at the time**

Normally DVLA evidence is taken as conclusive. An exception will be made if a proof of sale, details of the purchaser or confirmation from an insurance company are supplied. If the person named on the NtO says that a third party has purchased the vehicle but this person denies it, the DVLA evidence is decisive.

### **The contravention did not occur**

Evidence is considered on the balance of probabilities - does the evidence suggest that the contravention occurred? The policies of the Parking Services department give guidance on decisions and are followed whenever possible so that decisions made by the Appeals Officers are consistent.

### **The vehicle was stolen or TWOC'ed**

This argument will not be accepted without a crime reference number and details of the relevant police station. If the person named on the NtO claims that the matter has not been reported because the vehicle was taken by a friend or family member, the failure to report it to the police is counted as giving consent.

### **The traffic order was invalid**

These representations are referred to the Traffic Engineers section for checking. They generally refer to cases where a restriction may be considered not covered in the TRO, or the TRO is considered to be wrong.

### **The car was hired and the hirer accepts liability**

This is accepted on receipt of written, signed confirmation that the hirer accepts liability (this is usually a declaration on the hire form). If there is no signature provided then the hire company remains liable.

### **The PCN has been charged at too high an amount**

In practice, this only applies when the NtO recipient accepts the PCN but says they should only pay the discount amount or if the owner/registered keeper is claiming that they paid the discount amount within the discount period and the Council has not received it within the correct time.

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## **There has been a procedural impropriety on the part of the enforcement authority**

Where the Council has failed to observe the regulations concerned with issuing and processing PCNs or subsequent paperwork.

## **The penalty charge had already been paid in full**

(Within the regulatory time limits).

## **Other Grounds**

We also consider other grounds of appeal not listed in the legislation for basic reasons of fairness. Most of these will refer to mitigation, where the offence is admitted but it is argued that the PCN should be cancelled anyway.

Please refer to the following for details of Leeds' mitigation:

### **Delays**

Delays due to shop or bank queues, meetings taking longer than expected, etc are not grounds for cancellation of a PCN. Motorists are advised that it is better to over-estimate the amount of time needed, rather than under-estimate and risk incurring a PCN.

If the delay is related to any medical or emergency situation ie sudden sickness, difficulties in walking due to disablement, stopping to assist in an emergency situation and any other such cases, a degree of leniency is exercised.

### **Children**

Cases involving the hospital, doctor's visits with sick children and delays due to sudden illness are treated with leniency. It is usually appropriate for us to consider the length of the delay.

### **Emergencies**

An emergency is an unforeseen situation, which prevents a motorist from moving his/her vehicle. They are usually of a medical nature and leniency is exercised where it is felt that the motorist could not have foreseen the situation and/or had no chance to return to the vehicle.

It is useful to remember that there is an exemption for motorists who were unable to move their vehicle due to 'circumstances beyond their control', and to consider whether or not the circumstances fall into that category.

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Where a driver makes a claim for cancellation on the grounds that either he/she or a passenger is taken ill or injured in any way, proof is requested in the form of a letter from the GP. If the letter does not cover the date of the PCN, or it relates to a pre-arranged doctor's visit, the PCN will not be cancelled. There may also be cases where it is clear from the proof submitted that the motorist has been advised not to drive, and if this is the case, the PCN will be upheld.

Urgent toilet visits will not normally permit cancellation of a PCN unless mitigating medical circumstances applied.

### **NON-MITIGATING CIRCUMSTANCES**

The following examples show situations where we are usually unable to cancel PCNs:

- I thought I was parked legally but made a mistake
- There was nowhere else to park
- This is the first time I've got a parking ticket / I won't do it again / I'll be more careful next time
- I only stopped for a minute
- I lent the car to a friend and they won't pay the penalty
- I was parked outside my own house / business
- I went to get change for the pay & display machine
- I got lost / forgot about the time and so could not return to my vehicle in time
- My meeting / hospital / dental appointment ran late
- My ticket had fallen on the floor again / I had forgotten to display it again
- My permit / Blue Badge had fallen on the floor again / I had forgotten to display it again
- I did not know I had to Pay & Display
- I had been loading / unloading
- I thought I could return to the machine and pay for some more time

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Appeals Officers follow the agreed policies and procedures when making their decisions. In cases that are outside the policy, the principle is that the PCN will stand, unless the contravention was necessary or unavoidable in the circumstances.

Once we receive a representation there are 3 possible outcomes:

- If we accept the representation we cancel the PCN on the computer system and send out a Notice of Acceptance of Representations letter to the owner informing them of the decision. In the case of vehicle ownership or hiring grounds, we send a new NtO to the new owner or hirer.
- If we request further information before the case can be considered we write with the details and allow you 14 days to provide it. The case is held for 14 days pending a reply. If we do not receive the information the representation is rejected and appeal rights advised as below.
- If we reject the representation we send the owner/registered keeper a Notice of Rejection of Representations letter. The letter includes the reasons for this decision and a photo of the offence is included, if available. We also enclose a TPT appeal form so that the owner/registered keeper can submit a formal appeal to an independent adjudicator if they decide they want to appeal further.

