

## Enforcement & Discretion Policy

March 2009. Updated March 2011, July 2011.

### Guidance for the Enforcement of Penalty Charge Notices

#### Introduction

Parking Managers have prepared the following policy guidance in respect of Civil Parking Enforcement.

The policies in this document are intended to inform the public and provide guidance to council employees working in the enforcement of parking regulations; this is consistent with current best practice and aims to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the Traffic Penalty Tribunal and the Local Government Ombudsman.

What is important about these policies is that they represent a foundation upon which fairness and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be fettered by being unduly formulaic.

The policies address the following:

- *Observation times for enforcement staff*
- *The statutory grounds upon which representations may be made*
- *Mitigating circumstances*
- *The acceptance or rejection of representations*

It is important to recognise that each case will be considered on its own merits, matters of proportionality, objectivity, fairness and reasonableness should be paramount.

**The following is therefore a guide for information.**

These policies will be subject to ongoing review.

#### ***Important note:***

The following are *in addition* to the Statutory Grounds to make representation. In accordance with a directive issued by the Local Government Ombudsman, full consideration will be given and account taken of all representations received, whether or not they fall within the description of “**Statutory Grounds**”. Any other information the motorist or owner/keeper would like the Council to consider, has been included.

## Mitigating Circumstances

The circumstances below highlight exemplar cases where discretion might be applied. Discretion could be cited as a ground for challenge by motorists. This is a discretion guidance policy – the full facts of the case would be taken into consideration as it is an underlying principle of CPE that no case is binding on any other and each case shall be considered on the balance of its own merits. This is to be read in conjunction with the Operational Guidance issued by the Department for Transport.

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>	<b>Other evidence or notes</b>
<b>MC01</b> where the motorist claims to have become unwell while driving	<p>If the motorist provides proof of a medical condition, temporary or permanent, that is consistent with the conditions described.</p> <p>When the notes made by the Civil Enforcement Officer support the motorist's representations.</p> <p>Medical conditions which affect a person's ability to drive must be reported to DVLA.</p>	<p>If the motorist cannot provide some proof of a medical condition, temporary or permanent, consistent with the conditions described.</p> <p>Or</p> <p>Where other evidence contradicts the motorist's claims</p>	<p>Written medical evidence: The keeper should provide a letter from his/ her doctor or the passenger's doctor either confirming that he/ she has a medical condition that can result in the need for urgent stops or that such an incident is known to have occurred on the time &amp; date in question</p>
<b>MC02</b> where the motorist claims to be a doctor, nurse, health visitor attending a patient in an emergency	<p>If the motorist concerned possesses a Medical Dispensation badge (BMA, HEBS) that the Council concerned recognises and approves and/or is exempt under the relevant Order.</p> <p>Or</p> <p>If the motorist produces evidence that they were responding to an emergency and there was no nearby legal parking place.</p>	<p>If the motorist was not attending a patient in urgent circumstances or if there was legal parking spaces nearby.</p> <p>If motorist was parked outside their practice or other place of work for any reason other than to collect supplies for an urgent call</p> <p>If motorist was parked in an area which does not correspond with claims made in representations, i.e. far from patients property, say, in a car park</p>	
<b>MC03</b> where the motorist stopped to use the toilet	<p>On production of medical evidence confirming a relevant medical condition and in support of the circumstances described in a representation.</p>	<p>In all other circumstances</p>	<p>The keeper should provide a letter from his/ her or the passenger's doctor either confirming that he/ she has a medical condition that can result in the need for urgent stops or that such an incident is known to have occurred on the time &amp; date in question.</p>
<b>MC04</b> where the motorist stopped to collect (prescribed) medication from a chemist	<p>Only in the most grave, urgent and exceptional of circumstances and the use of a 'legal' parking place would have caused an unacceptable delay.</p>	<p>In any lesser circumstances.</p>	<p>The keeper should provide a letter from his/ her or the passenger's doctor either confirming that he/ she has a medical condition that can result in the need for urgent stops or that such an incident is known to have occurred on the time &amp; date in</p>

