

Response to:

Ministry of Housing, Communities & Local Government
Parking Code Enforcement Framework consultation

Submitted by:

PATROL

**PATROL (Parking and Traffic Regulations Outside London)
Joint Committee**

www.patrol-uk.info

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About PATROL

The PATROL (Parking and Traffic Regulations Outside London) Joint Committee comprises over 300 local authorities in England (outside London) and Wales.

The principal function of the Joint Committee is to make provision for independent adjudication in respect of appeals against penalties issued for traffic contraventions by local authorities and charging authorities in England (outside London) and Wales.

Adjudication is delivered through the **Traffic Penalty Tribunal (TPT)**. TPT Adjudicators are wholly independent lawyers, appointed with the consent of the Lord Chancellor, and are supported by a small team of administrative staff, who provide customer support. The TPT is the UK's first fully online tribunal and decides ~37,000 appeals a year.

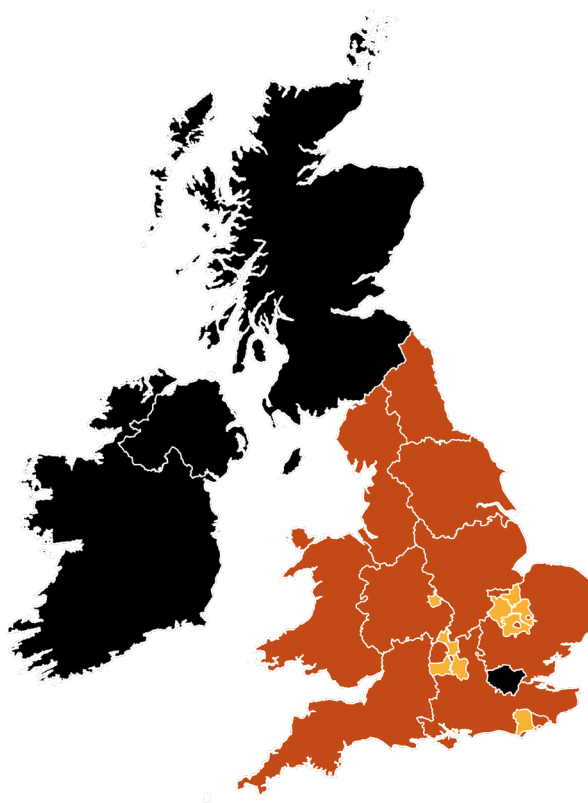
The Adjudicators decide appeals against civil enforcement penalties issued by authorities for parking, bus lane, littering from vehicles and (in Wales only) moving traffic contraventions, as well as appeals arising from road user charging enforcement (including from the Dartford-Thurrock River Crossing, Mersey Gateway Bridge Crossings and the Durham Road User Charge Zone). It is anticipated that from 2021, road user charging appeals arising from charging Clean Air Zones will be determined by the TPT Adjudicators

PATROL represents its member authorities on traffic management issues of mutual interest, whilst also taking into account the motorist's perspective – as seen through appeals to the TPT.

PATROL also promotes best practice in public information to increase understanding of traffic management objectives. This includes the annual PARC (Parking Annual Reports by Councils) Awards held at the House of Commons.

PATROL member authorities comprise each type of local authority and a spectrum of political allegiances – a representative voice on civil traffic enforcement outside London, through the sharing of issues, insight, evaluation and best practice from a broad and diverse geographic area.

(Right) Authority coverage in orange; lighter shade reflects authorities where civil enforcement is not in operation.



PATROL authorities and off-street car park management / enforcement

Most PATROL member local authorities operate off-street car parks in their local areas and the TPT Adjudicators have considerable experience in dealing with appeals relating to car parks and the difficulties that arise.

The difference between local authority off-street car parks and those managed by private operators may not be apparent to motorists, which is why Parking Charge Notices issued by private operators should not be similar in appearance to local authority Penalty Charge Notices.

Most drivers entering a car park do not intuitively recognise whether it is a public or private car park, so confusion between the civil and private schemes often arises.

Civil and private parking schemes: Key similarities and differences

Both the civil and private parking schemes relate to service provision and paid parking, together with common problems caused by poor parking; for example parking in a Blue Badge bay or causing an obstruction. They also share the common purpose of achieving compliance with regulations or contractual conditions.

