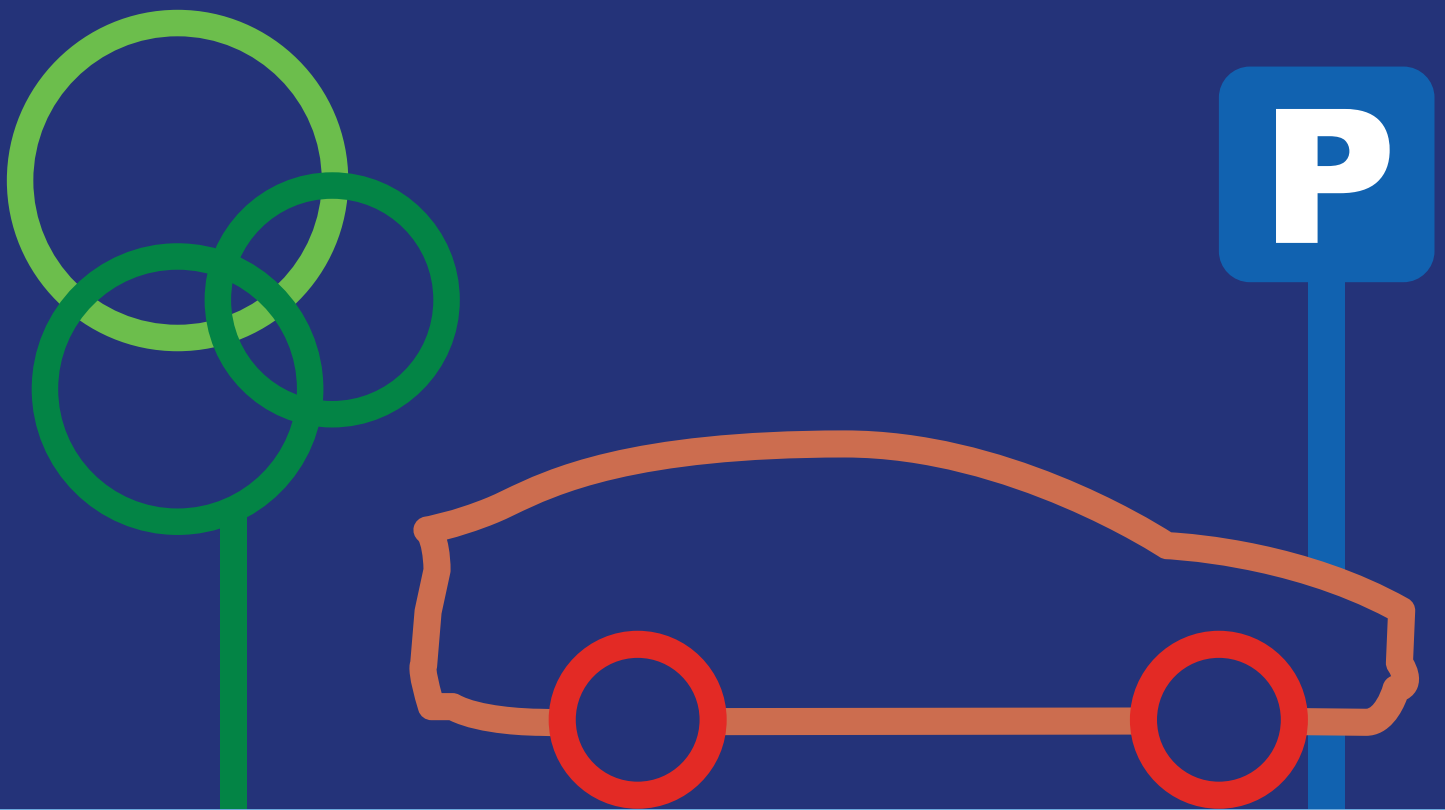


Parking on Private Land Appeals

Annual Report 2020





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Welcome





Like many organisations, POPLA's 2020 was shaped by Covid-19.

We're proud of the steps we put in place smoothly and quickly to support motorists and parking operators during the pandemic, while maintaining the integrity of the appeals service. We discuss our response to Covid-19 in more detail in Section 1 of this report.

Before the pandemic hit, we were on track to see a slight year-on-year increase in appeal numbers. This shows that more motorists continue to be aware of their appeal rights and are willing to exercise them.

Despite the challenges posed by Covid-19, there was some good news during 2020 for motorists, POPLA and the private parking sector.

The British Parking Association (BPA) supported the UK government in launching a free parking scheme for critical workers, to help them focus on the fight against Covid-19.

