

# **CIVIL PARKING ENFORCEMENT**

## **DISCRETION GUIDANCE**



City and County of Swansea  
Dinas a Sir Abertawe

### **GUIDANCE PRINCIPLES FOR THE ENFORCEMENT AND CANCELLATION OF PENALTY CHARGE NOTICES**

***POLICIES SET OUT IN THIS DOCUMENT PROVIDE GUIDANCE ONLY***

***EACH CASE MUST BE CONSIDERED ON ITS OWN MERITS, TAKING INTO ACCOUNT ALL OF THE EVIDENCE AVAILABLE AND THE EXCEPTIONALITY OF THEIR CIRCUMSTANCES***

#### **INTRODUCTION**

The guidance set out in this document is intended to provide guidance to both the public and the council employees working within the Parking Section of the City and County of Swansea Council.

This document represents a foundation upon which fairness, openness, transparency and discretion can be applied. The importance of flexibility in these matters has been recognised by the City and County of Swansea which has empowered employees within the Parking Section to apply this guidance when considering representations and appeals.

This guidance addresses the following:

- The statutory grounds upon which representations may be made.
- The acceptance or rejections of representations.

It is important to recognise that each case will be considered on its own merits, matters of proportionality, objectivity, fairness and reasonableness should be paramount.

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 Appeals Tribunal and the Local Government Ombudsman.

*This guidance will be the subject of ongoing review.*

# STATUTORY GROUNDS TO MAKE REPRESENTATIONS

(Traffic Management Act 2004)

## Important Note:

Although the following are the 9 Statutory Grounds to make representation, in accordance with a directive issued by the Local Government Ombudsman, full consideration will be given and account taken off all representations received, whether or not they fall within the description of “**Statutory Grounds**” (designated with an **SG number hereafter**). It is for this reason that a 10<sup>th</sup> Ground, encompassing any other information the motorist or owner/keeper would like the Council to consider, has been included.

	MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
<b>SG1 The Contravention did not occur:</b>		
SG1. 1 where the motorist claims he/she was loading/unloading.	<p>On a waiting prohibition or in a controlled bay: If evidence is available or provided to show:</p> <ol style="list-style-type: none"> <li>1. Goods being delivered or collected were heavy, bulky or numerous and it would be unreasonable to expect them to be carried from a `legal` parking place.</li> <li>2. Loading/unloading activity was adjacent to the premises concerned.</li> <li>3. Loading/unloading activity was timely (includes checking goods and paperwork, but not delayed by unrelated activity). (source – Traffic Orders, decided cases e.g. Jane Packer Flowers – See Annex 1)</li> </ol> <p>If in the course of business, including commercial delivery/collections, couriers, multi drop parcel carriers, removal services etc.</p>	<p>On school zig zag markings;</p> <p>On bus stop clearways;</p> <p>On Taxi ranks;</p> <p>On Police bays;</p> <p><u>Where loading is prohibited</u> In car parks (except when depositing materials in recycling bins);</p> <p>If a valid pay and display ticket was not purchased first.</p> <p>Designated disabled bays.</p> <p>Doctors bays.</p>

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
SG1.2 where a motorist claims that a parking pay and display machine was faulty.	<p>If service records confirm a fault or that the machine had been taken out of service at the time of contravention.</p> <p>If there is reasonable doubt because evidence is not available to confirm that a machine was working at the time (test ticket) and there was not another ticket machine nearby which was operating correctly.</p>	<p>If there was another ticket machine nearby that was working correctly at the time.</p> <p>If there is no record of the machine being faulty or taken out of service.</p> <p>If there is reasonable doubt because evidence confirms that other visitors had been able to purchase tickets during the relevant period.</p>
SG1.3 where motorist claims that the restriction is not clearly signed or marked.	<p>If signs and/or markings are missing or unclear.</p> <p>If signs and markings are inconsistent with each other and/or Traffic Order or legislation.</p>	<p>If site visit records or photographs establish that signs and/or markings are correct and consistent with each other and the Traffic Regulation Order.</p>
SG1.4 where motorist was carrying out building works.	<p>If evidence confirms that the motorist was simply loading/unloading (see policy SG1.1, above)</p> <p>If valid waiver to park at the location in question had been issued and was on display in the vehicle.</p> <p>If works are of a statutory nature or are exempted from restrictions by a Traffic Order or legislation.</p> <p>If it can be proven that works were an emergency.</p>	<p>In all other circumstances.</p>

