

CIVIL PARKING ENFORCEMENT – POSITION STATEMENT

Report of Executive Director of City Services and the Chief Solicitor

1. Purpose of Report

- 1.1 At its meeting on 21 September 2009, the Committee considered a report regarding the background to an article which appeared in the Sunderland Echo on 29 July 2009 relating to a number of parking appeals cases. Members requested a further report to update the Committee on the position with civil parking enforcement and also to provide additional information regarding the appeals heard on 29 July 2009.
- 1.2 The purpose of this report is to provide information but it is emphasised that with respect to those issues which will be determined by an appropriate body, ie. Court, Adjudicator or District Auditor they are not for debate at this meeting. However, the Committee may wish to express its views in relation to the policy on loading and unloading in parking places in the city centre which is set out in Section 10 of this report.

2. Background

- 2.1 Decriminalised Parking Enforcement (DPE) was introduced in Sunderland in February 2003, as a result of which the responsibility for enforcement of contraventions of Traffic Regulation Orders (TROs) in respect of restrictions on waiting, loading/ unloading and parking places, transferred from the Police to the Council. In March last year DPE became known as Civil Parking Enforcement (CPE) and throughout the remainder of this report it will be referred to as CPE.
- 2.2 Mr Herron first raised concerns regarding aspects of the CPE regime in Sunderland four years ago.

As well as challenging discrete areas of the regime, such as the accuracy of the signing of TROs, and the appropriateness of issuing penalty charge notices (PCNs) in particular situations (e.g. to blue badge holders parking in loading bays) Mr Herron alleged that the Controlled Parking Zone (CPZ) in the City Centre had not been validly created, was unlawful and the Council should suspend enforcement.

- 2.3 In August 2005, the Director of Development and Regeneration and City Solicitor (as he was then titled) commissioned a post implementation review of the CPE regime to assess:

- the arrangements that were put in place to implement it; and

- the subsequent management and operational arrangements within the Council with the successful Contractor, National Car Parks Limited (NCP).

2.4 The Council also obtained leading counsel's advice on a number of the matters raised by Mr Herron, in particular, the assertion that the CPZ was unlawful. Counsel's advice was that there was no basis for the claims:-

- (a) that there was a requirement for a specific Order declaring the creation of a CPZ;
- (b) that the CPZ was unlawful;
- (c) that the CPE regime established in Sunderland was unlawful;
- (d) that the CPE regime should be suspended.

Counsel also advised that unless or until a successful legal challenge was made to the Special/Permitted Parking Order made by the Secretary of State (this is the order that created the CPE regime in Sunderland) the Council must assume that the regime is lawful. There has not been such a successful legal challenge.

2.5 Whilst Counsel's advice was that the regime was lawful, it is accepted that there were some particular issues identified which required action by the Council. For example, PCNs had incorrectly been issued to motorists who had parked in taxi ranks and blue badge holders who had parked in loading bays. A number of restrictions/provisions in the Council's TROs had not been signed strictly in accordance with the requirements of the Traffic Signs Regulations and General Directions Order 2002 (TSRGD).

2.6 The Council implemented a programme of corrective action which included checking and rectifying signs and lines and refunding any motorist who had been issued with a PCN incorrectly (e.g. where it had not been possible to identify the TRO which had imposed the restriction which was marked on the ground). A number of Traffic Regulation Orders were made in 2006 to address anomalies.

2.7 Where a motorist has argued that there was an inconsistency between the signing on the road and the requirements of TSRGD, the Council has generally relied on the independent appeal process to determine whether a PCN should be upheld.

2.8 In addition, between November 2005 and May 2006, the Council cancelled a number of PCNs issued to motorists including Mr Herron, in response to two decisions involving other local authorities. The first case was a High Court matter involving Barnet London Borough Council, which established

that PCNs must state the date of issue as well as the date of the contravention. The second decision was an NPAS decision involving Aylesbury Vale District Council which concerned the timescales required to be stated on Notices to Owner and Notices of Rejection of Representations. Both of these decisions had implications nationally and the Council responded appropriately by amending its documentation and by cancelling outstanding PCNs affected by the decisions. These decisions were not unique to the Council's CPE regime.

