

THE MOTORISTS' CHARTER

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THE MOTORISTS' CHARTER

Introduction

At the last General Election in 2010, the archetypical driver 'Motorway Man' was identified as the key swing voter, but none of the parties really won him over (or his female equivalent).

In their 2012 paper, Fuel For Thought, Institute for Fiscal Studies researchers observed that historically drivers had not been a militant group but warned that this was changing, perceiving signs of smouldering discontent. It must never be forgotten that over 30 million drivers have votes.

The next General Election will take place in May 2015, just before the 800th anniversary of the signing of the Magna Carta, which gave overdue recognition to need for fair treatment including citizens' rights to due process and the reimbursement of unjust fines.

It is in this spirit that a modern Motorists' Charter is presented.

1. The Roads We've Paid For

We welcome long overdue recognition in the Government's White Paper "Action for Roads..."¹ that Britain has been under-investing both in building new roads and in maintaining existing roads.

Although this provides some commitment to road enhancements, it remains to be seen whether these fine words become yet another set of proposals which are followed by reversals, in keeping with government behaviour over the last quarter of a century.²

An excessive burden of taxation, regulation and other costs has been loaded onto motorists' shoulders over recent years, meanwhile spending on infrastructure has stalled. There is much to do to right these wrongs.

WE MORE THAN PAY FOR OUR ROADS: WE WANT OUR TAX BURDEN REDUCED, NOT INCREASED

In 2011/12, taxes collected from road users totalled £58 billion, but total government spending on roads was £7.7bn so the tax take was 7½ times as much.

The government should:

- Recognise the impact of high fuel prices, particularly on those on low incomes.
- Ensure that the tax burden on drivers is not increased.
- Prevent the imposition of a tax on going to work – the Workplace Parking Levy.
- Rule out any sell-off or lease-off of roads paid for and owned by the public.
- Rule out any introduction of road pricing, including by any concessionaires or subcontractors used by the Highways Agency.

¹ Cm8679, July 2013.

² The 1989 White Paper "Roads for Prosperity" promised "the largest road building programme since the Romans" but little was delivered. The 1998 White Paper "A New Deal for Transport" cut much of the roads programme and promised improved public transport. The "Transport Ten Year Plan 2000" skewed investment towards rail but the roads were not delivered because the railway accident at Hatfield caused an unanticipated increase in funding on railways. Over the latter years of the Blair government there was an increase in road building. "Roads-Delivery Choice and Reliability" in 2008 proposed a programme of major road improvements, but most were cut in the "Spending Review 2010".

- Ensure highways authorities provide safe road surfaces for all road users, including through cost effective and timely maintenance.
- Target measures on bottlenecks and congestion, including reversing gratuitous capacity restrictions made in the name of deterring car use.

2. Adequate Parking

WE WANT ADEQUATE, ECONOMIC AND REASONABLE PUBLIC PARKING PROVISION

- Local authorities should be required to provide parking to satisfy demand either free or at reasonable cost.
- They must factor in the needs of businesses which depend upon road use and agree enforcement practices.
- Parking and traffic management powers should be for managing parking and traffic and definitely not for generating revenue. Local residents and firms should be empowered to require local authorities to review parking provision, restrictions and charges etc. in their area.
- Local authority contracts should not have targets for PCNs or financial delivery to that authority.
- Restrictions leading to enforcement must only be used to solve genuine parking and traffic management problems, not to raise money.
- All signs and guidance must be clear. The system must reasonably acknowledge that we all make mistakes.

3. Realistic Speeds

SPEED LIMITS SHOULD BE SET TO KEEP BRITAIN MOVING

- They should be set at levels that the majority of drivers consider reasonable, taking into account the long proven 85th percentile model for setting limits.
- The general motorway speed limit should be set to at least 80 mph, to bring the UK into line with the 130 kph speed limit in many European countries. This increase would lead to very little change in actual speeds, but would legalise the behaviour of the majority of responsible drivers.
- The existing HGV limit of 40 mph on single carriageways should be raised to 50 mph and on dual carriageways to 60 mph.
- Speed limits in built up areas should respect the practical speed of the road, and highway authorities and other government functions should not divert funds to 'one size fits all' wide 20 mph zones.

4. Skilled and Responsible Driving

- We passionately believe that measures that incentivise drivers to develop their driving skills, attitudes and beliefs, not the criminalisation of safe driving, will produce the greatest accident reduction results.³

³ as described in Steve Haley's book 'Mind Driving', www.skilldriver.org/

- There should be positive measures to support young drivers, such as providing vehicle handling skills off public roads (e.g. with the Under-17 Car Club). Such drivers are shown to be more motivated and mature, with lower accident rates.
- Positive measures should be in preference to graduated licence proposals imposing restrictions on new drivers that would deny them gaining experience that builds skills and confidence.