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
SG1.5 where motorist claims that the PCN was not served.	No evidence in the Civil Engineering Officers pocket book that the PCN was not correctly served i.e. PCN not handed to driver or fixed to the vehicle.	If the Civil Enforcement Officers notes or photographs confirm that a PCN was correctly served i.e. handed to the motorist or fixed to their vehicle.
SG1.6 where the motorist claims that their vehicle was not parked in the location at the time and on the date alleged on the PCN which was issued.	<p>Following consideration of all available evidence:</p> <p>If the motorist provides a copy of their vehicle excise license (tax disc), which was valid at the time of the contravention, and the serial number of which differs from the number noted by the Civil Enforcement Officer.</p>	<p>If the motorist does not provide a copy of their tax disc, after being given a further opportunity to submit such a copy.</p> <p>OR</p> <p>If the serial number on the copy tax disc provided by a motorist is identical to the serial number noted by the Civil Enforcement Officer.</p> <p>Or</p> <p>If there is no evidence or if the evidence presented does not support the claim or is inconclusive.</p>
SG1.7 where the motorist claims that a valid written authorisation to park, had been issued.	If records show that the motorist holds a valid written authorisation to park.	<p>If the motorist cannot provide a copy of the valid written authorisation to park or if there is no record of any issue of the authorisation.</p> <p>If the motorist did not park in accordance with the authorisation.</p>

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
SG1.8 where the motorist claims that a pay & display ticket was purchased and displayed.	If the motorist produces a Pay & Display parking ticket that was valid at the time the Penalty Charge Notice was issued and the Civil Enforcement Officer confirms that a face down ticket or a ticket that was displayed but concealed in some other way was seen and it is the first contravention of this kind.	If the motorist is unable to produce a valid pay & display ticket. The Civil Enforcement Officer was unable to confirm that a face down ticket or a ticket that was displayed but concealed in some other way was seen. The motorist has made a similar representation before and had a previous PCN cancelled, after giving them the benefit of the doubt; or the Civil Enforcement Officer noted that the motorist obtained their ticket from another motorist in the car park; or where digits have been entered on the face of the ticket and do not match those of the motorist's vehicle registration, subject to some latitude being allowed for errors.
SG1.9 where motorist claims that they were not aware of the contravention until the PCN was serviced on them by post.	If the motorist can prove that the Civil Enforcement Officer had only just begun/not begun the process of writing/entering in the information of the vehicle etc. onto the PCN or into the handheld ticket machine.	If the Civil Enforcement Officers pocket book notes confirm that he/she had was in the process of finishing/finished preparing the PCN and all details of the vehicle had been logged, but had been prevented from serving because the vehicle was driven away.
<b>SG2 The penalty exceeded the relevant amount.</b>		
SG2.1 The penalty exceeded the relevant amount	If the PCN and/or Notice to Owner showed the incorrect amount of penalty charge, i.e. the wrong penalty charge band.	If the PCN or Notice to Owner showed the correct amount of penalty charge.

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
<b>SG3 The Traffic Order was invalid.</b>		
SG3.1 The Traffic Order was invalid.	If the Traffic Regulation Order which prescribes the restrictions that the vehicle was parked in contravention of was either not constructed correctly, i.e. is ultra vires, or was not made correctly, i.e. not consulted on properly.	If the Traffic Regulation Order which prescribes the restrictions that the vehicle was parked in contravention of was constructed and made correctly. If the motorist merely considers the restrictions to be unfair.
<b>SG4 The motorist was not the owner/keeper of the vehicle at the time of the contravention</b>		
SG4.1 where the current registered keeper claims that the vehicle was disposed of before the contravention occurred.	If the current registered keeper is able to provide proof that the vehicle was disposed of before the contravention, i.e. a bill of sale, registration documents, insurance documents or a letter from the DVLA; and /or if the current registered keeper is able to provide the full name and address of the person to whom they disposed of the vehicle. ACTION – send a new Notice to Owner to the person named by the current registered keeper.	If the current registered keeper is unable to prove that they disposed of the vehicle before the contravention or provide the name and address of the person to whom they disposed of the vehicle. If the person named by the current registered keeper as the person to whom they disposed of the vehicle, either does not exist, cannot be traced or is for some other reason not considered to be bona fide.
SG4.2 where the current registered keeper claims that the vehicle was purchased after the contravention occurred.	If the current registered keeper is able to provide proof that the vehicle was purchased after the contravention, i.e. an invoice, registration documents, insurance documents or a letter from the DVLA; and/or if the current registered keeper is able to provide the full name and address of the person from whom they purchased the vehicle. ACTION – send a new Notice to Owner to the person named by the current registered keeper.	If the current registered keeper is unable to prove that they purchased the vehicle after the contravention nor provide the name and address of the person from whom they bought the vehicle. If the person named by the current registered keeper as the person to whom they disposed of the vehicle, either does not exist, cannot be traced or is for some other reason not considered to be bona fide.