There is, however, a fundamentally different legal framework upon which of each of the two regimes are predicated.

The public civil enforcement scheme is a regulated penal scheme with prescribed penalties and processes, underpinned by regulations and the Secretary of State's Statutory Guidance. Private car parks, however, are a commercial consumer arrangement, based on contract.

The subsequent important differences between civil and private parking schemes are:

- Local authorities are not currently permitted to use ANPR for enforcement purposes, whereas private operators can.
- A private Parking Charge Notice is a money claim and can become a debt subject to a County Court Judgement (CCJ), whereas a PCN issued by a local authority can be registered at the Traffic Enforcement Centre of the Northampton County Court, but it cannot impact a motorist's credit score.
- Local authorities do not use the civil enforcement scheme to manage trespassing or residential off-street provision, whereas private operators manage facilities for other land-owners.

Consultation Response

Q1. Do you agree or disagree that members of APAs should be required to use a single appeals service appointed by the Secretary of State?

Strongly agree.

Q1.1. Please explain your answer

When using a car park, the general public do not always make the distinction between local authority and privately operated car parks. Whilst civil parking enforcement is set out in statute with associated regulations and statutory guidance, private car parking has had limited accountability to date. PATROL strongly agrees that there should be a single appeals service appointed by the Secretary of State. This will remove the potential for private parking operators to “shop around” for an appeals service that provides decisions more sympathetic to its operations. The fact that a single appeals service would be appointed by the Secretary of State, together with robust oversight by the planned Scrutiny and Standards Board, will help provide assurance to the motoring public of a ‘fresh start’, in terms of independence, consistency and fairness. Improvements to the quality of private parking provision and enforcement will also benefit local authorities, which rely on the availability of such car parks to assist in maintaining the accessibility and vibrancy of town centres.

Q2. Please provide any other feedback on the determination of appeals, including the funding model and features that an appeal service should offer e.g. telephone or in-person hearings, the ability to submit evidence online

Funding Model

With approaching 9 million private parking tickets issued in 2019/20, there are sufficient economies of scale to provide for a respected and accessible appeals service. The fixed costs of running the service could be shared amongst operators in proportion to their scale of operation, i.e. the number of private parking charges each operator issues, each year. The set-up costs could be funded by an annual fee, which could be graded according to the size of the operation. Variable costs could be met based on the number of appeals.

Consideration should also be given to basing the funding model on the one that applies to the Traffic Penalty Tribunal, mainly to apply a small charge for each PCN issued. In the case of private parking, the charge could be applied to an operator’s DVLA application for the registered keeper’s details (VQ4).

Those charges could cover the fixed costs of the appeals service and the Scrutiny and Standards Board, whereas the variable costs could be based on a cost per case paid by the respondent operator. It should be the responsibility for the ATA/APA to collect the payments from their own operators and pass them on to the appeals service.

Features of the appeals service

There should be a requirement for the information about the new appeals service to be clearly explained on the private Parking Charge Notice.

Motorists should have the confidence that individuals appointed to determine their appeal are suitably qualified and trained. In appealing to the new appeals service, it should be clear to motorists that their appeal is being looked at afresh by people who apply the law and consider the facts of the case

A key requirement is for a highly accessible online system, together with appropriate access to assistance for those people unable to appeal online. The PATROL Joint Committee has invested in such a system for the Traffic Penalty Tribunal, with more than 95% of all appeals (against civil penalties issued by local authorities and charging authorities) being submitted online.

An online system should also make it straightforward for the appellant to upload evidence and set out their case. Equally, it should not be onerous for private parking operators to respond to and manage appeals. PATROL's experience is that involving authority respondents in the design of the online appeals system will ensure that they are able to use it effectively, and that it will interact with their internal processing systems.

Such a system should also incorporate ongoing messaging functionality to allow communication between the parties throughout a case. This functionality, which exists in the Traffic Penalty Tribunal system, creates the potential for most cases to be determined without the need for a hearing.

Where a hearing is desirable, the options should include telephone and video hearings. During the COVID-19 pandemic, the use of videoconferencing for professional and social purposes has been prolific, and many appellants will be familiar with this.

Transparency is key to the integrity of and respect for the appeals service. Appellants and private operators should be able to see all the evidence that will be considered as part of the case.

