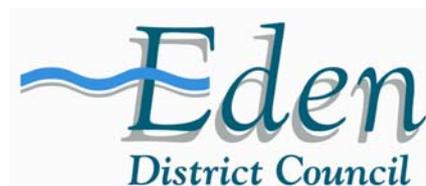


Eden District Council, and Cumbria County Council

Guidance Policies for the Enforcement and Cancellation of Penalty Charge Notices

The policies in this document provide guidance only.

Each case must be considered on its own merits taking into account all of the evidence available and the exceptionality of the circumstances.



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Introduction

The following policy guidance document has been prepared 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 possible acceptance or rejection of representations

It is important to recognise that each case will be considered on its own merits.

These policies will be subject to ongoing review.

1. Contravention codes and recommended observation times

On Street Parking

Code	Description	Observation Time
01	Parked in a restricted street during prescribed hours	0 min - special circs 5 min - car 10 min - commercial vehicle
02	Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force	0 min
12	Parked in a resident's or shared use parking place without clearly displaying either a permit or voucher or pay and display ticket issued for that place	5 min
16	Parked in a permit space without displaying a valid permit	5 min
19	Parked in a resident's or shared use parking place or zone displaying an invalid permit, an invalid voucher or an invalid pay and display ticket	5 min
21	Parked in a suspended bay/space or part of bay/space	0 min
22	Re-parked in the same parking place within one hour (or other specified time) of leaving	0 min
23	Parked in a parking place or area not designated for that class of vehicle	0 min - special circs 5 min - car 10 min - commercial vehicle
24	Not parked correctly within the markings of the bay or space	0 min
25	Parked in a loading place during restricted hours without loading	5 min - car 10 min - commercial vehicle

Code	Description	Observation Time
26	Vehicle parked more than 50cm from the edge of the carriageway and not within a designated parking place	0 min
30	Parked for longer than permitted	0 min
35	Parked in a disc parking place without clearly displaying a valid disc	5 min
36	Parked in a disc parking place for longer than permitted	5 min
40	Parked in a designated disabled persons parking place without clearly displaying a valid disabled persons badge	0 min
42	Parked in a parking place designated for police vehicles	0 min
45	Parked on a taxi rank	0 min
47	Stopped on a restricted bus stop or stand	0 min
48	Stopped in a restricted area outside a school	0 min
49	Parked wholly or partly on a cycle track	0 min
55	A commercial vehicle parked in a restricted street in contravention of an Overnight Waiting Ban	5 min
56	Parked in contravention of a commercial vehicle waiting restriction	0 min
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways	5 min
62	Parked with one or more wheels on any part of an urban road other than a carriageway(footway parking)	0 min
99	Stopped on a pedestrian crossing and/or crossing area marked by zig-zags	0 min

Off Street Parking

Code	Description	Observation Time
70	Parked in a loading area during restricted hours without reasonable excuse	5 min - cars 10 min - commercial vehicle
73	Parked without payment of the parking charge	5 min
80	Parked for longer than the maximum time permitted	5 min
81	Parked in a restricted area in a car park	0 min
82	Parked after the expiry of paid for time	5 min
83	Parked in a car park without clearly displaying a valid pay and display ticket or voucher or parking clock	5 min
84	Parked with additional payment made to extend the stay beyond time first purchased	0 min
85	Parked in a permit bay without clearly displaying a valid permit	5 min
86	Parked beyond the bay markings	0 min
87	Parked in a disabled person's parking space without clearly displaying a valid disabled persons badge	0 min
89	Vehicle parked exceeds maximum weight and/or height and/or length permitted in the area	0 min
90	Re-parked within one hour of leaving a bay or space in the car park	0 min
91	Parked in a car park or area not designated for that class of vehicle	0 min
92	Parked causing an obstruction	0 min
93	Parked in car park when closed	0 min

The '**observation period**' is the time that the vehicle is being observed by the Civil Enforcement Officer to ascertain whether a parking contravention has occurred or to

allow a grace period to enable the driver to return to the vehicle following the expiry time on a pay and display ticket, etc.

The '**special circumstances**' for an observation period applies to locations where short term stopping causes specific problems to traffic flow and obstruction problems e.g. outside a bank, ATM, newsagent, takeaway, sandwich shop, etc.

