



**Westmorland
& Furness
Council**

DECRIMINALISED PARKING ENFORCEMENT

Guidance policies for the enforcement and cancellation of Penalty Charge Notices

The policies provide guidance only

Each case will be considered on its own merits taking into account all of the evidence available

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Glossary of Terms

PCN	Penalty Charge Notice
NtO	Notice to Owner
RTA	Road Traffic Act 2004
CEO	Civil Enforcement Officer
TRO	TRAFFIC REGULATION ORDER Off Street Parking Places Order 2004 (as amended)
W&F	Westmorland and Furness Council
TPT	Traffic Penalty Tribunal

Introduction

The following policy guidance is in respect of Civil Parking Enforcement operated by Westmorland and Furness Council and follows the countywide agreement on parking policy within Cumbria. The policies in this document are intended to inform the public and provide guidance to council employees working in the enforcement of parking regulations.

This is consistent with current best practice and aims to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the Traffic Penalty Tribunal and the Local Government Ombudsman.

They represent a foundation upon which fairness and discretion can be applied. The importance of flexibility in these matters has been recognized by the Courts and, as a consequence, decisions made by councils must not be fettered by being unduly formulaic.

The policies address the following:

- Observation times by CEOs
- The statutory grounds upon which representations may be made
- Mitigating circumstances
- Acceptance or rejection of Representations

It is important to recognize that each case will be considered on its own merits.

These policies will be subject to ongoing review.

1 Contravention codes and recommended observation times

Off-street parking

Code	Description	Observation period
80	Parked for longer than permitted	10 min
81	Parked in a restricted area in a car park	0 min
82	Parked after the expiry of paid for time	10 min
83	Parked in a car park without clearly displaying a valid pay and display ticket or parking clock	10 min
84	Parked with payment made to extend the stay beyond initial time	0 min
85	Parked in a permit bay without clearly displaying a valid permit where required	5 min
86	Not parked correctly within the markings of a bay or space	0 min
87	Parked in a disabled person's parking space without displaying a valid disabled person's badge in the prescribed manner	0 min
89	Vehicle parked exceeds maximum weight or height or length permitted	0 min
90	Re-parked in the same car park within one hour after leaving	0 min
91	Parked in a car park or area not designated for that class of vehicle	0 min
92	Parked causing an obstruction	0 min
93	Parked in a car park when closed	0 min
94	Parked in a pay and display car park without clearly displaying two or more valid pay and display tickets when required	0 min

The Observation period is the time that the vehicle is being observed by the CEO to ascertain whether a parking contravention has occurred or to allow a grace period to enable the driver to return to the vehicle following the expiry time on a pay and display ticket, etc.

2 Statutory grounds to make representations (Part 6 TMA 2004)

2.1 The alleged contravention did not occur

The motorist claims a pay-and display ticket machine was faulty

May accept representation

- if records confirm there was a fault or that the machine was taken out of service
- if there is reasonable doubt i.e. no evidence to confirm machine was working at the time or no other working ticket machine in location

Reject representation

- if there was another ticket machine nearby that was working correctly at the time or there was an alternative means of purchasing a ticket.
- if there are no records showing the machine being faulty or taken out of service
- if there are reasonable doubts i.e. other vehicles show motorists have been able to purchase and display tickets

The motorist claims the restriction is not clearly signed or marked

May accept representation

- if signs and lines are not clearly visible
- if signs and lines are inconsistent with each other or the TRO

Reject representation

- if site visits and photographic evidence can establish the signs and lines are correct and consistent with each other

The motorist claims that the PCN was not served

May accept representation

- if the CEO's notes or photographic evidence do not record PCN is left on vehicle or handed to driver

Reject representation

- if the CEO's notes or photographic evidence show the PCN was correctly served i.e. fixed to vehicle/handed to driver

The motorist claims that their vehicle was not parked in the location at the time and date the PCN was issued

May accept representation

- Following consideration of all the evidence provided by the keeper

Reject representation

- If there is no evidence or the evidence does not support the claim

The motorist claims that a valid authorization to park the vehicle had been issued

May accept representation

- if records show that authorization to park had been issued or relevant proof is provided

Rejected representation

- if the motorist cannot provide proof of authorization or there are no records of authorization being issued
- if the motorist did not park in accordance with the authorization given

The motorist claims a valid pay-and-display ticket was purchased and displayed

May accept representation

- if the motorist produces a valid pay-and-display ticket and the serial number matches the one noted by the CEO when the PCN was issued (CEO's notes or photographic evidence)