5. Safety Not Cameras

At the 2009 Conservative Party Conference, Shadow Transport Secretary Theresa Villiers said: *“Labour’s army of speed cameras is not the best way to make our roads safer. We will switch to alternative, better, ways to improve road safety. Labour’s dependence on fixed speed cameras has blinded them to the effectiveness of the alternatives. It is time say enough is enough on fixed speed cameras...”*

- Speed limits should be set correctly in accordance with the 85th percentile rule. There would be much greater speed limit compliance, so less justification for the use of speed cameras.
- Historically, Britain’s excellent road safety record has been the result of engineering safe roads, and not the artifice of ever lower speed limits.
- Speed cameras should only be used when all other engineering measures have been tried. They should be audited at 2-3 year intervals, and must be removed where there has been no proven casualty reduction.
- Alternative and cheaper methods, such as Vehicle Activated Signs, are likely to be more effective in drawing drivers’ attention to a hazard ahead.⁴
- Resources should be prioritised towards removal of vehicle-damaging humps and potholes.

6. Prioritised Enforcement

WE WANT PRIORITISED AND COMMON SENSE ENFORCEMENT

Enforcement of parking and moving traffic contraventions should focus on motorists who cause significant danger or inconvenience to other road users.

- Local authorities should have a clear legal duty to be reasonable and proportionate in their approach to enforcement and to exercise the discretion of commonsense so that trivialities are not punished.
- There should be a grace period of 10 minutes for pay and display bays both to allow people who only require to park for a few minutes and a little leeway over time.
- Enforcement should be suspended immediately where restrictions are not lawful and Penalty Charge Notice (PCN) fines should be promptly reimbursed.
- Local authorities should have to compensate motorists for PCNs that are plainly issued without merit.
- Local authorities should have to investigate restrictions generating a significant number of PCNs and identify measures to produce compliance in preference to revenue generation.
- Differential penalty charges should always be used for less serious parking violations.
- Measures to restrict parking and manage congestion should not stifle businesses.
- A common sense approach to parking enforcement should minimise the issuing of PCNs to motorists who make honest mistakes.

⁴ See TRL report 549.

WE WANT ACTION TO ABOLISH THE USE OF CCTV CAMERAS FOR PARKING ENFORCEMENT

We welcome the statement by Eric Pickles, Secretary of State for Communities and Local Government, that:-

“Excessive parking charges and unfair parking fines push up the cost of living, and undermine local high streets and shopping parades. We want to rein in over-zealous parking enforcement, so it focuses on supporting high streets and motorists, not raising money. Parking spy cars are just one example of this and a step too far. Public confidence is strengthened in CCTV if it is used to tackle crime, not to raise money for council coffers.”

- The government must deliver on its promise to abolish the use of CCTV cameras for parking enforcement, consistent with its intention set out in the “Consultation on Local Authorities Parking” in 2013.

WE WANT LOCAL AUTHORITIES TO THINK MORE THAN TWICE ABOUT DEPLOYING BAILIFFS

Local authorities issue about 1.3 million Warrants of Execution (now Warrants of Control) to bailiffs each year for PCNs, but the bailiff system is rife with abuses.

- Bailiffs should be used only as a last resort. Local authorities should drastically reduce the number of warrants of execution issued by introducing a first stage office-based debt collection operation.
- Local authorities should be prohibited from outsourcing enforcement paperwork procedures to companies with a bailiff affiliate, a practice which is obviously open to abuse.

7. Sound Science

SOUND SCIENCE NOT GRATUITOUS RESTRICTIONS

There must be an objective, common sense approach to setting speed limits on motorways and other main roads. Recent consultation proposals for speed reductions sections of the M1 and M3 were not backed by accessible scientific data and failed to recognise that the majority of traffic air pollution is from heavy commercial vehicles and buses, not cars. Of such vehicles, most are already confined to lower speeds, rendering the proposals ineffective.⁵

- It must also be recognised that pollution can blow in from hundreds of miles away and is not readily controllable.

⁵ “Consultation on M3 Junctions 3 to 4 Maximum Mandatory Speed Limit - Response from the ABD”, 2014

8. Respect And Privacy For All

ALL ROAD USERS SHOULD BE TREATED WITH EQUAL RESPECT

- Authorities such as local councils should be prevented from operating a hierarchy of road users – a blatant excuse for discrimination against drivers.
- There should be an end to policies that are aimed at forcing drivers out of their cars, whether through intent or practical effect. This includes the recent "nudging" approach,⁶ designed to gradually force drivers out of their cars. This is nothing less than politically-motivated social engineering, but it is done with true Orwellian double-speak in the name of 'increasing choice'.

SAFEGUARD DRIVERS' PRIVACY - NO SELL-OFF OF SENSITIVE DVLA DATA

- The DVLA should ensure that the purposes for which the data is used are likely to be ethical.
- Requests for data from private parties (including bailiffs) from DVLA should be subject to rigorous checking as to the need for the data and the use that it is put to.

9. Fair Treatment

NO 'STRICT LIABILITY OFFENCES' OR SECOND-CLASS ROAD USERS

- There should be no institutionalised discrimination against drivers. Local authorities should be banned from operating a 'hierarchy of road users'.
- Future legislation should respect the principle of innocence before proof of guilt when investigating incidents involving all different types of road user.

ALL DRIVERS WRONGLY PENALISED SHOULD BE REFUNDED – WITH NO ARGUMENTS

- Legislation should require the repayment of all penalty monies taken by local authorities that issue PCNs in unlawful circumstances.
- Authorities convicting against flawed regulations should be obliged to make the same efforts to provide refunds/compensation as in levying penalties.

