

Cardiff Council

Parking Services, PO Box 47, Cardiff, CF11 1QB

www.cardiff.gov.uk

029 2087 2087



CHALLENGES, REPRESENTATIONS AND APPEALS POLICY

THE TRAFFIC MANAGEMENT ACT 2004

V.4 11/03/2019

Creating Fair and Transparent Enforcement to Keep Cardiff Moving

TABLE OF CONTENTS

Table of Contents

Introduction	1
Purpose of this Policy	1
Corporate Priorities	1
Applicable Legislation and guidance	1
Collecting Penalty Charges	3
Owner liability	3
What happens if i was not the owner at the time?	3
Hirer liability	3
Process for collecting parking PENalty Charges served by a CEO	4
Process for collecting PENalty Charges served by post	4
Penalty amounts	4
What happens if i do not pay the penalty?	5
What happens if i do not pay the enforcement agents?	5
What happens to any monies raised from enforcement	5
Considering appeals against Penalty Charge Notices	6
Who can consider your challenge or representations	6
Our consideration Principles	6
Our consideration of Mitigation and mistakes	7
Medical Emergencies	7
Blue badges	7
Paying then appealing	8
Payment Plans	8
Charge Certificates	9
Alleged Non-Receipt of Documents	9
How long will it take me to receive an answer to my challenge or representation?	9
Making an Informal Challenge	11
How do i challenge a PCN?	11
Process for making an informal challenge against a PCN served by a CEO	11

TABLE OF CONTENTS

Who can challenge a parking PCN? _____	11
When you cannot challenge a parking PCN _____	12
Reoffering the discount _____	12
Notice to Owners _____	12
Making Formal Representations _____	13
Who can Make formal representations? _____	13
When you cannot make formal representations _____	13
Process for making Formal Representations against a Notice to Owner or PCN served by Post _____	13
The Council decision _____	14
The Traffic Penalty tribunal _____	15
What happens after an adjudicator has made a decision _____	15
Appendix 1. Common Scenarios for Parking Challenges and Representations _____	16
Appendix 2. Common Scenarios for Bus Lane and Moving Traffic Representations _____	20
Definitions _____	24

INTRODUCTION

Introduction

Parking, bus lane and moving traffic enforcement plays a key role in allowing Cardiff to cope with the rising demands upon its transport network and helps promote the use of sustainable travel. To ensure Cardiff remains one of the country's most liveable cities the Council aims to encourage a 50/50 modal shift away from the private motor vehicle towards greener travel alternatives by 2026¹. Enforcement is needed to ensure compliance with regulations in order to keep the highway network working and tackle dangers to other road users and pedestrians.

PURPOSE OF THIS POLICY

It is essential that authorities should make sure their processes for pursuing outstanding penalties are efficient, effective and impartial.

This document sets out our 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. It remains applicable in its current version until it is replaced or revoked.

The Council is under a legal duty not to fetter its discretion. The purpose of this policy is to provide guidance. 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.

CORPORATE PRIORITIES

This policy contributes to the Council's aims to create a safe and vibrant city and to keep Cardiff moving by removing hazards and obstructions to the transport network by creating fair and transparent enforcement. It further compliments the guidance released by the Welsh Ministers² and the Council's Parking Strategy 2016. For the purpose of this policy any reference to the "council" or "we" is to be taken to mean The County Council of the City and County of Cardiff .

APPLICABLE LEGISLATION AND GUIDANCE

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

¹ Cardiff Council Corporate Plan, 2015-2017

² The Civil Enforcement of Road Traffic Contraventions: Parking, Bus Lane and Moving Traffic Enforcement Operational Guidance to Local Authorities December 2014

INTRODUCTION

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

Statutory Guidance to Local Authorities on the Civil Enforcement of Road Traffic Contraventions: Parking July 2014

The Civil Procedure Rules 1998

Any reference to an act of Parliament, statutory provision, regulation or statutory instrument includes a reference to that act, provision, regulation or instrument as amended, extended or re-enacted.

COLLECTING PENALTY CHARGES

Collecting Penalty Charges

A penalty charge is usually payable by the owner of the vehicle, unless the vehicle was on hire at the time of the contravention, in which case the hirer becomes liable³. Unlike a speeding ticket this means that it is the owner or hirer of the vehicle that would be liable for the penalty charge **even if they were not driving**.

OWNER LIABILITY

The owner of the vehicle is presumed to be the person in whose name the vehicle is registered in accordance with the Vehicle Excise and Registration Act 1994, unless proven otherwise⁴. This is called "owner liability" and means that the starting point of any enforcement action is taken against the registered keeper.

If the vehicle is on long term lease for over 6 months and is not subject to an extended hire agreement then for section 66 of the Road Traffic Offenders Act 1988 the leasee is to be considered the owner of the vehicle.

WHAT HAPPENS IF I WAS NOT THE OWNER AT THE TIME?

The Traffic Management Act 2004 puts the responsibility firmly on the person/company who's registered with the Driver and Vehicle Licensing Agency (DVLA) to prove that they were not the owner. This means that if you sold the vehicle before the contravention you must provide proof to the Council to suspend any enforcement action taken against you. Acceptable proof could be:

- ✓ Receipt of sale
- ✓ A signed V5c showing the transfer of the vehicle
- ✓ Receipt of part exchange
- ✓ Confirmation from the DVLA

Cancellation of insurance will not normally be accepted as this does not confirm that the vehicle was sold.

You should also always provide the name and address of the person or company that you sold the vehicle to if known.

HIRER LIABILITY

If the vehicle was on hire at the time of the contravention then the hirer becomes liable, provided that they have signed an agreement stating that they will become responsible for any penalty charges incurred.

