

DVLA Consumer Forum on Private Parking Issues: Note of Fourth Meeting and Actions
Date of Meeting: 17 July 2014

Present:

Hugh Evans (Chair)
Robert Toft
Kevin Watts (Secretariat)
Paul Watters
Jo Abbot
Philip Somarakis
Andy Foster
Alan Irving
Keith Hughes
Kelvin Reynolds
Grahame Rose
Will Hurley
John Davies
Martin Cutts
Jonathan Kirk QC (guest speaker)

Representing:

Driver and Vehicle Licensing Agency (DVLA)
DVLA
DVLA
AA
RAC Foundation
ACFO
Trading Standards Institute (TSI)
Department for Transport (DfT)
DfT
British Parking Association (BPA)
BPA – Accredited Trade Association (ATA)
Independent Parking Committee (IPC)
IPC
Independent
Advisor to TSI

Apologies:

Citizens Advice Bureau (CAB), Parking on Private Land Appeals (POPLA)

Items 1, 2 & 3: Welcome and introductions; Note of the Previous Meeting; Matters Arising and Actions Update

1. The Chair welcomed attendees to the fourth meeting of the DVLA Consumer Forum on private parking management. He reminded attendees that to promote open and honest discussion the meeting was to be conducted under the Chatham House Rule, meaning that comments should not be attributed to any individual.
2. The note of the previous meeting (17 January 2014) was agreed. Matters arising would be covered by agenda items.

Item 5 (brought forward): Representation

Additional members from ATAs

3. The Chair referred to the additional ATA representation at Forum meetings to two members each, following consultation with Forum members after the last meeting. IPC was represented by its two directors. BPA membership came from two separate strands of the organisation: Kelvin Reynolds represented BPA as the professional trade association for the parking industry, and Grahame Rose represented the BPA's Approved Operator Scheme (AOS).

Independent Consumer Representation

4. The Chair reported that Mr Metson had decided to step down as independent consumer representative and expressed his thanks for the constructive contribution that Mr Metson had made to the Forum whilst a member. The consumer representatives in the Forum would be canvassed for their views as to a replacement for Mr Metson.

ACTION: DVLA to write to AA, RAC Foundation, TSI, CAB, ACFO and Martin Cutts for views on Mr Metson's successor.

Landowner Representation

5. Although the last meeting agreed that it would be valuable to have landowners' views on the Forum, it had been difficult to identify a suitable representative body as their individual remits tend to be rather narrow.
6. Following discussion it was agreed that limited landowner representation for key aspects would be more beneficial than none at all. BPA (ATA) and ACFO took an action to look into whether they were able to offer details of possible contacts to at least cover certain aspects, e.g. property investment companies, land securities and British Institute of Facilities Management (BIFM).

ACTION: BPA (ATA) and ACFO to provide details of potential landowner members to the Chair. DVLA to consider and invite representation if appropriate.

Item 4: Operating Practices

Guidance on Charging Models including Genuine Pre-estimate of Loss

7. TSI reported that they had started taking forward work under the Business Education Mandate to issue guidance on charging models. They had engaged lawyers to provide a legal opinion, but work on this was suspended following the recent judgment at Cambridge County Court concerning charging models in the private parking industry. An appeal to this case is to be heard between 10 November 2014 and 9 March 2015, which might generate precedent in one or more areas; similarly a case relating to charges made for trespass was expected to go to appeal in September 2014. TSI would continue with the work to issue guidance, review it once the outcome of the Parking eye appeal is heard and decide what further guidance may be necessary.
8. TSI introduced Jonathan Kirk QC, who they had engaged in the work referred to above and who had a continuing involvement in the case that had been heard at Cambridge. By way of update, Mr Kirk gave an account of the findings of Justice Moloney at Cambridge and, more generally, issues relating to charging models in terms of contractual arrangements, breach of terms and conditions, and trespass. He stressed however that he was merely offering an opinion and that the courts may not ultimately have the same view. TSI stated that they

would obtain a written view from Mr Kirk at the appropriate time and would share it with Forum members before publishing it.

ACTION: TSI to share Mr Kirk's written view on charging models with Forum when it becomes available.

9. It was queried whether there would need to be new rules on signage issues such as clarity and legibility, depending on the outcome of the appeals referred to above. A view was provided that there are already requirements in consumer protection legislation about bringing terms and conditions to the attention of the 'contractor' in terms of these being in sufficiently clear terms, intelligible, not ambiguous, not untidy and (where captured on signage for example) prominent.
10. The question was asked what action would be taken if the appeals did not clarify the position as hoped. TSI's planned written guidance (referred to above) would stand.