GREATER PUBLIC ACCOUNTABILITY OF THE AUTHORITIES FOR THEIR ACTIONS

- Where public authorities have responsibility under this Charter, they should maintain auditable records of actions taken to discharge it.
- This should include setting performance targets to measure and meet expectations, with a focus on prevention rather than cure.
- For instance, if the Highways Agency (or successor organisation) has persistent road works that reduce traffic speeds on a motorway, it should be able to show its customers what it is doing to minimise delays and other disruption, including on similar future projects.
- Such records should be publicly accessible, both in terms of the means of storage, and readability.

⁶ See also 'behaviour change interventions' - <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldsctech/179/17905.htm>

Annex – Charter Points in Detail

1. The Roads We've Paid For

We welcome the Government's long overdue recognition in the White Paper "Action for Roads: A network for the 21st century"⁷ that Britain has been under-investing both in building new roads and in maintaining our existing ones. As it points out "*Since 1990, France has built 2,700 miles of new motorway – more than the entire UK motorway network put together...In 2010, France spent 75% more per head than the UK, and Germany spent at least 40% more...The UK is now ranked twenty-fourth in the world for roads, behind many other developed countries. Winning the global race means taking the challenges on our roads seriously.*" In principle we welcome the announcement of "*the biggest-ever upgrade of our motorways and key A roads – our strategic road network. By 2021, spending on road enhancements will have tripled from today's levels, and we will have resurfaced 80% of the network.*"

We will be:-

- *"Investing £15.1 billion in our strategic roads by 2021 to counter the effects of past underinvestment which includes:-*
 - * *adding a further 221 lane miles of extra capacity to our busiest motorways*
 - * *building 52 national road projects in this parliament and the next, subject to value for money and deliverability*
- *Investing more than £12 billion in maintaining our network, including over £6 billion to resurface over 3,000 miles of the strategic road network*
- *Identifying and funding solutions to tackle some of the most notorious and longstanding road hot spots*
- *We will replace 80% of the surfaces on the strategic road network over the next seven years, carrying out this work so as to minimise disruption to motorists and maximise environmental benefits.*"

But we wait to see whether these fine words become yet another set in the long history of proposals followed by reversals that have characterised government behaviour over the last quarter of a century.⁸

An excessive burden of taxation, regulation and other costs has been loaded onto motorists' shoulders over recent years, meanwhile spending on infrastructure has stalled.

There is much to do to right these wrongs.

⁷ Cm8679, July 2013.

⁸ The 1989 White Paper "Roads for Prosperity" promised "the largest road building programme since the Romans" but little was delivered. The 1998 White Paper "A New Deal for Transport" cut much of the roads programme and promised improved public transport. The "Transport Ten Year Plan 2000" skewed investment towards rail but the roads were not delivered because the railway accident at Hatfield caused an unanticipated increase in funding on railways. Over the latter years of the Blair government there was an increase in road building. "Roads-Delivery Choice and Reliability" in 2008 proposed a programme of major road improvements, but most were cut in the "Spending Review 2010".

WE MORE THAN PAY FOR THE ROADS: WE WANT OUR TAXES REDUCED

Taxes collected from road users in 2011/12

	(£bn)
Fuel duty	26.9
VAT on fuel	9.9
Vehicle excise duty	6.0
VAT in vehicle sales	8.5
Company car tax	3.7
Insurance premium tax (est)	<u>2.9</u>
Total	58.0

Source: The Road Users Association website/funds

In 2011/12 total government spending on roads was £7.7bn so the tax take was 7½ times the expenditure and represented an overall average tax take of 19p/mile.⁹ In contrast rail users are subsidised at about 21p/mile and investment in rail was £7.6bn compared with a mere £3.0bn on roads – yet only 9% of journey miles are by rail compared with 91% by road.

In December 2013, 79.8p/litre for petrol out of 130.8p/litre went on tax which represents 61% of the total price. **Britain has the sixth highest price of petrol in the EU and the highest price of diesel.** In 2011/12 total receipts from motoring-related taxes came to about nearly 14% of total tax take.

As the RAC Foundation observed:¹⁰

“Overall, one cannot help but think that the current levels of motoring taxation have little to do with either sound revenue-raising principles or external cost arguments. Rather, they are an accident of history by which the government raises as much as it can get away with.”

The Government should recognise that fuel duty has been frequently altered without adequate rationale; also the acute impact that high fuel prices have on car-owning households, particularly those on low incomes and those for whom fuel is a cost of doing business that are effectively double taxed.

WE WANT A REDUCTION IN TAXES, NOT AN INCREASE; WE OPPOSE THE WORKPLACE LEVY AND ROAD PRICING whose unpopularity was shown by the 1.8 million people who signed a 2007 petition against it, and by the referenda on the possible introduction of congestion schemes in Edinburgh (2005) and Manchester (2008) with 74% and 79% respectively voting against.

⁹ Motorised road users travelled 440bn miles in 2011/12 - Cm8679, July 2013

¹⁰ Fuel for Thought, the what, why and how of motoring taxation, Paul Johnson, Andrew Leicester, George Stoye, Institute for Fiscal Studies, May 2012, http://www.racfoundation.org/assets/rac_foundation/content/downloadables/fuel_for_thought-johnson_et_al-150512.pdf.

