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# Highway Management

Traffic Management - parking services

## Discretion and Mitigation Policy 2022

Guidelines for the consideration of Challenges and  
Representations against Penalty Charge Notices

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## Introduction

This policy document is intended to inform the public about the statutory grounds and mitigating circumstances for which a challenge to a Penalty Charge Notice (PCN) can be contested; and to provide guidance to council employees working within civil parking enforcement.

This is consistent with current best practice and aims to provide clarity, consistency and transparency within the enforcement process and be compliant with statutory guidance provided under the Traffic Management Act 2004 by the Department for Transport.

What is important about these policies is that they represent a foundation upon which fairness and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, therefore decisions made by councils must not be impeded by being unreasonably rigid.

This policy document addresses the following:

- The statutory grounds upon which representations may be made
- Mitigating circumstances
- The acceptance or rejection of challenges and representations

Each case must be assessed on its own merits and consider the exceptionality of the circumstances.

Policies set out in this document provide guidance only and are subject to ongoing review.

## Contravention Codes

The standard contravention codes operated within Solihull, the level of the penalty charge, including the observation time given by Civil Enforcement Officers prior to issuing a Penalty Charge Notice (PCN) is detailed in the table below.

Code	Description	Level <sup>1</sup>	Obs. <sup>2</sup>
<b>On-Street</b>			
01	Parked in a restricted street during prescribed hours	Higher	5
02	Parked or loading / unloading in a restricted street where waiting and loading / unloading restrictions are in force	Higher	0
05	Parked after the expiry of paid for time	Lower	10
06	Parked without clearly displaying a valid pay & display ticket or voucher	Lower	10
07	Parked with payment made to extend the stay beyond initial time	Lower	0
09	Parked displaying multiple pay & display tickets where prohibited	Lower	0
11	Parked without payment of the parking charge	Lower	5
12	Parked in a residents' or shared use parking place without clearly displaying either a permit or voucher or pay and display ticket issued for that place	Higher	5
14	Parked in an electric vehicles' charging place during restricted hours without charging	Higher	0
16	Parked in a permit space without displaying a valid permit	Higher	5
18	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	Higher	0
19	Parked in a residents' or shared use parking place or zone with an invalid virtual permit or displaying an invalid physical permit or voucher or pay and display ticket, or after the expiry of paid for time	Lower	10
20	Parked in a loading gap marked by a yellow line	Higher	5
21	Parked in a suspended bay/space or part of bay/space	Higher	0
22	Re-parked in the same parking place or zone within one hour <sup>3</sup> after leaving	Lower	0
23	Parked in a parking place or area not designated for that class of vehicle	Higher	0
24	Not parked correctly within the markings of the bay or space	Lower	0
25	Parked in a loading place during restricted hours without loading	Higher	5

<sup>1</sup> For differential Penalty charge levels, see table 1

<sup>2</sup> Observation times in minutes before a PCN may be issued

<sup>3</sup> "one hour" may be varied to another time period or "the prescribed time period"

26	Vehicle parked more than 50 centimetres from the edge of the carriageway and not within a designated parking place	Higher	0
27	Parked adjacent to a dropped footway	Higher	0
30	Parked longer than permitted	Lower	10
34	Being in a bus lane	N/A	0
40	Parked in a designated disabled person's parking place without clearly displaying a valid disabled person's badge	Higher	0
41	Parked in a parking place designated for diplomatic vehicles	Higher	0
42	Parked in a parking place designated for police vehicles	Higher	0
45	Parked on a taxi rank	Higher	0
46	Stopped where prohibited (on a red route or clearway)	Higher	0
47	Stopped on a restricted bus stop or stand	Higher	0
48	Stopped in a restricted area outside a school	Higher	0
49	Parked wholly or partly on a cycle track	Higher	0
55	A commercial vehicle parked in a restricted street in contravention of an overnight waiting ban	Higher	5
56	Parked in contravention of a commercial vehicle waiting restriction	Higher	5
57	Parked in contravention of a coach ban	Higher	5
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways	Higher	0
62	Parked with one or more wheels on any part of an urban road other than a carriageway (footway parking)	Higher	0
63	Parked with engine running where prohibited	Lower	0
99	Stopped on a pedestrian crossing and/or crossing area marked by zig-zags	Higher	0

