



London Councils' Transport & Environment Committee

Thursday 12 October 2017

Supplementary Agenda

2.30pm in the Conference Suite, London Councils, 59½ Southwark Street, London SE1 0AL

Labour Group: Meeting Room 4 at 1.30pm

Conservative Group: Meeting Room 1 at 1.30pm

Contact Officer: Alan Edwards

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Supplementary Agenda Papers	
1	Revised Agenda
11	Assisted Transport Allowances
12	Code of Practice for Parking Enforcement Part 2

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Contact Officer: Alan Edwards
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Agenda Items	
1	Apologies for Absence and Announcement of Deputies
2	Declarations of Interest*
3	Mayor's Environment Strategy – Introduction by Shirley Rodrigues, Deputy Mayor for Environment, GLA
4	Response to Mayor's Draft Transport Strategy – Val Shawcross, Deputy Mayor for Transport, GLA, will be available to answer any questions
5	Local Implementation Plan Guidance Response – Val Shawcross will be available to answer any questions.
6	Flooding Investment in London & introduction of the new Chair of the Thames Regional Flood & Coastal Committee
7	Chair's Report
8	GLC Parks Byelaws – Setting Penalty Levels
9	Proposed Freedom Pass Settlement Adjustment for Rail Network Disruption
10	Direct Vision Standard for Heavy Goods Vehicles

11	Assisted Transport Allowances	
12	Code of Practice for Parking Enforcement Part 2	
13	TfL Consultation on Penalty Charge Levels	
14	Re-Appointment of Environment & Traffic Adjudicators	
15	Environment & Traffic Adjudicators' Annual Report 2016/17	
16	TEC Constitutional Matters	
17	Minutes of the TEC Executive Sub Committee held on 15 September 2017 (for noting)	
18	Minutes of the TEC Main Meeting held on 15 June 2017 (for agreeing)	

Declarations of Interest

* If you are present at a meeting of London Councils' or any of its associated joint committees or their sub-committees and you have a disclosable pecuniary interest* relating to any business that is or will be considered at the meeting you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting, participate further in any discussion of the business, or
- participate in any vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

It is a matter for each member to decide whether they should leave the room while an item that they have an interest in is being discussed. In arriving at a decision as to whether to leave the room they may wish to have regard to their home authority's code of conduct and/or the Seven (Nolan) Principles of Public Life.

*as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

If you have any queries regarding this agenda or are unable to attend this meeting, please contact:

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London Councils' Transport and Environment Committee

Assisted Transport Allowances

Item No: 11

Report by: Joyce Mamode **Job title:** Head of Passenger Services, TfL
Date: 12 October 2017
Contact Officer: Joyce Mamode
Telephone: 020 3054 4358 **Email:** Joyce.mamode@tfl.gov.uk

Summary:

This report informs the Committee of the outcome of a recent London Assembly investigation into improving door-to-door services in London and the recommendations made by the Assembly in their subsequent report *Door-to-door transport in London – Delivering a user-led service*. It proposes London Councils' involvement in scoping a pilot of the Assisted Transport Allowances concept, put forward for consideration by Transport for London (TfL) in response to the recommendations made by the Assembly, in advance of a more detail proposal to be put to the Committee at its December 2017 meeting.

Recommendations: Members are asked to:

1. Endorse the outline proposed objectives and scope for a pilot of Assisted Transport Allowances in two London boroughs;
2. Agree to the participation of London Councils in a joint steering group with TfL to develop the detailed scope of the proposed pilot during October and November 2017;
3. Note that TfL will provide the majority of resources required to undertake the data analysis and modelling required to scope the pilot with subject matter expertise provided by London Councils staff;
4. Note that an update on the proposed pilot together with a more detailed proposal will be presented to the Committee at its December meeting.

Introduction

1. In April 2017 the London Assembly Transport Committee published its fourth report into London's door-to-door services (Dial-a-Ride, Taxicard, Capital Call, community transport and NHS patient transport), calling for greater integration, flexibility and choice for its users. The Deputy Chair of the Committee Keith Prince who led the Assembly's investigation, noted in the final report that whilst progress had been achieved towards integration as outlined in TfL's Social Needs Transport roadmap, endorsed by TEC in October 2015, the roadmap has 'not been implemented with any sense of urgency'.
2. The London Assembly called for faster progress towards the long term goal of greater integration between door to door services from a customer perspective and greater co-ordination and co-operation between the service funders, managers and providers who include both TfL and London Councils. In addition, the Assembly made a case for exploring the opportunities that a form of personal budgets might bring to creating a more customer friendly door-to-door offering in London, giving service users the ability to exert greater choice over where, when and how they travel.

The London Assembly recommendations

3. The London Assembly report made two recommendations, both of which were directed at TfL:

Recommendation 1

TfL should set out a timed plan for implementation of its roadmap towards integration of door-to-door services. In view of the slow progress since the Committee's last report, TfL should also provide written progress reports to the Committee every six months for the remainder of this Mayoral term. We ask that TfL write to the committee by the end of July 2017 setting out its response to this recommendation.

Recommendation 2

TfL should explore the feasibility of introducing a system of personal budgets to an integrated door-to-door service, with a timed action to do this added to the service integration plan. This work should be carried out with a view to introducing a pilot scheme in a London borough to test the concept. We ask that TfL write to the committee by the end of July 2017 setting out its response to this recommendation.

TfL's response

4. In response to the Assembly's first recommendation, TfL noted the ongoing work that has been done in partnership with London Councils on the joint tendering of the taxi and private hire contracts that contribute to London's door-to-door services. The joint procurement of the taxi and private hire supply for Taxicard, Capital Call and a proportion of Dial-a-Ride journeys will deliver a common set of quality and performance standards across all three of these services helping to ensure a common journey experience for customers. TfL also noted the intention of the TfL/London Councils partnership to continue working towards the aim of further integration from a customer and delivery perspective, building on the joint procurement exercise.

5. Also in response to the first recommendation, TfL agreed that six monthly progress reports would be provided to its Customer Service and Operational Performance Panel (CSOPP), chaired by TfL board member Dr Mee Ling Ng OBE and shared by CSOPP with the London Assembly.
6. In response to the Assembly's second recommendation, TfL noted that the Assembly themselves had recognised that there were a number of risk and challenges associated with personal budgets and their potential application in the context of door-to-door services. Those risks and challenges echoed points raised by London Councils in their submission to the London Assembly investigation that preceded the April 2017 report and included:
 - the potential difficulty that some service users might experience in managing a personal budget, which can be addressed only with the support of London Councils and local boroughs;
 - financial risks if higher usage increases overall costs;
 - a need to determine the level of personal budget allocated to each individual
 - a need to prevent potential fraudulent use.
7. TfL argued in their response to the Assembly's recommendations that the potential benefits of a form of personal budget warranted a further examination of the ways in which these challenges might be overcome.
8. TfL proposed to run, in partnership with London Councils and two London boroughs, a small pilot to test the concept of Assisted Transport Allowances in order to examine these issues further, as well as to examine how Assisted Transport Allowances might help deliver some of the aspirations of the draft Mayor's Transport Strategy for improving transport for older and disabled Londoners alongside greater financial efficiencies.
9. The outline proposal is to use the approved supplier frameworks in place to deliver journeys for Taxicard, Capital Call and Dial-a-Ride taxi element, with pilot participants able to use their virtual cash budget to 'purchase' journeys from these approved suppliers.
10. Preliminary work on the proposed pilot by TfL has identified a longer term potential for the Assisted Transport Allowance concept to provide a way in which third party organisations, such as the NHS, could integrate the assisted transport services they fund with other assisted transport services, bringing long called for customer improvements.

The Mayor's Transport Strategy

11. The draft Mayor's Transport Strategy (MTS) sets a general direction of travel for TfL in respect of assisted travel in all its forms; aimed at delivering greater reliability, convenience and flexibility of specialist door-to-door services alongside better integration of those services with mainstream public transport such as buses and the Underground.
12. The draft MTS states that:

“There is a growing need to deliver a reliable, convenient service for older and disabled Londoners who require door-to-door transport....As transport patterns change it is increasingly important that social needs transport services become more flexible. The Mayor is considering ways in which they could be better integrated with other public transport services, while maintaining the financial concessions their users need” (p . 129).

