

Notice of Non-Key Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contains exempt information within the meaning of paragraph 5 of Schedule 12A to the Local Government Act 1972. It is exempt because it contains confidential legal advice in respect of which a claim to legal professional privilege could be maintained in legal proceedings, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Subject Heading:	Amendment to Parking and Moving Traffic Penalty Charge Notice Early Payment Discount Following Unsuccessful Challenge or Representation
Decision Maker:	Director of Environment
Cabinet Member:	Councillor Barry Mugglestone, Cabinet Member for Environment
ELT Lead:	Neil Stubbings, Strategic Director, Place
Report Author and contact details:	Mark Hodgson, Head of Highways, Traffic and Parking mark.hodgson@havering.gov.uk
Policy context:	Parking Policy
Financial summary:	Based on current Penalty Charge Notice volumes and charge levels, it is estimated the decision could result in up to £0.300m full year efficiency split between increased income and reduced staff costs. The financial

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	impact would affect cost centre A24670
Relevant Overview & Scrutiny Sub Committee:	Place
Date notice given of intended decision:	3 May 2024
Relevant OSC:	Place
Is this decision exempt from being called-in?	The decision will be exempt from call in as it is a Non key Decision

The subject matter of this report deals with the following Council Objectives

X People - Supporting our residents to stay safe and well

X Place - A great place to live, work and enjoy

X Resources - Enabling a resident-focused and resilient Council

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

The Director for Environment is recommended to approve the removal of the 50% discount to the charge of parking and moving traffic contravention Penalty Charge Notices (PCN) currently offered to appellants where they unsuccessfully challenge or make a representation against a PCN within 14 days of issue and subsequently pay within 14 days of notice of unsuccessful challenge.

This decision does not affect the current 50% discount on PCNs when paid within 14 days of issue and nor does it remove the right to challenge a PCN in any way. Successful challenges will lead to a cancelled PCN (with no payment due).

The decision complies with current legislation and legal requirements.

AUTHORITY UNDER WHICH DECISION IS MADE

The principles of the recommendations of this decision were agreed at Full Council as part of the 2024/5 Budget setting process. The decision recommended in this report therefore confirm the approach and governance and the decision is taken under the Council's Constitution Part 3.3.5 (1.1):

To exercise the Council's powers and duties arising under the Road Traffic Regulation Act 1984, New Roads and Streetworks Act 1991 and Traffic Management Act 2004.

3.3.1 (5.1) covers sub-delegations:

The Chief Officers may delegate any of the powers listed in this part to another Officer, in so far as is legally permissible. Such delegation will specify whether the Officer is permitted to make further sub-delegations. Any such delegation or sub-delegation must be: (a) recorded in writing; and (b) lodged with the Monitoring Officer who will keep a public record of all such delegations. Any such delegation / sub-delegation will become valid only when these conditions are complied with.

STATEMENT OF THE REASONS FOR THE DECISION

Background

In broad terms, the Council undertakes parking and moving traffic enforcement to:

- Increase compliance
- Support wider transport policy and other policy objectives
- Ensure the parking spaces provide convenience (turnover), ease of access, support local business, safeguard space for deliveries and support the vitality of town centres
- Improve road safety

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- Manage competing demands
- Ensure space for and meet the needs of people with disabilities and those who depend entirely on car use

Raising revenue is not a Council objective of parking and moving traffic enforcement and the Council does not set targets for revenue or the number of PCNs issued. However, the Council has a duty to forecast revenue projections in advance and set budgets accordingly.

The Council is also under an obligation to run its enforcement operations efficiently, effectively and economically. This means taking steps to encourage payment and pursuing debt when payment is not made. Accordingly, agreement to increase enforcement actively would result in an adjustment to revenue budgets for as long as non-compliance remains. Similarly, where measures that have the effect of encouraging payment or reducing administration affect income or expenditure, these also need to be estimated and forecast to aid the council to set a balanced budget.