Paper IND 17/7/14-B: Genuine pre-estimate of loss & appeals

11. Mr Cutts presented this paper (annex D), and asked that POPLA be required to introduce genuine pre-estimate of loss (GPOL) as a specific category for appeal. DVLA had discussed with POPLA, who had reported that the issue of GPOL is covered in its annual report, and stated that it did not consider GPOL to be a standard ground for appeal. DVLA offered to seek the considered view of POPLA on behalf of the Forum.

ACTION: DVLA to raise issue of GPOL as specific category for appeal with POPLA on behalf of the Forum.

Paper IND 17/7/14-C: Clarity of signage

12. Mr Cutts presented this paper (annex D) and emphasised issues stemming from signage that may affect certain types of motorist, e.g. semi-literate individuals, foreign tourists. He then presented papers showing examples of what he considered to be poor signage for comment (annex E). The point about the issues with the signage was acknowledged. A discussion followed in which the point was made that it would not be possible to look at every single sign at every site, and that a workable solution based on professional standards, audits and a reasonable sample should be maintained.
13. It was proposed that a thorough study of signage in private car parks be mounted. This should take in at least 50 sites, checking issues such as language, legibility, clarity and positioning. DVLA agreed to take this away and consider with a view to discussing how such a study might be taken forward.

ACTION: DVLA to consider an official study and report back to the Forum.

Item 6: Update from Accredited Trade Associations (ATAs)

British Parking Association / Approved Operator Scheme (AOS) Board

14. BPA reported that the Independent Scrutiny Board (ISB) for POPLA is now in place which concentrates on monitoring and ensuring the independence of the appeals service rather than its day-to-day functions and deliberations. BPA has therefore accomplished all of the requirements placed upon it in terms of setting up an ATA, independent appeals service and an independent governance structure. It was confirmed that the AOS Board had been disbanded and that a new board would be set up to reflect the new separation between the BPA's standard-setting activities and its monitoring and auditing functions. The BPA said that this would benefit consumers in that it represents another step in the continuous improvement that it has sought and which has brought about significant advances in the last five years. It was requested that BPA provide details of consumer representation on the new board in due course.

ACTION: BPA to provide details of consumer representation when it is established.

15. BPA also said that it has dedicated a member of staff to seeing through the work for members to comply with its Code of Practice Appendix B requirements on signage. This is required to be completed by all members by 1 October 2015. Nine of its 170 members had not submitted a schedule of works to ensure compliance with this, and sanctions would be considered if these were not received by 1 October 2014.

Independent Parking Committee

16. IPC reported that the on-line independent appeals service had been launched, ensuring no IPC input at all in terms of appeal-handling. Early figures were that c.10% of charge notice recipients appeal to the operator and then proceed to the appeals service. Of these, c.57% result in an adjudication, c.17% of which are allowed. IPC attributed this to the compliance work it carries out with the operators when they join the ATA. They also offered the view that the figures are not necessarily comparable to POPLA's because of differences in the referral processes (e.g. those around allowing operators to withdraw their case after referral).

17. The question of accessibility for motorists without internet access was raised. IPC said that although they wished to encourage motorists to use on-line facilities, they will allow others to appeal on the behalf of motorists who do not have internet access and in very exceptional circumstances IPC will input an appeal on their behalf.

18. IPC also confirmed that they were developing a 'looking glass' facility for DVLA to obtain intelligence. For their own part, if themes develop, IPC would investigate with the operators concerned.

Item 7: Accreditation of ATAs

19. DVLA and TSI provided an update. There remained a number of issues in terms of the shape of the scheme, but it has now been established that in order to achieve the appropriate benefits, the standard Consumer Code Approval Scheme model would need to be developed. This would focus on requirements around the ATAs' codes of practice,

processes and appeals services. It was not unusual for Government to use this kind of approach in the private sector. Ministers would be formally consulted as this scheme would generate costs for the ATAs that would inevitably need to be met by members.

20. It was asked whether this work would lead to a single Code of Practice for the industry. It was reported that this was not the intention; rather it would provide core standards that would need to be met, and which as part of the scheme would be subject to approval and monitoring by TSI. A discussion followed as to how the respective Codes are currently audited and the necessity for further accreditation processes. DVLA agreed to take forward action to clarify and progress the work, taking the views of the ATAs into account, and update forum members.

ACTION: DVLA to update forum members on the progress of the work.

Item 8: Intelligence-led assurance activity

21. DVLA provided an update on its work to develop intelligence-led audit capability. Information received from a range of sources on complaints, appeal outcomes, court cases, etc. would be used to help target DVLA's audit activities. The Forum welcomed the DVLA update on progress with activities as set out in paper DVL 17/7/14-1 (annex B).