13. Based on the principles set out in the draft MTS whilst being mindful of the challenges highlighted by London Councils in their response to the London Assembly investigation, TfL are proposing to work with London Councils to develop and test a variant of personal budgets that might be suited to the door-to-door context in London.

Assisted Transport Allowances

14. The principle behind the concept of an assisted transport allowance is the combination of the best aspects of the Taxicard and Capital Call schemes to create a new way to access door to door services that is more user friendly and flexible, particularly in respect of users’ ability to access longer distance journeys as well as a broad range of vehicles.

	Advantages	Disadvantages
Taxicard	Popular and valued amongst existing users ¹ Good supply of wheelchair accessible vehicles	Difficult to undertake longer distance journeys (subsidy limit per trip, double swiping not available in all boroughs) ²
Capital Call	Perceived to provide good value for money by users ³ Choice and flexibility over long distance journeys	Poor supply of wheelchair accessible vehicles (PHV only) Only available in a restricted number of boroughs

15. An assisted transport allowance is a single, virtual cash purse, provided to each eligible individual to use to ‘purchase’ journeys with a set of approved suppliers of door to door services.
16. The proposed pilot would test the concept of an assisted transport allowance with a small number of users in the trial boroughs, alongside the promotion of other assisted transport services such as travel mentoring and information and advice about the options available

¹ London Taxicard consultation summary report, London Councils, July 2017.

² Taxicard Usage Review, London Council, February 2016.

³ Capital Call users report, TfL/Future Thinking, May 2017.

for mainstream travel for whole or part journeys (e.g. using door to door to access an accessible Underground station or a bus stop).

17. The Dial-a-Ride service would be out of scope for the trial, as it would serve as a 'safety net' for any participants who found it difficult to manage their allowance during the trial. Participants would be offered automatic registration for Dial-a-Ride as a supplement to the journeys available through their assisted transport allowance and potential journeys they might chose to switch onto mainstream transport modes.
18. Detailed scoping work needs to be carried out, including predictive usage modelling, to determine an appropriate level to set the annual virtual budget that could be offered, based on available funding.
19. This scoping work would also have to consider:
 - a. How the pilot will be funded;
 - b. How participants will be selected;
 - c. How journeys will be supplied to participants;
 - d. How the results will be evaluated;
 - e. How the pilot would impact on participants pre-existing Taxicard and Capital Call budgets.
20. It is proposed that a steering group, involving representatives from TfL and London Councils will meet every two weeks to help address these questions, with a view to bringing a more detailed proposal to the next TEC meeting in December.
21. The proposed objectives of the pilot are attached in Appendix 1.

Recommendations

Members are asked to:

1. Endorse the outline proposed objectives for a pilot of Assisted Transport Allowances in two London boroughs;
2. Agree to the participation of London Councils in a joint steering group with TfL to develop the detailed scope of the proposed pilot during October and November 2017;
3. Note that TfL will provide the majority of resources required to undertake the data analysis and modelling required to scope to project, with subject matter expertise provided by London Councils staff;
4. Note that an update on the proposed pilot together with a more detailed proposal will be presented to the Committee at its December meeting.

Appendix 1 – Objectives of proposed Assisted Transport Allowances pilot

	Strategic	Customer	Operational	Commercial	Financial	Technology & Data
Aim:	To develop and test a new framework for assisted transport services that improves choice, flexibility and usability and also encourages use of public transport, in line with objectives of draft Mayor's Transport Strategy	To reduce unnecessary restrictions embedded into current Taxicard and Capital Call customer propositions and expand customers' horizon of perceived choices.	To develop cost effective means of allocating limited assisted transport resources that also gives customers visible choices between services.	To establish a framework through which individuals or third party organisations can potentially financially support assisted transport journeys in the longer term.	To understand the financial models and mechanisms required to support virtual cash assisted transport allowances and modal shifts towards public transport.	To create a customer centric admin system from which data can be easily recorded for future planning purposes.
Rationale	'The draft Mayor's Transport Strategy calls for assisted transport services to become more flexible, and convenient for its users and better integrated with other public transport services.	Create more choice and flexibility over transport decisions for customers facing accessibility challenges whilst also retaining safeguards for the most vulnerable customers.	Trial new mechanism through which to operate a virtual cash based assisted transport allowance as a means of resource allocation.	To provide a way to capture financial contributions in the future from other authorities where appropriate (e.g. NHS transport; social services).	Inform future budget allocation, cost apportioning and management models.	Reporting and analytics to inform future planning of assisted transport services, public transport and potential commercial partnerships.
Questions answered/ concerns addressed	How to deliver more customer choice, flexibility, ease of use and strategic modal shift whilst remaining cost neutral through more efficient delivery and administration.	To what extent are customers able to choose? Is sufficient choice being offered? What information do customers need to make informed choices?	Can we enable more efficient customer choices between assisted transport and mainstream transport to be made available through operating assisted transport allowances?	Are other authorities interested in 'topping up' virtual cash purses to cover additional transport requirements?	How can we meet customer needs whilst also ensuring good financial management for funders?	Balance between preventing fraudulent activity and making services easy to use.
Measures/ metrics:	Stakeholder and delivery partner feedback measured against objectives of Mayor's Transport Strategy. Customer satisfaction ratings and use of public transport before and after pilot.	Analysis on changes in demand/ modal choices from baseline.	Analysis on changes in demand/ modal choices from baseline.	Feedback from individuals and other authorities on level of interest in buying into framework – during and at end of pilot.	Number of users over-spending/ under-spending their allocated budgets and number of users requesting advances. Modal shifts towards public transport.	Ease of use of proposed solution for customers and of data created for planners to extract relevant information.

London Councils' Transport & Environment Committee

Code of Practice on Civil Parking Enforcement (Part 2)

Item No: 12

Report by: Andrew Luck

Job title: Transport Manager

Date: 12 October 2017

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Summary: One of TEC's non-statutory functions is to publish and update a Code of Practice for Parking enforcement in London. The code is being updated in two parts; the revised Part 1 was agreed by TEC in December 2016. This report seeks approval of Part 2 of the revised Code of Practice relating to the back office functions.

Recommendations: The Committee is asked to:

- Note the contents of the revised Part 2 of the Code of Practice and agree that it should replace of the existing part of the Code relating the back office functions.
- Recommend the adoption of Part 2 of the Code of Practice by all London authorities that carry out civil parking enforcement of parking regulations.

Introduction

1. Decriminalised parking enforcement was first introduced in 1993 as a result of legislation introduced under the Road Traffic Act (RTA) 1991. This gave local authorities the power to take on responsibility for the enforcement of parking regulations as well as the clamping and removal of vehicles. Part 6 of the Traffic Management Act (TMA) 2004 replaced the RTA in April 2008 and forms the majority of the current legislation in London.
2. Under the terms of the London Councils' Transport and Environment Committee (TEC) agreement in 2009, a non-statutory function of London

Councils is to publish and update as necessary a Code of Practice for Parking in London.

3. The Code of Practice was last revised in full and approved by TEC in 2006. Since this time there have been substantial changes to parking legislation following the introduction of the TMA 2004 and the revised document reflects these – and other - legislative changes since 2006.
4. When planning the redraft and update of the Code of Practice it was decided to split the review in to two separate parts that would then be combined to form one single document. Part 1 related to on-street activity, the requirements of Civil Enforcement Officers, the requirements of Penalty Charge Notices and clamping and removal procedures. This was approved by TEC in December 2016. Part 2 relates to back office functions and the processing and administration of penalty charges once they have been issued through all of the statutory stages.