Working with Parkopedia, YourParkingSpace and JustPark, the BPA created a website to help NHS staff, health and social care workers and NHS volunteers to find free parking locations quickly and easily. Several parking operators also launched their own schemes to support the NHS.

The private parking sector made great strides in dealing with parking charges issued for keying errors, with the BPA updating its code of practice to mandate the cancellation of parking charges in some circumstances. This has significantly reduced appeals and motorist frustration over keying errors.

There was also continued progress on the Parking (Code of Practice) Act 2019, which will introduce a single code of practice for all operators once implemented.

The government consulted on an enforcement framework for the single code of practice – including some new ideas focusing on how parking operators respond to motorists who present mitigating circumstances.

POPLA is pleased that so many parties are committed to improving standards. In this report we reflect on the challenges that motorists have faced in the last year, and how improving standards can help overcome these challenges.

John Gallagher

Lead Adjudicator | POPLA

POPLA's year in numbers

Between 1 October 2019 and 30 September 2020, we ...

Received
65,087
appeals



Decided
43,790
appeals



Handled **14,555**
inbound calls with

98%

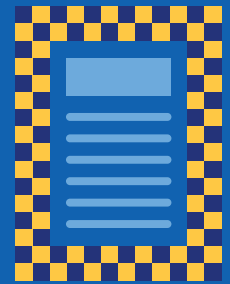
of calls answered
within 30 seconds



Allowed
9,039
appeals



Refused*
34,751
appeals



In addition, parking operators decided not to contest 14,732 appeals



58,522

appeals completed the
POPLA process



41%
(23,771 out of 58,522)



of appeals that completed the POPLA process resulted in the
motorist's parking charge being cancelled

Please see Appendix 2 for a full breakdown of appeals data

*An allowed appeal is one where we found in the motorist's favour and allowed their appeal to stand – leading to the parking charge being cancelled. A refused appeal is one where we didn't find in the motorist's favour – the parking charge stood.

Section 1

How POPLA responded to COVID-19

As the Covid-19 pandemic took hold in the UK in March 2020, we mobilised the whole POPLA team to work from home in just a few short days, ahead of government advice.

By 10 March we were all working remotely. This had little impact on our ability to deal with appeals until the UK-wide lockdown was announced on 23 March.

Shortly after this, motorists and parking operators began contacting us to say lockdown was making it difficult for them to participate in the appeals process as normal.

For example, it wasn't possible for a motorist who received a parking charge to revisit a car park and re-read the signs to understand what they were accused of.

Similarly, some motorists want to speak to the landowner such as a hotel to help them make an effective appeal. As businesses across the nation closed, motorists found that they couldn't get the information they needed for their appeal.

Lockdown also had a significant impact on parking operators. Sites were closed and car parks were left empty. Many operators had to shut down or significantly reduce their operations. They told us they wouldn't be able to respond to requests for evidence.

Adjournment of appeals

Given these challenges, we decided to adjourn consideration of appeals from 6 April. Motorists were still able to register their intention to appeal, with a recognition that they might not be able to provide all appeal details due to lockdown.

We told them we'd be back in touch to ask for further details when Covid-19 restrictions were lifted – and made clear that operators couldn't pursue payment while an appeal was with POPLA.

Any appeals that were ready for review as of 6 April were considered as normal. Once we had considered these appeals, the POPLA team maintained a core staff to ensure we could continue to respond to questions.

As Covid-19 restrictions eased, we decided to restart consideration of appeals from 1 August – giving motorists an opportunity to provide further comments.



Section 2

Keying errors

Many car parks are monitored by Automatic Number Plate Recognition (ANPR) cameras. The terms and conditions of such car parks often require the motorist to enter their vehicle's registration number into a terminal. This is so the payment or registration can be linked to the vehicle seen on camera.

If the motorist doesn't enter the correct registration number, the technology will suggest that no payment has been made – or that the vehicle has not been confirmed to be allowed on site. This will start a sequence of events which might result in a parking charge being issued.

The parking operator will incur costs when this happens. They must pay when seeking vehicle keeper details from the DVLA and will also incur costs when posting a parking charge and dealing with any subsequent appeal.

BPA code change

Last year we talked about how keying errors were a source of significant frustration for motorists. If a motorist was entitled to use a car park but made an error when inputting their registration, they felt real frustration at being asked to pay up to £100 for a simple mistake.

The BPA recognised this issue and in January 2020 updated its code of practice to set out the circumstances in which parking operators are required to cancel parking charges when there has been a keying error.

Where a legitimate user of a car park has made a simple keying error, such as typing a zero instead of the letter O, the BPA expects a parking operator to be able to identify this before it issues a parking charge.