Item 9: Information for Consumers

DVLA Complaints Facility – paper DVL 17/7/14-2

22. DVLA updated the Forum on the Complaints facility that had been introduced (Annex B), including reference to the information that was available to motorists when first entering the complaints facility. It was requested that this information be circulated to forum members.

ACTION: DVLA to circulate a copy of the information provided to motorists to forum members.

Wording on parking charge notices – paper DVL 17/7/14-3

23. A discussion took place about the wording set out in the above paper (annex B). It was acknowledged that because of the many and varied views on the wording, it was necessary to settle on one form of words quickly. Some further minor amendments were proposed on the day and passed to the Chair. These would be made to the draft wording and circulated to forum members for final approval before being submitted to the ATAs for their members to be encouraged to adopt this wording as best practice.

ACTION: DVLA to circulate the final amended wording to forum members.

Item 10: Terms of Reference

24. Mr Cutts presented and discussed his paper IND 17/7/14-A (annex D), and re-iterated his concerns about the use of the term 'executive functions'. Although not contained specifically in the terms of reference, it has been referred to in correspondence. A view was put forward that the existence of the Consumer Forum was a good thing for motorists, but that it wasn't helpful to describe the Forum as executive if it was not. DVLA stated that there was certainly no intention to mislead anyone about the status of the Forum, and that it was intended to examine and approve work as an entity in its own right; and so the remit could be regarded as executive. The potential lack of clarity in interpretation was noted however, and DVLA would examine the description of the Forum in future correspondence.

ACTION: DVLA to examine the description of the Forum and amend where appropriate.

Item 11: Any other business

25. BPA wanted to record its view that independence is an important tenet of the appeals process.

26. It was raised that rejection codes must be provided to motorists when appeals are rejected so that they may pursue their appeal through the appropriate appeals service. BPA stated that not to do so is a breach of their code, and that they welcomed information about incidents where operators did not provide these codes. It was put forward that DVLA should immediately stop disclosing data in such cases, but DVLA gave the view that the first line of responsibility should always be with the ATA.

Item 12: Date of next meeting

27. The Chair confirmed that the next meeting of the Forum would take place at DfT on Thursday 15 January 2015.

Item 13: Close

28. The Chair offered his thanks to forum members for their constructive input into this meeting.

Annexes:

A: Agenda for meeting 17 July 2014

B: Papers DVL 17/7/14 – 1, 2 and 3

C: Actions

D: Papers IND 17/7/14 – A, B and C (separate attachment)

E: Examples of signage presented to Consumer Forum (separate attachment)

DVLA, September 2014

Annex A

Agenda

Consumer Forum on Private Parking Issues

Thursday 17 July 2014, 1pm – 3.30pm, Room H6

Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR

	Item	Introduced by	Begins
1	Welcome and introductions <ul style="list-style-type: none">Chatham House Rule	Chair Chair	1.00
2	Note of the Previous Meeting (17 January 2014)	Chair	1.05
3	Matters Arising and Actions Update	Chair	1.10
4	Operating Practices <ul style="list-style-type: none">Guidance on Charging Models inc. Genuine Pre-estimate of lossGenuine pre-estimate of loss & appeals – Paper IND 17/7/14-BClarity of Signage – Paper IND 17/7/14-C	DVLA/TSI/ J Kirk QC Mr Cutts Mr Cutts	1.20
5	Representation <ul style="list-style-type: none">Additional members from Accredited Trade AssociationsIndependent Consumer RepresentationLandowner Representation	Chair Chair Chair	1.50
6	Update from Accredited Trade Associations <ul style="list-style-type: none">British Parking Association (inc AOS Board)Independent Parking Committee	BPA IPC	2.10
7	Accreditation of Accredited Trade Associations	TSI	2.35
8	Intelligence-led Assurance Activity – Paper DVL 17/7/14-1	DVLA	2.50
9	Information for Consumers <ul style="list-style-type: none">DVLA Complaints Facility – Paper DVL 17/7/14-2Wording on Parking Charge Notices – Paper DVL 17/7/14-3	DVLA DVLA	3.00
10	Terms of Reference <ul style="list-style-type: none">Role of the Forum – Paper IND17/7/14-A	Chair Mr Cutts	3.15
11	Any other business	Chair	3.25
12	Dates for future meetings	DVLA	3.30
13	Close	Chair	3.30

Annex B

CONSUMER FORUM PAPER – DVL 17/7/14-1: INTELLIGENCE LED ASSURANCE ACTIVITY

Introduction

1. This paper updates forum members on progress made with efforts to improve the sources of intelligence to DVLA. This enables the Agency to take a structured and risk-based approach to its assurance activities relating to private parking operators.

