

Agenda Item No. 7(d)

DERBYSHIRE COUNTY COUNCIL

CABINET

4 April 2017

Report of the Strategic Director – Economy, Transport and Communities

PERSISTENT EVADER POLICY (PARKING) (HIGHWAYS, TRANSPORT AND INFRASTRUCTURE)

(1) **Purpose of Report** To seek Cabinet approval for the introduction of a Policy for the removal of vehicles where the vehicle owner is classed as a 'persistent evader' in respect of unpaid or unchallenged Penalty Charge Notices (PCN), and to undertake a procurement exercise for a contract for the removal of vehicles.

(2) **Information and Analysis**

Background

On June 2008, Cabinet considered and approved seeking powers from the Secretary of State designating Derbyshire County Council as a civil enforcement area and special enforcement area for parking contraventions. Powers were also requested to be able to remove, store and dispose of vehicles in contravention of parking restrictions and, although granted, it was agreed that use of these powers was subject to further Cabinet approval.

Currently, the Council-instructed enforcement agents must collect any outstanding debt within one year of a warrant being issued. After this time the debt has to be 'written off'. If the debt is not collected this allows vehicles to repeatedly park in contravention of parking restrictions without paying parking fees or charges, whilst evading the Council's contracted enforcement agents. The proposal to extend enforcement to include vehicle seizure seeks to address this loophole.

Key Considerations

A persistent evader is defined by the Department for Transport (DfT) as a vehicle owner with "three or more recorded contraventions for the vehicle and the penalties for these have not been paid, represented against or appealed against within the statutory time limits, or their representations and appeals have been rejected but they have still not paid".

Since 2009, 255 vehicles would have obtained 'persistent evader' status in Derbyshire under the DfT's definition. These vehicles currently have 2,494 outstanding PCNs worth £161,382.95 outstanding debt. This is a cumulative debt for all councils within the Parksmarter partnership, not just Derbyshire County Council. However, due to the age of a majority of these PCNs, many will have to be written off.

The Council has appointed enforcement agents (previously known as bailiffs), but there are limitations on the powers that they can use. They are unable to seize a vehicle that, for example, is subject to a hire purchase agreement, parked on another's property (e.g. even within a council car park) or where the vehicle is a 'tool of the trade' (e.g. a taxi, ice cream van or tradesperson's van).

Enforcement agents also need to take control of any goods within 12 months of the warrant being issued, which can allow a motorist to 'hide' their vehicle away from their home address, not answer their door and/or place their vehicles in locations where they are unable to be seized from e.g. council car parks. They continue to do this until the warrant is expired. In some cases, these drivers continue to park their vehicles illegally and receive further PCNs. It is mainly these vehicle owners that would be classed as persistent evaders. These vehicles, which are normally low value and considered disposable by the owners, may continue to park with relative impunity as long as they can avoid the enforcement agents collecting the debt on behalf of the Council. They are not paying for their parking and/or using a space that may genuinely be needed by another road user. The proposed Policy would provide a mechanism for addressing such persistent evasion and would seek to disrupt these drivers from preventing the enforcement process.

The Policy proposes that, once a vehicle has received three or more PCNs within a 24 month period for parking contraventions in Derbyshire, and these have not been paid or appealed against within the statutory time limits, that they are classed as a persistent evader.

Once a vehicle is classed as a persistent evader, if it is again discovered to be parking in contravention of the relevant parking restrictions (including failure to hold a valid parking ticket), the Council may then issue a further PCN and exercise powers to immediately remove the vehicle from the place where it is parked. The owner can recover the vehicle upon payment of the current PCN, along with the removal and storage fees that would also be due. This action alone is likely to discourage motorists from becoming persistent evaders, and ensure compliance with local parking restrictions.

Removing a persistent evader vehicle from the highway will not generate additional income or enable any previous outstanding PCN fees to be recovered, as only the PCN issued on the day the vehicle is removed (and

any associated removal and storage costs) can be used in order to secure the release of the vehicle. The scale of charges that may be applied are outlined in the Removal and Disposal of Vehicles Regulations 1986. However, it should help to reduce future contraventions.

In the event that the vehicle owner chooses not to recover a seized vehicle the unclaimed vehicle can be sold at public auction to recover the costs incurred, which would include the removal and storage of the vehicle, as well as the PCN that was issued on the day the vehicle was removed. Any excess money from the sale of the vehicle will be repaid to the registered owner where contact has been made. Where no contact is made it will be held in the Council's bank account for a year from the date of sale, after which it will be added to the Council's Civil Parking income. The outstanding debt from other PCNs will be pursued through the appropriate channels.

