

POPLA update on tickets issued for alleged breach of Byelaws

POPLA adjourned appeals against tickets (penalties and parking charge notices) issued on land subject to Byelaws. We had been waiting for a response from the Department for Transport (DfT) on the remit for parking operators to issue tickets on the land and on POPLA's remit to deal with penalties.

The DfT has now provided a response confirming it considers parking operators to have a remit to issue penalties in line with section 14 of the Railway Byelaws. The DfT also confirmed that it expects parking operators to offer an appeal (such as through POPLA) in relation to tickets issued on Railway Land. A copy of the DfT's letter is included in Appendix 1.

POPLA ordinarily deals with appeals against tickets (parking charge notices) issued by British Parking Association (BPA) approved operators on relevant land as defined in the Protection of Freedoms Act (POFA) 2012. POFA 2012 sets out rules on the steps parking operators should take when ticketing on relevant land and POPLA measures against these rules when dealing with appeals.

Now that we have the DfT response, POPLA will be considering appeals against tickets issued on Railway Land (and other land subject to Byelaws). Such land is not relevant land as defined by POFA. This means we will be applying different rules to appeal consideration.

Although our determinations on whether a motorist has, for example, overstayed or displayed a ticket, will be largely the same: many of the appeals we deal with relate to a failure of process in relation to the ticketing itself. Motorists may appeal that they did not receive the ticket in reasonable time, or that the ticket they received did not contain correct information.

This document sets out our expectations of the actions operators should take when ticketing on land subject to Byelaws. Unless we receive and accept further guidance from a relevant stakeholder (such as the DfT or BPA), we will measure against this document when making decisions.

The focus of this document is Railway Land – as the DfT provided guidance on Railway Land only. Other sites such as airports and shipping ports have Byelaws specific to those sites: and some of those Byelaws set out specific processes. We will consider processes for specific sites where appropriate. In the absence of specific processes, our expectations at those sites will as set out below.

Considerations

- Who can the operator pursue?
- Timescales for ticketing
- What we expect to see in a penalty notice

Who can the operator pursue?

The Byelaws 14 (4) are specific that the **owner** of a vehicle “may be liable for a penalty as displayed in that area”. Therefore, if pursuing for breach of Byelaws, the parking operator can only pursue the owner of the vehicle.

The owner may or may not be the person who was driving at the time. Another person driving the vehicle does not affect the owner's liability for a penalty.

Following the same standard as the Traffic Penalty Tribunal for local authority penalties, we will presume the owner to be the registered keeper unless they prove otherwise.

Parking operators can pursue the owner of a vehicle for breach of Byelaws by affixing a penalty to the windscreen of a vehicle for the attention of the vehicle owner. They may also seek keeper information from the Driver and Vehicle Licensing Authority (DVLA) in order to send a notice to owner through the post. If the DVLA determines that the parking operator has reasonable cause to seek the information, they may provide it to the parking operator.

Timescales for ticketing

The Railway Byelaws set out no timescales for the issue of a penalty for breach of Byelaws. However, the parking operator is timed out of prosecuting the motorist for breach of Byelaws after six months.

We consider a lack of timescales unreasonable to motorists in respect of appealing. If a driver or an owner did not receive notification of a parking charge or penalty until several months after an incident of alleged improper parking, they may have little or no memory of the event and their ability to appeal will be hampered.

POFA 2012 sets out timescales for the issuing of parking charge notices. While POFA 2012 does not apply on Railway Land, the standards have been put in place for situations similar to those in question. As those standards are used across the industry, and both parking operators and motorists are familiar with the standards, we consider it suitable that we use these standards as a guide when considering appeals against penalties issued on Railway Land.

What does this mean in practice?

Penalty notice:

- Affixed to vehicle: this should be given by affixing it to the vehicle at the time the alleged breach of Byelaws is identified.
- Issued via post following a penalty notice affixed to vehicle: this should be given in the period of 28 days following the period of 28 days beginning with the day after that on which the initial penalty notice was affixed to the vehicle.
- Issued via post without a penalty notice having previously being affixed to vehicle: this should be issued in the period of 14 days beginning with the day after that on which the specified period of parking ended.

