



Nottingham City Council

Moving Traffic Enforcement Guidelines & Practice



Nottingham
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1. INTRODUCTION

The contents of this document are derived from current Nottingham City Council (NCC) practices, accepted best practice in Moving Traffic Enforcement (MTE), the issuance of Penalty Charge Notices (PCNs) and alongside NCC's existing CCTV and Parking Enforcement policies.

The Traffic Management Act 2004 (TMA 2004) introduced the civil enforcement of traffic offences in England and Wales. More recently the enactment of Part 6 of the 2004 TMA 2004 now allows councils to enforce more moving traffic offences in addition to enforcing Bus Lane contraventions. NCC has previously enforced the use of Bus Lanes and Gates under the Transport Act 2000. This has now been brought back under the TMA with additional powers to enforce further moving traffic offences.

In formulating these guidelines due regard has been paid to NCC's Diversity Policy and the Human Rights Act.

The guidelines are primarily concerned with: -

- a. How representations are dealt with and how NCC will endeavour to treat people fairly, equally and with respect, taking account of their personal circumstances.
- b. The conduct of NCC's staff and other representatives and the manner in which it carries out the enforcement of traffic restrictions for which it has responsibility.
- c. Service standards that NCC will endeavour to adopt when carrying out enforcement.

N.B. It is impossible to provide guidelines to cover all circumstances in each case and there will be occasions when a NCC Officer will consider a case on its individual merits before reaching a decision.

2. WHAT IS MOVING TRAFFIC ENFORCEMENT

Moving traffic enforcement is the implemented management of moving traffic on NCC's highway network and is carried out using specialist approved traffic enforcement cameras that utilise ANPR technology. NCC manage the detailed design, installation, associated signage and road markings for any ANPR camera site. The governing principles on how this will operate are:

Safety - Enforcement of moving traffic restrictions at locations where there have been a history of road traffic collisions resulting in road users being injured, where there is a high risk to pedestrian safety or where all other engineering interventions have been exhausted.

Capacity - Managing the transport network to ensure the expeditious movement of traffic. Enforcement of moving traffic restrictions at locations where congestion on the network regularly occurs.

Accessibility - Improving the quality, accessibility, and efficient movement of public transport with enforcement of bus priorities. This raises the profile and attractiveness to public transport and supports the safe and efficient movement of buses.

Amenity - Improving the local environment and supporting carbon reduction. Easing congestion and reducing delays for emergency services. Enforcement of restrictions that help improve air and noise quality and encourage more cycling and walking.

NCC already enforces some familiar moving traffic restrictions such as Bus Lanes, School Entrance Clearways (Yellow School Zig Zags) and Red Routes on the strategic network. The Department for Transport (DfT) and has now granted powers to enforce further moving traffic contraventions which can include but not exhaustive to:

- Banned Right or left Turns
- Illegal U turns
- One Way Streets
- Yellow box junctions
- Prohibition of Driving
- Pedestrian Zones
- No Entry
- Incorrectly driving in a Bus Lane

3. OBJECTIVES OF MOVING TRAFFIC ENFORCEMENT

The TMA has placed a duty on the City Council's Traffic Manager to reduce congestion and to keep traffic moving to maximum efficiency and includes pedestrians, cycles and the overall safety of all road users.

MTE is a key tool for helping to manage the highway effectively and efficiently. MTE helps to reduce congestion on the strategic highway network by managing key public transport routes and increasing safety and accessibility.

The overall objective of MTE is to manage the highway to maximum efficiency by reducing the incidences of moving traffic contraventions by improving safety on the network for all users.

MTE can help to achieve the following objectives.

- To ensure reliable, consistent journey times for bus services. This helps to encourage a more sustainable transport network, reduce congestion and improve air quality.
- To actively discourage road users who contravene on-street traffic restrictions such as Prohibitions of Driving, Banned Turns & No Entry restrictions which can lead to potential harmful conflict with all highway users.

4. BACKGROUND TO GUIDELINES

Moving Traffic Enforcement

Legislation

On street moving traffic restrictions are created by Traffic Regulation Orders (TRO's) using powers under the Road Traffic Regulation Act 1984 and The Local Authorities Traffic Orders (procedure) (England and Wales) Regulations 1996. TROs are governed by statutory instruments, such as the Traffic Signs Regulations and General Directions 2016 (TSRGD) and best practice with relevant Traffic Signs Manuals.

All traffic signs and road markings comply with the requirements of the TSRGD and relevant best practice. Where signs do not comply with those set out in TSRGD, such as for the inclusion of the words "wheelchair accessible taxi", DfT approval is obtained.

Powers are granted for civil enforcement of traffic contraventions by approved local authorities in the Traffic Management Act 2004 (TMA 2004). NCC is an approved local authority under TMA 2004 Section 78 and to use camera enforcement to produce PCNs under The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 (SI No 2022/71). Nottingham City Council decided to impose a PCN under these powers.