PCN Charges

The purpose of penalty charges is to dissuade motorists from contravening parking and moving traffic restrictions. Ideally, there would be 100% compliance, with no penalty charges issued.

In London, parking and moving traffic PCN charges are set by London Council Technical and Environment Committee (TEC). Within the charge scale is included a 50% discount on PCN charges if the PCN is paid within 14 days of issue as well as a 50% surcharge if the PCN is paid after 28 days of a Notice to Owner being issued. The discount and surcharge are designed to encourage payment and applies pan London.

Parking Enforcement

Parking enforcement by the Council is a legal process undertaken through powers and requirements set out in the Traffic Management Act 2004. Accompanying the legislation the government issues statutory guidance, published by the Secretary of State for Transport.

The statutory guidance sets out the policy framework for civil parking enforcement. It provides councils in England an explanation of the legislation and how to approach, carry out and review parking enforcement. The statutory guidance seeks to balance fairness and effectiveness and achieving as much national consistency as possible, while allowing parking policies to suit local circumstances.

The guidance applies to all enforcement authorities in England, including Havering, exercising civil parking enforcement powers. Authorities must have regard to the statutory guidance when exercising their functions, including developing, implementing and reviewing their civil parking enforcement regimes.

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Local authorities are also expected to explain any decision not to implement the terms of the statutory guidance, and adjudicators may consider it to be a procedural impropriety, sufficient to allow an appeal, if no sufficient explanation is provided.

Discount for Early Payment

As set out above, there is a 50% discount to the PCN charge if it is paid within 14 days of issue.

The current regime also requires that if a challenge or representation against a PCN is received within the 14 day discount period and is unsuccessful (ie that the Council has considered there are no grounds for cancellation), the 50% discount is re-offered. Specifically, the statutory guidance states:

If a challenge is received within the discount period and subsequently rejected, the Secretary of State recommends that the enforcement authority should consider re-offering the discount for a further 14 days to incentivise payment.

The Council is of the view that re-offering the discount has led to a very high number of speculative challenges and representations, given that a large number are unsuccessful. To remove it would significantly reduce challenges and representations with corresponding reductions in the cost of administration in the back-office processing team. It would mean that it would be likely that only those with genuine reasons for challenge, would challenge.

In 2023/4 the Council issued 183,000 PCNs (of all types – parking and moving traffic). In total 29% (53,000) of these were challenged/appealed/subject to representations and of these only 35% (19,000) were cancelled.

This therefore means 34,000 unsuccessful challenges / representations were made. Reducing this number would save significant back office staff time.

It is estimated savings to the Council of £0.300m pa would be generated as a result of a possible reduction. This is made up of staff savings due to fewer representations and PCN payment values.

The statutory guidance requires authorities to “consider” re-offering the discount following unsuccessful parking PCN challenges (no similar consideration is required for formal representations and moving traffic contravention PCNs). The statutory guidance does not place an obligation on authorities to actually reoffer the discount but to give due consideration. It is silent on whether consideration should be given to offering a discount at formal representation stage. This report therefore forms the basis and provides an explanation as to how the Council remains in full compliance with the statutory guidance – namely that consideration has been carefully given and the decision taken not to reoffer the discount for the reasons stated above.

External Specialist Legal Advice

Following the informal approval of the proposals set out in this report (in advance of formal approval of the Budget at Council) it was decided to seek external specialist

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legal advice. This was to advise on the legalities, merits and pitfalls of the proposal, before a decision might be implemented.

Accordingly, in February 2024 the Council instructed King's Counsel, to provide advice. A copy of KC's opinion and advice is included in Exempt Appendix A. In very high level terms a summary is:

- The proposal is legal and in compliance with the statutory guidance so long as it is fairly and lawfully made
- A focused public consultation on the proposal would be desirable
- The London Councils Technical and Environment Committee should be engaged (either formally or informally)
- An equalities assessment should be completed
- An aggrieved appellant or other person who objects to the proposal and new arrangement would need to seek redress through a judicial review
- A formal decision report setting out the decision and background should be approved

The Council will comply fully with the advice and the advice is adopted as part of the drafting of this decision paper.

