

MHCLG Parking Enforcement Framework Consultation

RAC Foundation response – October 2020

The RAC Foundation is a transport policy and research organisation which explores the economic, mobility, safety and environmental issues relating to roads and their users. The Foundation publishes independent and authoritative research with which it promotes informed debate and advocates policy in the interest of the responsible motorist.

The RAC Foundation intends to respond separately to the BSI consultation on PAS 232 Privately Managed Parking – Operation and Management – Specification. However, we would like to draw the MHCLG's attention to a key matter we want to include in that response. We think that landowner information should be displayed alongside parking operator information on car park signage. This would achieve two things. One, it helps drivers understand whose land they are ultimately parking on and who they can contact if they have general concerns over the way that land is being managed and two, it would encourage landowners to take a closer interest in how their property is being managed because they will be clearly linked to any bad practice which ultimately is being carried out in their name.

Determination of Appeals (p.7)

Q1 Do you agree or disagree that members of APAs should be required to use a single appeals service appointed by the Secretary of State? Strongly agree/Somewhat agree/Neither agree nor disagree/Somewhat disagree/Strongly disagree

Strongly agree

Q1.1 Please explain your answer

1. Public confidence in the private parking sector, its ability to issue tickets fairly, and to deal with appeals in a timely and empathetic way, is abysmal. Evidence for this view is contained in the record of Parliamentary debate held as the Parking (Code of Practice) Bill passed through its various pre-enactment stages in 2019.
2. Of the existing Accredited Trade Associations (ATA), each sponsors its own appeals service: POPLA in the case of the British Parking Association (BPA) and the IAS for the Independent Parking Community (IPC). These bodies adjudicate appeals against tickets issued by members of each ATA Approved Operator Scheme (AOS).

3. Both appeals bodies are Alternative Dispute Resolution Schemes (ADR) run by private companies. Adjudicators are not permitted by the ATAs to consider mitigating circumstances and allowed only to determine outcomes based on criteria i.e. Codes of Practice issued by the ATAs/AOSs themselves.
4. Alternative dispute resolution (ADR) refers to ways of resolving disputes between consumers and traders that don't involve going to court. The government has said it wants to encourage the development of ADR. Better ADR and easier access to it should be good for all businesses committed to giving their customers the best possible service. But the appeals services offered by the ATAs have not cleared the courts of parking ticket cases nor have they given their customers the best service. And this after eight years of trying.
5. Since there is no requirement for the staff employed by either appeals service to be legally qualified, there is no guarantee that current legal thinking or experience influences the way the services are run, or the outcomes of appeals.
6. Adjudicators presume that any mitigating circumstances will have been considered by the parking operators themselves. This is an unsatisfactory situation.
7. A motorist whose appeal on the grounds of mitigating circumstance to the operator is rejected will have little chance at the further appeal stage. The lead adjudicator for the IPC's appeal service said in his latest annual report:

“Features that amount purely to mitigation (i.e. something that amounts to a reason for incurring the charge, but that does not remove your legal liability for it) cannot be considered as a ground to cancel a charge nor can the simple fact that there has been a breach of a provision of the Code of Conduct that the parking operator may subscribe to.

Adjudicators will apply the civil standard of proof; the balance of probabilities. Otherwise, the normal civil rules of evidence do not apply”. P10

<https://theipc.info/uploads/R8eTwuDoUQTy2avgir0QWRuBMfOxO--ImHApcHa7c6l/2018-%202019%20IAS%20Annual%20Report.pdf>

8. Standards of evidence for both appeals services fall below what could be demanded by a court. The IPC Adjudicator added, in his annual report cited above, that without certain evidence it was difficult to come to the correct conclusion:

“A matter that has been brought to my attention is the issue of insufficient photographic evidence provided by parking operators displaying parking signage in situ. This is fundamental information that an adjudicator relies upon in adjudicating an appeal. Parking operators need to provide this information if an appeal is to be adjudicated fairly for all parties. Motorists

who appeal a parking charge, either through an operator's internal appeals process or through the Independent Appeals Service (IAS), will often raise issues or pose questions that are central to their appeal or as an accompaniment to their appeal. These questions from motorists very often go unanswered or unacknowledged." P.2

<https://theipc.info/uploads/R8eTwuDoUQTy2avgir0QWRuBMfOxO--lmHApcHa7c6l/2018-%202019%20IAS%20Annual%20Report.pdf>

9. There is no mechanism to ensure consistency of appeals and their outcome across the two ATAs. This adds to the confusion experienced by motorists both when considering their positions pre-appeal and at appeal.
10. Websites belonging to consumer organisations such as Which?, Citizens Advice, and Money Saving Expert, describe the complexities involved in paying or appealing a parking ticket issued on private land. The impact of obscure procedures on some motorists is that payments are not made within strict timeframes and some valid appeals not made at all. This results in debt recovery procedures being started by parking operators which use up valuable court time – and increase costs to the motorist.
11. The remedy for the motoring public's lack of confidence in the ATAs' appeals services and standards of adjudication that fall below expectations – as well as wasted court time – is for a Single Appeals Service to be appointed by the Secretary of State.