Reject representation

- if the motorist is unable to produce a valid pay-and-display ticket that matches the one noted by the CEO when the PCN was issued
- if the motorist has previously had a PCN cancelled under the one strike policy within a two-year period

2.2 I was never the owner of the vehicle in question

The current registered keeper claims that a contracted third party was responsible for the vehicle at the time of the contravention

May accept representation

- when documentary evidence is supplied i.e hire agreement

Reject representation

- in all other circumstances

The motorist claims that they never owned the vehicle

May accept representation

- if DVLA confirms that the motorist was not the registered keeper at the time of the contravention

Reject representation

- if DVLA confirm that the motorist was the registered keeper at the time of the contravention

2.3 I had ceased to be its owner before the date on which the alleged contravention occurred

Where the current registered keeper claims that the vehicle was disposed of before the contravention occurred

May accept representation

- if the current registered keeper can provide proof that the vehicle was disposed of before the date of the contravention i.e letter from DVLA
- if the current registered keeper can provide the full name and address of the person to whom they disposed of the vehicle (NtO will be sent to new keeper)

Reject representation

- if the current registered keeper is unable to provide independent proof they disposed of the vehicle prior to the date of contravention
- if the new keeper details supplied by the current registered keeper do not exist, cannot be traced or are not considered to be bona fide for some reason

2.4 I became its owner after the date on which alleged contravention occurred

The current registered keeper claims that the vehicle was purchased after the contravention occurred

May accept representation

- if the current registered keeper can provide proof that the vehicle was disposed of after the date of the contravention i.e letter from DVLA
- if the current registered keeper can provide the full name and address of the person from whom they purchased the vehicle (NtO will be sent to new keeper)

Reject representation

- if the current registered keeper is unable to provide independent proof they purchased the vehicle after the date of contravention
- if the new keeper details supplied by the current registered keeper do not exist, cannot be traced or are not considered to be bona fide for some reason
- if the previous registered keeper provides proof the motorist purchased the vehicle prior to the date of contravention AND the subsequent registered keeper also supplies proof the motorist disposed of the vehicle after the date of contravention
- if the motorist is proven to have hired the vehicle on the date of contravention

2.5 The vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle with the consent of the owner

The current registered keeper claims that the vehicle has been stolen

May accept representation

- if the registered keeper provides documentary proof i.e. police crime incident number

Reject representation

- if the registered keeper is unable to provide documentary proof of theft of the vehicle

The current registered keeper claims that the vehicle was driven by a third party i.e. friend or relative

May accept representation

- in no circumstances

Reject representation

- in all circumstance (the registered keeper is always liable)

2.6 We are a hire firm and the vehicle was on hire under a hiring agreement and the hirer had signed a statement acknowledging liability for any PCN issued during the hiring period

May accept representation

- if the hire company can provide proof that the vehicle was hired at the time of the contravention (a NtO would be sent to the person named by the hire company)

Reject representation

- if the hire company is unable to prove that they hired out the vehicle on the date of the contravention
- if the person named by the hire company (proof not provided) does not exist, cannot be traced or denies responsibility for the contravention

2.7 The penalty charge exceeded the amount applicable in the circumstance of the case

May accept representation

- if the PCN or NtO shows an incorrect amount

Reject representation

- if the PCN or NtO shows the correct amount

2.8 There has been a procedural impropriety by the enforcement authority

May accept representation

- if the motorist can show that the enforcement authority did not follow the correct procedures as set out in the legislation

Reject representation

- in all other circumstances

2.9 The order which is alleged to have been contravened in relation to the vehicle concerned is invalid

May accept representation

- if the TRO which prescribes the parking restrictions that the vehicle was in contravention of was not constructed correctly (is ultra vires), or was not made correctly (not consulted on properly)

Reject representation

- the TRO, which prescribes the restrictions that the vehicle was parked in contravention of, was constructed and made correctly
- if the motorist considers the restrictions to be unfair

2.10 This notice should not have been served because the penalty charge had already been paid in full at the discounted rate and within the time specified in paragraph 1 (H) of the Schedule to the Civil Enforcement of Parking Contraventions (England) general regulations 2007

May accept representation

- if the motorist provides documentary evidence of payment of the penalty charge within the specified time

Reject representation

- in all other circumstances

2.11 Any other information that the motorist/vehicle owner wants the council to take into consideration

The decision whether or not a PCN should be waived will only be made following very careful consideration taking into account all of the evidence available. Repeat claims of mitigation for subsequent PCNs for the same contravention are unlikely to be cancelled. The one-strike policy is for specific circumstances shown below and means penalties received in similar circumstances will not be cancelled within a two-year period.