2. Adequate Parking

WE WANT ADEQUATE AND ECONOMIC PUBLIC PARKING PROVISION

While some authorities make a loss, English local authorities as a whole made a substantial surplus in 2011/12 from on-street parking and income from Penalty Charge Notices (PCN):-

	(£M)
Income from on-street parking	770
(of which PCN income)	(353)
(of which London PCN income)	(252)
Costs	<u>454</u>
Total surplus before capital charges	<u>316</u>

Source: Local Authority Parking Finances in England 2012-13, RAC Foundation for Motoring

The eight authorities with the largest surplus (including both on- and off-street parking but excluding capital charges) and also Manchester and Birmingham, listed with their penalty income are:-

	Surplus (£M)	Penalty income (£M)
Westminster ¹¹	39.7	24.5
Kensington & Chelsea	30.4	9.8
Camden	23.5	15.9
Hammersmith & Fulham	19.4	17.9
Brighton & Hove	16.3	5.0
Wandsworth	15.9	7.0
Islington	8.2	10.1
Cornwall	7.9	n/a
Manchester	8.8	5.8
Birmingham	6.9	3.6

We have difficulty in understanding why Brighton & Hove and Cornwall make substantially greater surpluses than Birmingham – unless they are purposefully generating revenue.

The judge in the case of *Camden v Cran* clearly stated “the 1984 Act is not a revenue raising Act”.¹² The Secretary of State’s Statutory Guidance is that “*Raising revenue should not be an objective of Civil Parking Enforcement, nor should authorities set targets for revenue or the number of PCNs they issue*” (para 14) and the Department for Transport’s Operational Guidance states “*Authorities should never use parking charges just to raise revenue or as a local tax*” (para 14.7). But as the recent case of *Attfield v Barnet* shows¹³ finger wagging and case law do not prevent some enforcement authorities using parking controls to generate revenue.¹⁴ Barnet wanted to increase parking charges in a blatant attempt to raise more money from residents’ permits and was slapped down:-

- **We want legislation that states clearly that parking and traffic management powers are intended to control parking and traffic and are definitely not for generating revenue.**

¹¹ Westminster’s overall surplus from on- and off-street parking in 2011/12 was £37.1M, which compared with £49.1M from the Council Tax.

¹² *Regina v Camden Borough Council ex parte Mark Dyson, Gordon Cran and Others* (1995) 94 LGR 8

¹³ *Attfield, R (on the application of) v London Borough of Barnet* [2013] EWHC 2089 (Admin) (22 July 2013).

¹⁴ We have council reports from Westminster and Croydon which were quite blatant in their revenue objectives.

- **It should be illegal for a local authority's contract with a company providing Civil Enforcement Officers (CEOs) to incorporate either explicitly or implicitly, targets for PCNs and for financial delivery to the authority.**

Parking controls have discouraged shoppers and damaged retailers in town centres and high streets. The Government commissioned Mary Portas to undertake a Review in which she concluded that "*to increase the cost of parking in a locality (when there are alternatives offering free parking elsewhere) is to curtail the appeal of that location to the shopping consumer and therefore the longer term economic viability and wellbeing of the area.*" The Review concluded that "*local areas should implement free controlled parking schemes that work for their town centres.*"

- **Local authorities should have the duty in section 122 of the 1984 Act spelt out more explicitly requiring them to understand the needs of businesses that depend upon road use, to cooperate with them, and to make the parking regime for them as convenient as possible.**

There should be clear and commonsense publicised guidance about unloading and loading applicable in all areas. The facility of free permits to park should be reinstated for the benefit of businesses which need to be at a specific location at a certain time for longer than the standard 20-minute limit. Local authorities should sign Memoranda of Understanding with relevant trade groups - builders, couriers, delivery fleets, etc. – agreeing enforcement practices.

- **Local authorities should not profit from parking permits issued to builders, the charge for which should be equal to their administrative cost.**

The Lake District National Park employed 'Park With Ease' to develop a motorist friendly parking system. Motorists are able to drive into a car park, find a space and then leave their car. On return they have several payment options including cash or credit card having input their vehicle registration number; via a website for up to 48 hours; registered drivers can opt to have auto payment accompanied by a text message stating the charge. Motorists pay after the event for the time they park; after 1 hour minimum stay, charges are in 20 minute blocks. A number of local authorities are investigating the deployment of smart technology to manage kerbspace, including bay sensors, virtual parking and loading bays, shared space initiatives and real-time information provision to smartphones and in-cab devices thus allowing greater flexibility for managing kerbspace to encourage more efficient freight deliveries and parking options.