Revisions to the Code of Practice

5. In March 2015 the Department for Transport (DfT) published the latest version of the 'Operational Guidance' to Local Authorities on Parking Policy and Enforcement. The DfT has announced that they will no longer be updating this guidance, which has to date provided a useful benchmark for enforcement protocol. The DfT still produce the Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, under the TMA 2004. Part 2 of this Code of Practice has been revised accordingly to ensure that it builds on the advice and information contained within these two documents and sets out the grounds for good practice in London.
6. London Councils' officers formed a Working Group with five participating boroughs to review the existing Code of Practice and update it in light of any prescribed legislative and guidance changes. The group also consulted and agreed upon proven best practices, taking into consideration any technical advancements since 2006, such as payment and communication methodology.
7. This updated version of the existing Code of Practice advises authorities in London of the procedures that they must follow; the procedures they must have regard to and those that London Councils recommends are good practice when administering civil parking enforcement. Since the first publication of the Code of Practice, all 32 boroughs and City of London have adopted the Code and this is reflected in their enforcement procedures.
8. The Code of Practice incorporates the changes brought about by the Traffic Management Act 2004, the Deregulation Act 2015, London specific legislation, the amendments to the Department for Transport's (DfT) Operational Guidance to Local Authorities and the TMA 2004 Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions.
9. The Code of Practice is not statutory but authorities are recommended to continue to have regard to the contents, which reflects existing practices.

Financial Implications

10. There are no financial implications to London Councils arising from this report.

Legal Implications

11. Although civil parking enforcement sits within a legal framework, there are no legal implications associated with the production of this non-statutory Code of Practice.

Equalities Implications

12. Although there are no equalities implications to this report, the Code of Practice does make reference to the administration of the enforcement process and exemptions as they relate to blue badge holders.

Recommendations

13. The Committee is asked to:
 - Note the contents of the revised Part 2 of the Code of Practice and agree that it should replace the existing part of the code relating to back office functions.
 - Recommend the adoption of Part 2 of the Code of Practice by all London authorities that carry out civil parking enforcement of parking regulations.

Appendices

Appendix A: Code of Practice on Civil Parking Enforcement – Part 2

PART 2 - PROCESSING

A. INTRODUCTION

- 1) The processing of Penalty Charge Notices (PCNs) is as important as issuing the PCN. Timely processing helps secure prompt payments and gives motorists wishing to challenge them a fairer opportunity to do so. This generates better customer relationships and ensures that complaints are kept to a minimum. Slow or poor quality processing systems are unfair to the public and make it harder and more expensive for authorities to collect payment. Authorities should have robust systems, adequately trained staff, and policies and procedures in place to ensure the effective processing of PCNs.

B. SYSTEMS

- 2) A proven and effective PCN processing system is essential. Authorities should ensure the system is suitable, properly installed and tested, with adequate ongoing technical support and fully trained staff prior to its deployment. Particular care needs to be taken when migrating from one system to another.

C. STAGES IN PROCESSING

- 3) In all cases, it is essential to ensure that statutory time limits are met, and to try and ensure that backlogs or delays are not permitted to build up. It is also important that any case status changes and any associated charge increases are not applied too soon. This will help provide a good service and improve public confidence in the enforcement process. It is crucial to always allow time for delivery of documents where service is by post, as time limits usually apply to service and not issue.

D. DATA AND MANAGEMENT INFORMATION

- 4) Data and management information needs to be reliable to assist with accountability. Regular and consistent reporting allows for transparency and should assist the public in understanding the Civil Parking Enforcement (CPE) process. Monitoring provides the authority with management information for performance evaluation and helps to identify the need for improvement, providing a framework for performance comparisons between authorities.
- 5) Authorities should produce annual reports about their enforcement activities within six months of the end of each financial year. The report should cover financial and statistical data and should be published. (For full details of what is required to be published, please refer to The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions).
- 6) As a minimum, the following financial and statistical information is required:
 - Total income and expenditure on the parking account kept under section 55 of the RTRA 1984, as modified by Regulation 25 of the General Regulations 2007
 - Breakdown of income by source (i.e. on-street parking charges and penalty charges)
 - Total surplus or deficit on the parking account
 - Action taken with respect to a surplus or deficit on the parking account

- Details of how any financial surplus has been or is to be spent, including the benefits that can be expected as a result of such expenditure
- Number of higher level PCNs issued
- Number of lower level PCNs issued
- Number of PCNs paid
- Number of PCNs paid at discount rate
- Number of PCNs against which an informal or formal representation was made
- Number of PCNs cancelled as a result of an informal or a formal representation is successful
- Number of PCNs written off for other reasons (e.g. an error by the CEO or driver untraceable)
- Number of vehicles immobilised
- Number of vehicles removed

E. PAYMENTS FOR PCN's

- 7) PCN's are usually payable by the owner of the vehicle, unless the vehicle was hired at the time of the contravention.
- 8) An extensive range of payment options, by which penalty charges can easily be paid and vehicles quickly released from a clamp or recovered from a pound, will serve the best interests of both authorities and motorists.
- 9) The successful introduction of CPE requires convenient and up-to-date facilities for the payment of penalties and other parking charges. Motorists may be more likely to pay penalty charges if it is quick and easy to do so.
- 10) An efficient and secure system for collecting penalty charge revenue will improve an authority's financial performance by minimising bad debts and the time-consuming and costly actions needed to collect them. Although there is a limit on the time during which payment of PCNs can be made at the discounted rate, allowances should always be made for exceptional circumstances (e.g. unforeseeable delays due to breakdown in postal service).

F. METHODS OF PAYMENT

- 11) In order to make payment as accessible as possible, authorities are encouraged to make sure facilities, such as Payment Centres, are in place for the following methods of payment for the settlement of PCNs:
 - Cash
 - Personal & company cheques
 - Debit & credit cards by electronic terminal in person or by telephone (including using automated phone payment systems) or online tools
- 12) The choice of payment methods available should ensure ease of payment for motorists, although authorities should promote where possible the most cost effective method available.
- 13) It is important that authorities consider equality implications and ensure that systems do not inadvertently discriminate against some sections of the population. As such it is advisable that systems are set up to allow motorist to pay by whatever method is most convenient to them.

- 14) Authorities should have procedures in place for dealing with overpayments, underpayments and unidentified payments.
- 15) A PCN is deemed 'paid' as soon as the payment arrives at any payment office belonging to the enforcement authority that issued the PCN. An authority's system should accurately record the day on which it receives payments so that no further enforcement action is taken.
- 16) Where members of the public submit a payment with a letter challenging the PCN and seeking redress, the authority should always consider the challenge.
- 17) Where a payment has been made (e.g. when a vehicle is released from a clamp or a pound) which subsequently needs to be refunded (e.g. following acceptable representations), it is important that the money is refunded as quickly as possible, ideally accompanying the letter advising that a refund is due, but always within 28 days of the decision to refund being taken.
- 18) In instances where an adjudicator finds in favour of the appellant, perhaps awarding costs against the authority or necessitating the refund of PCN and clamping or removal fees, the appellant will seek and not unreasonably expect a prompt return of any money owed. Therefore, this means that the administrative process of making the refund must be started as soon as the authority is aware of the adjudicator's decision and the refund completed as quickly as possible thereafter and within 28 days.

G. PAYMENTS OF CLAMPING AND REMOVALS

- 19) In order to minimise the creation of bad debts and provide a better service, authorities that clamp and/or remove vehicles need a complete range of secured payment options to be made accessible at their pound locations.
- 20) Authorities must make sure facilities are in place for the following methods of payment for the settlement of PCNs, clamping and removal fees:
 - Cash
 - Credit/Debit Cards
- 21) The ability to accept payment by debit and credit card provides a secure payment option, as electronic card readers automatically seek authorisation for values above a limit previously agreed with the card company. Cheques are not an acceptable form of payment.
- 22) Circumstances where a motorist is unable to pay the charges to release the vehicle from a clamping device or pound, for example, the person reclaiming the vehicle is a vulnerable person with no immediate means of payment, at the discretion of the authority, a decision may be made to release the vehicle on strong compassionate grounds. Authorities should have policies in place for such circumstances and they should request the motorist to sign a promise to pay the outstanding debt.
- 23) In order to minimise bad debts where vehicles are released on compassionate grounds, it is advised to accept part payments on the spot.
- 24) The arguments for and against the acceptance of part payments should be examined on economic and customer care grounds. Where part payments are accepted, the authority should first seek the settlement for clamping, removal,

storage or disposal charges, as outstanding penalty charges can be recovered through other methods.

- 25) Payment plans can help secure payments, particularly where large amounts are due (for example from several outstanding PCNs). On the other hand, ensuring the debtor continues to pay after the first instalment can be difficult.

