

8 DECRIMINALISATION OF PARKING - REPRESENTATIONS AND APPEALS (AN162-2006)

Reference is made to Article III of the minute of the meeting of this Committee of 2nd December 2002 wherein it was agreed to implement a scheme for the decriminalisation of parking in Dundee.

If a parking attendant considers that a contravention has occurred, a Penalty Charge Notice (PCN) is issued. A discount (currently 50%) is applied where the penalty charge is paid within 14 days. If the penalty remains unpaid after 28 days, a Notice to Owner (NtO) is issued to the owner. The Council is under a statutory duty to consider any written representations and supporting evidence received from the owner within 28 days of the service of the NtO. The Council is required to cancel the PCN if it considers that one or more of the statutory grounds have been met. In summary these grounds are principally that:-

- the recipient did not own the vehicle at the time of the contravention;
- the alleged contravention did not occur;
- the vehicle had been parked by someone without the consent of the owner;
- the designation order was invalid;
- the vehicle had been hired and the person who hired it had agreed to be responsible for penalty charges;
- the penalty charge exceeded the amount applicable in the circumstances of the case.

A notice is served of the Council's decision on these representations as to whether the ground has been established and, if so, cancel the PCN, and, if not, to notify the owner of the right to appeal the PCN to the Parking Adjudicator. This function is currently being discharged by Planning and Transportation parking staff.

There are no statutory grounds for making written representations where the recipient of the NtO acknowledges a contravention but seeks to argue extenuating circumstances for making representations before the receipt of the NtO. However, the Council retains at all times a general legal discretion not to pursue a PCN at any stage so long as this is exercised reasonably and fairly. Therefore, the Council does accept and consider statutory and non-statutory representations made by an owner prior to the issuance of an NtO and these are currently considered and discharged by Planning and Transportation parking staff and this will continue.

It is now proposed to establish an internal review panel with delegated powers to consider all statutory and non-statutory representations received after the issuance of an NtO including extenuating circumstances where an owner does not accept the initial decision of Planning and Transportation parking staff. In the interests of natural justice the review panel will comprise Senior Officers who have not previously been involved in the issue or consideration of the original PCN/NtOs.

Accordingly, it is recommended that a pool of six senior officers - two each from Legal, Finance and Corporate Planning (with either the Senior Legal Officer or Senior Finance Officer in the Chair) be established for this purpose with full relevant delegated powers. All cases will be considered on an ad hoc basis by a panel of three officers - one from each discipline. It is also recommended that the Panel be guided in cases where extenuating circumstances are pled by the general principle that each case will be dealt with on its own merits and that they should balance the need to show flexibility with the need to enforce parking controls fairly in the public interest. In the event that there is no consensus then the appeal will be forwarded to the Chief Executive, Depute Chief Executive (Finance) or Depute Chief Executive (Support Services) for a final decision.