Enforcement Equipment for all Contraventions

NCC only uses a recording system and cameras that have been approved under The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 (SI No 2022/71)

The time on our ANPR devices are automatically synchronised every five to seven minutes to the GPS satellite (similar to that in Satellite Navigation Systems). The position of Automatic Number Plate Recognition (ANPR) cameras can be identified by their coordinates, from the same source.

New Part 6 Moving Traffic Enforcement (MTE) Powers – ANPR Enforcement

When enforcing any new MTE powers, NCC will have to follow strict DfT procedures when identifying potential camera enforced sites where it is deemed there is a significant road safety issue that could potentially lead to conflict between road users.

MTE is considered as a last resort for the highway where it is deemed there are road safety issues due to road users contravening the on-street restrictions. The DfT states – 'Enforcement action should not commence at any location where contraventions can be avoided by reasonable improvements to the highway or to traffic signs, and not until improvements are made and appropriate monitoring has been carried out'.

It should be noted that if a site is identified for enforcement then NCC must carry out a full investigation as to whether a camera will help reduce the number of contraventions. An example of where we would potentially consider a camera for enforcement is where there are reports of numerous contraventions on a daily basis. This could be where vehicles are regularly contravening banned turns at signalised junctions and putting other road users at risk when crossing on a green crossing phase. Again, an engineering solution must be considered first as to if this could include a change in road design or adding more clear signage. If, with these improvements, NCC is still seeing

high contravention numbers then camera enforcement could be considered as an option to deter this banned movement.

Warning Notices and PCNs under the new MTE powers: -

In line with DfT requirements, NCC is committed to issuing one Warning notice at each new moving traffic location for the first contravention committed by a vehicle within an initial set period, and this will be sent to the registered keeper of a vehicle. It is hoped this will prevent repeated contraventions by that vehicle.

Once the first Warning notice has been issued, a vehicle contravening the restriction again at the same specific moving traffic site will incur a PCN.

NCC will issue PCNs where they believe there is ANPR evidence a vehicle has contravened a moving traffic offence.

The purpose of penalty charges is to persuade motorists to comply with the moving traffic restrictions and will only be used when engineering and education have failed.

5. DISCRETION & FAIRNESS

The following guidelines & discretionary practices are considered either at the time of processing and issue of the PCN or at any subsequent representations, or both: -

Double Jeopardy

NCC operates discretion in the instance of 'Double Jeopardy' in an attempt to reduce the number of PCNs sent to an individual in a short space of time at the same location. The processing system itself should prevent issue of a PCN to a vehicle where another has been processed within five minutes of the original contravention.

For example, because there are two automatic cameras at either end of the Goldsmith Street tram stop, journeys through the tram gate at Goldsmith Street may be captured in both directions. A journey in the opposite direction within a very short time (usually less than five minutes), in the absence of any other information, is considered to be part of the same original journey and any PCN issued is usually cancelled.

Undertaking vehicles turning right

Vehicles are often observed to use bus lanes to undertake vehicles stationary in the middle of the running lane that are waiting to turn right into a side road. Although The Highway Code states that you should not overtake if you would have to enter a lane reserved for buses or cycles during its time of operation, a common sense approach has been adopted. Each case captured by a MTE camera will be considered on its own merits.

In most cases, the vehicle will leave the bus lane and return to the running lane as soon as the turning vehicle has been passed. NCC would expect the passing vehicle driver to ensure that, if the manoeuvre is carried out, then the exit back into the running lane is clear. If this is not the case, and the vehicle continues on its journey in the bus lane, then a PCN may be issued, particularly if the vehicle travels an unreasonable distance whilst in the bus lane.

6. FORMAL REPRESENTATIONS

The PCN is served by post and incorporates the Notice to Owner (NTO).

The keeper of a vehicle is given the opportunity to make Formal Representations against a PCN.

These representations must be made in writing within 28 days of the issue date of the PCN beginning with the date of service, which has been calculated automatically and printed on the PCN.

Representations can be made on the following grounds: -

- On a Red Route or School Entrance Clearway The alleged contravention did not occur I had to stop because of an incident in the car that was causing distress
- The PCN exceeded the relevant amount
- The circumstances leading to the issue of the PCN are subject to criminal proceedings or a Fixed Penalty Notice has been issued
- I was not the owner of the vehicle at the time of the alleged contravention
- I was not the hirer of the vehicle at the time of the alleged contravention
- I was the registered owner/keeper of the vehicle on the date of the alleged contravention, however: -
 - We are a vehicle hire firm, the vehicle was on hire under a hiring agreement and the hirer had signed a statement acknowledging liability for any PCN issued during the hiring period
 - The vehicle was being kept by a vehicle trader at the time of the contravention
 - The vehicle was being used without my consent at the time of the contravention.