2. Statutory grounds to make representations (Part 6 Traffic Management Act 2004)

2.1 the alleged contravention did not occur

The motorist claims he/she was loading/unloading

May accept representation	<p>Evidence is available/provided to show goods being delivered or collected were heavy, bulky or numerous and it is unreasonable to be expected to carry them from a 'legal' parking place.</p> <p>Loading/unloading activity was timely (includes checking goods and paperwork but not delayed by unrelated activity).</p> <p>Is in the course of normal business ie commercial delivery/collection, couriers, removal services, etc.</p>
Reject Representation	<p>Parked on a school zig zag marking</p> <p>Parked on a bus stop clearway</p> <p>Parked on a taxi rank</p> <p>Parked on a police only bay</p> <p>Where loading/unloading is prohibited</p> <p>Where the Civil Enforcement Officer's notes and photographic evidence show that the PCN was issued prior to the vehicle being driven away.</p>

The motorist claims a Pay and Display ticket machine was faulty

May accept representation	<p>If records confirm there was a fault or that the machine was taken out of service</p> <p>If there is reasonable doubt i.e. no evidence to confirm machine was working at the time or no other working ticket machine in location.</p>
Reject representation	<p>If there was another ticket machine nearby that was working correctly at the time.</p> <p>If there are no records showing the machine being faulty or taken out of service.</p>

If there is reasonable doubt ie other vehicles have been able to purchase and display tickets.

The motorist claims the restriction is not clearly signed or marked

May accept representation If signs and lines are not clearly visible.

If signs and lines are inconsistent with each other or the Traffic Regulation Order.

Reject representation If site visits and photographic evidence can establish the signs and lines are correct and consistent with each other and the Traffic Regulation Order.

The motorist was carrying out building work

May accept representation If evidence provided confirms the motorist was loading/unloading.

If a valid waiver had been issued to park at the location.

If it can be proven that the work was an emergency.

If the work is of a statutory nature or is exempt from the restrictions in the Traffic Regulation Order.

Reject representation All other circumstances

The motorist claims that the Penalty Charge Notice was not served

May accept representation If the Civil Enforcement Officer's notes (either pocket notebook or handheld notes) confirm that the vehicle drove away prior to the ticket being issued.

Reject representation If the Civil Enforcement Officer's notes or photographic evidence show the PCN was correctly served i.e. fixed to vehicle/handed to motorist.

The motorist claims that their vehicle was not parked in the location at the time and date the PCN was issued

May accept representation Following consideration of all evidence, if the motorist provides a copy of the vehicle excise license (tax disc) and the serial number differs from the number noted by the Civil Enforcement Officer.

Reject representation If a motorist does not provide a copy of their excise license following a written request.

If the serial number on the copy excise license is the same as that noted by the Civil Enforcement Officer.

If there is no evidence or the evidence does not support the claim.

The motorist claims that a valid authorisation to park the vehicle had been issued.

May accept representation If records show that authorisation to park had been issued or relevant proof is provided.

Reject representation If the motorist cannot provide proof of authorisation or there are no records of authorisation being issued.

If the motorist did not park in accordance with the authorisation given.

The motorist claims a valid Pay and Display ticket was purchased and displayed

May accept representation If the motorist produces a valid Pay and Display ticket and the serial number matches the one noted by the Civil Enforcement Officer when the Penalty Charge Notice was issued (shown in handheld notes).

Reject representation If the motorist is unable to produce a valid Pay and Display ticket that matches the one noted by the Civil Enforcement Officer when the Penalty charge Notice was issued.

If the Civil Enforcement Officer was unable to confirm there was a Pay and Display ticket and the serial number of that ticket.

2.2 I was never the owner of the vehicle in question

The current registered keeper claims that a contracted third party was responsible for the vehicle at the time of the contravention

May accept representation When documentary evidence is supplied ie hire agreement

Reject representation In all other circumstances

The motorist claims that they never owned the vehicle

May accept representation If DVLA confirm the motorist was not the registered keeper at the time of the contravention.

Reject representation If DVLA confirm that the motorist was the registered keeper at the time of the contravention.

2.3 I had ceased to be it's owner before the date on which the alleged contravention occurred

Where the current registered keeper claims that the vehicle was disposed of before the contravention occurred.

May accept representation If the current registered keeper can provide proof that the vehicle was disposed of before the date of contravention ie bill of sale, insurance documents, letter from DVLA.

If the current registered keeper can provide the full name and address of the person to whom they disposed of the vehicle to (NB send a new NTO to new keeper).