A valid hire agreement must be produced to confirm that the hirer had signed such an agreement before the Council will transfer liability. The Council will not transfer liability unless the information required by the Road Traffic (Owner Liability) Regulations 2000 is provided:

³ Part 2, Regulation 4 and 5 of the Civil Enforcement of Road Traffic Contraventions (General Provision) (Wales) Regulations 2013

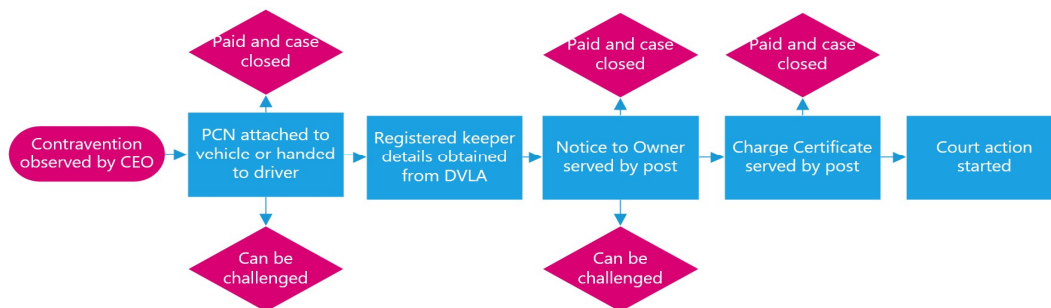
⁴ "Minor definitions" - The Traffic Management Act 2004

COLLECTING PENALTY CHARGES

- ✓ The name and address of the hirer
- ✓ The dates of the hire period (start date and end date)
- ✓ The vehicle registration mark that the hire agreement relates to
- ✓ The statement of liability for any penalty charges issued under the Traffic Management Act 2004

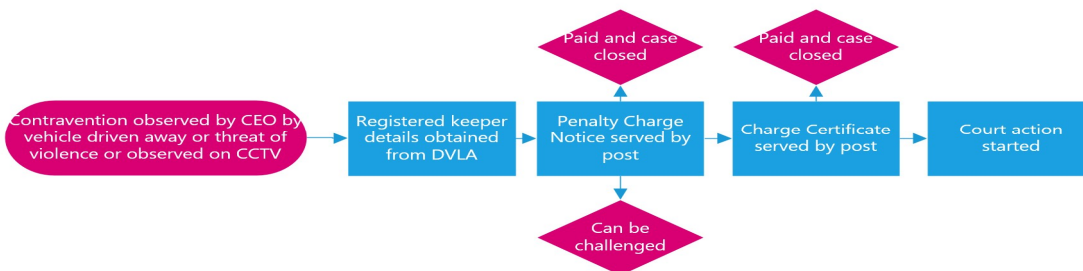
PROCESS FOR COLLECTING PARKING PENALTY CHARGES SERVED BY A CEO

If a contravention is observed by a Civil Enforcement Officer (CEO) then normally the PCN will be attached to the vehicle or handed to the driver.



PROCESS FOR COLLECTING PENALTY CHARGES SERVED BY POST

If a CEO starts to prepare the service of a PCN and the vehicle is driven away or if there is a threat of violence, or if the contravention is observed by CCTV then the PCN will be sent by post.



PENALTY AMOUNTS

The amount of the penalties are set in legislation⁵ and there are two bands; higher contraventions where parking is not normally permitted and lower contraventions when parking is normally permitted. All bus lane and moving traffic penalties are set at the higher rate.

⁵ The Civil Enforcement of Road Traffic Contraventions (Guidelines on Level of Charges) (Wales) Order 2013

COLLECTING PENALTY CHARGES

TABLE 1.3 PAYABLE PENALTY CHARGES

	DISCOUNT PENALTY	FULL PENALTY	SURCHARGE PENALTY	Court Fees
Higher contraventions	£35	£70	£105	£8
Lower contraventions	£25	£50	£75	£8

WHAT HAPPENS IF I DO NOT PAY THE PENALTY?

If you ignore the PCN or fail to successfully appeal, then we will have the outstanding surcharge penalty, plus court fees, registered as a debt with Northampton County Court's Traffic Enforcement Centre (TEC). If TEC permit the registering of the debt then it will become recoverable as if it were payable under a county court order and enforcement agents (formally known as bailiffs) will be instructed to recover the debt under warrant.

WHAT HAPPENS IF I DO NOT PAY THE ENFORCEMENT AGENTS?

If a warrant has been issued to recover what you owe but you still do not pay then several other options may be open to the Council⁶. We may have the debt attached to your earnings, which means your employer will be forced to deduct the debt from your wages, or apply for a Third Party Debt Order, which means your bank account may be frozen until the debt is paid. Not paying the PCN can lead to serious financial difficulties.

WHAT HAPPENS TO ANY MONIES RAISED FROM ENFORCEMENT

Money surpluses can only be used for the purposes set out in Part 6 of the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 and Section 55 of the Road Traffic Regulation Act 1984. These provisions only allow any income raised to be used for the provision of public parking places (in the case of parking surpluses), highway or road improvement, environmental improvement, highway projects or the provision of public transport services.

⁶ Part 75 of the Civil Procedure Rules 1998

CONSIDERING APPEALS AGAINST PENALTY CHARGE NOTICES

Considering appeals against Penalty Charge Notices

Appealing against a penalty charge notice is not only a legal right⁷ but is also an essential part of a fair and transparent enforcement process. There are two stages to appealing a parking PCN depending on the legal stage; making an informal challenge and making formal representations. If the PCN was sent by post then there is no informal challenge stage and the legal process goes straight to formal representations.

WHO CAN CONSIDER YOUR CHALLENGE OR REPRESENTATIONS

Only fully authorised staff may consider challenges or representations. The Council has its own dedicated team and only members of that team may make any decision as to enforcement of a penalty charge. This means other Council staff or elected members cannot legally play or attempt to play any part in the enforcement process or in the decision making of challenges or representations.