- **If the Lake District National Park can develop a motorist friendly approach to parking and traffic enforcement, and technology is evolving to facilitate smart parking and traffic management all local authorities can become motorist friendly.**

3. Realistic Speeds

Speed limits should be set at levels that the majority of drivers consider reasonable, which means setting them at the 85th percentile level (the speed that 85% of drivers would not exceed anyway in the absence of a speed limit).¹⁵

Low speed limits lead to a greater spread of speeds, as the few drivers who comply with the limit cause frustration in those behind them, leading to road rage and potentially dangerous overtaking manoeuvres. Accident frequency can thus increase. Research and experience in the US shows that the spread of speed (speed variance), rather than actual speed, is related to crash risk. Furthermore on average, lowering speed limits leads to a 6.9% increase in accident frequency, while raising them leads to an 11.3% decrease. British research also shows that raising unrealistically low speed limits can result in fewer accidents, with little change in actual speeds.¹⁶

¹⁵ See 'The Effects of Speed Limits on Driver Behaviour', http://www.abd.org.uk/speed_limits_85th.htm

¹⁶ See "Effects of Raising and Lowering Speed Limits on Selected Roadway Sections", US Department of Transportation, 1997, FHWA-RD97-084 (p74); Annex E, Department of Transport Circular Roads 1/80

These theoretical studies, which are often used as justification for lowering speed limits and promoting intrusive technology such as Intelligent Speed Adaptation, are fatally flawed. They fly in the face of the much greater body of empirical evidence that setting speed limits in accordance with the 85th percentile principle results in the minimum crash risk. This is because speed limits set according to the 85th percentile rule produce the lowest spread of speeds.

There should be an immediate increase in the general motorway speed limit to at least 80 mph, to bring the UK into line with the 130 kph speed limit applying in many European countries. This increase would lead to very little change in actual speeds, but would legalise the behaviour of the majority of responsible drivers and bring back some credibility to the motorway speed limit.

The existing HGV limit of 40 mph on single carriageways should be raised to 50 mph (and to 60 mph on dual carriageways, where the 50 mph limit is not respected). Slow moving lorries cause unnecessary delays and frustration, which can lead to hazardous overtaking.

We believe that seeking to reduce collisions and accidents through reduced speed limits represent a missed opportunity. An opportunity to train drivers to recognise risks and select an appropriate speed such that they can stop in the distance they can see to be clear.

Independent researcher Eric Bridgstock provides evidence from Portsmouth, Bristol, Oxford, Warrington, and St. Albans that the level of accidents *increased* after 20 mph zones were introduced.¹⁷

4. Skilled and Responsible Driving

We acknowledge the danger inherent in driving of vehicles on the road. However, we observe that drivers (and riders) trained to an advanced level have a considerably lower accident rate than the vast majority for whom basic learner driving preceding the Driving Standard Agency Learner Test is the first and last driver training ever undertaken. Advanced driver training emphasises observation, anticipation and planning and driving at a speed appropriate to circumstances even when such a speed is lower than the posted limit.

We believe that the ‘speed kills’ mantra has driven a dangerous obsession with ever lower speed limits. Bad drivers will still have avoidable accidents when travelling within the speed limit and inevitably many will continue to exceed posted limits. Much greater gains in terms of road safety would be gained by a widespread development of the skills and attitudes of drivers (and riders).

By ensuring that well engineered roads have sensible speed limits (set according to the 85th percentile rule – see above) and that drivers better understand the risks associated with driving, speed limits will be better respected and serve their rightful function of alerting motorists to the most appropriate speed for a given road.

We believe that by putting in place incentives (such as preferential insurance rates, a more lenient moving traffic enforcement regime, etc.) drivers could be incentivised to pay for their own advanced driver training. Massive improvement to road safety at no cost to the public purse.

Young drivers (17-24 year-olds) drive less but are disproportionately represented in KSI statistics compared with other licence holders. They are also more likely to have an accident within six months of passing their test.¹⁸

One proposal for graduated licences basically aimed to compel new drivers to undergo a minimum learning period of one year before taking a driving test.¹⁹

¹⁷ “20 mph Places” Conference, 1 May 2012.

¹⁸ The RAC Foundation study - *Young driver safety: solutions to an age-old problem*, authored by Foundation staff members Elizabeth Box and Ivo Wengraf - looked at evidence from several countries with graduated licensing including America, Australia, Canada, and New Zealand

¹⁹ <http://www.brake.org.uk/gdl2011campaignsummary>

Once passed, the novice driver would be allowed to drive unsupervised but would have restrictions on their licence for a minimum of two years covering:

- the time of day that they can drive
- a lower alcohol limit
- carrying young passengers
- no motorway driving in the first year after the test
- the requirement for a second driving test at the end of the two-year period “to help ensure safe driving on all types of roads.”

We see in this proposal the same over-bureaucratic regime of restriction that ignores the benefits of advanced driver training and the acquisition of skill, alertness and a responsible attitude that come from experience. Young/new drivers will only get this if they have practice driving. There have been some quite popular schemes helping young learner drivers train quite legally, off-the-road at special centres and these drivers have proved safer than average after they pass their test.²⁰

The ABD has spoken out against night and passenger restrictions as unworkable (without draconian enforcement).

5. Safety Not Cameras

Current speed camera siting guidelines are inappropriate since they recommend cameras should be located where the 85th percentile speed is above the speed limit. Where this is the case, it is usually an indication that the speed limit is set too low. If speed limits were set correctly in accordance with the 85th percentile, there would be much greater speed limit compliance, so less justification for the use of speed cameras.

Speed cameras should be audited at 2 to 3 year intervals. If a camera has shown no casualty reduction using statistically valid data, then it must be removed. Even where speed cameras are sited at locations with a higher than average accident rate, alternative and cheaper methods, such as Vehicle Activated Signs, are likely to be more effective (see TRL report 549) in drawing drivers' attention to the hazard ahead.