NCC will consider other mitigating circumstances and may use its discretion in deciding whether the specific circumstances warrant cancellation.

However, the following reasons will **not** be accepted: -

- I was going to turn left at the next junction
- There were no buses in the bus lane at the time
- I was only in the lane for a few seconds
- I was lost
- I was following the sat nav.

Intervention in Representation Processes by Councillors and Other Officers

The process of dealing with representations against the issue of PCNs is well documented within the TMA 2004: Statutory Guidance to Local Authorities on Bus Lanes and Moving Traffic Enforcement outside London: -

Elected Members and unauthorised staff should not, under any circumstances, play a part in deciding the outcome of individual challenges or representations. This is to ensure that only fully trained staff, make decisions on the facts presented.

There should also be a clear audit trail of decisions taken with reasons for those decisions and will be carried out in a fair, unbiased and equal manner.

These procedures include the ultimate right of all motorists to refer the matter to an independent arbitrator, the Traffic Penalty Tribunal.

To preserve the integrity of these procedures, they will be managed and carried out by the administration and processing staff within Parking Regulation & Compliance section and no undue external pressure shall be brought by either Councillors or other senior officers, designed to unduly influence the decisions by virtue of their position alone.

Representations

Representations against the issue of a PCN for a CCTV contravention must be made in writing and **cannot** be accepted over the telephone. 'Writing' includes emails received and also through NCC's online system, known as the OCM, Online Case Management System, at <https://nottingham.tarantportal.com/>

Written communication is considered to be a representation where a reason why the driver contravened against an on-street restriction and is asking for the penalty charge to be cancelled.

A letter asking for general information which can be supplied quickly will normally be answered the same day, without going through the representations process.

Representations received late

Representations which are made after the end of the 28 day will be treated on their own merits with due regard being made to the circumstances for the late submission.

NCC's contemporaneous notes

Officers processing PCNs will make a note for each PCN issued at the time of processing. They will record details of the location where the contravention took place and any other relevant details. These notes will be kept electronically with the PCN records, they will be made available to the adjudicators in the event of a PCN being appealed through the independent adjudication process and will assist the investigation of any representation received by the Council.

Cloned number plates

The Vehicle Registration Mark (VRM), otherwise known as a number plate, is recorded at the time of processing of the contravention. Occasionally the registration is inputted incorrectly by mistake; this is often caused by the number-plate screws being poorly positioned or the plate being dirty. Representations upheld for PCNs issued incorrectly under this category are cancelled.

Occasionally, the VRM appears to be correct and the make of the vehicle corresponds. The vehicle owner will be asked to provide a copy of the vehicle logbook and supporting evidence such as photographs to support a representation. Also, it will be necessary to inform the police of the possible cloned number plate.

Foreign vehicle registration numbers

PCNs are issued to a vehicle displaying foreign registration plates.

Hiring Agreement

In the case of a hired vehicle, responsibility for a PCN is that of the hirer, provided that a Hire Agreement has been signed. In this case, the responsibility is not with the registered keeper (Hire Company), providing they make a formal representation to the Council once the Notice to Owner is received. This representation must be accompanied by a copy of the relative hire agreement.

In all cases the agreement must state the name & address of the hirer, start and finish dates and times for the hire period, the drivers licence number, the place of issue and the hirer's signature. It must also include a statement regarding the hirer's liability for any PCNs incurred during the hire period. Should any of the above be unclear, absent or in contradiction of the date / time of issue of the PCN, then the PCN will be enforced against the hire company and a notice of rejection of representation will be sent to them with the reasons clearly stated.

Location (road name) – incorrect

Where a PCN is issued, the road name where the vehicle was recorded as seen is stated on the PCN itself. If this is recorded incorrectly, then this is deemed to be a material error and the PCN should be cancelled once a representation is made.

Mitigating Circumstances

Each case will be judged on its individual merits and particular circumstances are referred to elsewhere within this document.

However, below are a few general guidelines: -

- a. **Children/Elderly people:** Allowance should be made for the extra time taken to drop off/pick up children or elderly people with mobility issues when observing vehicles in a bus lane during its time of operation.
- b. **Emergencies:** An emergency is an unforeseen situation that may have caused the driver to use the bus lane during its times of operation. They are often of a medical nature and leniency should be exercised where it can be shown that the driver could not have foreseen the situation. Wherever possible such claims should be supported by independent evidence.

Notice of Rejection or Acceptance of Formal Representation

When the keeper of a vehicle makes a Formal Representation to NCC in response to a PCN/Notice to Owner, in accordance with current legislation NCC has to make a response. There is no current requirement in legislation for a timescale; in practice NCC will make a response within 56 days in line with national policy i.e. either a Notice of Acceptance of Representation or a Notice of Rejection of Representation will be issued.