H. CHALLENGES, REPRESENTATIONS AND APPEALS

- 26) The person responsible for the vehicle (usually the vehicle owner) may dispute the issuing of a PCN at three stages:
- So-called 'informal challenges' or 'informal representations' can be made against the PCN before the authority has served a Notice to Owner (NtO)
 - Once a NtO has been served, the vehicle owner may make a formal representation to the authority
 - If a formal representation has been rejected by the authority, the vehicle owner may appeal against the Notice of Rejection (NoR) to an independent adjudicator
- 27) It is advisable that authorities resolve any disputes with vehicle owners at the earliest possible stage and should always give challenges and representations a fair and impartial consideration.
- 28) The practice of considering challenges, representations and appeals is a legal process. Authorities should ensure that officers dealing with these aspects are fully trained in the relevant legislation and its application. Where necessary, authorities should consult their legal departments when dealing with complex cases.
- 29) It is important to have a good quantity of high quality data readily available to staff who are considering challenges to PCNs and representations. This means staff should have access to all original PCN data, any photographic evidence, CEOs notes, updated keeper details, suspension details, TMOs, equipment maintenance records, records of the condition of lines and signs, and any other similar information which could help them. Where necessary, conditions of lines and signs should be checked on-site as soon as any doubts are raised, rather than being delayed, for example, until the appeals stage. This means that problems can be dealt with quickly and the findings of such visits can be applied to other PCN cases.
- 30) Authorities should act fairly and proportionately when exercising their discretionary powers to cancel a PCN at any point throughout this process if it deems it to be appropriate based on the circumstances of the case.
- 31) Authorities should ensure that PCNs, NtOs and any other advice given to members of the public is not misleading as to what they may consider in the way of representations, and they should formulate and publish their policies on the exercise of discretion.
- 32) These policies should be applied with some flexibility and an authority should depart from its policies if the circumstance of the case allows it. Similarly this information should be readily available to those dealing with cases which are subject to an appeal, so the information can be easily supplied to the adjudicator.

- 33) If systems, procedures and working practices set up by the authorities to consider (and if appropriate, cancel) contested PCNs are efficient, reliable and consistent, the proportion of PCNs which result in an appeal to the adjudicator, should be minimal.
- 34) In contrast, if the data supplied is unreliable and a large number of PCNs can be cancelled on obvious technical grounds (e.g. invalid PCN, issued out of hours, no suspension signing), both the adjudicator and the public will lose confidence in the authorities' CPE, resulting in an increase in the proportion of PCNs being contested, and taken to and cancelled by the adjudicator.

I. TRANSFER OF LIABILITY (Hired Vehicles):

- 35) *General Liability:* The PCN is usually payable by the owner of the vehicle, unless the vehicle was hired at the time of the contravention (see below).
- 36) *Hired Vehicles:* Where the recipient of a PCN is a vehicle-hire firm and the vehicle in question, at the time of issue, was hired from the firm under a vehicle hiring agreement and the person hiring it, had signed a statement of liability acknowledging a legal responsibility, in respect of any PCN served against the hired vehicle.
- 37) The Secretary of State suggests that the NtO requests supplied by the hire-firm should include the name and address of the person hiring the vehicle at the time of the contravention and a copy of the statement of liability.
- 38) The details that need to be included on the hire agreement in order for liability to be transferable are as follows (from Road Traffic (Owner Liability) Regulations 2000, schedule 2):

Particulars of person signing statement of liability:

- Full Name
- Date of birth
- Permanent Address
- Address at time of hiring (if different from the above and the stay is likely to be more than two months from date of hiring)
- Details of driving licence:
 - country where issued (if not UK)
 - serial number or driver's number
 - date of expiry (which should be no later than date specified in the particulars of hiring agreements stated below)

Particulars of hiring agreements:

- Registration mark of vehicle hired under the hiring agreement
- Make and model of vehicle hired under the hiring agreement
- Registration mark of any vehicle substituted for the above during the currency of the hiring agreement
- Make and model of any vehicle substituted for the above during the currency of the hiring agreement
- Time and date of any change of vehicle
- Time and date of commencement of original hiring period
- Expected time and date of expiry of original hiring period
- Time and date of commencement of authorised extension of hiring period†
- Expected time and date of expiry of authorised extension of hiring period†

- Actual time and date of return of vehicle (or when vehicle returned out of hours' time and date on which vehicle-hire firm next opened for business)†

†This requirement applies only to the vehicle hire firm's copy of the hiring agreement.

- 39) With respect to hire agreements, the hirer is deemed to be the owner (Part 2 {4}{8} The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007) and the authority may issue a second NtO on the hirer, who is liable for payment of the penalty charge due. This only applies in cases where the hire period is for less than six months.
- 40) In cases where an agreement lasting more than six months is involved, the registered keeper should make representations that they were not the owner at the time and provide evidence to that effect. Although the level of detail required to be produced by the hiring/leasing company is not as high as is in short-term hire agreements.

J. REASONS FOR CANCELLING PCNs:

- 41) A PCN should be cancelled when satisfactory evidence is produced for any of the statutory grounds for representations.
- 42) The grounds on which representations can be made and stated on the NtO are:
 - That the alleged contravention did not occur. This may be where the vehicle was allegedly:
 - loading or unloading
 - the grace period was not applied by the CEO and the PCN issued too early
 - or where a valid permit, voucher, ticket or badge was displayed.
 - That the recipient was not the owner of the vehicle in question; had ceased to be the owner prior to the alleged contravention; or became the owner after the date of the alleged contravention. (Legally, the recipient is obliged to provide a statement of the name and address of the person to whom the vehicle was disposed of or acquired from, should they have this information).
 - That the vehicle had been permitted to remain at the location in question by a person who was in control of the vehicle without the consent of the owner. This covers stolen vehicles and vehicles that were used without the owner's consent.
 - That the recipient was a vehicle-hire firm (see Transfer of Liability – Hired Vehicles)
 - That the PCN exceeded the amount applicable in the circumstances of the case.
 - That there has been a procedural impropriety on the part of the enforcement authority. The regulations define procedural impropriety as a failure to observe any requirement imposed on it by the TMA 2004 or in relation to the imposition or recovery of a PCN or other sums. It includes the serving of a document and the purported serving of a Charge Certificate in advance of the time scale set out in the regulations.
 - That the TMO which is alleged to have been contravened in relation to the vehicle concerned is invalid.
 - In the case where the PCN was served by post on the basis that the CEO was prevented by some person from fixing it to the vehicle concerned or

handing it to the owner or person in charge of the vehicle, that no CEO was so prevented from doing so.

- That the NtO should not have been served because the PCN had already been paid in full or by the amount reduced by any discount applied within the set period.

- 43) In cases of extenuating circumstances, authorities should establish guidelines under this category to ensure consistency and assist management control. This should include guidance on what evidence would be appropriate in each set of circumstances. Authorities must consider using their discretion on all occasions if none of the statutory grounds apply, but the need to be flexible in considering exceptional circumstances must be balanced with the need to enforce parking controls firmly and fairly.
- 44) Where there is an element of doubt, an authority may decide to exercise discretion for a first contravention but to be stricter on later occasions. For this reason, it is appropriate to monitor discretionary cancellations carefully to check that the same exceptional circumstances are not being claimed on multiple occasions.
- 45) Where persisting representations and appeals relating to individual locations are being made, there should be an objective review of the location to ensure that the restrictions are clear and obvious. At all times, each case must be considered on its merits.

