

**CIVIL PARKING ENFORCEMENT AND MOVING TRAFFIC
OFFENCES - CHALLENGES, REPRESENTATIONS AND
APPEALS POLICY**

**STRATEGIC PLANNING & TRANSPORT (COUNCILLOR CARO
WILD)**

AGENDA ITEM: 12

Reason for this Report

1. To consider the introduction of a new policy for challenges, representations and appeals policy associated with Civil Parking enforcement and Moving Traffic Offences.

Background

2. In the summer of 2010, Cardiff Council took on the responsibility for enforcing a range of parking contraventions. This contributes towards the transportation policy objectives by addressing illegal parking which causes unnecessary congestion and traffic delays.
3. In 2013, new legislation was made available in Wales to allow local authorities to enforce bus lanes, yellow box junctions and a range of other moving traffic contraventions.
4. The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 ("the 2013 Regulations") were passed and came into force on 25th March 2014. These regulations enable the Council to assume responsibility for enforcement of bus lane and some moving traffic offences, pursuant to Part 6 of the Traffic Management Act 2004 ("the 2004 Act").
5. By having access to these powers, Cardiff Council now has a full suite of legal powers to control parking and travel along the highway. This gives the Council maximum control in terms of deploying its enforcement resource in support of its transportation policies, with the intention of assisting the movement of public transport and generally keeping traffic moving.
6. The 2004 Act imposes a duty on the Council as highway authority to ensure the smooth flow of traffic. Whilst roads may appear capable of accommodating parking, the Council may deem this does not facilitate

meeting the requirements of the 2004 Act and therefore may find it necessary to restrict parking.

7. Cardiff Council operates a number of different types of parking across the city including on street and off street resources. This includes
 - 2,000 spaces in off-street car parks,
 - 2,500 on-street pay and display spaces, and around 1,000 spaces at its Cardiff East Park and Ride facility.
8. The 2013 Regulations enable the Council to assume responsibility for enforcement of bus lane and some moving traffic offences (MTOs), pursuant to Part 6 of the Traffic Management Act 2004. The Traffic Management Act 2004 indicates the range of road signs which will be enforceable under this new legislation. These include enforcement of:
 - Directed and prohibited movement
 - Pedestrian precincts
 - Bus and Cycle provisions and
 - Yellow Box Junctions
9. These powers particularly assist:
 - i. Enforcement of Bus Lanes - preventing the blocking of bus lanes, especially at the approach to traffic signals.
 - ii. Enforcement of Yellow Box Junctions - reducing illegal queuing across the boxes, particularly during peak hours, preventing congestion and delay to all vehicles.
 - iii. Enforcement of turning movement bans - enhancing public safety, by preventing conflict with pedestrian crossing movements, and by reducing the use of weak bridges by lorries ignoring weight restrictions.
10. Penalty Charge Notices can be appealed within 28 days of the date the ticket was issued and can be challenged for the following reasons:
 - i. The alleged parking offence did not happen
 - ii. The vehicle was never owned by the appellant; had stopped being the owner of the vehicle before the alleged parking offence; or that they became the owner of the vehicle after the date of the alleged parking offence
 - iii. The vehicle was parked by someone else without the permission of the owner (e.g. if it was stolen)
 - iv. The vehicle was being driven by someone else under a hire arrangement (this is for use by car hire companies only)
 - v. The penalty exceeded the amount applicable for the offence type quoted
 - vi. The Council has not followed the correct procedure
 - vii. The parking limit where the alleged parking offence took place was not valid

Cardiff Council also considers other mitigating circumstances on a case by case basis.

Issues

11. A sample analysis of 250 appeals identified a potential to improve the management of appeals by having a policy to ensure consistency and adherence to current legislation.
12. Welsh Government Guidance on the Traffic Management Act 2004 – Civil Enforcement of Road Traffic Contraventions: Parking, Bus Lane and Moving Traffic Enforcement Operational Guidance to Local Authorities December 2014 – Ch. 11 states ‘Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits, and be ready to depart from policies if the particular circumstances of the case warrant it’.

Resources

13. The implementation of a policy has limited resource implications concerning the cost of implementation of the policy apart from additional training to all officers managing the appeal process.
14. The policy will ensure Cardiff Council processes for pursuing outstanding penalties are efficient, effective and impartial. Any additional revenue will support delivering highway and environmental improvements in Cardiff as allowed in legislation.