Off-street			
70	Parked in a loading area during restricted hours without reasonable excuse	Higher	5
73	Parked without payment of the parking charge	Lower	5
74	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	Higher	0
80	Parked for longer than permitted	Lower	10
81	Parked in a restricted area in a car park	Higher	5
82	Parked after the expiry of paid for time	Lower	10
83	Parked in a car park without clearly displaying a valid pay & display ticket or voucher or parking clock	Lower	5
84	Parked with payment made to extend the stay beyond initial time	Lower	0
85	Parked in a permit bay without clearly displaying a valid permit	Higher	5
86	Not parked correctly within the markings of a bay or space	Lower	0
87	Parked in a disabled person's parking space without clearly displaying a valid disabled person's badge	Higher	0
89	Vehicle parked exceeds maximum weight and/or height and/or length permitted in the area	Higher	0
90	Re-parked in the same car park within one hour after leaving	Lower	0
91	Parked in a car park or area not designated for that class of vehicle	Higher	0
92	Parked causing an obstruction	Higher	0
93	Parked in car park when closed	Lower	0
95	Parked in a parking place for a purpose other than that designated	Lower	0
96	Parked with engine running where prohibited	Lower	0

**Table 1**

Band	Higher level penalty			Lower level penalty		
	Penalty charge	Early payment	Charge Certificate	Penalty charge	Early payment	Charge Certificate
1	£60	£30	£90	£40	£20	£60
2	£70	£35	£105	£50	£25	£75

## Statutory Grounds for Appeal

The statutory grounds for which an appeal can be made are outlined in the table below.

S1	<b>The Penalty exceeded the amount that applied in the circumstances</b>
	This means the authority has asked for more than they are entitled to under the relevant regulations. The penalty charge should be either £50 or £70 before discount, depending on the alleged contravention that occurred.
S2	<b>The contravention did not occur</b>
	For example: <ul style="list-style-type: none"> <li>the signs and lines were wrong</li> <li>the events alleged did not happen</li> <li>the vehicle was entitled to park</li> <li>loading or unloading was taking place</li> <li>a passenger was boarding or alighting</li> <li>a valid Blue Badge was displayed</li> <li>a valid pay-and-display ticket or permit was displayed</li> </ul>
S3	<b>The Traffic Regulation Order (TRO) is invalid</b>
	TROs are created by authorities that specify traffic restrictions and the conditions under which vehicles may park. This ground means the TRO was invalid or illegal, not that you disagree with a restriction that is in place.
S4	<b>There has been a procedural impropriety by the authority</b>
	This means the authority has not complied with the relevant regulations. For example: <ul style="list-style-type: none"> <li>the PCN or another document did not provide the required information</li> <li>the authority did not respond to your challenge or responded too late.</li> </ul>
S5	<b>The PCN was sent by post because the authority claims the Civil Enforcement Officer (CEO) was prevented from putting it on the vehicle or handing it to the driver. But in fact, the CEO was not prevented from doing this.</b>
	This is when the appellant alleges the CEO was able to serve the Penalty Charge Notice by affixing it to the vehicle or handing it to the driver but chose not to.