K. CHALLENGES (INFORMAL REPRESENTATIONS)

- 46) Statutory representations cannot be made until an NtO or regulation 10 postal PCN has been served, however motorists are likely to write to authorities before then if they feel that the PCN is not merited. They can be made at any time up to the receipt of the NtO but are likely to be made within the 14 days discounted period. Any informal representations received by an authority must be considered and it is recommended that authorities respond within 14 days.
- 47) There is no legal requirement for an authority to ensure that informal representations are dealt with by directly employed officers, as opposed to staff of the enforcement contractor. However, it may assist the authority to make it transparent and clear that it deals with challenges fairly and independently, if representations are not considered by directly employed officers.
- 48) Informal representations may be made online or through other more traditional communication methods. Whichever preferred method is used by the member of public, there should be an adequate audit trail of the case and the decisions taken and why.
- 49) If the authority considers that there are no grounds for cancellation of the PCN, they should inform the correspondent of their decision and make clear that:
 - If the PCN is not paid, an NtO will be served which enables the vehicle owner to make formal representations
 - The authority must consider any representations even where it has previously concluded that the evidence does not merit cancellation of the PCN

- If the formal representation is rejected by the authority, the vehicle owner will be able to appeal the decision to an independent parking adjudicator, who will consider the statutory grounds for appeal
 - It is not possible to appeal to a parking adjudicator without making a formal representation to the authority first
- 50) If an informal representation is received within the discount period and subsequently rejected, the authority should re-offer the discount for a further 14 days to encourage payment of the PCN. Authorities should make clear that the vehicle owner may still make a formal representation if an NtO is served.
- 51) If an informal representation is received after the 14 day discount period and is rejected, the authority should consider re-offering the discount if circumstances have adversely affected the ability of the motorist to challenge within 14 days.

L. FORMAL REPRESENTATIONS

- 52) Formal representations cannot be made until an NtO 10 PCN has been served. An authority may serve an NtO to the person who appears to them to have been the owner of the vehicle when the alleged contravention has occurred, following the expiry of a period of 28 days specified in the PCN (or notification of an unsuccessful informal challenge) within which the PCN is to be paid and the PCN has not been paid.
- 53) An NtO may not be served after the expiry of 6 months beginning with the relevant date. The relevant date -
- in a case where an NtO has been cancelled under regulation 23(5)(c) of the Civil Enforcement of Parking Contraventions (England) General Regulations, is the date on which the district judge serves notice in accordance with regulation 23(5)(d);
 - in a case where an NtO has been cancelled under regulation 5 of the Representations and Appeals Regulations, is the date of such a cancellation;
 - in a case where payment of the penalty was made, or had purportedly been made, before the expiry of a period of 6 months, but the payment or purported payment had been cancelled or withdrawn, is the date on which the enforcement authority is notified that the payment or purported payment has been cancelled or withdrawn;
 - in any other case, is the date on which the relevant PCN was served under regulation 9.
- 54) Staff responsible for considering formal representations should be independent of the PCN issuing staff and of financial pressures. This function should not be contracted out – Enforcement Authorities remain wholly responsible for this part of the process, irrespective of whether they contract out part of their enforcement operations or not.
- 55) Where parking enforcement and other associated operations are carried out by in-house staff, the authority should have a clear separation between the staff that make decisions on the issuing and processing of PCNs (the CEOs) and the staff that deal with representations, to ensure decisions are impartial.
- 56) Elected members may wish to review their parking representations policies, particularly in the area of discretion, to ensure consistency with published policies.

However, elected members and unauthorised staff should not, under any circumstances, be involved in the decision making process of individual challenges or representations.

- 57) There are statutory grounds for representations that can be made to an authority. Authorities are not constrained to these grounds and may exercise discretion as to whether or not to cancel PCNs on other grounds and it is important that authorities exercise their discretionary powers responsibly and reasonably. If the authority rejects their representations, the motorist may appeal to the adjudicator.
- 58) Representations against parking and traffic enforcement should be made in writing, either by responding and signing the relevant section of the NtO, by signed letter, by email, by internet form or in any other written form. Where a vehicle keeper's disability prevents them from providing written representations, the authority should accept oral representations provided that an appropriate audit trail giving an irrefutable record of the representations is kept.
- 59) The relevant grounds for representations against an NtO as specified in Regulation 4 of The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 are as follows:
- a) the alleged contravention did not occur
 - b) the recipient:
 - never owned the vehicle in question;
 - ceased to be its owner before the alleged contravention occurred;
 - became its owner after that date
 - c) the vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner
 - d) that the recipient is a vehicle hire firm and
 - the vehicle in question was at the material time hired from that firm under a hiring agreement and
 - the person hiring it, had signed a statement of liability acknowledging his legal responsibility in respect of any PCN served in respect of any parking contravention involving the vehicle during the period of the hiring agreement
 - e) that the penalty charge exceeded the amount applicable in the circumstances of the case
 - f) that there has been a procedural impropriety on the part of the enforcement authority
 - g) the TMO (except where it is an order made under Schedule 9 of the RTRA 1984) which is alleged to have been contravened is invalid
 - h) a CEO was not prevented from serving the original PCN by affixing it to the vehicle or handing it to the owner or person in charge of the vehicle
 - i) the NtO should not have been served as the penalty charge had already been paid in full or had been paid within the specified period at the reduced amount.
- 60) These grounds can be divided into two distinct categories, which result in different action being taken if representations are accepted. The first set of grounds are those which challenge the validity of the PCN itself and are that:
- the contravention did not occur – 58) a)
 - the penalty charge exceeded the amount applicable in the circumstances of the case – 58) e)
 - that there had been a procedural impropriety on behalf of the enforcement authority – 58) f)

- the TMO was not valid – 58) g)
 - the CEO was not prevented from serving the PCN – 58) h)
 - the penalty charge had already been paid in full or within the specified discount period – 58) i)
- 61) The second set of grounds does not challenge the validity of the PCN itself but are raised by the owners as a challenge to their liability. These are that:
- the person to whom the NtO was sent, was not the owner – 58) b)
 - the vehicle had been taken without the owner's consent – 58) c)
 - the owner is a vehicle hire firm – 58) d)
- 62) The distinction between the grounds for representations is important to ensure that the correct action is taken in the case of representations being accepted. Successful representations on grounds that challenge the validity of the PCN should result in cancellation of both the PCN and the NtO.
- 63) Successful representations on grounds that challenge the liability of the recipient need only result in the cancellation of the NtO. In such cases, the PCN remains a valid notice and authorities may issue a fresh NtO if they have been supplied with suitable information to allow them to believe that liability has been transferred to a new person.
- 64) Authorities should cancel PCNs in cases where sufficient evidence has been provided as proof that a vehicle has been taken without consent, since there is no provision to serve a second NtO on the person who was in control of the vehicle at the time. Furthermore, if more than one PCN was issued during the time that the vehicle was under that other person's control, they should all be cancelled without the need for the owner to make representations for each case.
- 65) Authorities must consider representations made on any grounds. Representations must be made before the end of a period of 28 days, beginning with the date on which the NtO was served.
- 66) Authorities can apply discretion to late representations and it is advisory that where a vehicle owner provides a valid reason for the delay and has strong grounds for representations, then discretion should be applied.
- 67) The enforcement authority may disregard any representations which are received after the end of the period of 28 days, beginning with the date on which the relevant NtO was served. However, authorities must respond to such representations, explaining that they have been disregarded and the reason why.
- 68) Authorities must consider representations and any evidence provided against an NtO and serve notice of its decision within a maximum of 56 days of the service of the representations but should aim to serve all decision notices within 21 days.
- 69) The need for cancellation policies to cover the use of discretion is recommended. When a motorist accepts that the contravention did occur but argues that the PCN should be cancelled on grounds of extenuating circumstances, individual authorities will have the choice of exercising discretion.
- 70) Adjudicators may also adjourn cases and refer them back to an authority with a request that they reconsider exercising their discretion to cancel a PCN (or NtO), where they believe they have received further and better information which may

warrant such action by the authority, or where it is not apparent that the authority has properly considered the exercise of its discretion in the first place.

