



Service Specific Enforcement Policy

Parking

To be read in conjunction with the Cheshire East Council
Enforcement Policy

July 2016

CHESHIRE EAST BOROUGH COUNCIL PARKING ENFORCEMENT POLICY

Introduction

Cheshire East Council, since its inception in April 2009 has been working under the Traffic Management Act 2004. This means that it is responsible for the enforcement of 'on-street' and 'off-street' parking areas.

The Traffic Management Act 2004 allows the charges of £70, discounted to £35 for the higher value contraventions e.g. yellow line waiting restriction, and £50, discounted to £25 for the lower value contraventions e.g. parked without displaying a valid Pay and Display ticket. A full list of parking contraventions can be found on the Cheshire East website.

Notices issued for parking contraventions are not breaches of criminal law enforceable through the criminal justice system, but instead 'Penalty Charge Notices' (PCN's) are a debt owned by the Authority, enforceable through the civil justice system.

Civil Enforcement Officers (CEO's)

The PCN's are issued by Civil Enforcement Officers (CEO's) who are employed by the Council to carry out 'on street' and 'off street' parking enforcement. The PCN's can be affixed to the vehicle, handed to the person who appears to be in charge of that vehicle or issued by post if the CEO is prevented from issuing the PCN.

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

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

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

Once a PCN has been issued, the Notice can either be paid or disputed by following the appeal process. Details on how to pay a PCN and/or how to appeal its issue are documented on the reverse of the PCN itself.

Payment Details

If payment is made within 14 days of the issue of the PCN, the discounted amount will apply. The day of service of the PCN is counted as day 1 of the 14 day period. If payment is not

made within the 14 day period, the opportunity to pay at the reduced amount is no longer available and the full charge becomes due.

Payments can be made by:

- Internet - www.cheshireeast.gov.uk/parking
- Automated payment line 0300 123 5036 - 24 hours a day.
- Cheque/postal orders (payable to Cheshire East Council) and posted to : Parking Services, Municipal Buildings, Crewe CW1 2BJ

The Appeals Process

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

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

1. Informal

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

Challenges must be made in writing:

- Online at
- www.cheshireeast.gov.uk/car_parks_and_parking/penalty_charges/how_to_appeal_against_a_pcn.aspx
- By post to: Cheshire East Council, Parking Services, Municipal Buildings, Crewe CW1 2BJ

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

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

2. Formal

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

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

Statutory grounds on which a formal representation may be made to the Council:

- The contravention did not occur.
- The recipient has never owned the vehicle in question.
- The recipient had ceased to be the owner before the contravention date or, became the owner after that date. Proof of sale or purchase will be required. If the vehicle has been sold, the name and address of the person buying the vehicle must also be supplied in order that the Council can redirect the Notice and serve a Notice to Owner to the new owner. It is not acceptable to simply say the vehicle was sold to somebody else without proof. A letter from DVLA confirming that a person was not the owner at the date of event may assist the Council in making a decision.
- The vehicle was a hire vehicle, on hire under a formal hire agreement and the hirer had signed a statement acknowledging liability for any PCN issued during the hire period. (A copy of a signed hire agreement, which includes the start and end dates will be required).
- The vehicle was parked without the owner's consent. (This does not cover cases such as lending the vehicle to a friend who then parks illegally; or to a vehicle which is parked illegally whilst in the hands of a vehicle repair or service business). If the vehicle has been stolen, the Council will require details of the crime reference number and the name of the police station to which the crime was reported or a letter from an insurance company.
- The Penalty Charge exceeded the amount properly due (i.e. the amount is more than you are legally liable to pay – not that you feel the charge is too much).
- The traffic order was invalid (i.e. the Council had not followed the proper statutory steps in making the order).
- There has been a procedural impropriety by the enforcement authority
- The NtO should not have been served because the PCN had already been paid

Each case will therefore be considered on its own merits and all mitigating circumstances will be taken in to account.

Mitigating Circumstances which may apply:

- The person became unwell while driving or whilst parked. Evidence of having a medical condition that is consistent with the symptoms described will be required. This evidence should also indicate at the time the PCN was issued that the condition had prevented safe movement of the vehicle.

- The vehicle had broken down. Evidence of breakdown is required such as, an authenticated garage repair/ vehicle recovery bill. This evidence should indicate the timing is relevant to the issue of the PCN.
- You were delayed due to unforeseen circumstances and the parking time purchased had expired. Where appropriate evidence is produced to confirm that delay was caused by unforeseen, unavoidable and exceptional circumstances.
- The Pay and Display machine was faulty. This is subject to another Pay and Display machine not being available and maintenance records supporting the claim.
- The vehicle was on police, fire brigade or ambulance duties. Supporting evidence by a senior officer on letter headed paper is required.
- The owner liable for payment of the PCN is said to have died or the motorist claims to have been recently bereaved. The circumstances will be explored by making sensitive enquiries.

The above list is not exhaustive, for full mitigating circumstances – see the Cheshire East website.

A PCN is unlikely to be cancelled on the following grounds:

- The parking restrictions are unfair.
- Blue badge not on display and/or not properly on display.
- You claim to be unaware of the restriction.
- You had gone to get change for a pay and display machine.
- You had only parked for a few minutes.
- You were not causing an obstruction.
- There was nowhere else to park.
- You ran out of fuel (unless due to a mechanical or electrical fault in which case evidence will be required).
- You are a Council Officer or Elected Member attending Council business.
- You are a Council Officer or Elected Member and the only space available was a disabled parking bay

The above list is by no means exhaustive.

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

To preserve the integrity of these procedures, they will be managed and carried out by the administration and processing staff in Parking Services.

3. Appeal to the Traffic Penalty Tribunal

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

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

Charge Certificate

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

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

Debt Registration

If, after 14 days from the issue of the Charge Certificate, payment is not received, the Council will register the debt at County Court. This could ultimately lead to the issue of a warrant which is recoverable through an independent enforcement agent where their fees will also apply.