

Further evidence in response to the Transport Committee inquiry into pavement parking:

Potential Pavement Parking Behaviour Change Strategy

Submitted by:

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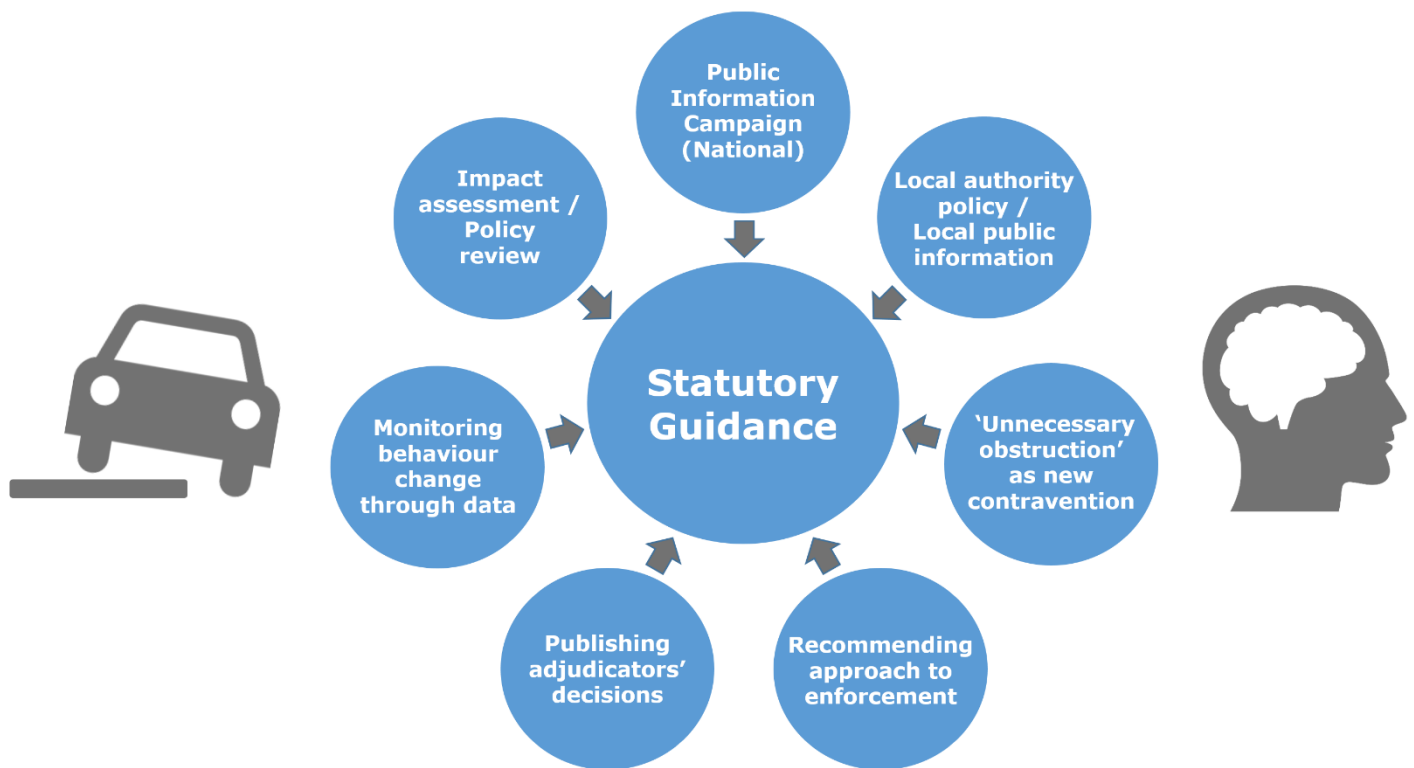
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Further to the evidence already provided to the Transport Committee, the Chief Adjudicator of the Traffic Penalty Tribunal (TPT), Caroline Sheppard OBE, and Louise Hutchinson, Director, PATROL, set out in detail a potential strategy to tackle the problem of pavement parking.

1. Introduction

- 1.1** There is no easy answer to preventing unsociable parking on the pavement. As highlighted in previous submissions from PATROL, creating a similar pavement parking ban outside London to the one that has been applied in London since 1974 would, while solving the problem for some areas, create significant difficulties for others.
- 1.2** Rather than grapple with the complexities of drafting primary legislation that is responsive to local differences and needs, a more immediate solution to the problem could be provided by harnessing **a range of strategic levers to a single statutory instrument**, in order to introduce the offence of **'unnecessary obstruction'** to the list of parking contraventions subject to civil enforcement: a Pavement Parking Behaviour Change Strategy. This would be carried through by PATROL.
- 1.3** The range of strategic levers proposed focus primarily on behaviour change and educating the public to be more responsible about parking on the pavement, with the new contravention of unnecessary obstruction providing an enforcement tool for local authorities to deal with their particular problems at a local level.
- 1.4** The proposed strategic levers include:
1. the coordination of a national public information campaign
 2. the provision of local policies and public information
 3. introducing unnecessary obstruction as a parking contravention, subject to civil enforcement
 4. defining the approach to enforcement, including the issuing of Warning Notices and Penalty Charge Notices (PCNs)
 5. the publishing of TPT adjudicators' decisions, aiding local authorities on what constitutes unnecessary obstruction
 6. monitoring behaviour change through data
 7. robust impact assessment and policy review.
- 1.5** Because unnecessary obstruction would become a civil enforcement parking contravention through the provisions of the *Traffic Management Act 2004 (TMA)*, these strategic levers could be underpinned by Statutory Guidance issued by the Secretary of State for Transport under Section 87 of the TMA.
- 1.6** Therefore, the objective is to discourage parking on the pavement by using a range of public information, deterrent and enforcement policies and powers, together with the necessary checks and balances, all addressed in Statutory Guidance. This is an approach that minimises the use of local authority resources, as well as a timely solution to an increasingly concerning problem.