M. RESULTS OF REPRESENTATIONS

- 71) If representations against an NtO are accepted, the authority should cancel either the PCN and the NtO or just the NtO (depending on the category of the grounds of representation) and inform in writing, the person who made the representation.
- 72) If representations are rejected, the authority must issue a Notice of Rejection (NoR) which should:
 - state the reason for rejection, dealing with and answering all points raised in the representations and providing a clear explanation for the decision
 - state the amount owed and timescales for payment
 - state that a Charge Certificate may be served, unless before the end of the period of 28 days, beginning with the date of service of the NoR, either payment is received or an appeal is made to an adjudicator
 - advise of general form and manner in which an appeal to the adjudicator should take and
 - indicate the nature of the adjudicator's power to award costs against either party to an appeal (the circumstances of which are explained on the adjudicators' forms and London Tribunals website).
- 73) It must be remembered that the NoR is a letter explaining that representations have not been accepted and should not be, or appear to be intimidating.
- 74) An appeal application form must be included with each NoR. This is important even when the authority does not believe that the vehicle owner is seeking to establish a formal ground of appeal. This is to allow the appellant to attempt to establish a ground at appeal stage.
- 75) As requested by London Tribunals, the authority should complete the 'official use' box on the back of the appeal application form with the name of the person that the NoR was sent to, the relevant PCN number(s), the vehicle registration number and the date of rejection, to assist in processing the appeal.
- 76) If out-of-time representations have been disregarded, it is not necessary to send an appeal application form or explain the appeals process.
- 77) London Tribunals allow for appeals to be made online and therefore, authorities may issue verification codes to those appellants wishing to make online appeals.
- 78) A Charge Certificate may be served unless an appeal has been made to the adjudicator or the penalty charge paid. Appeals should be made to the adjudicator before the end of the period of 28 days, beginning with the date of service of the NoR. Although the adjudicator has the discretion to accept out-of-time appeals.
- 79) Authorities will be informed by London Tribunals if late appeals are to be considered in the appropriate circumstances and therefore, they should take steps to cancel any Charge Certificate that may have been issued.
- 80) When a vehicle owner has made representations or an appeal but accepts either the authorities or, at a later stage, the adjudicator's decision that payment is due, payment would usually be at the full (not discounted) amount.

N. REPRESENTATIONS AGAINST CLAMPING OR REMOVAL

- 81) The TMA 2004 and RTRA 1984 require the PCN to be paid at the same time as the fee for the declamping or the release of a vehicle from a pound.
- 82) The statutory grounds for representation for vehicles that have been clamped are that:
- a) the vehicle had not been permitted to remain at rest, in a civil enforcement area, in circumstances in which a penalty charge was payable under Regulation 4 of the General Regulations
 - b) the vehicle had been permitted to remain at rest, in the place where it was, by a person who was in control of the vehicle without the owner's consent
 - c) the place where the vehicle was at rest, was not in a civil enforcement area for parking contraventions
 - d) in accordance with Regulation 13 (limitations on the power to immobilise vehicles) of the General Regulations, there was in the circumstances of the case, no power under these regulations to immobilise the vehicle at the time it was immobilised or at all
 - e) the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case
 - f) there was a procedural impropriety on the part of the enforcement authority
- 83) The statutory grounds for representations for vehicles that have been removed are that:
- a) the vehicle had not been permitted to remain at rest, in a civil enforcement area for parking contraventions, in the circumstances in which a penalty charge was payable by virtue of Regulation 4 of the General Regulations
 - b) the CEO had not, in accordance with Regulation 9 of the General Regulations, fixed a PCN to the vehicle or handed such a notice to the person appearing to be in charge of the vehicle, before the vehicle was removed
 - c) the power to remove the vehicle was not exercisable as it had been removed before 30 minutes had passed. This 30-minute period only applies where a vehicle is in contravention as a result of failing to pay a parking charge, failing to display a valid ticket or failing to move the vehicle before the purchased time expired. It should be noted that the 30 minutes is reduced to 15 minutes if the vehicle is classed as a persistent evader.
 - d) the vehicle had been permitted to remain at rest, in the place where it was by a person who was in control of the vehicle, without the owner's consent
 - e) the place where the vehicle was at rest, was not in a civil enforcement area for parking contraventions
 - f) the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case
 - g) there has been a procedural impropriety on the part of the enforcement authority
- 84) The TMA 2004 requires that at the time of the release of the vehicle, the owner or person in charge of the vehicle is informed in writing of the right to make representations to the authority concerned. Strict time limits are set out under which the procedure operates as payment has already been made. Where no payment has been made and the vehicle has been released, the person in charge of the vehicle must still be advised of their right to make representations.

- 85) Representations must be made before the end of a period of 28 days, beginning with the date on which the person making them was informed of this right. Representations that are received after the end of the 28 days may be ignored.
- 86) Authorities must respond to such representations, explaining that they have been disregarded and the reason why. Authorities can apply discretion to late representations and it is advisory that where a vehicle owner provides a valid reason for the delay and has strong grounds for representations, discretion should be applied.
- 87) The authority must consider the representations and serve a notice on the person giving its decision before the end of the period of 56 days, beginning with the date on which it receives the representation. Failure to meet this deadline is deemed as an acceptance of the representations and all sums paid, should be refunded.
- 88) Where the authority accepts the representations it must, at the same time that it serves notice of that decision, refund the charge for the PCN plus any sums either paid by the owner for declamping or removal including any storage fees, or any sums that were deducted from the proceeds of the sale of the vehicle if it has been sold. It is important that the money is refunded as quickly as possible, ideally accompanying the letter advising that a refund is due, but always within 28 days of the decision to refund being taken.
- 89) Where the authority does not accept the representations, it must inform the appellant of the right to appeal to the adjudicator, giving details in general terms of the form and manner in which such an appeal is required to be made, including details of the power of the adjudicator to award costs against either party.
- 90) Where the appellant wishes to appeal to the adjudicator, he or she must do so before the end of the period of 28 days, beginning with the date of service of the authority's decision notice. The adjudicator has the power to extend this time limit and accept late appeals, if he/she considers it appropriate to do so.
- 91) If an appeal is successful, at any stage, authorities or their contractors may be faced with a claim for compensation. Such claims should be resisted unless the authority feels it is clearly at fault, in which case reasonable compensation, covering costs and disbursements, should be offered.
- 92) This does not apply to awards of costs made by an adjudicator, which should be paid as soon as possible after the decision and within 28 days at the most. In order to limit the number of compensation claims and to minimise their validity, it is important to ensure that vehicles are always clamped or removed in accordance with the legislation and following correct procedures.

O. APPEALS

- 93) The Schedule to The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 provides the framework for the process and procedure governing parking appeals in London.
- 94) If an authority rejects a formal representation, the person who has made the representation has a right to appeal to an adjudicator within the timescales previously outlined above. The grounds for appeal are the same as those identified in paragraph 58 for *Formal Representations*, paragraph 81 for *Representations*

against Clamped Vehicles and paragraph 82 for *Representations against Removals*.

- 95) Following the notification of an appeal, the Regulations require that authorities in every case, send London Tribunals:
- a copy of the PCN
 - a copy of the original representations and
 - a copy of the NoR
- 96) In addition to the evidence required by the Regulations, authorities should also send:
- a case summary outlining the details of the case
 - a copy of all other correspondence relating to the PCN
 - a copy of CEO's log book (or equivalent electronic version)
 - details of signing and road markings and the hours of operation
 - a summary of the relevant TMO
 - evidence to show that the appellant is the person liable for the penalty charge. This must make clear whether the appellant is the registered keeper or someone else whom the authority alleges is the owner. In the latter case the authority must include evidence to show why they believe the appellant is the owner – this is not necessary for clamping and removal cases
- 97) If appropriate and depending on the circumstances of the case, authorities should also send:
- records of meter maintenance/fault checks carried out to verify the meter was in operation and accurate
 - suspension records: dates of advance warning (if any), start and end of suspension etc
 - statement from the CEO
 - details of ownership enquiries: when NtOs sent, replies received etc, DVLA enquiries etc
 - details of permits: type of permit, when issued, expiry date etc
 - clamping: time of clamping, time of PCN issue and fee paid, time of declamping etc
 - removal: time of PCN issue, time of removal, time vehicle received at pound, time collected from pound and fee paid etc
- 98) This list is not exhaustive. Authorities need to send sufficient evidence to prove their case and therefore have to consider what may be necessary in each particular case.
- 99) Local authorities are able to access listings of new appeals, outcomes of appeals and details of out-of-time appeals on the London Tribunals' Appeals Portal
- 100) Authorities must make sure that all necessary information is supplied to London Tribunals as soon as possible after it is requested and always by the specified deadlines. They should also ensure that all information and documentation should reach the London Tribunals service five calendar days prior to the scheduled hearing date and a copy should be sent to the appellant at the same time. Similarly, authorities should receive from the Tribunals service, a copy of any information or documentation submitted by the appellant.