Q2 Please provide any other feedback on the determination of appeals, including the funding model and features that an appeal service should offer e.g. telephone or in-person hearings, the ability to submit evidence online

12. The Single Appeals Service must be free to the motorist.
13. It should, so far as is possible given differences amongst the various laws that apply to parking on public land and parking on private land, copy the online appeals service used by the Traffic Penalty Tribunal.
<https://www.trafficpenaltytribunal.gov.uk/appeals-process-parking-england/>
14. Whilst TPT is a statutory tribunal and such status is not a requirement for the Single Appeals Service we see no reason why a tried and tested system shouldn't be explored for use in a different but similar context
15. TPT's fast online appeals service (FOAM) allows three-way online correspondence, including uploaded evidence, between the ticket issuing authority, the appellant, and the adjudicator at TPT. Phone hearings are available, as is 'live chat', for motorists who need them. This service has been praised by MOJ as an example of excellent administration of justice and has been well received by local authority parking departments and motorists alike.

16. It is essential in our view that legally qualified adjudicators are used to consider motorists' appeals.

Enforcing the Code of Practice (p.9)

Q3 Please provide any comments you have on the proposal to enforce the Code by combining the ATA's existing audit procedures with additional safeguards.

17. Clearly the adequacy of the proposal depends on the additional safeguards.
18. An annual report to the Scrutiny and Standards Board from the new Accredited Parking Associations (APAs) will be an essential element of the success of the proposed audit procedures.
19. We believe the present system of audits, conducted by the existing ATAs of their own members, falls short due to understaffing and lack of independence/status by the auditing team.
20. Timely, transparent and comprehensive data will be key to assessing the successful implementation of the Code (and indeed understanding whether the code, as drafted, is fit for purpose in the real world). A central measure of success will be a swift decline in the number of annual KADOE requests by car parking management companies to the DVLA which is a proxy for the number of PCNs issued. It is inconceivable that more than eight million motorists set out annually to receive a PCN suggesting the parking industry is either, at worst, one that has the issuance of parking charges at the heart of its business model or at best is doing little to prevent motorists racking up avoidable additional charges.
21. Data should not just be viewed on an aggregate level. It should also be interrogated on a micro level: by company and individual car park. Account should be taken of the number of tickets issued as a proportion of car parking spaces and explanations sought for any particular PCN hotspots, be they geographical or distinguished by time of day. Questions also need to be asked if a particular type of non-compliance stands out as a reason for PCNs being issued.
22. A high number of PCNs will be a warning sign, a red light. It will be an indication of a system failing, not of one working. If the number of PCNs issued does not fall rapidly then only two conclusions can be drawn: either the code of practice as drafted is not completely fit for purpose (and will need urgent amendment) or parking firms are being cavalier with their interpretations of the code.
23. Where the standards and scrutiny board takes issue with audits carried out by the APAs it will raise those concerns with them directly. If this does not result in a

satisfactory conclusion then the board will refer matters to the Secretary of State and the accreditation body.

24. The Scrutiny and Standards Board should be able to reserve the right to carry out its own no-notice audits of the premises of both APAs and individual parking operators, in a similar way that Ofsted can visit schools where there are serious concerns about standards, safety and leadership.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843108/School_inspection_handbook_-_section_5.pdf

Q4 Please outline any alternative means by which the Code could be monitored and enforced. You may wish to cite evidence from other regulatory frameworks which are relevant.

25. The Government's aspiration for impact through Regulation states:

"We promised to build a stronger, fairer, more prosperous Britain, for all. Effective markets can do this, bringing prosperity and innovation to us all. However, sometimes markets work against the interests of the consumer and the government has made it clear that it will act when this occurs in order to protect society's most vulnerable. **To this end we have decided to intervene in how some businesses operate to support consumers and the vulnerable in society.** This year four key measures have been introduced to bring about this change. The Business Impact Target measurement does not reflect the benefits that this change brings. For these regulatory measures, the impact on business arises from a direct transfer of financial benefit from certain businesses to consumers to protect them from particular business practices, rather than imposing additional regulatory burdens on business." Taken from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865807/hc-80-better-regulation-annual-report-2018-19-updated-february-2020.pdf Page 3

26. It is clear that the Parking Code Enforcement Framework reflects Government aspirations for a fairer society. Enforcing the Code of Practice effectively will call for a range of measures which could include enhanced existing audit procedures. But only if the existing ATAs themselves demonstrate standards acceptable to UKAS and are awarded accreditations as APAs. These initial accreditations are fundamental to the new system working and need to be rigorous processes. During the accreditation procedures adequate weight needs to be given to how the APAs will carry out their auditing tasks and with what resources.

