
**PRE DECISION SCRUTINY: CHALLENGES, REPRESENTATIONS &
APPEALS POLICY**

Reason for the Report

1. To provide the Committee with an opportunity to carry out pre decision scrutiny on:
 - The introduction of a new policy for challenges, representations and appeals policy associated with Civil Parking enforcement and Moving Traffic Offences. A copy of the draft policy titled 'Challenges, Representations & Appeals Policy – The Traffic Management Act Policy 2004' is attached to this report as **Appendix 1**.

Background

2. In the summer of 2010 the Council took on the responsibility for enforcing a range of parking contraventions. These contraventions contribute 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 the 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. Traffic Management Act 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 legislation and, therefore, may find it necessary to restrict parking.
7. The 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 that will be enforceable under this new legislation. These include enforcement of the following:
 - Directed and prohibited movement;
 - Pedestrian precincts;
 - Bus and Cycle provisions; and,
 - Yellow Box Junctions.
9. In particular, the powers provided by the Traffic Management Act assist:

- Enforcement of Bus Lanes - preventing the blocking of bus lanes, especially at the approach to traffic signals;
- Enforcement of Yellow Box Junctions - reducing illegal queuing across the boxes, particularly during peak hours, preventing congestion and delay to all vehicles;
- 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:

- The alleged parking offence did not happen;
- 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;
- The vehicle was parked by someone else without the permission of the owner (e.g. if it was stolen);
- The vehicle was being driven by someone else under a hire arrangement (this is for use by car hire companies only);
- The penalty exceeded the amount applicable for the offence type quoted;
- The Council has not followed the correct procedure;
- 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 the policy will have limited cost implications, apart from additional training for all officers managing the appeal process.
14. It is hoped that the policy will ensure that the Council has processes for pursuing outstanding penalties that are efficient, effective and impartial. Any additional revenue will support delivering highway and environmental improvements in Cardiff as allowed in legislation.

Cabinet Report - Legal Implications

15. The Council, as the ‘Traffic Authority’, has the power to make ‘Traffic Regulation Orders’ (TROs) and powers to enforce certain TROs.
16. In developing the proposed policy, and when considering these matters generally regard must be had to:
 - (i) 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.

17. In considering this matter, the decision maker must have regard to the Council’s duties under:

- **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.
- **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. 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 seven 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.
- **Welsh Language (Wales) Measure 2011** – This 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.

Report Recommendations

18. The recommendations made in the report to Cabinet are:
 - To approve the new policy (attached as Appendix A) for considering Challenges, Representations and Appeals associated with Civil Parking enforcement and Moving Traffic Offences.
 - To 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.
19. The report documents the reasons for the recommendations as:

- To ensure that the Council has processes for pursuing outstanding penalties that are efficient, effective and easy to understand.
- 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.
- 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.

Way Forward

20. Councillor Caro Wild, Cabinet Member for Strategic Planning & Transport has been invited to attend for this item. He will be supported by officers from the Planning, Transport & Environment Directorate.

Legal Implications

21. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

22. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- (i) Consider the information in this report and the information presented at the meeting;
- (ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter; and,
- (iii) Decide the way forward for any future scrutiny of the issues discussed.

DAVINA FIORE

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13 March 2019