This is supported by the Statutory Guidance where the Welsh Ministers believe that *'Elected members and unauthorised staff should not, under any circumstances, play a part in deciding the outcome of individual challenges or representations. This is to ensure that only fully trained staff make decisions on the facts presented'*⁸.

While we will still consider supporting information from members on behalf of an appellant.

OUR CONSIDERATION PRINCIPLES

Our consideration of all challenges and representations are underpinned by our "consideration principles".

Merits of the case

The circumstances surrounding a particular PCN are unique and therefore each PCN will be considered on its own merits.

Council Policy

While the circumstances surrounding all PCNs are unique, due regard will be given to this policy to ensure fair and consistent approach to deciding challenges and representations.

Statutory obligations

We will always ensure that our processes for the consideration of challenges and representations comply with legislation at all times as well as any statutory guidance or operational guidance released by the Welsh

⁷ The Civil Enforcement of Road Traffic Contravention (Representations and Appeals) (Wales) Regulations 2013

⁸ The Civil Enforcement of Road Traffic Contraventions: Parking, Bus Lane and Moving Traffic Enforcement Operational Guidance to Local Authorities December 2014/(88) of the Statutory Guidance to Local Authorities on the civil enforcement of bus lane and moving traffic contraventions.

CONSIDERING APPEALS AGAINST PENALTY CHARGE NOTICES

Ministers. Should any element of this policy conflict with statutory provisions, the statutory provision will prevail.

Driver/vehicle history

Both driver and vehicle histories will be checked to see if either has a history of incurring similar PCNs and whether discretionary cancellations have been granted previously. If you have already received a discretionary cancellation for another case it is highly unlikely that the Council will cancel any further PCNs.

OUR CONSIDERATION OF MITIGATION AND MISTAKES

Any PCN can be cancelled if the mitigation put forward is deemed strong enough to warrant it. Cases will be considered objectively and discretion can be given where it is evident that a parking contravention occurred due to circumstances beyond the motorist's reasonable control or due to a medical emergency, which must be proved by you.

Unfortunately mistakes made in reading parking and traffic signs, accidentally breaching restrictions do not provide suitable mitigation and the PCN will not normally be cancelled. All parking and traffic signs can be found in the Highway Code, along with other advice to ensure that restrictions can be adhered to at all times. It is the responsibility of the motorist to be fully aware of all signs and regulations and the advice in the Highway Code.

MEDICAL EMERGENCIES

It is appreciated that medical emergencies are difficult to gauge so each case turns on its own merits depending on the quality of the proof provided. If a medical emergency is claimed proof MUST be provided on every occasion and this must be sufficient to confirm that the emergency was a serious one and would have affected the driver/motorist at the time of the contravention.

Moving traffic contraventions will not normally be accepted when claims of a medical emergency are made. If the emergency is severe enough to warrant breaching traffic restrictions then the driver is expected to pull over immediately rather than cause safety issues to other motorists by being unwell behind the wheel and consequently driving dangerously – which is a criminal offence.

BLUE BADGES

There are certain occasions when legislation requires that exemptions for blue badge holders are incorporated into Traffic Regulation Orders. Some examples are;

- On yellow line restrictions without kerb blips they are permitted to park for up to 3 hours, with no return within 1 hour
- In on-street pay and display bays they are permitted to park for as long as they require without payment

CONSIDERING APPEALS AGAINST PENALTY CHARGE NOTICES

- In limited waiting bays they are permitted to park for as long as they require, provided that the regulatory signs do not state otherwise

There are also some discretionary occasions when Traffic Regulation Orders exempt blue badge holders. For example in resident' permit holder only bays/zones they are permitted in Cardiff to park for up to 3 hours with no return within 1 hour.

Blue badges must be clearly and properly displayed whilst the vehicle is parked. The blue badge must be on the dashboard or the fascia of the vehicle where all the details can be seen through the windscreen. If you fail to do so you may receive a PCN. Blue badge exemptions may not apply in car parks, so always check the signs.

The Council appreciates that a blue badge can be essential to help remove certain barriers for people with chronic mobility issues that may otherwise impact significantly on their quality of life and all appeals will be considered with this in mind. However, the blue badge booklet clearly informs the blue badge holder of their lawful responsibilities. The blue badge does not apply to many parking restrictions where it is dangerous or obstructive to park. For this reason incorrectly using a blue badge will not normally constitute reasonable grounds to cancel a PCN. Where parking with a blue badge would otherwise be permitted, the Council will take into consideration all the facts and will normally issue a discretionary cancellation when it is deemed appropriate.

If a blue badge is not in the vehicle at all when it should be clearly displayed, it is highly unlikely that the PCN will be cancelled as it must be displayed to ensure that it is not being misused by someone else. Blue badge misuse is a serious criminal offence so the Council takes the enforcement of blue badge fraud very seriously.

PAYING THEN APPEALING

If you decide to challenge or make representations against a PCN then once it is received then the case will be put on hold pending a decision from a PCN Appeals Officer. The penalty will not increase in the meantime. **You should not pay and appeal.** If payment is received for a Penalty Charge then the case will be promptly closed.

PAYMENT PLANS

It is appreciated that financial difficulties can sometimes make it difficult to pay your penalty charge; however, it must be remembered that it would be better not to incur a PCN in the first place. We will consider requests for payment plans when you can prove that you are experiencing financial difficulties and when court action has not already started. This is because payment plans should not be used simply as a way of managing your illegal parking or traffic activities but are only for those in genuine financial difficulty.