Speed cameras should only be used when all other engineering measures have been tried. In such cases the speed limit should be shown on the camera post to help prevent panic braking. When other measures are introduced, they must be given a period of three years for reliable statistics to be obtained post improvement to ensure the area still justifies camera installation.

6. Prioritised Enforcement

WE WANT PRIORITISED AND COMMON SENSE ENFORCEMENT

In 2011 local authorities in England & Wales issued 9.7M Penalty Charge Notices (PCNs) of which 8.4M were for parking contraventions. The drive to generate money can lead to ticketing trivialities and crass stupidities:

- Transport for London (TfL) recently issued a CCTV PCN to a driver for stopping for 4 minutes in a relatively little used disabled bay to go to a euro ATM which are few and far between. The paperwork came to half an inch and involved significant time and trouble for both parties. TfL did not provide evidence that the camera was certified and so an appeal was won. TfL also penalised the same driver for stopping in a safe manner on a red route to check whether there was something unsafe at the back of his car having been alerted by other motorists.

²⁰ See the independent report on the effectiveness of the Under-17 Car Club available from it or the ABD.

- Ticketing cars blocked by a fire engine attending a fire (Camden).
- Yellow lines painted under a parked car and then ticketed (Salford).
- Ticketing funeral cortege vehicles (Westminster).

Enforcement of parking and moving traffic contraventions should focus on motorists who cause significant danger or inconvenience to other road users, and not as too often at present on the indiscriminate penalising of “contraventions” regardless of their significance.

Local authorities should have a clear legal duty to be reasonable and proportionate in their approach to enforcement and to exercise the discretion of commonsense so that trivialities are not enforced.

There are a number of measures that should be taken:-

- **There should be a grace period of 10 minutes for pay and display bays** both to allow people who only require to park for a few minutes (e.g. go into a shop) to do their business without the bother of finding money or using their mobiles, and to allow people a little leeway if they misjudge time.
- **Enforcement should be suspended immediately in locations that are not lawfully signed or marked or the Traffic Management/Regulation Orders are not correct until the signage is corrected, and PCNs should be reimbursed forthwith.**
- **Local authorities should significantly reduce the issuing of PCNs in cases where their wrongful issue is established at appeal and the situation is common to other drivers.** To this end local authorities should be required to make payment to motorists for PCNs that are plainly issued without merit, say £15 for those cancelled on challenges and representations to the authority; £25 for those which go to a Tribunal where the authority fails to contest the appeal; and *at least* £35 where the authority loses and their case is clearly unmeritorious.
- Local residents and firms should be able to require local authorities to review yellow lines, parking provision, charges etc. in their area.

The recent report by the House of Commons Transport Select Committee²¹ commented:-

- ***“It is unacceptable that local authorities set enforcement regimes that effectively force some companies to incur Penalty Charge Notices costing hundreds of thousands of pounds a year for carrying out their business. Local authorities must ensure that the need to restrict parking and manage congestion does not stifle the ability of businesses to trade and help grow the economy.***
- ***It is hard to justify parking fines that are substantially more than the fines for more serious offences like speeding. We recommend that the Government freeze the maximum penalty charge. The Government should also work with the Mayor of London and local authorities outside London to identify ways in which the burden on the motorist of penalty charges for minor parking violations can be reduced. For example, greater use could be made of differential penalty charges for less serious parking violations.***
- ***A common sense approach to parking enforcement should minimise the issuing of Penalty Charge Notices to motorists who make honest mistakes.***

²¹ House of Commons Transport Committee, Local authority parking enforcement, Seventh Report of Session 2013-14, Volume 1 Report together with formal minutes, oral and written evidence, ordered by the House of Commons to be printed 14 October 2013.

- ***Councils should have an obligation to suspend enforcement at locations generating a significant number of PCNs and investigate what measures can be taken to reduce the numbers.***

The aim of parking enforcement should be constructive commonsense. But too often commonsense is lacking in local authority enforcement. Too often we hear “you have committed a **CONTRAVENTION**” as though that is necessarily a “bad thing”. Too many local authorities and their agents appear to have lost sight of the simple proposition that they exist to help the populace - including motorists, not to harass and discipline us (unless we are behaving dangerously or inconsiderately.)

- Legislation should expressly include a requirement for ‘reasonableness’ in legislation empowering local authorities to be enforcement authorities for parking and moving traffic offences.

WE WANT PRIVATE LAND PARKING COMPANIES AND THE DRIVER AND VEHICLE LICENCING AGENCY (DVLA) TO BE PROPERLY CONTROLLED

Over the last decade a private land parking “industry” has developed which generally operates by private land companies offering landowners a “free” service for managing the use of their car parks while they make their income from charging vehicles which overstay time. Some of the companies are unethical. Although there is a Code of Practice set by the British Parking Association which requires member companies to (among other things) clearly sign the terms for using a car park, some companies purposefully obscure signage so that motorists are more likely to overstay. Some of the companies are very aggressive and borderline unlawful in their ‘debt’ collecting procedures.