Risk

The report recommends the removal of the 50% discount following unsuccessful challenge or representations. In following the recommendations of this report there are benefits to the council in doing so, as listed below:

- The likelihood of fewer challenges where appellants know they have no case but chance a challenge as they have nothing to lose
- Genuine incentive to pay at the start of the process
- Improved efficiency in the back office team allowing response times across the service to be improved (as staff can be allocated to other tasks and appeals)
- Staff savings due to reduce volume and workload
- Improved cashflow

It is also the case that the decision would also provide some risk and could be considered to take away some of the fairness in the current process. The following risks have been identified along with the mitigations that would be put in place

Risk	Mitigation
Appellants who genuinely have a case may be discouraged from challenging	Review and provide clear discretionary policy with examples and reference to the statutory guidance on the Council website. Review other information on council website so appellants can make informed decisions
Appellants who incorrectly believe their PCN should be cancelled may not challenge, due to risk of paying more	As above, improved information will help lead to more informed decisions. This could lead to loss of trust in the service / council but the correct outcome would be achieved

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Incorrectly issued PCNs being paid	This is not desirable and leads to a loss of trust in the service and council. Continued staff / CEO training would be completed. Levels of cancellations per officer reviewed and action taken where unacceptably high
Concern about those on low income or in financial hardship may have previously used challenge or appeal process to spread out timeframe in which to pay	Those on low incomes are likely to be impacted greatest as a result of this decision. Whilst the advice is to comply with parking and traffic rules sometimes genuine mistakes are made. The council has in place an instalment plan offer for those struggling to meet the costs of a PCN. This will be reviewed and communicated as needed to ensure awareness.

A targeted public consultation has been completed (see below). Due regard to the comments and feedback received has been taken in the drafting of this report and actions set out.

OTHER OPTIONS CONSIDERED AND REJECTED

Alternative Option 1

Do nothing – the current approach would not change.

Alternative Option 2

Seek to offer a reduced discount (say 25%). This option was not included in the Budget Consultation 2023. It could lead to confusion. The option was ruled out.

PRE-DECISION CONSULTATION

The principle of the decision contained in this report was included in the 2024/5 Budget Consultation (In late 2023).

The general decision to implement was taken at Full Council as part of the Budget setting 2024/5.

The Legal advice stated it would be desirable to undertake a further focused public consultation on the proposal. This is to ensure both people in the local area are aware of the proposal and parking arrangements and to take account of comments.

Accordingly, a public consultation was held from 3 May to 31 May 2024.

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Attention to the consultation was raised via social media posts, a banner on the Councils parking pages website, email newsletter Living and the Councils intranet.

A total of 649 responses were received. A copy of the consultation information and questionnaire is included in Appendix B. A breakdown of the results is included in Appendix C.

A summary of the consultation is:

95% of the respondents are drivers and 96% are borough residents. 18% work in the borough.

97% of respondents listed one their main forms of transport as a car. 48% said they use public transport and 47% said they walk or cycle.

90% of respondents stated they are familiar with parking rules and 92% said they are familiar with moving traffic rules.

When it comes to effectiveness of enforcement 57% of respondents felt enforcement helps encourage people stick to the rules. This is interesting and a lower number than expected may suggest the deterrent (PCN level) is too low, that possible contraventions they have observed go unpunished (but this was not explored in the questionnaire) or it could reflect another assumption such as practicality and ability to stay within the rules or something else. It is the case the Council continues to receive more requests for enforcement than complaints or objections to it. (12% were unsure and 29% said no)

76% of residents do not want to see increased levels of enforcement. 84% object or strongly object to the removal of the 50% discount.

Various comments were made by respondents and these are summarised in Appendix C.

The responses from the consultation have been noted and the decision to progress with the removal of the 50% discount is recommended based on the information in the body of the report, along with addressing the risks through mitigation referred to in Risk section of the report.

A review and classification of every comment has been completed. Where targeted additional enforcement is requested this will be considered and officers deployed where deemed appropriate and subject to resources.