Background

2. When ministers introduced the Accredited Trade Association (ATA) approach in 2006, its focus was very much on having an increased level of assurance in place to govern the disclosure of vehicle data, not to regulate the private parking industry. It is very much on this basis that DVLA seeks to improve its intelligence-gathering activities – to enable it to focus its enforcement activities on companies whose operations may give significant cause for concerns as regards its use of vehicle keeper data. In most cases, DVLA will ask the relevant ATA to investigate where appropriate.
3. DVLA considers every complaint or report that it receives. However, to ensure best use of resource both in terms of obtaining the relevant information and taking appropriate action, the Agency aims to have processes and channels for the receipt of information and for its use. This is set out briefly below.

Sources of information

4. **Citizens Advice Bureau (CAB)** – DVLA is currently piloting an information-sharing arrangement with CAB. This involves CAB providing DVLA with statistical data, anonymised case studies and information about specific firms and traders where evidence suggests that motorists may have experienced unfair practices by private parking operators.
5. **HM Courts & Tribunals Service (HMCTS)** – DVLA is exploring with HMCTS the possibility of receiving information about court action involving private parking operators. Details are to be decided, but it is likely to be primarily statistical. We expect to have sample information on 17 July, broken down by operator.
6. **Complaints portal** – Paper 17/7/14-2 covers this in more detail, but one of the by-products of the portal will be that it will enable DVLA to analyse the level and type of complaint that is being received and focus its assurance activities accordingly.
7. **Appeals Services** – The IPC has set out plans to develop new systems to provide automated appeals-processing without their involvement, including a looking-glass facility so that DVLA can view appropriate information. This will demonstrate appropriate handling of appeals and provide a source of intelligence. DVLA has also discussed with POPLA's lead

adjudicator what may be available in terms of information regarding appeal and we have agreement in principle. There are some issues around the resource, but POPLA is keen to work with DVLA to explore the possibilities in this area. Publication in the latest annual report of appeal decisions by operators is a strong indication of the desire for openness in this regard. We intend to continue to explore what the possibilities are outside of this report.

The report can be accessed at <http://www.popla.org.uk/AnnualReport.htm>.

8. **Accredited Trade Associations** – DVLA is mindful of the importance of allowing disputes to go through the appropriate appeals services. Issues arising either outside or as a result of these processes will still be raised with the ATAs as appropriate. DVLA is in discussion with BPA on the matter of receiving reports on complaint levels and types, in order to take appropriate preventative measures and target assurance activities.

Risk-based assurance

9. DVLA is moving towards a more formal risk-based auditing model based on the National Intelligence Model, supported by a more focused records management system. This will include details of complaints, audit results and 'on-team' inspections.

Proposal

10. DVLA is continuing to explore opportunities for appropriate intelligence-gathering and information-sharing, and welcomes any suggestions that forum members may have.

DVLA

July 2014

CONSUMER FORUM PAPER – DVL 17/7/14-2: CUSTOMER COMPLAINT PORTAL

Introduction

1. This paper updates forum members on the DVLA's introduction of a customer complaint portal which provides structured processes to allow customers key information before they decide whether they want to proceed with their complaint; then a means to submit that complaint; and finally management information to DVLA to enable it to take it into account when looking at the Agency's assurance activities.

Background

2. The first Consumer Forum meeting in December 2012 reported the view that there was a lack of clear information on GOV.UK/DVLA's website with regard to the release of information to private parking companies and that there was a need for a more direct online route for customers to contact DVLA if they believed that their personal data was being incorrectly released to a private parking company.
3. DVLA considered and explored a number of options, including a 'decision-tree' solution along the lines of an existing similar solution on the GOV.UK website for foreign driving licence holders. However, because of other pressures on GOV.UK resource and technical capacity, DVLA has designed a tactical solution, namely a dedicated email facility sitting on DVLA's 'Contact Us' page on the GOV.UK website.
4. In line with Government's digital strategy, a minimum function solution has been introduced for an initial trial period which will allow us to monitor and evaluate feedback and enable further iterations to be developed. DVLA 'owns' the content on these pages so any further changes can be made quickly.

How it works

5. A specific link on the 'contact us' page called 'Release of information from DVLA vehicle records' requires the customer to enter their name and email address leading to automated response containing specific information (key facts) on the policy and background as to why DVLA releases information. The customer is also signposted to more information through links to other organisations, such as the ATAs.
6. At the foot of the automated response is a direct link for customers to make an enquiry or complaint to DVLA if they believe that the response does not meet their requirements.