Fundamental to the operation of this business has been the willingness of the DVLA to provide motorists’ data to the parking companies. Whereas in 2006 private companies received data on 272,000 vehicle keepers in 2013 the total was around 2½m of which 1.6M was for private land companies for which the DVLA earns £4M. The DVLA has willfully misinterpreted the provision in legislation that it “may” provide data to “companies that can demonstrate reasonable cause for their enquiry”, to claim that “it is required by law to provide data”. The DVLA falsely claims that “*Each request is looked at individually to ensure that the privacy of motorists is properly safeguarded...At DVLA we have tough safeguards in place to protect the privacy of information...register.*” In fact the DVLA provides data electronically on an industrial scale by facilitating easy access to its Electronic Data Interchange (EDI).

The DVLA has been the “back office” supporting this expanding “parking industry” some of whose members collect substantial sums of money (e.g. Parking Eye collected some £11m in a year; its recent acquisition by Capita for £57m suggests how lucrative the business is). In a recent letter²² an official of the DVLA noted that without the DVLA’s release policy “Landowners would have great difficulty in enforcing their rights if motorists were able to park with impunity on private property”.

This statement goes to the nub of our objection to the behaviour of DVLA. It was set up and is paid for by motorists for the purposes of registering drivers and vehicles. It was not set up to protect property owners’ interests. As we point out in our submission to Transcom “the private land parking industry is an artificial construct, we have the DVLA, a public agency set up for one purpose and paid for by motorists, effectively acting as the key and as the back office for the operation of private land parking companies, some of whom operate in an unethical manner.”

²² From Elizabeth Symons, Data Customer Compliance & Assurance Manager, Data Sharing Team, to Colin Moran, 14 January 2014.

7. Respect And Privacy For All

WE WANT MOTORISTS' PRIVACY SAFEGUARDED - NO SELL-OFF OF SENSITIVE DVLA DATA.

We object to the indiscriminate release of motorists' personal data which they provide (**and pay for the DVLA to maintain**) when we register and tax vehicles and obtain licences. Although we accept that this data can properly be used for helping track criminal activities, **we object most strongly to its indiscriminate use to enforce civil claims by private land parking companies and bailiffs for their own profit when so many have a long record of behaving in a threatening manner and some are run by convicted criminals. The Secretary of State, in allowing the DVLA to enter into contractual arrangements with private land parking companies which guarantees 100% data release, has unlawfully fettered his discretion.**

- **As a public body entrusted with people's data, the DVLA has a duty to ensure that the purposes for which the data is used are likely to be ethical.**
- Requests for data from private parties (including bailiffs) from DVLA should be subject to rigorous checking as to the need for the data and the use that it is put to.

WE WANT ACTION TO ABOLISH THE USE OF CCTV CAMERAS FOR PARKING ENFORCEMENT

The Secretary of State's Statutory Guidance states (para 48) that parking enforcement by means of CCTV "Should be used **only** where on-foot CEO enforcement is difficult, or sensitive, **AND** is not practical". Nonetheless some local authorities use CCTV and CCTV mobile enforcement vehicles indiscriminately to generate revenue in flagrant disregard of the Statutory Guidance. "Traffic Spies" published by Big Brother Watch in April this year²³ comments that there are at least 71 local authorities in **England & Wales** using static CCTV and Smart cars with CCTV to capture traffic offences. Between March 2008 and March 2013 they recorded 6.7m contraventions and collected £312M revenue of which £285M (90%) was in London. The top six penalising local authorities were:-

Income from penalty notices:

	Smart Car (£M)	Static (£M)	Total (£M)
Camden	1.7	34.6	36.3
Ealing	N/A	N/A	24.1
Lambeth	2.2	20.4	22.6
Westminster	3.1	17.6	20.7
Harrow	0	20.2	20.2
Hammersmith & Fulham	0	18.5	18.5

- Many have set up fixed CCTV cameras as money traps or had smart cars with CCTV running around and focusing on likely areas where motorists may be caught in a contravention, often due to lack of clarity of signs.
- London Boroughs raised an estimated £37 million from moving traffic enforcement alone in 2011-12. One of Hammersmith and Fulham's box junctions raised £2.7M from 40,634 PCNs per annum last year.²⁴

On 12 August 2013 the CCTV Code of Practice came into force. The Code states that:-

²³ http://www.bigbrotherwatch.org.uk/files/reports/TrafficSpies_2014.pdf

²⁴ The Sunday Times of 13/1/2013 noted that "a daily average of 111 drivers are trapped in the box and they pay about £7,500 a day in fines...at least one car was getting stuck in the box every time the first set of traffic lights on the junction changed. While the junction may not have been set up as a money trap, its continued operation as one is clearly a conscious decision by the Council.

“Such systems should only be deployed where other means of enforcement are not practical and their effectiveness in achieving this purpose is subject to regular review.”

In order to achieve this, the code states that CCTV must only be installed for a “specified purpose” which is in pursuit of a “legitimate aim” and necessary to meet an “identified pressing need” (Principle 1).

We welcome the statement by Eric Pickles, Secretary of State for Communities and Local Government, that:-

“Excessive parking charges and unfair parking fines push up the cost of living, and undermine local high streets and shopping parades. We want to rein over-zealous parking enforcement, so it focuses on supporting high streets and motorists, not raising money. Parking spy cars are just 1 example of this and a step too far. Public confidence is strengthened in CCTV if it is used to tackle crime, not to raise money for council coffers.”