3.0 Mitigating circumstances

3.1 The motorist claims to have become unwell whilst driving

May accept representation

- if the motorist can provide proof of a medical condition temporary or permanent, consistent with the conditions described.
- if the notes made by the CEO correspond with the motorist's representation.

Reject representation

- if the motorist cannot provide some proof of a medical condition, temporary or permanent, consistent with the conditions described.
- where other evidence contradicts the motorist.

3.2 The motorist claims to have been a doctor, nurse or health visitor visiting a patient

May accept representation

- if the motorist produces evidence that they were responding to an urgent medical call

Rejected representation

- if the motorist was not attending the patient in urgent circumstances
- if the motorist was parked in an area that does not correspond with the representation made i.e parked far from patient's property

3.3 The motorist stopped to use the toilet

May accept representation

- on production of medical evidence confirming a relevant medical condition and in support of the circumstances described in the representation

Reject representation

- in all other circumstances

3.4 The motorist stopped to collect prescribed medication from a chemist

May accept representation

- only in the most grave and exceptional circumstances where the use of a legal parking place would have caused an unacceptable delay

Reject representation

- in lesser circumstances

3.5 The motorist was a patient visiting a Doctor's surgery

May accept representation

- if the motorist can provide a letter from the doctor to confirm that the visit was very urgent and that they were unable to walk from the nearest legal parking place

Reject representation

- if the motorist was not the patient but only the driver of the vehicle
- if the motorist was attending a pre-arranged, non-urgent appointment
- if the motorist could reasonably have been expected to park legally elsewhere

3.6 The motorist claims to have been recently bereaved

May accept representation

- if no evidence exists to the contrary, taking into account the sensitivity of the issue

Reject representation

- only if there is a significant reason to doubt the representation ie the CEO's notes indicate the motorist was going about a normal day shopping, working
- if the bereavement was considered to be a long time ago

3.7 The motorist was delayed in returning to their vehicle and the parking time had expired

May accept representation

- the motorist's representation claims that the delay in returning to the vehicle was caused by circumstances that were entirely unforeseen, unavoidable and exceptional (appropriate evidence must support this)
- if the motorist's vehicle had broken down (documentary evidence to support this required)
- if the motorist was unable to drive since parking the vehicle (documentary evidence to support this required)

Reject representation

- if the delay described by the motorist was avoidable ie queuing in a shop for a non-essential item
- if the motorist simply under-estimated the parking time required
- if the motorist was unable to drive since parking the vehicle due to excess alcohol in the body or had been detained and charged by the police

3.8 The motorist left the vehicle parked without a valid ticket on display to obtain change

May accept representation

- if the motorist had not left the car park area and a valid ticket was purchased and produced

Reject representation

- if the CEO's notes indicate the motorist returned to the vehicle having completed their purpose for parking ie carrying shopping or left car park area to obtain change
- if a reasonable time to obtain change had been exceeded

3.9 The motorist claims to have been unaware of recent charges or restrictions in the car park relating to the vehicle's class, weight or height

May accept representation

- if car park notices are incorrect or missing
- if tariff information is incorrect or missing

Reject representation

- in all other circumstances

3.10 The motorist claims to have been unaware of a recent tariff rise

May accept representation

- if statutory notices were not erected in accordance with procedural regulations
- if revised tariff is not displayed correctly in car park

Reject representation

- if statutory notices were erected in accordance with procedural regulations
- revised tariff correctly displayed in car park

3.11 The motorist had parked with one or more wheels outside or more wheels outside the markings of a bay or space

May accept representation

- only in the most exceptional circumstances that were out of the motorist's control and supported by incontrovertible evidence
- where photographic evidence is not available
- in no other circumstances

Reject representation

- when clear photographic evidence is available
- when CEO's notes state vehicle out of bay

3.12 The motorist is a Blue Badge Holder/transporting a Blue Badge Holder and they did not have their Blue Badge on display correctly

May accept representation

- if it is established that this is the motorist's first contravention of this type and they provide evidence they are a Blue Badge holder or were transporting a Blue Badge holder (one strike policy)

Reject representation

- if the motorist has previously had a PCN cancelled under the one strike policy
- if the CEO's notes and photographic evidence show that there was no badge displayed in the vehicle