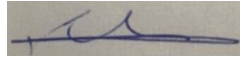
NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Mark Hodgson

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Designation: Head of Highways, Traffic and Parking

Signature:



Date: 8 July 2024

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

In accordance with King's Counsel's advice, the Council is satisfied that the balance of benefits and risks comes out in favour of removing the discount. In accordance with the terms of the statutory guidance, the Council has "considered" re-offering the early payment discount but has decided not to re-offer it in the circumstances set out above.

General risks are discussed above. The main area of legal risk is judicial review of the Council's decision by an aggrieved party. That would have to be addressed in the light of the facts of the case and the specific allegations made. But the Council's essential position in resisting a judicial review would be that the decision not to re-offer the discount was made in accordance with the terms of the guidance.

The guidance states that "Local authorities will be expected to explain any decision not to implement the terms of the guidance, and adjudicators may consider it to be a procedural impropriety, sufficient to allow an appeal if no sufficient explanation is provided". It follows that a person contesting a PCN which reaches the adjudication stage might contend that the Council's decision not to re-offer the discount was a "procedural impropriety sufficient to allow the appeal". But again the Council's defence would be that the decision was in accordance with "the terms of the guidance" because the Council has "considered" re-offering the early payment discount but has decided not to re-offer it in the circumstances and that a "sufficient explanation is provided" as set out above.

FINANCIAL IMPLICATIONS AND RISKS

This proposal recommends the approval of the removal of the 50% discount to the charge of parking and moving traffic contravention Penalty Charge Notices (PCN) currently offered to appellants where they unsuccessfully challenge or appeal a PCN within 14 days of issue and subsequently pay within 14 days of notice of unsuccessful challenge.

The proposal is forecast to deliver £300k in savings from two predicted outcomes. The first is an increase in revenue inflow to the Council with all appeals that are unsuccessful requiring the full payment of the PCN. In addition that fewer PCNs will be challenged freeing up staff time. This saving is dependent on behavioural trends which will need to be monitored. Income levels could remain the same with all potential challenges being paid within 14 days resulting in no changes to income but significantly reduced staff time. However, if challenge levels do remain the same we would see a corresponding increase in income if not a reduction in staff time. Therefore the direct split of how the £300k is to be broken down will be determined through monitoring changes in behaviour. The initial assessment is that 6,000 people out of the unsuccessful 30,000 would pay a higher rate and 2-3 staff members' savings.

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For staff savings to be realised there is a required reduction in staff or a repurposing of staff to activities which recover their costs. It is proposed here that up to 2-3 staff members may initially be released back to agencies. Any redundancy costs if applicable will be met centrally, although it is unlikely these will be required.

It is noted that any legal challenge would be through the judicial review route and the Council has already sought external leading Counsel advice that confirms this proposal is fully compliant.

It is worth noting that this saving is being implemented part way through the year and therefore will not have the full year impact in 2024/25.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The recommendations made in this report do not appear to give rise to any immediate HR risks or implications that would affect either the Council or its workforce. However, should there be a decrease in workload due to a reduction in the number of appeals any changes to the workforce will be managed in accordance with the Councils HR policies and procedures.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

An equalities assessment has been completed. The decision leads to no significant impact on any of the protected characteristics.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

It is not considered the decision will impact either positively or negatively on the health and wellbeing of members of the public.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

It is not considered the decision will impact either positively or negatively on the environment and climate change.

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BACKGROUND PAPERS

Parking Discretionary Policy
Civil Enforcement Officer Observation Period
Civil Enforcement Handbook
PCN payment instalment plan information
Equality Assessment

APPENDICES

Appendix A	EXEMPT legal advice
Appendix B	Consultation literature
Appendix C	Consultation summary

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

~~Proposal NOT agreed because~~

Details of decision maker

Signed



Name: Imran Kazalbash, Director of Environment

Date: 12 July 2024

Lodging this notice

The signed decision notice must be delivered to Committee Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____