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Penalty Charge Notice Case Manual.

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PENALTY CHARGE NOTICE CASE MANUAL

INTRODUCTION

This manual is intended to cover the majority of the circumstances that regularly occur in letters, representations or appeals to the Adjudicators. It is not intended to be a guide to processing Penalty Charge Notices, nor to replace knowledge of the regulations and Council's policies and practices, but to provide a reference manual for common situations that arise in letters, representations and appeals.

Detailed advice for handling correspondence and representations is given in the Penalty Charge Notice Processing Guide, and this manual is intended to supplement that guide, as well as forming the basis for individual decisions to be made.

It includes legal information and general information about each subject, together with notes regarding Adjudication cases where the Appeals Services have listed the cases as dealing with common or important issues which may offer useful guidance on similar cases. An explanation of the rulings in each case has been given where it is especially pertinent; otherwise the cases have been listed for guidance and referral if necessary. All Adjudication cases can be found on the PATAS and the Traffic Penalty Tribunal web-sites, www.parkingandtrafficappeals.gov.uk, and www.trafficpenaltytribunal.gov.uk. The cases are grouped into topics but can be searched for on a number of features, including the case name.

This manual also indicates good practice and what Councils generally do in similar circumstances. It has also been amended to include the Council's own policies on dealing with cases.

However, it is important to stress that just as a Council has the power to decide whether or not to issue a Penalty Charge Notice, it also has the power to decide whether or not to pursue payment of that Notice. Council officers considering appeals against parking tickets act in a quasi-judicial manner and nothing in this manual is intended to act as a definitive instruction on what action to take in all circumstances. The duty of a Council officer to use discretion may take precedence over any guidance given in this manual if the circumstances warrant the exercise of that discretion.

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BROKEN DOWN VEHICLES

A broken down vehicle that cannot be moved is covered by the exemptions contained in Traffic Regulation Orders. Claims of alleged breakdown should be accepted if they appear to be unavoidable and if supporting evidence in the form of one of the following has been produced -

- a) A garage receipt, on headed paper, properly documented.
- b) A till receipt for purchase of seemingly relevant spare parts purchased on or about the date of the contravention.
- c) A confirmation letter from the AA, RAC or other motoring organisation.
- d) The civil enforcement officer has noted in the pocket or on the hand held computer that the vehicle had obviously broken down.

The main areas of contention associated with the alleged breakdown of vehicles are listed below with guidelines on how the enquiry should be dealt with.

Removal of Vehicle by a garage or break-down service.

It should be noted that if a vehicle is broken down, the driver cannot leave it indefinitely before arranging for it to be removed. Generally, the driver is expected to arrange for the vehicle to be removed within 24 hours – if the vehicle cannot be removed within this time, we should expect to see some evidence that the driver has contacted the breakdown service or garage.

Flat Battery

A receipt for the purchase of a new battery or for parts, which could cause a flat battery, should be requested. Normally a faulty alternator, solenoid or fan belt would cause a flat battery. If no evidence is forthcoming, the Penalty Charge Notice should be upheld.

In cases where it is alleged that the vehicle was bump/jump started and no other evidence is received, the Penalty Charge Notice should be upheld.

Consideration should also be given as to how the vehicle came to be illegally parked before it failed to restart.

Flat Tyre

The Penalty Charge Notice should be upheld unless there is a good reason why the driver could not change the tyre i.e. the driver is elderly, infirm or disabled, or where the breakdown services were called because of mechanical difficulty.

Overheating

Where it is claimed that the vehicle had overheated due to lack of water, the Penalty Charge Notice should be upheld unless there is evidence of a mechanical failure i.e. a broken fan belt, faulty radiator/hose.

Consideration should not be given to any claims that the vehicle had overheated through heavy traffic or hot weather.

Running out of petrol

Unless the driver has provided evidence that the vehicle ran out of fuel due to an electrical or mechanical fault, the Penalty Charge Notice should be upheld.

IF IT IS APPARENT FROM PREVIOUS CASES THAT A PARTICULAR DRIVER IS USING THE ALLEGED BREAKDOWN OF A VEHICLE IN ORDER TO PARK IN CONTRAVENTION OF THE REGULATIONS, THIS SHOULD BE TAKEN INTO CONSIDERATION WHEN DECIDING WHETHER OR NOT TO CANCEL OR UPHOLD THE PENALTY CHARGE NOTICE.