We may not consider a payment plan request if:

- × You cannot provide proof that are experiencing financial difficulties
- × You have received an Order for Recovery of Unpaid Penalty Charge

CONSIDERING APPEALS AGAINST PENALTY CHARGE NOTICES

- × You wish to make part payments. The Council will only accept payment for a penalty charge in full
- × You have already previously been offered a payment plan and you have defaulted
- × If you have previously been offered a payment plan but have incurred further PCNs

If a previous payment plan has already been set up and you have either defaulted or received more PCNs, then a request for a payment plan may be denied as it is expected that you should have ensured you did not receive any further PCNs.

If you receive a Notice of Enforcement or have received a visit from enforcement agents then you must contact the recovery team. They can be contacted on 029 2087 2087 or you can write to PO Box 9000, Cardiff, CF10 3ND.

CHARGE CERTIFICATES

When a Charge Certificate (CC) has been sent you no longer have the right to challenge or make representations against the PCN. This is because you did not respond to any initial documents we sent you or any challenges or representations you already made were rejected but payment was still not received.

The Charge Certificate will provide you with 14 days to pay an increased penalty. After this time the Council will start court action. Once court action has started you will be sent court paperwork and one final chance to pay the increased penalty (plus court costs). Alternatively you may wish to proceed with the court action.

If you attempt to make representations once a Charge Certificate has been sent you will need to provide good reasons why you made your representations late. This could be, for example, that you were in hospital. Without good reason it is unlikely that your representations will be considered.

ALLEGED NON-RECEIPT OF DOCUMENTS

The Council ensures that all documents are issued correctly. When a PCN is affixed to the vehicle photographs will normally be taken by the CEO at the time to show that it was correctly served. If the CEO has shown that they correctly served the PCN, and there are no other good reasons to cancel the PCN such as strong mitigating circumstances, the reduced penalty will not normally be reoffered.

If a PCN or NtO has been sent by post the Council will keep records of the date and time when it was sent. It is then presumed served 2 working days after the date of issue unless proven otherwise. This means that, without you proving that it was not received, we will not normally reoffer the discount unless legally obliged to.

HOW LONG WILL IT TAKE ME TO RECEIVE AN ANSWER TO MY CHALLENGE OR REPRESENTATION?

We will try to respond to your informal challenge or formal representations within **21** days from the date of its receipt. However, for a variety of reasons this may not be possible but we will always try to respond to your challenge or representations within **56** days.

CONSIDERING APPEALS AGAINST PENALTY CHARGE NOTICES

If we receive your informal challenge within the permitted timeframes (please see “Making an Informal Challenge” below) and we do not answer your informal challenge within **6** months from the date of the contravention, we will cancel the PCN.

Where formal representations have been made legislation dictates⁹ that we have to serve an answer within **56** days from the date of receipt of the representations. If we do not provide an answer in this timeframe, or if our answer is after this **56** day period, then we will cancel the PCN.

⁹ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013

MAKING AN INFORMAL CHALLENGE

Making an Informal Challenge

Unless the Penalty Charge Notice (PCN) was sent to you by post, you are permitted to initially challenge the issuing of the PCN by making an informal challenge. The Council provides 28 days beginning with the date of service of the PCN to make an informal challenge. The date of service will be shown on the PCN.

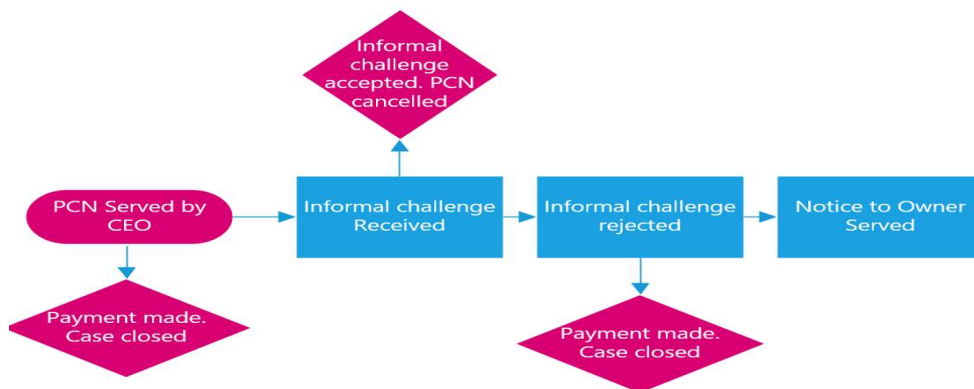
HOW DO I CHALLENGE A PCN?

Unlike formal representations, there are no specific grounds that you must make an informal challenge. However, like representations, if any of the following grounds are met then the Council will cancel the PCN:

- The contravention did not occur
- There has been a procedural impropriety by the Council
- The Traffic Regulation Order under which the PCN was issued is invalid
- The PCN has already been paid in full and you have provided evidence to confirm this
- The penalty exceeds the amount set by legislation

If any of the above grounds have not been then the Council will cancel the PCN only if strong mitigating circumstances are put forward; for example there was a legitimate emergency that you have provided proof to confirm was happening at the time of the contravention. Informal challenges to the Council must either be made online or made by post. The Council WILL NOT consider informal challenges over the phone or in person. **DO NOT PAY** if you intend to make an informal challenge as if you do the case will be promptly closed. You can easily challenge a PCN online at www.cardiff.gov.uk. Otherwise you can challenge your PCN by writing to the PCN Appeals Team, PO Box 47, Cardiff, CF11 1QB.

PROCESS FOR MAKING AN INFORMAL CHALLENGE AGAINST A PCN SERVED BY A CEO



WHO CAN CHALLENGE A PARKING PCN?

Unlike formal representations anyone can challenge the issuing of a PCN that has been attached to your vehicle or handed to you as the driver or person appearing to be in charge of the vehicle.