27. As a reality check, questions should be asked about how many staff the APAs will allocate to the auditing and the frequency of checks. Will they rely on photos – or personal visits?
28. Subsequently, the Scrutiny and Standards Board should be tasked with oversight of the APAs' effectiveness in this area.

Scrutiny and Standards Board (p.10)

Q5 Please provide any feedback you have on the proposed governance arrangements for monitoring the new Code of Practice

29. The public have expectations that new measures to regulate the private parking industry will not be compromised – and that the APAs will be obliged to meet their obligations as laid out in PAS232.
30. A Scrutiny and Standards Board would be the most effective way to ensure the proposed governance arrangements are met. In addition, a Single Appeals Service will need to be selected and appointed.
31. It would be an absurdity if the Scrutiny and Standards Board contained members from those bodies which were being scrutinised. Therefore, no representatives from parking companies, APAs or the DVLA should be appointed to the board. To do otherwise would at the very least suggest that, as is the case now, the industry is self-regulating, with parking companies and their representative bodies marking their own homework. However, we do see the case for a wider industry talking shop or forum and believe that both form part of the new framework.
32. We envisage that the members of the Scrutiny and Standards Board are independent and relatively small in number - totalling four or five perhaps – with no affiliation to any parking company or APA, the DVLA, or live association with special interest groups, and to be appointed by the Secretary of State for a fixed period.
33. The Board must be given an adequate budget to allow it to carry out its work, and it must have the best qualified people for its work, including an effective chair and members with business, technical, and/or legal qualifications. Its overall membership might well be small in number, but the key attributes of those involved are knowhow and independence.
34. Additionally, it should have the analytical capacity to keep on top of the statistics supplied by the APAs to spot any anomalies contained within them.
35. The board should produce an Annual Report to meet the requirements of the Secretary of State – and in addition any other ad hoc reports he, she or the Chair sees fit.

36. While the board should report its findings directly to the Secretary of State, it should also publish them so they can be seen by the industry forum mentioned in paragraph 31 above. It should be free to issue ad hoc or interim reports based on its findings, and to raise issues directly with parties in the overall framework.

The Level of Parking Charges (p.11)

Q6 Which parking charge system is most appropriate for private parking? a) the Three-tiered system b) Mirroring the Local Authority system

b) Mirroring the Local Authority system (with a caveat)

Q6.1 Please explain your answer. You may, for example, wish to make reference to other deterrent frameworks (for example, for railway tickets or traffic violations)

37. Simple but consistent messages are much more likely to generate compliance and confidence amongst the motoring public than a variety of locational and situational circumstances. This is allowed for by the broad mirroring of the local authority system. It would also help foster the impression that charges are not arbitrary but are in line with what is found in the highly regulated public sector.
38. However, there is a caveat. The upper level of charge should either match that in the corresponding local authority area or be £100, whichever is lower. This is to ensure that, in London for instance, where penalty charge notice levels are above the current £100 limit the private parking industry sets itself, motorists attracting a PCN do not find themselves paying more than is the case today.
39. The public would find it difficult to comprehend if the proposed changes – which, after all, are only being introduced because of the industry’s failure over many years to adequately self-regulate – actually result in motorists paying more in charges than they do now, especially when the industry has so far limited itself to PCNs of ‘only’ £100 maximum.
40. The benefits of simple and consistent rules are as true of paying for parking as they are in other areas of daily life. Here are two examples of where things can go wrong and create uncomfortable situations for the public:
- a. The wide variety of types of ticket available for railway travel may have created options for cheap travel but they have also created confusion – and penalties – for people who find themselves on the right train at the wrong time. Whilst the railway companies may recognise an off-peak train, it isn’t always clear to the traveller. And a super off-peak?

- b. In the early part of the Coronavirus lockdown in England, compliance rates with Government advice were in the high 90% range. However, as lockdown was eased and the rules became less clear with many regional and situational variations, people began to 'tailor the rules' to suit themselves.

(<https://www.bbc.co.uk/programmes/b07cblx9/episodes/player> accessed 1 October 2020)

41. It is evident that clear unambiguous messages backed up by logical reasoning get the best reaction from the public, allowing public servants and others to carry out their work most effectively.

