



Report for Leader (Logistics portfolio)

Decision Date:	18 th March 2021
Reference number:	LG02.21
Title:	Vehicle Removal Policy
Relevant councillor(s):	Councillor David Martin
Author and/or contact officer:	Julie Rushton (Interim Head of Off-Street Parking)
Ward(s) affected:	All

Recommendations:

- To utilise the powers afforded to Buckinghamshire Council to remove vehicles where legislation permits and introduce a Vehicle Removal Policy covering the following scenarios:**
 - 1.1.** Persistent evaders. These are motorists who receive numerous penalty charge notice (PCNs) and where payment for the charge cannot be collected because either;
 - The owner/keeper cannot be located
 - The debt has escalated to the Enforcement Agents (EAs) and the Warrant of Control has expired before the debt has been successfully recovered.
 - 1.2.** Vehicles parked causing an obstruction or danger on the highway. This includes, but is not limited to, vehicles parked preventing expeditious flow of traffic, and/or parked in contravention of an area suspended to facilitate highways works.

Reason for decision:

The removal of vehicles will enable the Council to recover debt more effectively and act as a deterrent to motorists leading to a higher compliance with parking restrictions. In addition, it will reduce obstruction and congestion on the highway and help eliminate delays to essential highways maintenance works caused by inconsiderate drivers.

1. Executive summary

- 1.1** Vehicles abusing parking restrictions have a significant impact on the County; this is in terms of residents, visitors, not being able to park, designated reserved bays for those most vulnerable being abused, parking supply and demand issues effecting the high street, and delays on essential highway works and consequently the Council's ability to carry out statutory highway functions in a timely manner. For the most part this is persistent evaders, the majority of which, their vehicles are not registered with the DVLA and in many cases are not taxed and insured. Current outstanding

debt to the Council for persistent evaders is £223,377. Delays to Highways works costs the Council in the region of £150,000 per annum. Utilising the powers for vehicle removals and introducing a Vehicle Removal Policy will help address some of these issues. The content of the report provides more detail to support vehicle removal. A draft Vehicle Removal Policy is provided at Appendix A.

2. Content of report

Background

- 2.1 Buckinghamshire Council has powers awarded by the Secretary of State to carry out civil parking enforcement in accordance with the Traffic Management Act 2004 (TMA). This enables PCNs to be issued where motorists are parked in contravention of the parking restrictions in place, and removal of vehicles where a vehicle is parked dangerously or causing an obstruction on the highway.
- 2.2 The TMA also includes a provision to initiate vehicle removal for persistent evaders. A persistent evader is defined by the Department for Transport as having three or more recorded contraventions for the vehicle and the penalties for these have not been paid, represented, or appealed against, within the statutory time limits, or the representations and appeals have been rejected but payment has not been received. The proposal for Buckinghamshire Council is to allow five or more PCNs before being designated as a persistent evader.
- 2.3 The statutory guidance recommends that local authorities adopt strong enforcement policy against persistent evaders, with the removal of the vehicle as a beneficial option, as the keeper of the vehicle then has to provide evidence of where they live at the time of collection.

Content of Report

- 2.4 Motorists who receive a PCN have the option to either pay or appeal the charge. The liability of the charge is the responsibility of the vehicle owner. In accordance with relevant regulations enquiries are made with the DVLA to obtain details of the registered keeper (who is legally presumed to be the owner). The keeper is sent three statutory notices at different stages of the PCN, each of which explains the options available, including how to pay and what will happen if the notice is ignored. As a final resort a warrant of control is obtained for unpaid PCNs and referred to appointed Enforcement Agents (previously called bailiffs) for collection. This can result in the keeper being traced but often warrants are returned at this stage as the keeper cannot be found.
- 2.5 The Council incurs costs for pursuing unpaid PCNs including an £8 court registration fee for each case that is registered as a debt at the Traffic Enforcement Centre. This is required before a warrant can be issued.
- 2.6 For some vehicles the DVLA fails to return any current keeper information, for example if the previous keeper says they sold the vehicle but they do not know full details of the buyer and the new owner then fails to inform the DVLA of their details.
- 2.7 Where vehicles are not registered with the DVLA it has been found by the British Parking Association that many of them do not have an MOT, are not taxed or insured, and in some cases are of interest to the police. As well as being used to abuse parking restrictions the vehicles are therefore potentially a danger to other highways users.
- 2.8 In the instance where a warrant is served, EAs have twelve months in which they are able to take control of goods to recover the debt. Once the twelve-month period has expired, EAs can continue to encourage the motorist to pay the debt, however, they are no longer able to seize goods.
- 2.9 This can lead to a motorist purposely parking their vehicle away from their home or on a car park where it cannot be seized. They continue to do this until the warrant is expired. These vehicles,

which are normally low value and considered disposable by the owners, may continue to park with disregard for the restrictions as long as they can avoid the EAs collecting the debt on behalf of the Council. The proposed Policy would provide a mechanism for addressing persistent evasion and would seek to disrupt these drivers from preventing the enforcement process.