- 2.9 Following the post implementation review, Internal Audit's detailed report was considered by both Cabinet and the then Environmental and Planning Review Committee. Regular updates were provided to the Review Committee regarding progress with the various action points identified.
- 2.10 External consultants, RTA Associates, were subsequently commissioned to carry out a review of parking arrangements which included a sample check of signage and they concluded that the arrangements in place were fit for purpose. This was reported to both Cabinet and the Environmental and Planning Review Committee in November 2008.

3. **Formal Challenges by Mr Herron**

- 3.1 Mr Herron has made a number of challenges and allegations relating to the parking enforcement regime and it is not practicable to include reference to every single issue he has raised. However, there are formal mechanisms for dealing with the issues he raises, whether that be by way of appeal to the Traffic Penalty Tribunal, objection to the accounts, or court proceedings. The key challenges are referred to below.

4. **Objection to Accounts for 2004/2005**

- 4.1 In October 2005, Mr Herron made an objection to the Council's accounts for 2004/2005. Mr Jennings, the then District Auditor, accepted the notice of objection as valid but after consideration of the matter, decided not to apply to the Court for a declaration that there were items of account that were contrary to law or to issue a report in the public interest. In reaching his decision he had regard to a number of factors including the steps the Council had taken to refund motorists, where appropriate, and the programme of work it had undertaken to address weaknesses in the system.

5. **Appeals against PCNs heard in 2006**

- 5.1 During 2006, Mr Herron deliberately accumulated a number of PCNs, against which he appealed to the National Parking Adjudication Service (NPAS) (now called the Traffic Penalty Tribunal (TPT)). His appeals were heard in October 2006.

- 5.2 There were twenty nine appeals against PCNs which were made by either Mr Herron, or his sister Rachel Herron (whom he represented at the hearing of the appeals). Of those twenty nine appeals, twenty six were dismissed. The Council conceded one appeal and Mr Herron was successful in respect of only two.
- 5.3 Mr Herron applied for a review of the Adjudicator's decision. In a decision dated 18th January, 2007, the Adjudicator referred to the fact that "by the middle of 2005 [Mr Herron] had reached a view that there were potential problems with the validity of the Council's Parking Enforcement Scheme. Because of those concerns Mr Herron deliberately parked his vehicle in locations where a PCN was likely to be issued so as to be able to start the process of challenging both the PCNs and the Parking Enforcement Scheme.
- 5.4 Mr Herron believed that he had evidence of malpractice, maladministration and misfeasance on the part of the Council so that, as he put it, he continued to collect PCNs in an attempt to bring matters to a head. He states that the PCNs were collected in order to expose the fact that the signing of the restrictions did not comply with the statutory regulations with the result that in his opinion the City Centre controlled parking zone could not be enforced.

It follows that Mr Herron must have carefully chosen the locations to which the PCNs related and that he had given considerable thought to the grounds on which the challenges would be made."

The Adjudicator dismissed Mr Herron's application for a review.

6. County Court Proceedings

- 6.1 Mr Herron did not pay the penalty charges to which the twenty six appeals related and therefore the amounts outstanding under the PCNs were registered as debts in the County Court. Mr Herron, however, sought to have this set aside by applying to lodge Statutory Declarations to the effect that he had not been issued with a valid Notice to Owner (NtO) by the Council in respect of the PCNs. (The NtO is a document served by the Council after the PCN has been issued which gives the motorist the opportunity to make formal representations as to why the penalty charge should not be paid). This challenge was heard by His Honour Judge Walton at Newcastle County Court and on 9 January 2009, judgment was given in favour of the Council and Mr Herron was ordered to pay the Council's costs of over £3,000. The PCN payments remain outstanding.