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			question.
<b>MC05</b> where the motorist was a patient visiting a doctor's surgery	If the motorist can provide a letter from a doctor to confirm that the visit was of an emergency nature and was unable to walk from the nearest legal parking space.	If the motorist was not the patient but only driving the vehicle carrying the patient If the motorist was attending a pre-arranged, non-urgent appointment. If the motorist could reasonably have been expected to park legally elsewhere.	The keeper should provide a letter from his/ her or the passenger's doctor either confirming that he/ she has a medical condition and could not reasonably have walked from a legal parking place.
<b>MC06</b> where the motorist claims to have been recently bereaved	Only in exceptional circumstances.	Only if there is a significant reason to doubt the sincerity of representations, i.e. the Civil Enforcement Officer's notes indicating that the motorist was going about a normal day, say, shopping or working, or the bereavement considered to be a long time ago	A copy of the Certificate would prove beyond doubt.
<b>MC07</b> where the motorist was delayed in returning to their vehicle and parking time purchased had expired	Only in exceptional circumstances such as a medical emergency	If the delay described by the motorist was entirely avoidable, e.g. queuing in a shop. If the motorist simply underestimated the time needed and could have reasonably purchased more time, i.e. when conducting business, shopping or commuting. If the motorist was unable to drive since parking due to excess alcohol in the body or had been detained and charged by the police.	
<b>MC08</b> where the motorist "fed" a meter or pay & display machine by buying subsequent time to park in the same place or returned to the same place within a specified and prohibited time period	In no circumstances	If the motorist overstays initial period of time purchased or returns within a period of 'No return'	
<b>MC09</b> where the motorist left the vehicle parked without a valid ticket on display to obtain change	If the motorist returns to the vehicle with a valid Pay and Display ticket and the Civil Enforcement Officer is still at the vehicle.	If the Civil Enforcement Officer's notes indicate that the motorist returned to their vehicle, having completed their purpose for parking, while the PCN was being issued, i.e. carrying shopping, or had left vehicle in car park, or on-street pay and display area, while obtaining change	
<b>MC10</b> where the motorist claims to have been unaware of charges or restriction in the car park relating to vehicle's class or weight	If reference to restrictions on tariff board(s) are incorrect.	In all other circumstances	
<b>MC11</b> where the motorist claims to have been unaware of recent rise in tariff	If statutory notices were not erected in accordance with procedural regulations.	If statutory notices were erected in accordance with procedural regulations and tariff board(s) were correct	
<b>MC12</b> where the motorist had parked with one or more wheels outside of a marked bay in a car park	Only in the most exceptional of circumstances that were outside the motorists control.  Otherwise in no circumstances	When clear and incontrovertible supporting evidence (authentic photographs/Sketch plan of the actual parking event, and not a later pose) is available. Note that civil Enforcement Officers	

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		generally take photographs of the actual position of the vehicle.	
<b>MC13</b> where the motorist is a Blue Badge holder/transporting a Blue Badge holder and they did not have their Blue Badge and/or clock on display or could not be read or had expired	Only in exceptional circumstances.	If the motorist has previously had a PCN cancelled for the same contravention and has been warned to display a valid badge /time clock correctly in the future (prior warning). If the motorist was parked on a waiting restriction beyond the 3 hour time limit permitted by the Blue Badge Scheme, or on another restriction for which the Blue Badge does not provide an exemption. If the Blue Badge holder was not present in the vehicle at the time it was parked. If the badge was not authentic, was out of date, or otherwise invalid.	
<b>MC14</b> where the motorist claims to have been unaware of the existence of a controlled parking zone	If it can be established that the signing and marking of the CPZ is at fault.	In all other circumstances	
<b>MC15</b> where the motorist was displaying an expired authorisation to park, i.e. waiver, parking place suspension, season ticket, resident's permit, business permit or visitor's permit	If the renewal of the authorisation was delayed by the Council's administrative processes If it can be established that other reasonably unforeseen circumstances delayed the renewal of an authorisation to park, e.g. sickness on the part of the applicant or a postal dispute/delays (supported by appropriate evidence) In the case of season tickets and resident's / business parking permits only, if the authorisation had expired by less than 7 days	In all other circumstances In the event of more than one vehicle registration included on season ticket or permit, subsequent production of the season ticket will not necessarily cause automatic cancellation of the PCN as the season ticket or permit may have been used on some other vehicle	
<b>MC16</b> where the motorist is parked in contravention of a waiting/parking prohibition whilst displaying a resident's visitor permit	In no circumstances.	On all occasions	
<b>MC17</b> where the motorist is a new resident within a controlled parking zone and had parked in a resident's bay without displaying a valid resident's permit	In no circumstances.	On all occasions	
<b>MC18</b> where the motorist had parked incorrectly in a controlled bay on-street	In no circumstances.	On all occasions	
<b>MC19</b> where the motorist assumed that they were entitled to "a period of grace" before the PCN was issued	In no circumstances.	In all circumstances.	
<b>MC20</b> where the motorist claims they were attending a funeral	Where there is no reason to doubt the sincerity of the representations.	In all other circumstances.	
<b>MC21</b> where the motorist claims that snow, foliage, fallen leaves or flooding	If it can be established that such conditions prevailed and it is likely that signs and markings were	If it can be established that such conditions did not cause lines and signs to be obscured as	