S6	<b>You did not own the vehicle when the alleged contravention occurred.</b>
	<p>For example:</p> <ul style="list-style-type: none"> <li>• you have never been the Registered Keeper</li> <li>• you sold it before, or bought it after, the date of the contravention. You will be required to provide the name / address details of who you bought the vehicle from / sold the vehicle to in your appeal. If you cannot do this, you should explain why.</li> <li>• it was under a long-term leasing arrangement that transfers 'keepership' from the Registered Keeper to the hirer.</li> </ul>
S7	<b>The owner is a vehicle hire firm</b>
	<p>This ground applies only to qualifying formal hire agreements, where the hirer has signed an agreement accepting liability of penalty charges issued during the hire period. You should provide the hirer's name and address and a copy of the agreement when making an appeal to us.</p> <p>For further guidance, see:</p> <ul style="list-style-type: none"> <li>• Schedule 2 to the Road Traffic (Owner Liability) Regulations 2000<sup>4</sup></li> <li>• Section 66 of the Road Traffic Offenders Act 1988<sup>5</sup></li> </ul>
S8	<b>The vehicle was taken without the owner's consent</b>
	<p>This ground covers stolen vehicles and vehicles used without the owner's consent. It could apply, for example, to a vehicle taken by 'joy riders'. It does not generally apply to vehicles in the care of a garage or borrowed by a relative or friend. If possible, you should supply a crime reference number from the police when submitting an appeal.</p>
S9	<b>The penalty has already been paid</b>
	<p>Either:</p> <ul style="list-style-type: none"> <li>• in full; or</li> <li>• at the discounted rate and in time.</li> </ul>

<sup>4</sup> <https://www.legislation.gov.uk/ukxi/2000/2546/contents/made>

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/1988/53/section/66>

## Mitigating Circumstances

The mitigating circumstances contained in the following tables highlight example cases where discretion might be applied.

The full facts of all appeals are taken into consideration when assessing the evidence for each case. It is an underlying principle of civil parking enforcement that no case is binding on any other and that each appeal or representation is considered on the balance of its own merits.

This list is not exhaustive.

MC1	The motorist claims to have become unwell while driving	
	May accept representation	May reject representation
	<p>If proof of a temporary or permanent medical condition, that is consistent with the conditions as described is provided.</p> <p>The notes made by the CEO support the motorist's representations.</p>	<p>The motorist cannot provide proof of a temporary or permanent a medical condition that is consistent with the conditions described.</p> <p>Where other evidence contradicts the motorists claims.</p>

MC2	A current blue badge holder that did not have their blue badge and/or clock on display or could not be read or had expired.	
	May accept representation	May reject representation
	<p>If it can be established that this is the first contravention of this type and details of a blue badge that was valid at the time the PCN was issued is provided, and if the Civil Enforcement Officer's evidence also confirms:</p> <ul style="list-style-type: none"> <li>• The blue badge was displayed incorrectly in the vehicle.</li> <li>• The clock was not displayed or partially obscured.</li> <li>• It can be established that other reasonable circumstances delayed the renewal of the blue badge e.g., sickness on the part of the applicant.</li> </ul>	<p>If the motorist has previously had a PCN cancelled for the same contravention and had been given full information on the need to display a valid badge / time clock, and how to do so correctly in the future.</p> <p>If the motorist was parked on a waiting restriction beyond the 3-hour time limit permitted or on another restriction for which the blue badge does not provide an exemption.</p>

MC3	<b>The motorist stopped to use the toilet</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	On production of medical evidence confirming a relevant medical condition and in support of the circumstances described in a representation.	In all other circumstances

MC4	<b>The vehicle had broken down</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	If satisfactory evidence of the breakdown, i.e., proof of vehicle recovery that confirms the date, time, and location is provided.	<p>If the motorist is unable to provide satisfactory evidence that their vehicle had broken down.</p> <p>If the cause of the vehicle “breaking down” was due to negligence on the part of the motorist, e.g., the vehicle had not been properly maintained, had run out of petrol, water or for a similar reason.</p> <p>If the vehicle was parked in a pay and display bay as payment of parking would still be required.</p> <p>If the CEO's notes contradict the motorist's version of events.</p>

MC5	<b>The motorist claims they were attending an emergency, or another vehicle that had broken down</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	The motorist provides reasonable proof of the emergency, i.e., a credible report of an accident or incident, or that they were attending to another vehicle that had broken down.	<p>If the motorist is unable to provide evidence that they were attending an emergency of another vehicle which had broken down.</p> <p>If the CEO's notes and photographic evidence contradict the motorist's version of events, i.e., the motorist was not seen attending an emergency or another vehicle that was broken down.</p>