THIS ALSO APPLIES WHERE FREQUENT CLAIMS ARE BEING MADE FROM A PARTICULAR GARAGE AND THE VEHICLES CONCERNED WERE PARKED IN THE VICINITY OF THE GARAGE PREMISES AS THEY ARE LIKELY TO BE VEHICLES THE GARAGE IS REPAIRING.

In adjudication Case *Mr. B –v- Manchester City Council*, the garage invoice submitted by the appellant did not give the full correct registration number of the vehicle. The Adjudicator accepted this was an error on the part of the garage and the vehicle in question was broken down at the time.

COURT DELAYS

Any requests for cancellation of a Penalty Charge Notice from police officers, solicitors, barristers, witnesses or members of the public who have been delayed because a court hearing was delayed or took longer than expected should not be allowed.

However, consideration should be given to a member of the public who appears in court and is unable to return to the vehicle because he or she has been sent to prison. In these circumstances the Penalty Charge Notice should be cancelled provided that proof has been supplied.

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ELECTRICITY BOARDS/COMPANIES

Electricity Board/companies are not automatically exempt from the regulations (see section on Exempt Vehicles for more information), and often make arrangements for bay(s) to be suspended if they are working in the area.

The electricity companies often display a board in the vehicle when engaged on emergency work and in these circumstances there may not always be time to arrange a suspension. The Penalty Charge Notice should be cancelled providing that the circumstances are explained in a letter from the Area Manager. This should clearly state that the driver was dealing with an emergency situation.

If abuse is suspected, the civil enforcement officer who issued the Penalty Charge Notice should have made a note if the vehicle was unattended and there was no sign that work was being carried out and in these circumstances the Penalty Charge Notice should be upheld.

Consideration should not be given for electricity operatives carrying out routine maintenance to electricity appliances or meter reading.

PAY AND DISPLAY BAYS

These are bays which are controlled by a pay and display machine, which will usually cover several bays in the road. Car parks will also be controlled by various types of pay and display machine. Although the types of machine may differ, the regulations regarding paying and displaying, whether on street or in a car park are generally similar.

A driver using a pay and display machine is required to have sufficient change available to get out of the car, walk to the machine, and insert coins. No time is allowed to go for change, and this has been upheld by Adjudicators.

The Traffic Regulation Orders usually require that the pay and display ticket be purchased in one operation (the driver cannot stay in the same bay and purchase a further ticket if he subsequently realizes he has not paid enough, or wishes to stay longer than allowed by the original ticket - 'meter feeding').

However, where a driver has purchased two tickets due to a problem with the first ticket, such as coins not registering properly, providing that the total amount paid was sufficient to cover the length of time parked, the PCN should be cancelled on the first occasion only.

A pay and display ticket must be clearly displayed on the vehicle so that it can be seen easily by a civil enforcement officer. Drivers often claim that they had a pay and display ticket, but that it fell off the windscreen. If they do not produce a ticket covering the time they were parked, the Penalty Charge Notice should be enforced.

However, if they do send a valid ticket, it is usual practice to cancel the ticket on one occasion only, but not on any subsequent occasions.

Faulty Machines.

Where a driver claims that a machine is not functioning properly, and this is confirmed by maintenance records, the Penalty Charge Notice must be cancelled.

Where the driver has reported a fault to the civil enforcement officer (either verbally or by way of a note on the vehicle) the officer should make arrangements for the machine to be checked. If this has not been done, the Penalty Charge Notice should be cancelled.

The Adjudication cases that apply to purchasing and displaying a ticket are –

Baker –v- Westminster City Council

The Adjudicator confirmed the requirement not just to purchase a pay and display ticket, but to display it properly on the vehicle.

Mayor –v- London Borough of Camden

It was confirmed that a driver cannot leave the vehicle to get change for the machine.

Mr. H –v- Manchester City Council

The pay and display ticket was flimsy and did not have any means to affix it to the windscreen. The driver could not therefore ensure that it was displayed at all times while the vehicle was parked.

With regard to faulty machines –

Mr. M –v- Manchester City Council

Mr. M wrote to the Council after receiving a Penalty Charge Notice, complaining that the machine (in this case a parking meter) was faulty. The Council claimed that it was not, but did not produce any maintenance records to the Adjudicator. In the absence of this evidence, the case was allowed.

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