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covered the signs or markings	obscured as claimed (at the time of the alleged contravention, and not some later time) and there was no alternative indication of the restriction.	claimed. If the Civil Enforcement Officer's notes, photographic evidence etc. directly contradict the motorist's version of events. If any reasonable alternative indication of the restriction was available to the motorist. If the location of the contravention was unlikely to be subject to the natural conditions described by the motorist, i.e. it was under cover	
<b>MC22</b> where the motorist claims that their vehicle had broken down	If the motorist is able to provide evidence of a breakdown, i.e. proof of vehicle recovery or a bill of sale for repair or parts.	If the motorist is unable to provide evidence of any kind that their vehicle had broken down If the cause of the vehicle "breaking 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 Civil Enforcement Officer's notes contradict the motorist's version of events.	
<b>MC23</b> where the motorist claims that they were attending an emergency or another vehicle that had broken down	If the motorist is able to provide reasonable proof of the emergency, i.e. a credible report of an accident or incident, or that they were attending to another vehicle that had broken down.	If the motorist is unable to provide evidence of any kind that they were attending an emergency or another vehicle which had broken down. If the Civil Enforcement Officer's notes photographic evidence etc. contradict the motorist's version of events, i.e. the motorist was not seen attending an emergency or another vehicle which was broken down	
<b>MC24</b> where the motorist claims to have put money into the wrong ticket machine	If it is agreed that the position of the ticket machine used by the motorist is likely to cause confusion.	If the ticket machine used by the motorist is positioned in such a place that confusion is not likely. If the motorist has had representations accepted for a similar contravention previously.	
<b>MC25</b> where the vehicle in question was on police, fire brigade or ambulance duties	If a senior officer of the service concerned supports the representations and there is no reason to doubt that the vehicle was engaged on operational activities.	In all other circumstances	
<b>MC26</b> where the motorist claims to have been collecting or depositing monies at a bank	In no circumstances.	On all occasions.	
<b>MC27</b> where the motorist claims to have been unaware of a temporary parking restriction or special event restriction	If the motorist claims that there was no indication of the restriction, and the Civil Enforcement Officer's notes, photographic evidence etc. do not confirm that appropriate signing was in place. If the process followed to make the temporary order was defective in some way.	If the Civil Enforcement Officer's notes, photographic evidence etc. confirm that the vehicle was parked in an area restricted by the Temporary Order or Notice, and that appropriate signing was in place and clearly visible.	
<b>MC28</b> where the registered keeper liable for payment of the PCN is expected to be absent for	In no circumstances	On all occasions	

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a long period of time, e.g. is living abroad or is in prison			
<b>MC29</b> where the registered keeper liable for payment of the PCN is said to have died	Where a copy of the death certificate is provided.	Where no supporting evidence is provided.	
<b>MC30</b> where the vehicle driven by the motorist is diplomatically registered	In all circumstances. A Notice to Owner should never be sent to the keeper of a diplomatically registered vehicle. Essex CC should be informed of all penalty charges un-recovered from keepers of diplomatically registered vehicles. They will pass information concerning these debts onto the Foreign and Commonwealth Office[Source – Secretary of State’s Traffic Management and Parking Guidance, Vienna Convention on Diplomatic Relations, Diplomatic Privileges Act 1964 and Government Report on Review of Vienna Convention...]	In no circumstances	
<b>MC31</b> where the motorist received a Fixed Penalty Notice (FPN) from a police officer when parked in the same location	To prevent ‘double jeopardy’, if confirmation provided by the police that proceedings for a criminal offence in connection with the same parking/waiting incident have been instituted.	In all other circumstances	
<b>MC32</b> where a Council officer or Member parked in contravention and claims to have been on Council business	If the officer was carrying out emergency or other statutory work.	In all other circumstances.	
<b>MC33</b> where the motorist stopped to drop off someone	If the circumstances are seen by the Civil Enforcement Officer. If, in exceptional circumstances and subject to observations times, the motorist had to escort a passenger (child, elderly or disabled person) to home, or school.	If motorist was parked/stopped on school keep clear markings, pedestrian crossing, bus stop clearway	
<b>MC34</b> where motorist was unaware of the Overnight Waiting Ban/Commercial Vehicle waiting restriction	If motorist was instructed / authorised to park in contravention of the restriction by the police.	In all other circumstances	
<b>MC35</b> where motorist states they were in police custody when PCN issued	If proof (from the Police) has been provided that the police had instructed the motorist to leave the vehicle. If the time of arrest (proof required from the Police) provides confirmation that motorist was legally parked and was unable to move vehicle before the restriction started	If no proof provided. If vehicle could have been legally parked before arrest	
<b>MC36</b> where motorist states they were visiting a friend or relative in urgent circumstances	If due to an emergency the parking contravention could not be avoided due to the exceptional nature of the incident.	If motorist has already received a PCN, which has been cancelled for the same reason. If the Civil Enforcement Officer’s Pocket Book notes provides significant reason to doubt sincerity of representation	
<b>MC37</b> where the motorist claims there was no legal place to park	Only in the most exceptional of circumstances	In the absence of exceptional circumstances	
<b>MC38</b> where the motorist	If land search maps confirm	In all other circumstances	