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
SG4.3 where the current registered keeper claims that a contracted third party was responsible for the vehicle at the time of the contravention	Only when a hire agreement exists (see policy S6, below) ACTION – send a new Notice to Owner to the person named by the current registered keeper.	In all other circumstances because the registered keeper is always liable, including where the vehicle was left in the care of a garage.
SG4.4 where the motorist claims that they never owned the vehicle.	If the DVLA confirm that the motorist was not the registered keeper at the time of the contravention. ACTION – send a new Notice to Owner to the person named by the current registered keeper.	If the DVLA confirms that the motorist was the registered keeper of the vehicle at the time of the contravention. If the previous registered keeper provides proof that the motorist bought the vehicle before the contravention, or the subsequent registered keeper provides proof that the motorist sold the vehicle after the contravention. If the motorist is proven to have hired the vehicle for the day on which the contravention occurred and signed an agreement to take responsibility for PCN's incurred, subject to the time of hire (see policy S6, below).
<b>SG5 the vehicle had been taken without owner's consent.</b>		
SG5.1 where the current registered keeper claims that the vehicle had been stolen.	If the registered keeper provides a valid police crime report reference number.	If the current registered keeper is unable to provide any proof of theft. If the police crime report reference number provided by the current registered keeper does not exist or it does not match the theft or date of the theft alleged.
SG5.2 where the current registered keeper claims that the vehicle was driven by a third party (i.e. a friend, relative or estranged partner).	In no circumstances.	In all circumstances because the registered keeper is always liable, save for when a hire agreement exists (see policy S6,below).

	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
<b>SG6 the owner is a hire company and have supplied the name of the hirer</b>		
SG6.1 the owner is a hire company and have supplied the name of the hirer.	<p>If the hire company are able to provide proof that the vehicle was hired at the time of the contravention, i.e. a signed agreement. If the hire company are able to provide the full name and address of the person to whom they hired the vehicle.</p> <p>ACTION – send a new Notice to Owner to the person named by the hire company.</p>	<p>If the hire company are unable to prove that they hired out the vehicle on the date of the contravention nor provide the name and address of the person to whom they hired the vehicle.</p> <p>If the person named by the hire company as the person to whom they hired the vehicle, without proof, either does not exist, cannot be traced or denies responsibility for the contravention. If the vehicle was being used as a courtesy car without an agreement signed to accept responsibility for Penalty Charge Notices issued.</p>
<b>SG7 the Civil Enforcement Officer was not prevented from serving the Penalty Charge Notice</b>		
SG7.1 The Civil Enforcement Officer was not prevented from serving the Penalty Charge Notice	<p>If the motorist can prove that the Civil Enforcement Officer was not prevented from serving the PCN and had only just begun/not begun the process of writing/entering in the information of the vehicle etc. onto the PCN or into the handheld ticket machine.</p>	<p>If the Civil Enforcement Officer's pocket book notes confirm that he/she had was in the process of finishing/finished preparing the PCN and all details of the vehicle had been logged, but had been prevented from serving because the vehicle was driven away.</p>
<b>SG8 that there was a procedural impropriety on behalf of the authority.</b>		
SG8.1 that there was a procedural impropriety on behalf of the authority.	<p>Failure by the City &amp; County of Swansea to observe any requirement imposed on it by the TMA or TMA regulations in relation to the imposition or recovery of a Penalty Charge Notice.</p>	<p>If the current procedures have been implemented and carried by the City &amp; County of Swansea.</p>



	<b>MAY ACCEPT REPRESENTATIONS</b>	<b>MAY REJECT REPRESENTATIONS</b>
<b>SG9 Penalty Charge Notice was paid, either in full or at discount rate within discount period</b>		
SG9.1 Penalty Charge Notice was paid, either in full or at discount rate within discount period	If records show that payment has been received by the City & County of Swansea either in full or discounted.	No records of any payment are found.
<b>SG10 Any other information that the motorist/vehicle owner want the City &amp; County of Swansea to take into consideration.</b>		
SG10.1 Any other information that the motorist/vehicle owner want the City & County of Swansea to take into consideration.	The decision whether or not a Penalty Charge Notice should be cancelled, will only be taken following very careful consideration taking into account all of the evidence available.	