As with POFA 2012: We will presume a penalty notice sent by post, unless the contrary is proved, to have been delivered on the second working day after the day on which it is posted; and for this purpose "working day" means any day other than a Saturday, Sunday or a public holiday in England and Wales.

What we expect to see in a penalty notice

POFA 2012 provides specific instructions on the information that should be contained within a parking charge notice. This information allows drivers and keepers to understand the allegation against them, the situation in which they find themselves, and their options. There are no such requirements for penalties for breach of Byelaws or parking charges where the parking operator is not seeking to pursue the keeper using the provisions within POFA 2012.

However, we consider it important that tickets (penalties and notices) clearly communicate the circumstances to owners and drivers so they know their options and can make an informed decision on what to do next.

We set out the following expectations for a Penalty Notice for breach of Byelaws on Railway Land:

A Penalty Notice should:

- Say it is a Penalty Notice (this can be abbreviated to PN providing the phrase Penalty Notice is used first)
- Be dated
- Specify the alleged contravention including the time and date, site, and period of parking
- Confirm how the Byelaws were brought to the motorist's attention
- Confirm the law under which it has been issued
- Be issued to the vehicle owner (Registered Keeper assumed to owner unless proved otherwise)
- Confirm potential consequences of non-payment, including prosecution
- Confirm the amount of the penalty – which should be the same as the penalty shown in the car park
- Inform the owner of any discount offered
- Explain how to pay and who to pay
- Confirm the appeal procedure

A penalty notice should not:

- Mention POFA 2012 (as this is not relevant and will confuse the owner about the situation in which they find themselves)
- Mention ParkingEye Vs Beavis (as this is not relevant and will confuse the owner about the situation in which they find themselves)
- Say the words “parking charge”, “parking charge notice”, or “PCN” (as this is not relevant and will confuse the owner about the situation in which they find themselves)
- Refer to keeper or driver liability (as this is not relevant and will confuse the owner about the situation in which they find themselves)
- Say anything untrue or misleading

John Gallagher
Lead Adjudicator

Appendix 1



Department for Transport

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Dear Mr Gallagher,

Parking Penalties on Railway Land

I write in connection with the practice of ticketing in relation to railway station car parks. I wish to address the fact that some car park operators have ceased to provide the recipients of parking tickets with access to an independent appeals service. The department would like to see this restored.

In this letter, references to "ticketing" and "issuing parking tickets" mean the practice of charging an additional fee to a person who has not used a railway station car park in accordance with the applicable rules. This can also sometimes be referred to as "issuing a parking charge notice" or "PCN". The practice of ticketing is considered by the department to be a more cost-effective, efficient and proportionate means of incentivising motorists to comply with the rules of a railway station car park in most cases compared to, for example, clamping, towing vehicles away or bringing a prosecution.

The Railway Byelaws 2005 ("the Byelaws"), which regulate the use and parking of vehicles in railway station car parks, permit ticketing. Under byelaw 14(3), a person using a railway station car park must pay the parking charges which are levied by the operator. Further, it is stated in byelaw 14(4)(i) that the owner of a vehicle may be liable to pay a penalty if it has been used, placed or left in contravention of byelaws 14(1) to (3). The ability to render a charge under byelaw 14(4)(i) is distinct from the general enforcement power in byelaw 24(1), under which a person can be prosecuted in the Magistrates Courts.

A parking operator may also have a contractual right to issue a parking ticket, depending on the terms which have been agreed between the parties, for example, the parking operator and the owner/registered keeper of the vehicle.

It is the view of the department that if a person is issued with a parking ticket then, as a matter of good industry practice, they should be provided with the opportunity to appeal against it to a body which is independent of the parking operator. There is nothing stated in the Byelaws which prohibits parking operators from providing an avenue of appeal. The department would therefore encourage parking operators to re-instate their

independent appeals processes with immediate effect. The department also recommends that parking operators take this opportunity to ensure that their car park signage clearly displays the applicable charges and that customers are made aware of the appeals process.

The department intends to carry out a more detailed review of the Byelaws at a later date and may consult on possible revisions.

I am copying this letter to Transport Focus, London Travelwatch, the RAC and the AA.

Yours sincerely



Fiona Walshe
Deputy Director – Passenger Experience Policy