Vehicles that are displaying valid disabled badges will not be removed from the highway under this Policy. Consideration will also be given to vehicles that belong to vulnerable adults (by reason of disability, age or illness), as long as the Council is made aware before any enforcement action is taken.

The Council will seek to appoint a contractor, or contractors, for a period of 5 years, to remove vehicles illegally parked upon request. The contractor will also store and auction the vehicle where necessary. It would be reasonable to expect a number of vehicle pounds to be established across the County to avoid drivers having to travel excessive distances to collect their vehicles. The contract will be advertised through Source Derbyshire.

Risk Management

There is a risk that the Council will not recover the cost of the removal of a vehicle if, when it is sold, it is not worth as much as the total cost. This would be mitigated by the deterrent to other owners of their vehicles becoming persistent evaders by ignoring PCNs.

There is also a risk that a vehicle could be removed from a highway and an independent adjudicator allows an appeal against the issue of the original PCN. This would then require the Council to reimburse any costs incurred by the third party. This can be mitigated by allowing appeals to be reviewed by the Appeals Team before the vehicle is removed and, again, before it is disposed of.

Community Impact

The current position creates an inequality between those who follow the rules and challenge or pay their PCNs and those who ignore them and evade enforcement agents recovering the debt. The public would expect that where the rules are applied they apply to everyone.

One of the key priorities of the Council's Corporate Plan 2016 - 2020 is to support the growth of Derbyshire's economy by providing vibrant and successful town centres and attractive neighbourhoods. Illegally parked vehicles contribute to the general clutter in the street, cause safety issues and can remove a parking space that would otherwise be available to a legitimate motorist. This Policy will support the overall parking operation, which in turn supports local economies.

Equality Duty

The Policy provides that vehicles displaying a valid disabled persons parking badge will not be seized. Consideration will also be given to vulnerable adults that have been identified before any enforcement action is taken.

(3) **Financial Considerations** The removal of the vehicles will be carried out by an approved contractor(s) working on behalf of the Council and the charge for this will be managed within existing parking budgets.

The associated costs for vehicle removal, storage and/or disposal of vehicles removed for parking contraventions under the Traffic Management Act 2004 are prescribed by the Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (Statutory Instrument (SI) 2007/3487):

- £105 for vehicle removal.
- £12 per day for vehicle storage or each day or part day during which the vehicle is impounded, chargeable from Midnight after the first full day the vehicle is stored.
- £50 for vehicle disposal.

The total cost for the removal, storage and disposal of a vehicle is likely to be around £400 (dependant on the length of time the vehicle remains in storage). A proportion of the cost will be recovered from the sale of the vehicle if it is not claimed, or from the owner that claims the vehicle.

The Contractor passes over collected monies to the County Council. The contractor would then be paid the cost of removing the vehicle by the County Council. Where a vehicle is recovered by the owner on the day of removal they would pay the PCN (£25 or £35, and the removal fee of £105). This money is passed to the Council, which then pays the contractor £105.

The removal costs will be managed through the existing Civil Parking Enforcement budget. Vehicle owners who wish to recover their vehicles must reimburse the Council for the cost of the removal, storage and PCN on the day the vehicle is removed. However, it is not expected that many vehicle owners would exercise their right to recover their vehicle and, therefore, the

Council would pay the full removal cost, and pay for this through the sale of the vehicle.

It is anticipated that no more than 40 vehicles a year will become persistent evaders, and approximately 80% (30+) will be towed; 150 over 5 years. The value of the contract to all contractors over 5 years will be between £15,750 and £41,250. The cost of the contract to the County Council will be any net loss on vehicle disposal if a vehicle is disposed of for less than the costs raised. This net loss is thought to be negligible.

	Price	All Cars Collected Immediately	All Cars Disposed Of
Tow Away Fees	£105	£15,750	£15,750
Storage Fees	£12		£18,000
Disposal Fees	£50		£7,500
Total over 5 years		£15,750	£41,250

(4) **Legal Considerations** The Council has various powers under the Traffic Management Act 2004 to deal with parking enforcement matters, along with the Road Traffic Regulation Act 1984 and Removal of Vehicles Regulations 1986 that it may use. Under Section 87 of the Road Traffic Management Act 2004, the Council must have regard to the statutory guidance published by the Secretary of State: "The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions 2015" in the exercise of their functions.