Communication both within the system and the appeal decision should be accessible and use plain English.

The appeals service should report on appeals by operator on an annual basis, to the Scrutiny and Standards Board. Furthermore, each operator should be required to publish the data on the number of parking charges they have issued, how many were appeals at the appeals service and how many have been subject to an application for a County Court Judgment (CCJ).

Q3. Please provide any comments you have on the proposal to enforce the Code by combining the ATA's existing audit procedures with additional safeguards.

Relying on the ATA's existing audit procedures would not inspire public confidence in an improved system. Additional safeguards should aim to provide clarity for the motorist, operator and appeals service. Introducing the requirement for ATA certification schemes to be assessed by the United Kingdom Accreditation Service (UKAS) is helpful.

The proposals for increasing transparency for the ATAs, in terms of the implementation of sanctions against operators who breach the Code of Practice, is vital to counter claims that the ATAs have an interest in preserving their membership.

(See above at Q2.)

Q4. Please outline any alternative means by which the Code could be monitored and enforced. You may wish to cite evidence from other regulatory frameworks which are relevant.

The single appeals service could be asked to report on instances arising in appeals that undermine the operation of the Code. The single appeals service should be able to cancel a Parking Charge Notice if there has been a relevant breach of the Code of Practice. Any breach of the Code of Practice should be reported to the relevant APA/ATA and a quarterly report of those referrals sent to the Scrutiny and Standards Board.

There are examples of other non-statutory regulatory frameworks, for example the Press Complaints Commission and other complaints services coming under the auspices of OFCOM. Also, the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP) may provide useful models for both the appeals service and the Scrutiny and Standards Board.

Q5. Please provide any feedback you have on the proposed governance arrangements for monitoring the new Code of Practice

The proposed Scrutiny and Standards Board will be a key plank in providing assurance to the motoring public. The PATROL Joint Committee has appointed an Advisory Board and finds that the role of independent representatives – whether relating to the experience of motorists or someone with experience of an appeals service – is very instructive. The potential functions of the Scrutiny and Standards Board set out in the consultation are generally robust.

The concept of providing feedback on standards and professionalism is to be commended. The PATROL Joint Committee and Traffic Penalty Tribunal run local authority workshops that examine common issues and aim to promote a “right first time” approach within the principles of the ‘three Es’: Engineering, Education and Enforcement. *Engineering* (e.g. signage) is vital for motorists to understand what is required of them; all forms of communication should be adopted to reinforce this and *educate* the public, while *enforcement* should be seen as a last resort.

In terms of reporting, the Scrutiny and Standards Board should extend the information to include the number of appeals upheld, refused and withdrawn, and also report by ATA. The Tribunal has recently introduced an online portal for appeal statistics, available on its website, which may be considered as an option for the new Board.

Q6. Which parking charge system is most appropriate for private parking? a) the Three-tiered system b) Mirroring the Local Authority system

Neither system is appropriate because parking charges, if pursued through the *Protection of Freedom Act 2012*, relate to a breach of contract or an act of trespass. The local authority system is a public regulatory scheme with a prescribed penal process and procedure. Although the private operators regard their parking charge process as fines and penalties, that is a wholly inappropriate approach.

Although the three-tier system is meant to be helpful, since under the laws of contract the Terms and Conditions (T&Cs) must be set out on the entry sign, three tiers of parking charges – depending on which T&C has been breached – would be impossible for a motorist to absorb and understand.

Q6.1. Please explain your answer. You may, for example, wish to make reference to other deterrent frameworks (for example, for railway tickets or traffic violations)

Civil enforcement provides for higher and lower level penalties. The proposal for having three levels for the private parking scheme may introduce unnecessary complexity for the motorist.

Clarity for the public is key. The concept of a discount for early payment is familiar to both the civil and private scheme.

There can be no true comparison with the deterrent frameworks for railway tickets or traffic violations because those are subject to legislation or bylaws issued under a Statute. Both are public schemes.

Q7. What level of discount is appropriate: 40% as is currently offered in private parking and suggested in the three-tiered system, or 50% as is offered in Local Authority parking? a) 40% b) 50%

50%.

Q7.1. Please explain your answer, including whether the discount should be set at a different level

The concept of a discount for early payment is familiar to both the civil and private scheme, and consistency with 50% would be helpful.