7. Appeals Against PCNs heard in 2007

- 7.1 In the meantime, Mr Herron had continued to be issued with further PCNs against which he submitted a further 55 appeals. These appeals were

heard over two days in 2007, again by Mr Keenan, OBE, the Adjudicator who had heard the first set of appeals. By a decision dated 26th February, 2008, the Adjudicator dismissed fifty three of the fifty five appeals. Mr Herron won only one of the appeals and there is a decision outstanding in respect of one other which was dealt with at the same time. (It is believed that the one outstanding decision has been inadvertently omitted from the Adjudicator's decision letter and the TPT has been contacted regarding this).

- 7.2 Mr Herron applied for a review of Mr Keenan's decision and his application was dismissed by another Adjudicator by a decision letter of 30th June, 2008. It is this second set of appeals which is the subject of Mr Herron's current application for judicial review, which is referred to below.

8. Objection to the Accounts for 2007/2008

- 8.1 Mr Herron has also lodged an objection to the accounts for 2007/2008. His objection relates to the contractual relationship between the Council, National Car Parks Limited and NCP Services Limited and is currently being considered by the District Auditor.
- 8.2 The original parking enforcement contract was awarded to National Car Parks Limited and following a company re-organisation, was assigned to NCP Services Ltd. Mr Herron's objection is based on his contention that there was a period during which NCP Services Ltd were issuing PCNs in Sunderland without there being any contractual arrangements in place between that company and the Council. This is something which he raised before the Adjudicator in his second set of appeals heard in 2007. The Adjudicator did not accept Mr Herron's submission. Despite Mr Herron having now made this the subject of his challenge to the accounts, interestingly, he has not pursued this line of argument in the judicial review proceedings as a basis for challenging the Adjudicators' decisions. The judicial review proceedings have been pursued on different grounds, to which reference is made below.
- 8.3 Mr Herron has also alleged that Council acted in breach of its Constitution by assigning the parking enforcement services contract from National Car Parks Limited to NCP Services Limited.
- 8.4 The Council does not accept this and has provided information to the District Auditor to confirm that there were in fact arrangements in place between the Council and NCP Services Ltd during the period concerned and that the Director of Development and Regeneration did have delegated power under the Council's Constitution to assign/novate contracts. Mr Herron has recently written to the District Auditor amplifying the grounds of his objection, to which the Council will respond.

8.5 It is understood that similar challenges have been made in other local authority areas and therefore they are being considered together to ensure a consistent response. The District Auditor's decision will be reported to the Audit and Governance Committee.

9. Application for Judicial Review

9.1 Mr Herron's application for judicial review relates to the fifty three appeals which were heard in 2007.

9.2 With regard to the grounds upon which Mr Herron is pursuing his application for judicial review, the Judge refused permission for him to pursue his claim that the arrangements for the hearing of appeals by NPAS (now the TPT) breached his Article 6 rights. Mr Herron has consistently argued this point at each of his appeals. He failed to obtain permission to pursue this ground of challenge.

9.3 The Judge has however granted permission for the claim to proceed on the ground that the Adjudicator who considered Mr Herron's application for a review of the fifty three appeal decisions, erred in law in finding that there was no reason to interfere with the interpretation of the law or its application to the facts by the Adjudicator who heard the appeals and dismissed them.

9.4 This ground of appeal relates to the Controlled Parking Zone (CPZ) in Sunderland and the Adjudicator's conclusions regarding the enforceability of single yellow line restrictions within the zone.

9.5 The Judge who granted permission for the claim to proceed stated that although he was very sceptical about the correctness of the approach to the legislation which was advanced on behalf of the Claimants, he could not say that it was so unarguable that a full hearing to consider it was unwarranted.

9.6 The Secretary of State for Transport has now applied to be joined in the proceedings as an interested party. The Secretary of State has lodged detailed grounds for contesting the claim in which he submits that Mr Herron's interpretation of the relevant legislation is incorrect and he requests the Court to dismiss the claim for judicial review.

9.7 A date for the hearing is still awaited.

9.8 It does not follow that because permission to proceed has been granted, Mr Herron will be successful at the substantive hearing. However, there are, inevitably, uncertainties and risks associated with any litigation. The Council has, however, acted properly throughout Mr Herron's campaign and is acting reasonably in continuing to resist the claim for judicial review.