If a parking operator issues a parking charge, the updated BPA code of practice makes clear that the operator must cancel the parking charge when the motorist appeals.

Advice to motorists who make a keying error

- Our advice to motorists, as always, is to provide as much evidence and information as possible when appealing to the parking operator.
- If you think you might have made an error when interacting with keypad – tell the parking operator.
- If you think you might have put in the wrong registration (for example your own when driving your spouse's car) – confirm the registration you think you'll have put into the keypad.
- The operator will then be able to search its systems for that registration.

POPLA's approach to appeals involving keying errors

POPLA must make decisions based on facts and law, with consideration of the BPA code of practice.

Before the BPA's introduction of keying error provisions, our decisions focused on whether the parking charge was legally valid.

Now that the BPA has formalised expectations of parking operators in its code of practice, we can make decisions to allow appeals if operators have not met these expectations.

Generally this isn't necessary, because parking operators take the correct action at the first appeal stage (when the motorists appeals to them).

The number of appeals received about keying errors reduced significantly after the updated BPA code of practice came into force in January 2020. We still see some appeals, however – most of which relate to major keying errors.

Major keying errors

Sometimes, the motorist will make an error that the parking operator couldn't reasonably be expected to identify before issuing a parking charge. An example would be where a motorist is driving their spouse's car and enters their own registration.

In these circumstances, the BPA recognises that the parking operator will have incurred costs because of the motorist's error. Nevertheless, it would still be frustrating for the motorist to receive a parking charge when they were a legitimate user of the car park.

Therefore, the BPA asks that if the evidence shows that the motorist was a legitimate user who made a major keying error, the parking operator seeks only to recover the costs (or some of them) caused by the motorist's error, with the amount they can seek capped at £20.

An opportunity for greater clarity

Overall, the keying error provisions in the BPA code of practice have been a resounding success. One area, however, where increased clarity would benefit both motorists and parking operators is where the motorist has not interacted with the registration terminal – they simply didn't enter any registration number at all.

This has been the subject of some dispute.

Parking operators have argued that a total failure to interact with the payment terminal represents a breach of the parking conditions, rather than a mistake when trying to comply with the parking conditions.

We can see both sides but interpret the BPA code of practice to expect operators to deal fairly with legitimate users of car parks who have made inadvertent errors.

We believe the Parking (Code of Practice) Act 2019 provides the opportunity to add further clarity.

Indeed, we made this suggestion in our response to the British Standards Institution (BSI) consultation on the proposed new single code of practice (see Section 4).

Section 3

Mitigating circumstances

We continue to see appeals that feature mitigating circumstances. It can be incredibly frustrating for a motorist to receive a parking charge when they tried or intended to keep to the parking conditions but were unable to do so for reasons beyond their control.

Background

POPLA's remit since its creation in 2012 has always been to decide appeals based on facts, law and the relevant codes of practice. This means we cannot currently allow an appeal based on mitigating circumstances if the motorist did not keep to the parking conditions.

However, it was recognised soon after POPLA's creation that appeals would include mitigating circumstances. A process was soon developed for dealing with such appeals. The Department for Transport's (DfT) September 2012 guidance set out the following:

“POPLA may also refer cases back to the landholder where it considers the landholder has failed to take reasonable account of evidence of reasonable mitigating circumstances which has been presented by the driver or registered keeper.”

Our current approach

Based on this DfT guidance, we sometimes refer appeals back to parking operators (working on behalf of landholders) and ask them to cancel parking charges because of mitigating circumstances.

The operator then decides whether to cancel the parking charge. If they refuse, POPLA considers the appeal based on facts, law and relevant codes of practice.

This process has reasonable levels of success, with a third of cases resulting in the appeal being cancelled.

Between 1 October 2019 and 30 September 2020, a total of 1,031 appeals were referred back to parking operators to consider mitigating circumstances. From this 339 (33%) were withdrawn and 692 (67%) were not.

Nevertheless, the decision whether to cancel an appeal based on mitigating circumstances ultimately lies with the parking operator.



What are reasonable mitigating circumstances?

POPLA sees a broad range of mitigating circumstances – some more serious than others. At the lower end of the scale motorists tell us about queues in the shops they were visiting, a meeting that overran, or of the need to take children to the toilet before departing.

More serious examples include dealing with significant emergencies, injury that prevented driving, or loss of loved ones.

Deciding what qualifies as a reasonable mitigating circumstance is subjective. To try to bring some consistency, we apply the following question to the circumstances described by the motorist:

Did the situation unavoidably prevent the motorist from meeting the terms and conditions of the car park in question?