2. Pavement Parking Behaviour Change Strategy: Utilising the *Traffic Management Act 2004* (underpinned by Statutory Guidance)



Strategic Level 1: Public Information Campaign (National)

The objective would be to discourage pavement parking through a national public information campaign. PATROL, in consultation with its 316 local authority members in England and Wales (outside London), would commission and spearhead the campaign, utilising various appropriate channels, including digital video and social media. This would be resourced from existing funds.

The campaign would provide clear examples of pavement obstruction and the resulting impact on the community (for example, for those with impaired sight or wheelchair users) and warn that, in future, pavement parking could result in a penalty charge from an operative date. Although the Transport Committee's inquiry applies only to England, a general campaign discouraging pavement parking may also have a positive impact in Wales, Scotland and Northern Ireland.

Strategic Level 2: Local authority policy / Local public information

Similarly, on a local level, it would be beneficial to reinforce the impact of pavement parking specific to that area and warn that in some circumstances it could be subject to a penalty charge from an operative date.

Each local authority campaign would deal with local problems, particular areas of concern and explain local policies towards enforcement and behaviour change.

Strategic Lever 3: Adding 'unnecessary obstruction' as a new parking contravention, subject to civil enforcement

a) *Traffic Management Act 2004*

Part 1 of Schedule 7 of the *Traffic Management Act 2004* (TMA) provides the list of parking contraventions that are subject to civil enforcement, with Paragraphs 2, 3 and 4 applying to London and Paragraph 4 to outside London.

Paragraph 5 of Schedule 7 empowers the Secretary of State, by regulation, to add to the list:

5(1) The appropriate national authority may by regulations amend paragraph 3 or 4 so as to add further offences (but only in so far as they relate to stationary vehicles).

(2) Before making regulations amending paragraph 3 the Secretary of State shall consult—

(a) the Commissioner of Police of the Metropolis and the Commissioner of Police for the City of London, and

(b) such associations of London authorities (if any) as he thinks appropriate.

(3) Before making regulations amending paragraph 4 the appropriate national authority shall consult—

(a) such representatives of chief officers of police, and

(b) such associations of local authorities (if any), as the authority considers appropriate.

Section 87 of the TMA empowers the Secretary of State to issue Statutory Guidance, with which the enforcement authority must comply.

NB. The TMA civil enforcement provisions in England only apply to authorities that have adopted the powers. There are a few local authorities that have not yet adopted the powers.

b) *Unnecessary obstruction*

Regulation 103 of the *Road Vehicles (Construction and Use) Regulations 1986* ("the 1986 Regulations") creates the offence of obstruction of the road by a motor vehicle or trailer.

Obstruction

103. No person in charge of a motor vehicle or trailer shall cause or permit the vehicle to stand on a road so as to cause any unnecessary obstruction of the road.

'Road' is not defined in the 1986 Regulations, but Section 192(1) of the *Road Traffic Act 1988* states that a 'road' means '*any highway and any other road to which the public has access...*' A highway includes the footway and verges maintained by the highways authority. Therefore, under the 1986 Regulations, the obstruction offence can apply to footways (i.e. pavements) and verges.

The use of 'stand' in the description of obstruction under Regulation 103 of the 1986 Regulations is there because it can only apply to a stationary vehicle; not, for example, to a vehicle moving back and forth, so as to create an obstruction. It therefore fulfils the condition in Paragraph 5 of the TMA that a contravention can only apply to a stationary motor vehicle or trailer – not, say, to rubbish or building materials left on the pavement or road.

Obstructing free passage is the first critical ingredient of introducing the 'unnecessary obstruction' contravention. The second is that the obstruction needs to be *unnecessary*.

Therefore; where, for example, a vehicle is used for setting down a passenger (and maybe left to escort a disabled or child passenger) or for loading / unloading a heavy burden, it could be said that it was *necessary* to park adjacent to the premises. This can be made clear in the Statutory Guidance, giving examples of what the Secretary of State would consider *unnecessary* obstruction; for example, blocking the free passage of a wheelchair or buggy.

The consultation can ask for other examples of what would be regarded as *necessary* and different authorities may have a range of views about this.

However, that being *unnecessary* is the critical ingredient of the contravention limits the issue of a PCN without first observing the vehicle, as currently happens where loading and unloading is permitted.