MAKING AN INFORMAL CHALLENGE

WHEN YOU CANNOT CHALLENGE A PARKING PCN

We may not consider any challenges made to the Council if you have:

- × Received a Notice to Owner. You must then make formal representations.
- × Received a Charge Certificate
- × Received an Order for Recovery of Unpaid Penalty Charge
- × Recovery agents have been instructed by warrant to recover the debt

REOFFERING THE DISCOUNT

When a parking PCN is affixed to your vehicle or handed to the driver, it provides 14 days from its service to pay a 50% reduced penalty. If you decide to challenge the PCN and your challenge is received by the Council within this 14 day period, we will reoffer the discount amount for a further 14 days should your challenge be rejected.

If your challenge is received by us after the 14 day period we will not normally reoffer the discount amount.

It is your responsibility to ensure your challenge is received within the correct timeframes. If challenging by post please allow 2 working days for 1st class or 5 working days for 2nd class.

NOTICE TO OWNERS

If your informal challenge is rejected and we decide not to cancel the PCN, there will be two options:

- 1) Pay the penalty charge. If your challenge was received by us within the initial reduced penalty period we will reoffer you the opportunity to pay the reduced penalty amount again for a further 14 day. Please see above.
- 2) Await the service of the Notice to Owner.

If the penalty is still not paid within a further 28 days then the Council will contact the DVLA for the registered keeper/owners details. This is because it is the registered keeper/owner who then becomes liable for payment of the penalty, even if they were not driving at the time. Once a Notice to Owner has been served you will not be entitled to pay the reduced penalty amount.

When these details are returned the Council will then send them a legal document called a Notice to Owner. This then starts the formal representations process which is set by the Civil Enforcement of Road Traffic Contraventions (Representations and appeals) (Wales) Regulations 2013.

MAKING FORMAL REPRESENTATIONS

Making Formal Representations

If you have received a Notice to Owner or a Penalty Charge Notice through the post then you have the right to make formal representations within 28 days from the date of service of that NtO or PCN. The date of service will be 2 working days after the date of posting unless proven otherwise¹⁰.

WHO CAN MAKE FORMAL REPRESENTATIONS?

Unlike an informal challenge only the person who the NtO or postal PCN was sent to can make formal representations. However, the Council will consider representations made on behalf of the recipient but only with their authorisation. Representations in these circumstances will not be considered without authorisation.

If formal representations are made on behalf of the recipient of the NtO or PCN and they are rejected then the person who made the representations will receive the response¹¹. As the person named on the NtO or PCN remains liable it is essential that you make them aware of the decision so that they are aware of their legal rights and what enforcement action may be taken against them. As ultimately enforcement agents may be engaged to seize their possession it is very important that you take steps to inform them of the decision.

WHEN YOU CANNOT MAKE FORMAL REPRESENTATIONS

We may not consider any representations made to the Council if you have:

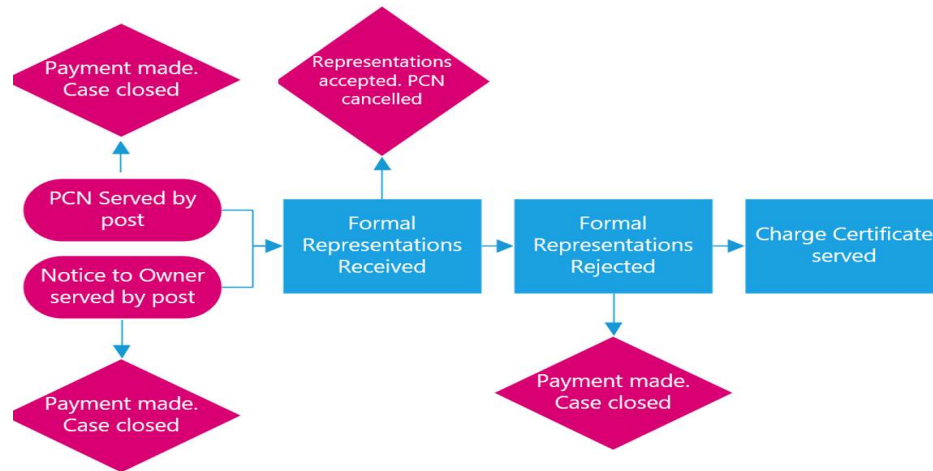
- × Received a Charge Certificate
- × Received an Order for Recovery of Unpaid Penalty Charge
- × Recovery agents have been instructed by warrant to recover the debt

PROCESS FOR MAKING FORMAL REPRESENTATIONS AGAINST A NOTICE TO OWNER OR PCN SERVED BY POST

¹⁰ Regulation 3 the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013

¹¹ The Civil Enforcement of Road Traffic Contraventions: Parking, Bus Lane and Moving Traffic Enforcement Operational Guidance to Local Authorities December 2014

MAKING FORMAL REPRESENTATIONS



THE COUNCIL DECISION

We will try to respond to your representations within 14 days from the date of its receipt. However, for a variety of reasons this may not be possible but legislation states we have 56 days¹² to respond. If we respond to you after 56 days we will cancel the PCN.

When you have made representations to the Council and you have shown good reasons to cancel the Penalty Charge Notice, it will do so and you will be sent a letter explaining why the PCN has been cancelled. You will then have nothing to pay and we will consider the matter concluded.

When you have made representations to the Council, but you have not provided sufficient reasons to cancel the PCN, then the Council will serve you with a document called a Notice of Rejection of Representations (Notice of Rejection or NoR). This will be sent to you within 56 days from the date we receive your representations. On some occasions the Council may extend the deadline for paying the reduced penalty, but it is normally under no legal obligation to do so (unless the contravention is for a moving traffic or bus lane PCN when the reduced penalty will be reoffered for a further 21 days).