Q8. How should the level of parking charges be set and how should the levels be revised in future?

The civil enforcement scheme penalties are set by the Secretary of State, the Mayor of London, or the Welsh Government. They are underpinned by regulations and statutory guidance issued under Section 87 of the *Traffic Management Act 2004*. The primary purpose of a civil Penalty Charge Notice (PCN) is to encourage compliance with parking restrictions, and enforcement authorities are expected to adopt the lowest charge consistent with a high-level of public acceptability and compliance.

The Secretary of State's Statutory Guidance also cautions:

"Civil parking enforcement provides a means by which an authority can effectively deliver wider transport strategies and objectives. Enforcement authorities should not view it in isolation or as a way of raising revenue."

In the main, the current civil parking PCN charge levels continue to act as a deterrent. The table below sets out the number of PCNs issued by authorities in England (outside London) over the five-year period April 2014 to March 2019.

Period	PCNs issued
Apr 18 – Mar 19	4,733,068
Apr 17 – Mar 18	4,637,310
Apr 16 – Mar 17	4,521,724
Apr 15 – Mar 16	4,252,776
Apr 14 – Mar 15	4,193,588

Over the five-year period, the number of PCNs issued has increased by 13%; however, account needs to be taken of new local authorities commencing civil parking enforcement during the period. Between the two most recent years reported, the increase in PCNs issued was 2%.

This country wide picture reflecting a degree of stability can, however, mask significant local traffic management challenges – some of which have come to the fore during the current pandemic.

Local authorities are required to balance the parking needs of residents, businesses and visitors. This challenge becomes acute when there are high visitor numbers that outstrip the supply of parking. In these circumstances, the current PCN charge levels may not act as a deterrent.

For example, following the easing of lockdown, coastal authorities in areas of high tourism had to resort to using tow-away powers to remove abandoned vehicles, and car parks have been obstructed where the cost of a penalty charge is not regarded as excessive by drivers. Other authorities have received complaints from resident permit holders who have paid for a permit but are unable to find a parking space.

In circumstances where the cost of a PCN – particularly one paid at the 50% discount rate – is acceptable to the public, such as in tourist locations or parking associated with major sporting events, the Secretary of State may wish to provide local authorities with the option to adopt a new higher rate penalty charge of £90 (for 'higher level' contraventions), discounted to £45 in areas where there is very high parking demand. Under this new rate, 'lower level' contraventions would attract £70. Local authorities with less demand for parking could retain the current charge levels.

For local authorities outside London, penalty charge levels are determined by *The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007*. This currently has the effect of restricting the imposition of higher level penalties on contraventions set out within the order determined over a decade ago. This means that, outside London, emerging enforcement challenges cannot be addressed with a higher level penalty.

The Secretary of State is asked to consider adopting the Welsh model of listing higher level contravention types in an Order while publishing the specific contravention codes in guidance.

Private parking is a matter of contract rather than penalty, and private parking operators are private companies, for whom profit must be a motivating factor. The robust procedures for applying for the level of charges where these are higher than the voluntary cap should be mirrored in the proposal for the higher charges in the civil scheme outlined above.

Oversight of private parking charges by the Secretary of State or the Scrutiny and Standards Board would provide assurance to the public.

Q9. Do you agree or disagree in principle with the idea of the Appeals Charter?

Agree.

Q9.1. Please explain your answer

Any initiative that provides clarity for the motorist whilst not fettering discretion, either by the operator or the appeals service, is to be welcomed.

It would be invaluable for the parking industry to publish a charter setting out how they will intend to operate the system fairly and take into account compelling reasons. This reflects the public duty to develop and publish policies.

Q10. Do you agree or not that the examples given in the Appeals Charter are fair and appropriate?

Agree.

Q10.1. Please explain your answer

The examples provided are comprehensive. With respect to the keying error, in both cases the motorist has paid the parking charge, albeit with incorrect details, and it is right that this is recognised.

Q11. Do you agree or disagree that the parking industry should contribute towards the cost of the regulation?

Agree.

Q11.1. Please explain your answer

All the appeals services in the public civil enforcement schemes, together with the governance of the local government committees overseeing the process (London, outside London, Wales, Scotland, Northern Ireland) are funded wholly from the enforcement authorities. There is no reason why the private sector should not wholly fund the processes and services associated with their industry.