For clarity, if someone describes a significant emergency that meant they were not focused on keeping to the parking conditions, we may decide that this unavoidably prevented them from doing so.

The question we ask before deciding whether to refer reasonable mitigating circumstances back to an operator is:

Are we persuaded that the version of events given to us by the motorist is truthful?

Has the operator already considered the mitigating circumstances?

The Department for Transport's 2012 guidance is clear that referrals should be made where the landowner has not already taken reasonable account of reasonable mitigating circumstances. Therefore, before referring an appeal back to a parking operator, we check to see whether the operator provided a reasonable response to the mitigation in its appeal response to the motorist.

If the operator has already provided a direct response to the motorist's points on mitigation, there may be little value in us asking them to consider the same points. We often receive responses that focus on whether the motorist kept to the parking conditions but fail to address the mitigation. We would refer an appeal if the mitigation had not been previously addressed.

Clear expectations

As described earlier in this section, the decision on whether to cancel an appeal based on mitigating circumstances currently lies with the parking operator. The Parking (Code of Practice) Act 2019 could change all that.

Indeed, the Ministry of Housing, Communities and Local Government (MHCLG) consultation on the enforcement framework for the new single code of practice proposes that mitigating circumstances be included in an Appeals Charter.

This would set expectations around how parking operators should deal with mitigating circumstances in appeals, enabling independent appeal handlers to allow appeals if an operator had not followed the expectations set out in the charter. We welcome this opportunity to build consistency across the sector and deliver fairer outcomes for motorists.

Section 4

Building trust and confidence in the parking sector

The past year has seen significant progress towards the implementation of the Parking (Code of Practice) Act 2019 – the most significant piece of legislation for the private parking sector in years.

- The British Standards Institution (BSI) was appointed to issue a Publicly Available Specification (PAS 232) – the proposed single code of practice.
- This was put together with the help of a steering group made up of key industry, government and motorist stakeholders.
- A review panel, including POPLA, was also formed to provide comments on the proposals.
- The Ministry of Housing, Communities and Local Government (MHCLG) consulted on the enforcement framework for the single code of practice.
- The enforcement proposals included some significant new measures aimed at ensuring fair treatment of motorists.

Appeals Charter

The proposed Appeals Charter includes keying error provisions, similar to those included in the BPA code of practice, which have proved very successful in reducing unfair parking charges for motorists. It would also introduce new issues that can be considered in a similar way.

As well as setting requirements for parking operators around mitigating circumstances (see Section 3), the Appeals Charter includes proposals to ensure leniency is shown to motorists who were entitled to be in a car park but made a mistake when displaying a pass, permit or ticket.

This could include a Blue Badge holder or permit holder who submits their badge or permit at the appeals stage, or a motorist who bought a ticket that blew off the dashboard. These are all issues about which POPLA receives many appeals.

A fairer experience for motorists

The proposals for parking operators to show leniency in certain circumstances should result in a much fairer experience for motorists. More broadly, they could help to improve the public perception of parking operators and the parking industry.

The proposed Appeals Charter also moves appeal consideration away from a cold, hard focus on the law, towards a focus on what is fair and reasonable in the circumstances.

This is great news. For many years, POPLA annual reports have contained explanations of why we cannot allow appeals for some of the reasons that frustrate motorists the most.

Bringing fairness into appeal consideration would mean a greater sense of justice and fairness for many motorists. It would also help to build trust and confidence in the private parking sector.

Enabling more rounded decisions

POPLA is administered by Ombudsman Services – an Alternative Dispute Resolution (ADR) provider operating in the energy and telecoms sectors.

Considering fairness and good practice in our decision making is part of our nature.

Adding considerations around fairness to POPLA's many years of considering the legal validity of parking charges would lead to more rounded decisions that are more acceptable to both parties.

Single appeals service

Another positive feature of the Act is that it allows for the creation of a single appeals service to cover the entire private parking sector.

Currently there are two appeals services, and the appeals process and handling will differ for motorists depending on the appeals scheme attached to the car park at which they received a parking charge.

Having a single appeals service to cover all private parking would mean a less confusing and more consistent appeals experience for motorists.

Data-driven improvements

Importantly, it would also allow a single dataset to cover all private parking – giving a clearer picture of what is happening across the sector and ultimately raising standards.

POPLA believes the introduction of a single appeals service would be a significant positive step for motorists.

The new service could do more than just provide efficient and fair appeal handling. It would be a key component in raising standards across the industry and ensuring continuous improvement for the benefit of motorists and parking operators alike.