- 2.10 Once a vehicle is classed as belonging to a persistent evader, if it is found again to be parked in contravention of a parking restriction the Council can issue a further PCN and exercise powers to remove the vehicle from the place where it is parked.
- 2.11 To retrieve a vehicle once it has been removed the vehicle owner is required to pay all associated removal and storage costs, and the value of the PCN issued on that day.
- 2.12 A provision has also been included in the Policy that in order for the vehicle to be released, the vehicle owner must provide evidence of residency. The Council can then take appropriate action to recover all other outstanding PCNs through the statutory notice process.
- 2.13 The number of live PCNs relating to persistent evaders across on and off street parking in Buckinghamshire is 2,705; this equates to outstanding debt in the region of £223,377. Some persistent evaders have received up to 55 PCNs on one vehicle.
- 2.14 Another scenario where debt is unable to be collected and motorists rack up PCNs leading to persistent evader status is foreign vehicles. These are vehicles which are not registered in the UK and as such, the owner/keeper of the vehicle cannot be located. Foreign vehicles amount to an average of 8% of PCNs issued as per business as usual levels - BAU is 75,000 PCNs per annum.
- 2.15 Costs to the Council where a vehicle is parked causing an obstruction resulting in delays to essential Highways works is in the region of £150,000 per annum. This covers remobilisation, return visits, and wasted material. It does not take account of the detriment to the final finished schemes in terms of aesthetics or their long-term serviceability, nor the additional workload of TfB staff in reprogramming.

Timeline for removal

- 2.16 Vehicles parked in contravention and in breach of the regulations **in a designated parking place**, the TMA and Regulations made under it, prohibit the vehicle from being removed until at least 30 minutes have elapsed following the issue of a PCN.
- 2.17 Where a vehicle is in the persistent evader category, it is prohibited from being removed until 15 minutes have elapsed following the issue of the PCN.
- 2.18 For vehicles parked in contravention and in breach of the regulations on the highway **not in a designated parking place**, such as but not limited to single or double yellow lines, removal may be instant following the issue of the PCN.

Risk Management

- 2.19 There are no significant equalities impacts, positive or negative, from this proposal, albeit there are two elements to be aware of:
 - 2.19.1 Motability vehicles used by blue badge holders who are persistent evaders or parked in a manner that is obstructive or dangerous to other road users, may be relocated but cannot be removed (in accordance with Secretary of State guidance).
 - 2.19.2 Motorists issued with a PCN may appeal at three stages; the third stage is to an independent adjudicator at the Traffic Penalty Tribunal. There is the risk that a vehicle could be removed from the 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.

- 2.20 Overall, removing vehicles that are parked on restrictions causing obstruction, creating significant traffic congestion, or are a danger to other road users, has significant benefits for our residents. For example, it reduces the safety risks around schools, supports key cycle routes, supports public transport journey times, and provides a safer environment for pedestrians, particularly those pushing buggies, with visual impairments, or with restricted mobility. In addition, it helps to facilitate highways works thus helping to prevent unnecessary spend on the public purse due to avoidable delays.
- 2.21 Reducing demand on bays from drivers trying to avoid payment of PCNs can also help improve traffic congestion and air quality as people are less likely to need to circulate to find an available space.
- 2.22 Equally, it may encourage compliance to criminal offences such as tax, MOT, insurance, and registering vehicles, and as such, assist TVP.

3. Other options considered

- 3.1 To continue to issue PCNs to persistent evaders rather than to also approve removal of their vehicles. However, this will result in such drivers continuing to use loopholes in the DVLA vehicle registration system to avoid payment of charges and the resulting negative impact on other road users. Not removing persistent evaders creates an unfair position between motorists who do correctly register their vehicles and pay relevant parking fees (and PCNs if they incur these) and those motorists who evade enforcement.
- 3.2 To continue to only issue PCNs to vehicles parked in contravention of higher level PCN contraventions at locations where they are obstructing or endangering other road users. However, the vehicle would then remain in a position where it is causing issues for other road users.