There has never been a requirement to specify distances, etc. It would be a complication to do so now and, in any event, that is not how the offence is drafted in Regulation 103 of the 1986 Regulations.

c) Other examples of unnecessary obstruction

There are further incidences of unnecessary obstruction on the carriageway. The most common behaviour of concern to councils and road users is parking too close to a junction or traffic island.

The power to issue warning notices and PCNs in these circumstances would be a useful measure to reduce this problem. This power would be particularly welcome in London.

The Statutory Guidance could recommend the same caution and restraint that would apply to pavement parking incidences.

Strategic Lever 4: Recommending the approach to enforcement

The approach to enforcement will be a matter for each local authority. Some authorities might decide only to enforce pavement parking where there is a request or complaint. Others may patrol known trouble spots, while others may have mobile patrols of their area, generally.

There is an understandable concern that the power to issue PCNs for obstruction could open the floodgates to over-enthusiastic ticketing. However, the TMA has set useful precedents.

Section 85 prohibits double parking and Section 86 prohibits parking adjacent to dropped footways. These only apply in special enforcement areas (i.e. in those areas where the authority has adopted civil enforcement).

These prohibitions are not signed and, to some extent, the motorist cannot tell whether they are likely to get a PCN in, say, Portsmouth (where civil enforcement applies) or adjacent Gosport (where it does not).

That said, these difficulties do not appear to have arisen. This is due to the light touch that authorities have applied to enforcing these two new contraventions. Most enforcement arises from a particular complaint.

Therefore, the revised Statutory Guidance accompanying the introduction of 'unnecessary obstruction' as a new contravention, subject to civil enforcement, could urge councils to exercise the same restraint they have done for double parking and dropped kerbs.

a) Warning Notices

A key balancing tool for enforcement would be for authorities to issue a Warning Notice to the car for the first contravention. The Civil Enforcement Officer (CEO) would record the vehicle details for future reference and data collection; however, the hand-held computer could issue a Warning Notice, printing the usual details, but advising that a penalty charge has not been imposed on this first occasion. The Statutory Guidance should recommend this practice.

b) PCNs

On the basis of the Statutory Guidance, CEOs would require training to properly identify unnecessary obstruction. The amount of time that the vehicle is left stationary will always be a factor. Consequently, there would need to be an observation period to ensure that the vehicle has not been engaged in transporting passengers, loading or unloading, or making a delivery.

With modern technology, if a CEO is in doubt as to whether the vehicle is causing an unnecessary obstruction, they can take a photograph and immediately send it to a senior officer at their base for advice as to whether to issue a PCN.

c) Empathetic and pragmatic consideration of representations

It will be important for authorities to consider representations following the issuing of a PCN carefully, and at a senior level. Because the judgment as to whether there was an unnecessary obstruction is a mix of subjective and objective, the contravention does not lend itself to 'business rules' for a contractor as to how to deal with representations. It is the appropriate analysis and realisation of the impact of enforcement that will inform councils how to approach the problem going forward.

Strategic Lever 5: Publishing adjudicators' decisions

TPT adjudicators are the same judicial level as district judges in the county and criminal courts, as well as other tribunal judges, requiring the same legal qualifications. Many adjudicators also sit as judges in other jurisdictions, in addition to their TPT appointment. Consequently, they are more than able to determine whether there has been an 'unnecessary obstruction'.

Inevitably, a wide variety of factual situations will be presented in appeals. Therefore, regular reports and case studies from the adjudicators will give further guidance to authorities as to what amounts to an unnecessary obstruction.

Because procedural impropriety (which also includes a clear failure to follow the Statutory Guidance) is a ground of appeal resulting in the cancellation of the PCN, further checks and balances are placed on inappropriate enforcement.

The *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007* ("the 2007 Regulations"), which accompany the TMA, also provide an express requirement for authorities to consider compelling reasons, as well as for adjudicators to refer cases where compelling reasons have become apparent in the appeal back to the Chief Executive of the local authority to reconsider the decision.

It follows that the 2007 Regulations provide a robust framework to ensure a just approach to enforcement, together with appropriate redress.

Strategic Lever 6: Monitoring behaviour change through data

Today's technology enables close monitoring of behaviour change, and through the analysis of enforcement data; numbers of warning letters and PCNs issued; representations accepted and / or rejected, etc. the outcomes of and issues raised in appeals can be monitored and reported.

The combination of data generated through the TPT's online appeals management system, as well as statistics provided by local authorities to PATROL, encompasses a rich profile that could be utilised for monitoring behaviour change over time.

Additionally, surveys of motorists and residents can be undertaken to assess the effect of public information campaigns and enforcement that has been undertaken in the area.

Strategic Lever 7: Impact assessment / Policy review

Impact assessment will enable Government and local authorities alike to assess whether primary legislation is needed to tackle the problem, with clear evidence-based examples of successes and difficulties in enforcement.

These insights and experiences can be fed back into the Statutory Guidance, so that enforcement policies and strategies will be adjusted effectively and sensitively to following the 'user experience' of the various stakeholders concerned about pavement parking.