MC6	The motorist was a patient visiting a doctor's surgery	
	May accept representation	May reject representation
	If the motorist can provide a letter from a doctor to confirm that the visit was of an emergency nature, and they were unable to walk from the nearest legal parking space.	<p>If the motorist was not the patient but only driving the vehicle carrying the patient.</p> <p>If the motorist was attending a non-urgent prearranged appointment.</p> <p>If the motorist could reasonably have been parked legally elsewhere.</p>

MC7	The motorist claims to have been recently bereaved	
	May accept representation	May reject representation
	Only in exceptional circumstances.	Only if there is a significant reason to doubt the sincerity of representations, i.e., the CEO's notes indicating that the motorist was going about a normal day, shopping, working for example, or the bereavement is a long time ago.

MC8	The motorist was delayed in returning to their vehicle and the parking time purchased had expired	
	May accept representation	May reject representation
	Only in exceptional circumstances such as a medical emergency.	<p>If the delay described by the motorist was entirely avoidable, e.g., queuing in a shop.</p> <p>If the motorist simply underestimated the time needed and could have reasonably purchased more time.</p> <p>If the motorist was unable to drive since parking due to excess alcohol in the body or had been detained and charged by the police</p>

MC9	The motorist left the vehicle parked for more than 10 minutes without a valid ticket on display to obtain change	
	May accept representation	May reject representation
	If the motorist returns to the vehicle with a valid Pay and Display ticket and the Civil Enforcement Officer is still at the vehicle.	If the CEO's notes indicate that the motorist returned to their vehicle, having completed their purpose for parking, while the PCN was being issued, e.g., carrying shopping, or had left vehicle in car park, or on-street pay and display area, while obtaining change.

MC10	The motorist claims to have been unaware of charges or restriction in a car park relating to vehicle's class or weight	
	May accept representation	May reject representation
	If restrictions referenced on the tariff board(s) are incorrect.	In all other circumstances.

MC11	The motorist claims to have been unaware of recent rise in tariff	
	May accept representation	May reject representation
	If statutory notices were not erected in accordance with procedural regulations.	If statutory notices were erected in accordance with procedural regulations and tariff board(s) were correct.

MC12	The motorist had parked with one or more wheels outside of a marked bay in a car park	
	May accept representation	May reject representation
	Only in exceptional circumstances that were outside the motorist's control.	When incontrovertible evidence is provided by the CEO, i.e., photographs of the actual contravention.  Note: A motorist must park correctly within a space. It is not an acceptable reason to park outside the confines of a parking space because another car has done so.

MC13	The motorist claims to have been unaware of the existence of a controlled parking zone	
	May accept representation	May reject representation
	If it can be established that the signing and marking of the CPZ is at fault.	In all other circumstances.

MC14	The motorist was displaying an expired authorisation to park, i.e., waiver, parking place suspension, season ticket, resident's permit, business permit or visitor permit	
	May accept representation	May reject representation
	If the renewal was delayed by the Council's administrative processes, or if it is established that other reasonably unforeseen circumstances delayed the renewal of an authorisation to park, e.g., sickness on the part of the applicant or postal delays (supported by appropriate evidence).	In all other circumstances.
MC15	The motorist is a new resident within a controlled parking zone and had parked in a resident's bay without displaying a valid resident's permit	
	May accept representation	May reject representation
	In no circumstances.	On all occasions.
MC16	The motorist claims they were attending a funeral	
	May accept representation	May reject representation
	Where there is no reason to doubt the sincerity of the representations.	In all other circumstances.
MC17	The motorist claims that snow, foliage, or fallen leaves covered the signs or road markings	
	May accept representation	May reject representation
	If weather conditions support it was a likely contributory factor that obscured the markings at the time of the contravention, or that overhanging foliage was covering the signs.	<p>If it can be established that weather conditions did not contribute to covering markings and foliage is not obscuring the signs.</p> <p>If the CEO's photographic evidence and notes directly contradict the motorist's version of events.</p> <p>If the location of the contravention was unlikely to be subject to the natural conditions described by the motorist, e.g., it was under cover.</p>