42. In 2013 the case 'Beavis v. ParkingEye' succeeded for ParkingEye because the terms of the contract in the car park were few and simple. The judgment included this statement:

'The interest of the landowners was the provision and efficient management of customer parking for the retail outlets. The interest of ParkingEye was in income from the charge, which met the running costs of a legitimate scheme plus a profit margin. Further, the charge was neither extravagant nor unconscionable, having regard to practice around the UK, and taking into account the use of this particular car park and the clear wording of the notices.' Supreme Court 2013

43. The simple signage that persuaded the judges included only three conditions:

- a two hour limit for parking,
- the need to park within the marked bays,
- that parking designated for disabled badge holders shouldn't be used by non-badge holders.

44. You have asked whether tiered parking charges are acceptable. We would say the terms and conditions for such a scheme would be too difficult to include on signage in the car park. And they must be put there to establish a contract.

45. For public acceptance of the scheme and to ensure some consistency across the country, we would argue the case for mirroring Local Authority charges though with the caveat outlined above in paragraphs 38 and 39.

46. Ultimately, the introduction of the new system – with the code of practice at its heart - should result in two things happening, one being a consequence of the other: parking contracts become reasonable and transparent to the user; and the number of PCNs being issued falls dramatically.

Q7 What level of discount is appropriate: 40% as is currently offered in private parking and suggested in the three-tiered system, or 50% as is offered in Local Authority parking? a) 40% b) 50%

b) 50%

Q7.1 Please explain your answer, including whether the discount should be set at a different level

47. In line with the argument about consistency above, 50% is the logical choice.

Q8 How should the level of parking charges be set and how should the levels be revised in future?

48. The parking charge levels should be set in line with local authority charges and revised at the same times in the future.

The Appeals Charter (p.14)

**Q9 Do you agree or disagree in principle with the idea of the Appeals Charter?
Agree/Disagree**

Agree

Q9.1 Please explain your answer

49. We agree that there should be an Appeals Charter because it sets out expectations. It leaves industry in no doubt as to what grounds for issuing PCNs will be regarded as dubious and it helps reassure the public that honest mistakes will go unpunished, as is only reasonable.

Q10 Do you agree or not that the examples given in the Appeals Charter are fair and appropriate? Agree/Disagree

Agree.

Q10.1 Please explain your answer. You may wish, for example, to suggest additional cases to be covered in an Appeals Charter or query existing examples.

50. The examples cited in the consultation document – paragraph 50, a-h – are a good start but are unlikely to be exhaustive. The danger with trying to codify every last circumstance and mitigation is that inevitably some will be missed and therefore, if the industry attempts to rely on the ‘strict letter of the law’, there will be other situations where PCNs are issued but are, with hindsight, clearly unfair to the driver.

51. Therefore, we might word the Appeals Charter along the following lines:

“There are a range of circumstances where the parking charge will be reduced to £0 – i.e. cancelled – which include, but are not limited to, the points [a-h] below...”

52. Following on from the paragraph above we can see no case for reducing a PCN to £20 rather than cancelling it completely. If a PCN has been unfairly issued then that is the end of the matter. There is an argument that setting a ‘modest’ PCN will encourage people not to make the same mistake again. This is approaching the problem from the wrong end. As we have already explained no driver sets out to incur a PCN. If they do incur a PCN it is almost inevitable that the problem lies with the operator, or the operator has the power to fix it.

The Levy (p.16)

Q11 Do you agree or disagree that the parking industry should contribute towards the cost of the regulation? Agree/Disagree

Agree

Q11.1 Please explain your answer.

53. The cost of the regulation of the parking industry should be met entirely by the parking industry itself. The cost should include work already completed and associated with changes necessary to implement the Parking (Code of Conduct) Act 2019 e.g. work by BSI, as well as the setting up and running of a Single Appeals Service and a Scrutiny and Standards Board.
54. At present neither the IPC nor the BPA has a Scrutiny and Standards Board (although the BPA formerly had one).
55. The BPA pays for its appeals service, POPLA, by collecting money from its AOS members on a case by case basis and makes up shortfall by other arrangements. BPA will have shared this detail with you already. We believe the IPC has a similar arrangement.
56. But the public sector appeals service (TPT) takes a different approach and charges a levy on its local authority members for every ticket they issue – whether appealed or not. The present rate is £0.30 per ticket.
57. At present, DVLA collects £2.50 per KADOE enquiry from parking operators. If DVLA at the same time collected a levy of £0.30 per enquiry to fund the Scrutiny Board and the Appeals Service for 2019/20 the income for these bodies could be around £2.5m.

58. As now, motorists' appeals would still be charged to the relevant operators – around £27 per case.
59. If the levy were to be doubled for - say - five years to cover exceptional set up costs, and a further one-off amount were to be raised from the parking operators themselves (pro rata based on company income) public expense could be avoided. The ATAs already charge membership fees to their AOS members based on company accounts so this would not be a difficult exercise.

ENDS