We welcome the Government’s intention to restrict the use of CCTV cameras for parking enforcement detailed by Roads Minister Robert Goodwill at the Parkex Exhibition in June 2014. However, the decision to row back from the previously planned total ban and allow CCTV use at schools, bus stops, bus lanes and Red Routes means that very clear and binding rules must be legislated to prevent ongoing abuse of this power by highway authorities. Enforcement of PCNs should be expressly disallowed if clear signage warning of CCTV use and other procedural requirements are not in place.

WE WANT LOCAL AUTHORITIES TO THINK MORE THAN TWICE ABOUT DEPLOYING BAILIFFS

Local authorities issue about 1.3 million Warrants of Execution (since April 2014 called Warrants of Control) to bailiffs each year for PCNs. Many are lax and incompetent in controlling bailiffs, who have frequently and fraudulently demanded fees which are far in excess of the permitted statutory level and bullied people. Some local authorities issue Warrants of Execution without thinking that the consequences may be disproportionate to what may have been a trivial contravention but has escalated through the stages because of some administrative slip. The keeper of the vehicle may have moved house and not received a PCN, Notice to Owner or Charge Certificate following which a Warrant of Execution is assigned to a bailiff.

Prior to the bringing into operation in April 2014 of the relevant part²⁵ of the Tribunals, Courts and Enforcement Act 2007 the basic bailiff fee was not adequate and so bailiffs were heavily incentivised to create chargeable ‘phantom’ visits to alleged debtors. Some broke the Code of the National Standards for Enforcement Agents and forcibly entered people’s homes and illegally clamped or towed vehicles including those which are “tools of the owner’s trade” (e.g. taxis, van) which they are not permitted to do. Some took money from vulnerable people. A failure to pay a PCN could, sometimes for innocent reasons, cost a motorist thousands of pounds if his or her car were taken and sold at auction for a low price. It is to be hoped that the new law will reduce, if not eliminate, some of the ways bailiffs used to collect money, but since the rules have been rushed into force and left many grey areas it remains to be seen if matters improve.

Bailiffs should be used only as a last resort. Local authorities should drastically reduce the number of warrants of control issued by introducing a first stage office-based debt collection operation, which a local authority may run itself or pay to outsource – *but it should never be undertaken for “free”*. **Local authorities should be prohibited from outsourcing enforcement paperwork procedures to companies with a bailiff affiliate, a practice which is obviously open to abuse.**

Too often the use of bailiffs is out of all proportion to the trivial nature of contraventions, and can have a devastating effect on members of the public some of whom have difficulty coping – **AND THEY SHOULD NOT BE ASKED TO COPE.**

²⁵ Part 3 and Schedule 12.

8. Fair Treatment

WE WANT ALL DRIVERS WRONGLY PENALISED AUTOMATICALLY REFUNDED – WITH NO ARGUMENTS

Local authorities have issued invalid PCNs for various reasons, e.g. the wording on some PCNs has not met legislative requirements; signage has not complied with the Traffic Signs Regulations and General Directions 2002; CCTV cameras have not been certified. NMAG's submission to the Government's Consultation on Local Authority Parking gave examples of wrongfully issued PCNs by the London Boroughs of Brent, Camden, Islington, Newham, Sutton and Westminster, as well as Buckinghamshire County Council and Manchester City Council.

Many local authorities adamantly refuse to refund penalty charge monies that are subsequently discovered to have been unlawfully levied. They devise various specious arguments to hold on to the money.²⁶

The London Borough of Newham issued £353,000 worth of PCNs using CCTV cameras that were not certified. It stated that it would not refund the tickets. NMAG complained to the Mayor of Newham Council, but there was no reply. NMAG then wrote to the appointed Independent Auditor on behalf of a Newham resident making a formal objection to the Council's accounts that "Penalty charge payments made by motorists in response to identified sets of penalty charge notices (PCNs) that were unlawfully issued by the Council are not in the lawful possession of the Council."

The Auditor²⁷ obtained counsel's opinion which was that "the monies were unlawfully received by the Council and therefore unlawfully retained because the evidence relied upon to issue the parking contravention PCNs was not produced by a certified device and so the Council had no power to impose the penalty charge and no power to serve the PCN." The Council is now taking all reasonable steps to identify motorists who were affected to enable them to obtain a refund of their PCN payment and has written to them all inviting them to claim a refund.

Legislation should require the repayment of all penalty monies taken by local authorities that issue PCNs in unlawful circumstances. Adjudicators should be empowered to require local authorities to repay past invalid PCNs.

For more information, please visit www.abd.org.uk and www.nmag.co.uk.

²⁶ Some examples are that:-

- "Their legal advice" supports that position, but they will not disclose that (dubious) advice.
- "Those who paid their penalty charge thereby admitted their liability." The High Court has determined that payment of any fixed-rate penalty charge or fine does not constitute an admission of guilt."
- "Decisions of parking tribunal adjudicators are not binding authority, and that the situation which was adjudicated affects only the motorist who successfully appealed." But this argument holds no water where the fault is either an indisputable matter of fact, or several adjudicators reach the same conclusion.
- Some have dissembled and claimed that by publishing their willingness in a local newspaper to refund PCNs when drivers apply they have fulfilled their obligation to attempt to repay drivers - yet they know full well that a low proportion of those affected will in fact apply.

²⁷ Auditor's final response to the Objection, 4 April 2014.