Reject representation If the current registered keeper is unable to provide proof they disposed of the vehicle prior to the date of contravention.

If the new keeper details supplied by the current registered keeper do not exist, cannot be traced or are not considered to be bona fide for some reason.

2.4 I became it's owner after the date on which the alleged contravention occurred

The current registered keeper claims that the vehicle was purchased after the contravention occurred

May accept representation If the current registered keeper can provide proof that the vehicle was disposed of after the date of contravention ie bill of sale, insurance documents, letter from DVLA.

If the current registered keeper can provide the full name and address of the person from whom they purchased the vehicle from (NB send a new NTO to new keeper).

Reject representation If the current registered keeper is unable to provide proof they purchased the vehicle after the date of

contravention.

If the new keeper details supplied by the current registered keeper do not exist, cannot be traced or are not considered to be bona fide for some reason.

If the previous registered keeper provides proof the motorist purchased the vehicle prior to the date of contravention AND the subsequent registered keeper also supplies proof the motorist disposed of the vehicle after the date of contravention.

If the motorist is proven to have hired the vehicle on the date of contravention.

2.5 the vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner

The current registered keeper claims that the vehicle has been stolen

May accept representation	If the registered keeper provides documentary proof ie police crime report reference number or insurance claim
Reject representation	If the registered keeper is unable to provide documentary proof of theft of vehicle.

The current registered keeper claims that the vehicle was driven by a third party ie friend or relative

May accept representation	In no circumstances
Reject representation	In all circumstances (the registered keeper is always liable)

2.6 we are a hire firm and the vehicle was on hire under a hiring agreement and the hirer had signed a statement acknowledging liability for any PCN issued during the hiring period

May accept representation	If the hire company can provide proof that the vehicle was hired at the time of the contravention (NB send a NTO to the person named by the hire company).
Reject representation	If the hire company is unable to prove that they hired out the vehicle on the date of the contravention.

If the person named by the hire company (proof not provided) does not exist, cannot be traced or denies responsibility for the contravention.

2.7 the penalty charge exceeded the amount applicable in the circumstances of the case

May accept representation If the Penalty Charge Notice or Notice to Owner shows an incorrect amount.

Reject representation If the Penalty Charge Notice or Notice to Owner shows the correct amount.

2.8 there has been a procedural impropriety by the enforcement authority

May accept representation If the motorist can show that the enforcement authority did not follow the correct procedures as set out in the legislation.

Reject representation In all other circumstances

2.9 the order which is alleged to have been contravened in relation to the vehicle concerned is invalid

May accept representation If the Traffic Regulation Order which prescribes the parking restrictions that the vehicle was in contravention of was not constructed correctly (is ultra vires), or was not made correctly (not consulted on properly).

Reject representation The Traffic Regulation Order, which prescribes the restrictions that the vehicle was parked in contravention of, was constructed and made correctly.

If the motorist considers the restrictions to be unfair.

2.10 this notice should not have been served because the penalty charge had already been paid in full / at the discounted rate and within the time specified on paragraph 1(h) of the Schedule to the Civil Enforcement of Parking Contraventions (England) General Regulations 2007

May accept representation If the motorist provides documentary evidence of payment of the penalty charge within the specified time.

Reject representation In all other circumstances

2.11 any other information that the motorist/vehicle owner want the council to take into consideration

The decision whether or not a Penalty Charge Notice should be waived will only be taken following very careful consideration taking into account all of the evidence available.

3. Mitigating Circumstances

3.1 The motorist claims to have become unwell while driving

May accept representation If the motorist can provide proof of a medical condition, temporary or permanent, consistent with the conditions described.

If the notes made by the Civil Enforcement Officer correspond with the motorists representation.

Reject representation If the motorist cannot provide some proof of a medical condition, temporary or permanent, consistent with the conditions described.

Where other evidence contradicts the motorist.

3.2 The motorist claims to be a doctor, nurse or health visitor visiting a patient

May accept representation If the motorist concerned possesses a Medical Dispensation Badge (BMA, HEBS, etc) or is exempt under the relevant Traffic Regulation Order.

If the motorist produces evidence that they were responding to an urgent medical call.

Reject representation If the motorist was not attending the patient in urgent circumstances.

If the motorist was parked outside their practice or place of work.

If the motorist was parked in an area that does not correspond with the representation made ie parked far from patients property.

