

PARKING ENFORCEMENT POLICY: OBSERVATION PERIODS

Cabinet Member(s)	Cllr Eddie Lavery
Cabinet Portfolio(s)	Residents' Services
Officer Contact(s)	Beth Rutherford, Place Directorate
Papers with report	Appendix 1: Observation Times

HEADLINES

Summary	This report seeks approval to change the Council's Parking Enforcement Policy relating to observation periods before a Penalty Charge Notice (PCN) is issued and to pursue Vehicle Drive Away or Prevented from Issue PCNs.
Putting our Residents First Delivering on the Council Strategy 2022-2026	This report supports our ambition for residents / the Council of: Live active and healthy lives This report supports our commitments to residents of: Safe and Strong Communities
Financial Cost	There is a cost of £5k to carry out the required configuration changes to the Penalty Charge Notice processing system.
Relevant Select Committee	Residents' Services Select Committee
Relevant Ward(s)	All Wards

RECOMMENDATIONS

That the Cabinet:

- 1) **Agrees to change the observation times before a Penalty Charge Notice is issued as per Appendix 1: Observation Times.**
- 2) **Agrees to implement the enforcement of Vehicle Drive Away and Prevented from Issue Penalty Charge Notices, permitted under the Traffic Management Act 2004 (as amended).**

Reasons for recommendation

Enhanced enforcement of traffic management regulations will improve compliance with those regulations, improve road safety and contribute to ensuring the traffic on the highways network is kept moving.

The proposed changes to observation times are to encourage drivers to actively choose to park legally instead of illegally parking during the Council's current observation time. The enforcement of Vehicle Drive Away (VDA) and Prevented from Issue (PFI) Penalty Charge Notices (PCNs) will also penalise those drivers that choose to park illegally and obstruct the issue of a PCN.

Alternative options considered / risk management

An alternative option is to not implement these changes; however, this would not enhance compliance by motorists.

Under the parking enforcement powers within the Traffic Management Act 2004 (as amended) the Council is entitled to enforce VDA and PFI PCNs. Contraventions requiring a constant observation time are recommended to have an observation period so that the Civil Enforcement Officer can establish if an exemption applies before a PCN is issued. There is no set time in legislation for an observation time although guidance refers to five minutes being generally accepted.

Democratic compliance / previous authority

No previous decision has been made regarding the observation times. In addition, the powers to enforce VDA and PFI PCNs have been available since 2004 but not implemented.

Select Committee comments

None at this stage.

SUPPORTING INFORMATION

Background

1. The Council is responsible for the management of parking, moving traffic and bus lane restrictions on adopted highways and in car parks across the borough. Enforcement of parking restrictions is mainly carried out by Civil Enforcement Officers (CEOs) provided by the Council's contractor, APCOA Parking UK Ltd. School Keep Clears and Bus Stops are also enforced by CCTV cameras. Moving traffic and bus lane restrictions are enforced by CCTV.

Vehicle Drive Away and Prevented From Issue

2. Under the Traffic Management Act 2004, Parking Services may pursue the issue of a PCN if a vehicle is driven away before it can be served, or if the driver prevents the PCN from

being issued (due to aggressive behaviour). These are known as Vehicle Drive Away (VDA) and Prevented from Issue (PFI).

3. The Council does not currently pursue these PCNs and, therefore, if a VDA or PFI PCN is currently issued it is cancelled and consequently the driver does not receive any retribution for their action. In 2022, 76 PFI and 97 VDA PCNs were not pursued. Between January and August 2023, 21 PFI and 117 VDA PCNs had also not been pursued.
4. It is therefore proposed that the Council adopts the permitted issuing of VDA and PFI PCNs under the Traffic Management Act 2004 (as amended). The statutory process of a VDA/PFIs would be to instantly request DVLA keeper details. Once received, a PCN is issued by post. Under legislation, those in receipt of the PCN will still be offered the discount period and be able to make formal representations against the PCN.

Observation Times

5. There are three types of observation times: Instant, Constant and Casual. An instant observation is for high level offences where no exemption applies. A constant observation time is where an exemption may apply and therefore CEOs need to observe the vehicle to establish if an exemption does apply. A casual observation period applies to offences whereby time limits apply, for example a 20-minute free bay. A casual observation period is followed by a constant observation period.
6. The Code of Practice on Civil Parking Enforcement issued by London Councils states that “five minutes is the generally accepted period of observation”. This is however advisory and not required in legislation.
7. The Council currently provides a five-minute observation period across all constant parking offences. Instead of parking legally, some drivers instead choose to park illegally for these five minutes before driving away. This causes inconvenience to other road users and does not drive compliance of parking restrictions.
8. A review of neighbouring boroughs identified that Hounslow has a three-minute observation period and Ealing a two-minute observation period. Harrow does not openly advertise its observation period.
9. To improve compliance with parking regulations within the borough, Appendix 1 sets out proposed changes to observation times based of the type of offence taking place.