4. Legal and financial implications

Legal

- 4.1 The TMA states there are offences which may be regarded as parking contraventions, which are subject to civil enforcement. The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 state that PCNs may be issued by civil enforcement officers where a parking contravention is observed. The Removal and Disposal of Vehicles Regulations 1986 ('the 1986 Regulations') further state that where a PCN has been issued the vehicle may be removed to either another position on the road it was found on, another road entirely, or to a place which is not a road (e.g. a depot) by a civil enforcement officer or a person acting under their direction.
- 4.2 The use of removal powers under the 1986 Regulations present an appropriate and proportionate response where a parking contravention has occurred; said powers are exercised pursuant to and in accordance with the duty under section 122 of the Road Traffic Regulation Act 1984 (to secure the expeditious, convenient and safe movement of traffic) as well as enabling the Council to fulfil its network management duty under section 16 of the 2004 Act, which also states that the Council must manage its road network with a view to securing the expeditious movement of traffic.

Finance

- 4.3 The associated costs for vehicle removal, storage and/or disposal of vehicles removed for parking contraventions under TMA are set nationally - currently by The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 SI No. 3487:

- £105 for vehicle removal charge
- £ 12 per day for vehicle storage charge 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.

4.4 Where a vehicle is recovered by the owner, they would be required to pay:

- the vehicle removal/storage costs
- the PCN that was issued on the day the vehicle was removed.

They would also be required to provide address and proof of address, which would enable the Council to recover the debt for any other outstanding PCNS.

4.5 Not all vehicle owners will exercise their right to recover the vehicle. If the Owner fails to contact the council within 35 days, the vehicle will be either scrapped or auctioned in accordance with The Removal and Disposal of Vehicle Regulations 1986 as amended by The Removal & Disposal of Vehicles (Amendment) (England) Regulation 2007.

4.6 In the event where the Council is not able to recover the full cost of the removal of a vehicle when it is sold, this shortfall will need to be funded from the parking account. Also, with other persistent evader cases where the motorist does pay to collect the vehicle, the requirement to provide proof to collect the vehicle opens the opportunity to collect other unpaid PCNs which the local authority would have otherwise been unlikely to recover. This will therefore have the potential to mitigate any remaining shortfall mentioned above.

5. Corporate Implications

- 5.1 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 either through not registering the vehicle with the DVLA or taking other measures so the vehicle cannot be located.
- 5.2 One of the key priorities for the Council is to support economic growth by providing vibrant and successful towns and villages. 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.
- 5.3 Discussions have taken place with other councils who have adopted the vehicle removal powers, mainly Portsmouth City Council and the London Borough of Ealing. The feedback from both is that vehicle removals are welcomed by residents generally and it has proved to be a success for assisting them in meeting their objectives.
- 5.4 Appendix B details the Equality Impact Assessment for this report.

6. Local councillors & community boards consultation & views

- 6.1 Consultation has taken place with the Cabinet Member for Logistics.
- 6.2 Members and Town & Parish Councils have been consulted via the e-newsletters sent 25.2.21. A link was included in the newsletters directing to the public consultation page to enable views to be put forward.

7. Communication, engagement & further consultation

7.1. Finance and Legal have been consulted and their comments have been incorporated into the report.

7.2. A public consultation took place between 19.2.21 and 5.3.21. This resulted in 166 responses being received. The responses are anonymous, however the feedback shows responses were received from residents, local businesses, community groups, and elected representatives. The table below provides an overview of the response count from each group, many of which have more than one group status

Status	No. responded
Resident	154
Work in Buckinghamshire	48
Local Business	10
Community Group	17
Elected Representative	30

7.3. The outcome of the consultation shows that 86% are supportive of the Council introducing a Vehicle Removal Policy. Of these, 23% have asked for wider enforcement action; this is mainly removal of vehicles that are blocking pavements. Currently, footway parking contraventions outside London are not subject to civil enforcement unless a Traffic Regulation Order is in place. The Council therefore has no powers to enforce against this activity at the moment.

7.4. Of the remaining 14% of respondents, 12% were neither for nor against the Policy, choosing only to provide impartial feedback, and 2% were against the Policy

Responses	Supportive	Against	Impartial
	86%	2%	12%

7.5. The comments received in response to the consultation are attached at Appendix C.

7.6. The Police would be informed as part of the standard practice about any vehicle that is removed following the issue of a PCN and so too would the Council team answering enquiries at the Council's Access Points.

8. Next steps and review

8.1. If the Vehicle Removal Policy is approved, a removal and storage contract will be tendered and the Policy implemented.

9. Background papers

8.1 None

10. Your questions and views (for key decisions)

9.1 If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider

please inform the democratic services team. This can be done by telephone [01296 382343] or email democracy@buckinghamshire.gov.uk