- 101) The appellant can request that any appeal hearing is held in person or that the hearing is heard in their absence (a postal appeal). Authorities may send representatives to appeals hearings if they wish.
- 102) Should an appellant send an appeal to an authority by mistake, it should be forwarded immediately to the London Tribunals service.
- 103) Decisions made by adjudicators should normally be considered as final and any directions given by adjudicators must be complied with immediately. Although the Regulations do allow for reviews of decisions to be requested, the grounds for these are often quite limited.
- 104) In general, a review should only be requested where fresh evidence has become available, which was not available at the time of the original hearing. No further challenges can be made other than on a point of law, through an application to the High Court for judicial review.
- 105) If an adjudicator allows an appeal, he/she may make such directions to the authority as he/she feels appropriate. Usually this will be to cancel the PCN and NtO and refund any sum paid in relation to the penalty charge.

P. CASES REFERRED BACK TO THE AUTHORITY BY THE ADJUDICATOR

- 106) An adjudicator may only allow an appeal if one of the statutory grounds applies. Where a contravention has taken place but the adjudicator feels that the authority should have used its discretion to cancel the NtO, the adjudicator may refer the case back to the authority to reconsider. This power covers appeals against the clamping or removal of a vehicle, as well as those against NtOs.
- 107) Such cases should be directed to Chief Executive Office to ensure that proper consideration is given of the facts presented. It should not be dealt with by the same person who considered the original representation.
- 108) A decision must be reached within the period of 35 days, beginning with the date on which the direction was given. If the authority does not reach a decision within this period, it is deemed to have accepted the adjudicator's recommendation and must cancel the NtO. Where it does not accept these recommendations, it must notify the adjudicator and the appellant of the reasons for its decision before issuing the Charge Certificate.
- 109) If the penalty charge is not paid after a period of 28 days, beginning with the date on which the authority notified the appellant that it does not accept the adjudicator's recommendation, the authority may issue a Charge Certificate.
- 110) If the authority decided to accept the recommendation of the adjudicator, it must cancel the NtO without delay and refund any sums paid. Refunds must be made within 35 days of the adjudicator's direction.

Q. ELECTED MEMBERS AND CHALLENGES TO ENFORCEMENT

- 111) Consideration of challenges to enforcement is a quasi-judicial function and elected members of authorities should play no part in deciding on individual representations. Their involvement should extend no further than to ask for and

receive information about the progress of consideration of challenges and about the eventual outcome of any challenge.

R. CHARGE CERTIFICATES

- 112) The Charge Certificate informs the vehicle owner that the penalty charge has increased and action will be taken through the County Court if it is not paid before the end of the period of 14 days, beginning with the date on which the certificate is served. The current applicable surcharge in London has been set at 50%.
- 113) A Charge Certificate may be served by an authority if the following situations apply:
- the penalty charge has not been paid and no representations have been made to the authority before the end of a period of 28 days, beginning with the date the NtO was served (an allowance of 35 days is recommended)
 - where representations have been rejected and neither full payment nor an appeal to the adjudicator has been made before the end of a period of 28 days, beginning with the date on which the NoR was served (an allowance of 35 days is recommended)
 - where full payment has not been made before the end of a period of 28 days, beginning with the date on which the adjudicator's decision rejecting the appeal was served on the appellant (an allowance of 35 days is recommended)
 - where full payment has not been made following a period of 14 days, beginning with the date on which a withdrawal of an appeal was made by the appellant (an allowance of 21 days is recommended)
- 114) A Charge Certificate must not be issued until all processes have been completed. If an authority issues a Charge Certificate before an appeal is decided, the adjudicator may then allow the appeal on the grounds of procedural impropriety. In all cases, if a part payment has been made within the timescales mentioned, a Charge Certificate may be issued in respect of the outstanding balance.
- 115) The penalty charge cannot be increased until the Charge Certificate is issued.
- 116) If an owner contacts an authority and says that the Charge Certificate is the first notice received, the authority should consider allowing the owner to make payment of the full PCN charge (without the Charge Certificate increase) or make a challenge. When this is received, the Charge Certificate and preceding NtO should be cancelled. If the challenge is not accepted, the owner's address should be checked and another NtO served (if within the time allowed) in order to give the owner the opportunity to make representations. If the authority chooses not to allow either of these options, for example, where an owner frequently makes this claim, they should explain the procedure for making a Witness Statement at the next stage of the process.
- 117) If a penalty charge has not been paid 14 days after the Charge Certificate has been served, the authority may apply to the Traffic Enforcement Centre (TEC) at Northampton County Court to recover the increased charge, as if it were payable under a County Court order.

S. DEBT RECOVERY and WITNESS STATEMENTS

- 118) The TEC processes requests from authorities to register Charge Certificates and requests to enforce orders to recover unpaid penalty charges. A Code of Practice produced by the TEC for authorities outlines the correct procedures where penalty charges have not been paid following the service of a Charge Certificate. This code is issued to all authorities who register their intention to enforce PCNs in accordance with Part 75 of the Civil Procedure Rules, its practice and directions.
- 119) Where a Charge Certificate remains unpaid before the end of the period of 14 days, beginning with the date on which the Charge Certificate is served, the enforcement authority may, if a County Court so orders, recover the increased charge as if it were payable under a County Court order. A fee of £8 is payable for the registration of each Charge Certificate. Once registered, the TEC will send the authority a sealed authorisation to issue an Order for Recovery of Unpaid Penalty Charge for the outstanding amount. This will include the outstanding penalty charge, the registration fee and any costs awarded by the adjudicator, if applicable.
- 120) It is recommended that the Authority should send an order (Order for Recovery of Unpaid Penalty Charge) within 7 days of receiving the authority from the TEC. The TEC allows 35 days from the acceptance of the request until the last day an in time Witness Statement can be processed. The date is set on the order but can be taken to be 21 days from the service order for the recipient to either pay the amount outstanding or send a Witness Statement to the TEC refuting the need to pay the penalty charge and that the registration should be revoked.
- 121) The Witness Statement can be made on one of the following grounds:
- that the PCN has been paid in full
 - that the NtO/Regulation 10 PCN was not received
 - that representations were made to the authority concerned within the stipulated 28 day period but no NoR was received
 - that an appeal was made to an adjudicator against the authorities' decision to reject the representations but no response to the appeal was received
- 122) A valid Witness Statement automatically results in an order issued by the TEC that revokes the Order for Recovery of Unpaid Penalty Charge and cancels the Charge Certificate, as well as the Notice to Owner if submitted on the grounds that the NtO wasn't received.
- 123) Where the recipient claims that the penalty charge was paid or representations were made to the enforcement authority about the penalty charge and no NoR was received, the authority should refer the case to a parking adjudicator who may give such direction as he/she considers appropriate. However depending on the circumstances of the case (e.g. the grounds and case history), there may be scope for the authority to resend the Notice of Rejection.
- 124) If the Witness Statement indicates that the motorist never received the NtO, the NtO is also deemed to have been cancelled and the authority may serve a fresh NtO. To prevent abuse of the Witness Statement process it is advisable that a second NtO should be served by recorded delivery (or another means where delivery can be demonstrated), so that a further Witness Statement cannot legitimately be made for the same reason. In the case of any other Witness Statement, the matter should be referred to the court if a challenge is sought. Should a motorist send a Witness Statement to an authority by mistake, it should be forwarded immediately to the TEC.

- 125) Where the recipient claims that he/she appealed to the parking adjudicator against the authority's decision to reject the representation but received no response to the appeal, the authority must refer the case to a parking adjudicator, who may give such direction as he/she considers appropriate.
- 126) Authorities should note that some of the information contained may change following any review of Part 75 of the Civil Procedure Rules.