A Notice of Acceptance will confirm that the representation has been accepted and that liability for the Penalty Charge has been cancelled.

A Notice of Rejection formally rejects the representation and gives detailed reasons as to why NCC has come to this conclusion. The rejection will also include the necessary forms and instructions as to how an appeal may be made to the Traffic Penalty Tribunal. This appeal must be made within 28 days of the Notice of Rejection of Representation.

Penalty Charge Notice – Discount Period

The PCN rate for a bus lane contravention is currently set at £70. If the PCN is paid within 21 days of the date of service, a discounted amount of £35 (50% of the £70 penalty) will be accepted in full and final settlement of the matter.

Penalty Charge Notices – Time to Pay/Instalment Payments

As a general rule, NCC will neither offer extensive time in which to pay PCNs nor will it enter into instalment payment arrangements. Exceptions to this are only made in cases of demonstrated, genuine financial hardship. NCC will not consider any such arrangements once the PCN has been referred to the Bailiff for collection.

- Any such application to make instalment payments must be made in writing.
- The applicant must complete the tear off slip at the bottom of the acceptance letter and sign to confirm their acceptance of the terms and conditions of the payment plan.
- Minimum payment of £10 per PCN per month is required until the outstanding balance is paid in full.
- Part payment plans will not be set up where PCNs are at the discounted rates.
- Part payment plans will not be set up where the PCN has been through the Adjudication process. The amount outstanding must be paid in full.
- Non-payment of any cheque will result in enforcement action being recommenced and any unbanked cheques will be returned to the drawer with a letter stating that the arrangement is cancelled.
- If any payment due in accordance with the arrangement is late or missed, NCC will regard the arrangement as cancelled and will recommence recovery action. Written confirmation of this will be sent to the debtor.

Penalty Charge Rate

The PCN rate is currently £70.

Police Officers on Duty

PCNs will be issued to marked/unmarked police vehicles using bus lanes during their times of operation and will be subsequently cancelled if written documentation is provided and signed by a Police Inspector or above to confirm that the officer was on official business.

Police Officer Given Permission to Drive in Bus Lane

Where details of the officer concerned are given, confirmation should be sought prior to cancellation of the PCN. If no details are initially supplied, these details should be requested; if supplied the PCN should be cancelled.

Registered Keeper's Liability

Under the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022, the responsibility for any PCN rests with the registered Keeper of the vehicle as recorded at the Driver & Vehicle Licensing Agency (DVLA). If the keeper was not the driver at the time of the contravention, it remains his / her responsibility to pay the PCN.

The only exception is where the registered keeper is a Hire Company and has supplied a copy of the relevant signed Hire Agreement which includes acceptance of liability for any penalties, by the person leasing the vehicle.

Road Markings – Missing/Obscured

Where road markings are obscured, for example where markings cannot be seen from the camera or in its videos because, for instance, of snow, it is considered that they will be not visible to the motorist, and a PCN, if issued, will usually be cancelled.

Satellite Navigation Systems

Satellite Navigation Systems are a very useful tool in assisting a driver with directions to their destination. However, they are often not kept up to date and are sometimes inaccurate. NCC expects that drivers comply with the road signs and markings in place rather than fully rely on the Satnav's instructions.

Traffic Penalty Tribunal

If a resolution cannot be found between NCC and the appellant then the appellant has the right to take their PCN case to the Traffic Penalty Tribunal (TPT)

The Traffic Penalty Tribunal is an independent body of adjudicators that make decisions relating to an appeal by the recipient against the issuing of a PCN for bus lane contraventions by a Local Authority outside London. This is covered by the following: -

- **MTE:** - Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 and Traffic Management Act 2004 Part 6 and The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022.
- **Parking:** - Traffic Management Act 2004 Part 6 and The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022.

Once a formal representation against a PCN has been rejected, the keeper of a vehicle is given the opportunity to appeal to TPT within 28 days of the rejection.

The Traffic Penalty Tribunal is the final stage of appeal for motorists or vehicle owners against a penalty issued by a council in England (outside London) and Wales.

The Traffic Penalty Tribunal will review the case and make an independent decision as to the validity of the PCN based purely on its legality. The standard of proof required by the Traffic Penalty Tribunal is "on the balance of probabilities".

The Traffic Penalty Tribunal will not take into account mitigating circumstances, but will realistically expect a local authority to do this prior to the matter being sent to them. If they feel mitigating circumstances do apply, they will not uphold the appeal but will make their view known to the local authority.

The Traffic Penalty Tribunal's decisions are final and binding on both parties.

Approvals			
Approved by	Position	Signed	Date
Sajeeda Rose	Corporate Director for Growth & City Development	✓	15/04/2024
EIA – Rosey Donovan	Equality & Employment Team	✓	17/04/2023

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