3.13 The motorist was displaying an expired authorisation to park ie permit or Blue Badge

May accept representation

- if the renewal of the authorisation was delayed by the W&F administrative processes (permits only)
- if it can be established that other reasonable unforeseen circumstances delayed the renewal of an authorisation i.e postal disputes (must be supported by documentary evidence)

Reject representation

- in all other circumstances

3.14 The motorist is parked in a disc car park without displaying a valid clock

May accept representation

- if the motorist can provide documentary evidence of a medical emergency

Reject representation

- in all other circumstances

3.15 The motorist assumed that they were entitled to 'a period of grace' prior to a PCN being issued

May accept representation

- in no circumstances

Reject representation

- in no circumstances

3.16 The motorist claims they were attending a funeral

May accept representation

- if no evidence exists to the contrary, taking into account the sensitivity of this issue

Reject representation

- only if significant reasons to doubt the sincerity of the representation
- the CEO's notes state otherwise ie returned to vehicle with shopping bags etc

3.17 The motorist claims that snow, foliage, fallen leaves or flooding covered the lines and signs

May accept representation

- if it can be established from photographic evidence that such conditions prevailed and there was no alternative indication of the parking restriction

Reject representation

- if photographic evidence shows that such conditions did not cause signs and lines to be obscured as claimed
- if the CEO's notes and/or photographic evidence contradicts the motorist's version of events

3.18 The motorist claims that their vehicle had broken down

May accept representation

- if the motorist is able to provide evidence of a breakdown ie proof of vehicle recovery or bill of sale for repair or parts with VAT registration number

Reject representation

- if the motorist is unable to provide evidence of any kind that their vehicle had broken down
- if the CEO's notes contradict the motorist's version of events

3.19 The motorist claims that they were attending an emergency or another vehicle that had broken down

May accept representation

- if the motorist is able to provide proof of the emergency ie a credible report of an accident or incident

Reject representation

- if the motorist is unable to provide evidence of any kind that they were attending an emergency
- if the CEO's notes contradict the motorist's version of events

3.20 The vehicle in question was on police, fire brigade or ambulance duties

May accept representation

- if a senior officer of the service involved supports the representation and there is no reason to doubt that the vehicle was involved in operational duties

Reject representation

- in all other circumstances

3.21 The registered keeper liable for payment of the Penalty Charge Notice is said to have died

May accept representation

- where the circumstances can be confirmed (by sensitive enquiry)

Reject representation

- only if there is significant evidence to doubt the sincerity of the representation

3.22 The vehicle driven by the motorist is diplomatically registered

May accept representation

- in all circumstances

Reject representation

- in no circumstances

3.23 A Council Officer or Elected Member parked in contravention and claims to have been on council business

May accept representation

- if the Council Officer or Elected Member was on council business in the designated car park and has a valid permit (one strike policy)

Reject representation

- if the Council Officer or Elected Member has had a previous PCN cancelled within a two-year period

3.24 The motorist states they were in police custody when the PCN was issued

May accept representation

- if proof is received from the police to confirm that they instructed to motorist to leave the vehicle

Reject representation

- if no proof provided

3.25 The registered keeper liable for payment of the PCN is expected to be absent for a long period time ie living abroad or in prison

May accept representation

- in no circumstances

Reject representation

- in all circumstances

3.26 The motorist claims they were parked on private property

May accept representation

- if land search maps confirm location is private property and therefore not subject to the TRO
- if there is insufficient evidence to establish the exact location of the vehicle

Reject representation

- in all other circumstances

3.27 The motorist claims the details on the PCN are incorrect

May accept representation

- if there is reason to doubt the PCN was not issued correctly. Take into account CEO's notes and photographic evidence

Reject representation

- if the PCN is fully and correctly completed

3.28 The motorist claims they were unaware of enforcement on Bank Holidays/Public Holidays

May accept representation

- in no circumstances

Reject representation

- on all occasions

3.29 The motorist is parked in a car park without a valid permit

May accept representation

- if the motorist provides evidence of the valid permit (one strike policy)
- if the renewal of the permit was delayed by W&F's administrative processes

Reject representation

- if the motorist has previously had a PCN cancelled under the one strike policy within a two-year period

3.30 The motorist is parked in a permit only car park without a valid permit

May accept representation

- if the permit-holder provides evidence of the valid permit (one strike policy)

Reject representation

- if the permit-holder has previously had a PCN cancelled under the one strike policy within a two-year period
- if the motorist is not an authorized permit-holder