Financial Implications

This report recommends the adoption and implementation of VDA and PFIs PCNs under the Traffic Management Act 2004 (as amended) and changes to the observation times provided before a PCN is issued.

Costs associated with system configuration changes to implement the VDA and PFI statutory process and revisions to the observation times are estimated at £5k. Depending on the offence committed, PCNs are issued at either £110 or £60, reduced to £55 or £30 if paid within 14 days Based on recent volumes of instances of VDAs and PFIs, as referenced in paragraph 3 above,

and the discount rate of £55, c.£10k of income would be generated annually via pursuing such PCNs (sufficient to cover the initial reconfiguration costs).

If approved, the actual impact of this - and the proposal to amend observation times - would be tracked closely as part of the monthly monitoring cycle. Any requirement for budgetary realignment will be considered as part of the Council's ongoing MTF process. However, whilst there may be an uptick in the number of PCNs issued and associated income in the short term, these would be expected to then reduce as both awareness levels and adherence to the restrictions increase.

RESIDENT BENEFIT & CONSULTATION

The benefit or impact upon Hillingdon residents, service users and communities

Road safety would be improved and traffic congestion reduced, by deterring motorists from undertaking unsafe manoeuvres or causing obstructions as they will become aware that enforcement action will be taken against them.

Effective enforcement of the traffic regulations will assist in improving air quality, helping to reduce carbon levels and making the local environment more pleasant for pedestrians.

Consultation carried out or required

No specific consultation has been carried out or is required in respect of undertaking enforcement of the parking and traffic regulations, but parking and traffic management regulations are consulted on before they are introduced. In addition, a number of parking regulations are specific within the Highway Code.

CORPORATE CONSIDERATIONS

Corporate Finance

Corporate Finance have reviewed this report and concur with the Financial Implications set out above, noting the recommendations to agree to change the observation times before a Penalty Charge Notice is issued and implement the enforcement of Vehicle Drive Away and Prevented from Issue Penalty Charge Notices, with these changes expected to yield additional income that will be considered as part of the refresh of the Council's budget strategy, noting the expectation that income yield will reduce in the medium term.

Legal

As the Council is the civil enforcement authority for parking and traffic contraventions in the Hillingdon area, Legal Services confirm that the Council is responsible for the functions addressed in this report pursuant to regulations 5 and 10 of the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022, which were made under the Traffic Management Act 2004 and the London Local Authorities and Transport for London Act 2003.

Regulation 10 covers vehicle drive away (VDA) and prevented from issue (PFI) penalty charge notices (PCNs). These are PCNs that can be served by post, typically within 28 days of the contravention date (exceptions apply as stated in regulation 10(7)-(8)). Such PCNs may be served by the Council where civil enforcement officers (CEOs) have:

- (i) attempted to give a PCN under the normal regulation 9 procedure, which involves affixing the PCN to the vehicle or handing it to the person who appears to be in charge of the vehicle, but have been prevented from doing so by any person; or
- (ii) begun preparing to give the PCN under the regulation 9 procedure, but the vehicle has driven away from the relevant place it was parked in contravention.

VDA and PFI PCNs must meet the rules set out in the 2022 Regulations. This includes a requirement for them to be served on the person appearing to be the owner of the vehicle involved, and to include various particulars prescribed in paragraph 3 of Schedule 2 and the information about appeals set out in regulation 3(2) of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022.

Pursuant to regulation 24, charges attached to PCNs in London continue to be those determined by a joint committee of the London boroughs. An account of all income and expenditure relating to Traffic Management Act 2004 parking contraventions must be maintained according to regulation 25. The Council must adhere to these provisions.

Observation times prior to PCN issue are a risk-managing mechanism and a matter of policy for the Council to satisfy itself that there has been a contravention that is not exempt. An observation time sufficient to the offence in question may assist CEOs in establishing whether an exemption to enforcement applies and work as evidence to rebut any assertions that the vehicle was exempt. The content at paragraph 7 - 9 of this report and in Appendix 1 suggests that an exercise has been undertaken to evaluate a proportionate enforcement time for each offence in order to strike a balance that allows the opportunity to check whether an exemption exists whilst avoiding contraveners escaping due enforcement.

Provided that the various rules and regulations cited above are complied with, Legal Services confirms that there are no legal impediments to following the recommendations set out in this report, namely changing observation times before a PCN is issued as per Appendix 1 and implementing VDA and PFI PCNs.

As an overarching general consideration, pursuant to section 87 of the Traffic Management Act 2004, the Council and its CEOs must continue, in connection with civil enforcement of traffic contraventions, to have regard to the statutory guidance issued by the Department for Transport.

BACKGROUND PAPERS

NIL