3.3 The motorist stopped to use the toilet

May accept representation On production of medical evidence confirming a relevant medical condition and in support of the circumstances described in the representation.

Reject representation In all other circumstances

3.4 The motorist stopped to collect prescribed medication from a chemist

May accept representation Only in the most grave and exceptional circumstances where the use of a legal parking place would have caused an unacceptable delay.

Reject representation In any lesser circumstances.

3.5 The motorist was a patient visiting a doctor's surgery

May accept representation If the motorist can provide a letter from the doctor to confirm that the visit was very urgent and that they were unable to walk from the nearest legal parking place.

Reject representation If the motorist was not the patient but only the driver of the vehicle.

If the motorist was attending a pre-arranged, non-urgent appointment.

If the motorist could reasonably have been expected to park legally elsewhere.

3.6 The motorist claims to have been recently bereaved

May accept representation If no evidence exists to the contrary, taking into account the sensitivity of this issue.

Reject representation Only if there is a significant reason to doubt the representation, ie the Civil Enforcement Officer notes indicate the motorist was going about a normal day shopping, working.

If the bereavement was considered to be a long time ago.

3.7 The motorist was delayed in returning to their vehicle and the parking time had expired

May accept representation The motorist's representation claims that the delay in returning to the vehicle was caused by circumstances that were entirely unforeseen, unavoidable and exceptional (appropriate evidence must support this).

If the motorist's vehicle had broken down (documentary evidence to support this required).

If the motorist was unable to drive since parking the

vehicle (documentary evidence to support this required).

Reject representation

If the delay described by the motorist was avoidable ie queuing in a shop for a non essential item.

If the motorist simply under estimated the parking time required.

If the motorist was unable to drive since parking the vehicle due to excess alcohol in the body or had been detained and charged by the police.

3.8 The motorist left the vehicle parked without a valid ticket on display to obtain change

May accept representation

If the motorist had not left the car park area and a valid ticket was purchased and produced.

Reject representation

If the Civil Enforcement Officer's notes indicate the motorist returned to the vehicle having completed their purpose for parking, ie carrying shopping or left car park area to obtain change.

3.9 The motorist claims to have been unaware of charges or restrictions in the car park relating to the vehicle's class, weight or height

May accept representation

If car park notice boards are incorrect or missing.

If tariff information is incorrect or missing.

Reject representation

In all other circumstances.

3.10 The motorist claims to have been unaware of a recent tariff rise

May accept representation

If statutory notices were not erected in accordance with procedural regulations.

If revised tariff is not displayed correctly in car park.

Reject representation

If statutory notices were erected in accordance with procedural regulations

Revised tariff correctly displayed in car park.

3.11 The motorist had parked with one or more wheels outside the markings of a bay or space

May accept representation Only in the most exceptional circumstances that were out of the motorist's control and supported by incontrovertible evidence.

Where photographic evidence is not available.

In no other circumstances.

Reject representation When clear photographic evidence is available.

When Civil Enforcement Officers notes state vehicle out of bay.

3.12 The motorist is a Blue Badge Holder/transporting a Blue Badge Holder and they did not have their Blue Badge on display correctly

May accept representation If it is established that this is the motorist's first contravention of this type and they provide evidence they are a Blue Badge holder or were transporting a blue Badge holder (one strike policy).

Reject representation If the motorist has previously had a Penalty Charge Notice cancelled under the one strike policy.

If the Civil Enforcement Officer's notes and photographic evidence show that there was no badge displayed in the vehicle.

3.13 The motorist is a Blue Badge Holder/transporting a Blue Badge Holder and they did not have their clock disc on display with the Blue Badge

May accept representation If the motorist was parked within the disc parking zone or in an off street car park where there is no requirement to display a clock disc with the Disabled Person's Badge.

Reject representation If the motorist was parked on a yellow line (3 hour parking restriction).

Any other time restricted parking.

3.14 The motorist was displaying an expired authorisation to park, ie resident's permit, visitor permit, business permit, etc.

May accept representation If the renewal of the authorisation was delayed by the City Council's administrative processes.

If it can be established that other reasonably unforeseen circumstances delayed the renewal of an authorisation ie postal disputes (must be supported by documentary evidence).

Reject representation In all other circumstances.

3.15 The motorist is parked in a disc zone without displaying a valid clock disc/permit

May accept representation If the motorist can provide documentary evidence to support loading/unloading activity.