9.9 Further, it should also be borne in mind that the basis of Mr Herron's challenge to the validity of the CPZ relates to the presence of signs and lines in the Zone other than yellow lines and parking places. This situation applies in the areas of numerous other authorities, who will be following the case with interest. The situation is not unique to Sunderland. A similar challenge could have been made in respect of the CPZs of other authorities. However, as the challenge has been made in Sunderland, it falls upon this Council to resist it. Should Mr Herron's judicial review application be successful, the implications will be far reaching.

10. Appeals Against PCNs Heard on July 21st 2009
(Loading and Unloading in Parking Places in the City Centre)

10.1 These appeals were the subject of the report to Committee on 21 September 2009. The appeals were made by Mr Herron on his own behalf or for individuals for whom he acted and were heard on July 21st 2009. Of those appeals, 8 were allowed, 6 were dismissed and one was adjourned pending the outcome of the judicial review hearing which is a neutral action by the Adjudicator. An article subsequently appeared on the front page of the Sunderland Echo regarding the appeals in which Mr Herron was successful, without mention of the other appeals that the Adjudicator dismissed either at the hearing on the 21st July or at previous appeal hearings.

10.2 The appeals related to the operation of a provision in the current On-Street Parking Places Order that allows a vehicle to wait in a pay and display parking place for up to 20 minutes for the purpose of delivering or collecting goods or loading or unloading the vehicle at premises adjacent to the parking place. Cllr Wood asked for clarification as to whether the policy for enforcement of such bays had changed and if so, when. The Council may be unique in that there is a provision within the Parking Places Order made many years ago, that allows loading and unloading at premises adjacent to the parking place and this concession benefits local businesses. This provision was first contained in the Tyne and Wear County Council (Sunderland On Street Parking Places) Order 1981. There has been no change in policy with regard to loading and unloading in these bays. The Council's Parking Charter is clear whereby vehicles observed in a pay and display bay without displaying a valid ticket will be issued immediately with a penalty charge notice and any mitigating circumstances will be considered through the normal appeals process. Continuous loading and unloading is assessed using observation periods of 5 minutes for a private motor vehicle and 20 minutes for a commercial vehicle. However, in the Adjudicator's decision on 21st July 2009 he accepted a claim without evidence that a motorist could have been loading and unloading. The appeal was allowed on the basis that evidence of allowing an observation period had not been recorded. Motorists may now seek to exploit this provision in the Parking Places Order and therefore Civil Enforcement Officers have been instructed to ensure when a pay and display ticket is

not displayed that observation periods are carried out and recorded in order to help contest any appeals made on the grounds of loading and unloading.

- 10.3 In future, should abuse of this concession lead to operational difficulties or Adjudicators do not accept Civil Enforcement Officer pocket book evidence rendering enforcement redundant then consideration may have to be given to remove this provision from the Parking Places Order to the detriment of local businesses.

11. Part Time Parking Bays

- 11.1 A current issue relates to part time parking bays situated at nine locations in the City Centre created by the Council which Mr Herron refers to as dual use bays and alleges requires special authorisation from the Secretary of State for the signing that has been put in place. He has now made an objection to the accounts regarding this matter.. The Department for Transport has subsequently confirmed that such authorisation is not required for any of the bays.
- 11.2 Although special authorisation is not required a survey has revealed minor discrepancies in signing of the restrictions at five of the nine locations which are being corrected and minor amendments needed to the Traffic Regulation Orders in respect of four locations which is already being progressed.

12. Conclusion

- 12.1 For over four years, Mr Herron has made numerous challenges to aspects of the Council's parking enforcement regime. There are formal mechanisms for those challenges to be determined, whether that be by Traffic Penalty Tribunal, District Auditor or Court.
- 12.2 Officers have acted properly in implementing the actions required following the post implementation review and in the way they have responded to Mr Herron's challenges, and will continue to take corrective action where identified as necessary.

13. Recommendation

- 13.1 That the position statement be noted.