MC18	The vehicle in question was on police, fire brigade or ambulance duties	
	May accept representation	May reject representation
	If a senior officer of the service concerned supports the representation and there is no reason to doubt that the vehicle was engaged on operational activities.	In all other circumstances.

MC19	The motorist claims to have been unaware of a temporary parking restriction or special event restriction	
	May accept representation	May reject representation
	<p>If the motorist claims that there was no indication of the restriction, and the CEO's photographic evidence and notes confirm that appropriate signing was not in place.</p> <p>If the process followed to make the temporary order was defective in some way.</p>	If the CEO's notes and photographic evidence confirm that the vehicle was parked in an area restricted by a temporary parking restriction and that appropriate signing was in place and clearly visible.

MC20	The registered keeper liable for payment of the PCN is expected to be absent for a long period of time, e.g., is living abroad or is in prison	
	May accept representation	May reject representation
	In no circumstances.	In all circumstances.

MC21	The registered keeper liable for payment of the PCN is said to have died	
	May accept representation	May reject representation
	When a copy of the death certificate is provided.	When a copy of the death certificate or other satisfactory supporting evidence is not provided.

MC22	<b>The vehicle driven by the motorist is diplomatically registered</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>In all circumstances. A Notice to Owner should never be sent to the keeper of a diplomatically registered vehicle. Solihull MBC should be informed of all penalty charges un-recovered from keepers of diplomatically registered vehicles.</p> <p>They will pass information concerning these debts onto the Foreign and Commonwealth Office [Source – Secretary of State’s Traffic Management and Parking Guidance, Vienna Convention on Diplomatic Relations, Diplomatic Privileges Act 1964 and Government Report on Review of Vienna Convention...]</p>	<p>In no circumstances.</p>

MC23	<b>The motorist received a Fixed Penalty Notice from a police officer when parked in the same location</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If confirmation is provided by the police that proceedings for a criminal offence in connection with the same incident have been instituted to prevent ‘double jeopardy’.</p>	<p>In all other circumstances.</p>

MC24	<b>When a Council officer or Member parked in contravention and claims to have been on Council business</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If the officer was carrying out emergency or other statutory work.</p>	<p>In all other circumstances.</p>

MC25	<b>The motorist stopped to drop off someone</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If the circumstances are seen by the CEO.</p> <p>If, in exceptional circumstances and subject to observations times, the motorist had to escort a passenger (child, elderly or disabled person) to home, or school.</p>	<p>If motorist was parked / stopped on school keep clear markings, pedestrian crossing, bus stop clearway or any other restriction where no stopping is prohibited.</p>

MC26	<b>The motorist was unaware of the overnight waiting ban/commercial vehicle waiting restriction</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If motorist was instructed or authorised to park in contravention of the restriction by the police.</p>	<p>In all other circumstances.</p>

MC27	<b>The motorist states they were in police custody when the PCN was issued</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If the Police provide proof they instructed the motorist to leave the vehicle and at the time of arrest the motorist was legally parked but was unable to move vehicle before the restriction started.</p>	<p>If proof is not provided or the vehicle could have been legally parked before arrest.</p>

MC28	<b>The motorist states they were visiting a friend or relative in urgent circumstances</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If due to an emergency the parking contravention could not be avoided due to the exceptional nature of the incident.</p>	<p>If the motorist has already received a PCN, which has been cancelled for the same reason.</p> <p>If the CEO's Pocket Book notes provides significant reason to doubt sincerity of the representation.</p>

MC29	<b>The motorist claims there was no legal place to park</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>Only in the most exceptional of circumstances.</p>	<p>If evidence of exceptional circumstances is not provided.</p>

MC30	<b>The motorist claims they were parked on private property</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	If land search maps confirm location is private property and not subject of the relevant Traffic Regulation Order, and if there is insufficient evidence to establish location of vehicle is on private land.	In all other circumstances.