Reason for Recommendations

15. The policy will ensure Cardiff Council processes for pursuing outstanding penalties are efficient, effective and easy to understand.
16. The policy sets out Cardiff Council’s consideration of challenges, representations and appeals against the issuing of Penalty Charge Notices (PCNs) as well as determining enforcement processes to be followed to ensure consistency and adherence to current legislation.
17. The Council is under a legal duty never to fetter its discretion so this policy is only guidance and all considerations of challenges, representations and enforcement measures in general will be considered on their own merits, provided legislation is observed to at all times.

Financial Implications

18. The costs of introducing the new policy for challenges and appeals will not be significant and will be funded from the Civil Enforcement Account. Any increase in net income following the introduction of this new policy will be earmarked to fund highway and environmental improvements.

Legal Implications

19. The Council, as the 'Traffic Authority', has the power to make 'Traffic Regulation Orders' (TROs) and powers to enforce certain TROs. The legal powers are referred to in the body of the report.

In developing the proposed policy and when considering these matters generally regard must be had:-

- (i) to the provisions of the Traffic Management Act 2004 Act ("the 2004 Act"). The purpose of the 2004 Act is to provide the basis for improving conditions for all road users through management of the national and local road networks. Part 2 of the 2004 Act imposes a duty on all Local Traffic Authorities to secure the expeditious movement of traffic on their road networks and to facilitate such movement on other authorities' networks,
 - (ii) the fact that the powers as regards the making of TROs and enforcement are not intended and should not be viewed as a means of raising revenue for the Council,
 - (iii) the enforcement of parking and moving traffic contraventions will inevitably involve the processing and storage of data some of which may be personal and/or sensitive and the Council should ensure that such data is processed in line with current data protection legislation,
 - (iv) the Crime and Disorder Act 1998, which imposes a general duty on the Council, when exercising its functions, to take account of community safety dimension, with a view to reduce local crime and disorder in its area,
 - (v) the Council duties under The Active Travel (Wales) Act 2013 ("the 2013 Act"), which makes provisions requiring local authorities to take reasonable steps to enhance the provision made for, and to have regard to the needs of walkers and cyclists, for requiring functions under the 2013 Act to be exercised so as to promote active travel journeys and secure new and improved active travel routes and related facilities
20. In considering this matter, the decision maker must have regard to the Council's duties under:-
- the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment, (c) Sex, (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation and (i) Religion or belief – including lack of belief.

The decision maker should consider the EQIA set out in appendix B

- the Wellbeing of Future Generations (Wales) Act 2015 The decision maker should also have regard, when making its decision, to the Council's wider obligations under The Well-Being of Future Generations (Wales) Act 2015 ('the Act'). The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2018-21: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf> #

When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

- the Welsh Language (Wales) Measure 2011 which imposes duties on public organisations to comply with the standards of conduct on the Welsh language which must be treated no less favourably than the English in Wales.

HR Implications

21. There are no HR implications to this report regarding changes to current staffing levels. However, it is expected that there will need to be changes to ways of working which will be consulted on with trade unions and affected employees.

RECOMMENDATIONS

Cabinet is recommended to:

1. approve the new policy (attached as Appendix A) for considering Challenges, Representations and Appeals associated with Civil Parking enforcement and Moving Traffic Offences .
2. delegate authority to the Assistant Director Street Scene in consultation with the Cabinet Member for Strategic Planning & Transport to update the policy, from time to time, relating to any changes in legislation, related case law and good practice .

SENIOR RESPONSIBLE OFFICER	ANDREW GREGORY DIRECTOR OF PLANNING, TRANSPORT AND ENVIRONMENT
	15 March 2019

The following appendices are attached:

Appendix A – Challenges, Representations and Appeals Policy.
Appendix B – EqIA for the Challenges, Representations and Appeals Policy.

The following background papers have been taken into account:

The Traffic Management Act 2004
The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013
The Civil Enforcement of Road Traffic Contraventions (Representations and appeals) (Wales) Regulations 2013
The Civil Enforcement of Road Traffic Contraventions (Guidelines on Level of Charges) (Wales) Order 2013
Road Traffic Regulation Act 1984
Road Traffic Act 1988
The Road Traffic Offenders Act 1988
The Road Traffic (Owner Liability) Regulations 2000
The Traffic Signs Regulations and General Directions 2016
The Civil Enforcement of Road Traffic Contraventions: Parking, Bus Lane and Moving Traffic Enforcement Operational Guidance to Local Authorities December 2014
Statutory Guidance to Local Authorities on the Civil Enforcement of Bus Lane and Moving Traffic Contraventions July 2014
The Civil Procedure Rules 1998