Please note: If formal representations are made on behalf of the recipient of the NtO or PCN and they are rejected then the person who made the representations will receive the response¹³. As the person named on the NtO or PCN remains liable it is essential that you make them aware of the decision so that they are aware of their legal rights and what enforcement action may be taken against them. As ultimately enforcement agents may be engaged to seize their possession it is very important that you take steps to inform them of the decision.

¹² The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013

¹³ The Civil Enforcement of Road Traffic Contraventions: Parking, Bus Lane and Moving Traffic Enforcement Operational Guidance to Local Authorities December 2014

MAKING FORMAL REPRESENTATIONS

THE TRAFFIC PENALTY TRIBUNAL

If you receive a Notice of Rejection of Representations you will be provided with the opportunity to appeal to the independent adjudicator. Please note that if you appeal to the adjudicator you will no longer be entitled to pay the reduced penalty if they find you liable, even if you had been offered the opportunity again in the NoR.



The independent adjudicators work for the Traffic Penalty Tribunal which is separate from the Council. They are a legal body set up specifically to decide if someone should pay the penalty for parking, traffic or bus lane PCNs cases. While they do have the powers to award costs in certain circumstances, it is very rare that this happens.

You can appeal to the adjudicator on the following grounds.

- The penalty exceeded the amount set by law
- The contravention did not occur
- The relevant Traffic Regulation Order (TRO) was invalid
- There has been a procedural impropriety by the Council (e.g. the Council did not follow correct legal procedures)
- You did not own the vehicle
- The vehicle was taken without the owner's consent (e.g. it was stolen)
- You are a vehicle hire firm and in the particular circumstances you are not liable for the PCN
- The penalty has already been paid

Adjudicators have no powers to quash a PCN based on mitigating circumstances or compelling reasons alone.

They are granted their powers under the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 and their decision is usually final. However, if you believe there has been an error of law in their decision you can appeal their decision to the High Court.

WHAT HAPPENS AFTER AN ADJUDICATOR HAS MADE A DECISION

If the adjudicator has found in your favour the case has been "allowed" and you have nothing to pay. The Council is bound by that decision and must close the case and immediately stop any enforcement action that may have commenced. The matter is then concluded.

If the adjudicator has found in the Council's favour then the case has been "dismissed" and you are required to pay the penalty as directed. If you fail to pay the penalty then the Council will issue a Charge Certificate increasing the amount due by a further 50% and if the increased amount is not paid within 14 days a number of options will be open to the Council. If you do nothing your possessions may be seized and sold to cover what is owed, we may have the debt attached to your earnings, which means your employer will be forced to deduct the debt from your wages, or apply for a Third Party Debt Order, which means your bank account may be frozen until the debt is paid. Not paying the penalty can lead to serious financial difficulties.

APPENDIX 1. COMMON SCENARIOS FOR PARKING CHALLENGES AND REPRESENTATIONS

Appendix 1. Common Scenarios for Parking Challenges and Representations

The circumstances surrounding a particular PCN are unique and therefore each PCN will be considered on its own merits. The following is therefore only for informational purposes to provide an indication of whether we may cancel your PCN. You may still be made to pay the penalty even if the below indicates it is likely the PCN will be cancelled.

Scenario	Likely the PCN will be cancelled	Reason (if applicable)
I was not the driver at the time of the parking contravention	No	Legislation makes the owner liable for the penalty charge not the driver. If the vehicle was on hire then the hirer becomes liable.
I was feeling unwell	No	If you are so unwell you feel you would have to breach a parking restriction you will need to provide evidence of a genuine medical emergency before the Council will consider cancelling the PCN
	Yes	If suitable proof is provided
This was my first PCN	No	You are required to abide by parking rules at all times.
I was loading / unloading when I was permitted to do so (for example on yellow lines where yellow kerb ticks are not in force)	No Yes (if suitable proof is provided)	Civil Enforcement Officers observe any vehicle where there is an exemption for loading / unloading to see if these activities were taking place. They would not issue a PCN if they observed loading / unloading then the PCN will not normally be cancelled. The PCN may be cancelled however if you can provide proof to the Council.
I was late returning to my car as my meeting overran	No	It is the responsibility of the motorist to make sure that they obtain enough parking time to cover any eventualities.
I placed my pay and display ticket upside down or it blew off the dashboard when closing the door, but I had paid for the correct amount of time	No	If there is a requirement to display a valid pay and display ticket then it is the responsibility of the person placing it in the car to check through the windscreen of their vehicle that their ticket is clearly visible

APPENDIX 1. COMMON SCENARIOS FOR PARKING CHALLENGES AND REPRESENTATIONS

When obtaining a ticket or cashless stay I entered the wrong vehicle registration	No	The full correct registration mark must be entered to stop potential abuse of pay and stay parking places and car parks
The pay and display machine was not accepting change or was not accepting card, or MiPermit was not working properly	No	There are many methods available in Cardiff to obtain parking time, including cashless parking where you can pay by text, app or by phone. On all pay and display machines where there will be instructions on alternative methods of payment. Just because a particular method of payment is not working that does not mean you do not have to obtain parking time by alternative means.
The Council did not follow correct procedures when issuing or enforcing the PCN	Yes	The Council is under a legal obligation to follow correct procedures. If it does not the PCN is invalid.
I did not notice or understand the parking signs or road markings	No	It is the responsibility of the motorist to be fully aware of the rules of the Highway Code and all drivers are obliged to understand and act upon all parking signs and road markings to ensure that they are adhered to.
The parking signs or road markings were in Welsh	No	The Council is under a legal obligation to provide bilingual signs and road markings. The Welsh will always be followed by the English this does not provide an exemption.
I was parking in accordance with an exemption, for example I was loading/unloading goods where I was permitted to do so	Yes (if suitable proof is provided)	If you have a valid reason to be parked in the place where the contravention was observed then the PCN will be cancelled. However, Civil Enforcement Officers often observe vehicles for a period of time to ensure that a permitted activity is not being carried out. If the evidence provided by the Officer is sufficient to rebut any claims of an exemption then the PCN will not be cancelled.
I cannot afford to pay the penalty	No	As the penalty should not have been incurred in the first place this does not provide good grounds to cancel the PCN. However, if proved, certain financial circumstances may lead to the Council providing a payment plan. However, this is purely discretionary. If you have already requested a payment plan in the past, but defaulted, then it is highly unlikely that another payment plan will be allowed.