MC31	<b>The motorist was parked in a limited waiting parking place and were delayed in returning to their vehicle</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	<p>If supported by appropriate evidence, the motorist's representations claim that the delay in returning to the vehicle was caused by circumstances that were entirely unforeseen, unavoidable, and exceptional.</p> <p>If the motorist's vehicle had broken down, (subject to agreement with policy MC4).</p> <p>If the motorist was unable to drive, since parking the vehicle due to ill health (subject to agreement with policy MC1).</p>	<p>If the delay described by the motorist was not exceptional, i.e., queuing in a shop.</p> <p>If the motorist underestimated the time required and could reasonably have purchased more time.</p> <p>If the motorist was unable to drive since parking due to excess alcohol in the body or was detained by the police for any reason, unless subsequently released without charge or proven innocent.</p>

MC32	<b>The motorist had parked while asking directions / opening gates to private property</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	If evidence provided by the Civil Enforcement Officer does not contradict representations.	In all other circumstances.

MC33	<b>The motorist stopped to answer mobile phone</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
	In no circumstances.	On all occasions.

MC34	The motorist states that the details on the PCN are incorrect, e.g., location	
	May accept representation	May reject representation
	If there is reason to doubt that the PCN was issued correctly, when considering evidence provided by the Civil Enforcement Officer.	If the PCN was fully and correctly completed.

MC35	The motorist states they were unaware of enforcement on bank holidays	
	May accept representation	May reject representation
	In no circumstances.	On all occasions.

MC36	The motorist states that restriction was marked after the vehicle had been parked	
	May accept representation	May reject representation
	If records confirm that signing, lining, and placement of cones or suspension notices was likely to have taken place after the vehicle parked.	If CEO evidence shows that markings were already in place at the time of parking.

MC37	The motorist was carrying out construction or demolition works	
	May accept representation	May reject representation
	<p>If evidence confirms that the motorist was loading/unloading</p> <p>If a valid waiver to park at the location in question had been issued and was on display in the vehicle.</p> <p>If works were of a statutory nature or are exempted from restrictions by a Traffic Order or legislation.</p> <p>If it can be proved that works were an emergency. Where there are compelling reasons or other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>In all other circumstances where there are no compelling reasons or other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>

MC38	<b>The motorist stopped to collect (prescribed) medication from a chemist</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
Only in the most grave, urgent, and exceptional of circumstances and only if the use of a 'legal' parking place would have caused an unacceptable delay. Where there are compelling reasons or other specific mitigating circumstances requiring the case to be assessed on its individual merits.		In all other circumstances where there are no compelling reasons or other specific mitigating circumstances requiring the case to be assessed on its individual merits.

MC39	<b>The motorist states a bus lane was not clearly marked</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
<p>If the signs are missing, vandalised or defaced making them illegible to approaching motorists.</p> <p>If the road markings are worn to such an extent, they are no longer legible to approaching motorists.</p>		In all other circumstances.

MC40	<b>The motorist states an emergency vehicle forced them into a bus lane</b>	
	<b>May accept representation</b>	<b>May reject representation</b>
If footage shows an emergency vehicle needed vehicles to give way, and that entering the bus lane was a reasonable manoeuvre.		In all other circumstances.

## Version History

Revision date	Revision by	Summary of changes	Version
10/01/2022	Steve Halsey	Creation of discretion and mitigation policy	0.1
17/01/2022	Steve Halsey	Added observation times	0.2
03/02/2022	Krissy Coley	Minor changes	0.3
07/02/2022	Steve Halsey	Contravention code list amended, and bus lane mitigation examples added	0.4
17/02/2022	Paul Tovey	Sign off	1.0