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claims they were parked on private property	location is private property & not subject of the relevant Traffic Regulation Order. If there is insufficient evidence to establish location of vehicle		
<b>MC39</b> where the motorist was delayed in returning to their vehicle parked in a limited waiting parking place	If supported by appropriate evidence, the motorist's representations claim that the delay in returning to the vehicle was caused by circumstances that were entirely unforeseen, unavoidable and exceptional. If the motorist's vehicle had broken down, subject to concurrence with policy MC25, above). If the motorist was unable to drive, since parking the vehicle.	If the delay described by the motorist was not exceptional, i.e. queuing in a shop. If the motorist simply underestimated the time needed and could have reasonably purchased more time. If the motorist was unable to drive since parking due to excess alcohol in the body or had been were detained by the police for any reason, unless subsequently released without charge or proven innocent	
<b>MC40</b> where motorist had parked while asking directions / opening gates to private property	If evidence provided by the Civil Enforcement Officer does not contradict representations.	In all other circumstances	
<b>MC41</b> where the motorist stopped to answer mobile phone	In no circumstances	On all occasions	
<b>MC42</b> where the motorist states that the details on the PCN are incorrect, e.g. location	If there is reason to doubt that the PCN was issued correctly, taking into account evidence provided by the Civil Enforcement Officer.	If the Penalty Charge Notice was fully and correctly completed.	
<b>MC43</b> where the motorist states they were unaware of enforcement on Bank/Public holidays	In no circumstances	On all occasions	
<b>MC44</b> where the motorist states that restriction was marked after the vehicle had been parked	If records confirm that signing/lining/placement of cones or suspension notices was likely to have taken place after the vehicle parked.	If there is evidence to show that markings were already in place at the time of parking.	

## Other events

<b>MC80</b> - Representation accepted – keeper not owner at time new keeper not known	Written proof of disposal &, if possible, new keeper's details	The alleged keeper should provide evidence that he/ she was not the keeper at the time; e.g. bill of sale, DVLA confirmation or insurance confirmation. If there is no such evidence (e.g. the named keeper was never in fact the keeper) officers should ask him/her to swear an affidavit to this effect.
<b>MC81</b> - Emergency services vehicle	Written statement from the relevant organisation	Officers should seek written confirmation from a senior officer of the service in question that the vehicle was on duty on the date & time in question.
<b>MC82</b> -Police vehicle on duty	Written statement from the relevant organisation	Officers should seek written confirmation from a senior officer of the service in question that the vehicle was on duty on the date & time in question.
<b>MC83</b> - Foreign vehicle	Self evident	DVLA records do not include foreign vehicles. Whilst it is possible to make an enquiry to the national agency concerned (if known) this is unlikely to be pursued unless there are, for example, a large number of PCNs involved.
<b>MC84</b> - DVLA information incorrect	DVLA confirmation	The information supplied by DVLA is that held on their databases at the time of the enquiry & may not be up to date. It is sensible to close the case (or to pursue a 'new' keeper) if the alleged keeper subsequently provides DVLA written confirmation that the information provided was incorrect as to his/ her ownership.

<b>MC85</b> - DVLA information – keeper not known	DVLA confirmation	If the response to a DVLA enquiry provides such information the case should be closed since enforcement is clearly impossible if a keeper cannot be identified.
<b>MC86</b> - DVLA information – vehicle scrapped	DVLA confirmation	Not applicable
<b>MC90</b> - Keeper moved no trace	Notices returned by Royal Mail;	Name/ address databases checked; Electoral Register checked.  Officers need to exercise care before relying on this information since it is known for keepers to instigate the return. It is better perhaps to either check the information through proprietary address databases or to allow the case to progress through for bailiffs to visit the address, particularly if there are several PCNs for a specific keeper.
<b>MC91</b> - CEO error – Other	Depends on circumstances	Examples are missing or wrong information; e.g. CEO has omitted to specify a contravention.
<b>MC92</b> - CEO error – PCN defaced/ altered/illegible	Sight of original PCN	Depends on circumstances. Alterations may mean that the downloaded details do not tally with the document the motorist received. If the PCN is defaced & illegible the motorist may not have been aware of important details (e.g. the alleged contravention).