## **NO REPRESENTATION RECEIVED**

If the PCN is unpaid and we do not get a reply to the NtO, the case proceeds to the Charge Certificate (CC) stage (see section below) after 35 days have elapsed from the NtO issue date. Once a CC has been issued, appeal rights no longer exist.

TPT only accept appeals on the correct form issued by the Council with the Notice of Rejection of Representations letter. Therefore, you cannot make a representation or a subsequent appeal to an independent adjudicator if you have not already made representations to the Council within 35 days of the issue of the NtO.

The date of issue of the CC is what is relevant rather than the date that it arrives. If a representation is received after the CC has been issued it is too late and cannot be considered unless there are exceptional circumstances.

Exceptional circumstances only apply if the owner/registered keeper cannot feasibly reply on time, eg due to hospitalisation. A person going on holiday is not usually sufficient exceptional circumstances.

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If a late representation is accepted, the CC is withdrawn and the process reverts to the point where we receive a representation.

## **CHARGE CERTIFICATE**

The issue of the Charge Certificate increases the amount owing by 50%, less any prior payments and ends the legal right for you to dispute the issue of the penalty charge. It occurs 35 days from:

- the NtO issued & no representation is received **OR**
- the Representation is rejected by the Council **OR**
- the Appeal is refused by the Adjudicator **OR**
- an Appeal is submitted but later withdrawn (very rare)

The CC is issued automatically by the computer system which will show all Parking Services officers logged on to the computer system that the case has reached this stage.

## **APPEAL STAGE**

TPT forms are included with the Notice of Rejection of Representations letter. The appellant completes the form and sends it directly to TPT, who subsequently notifies the council.

There are statutory grounds of appeal listed on the form but Appeals Officers also consider any mitigation when dealing with appeals. The independent adjudicators will only consider the statutory grounds.

The appeal submission may include new mitigation or new evidence and the first task for an Appeals Officer is to consider the case again and make sure that it passes the evidential test, where there are 5 points to demonstrate:

- The CEO thought an offence had occurred
- The PCN was issued correctly
- The statutory process was followed correctly
- The parking restriction was backed by a TRO
- That representations were considered and rejected by a reasoned notice of rejection.

If the case cannot be established on the evidence, then the PCN is cancelled and we inform both the appellant and TPT that we will not contest the appeal.

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If we believe that the case is worth pursuing, the Appeals Officer prepares the case papers and submits them in a clear format to TPT and the appellant, as follows:

- A front sheet, explaining the case and highlighting the important points. If the appellant has offered any arguments we address these and explain why they have not been accepted.
- Schedule of evidence (list of all documents submitted)
- Copies of all documents listed above.
- Copies of all the Council's documentation are also sent to the appellant.

The appellant can supply new evidence to TPT at any point before the hearing, which TPT copy to the Council.

The adjudicator may refer the appeal back to the Council for reconsideration. In these cases the Chief Executive's department reviews the appeal. If they do not agree with the adjudicator they will write a Notice of Rejection of Adjudicator's Recommendation letter to both the appellant and adjudicator and return the case to the Notice of Rejection of Representations stage above, with a further 35 days before a Charge Certificate is issued. If the Chief Executive's department agrees with the adjudicator they will write a Notice of Acceptance of Adjudicator's Recommendation letter to the appellant and adjudicator and instruct Parking Services to cancel the PCN.

If the appeal is allowed, the Council receives an instruction from TPT to cancel the PCN. If the appeal is dismissed, the Council will continue the process to recover the amount owing.

The adjudicator's decision is final and binding upon both parties, but there are limited grounds for the Council or the appellant to ask for a review of the decision.

## **REGISTRATION OF CHARGE**

Once a CC is issued, a further 21 days are given to pay. If you decide not to pay, we apply to the TEC at Northampton County Court for permission to recover the debt.

We send information to TEC together with a £5.00 registration fee for each case. £5.00 is then added to the case for the amount owing to the Council.

TEC then sends us permission to recover the debts on a standard form entitled "Order for recovery of unpaid penalty charge (Parking)". When we receive the order we send it to the owner/registered keeper together with a "Application to file

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a statement out of time/extension of time (Parking)” form (or Witness Statement supported by a Statement of Truth). You then have 36 days to either pay the new amount owing or to complete and file the Statement of Truth.

## **WITNESS STATEMENT**

The owner/registered keeper completes the Witness Statement and sends it direct to TEC stating that one of the following has happened:

- they did not receive the NtO
- they made a representation but got no reply
- they made an appeal but got no reply
- they paid the PCN

If the owner/registered keeper states that they didn't receive the NtO, TEC advise us that we should re-issue it, which we do. All other grounds are referred to the Council with instructions which we must follow.

If we do not receive a Witness Statement, we apply to TEC again for permission to pass the details of the amount owing to bailiffs.

## **REFERRAL TO BAILIFF**

21 days after the “Order for recovery of unpaid penalty charge (Parking)” is sent out, the Council can apply for a Warrant of Execution. The Council sends details of such cases to TEC, who then send back permission for us to issue a warrant.

The warrant is valid for one year and is passed to bailiffs. Once the case has been sent to the bailiff we are unable to accept payment or enter into any discussion about the PCN and callers are referred to the Bailiff or advised to seek independent guidance.