(5) **Social Value Considerations** Local contractors will be able to bid for the contracts.

The policy of towing away vehicles belonging to persistent evaders will ensure that roads are kept clear of errant vehicles aiding road safety and improving congestion.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – James Adams, extension 38671.

(9) **OFFICER'S RECOMMENDATIONS** That Cabinet approves:

- 9.1 The introduction of the Persistent Evader Policy for the removal of vehicles as set out in the report.
- 9.2 The undertaking of a procurement exercise for a contract for the removal of vehicles.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Parking Services	Persistent Evaders
February 2017 v1	Policy for the removal, storage and disposal of vehicles

1. Introduction

Derbyshire County Council is responsible for the enforcement of the on and off-street parking restrictions within Derbyshire. Civil Enforcement officers (CROs) patrol and issue Penalty Charge Notices (PCNs) to vehicles parked in contravention of the regulations.

“A vehicle owner can be classed as a ‘persistent evader’ if there are three or more recorded contraventions for the vehicle and the penalties for these have not been paid, represented against or appealed against within the statutory time limits, or their representations and appeals have been rejected but they have still not paid.”

- Department for Transport Traffic Management Act 2004 - Operational Guidance to Local Authorities: Parking Policy and Enforcement.

It is appropriate for a Local Authority to have a policy in place to take action against vehicle owners who are considered persistent evaders. This policy describes vehicle owners that Derbyshire County Council considers to be persistent evaders and the action it will take in ensuring that they do not continue to contravene On or Off-Street Parking or Traffic Regulation Orders without action. This Policy forms part of the Council's Enforcement Policy.

2. Statutory Legislation and Guidance

Vehicles may be removed, stored and disposed of in accordance with the provisions set out in sections 99-101 of the Road Traffic Regulation Act 1984 and The Removal and Disposal of Vehicles Regulations 1986. Regard has been given to the statutory guidance under Section 87 Traffic Management Act 2004.

3. Aims/Objectives

The purpose of this policy is to prevent drivers from being able to accumulate large PCN debt and continue to park illegally without action.

4. Process for Classification as a Persistent Evader

4a. Penalty Charge Notice (PCN) Statutory time limits

The driver of the vehicle has 28 days from the date the PCN is affixed to the vehicle to pay or appeal against the PCN. If no contact is made, or the appeal

challenge is rejected at the first stage, a Notice to Owner (NtO) is sent to the registered keeper's address. The NtO requires payment or formal representation within 28 days.

A vehicle owner will become a persistent evader if they:

- **have not appealed against, or they have, but have had their appeal rejected;**
- **have not made representation against; or**
- **have not paid three or more PCNs that are older than 28 days from the date of the NtO for each PCN, within a 24 month period.**

4b. Process

Persistent evader vehicles will be added to the active 'persistent evaders list' on a monthly basis. This will inform enforcement officers which vehicles can be treated as persistent evaders. Thereafter, each vehicle that is highlighted will be manually checked by the Civil Parking Enforcement (CPE) team to ensure that it falls within the criteria outlined in this Policy and the relevant legislation.

5. Approach that will be taken to Persistent Evaders

5a. Removal of the vehicle

Once a vehicle has been classed as a persistent evader, if it is parked in contravention of any parking restriction for longer than 15 minutes after a PCN is served by a CEO it may then be removed. This decision will be authorised by the Parking Services Manager or a Parking Services Officer and the issuing CEO. An authorisation form must be signed by both the CEO and the Parking Manager or Parking Services Officer before the vehicle is removed.

The Police will be notified of the removal of the vehicle to enable them to deal with queries from motorists who may report their vehicle as stolen.

If the vehicle is parked where parking is prohibited (such as on double yellow lines), it can be removed as soon as the PCN has been served. An authorisation form must be signed by both the CEO and the Parking Manager or Parking Services Officer before the vehicle is removed.

5b. Before taking action as detailed in Section 5a above, consideration will be given to the following matters:

- The inconvenience that the vehicle is causing other road users.
- Traffic congestion being caused on the highway network.
- Potential obstruction or loss of parking space that results.
- The effect of removal on the public perception and acceptance of CPE.

Vehicles **will not generally** be removed:

- When it will cause disproportionate inconvenience and potential danger to other road users or pedestrians, such as late at night.
- Where exceptionally, having regard to all the circumstances, the Parking Services Manager or Principal Parking Services Officer considers it would not be expedient to remove the vehicle having regards to the individual circumstances or vulnerability of the vehicle owner/keeper.