T. OUT OF TIME WITNESS STATEMENTS

- 127) If the motorist does not make a Witness Statement (TE9) within the statutory time scale (35 days from the acceptance of the registration request), they may apply for an extension of the time allowed for making a Witness Statement by completing 'An Application to file a statement out of time/extension of time (Parking)' form (TE7). The Respondent must state the reason they are making a Witness Statement outside of the original timescale on the TE7.
- 128) The Out of Time Witness Statement is sent by the motorist to the TEC for consideration by an officer of the Court and the TEC will make a decision whether to refuse or allow the submission.
- 129) All Authorities are notified electronically through CJSM (Criminal Justice Secure Email) accounts of out of time witness statement being received. At which point PCN progression must remain on hold pending the outcome. If the case is at an Enforcement Agents, enforcement action must be put on hold pending the resulting order.
- 130) The e-mailed notification will confirm the response deadline if the Authority wish to oppose the submission (that allows 21 days). The out of time submission will follow in the post. The Authority has the opportunity to oppose the out of time submission and can submit a response to the TEC for consideration (usually in the form of a Statement of Truth). If the Authority does not issue a challenge the TEC will issue a revoking order in default.
- 131) If the Authority chooses to oppose an out of time witness statement a statement of truth is sent to the TEC for consideration by a Court Officer and this must be done within the 21 day timescale. A copy of the statement of truth should also be sent to the deponent (the person who submitted the out of time witness statement). The Court Officer will make a decision, either refusing or accepting the out of time submission and either a refusal notice or a revoking order will be issued as a result. In the event the submission is refused PCN progression can continue, including post warrant enforcement.

U. N244 PROCESS

- 132) Following the result of an Out of Time Witness Statement either party can submit to the TEC an application to set aside the decision of the Court Officer by completing an N244 Application Notice.
- 133) Either party has 14 days to file an N244 application with the TEC. However the TEC may accept N244 applications outside the 14 day time period if a good reason for late submission is given. Upon notification through the CJSM account of the

submission of an N244 application, PCN progression (including post warrant enforcement) should be put on hold.

- 134) Either party can apply to have the application considered either with or without a hearing (at a cost of £100 or £255 respectively). If the application is without a hearing the case will be considered by a different Judge (District or Circuit) at Northampton County Court. If the application is with a hearing the case is transferred out to a County Court local to the Defendant (the motorist) and listed for hearing. The applicable County Court will then write to both parties notifying them of the hearing date and time.
- 135) At either hearing the District Judge will consider the case presented by both parties, either in writing or in person. Where written representations are made these should be sent to the other party in advance of the hearing. A decision will then be made on the case. The Court will issue an order to both parties and this should then be sent to the TEC (in the event of an application with a hearing) so that the appropriate subsequent order can be produced. If the Court that considers the application is not the TEC, the resulting order will either allow the Witness Statement out of time or strike out the application. If the TEC consider this they will either issue a refusal notice or a revoking order directly. Subsequent applications can be made by either party.

V. WARRANT of CONTROL and ENFORCEMENT AGENTS (BAILIFFS)

- 136) Where an Order for Recovery of Unpaid Charges has been served and the recipient has either failed to pay the penalty charge or to complete the Witness Statement, the authority can ask the TEC for authority to prepare a Warrant of Control (the warrant). This authorises a Certified Enforcement Agent (CEA) to seize and sell goods belonging to the recipient to the value of the outstanding amount and costs of enforcing the warrant.
- 137) The authority can ask the TEC for authorisation to prepare a Warrant of Control if the following criteria have been met:
- 35 days have elapsed since the registration request was accepted
 - full payment has not been received
 - no Witness Statement has been filed
 - no time extension for making a Witness Statement has been approved
 - the recipient lives in England or Wales
- 138) The authority must produce a warrant within seven days of receiving the authorisation from the TEC. A copy of the warrant should be given to the enforcement agency and must be made available for viewing by the debtor when the enforcement agent is carrying out their duties. This copy may be a hard paper copy or produced and sent electronically.
- 139) If the address on the warrant is incorrect and differs from that where the CEA seeks to enforce the Authority would need to get the warrant resealed. This requires the TEC to reissue the warrant – with the same expiry date – for the new address.
- 140) The Warrant of Control has a lifespan of one year and cannot be reissued. If the authority has failed to recover the charge by means of a warrant within this period of time and wishes to pursue this matter further they may seek an extension of the

warrant under the Tribunals, Courts and Enforcement Act 2007. The TEC would need to be approached regarding any preparation of another warrant.

- 141) A motorist's credit rating will not be affected by enforcement proceeding as the debts will not be entered onto the Registry of County Court Judgements, either when the case is at the TEC or transferred out to another County Court.
- 142) Enforcement agents are acting on behalf of the local authority. The authority remains responsible and accountable for enforcement agents working on their behalf.
- 143) Enforcement agents are obliged to follow the code set out in Part 3 and Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 and the associated regulations.
- 144) Local Authorities are encouraged to have regard to the good practice set out in the Taking Control of Goods Regulations, National Standards 2014 and the Guidance to Local Councils on Good Practice in the Collection of Council Tax Arrears (June 2013).

W. SERVICE OF NOTICES

- 145) The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 states that any notice (not including a regulation 9 PCN) or Charge Certificate may be served by first class post but not second class post. Where the person on whom it is to be served is a corporate body, it is duly served if it is sent by first class post to the secretary or clerk of that body. Service of a notice or charge certificate contained in a letter sent by first class post which has been properly addressed, pre-paid and posted shall, unless the contrary is proved, be taken to be on the second working day after posting. Full details defining the working day can be seen in the above regulations.
- 146) At all stages, it is essential that the council takes all reasonable steps to ensure that the appropriate notices are, in fact, served on the person to whom they are addressed. If the council believes that service has not taken place then enforcement action cannot proceed. It is therefore important to have procedures in place for dealing with returned (undelivered) post, as such items have not been served.
- 147) It is recognised that there will be cases where service is not easy. These include cases where service is refused or where the keeper cannot be identified. Where service is denied or refused, the authority should consider taking other steps, such as hand delivery, to give a higher degree of likelihood of service. Enforcement Agents may also be able to help in this area.
- 148) Where the DVLA does not have information on the keeper, it may be that other sources of information may help. The TMA 2004 regulations only makes the registered keeper, the presumed keeper and if the authority has better information this can supplant any DVLA files. Such information may come from resident parking permit applications, Enforcement Agents or neighbours (subject to any data protection limitations). Councils should use all available avenues to identify a keeper, while taking care not to enforce against an innocent party, bearing in mind the possibility of a vehicle being cloned or something similar.

- 149) It may be the case that some keepers cannot be traced. In these circumstances, the authority should consider writing off the penalty as a bad debt (subject to internal rules about writing off debt), rather than keeping such PCNs open indefinitely.

X. PUBLIC RELATIONS

- 150) Parking enforcement has always suffered from an image problem and the interaction between the motoring public and the enforcing authorities is often described in martial terms. Not only is this undesirable, for what is an essential public service but it also hinders the efficient and effective running of that service. Authorities should therefore do all they can to change public perceptions and to encourage motorists, as well as non-motorists, to see parking enforcement as a beneficial and welcome service. Although it is very unlikely that anyone will be happy to receive and pay for a penalty charge, it will lessen any sense of hostility if they are treated in an efficient and reasonable manner.
- 151) To this end, authorities should:
- ensure that no unreasonable, unnecessary or unlawful enforcement takes place
 - making sure that all parking restrictions are clearly and correctly signed and marked
 - ensure that all staff, both on-street and in the back office are trained to a high standard
 - avoid delays at any stage of the process
 - answer all enquiries and correspondence promptly and fully
 - give detailed and clear reasons for any decisions taken
- 152) Authorities should aim to achieve recognised quality assurance accreditation, such as ISO 9000 or the Charter Mark, to ensure and demonstrate that they have built the necessary customer focus elements into their processes.
- 153) It is also important to address public perception in a wider context. Every possible opportunity should be taken to remind the public of the reasons for the existence of parking controls and their benefit to the local environment. Any major amendment of new controls or restrictions should be introduced in tandem with a comprehensive publicity campaign, not only explaining the need for them but also promoting their benefits.
- 154) Authorities should also monitor their enforcement activities and their effectiveness in ensuring compliance with parking regulations. The results of these monitoring programmes should be used in the review process for existing controls, included in the publicity framework and communicated to the public. Sharing the results of the monitoring programmes with other authorities would also provide useful benchmarking data and help develop best practice.
- 155) In addition to their own monitoring, authorities should regularly consult with road users, residents, local businesses and other interested parties to assess their views on parking controls and the enforcement regime. The results of such consultations should be publicised and made freely available.
- 156) There should be no secrecy about what happens within an enforcing regime. Details of performance, income and expenditure should be publicised, as should

the use of any surplus made to the parking account in accordance with Central Government guidance as outlined in paragraphs 5) and 6) of this document.