If the motorist can provide documentary evidence of a medical emergency.

Reject representation In all other circumstances.

3.16 The motorist assumed that they were entitled to 'a period of grace' prior to a Penalty Charge Notice being issued

May accept representation In no circumstances.

Reject representation In all circumstances.

3.17 The motorist claims they were attending a funeral

May accept representation If no evidence exists to the contrary, taking into account the sensitivity of this issue.

Reject representation Only if significant reason to doubt the sincerity of the representation.

The Civil Enforcement Officers notes state otherwise, ie returned to vehicle with shopping bags, etc.

3.18 The motorist claims that snow, foliage, fallen leaves or flooding covered the signs and lines

May accept representation If it can be established that such conditions prevailed and it is likely that signs or lines were obscured as claimed and there was no alternative indication of the parking restriction.

Reject representation If it can be established that such conditions did not cause the signs and lines to be obscured as claimed.

If the Civil Enforcement Officers notes and/or photographic evidence contradicts the motorist's version of events.

3.19 The motorist claims that their vehicle had broken down

May accept representation If the motorist is able to provide evidence of a breakdown, ie proof of vehicle recovery or bill of sale for repair or parts.

Reject representation If the motorist is unable to provide evidence of any kind that their vehicle had broken down.

If the Civil Enforcement Officer's notes contradict the motorists version of events.

3.20 The motorist claims that they were attending an emergency or another vehicle that had broken down

May accept representation If the motorist is able to provide proof of the emergency, ie a credible report of an accident or incident.

Reject representation If the motorist is unable to provide evidence of any kind that they were attending an emergency.

If the Civil Enforcement Officer's notes contradict the motorists version of events.

3.21 The vehicle in question was on police, fire brigade or ambulance duties

May accept representation If a senior officer of the service involved supports the representation and there is no reason to doubt that the vehicle was involved in operational duties.

Reject representation In all other circumstances

3.22 The motorist claims to have been collecting or depositing monies at a bank

May accept representation If the motorist's representation is consistent with the allowance for loading/unloading.

If specific arrangements have been agreed.

Reject representations In all other circumstances.

3.23 The motorist claims to have been unaware of a temporary parking restriction or special event restriction

May accept representation If the motorist claims that there was no indication of the temporary restriction and the Civil Enforcement Officer’s notes or photographic evidence confirms that the appropriate signage was not in place.

If the process followed to make the temporary order was defective in some way.

Reject representation If the Civil Enforcement Officer’s notes or photographic evidence confirm that the vehicle was parked in an area restricted by the temporary order.

The appropriate signage was in place and in order.

3.24 The registered keeper liable for payment of the Penalty Charge Notice is said to have died

May accept representation Where the circumstances can be confirmed (by sensitive enquiry).

Reject representation Only if there is significant evidence to doubt the sincerity of the representation.

3.25 The vehicle driven by the motorist is diplomatically registered

May accept representation In all circumstances.

Reject representation In no circumstances.

3.26 The motorist received a Fixed Penalty Notice from a police officer when parked in the same location

May accept representation If confirmation provided from the police that proceedings for a criminal offence in connection with the same parking/waiting incident have been instituted.

Reject representation In all other circumstances.

3.27 A Council Officer or Elected Member parked in contravention and claims to have been on Council business

May accept representation If the Council Officer or Elected Member was on council business whilst displaying a valid parking permit in the designated car park.

Reject representation In all circumstances.

3.32 The motorist states they were visiting friends/relatives in urgent circumstances

May accept representation If due to an emergency the parking contravention could not be avoided due to the exceptional nature of the incident (proof required).

Reject representation If the motorist has already received a Penalty Charge Notice that has been cancelled on the same grounds.

If the Civil Enforcement Officer's notes provide significant reason to doubt the sincerity of the representation.

3.33 The motorist claims there was no legal place to park

May accept representation Only in the most exceptional of circumstances.

Reject representation In all other circumstances.

3.34 The motorist claims they were parked on private property

May accept representation If land search maps confirm location is private property and therefore not subject to the Traffic Regulation Order.

If there is insufficient evidence to establish the exact location of the vehicle.

Reject representation In all other circumstances.

3.35 The motorist was delayed in returning to their vehicle parked in a limited waiting parking place

May accept representation If supported by the appropriate evidence, the motorist's representation claims 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 (proof required).

If the motorist was unable to drive since parking the vehicle (proof required).