APPENDIX 1. COMMON SCENARIOS FOR PARKING CHALLENGES AND REPRESENTATIONS

I returned to my car but there was no PCN on my windscreen	No	Civil Enforcement Officers make notes to confirm that the PCN was served correctly and, if attached to the windscreen, often take photographs to prove this. For this reason, if it is claimed that a PCN was not received and we can prove that it was correctly served, the PCN will not usually be cancelled or the reduced penalty reoffered. If a PCN is removed by a third party then this does not cancel any liability for payment.
You have breached the bill of rights	No	This argument has been put before the High Court and has been described as “completely hopeless”.
I did not agree to a contract with you therefore you were not entitled to issue the PCN	No	This is not a contractual matter but a matter set in statutory legislation. Therefore the Council does not need to enter into a contract with you to enforce the PCN
I parked on yellow lines with my blue badge but my time clock was not displayed, or not set correctly	No	The blue badge booklet states that a time clock must be clearly and correctly displayed for the yellow line exemption to apply. Yellow lines are there for safety and traffic management and without correctly displaying a valid time clock a parking enforcement officer has no way of determining if the vehicle has been parked beyond the permitted time.
I have a resident parking permit but forgot to display it in my vehicle or displayed it incorrectly	No	If there is a requirement to display a permit then it is the responsibility of the person placing it in the car to check through the windscreen of their vehicle that their permit is clearly visible. All permit holders are informed of this when they apply for their permit.
My vehicle was being driven without my consent	Yes (if proof is provided)	If you can prove that your vehicle had been taken without your consent (e.g. stolen) then the PCN will be cancelled. However, you will need to provide a valid crime reference number and any other evidence to show that this was the case.
I parked where I did (for example on yellow lines) because there was nowhere else to park	No	You must park correctly at all times and if your preferred parking place is unavailable you must find a lawful alternative
I have been fined for parking next to a dropped kerb, but there were	No	A vehicle is not permitted to park adjacent to a kerb that has been lowered to aid pedestrians or wheelchair users , or where they have been

APPENDIX 1. COMMON SCENARIOS FOR PARKING CHALLENGES AND REPRESENTATIONS

no lines or signs to say I could not park there?		lowered to allow vehicles to cross the footway. Motorists are informed of this in the Highway Code so there is no legal requirement for regulatory signs or lines to accompany a dropped kerb.
I had to stop to use the toilet	No Yes (if suitable proof is provided)	The PCN will not usually be cancelled but may be if suitable evidence is provided that confirms a medical emergency of that nature at the time of the contravention
The vehicle had broken down	Yes (if suitable proof is provided)	If the vehicle had broken down then the PCN will be cancelled if suitable evidence has been provided. Suitable evidence of a breakdown should not be hard to come by so without suitable evidence the PCN will not normally be cancelled.
My parking did not inconvenience anyone or cause an obstruction	No	It is the responsibility of the motorist to park correctly at all times, regardless of if they believe that it may not be a nuisance to others
The colour or make of my vehicle is incorrect on the PCN	No	It is not a legal requirement for the make or the colour to be correct on the PCN. Provided that the Vehicle Registration Mark is correct and that this is corroborated by the photographs taken by the CEO then the PCN will not normally be cancelled. If there are no photographs and there is a dispute over the make of the vehicle the Council may cancel the PCN.

APPENDIX 2. COMMON SCENARIOS FOR BUS LANE AND MOVING TRAFFIC REPRESENTATIONS

Appendix 2. Common Scenarios for Bus Lane and Moving Traffic Representations

The circumstances surrounding a particular PCN are unique and therefore each PCN will be considered on its own merits. The following is therefore only for informational purposes to provide an indication of whether we may cancel your PCN. You may still be made to pay the penalty even if the below indicates it is likely the PCN will be cancelled.

Scenario	Likely the PCN will be cancelled	Reason (if applicable)
I was not the driver at the time	No	Legislation makes the owner liable for the penalty charge not the driver. If the vehicle was on hire then the hirer becomes liable.
I was following my Sat Nav	No	Sat-Navs are advisory guides and it is still the responsibility of the driver to pay sufficient attention to the road ahead to comply with any traffic restrictions.
I had only just passed my driving test	No	Any motorist driving on the road is expected to be aware of the meanings of all traffic restrictions regardless of the length of time that they have been driving for
I was feeling unwell	No	If you are feeling unwell it is still down to you to drive correctly. If you are so unwell you feel you would have to breach a traffic restriction you should instead pull over immediately and call the emergency services. If your vehicle is observed pulling over immediately in this fashion then the PCN may be cancelled.
This was my first PCN	No	You are required to abide by the rules of the road at all times.
I was pulling into the bus lane to allow an emergency service vehicle on call to pass	Yes	The Council will not enforce any PCN where it is clear the bus lane was used to allow an emergency service vehicle on call to pass as it is essential these vehicles can reach their destination as quickly as possible.