Benefits

7. The idea behind this facility is to ensure that motorists are informed of key information before they decide whether to proceed with an enquiry or make a complaint. This ensures that resource is used to best effect and that this can be used as an intelligence tool for the Agency's enforcement efforts.

Early findings and way forward

8. The facility has been in place for a month and to date c.60 customers have used the facility and received information about DVLA's disclosure of personal data, 20 (33%) of which followed the link and continued with their enquiry/complaint. However, none of these were specific to the disclosure of vehicle data for parking purposes. **See Annex E** for figures and graphical view
9. We will continue with the trial for a further month and evaluate results.

DVLA
July 2014

CONSUMER FORUM PAPER – DVL 17/7/14-3: PARKING CHARGE NOTICE (PCN) WORDING

Introduction

1. This paper updates forum members on progress regarding the wording for inclusion on parking charge notices.

Background

2. At the first Consumer Forum meeting in December 2012, concerns were raised about the wording and appearance of Parking Charge Notices (PCN's). There was a specific request for the PCN to contain the following references:
 - the status of the charge (i.e. to declare that it is not a fine);
 - the independent appeals process; and
 - the fact that the charge may only be enforced by a court.
3. Mr Cutts agreed to draft for consideration suggested wording for PCN's. DVLA presented Mr Cutts' draft wording to an online consumer panel and the resulting findings were presented to forum members for comments and suggested amendment.

Progress

4. DVLA subsequently amended the wording and circulated it to forum members. A number of comments were received, and DVLA has tried to incorporate as many of these as possible into the version below. DVLA would like to thank everyone for their feedback and comments.

Proposal

5. We have now reached a stage where we need to settle on a final version and unless members have serious reservations about the content, we would like to present this wording for the ATAs to comment on and to take back to their members with a view to including this on charge notices going forward.

Please note that this is a parking charge notice and **not** a penalty or fine.

Failure to respond to this notice may result in legal action being taken by the operator to recover the parking charge. This could result in you incurring additional costs.

You can appeal against the notice by writing to the car park operator. If you are not satisfied with the outcome, you can make a further appeal to Parking on Private Land Appeals (POPLA)/the Independent Appeals Service (IAS) (*depending on the ATA*). Details are given elsewhere on the notice.

The car-park operator has agreed to keep to a code of practice, which states that the parking charge issued cannot be unreasonable or used as a penalty.

Free and independent advice is available from your local Citizens Advice Bureau or by calling the Citizens Advice Consumer Advice helpline on 08454 04 05 06.

Annex C

Reference: (Date & Para)	Subject	Action Required	Owner/s	Progress	Status/Timing
17/7/14-4	Independent Consumer Representation	DVLA to write to AA, RAC Foundation, TSI, CAB, ACFO and Martin Cutts for view on Mr Metson's successor as Independent Consumer Representative	DVLA		31/8/14
17/7/14-6	Landowner Representation	Grahame Rose and Phil Somarakis to provide details of potential landowner members to the Chair. DVLA to consider and invite representation if appropriate.	Grahame Rose and Phil Somarakis; DVLA		31/8/14
17/7/14-8	Guidance on charging models	TSI to share Jonathan Kirk QC's written view on charging models with the Forum (through the Chair) when it becomes available	TSI		Depends on timing of appeal, set for sometime between November 2014 and March 2015.
17/7/14-11	Genuine Pre-estimate of loss and appeals	DVLA to raise issue of GPOL as specific category for appeal with POPLA on behalf of the Forum	DVLA		31/8/14
17/7/14-13	Clarity of Signage	DVLA to consider an official study and report back to the Forum	DVLA		Inter-forum update 17/10/14
17/7/14-14	British Parking Association update	BPA to provide details of consumer representation on the Board succeeding the recently-disbanded AOS Board	BPA		Inter-forum update 17/10/14
17/7/14-20	Accreditation of ATAs	DVLA to update Forum members on progress of the work to develop the standard Consumer Code Approval Scheme for accreditation of private parking ATAs	DVLA		Inter-forum update 17/10/14

17/7/14-22	DVLA Complaints Facility	DVLA to circulate a copy of the information provided to motorists to forum members	DVLA		31/8/14
17/7/14-23	Wording on parking charge notices	DVLA to circulate the final amended wording to forum members	DVLA		31/8/14
17/7/14-24	Terms of reference	DVLA to examine the description of the Forum and amend where appropriate	DVLA		31/8/14
STANDING ITEM 01	Operating practices	DVLA to update the Forum on its intelligence-based assurance activities	DVLA		15/1/15 (next forum meeting)