Vehicles **will not** be removed:

- Where the vehicle is displaying a valid disabled person parking badge.
- Where the vehicle is on diplomatic plates (The exception is for X registered vehicles which have been identified as persistent evaders).

5c. Storage and collection arrangements

The vehicle will be removed by an approved contractor. The Council will write to the registered keeper at the time of removing the vehicle and advise them that their vehicle has been removed, where to contact to arrange collection, and the amount to pay to recover the vehicle.

Payment for the release of the vehicle must be made directly to the approved contractor and the vehicle will only be released upon receipt of full payment of all removal and storage charges incurred. These current charges are:

- £105 – recovery of vehicle within 24 hours of removal;
- £12 – per day or part day storage of the vehicle starting from 00:01am on the day following the removal of the vehicle; and
- payment of the PCN incurred on the day of removal (the cost of a PCN is £50 for lower rate contraventions or £70 for higher rate ones). This amount is discounted by 50% if paid within 14 days from the date of the contravention.

These charges will be reviewed annually.

Production of the following documents (paper only) will also be required to obtain release of a vehicle:

- Valid registration document (V5)
- Valid insurance document
- Formal proof of ownership of the vehicle
- A current UK driving licence

And one of the following which must be dated in the last three months:

- A current tenancy agreement
- Utility bill
- Benefits letter
- Telephone bill (landline only)
- Bank statement

Upon release of the vehicle, the vehicle owner or the person in charge of the vehicle will be informed about their right to make a representation and their subsequent right to appeal against representations that are rejected (see below).

5d. Uncollected vehicles

If the vehicle is not collected within 10 working days from the date of the letter notifying the registered keeper of its removal, the Council will sell or dispose of the vehicle in accordance with Section 101 of the Road Traffic Regulation Act 1984 and The Removal and Disposal of Vehicles Regulations 1986 and the cost of the removal and storage recovered from the proceeds of sale or disposal.

If the vehicle is disposed of or sold, the local authority will inform the registered keeper of this in writing and of their right to make representations and their subsequent right to appeal against representations that are rejected (see below). Where a registered owner/keeper makes an appeal against the issue of the PCN whilst the vehicle is in storage, the process for disposing of the vehicle will be put on hold until such time as the Council has considered the grounds for appeal and advised the owner/keeper of the outcome.

Where a vehicle is sold, any proceeds remaining from the sale of the vehicle after the Council's costs of removal storage and disposal have been deducted will be held by the Council for up to one year from the date of sale. If a person satisfies the local authority that they were the owner of the vehicle at the time of the sale, the local authority will pay them any sum by which the proceeds of the sale exceed the amount of the relevant charges. Contact must be made by the owner within one year from the time of the sale in writing to the council at the address below (see 6. Complaints).

5e. Right of Appeal

If a person believes the PCN should not have been issued, or that they have mitigating circumstances, they can make a challenge, however, this must be in writing. This can be done whilst the vehicle is in storage or after the vehicle has been release or disposed of with the statutory time-limits, by:

- going to www.parksmarter.org.uk and completing the form with all the relevant information. Attachments should be sent to the Central Processing Unit:
 - Email parking.enforcement@nottsc.gov.uk
 - Writing to The Central Processing Unit, PO Box 10282, Sutton in Ashfield, Nottinghamshire, NG17 0DX.

If the PCN is not paid within 28 days of the issue date, the CEOs we will make enquiries to the DVLA as to the registered owner/keeper at the time of the contravention and a NtO will be sent to the registered owner/keeper of the vehicle. At that stage a formal representation can be made, by the registered owner/keeper, on up to six grounds, which are detailed on the reverse of the NtO.

All representations will be carefully considered and, if successful, a Notice of Acceptance will be sent. Any fees paid to the removal contractor will be refunded. However, if unsuccessful, a Notice of Rejection will be issued, along with details of how to appeal to the Traffic Penalty Tribunal (TPT). This is an independent body that considers appeals throughout the County. The owner/keeper/hirer can only appeal to TPT once a formal Notice of Rejection has been received.

6. Complaints

Complaints about this Policy should be made in writing to:

Civil Parking Enforcement Manager
Derbyshire County Council
Economy, Transport and Communities Department
County Hall
Matlock
Derbyshire
DE4 3AG

Persistent Evader's Procedure – Parking