APPENDIX 2. COMMON SCENARIOS FOR BUS LANE AND MOVING TRAFFIC REPRESENTATIONS

The Council did not follow correct procedures when issuing or enforcing the PCN	No Yes (if proved)	The Council ensures it follows the correct procedure at all times. However, the Council is under a legal obligation to follow correct procedures. If on a particular occasion it does not then PCN is invalid and will be cancelled.
I did not notice or understand the signs or road markings	No	It is the responsibility of the motorist to be fully aware of the rules of the Highway Code and, during the course of their journey, all drivers are obliged to understand and act upon all traffic signs and road markings to ensure that they are adhered to.
The traffic signs or road markings were in Welsh	No	The Council is under a legal obligation to provide bilingual signs and road markings. As the Welsh will always be followed by the English this does not provide an exemption.
I entered the box junction when traffic was flowing smoothly but it then came to a sudden stop. This was not my fault.	No	You are entitled to enter a box junction when traffic is flowing but you run the risk of a contravention if it then comes to a halt. The best way to ensure you do not stop in a box junction illegally is to follow the advice in rule 174 of the Highway Code.
I entered the bus lane as I was turning left at the next junction	No	Drivers intending to turn left should stay in the unrestricted lane until there is a full break, or broken white line in the bus lane markings, at which point they are permitted to cross the bus lane in order to turn left. Otherwise they must wait for the directional arrow and signs showing the end of the bus lane before they can manoeuvre to turn left.
I was in the bus lane for less than 20 meters. Drivers are permitted to use bus lanes for less than 20 meters!	No	This is a common “ticketfighter” myth. There is no 20 meter rule and the legal position is that there is no minimum distance that a vehicle has to travel before it can be considered in breach of the governing Traffic Regulation Order. Any case where the distance travelled is disputed or questioned will turn on its own merits and particular facts.

APPENDIX 2. COMMON SCENARIOS FOR BUS LANE AND MOVING TRAFFIC REPRESENTATIONS

I was an emergency service worker but not on call	No	Unless a valid exemption has been provided by the Council, or included in the relevant Traffic Regulation Order, unless you are on call or are required by law to breach the traffic restriction you are not permitted to ignore traffic restrictions – such as stopping in box junctions.
There were no signs advising of traffic enforcement, so how was I to know I would receive a PCN?	No	There are traffic enforcement signs situated at many locations around Cardiff, however they are not a legal requirement and you must not breach traffic regulations simply because you think you will not be fined. The Police may also still fine you at any location, even where Council enforcement is not taking place.
I was driving in accordance with an exemption/my vehicle was permitted to make the otherwise banned turn or be in a bus lane	Yes	If you have a valid reason to ignore the restriction, for example to be in a bus lane for the purposes of loading or unloading when a loading ban is not in force, a PCN will not usually be issued. If it is, then it will be up to you to prove that you were carrying out a permitted activity upon appeal
I was not the owner or hirer of the vehicle at the time of the alleged contravention	Yes	Welsh regulations state that the owner of the vehicle is liable for the PCN, unless the vehicle was on hire when it is the hirer that becomes responsible. However, if you were not the owner of the vehicle you will be required to prove that you were not.
My vehicle was being driven without my consent	Yes (if proof is provided)	If you can prove that your vehicle had been taken without your consent (e.g. stolen) then the PCN will be cancelled. However, you will need to provide a valid crime reference number and any other evidence to show that this was the case.
I cannot afford to pay the penalty	No	As the penalty should not have been incurred in the first place this does not provide good grounds to cancel the PCN. However, if proved, certain financial circumstances may lead to the Council providing a payment plan. However, this is purely discretionary. If you have already requested a payment plan in the past, but defaulted, then it is highly

APPENDIX 2. COMMON SCENARIOS FOR BUS LANE AND MOVING TRAFFIC REPRESENTATIONS

		unlikely that another payment plan will be allowed.
I did not receive the PCN	No Yes (if suitable proof is provided)	The Council keeps postal records of all PCNs sent. If we have followed our correct procedures the law states that the PCN is deemed served unless you are able to prove otherwise. If you are able to prove otherwise then this proof must be provided as evidence to the Council.
You have breached the bill of rights	No	This argument has been put before the High Court and has been described as “completely hopeless”.
I did not agree to a contract with you therefore you were not entitled to issue the PCN	No	This is not a contractual matter but a matter set in statutory legislation. Therefore the Council does not need to enter into a contract with you to enforce the PCN
The make of my vehicle is incorrect on the PCN	Yes	It is not a legal requirement for the make or the colour to be correct on the PCN; however, with a moving traffic or bus lane PCN if the make is incorrect and is proven to be incorrect then the PCN may be cancelled.

DEFINITIONS

Definitions

DESCRIPTION	DEFINITION
Approved device	A camera that has been approved by the Welsh Ministers for use in the detection of parking, bus lane and/or moving traffic contraventions
CC	Charge Certificate
CEO	Civil Enforcement Officer
Challenge	The informal challenge against the issuing of a Penalty Charge Notice issued by a Civil Enforcement Officer
Discount penalty amount	either £25 or £35 depending on the type of contravention
Full penalty amount	either £50 or £70 depending on the type of contravention
Increased penalty amount	either £75 or £105 depending on the type of contravention
MiPermit	the contractor we use for the issuing of cashless parking stays or virtual permits/waivers
NtO	Notice to Owner
Order for Recovery (TE3)	a document sent by TEC to inform the recipient that the increased penalty amount has been registered as a debt with Northampton County Court
PCN	Penalty Charge Notice
Representations	the formal challenge against a Notice to Owner or postal Penalty Charge Notice
TEC	Traffic Enforcement Centre at Northampton County Court that authorises Order for Recoveries and Warrants
Witness Statement (TE9)	a document sent with a TE3 providing the recipient the chance to appeal to the court against the issuing of the TE3