

Three Submissions on the Code of Practice for Private Parking and responses from the Department of Levelling Up, Housing and Communities

Submission by 39 Essex Chambers on behalf of Euro Car Parks Limited

These representations set out the concerns of Euro Car Parks to levels of parking charges allowed for in the Private Parking Code of Practice which has been laid before Parliament by the Secretary of State for Levelling Up, Housing and Communities. These comments have been prepared by Euro Car Parks with the assistance of Richard Harwood QC from 39 Essex Chambers.

Euro Car Parks Limited

Founded in 1976, operates over 2000 car parks across the UK and Ireland dealing with more than 1.4 million motorists on a daily basis. ECP operates 24 hours a day, 365 days a year. Euro Car Parks has won many prestigious awards over the years, including Park Mark awards and being voted one of The Great Places To Work.

ECP provides on and off street parking management, in both the public and private sector. From 1 to 2000+ parking spaces, ECP manages and operates car parks for airports, railway stations, retail and leisure parks, supermarkets, shopping centres, hotels, hospitals, institutional leasing of multi-storey car parks, basement, surface and rooftop structures, as well as our own leased and owned sites.

The Parking (Code of Practice) Act 2019

The Parking (Code of Practice) Act 2019 requires the Secretary of State to prepare a code of practice containing guidance about the operation and management of private parking facilities (section 1(1)). The Code is given 'teeth' by the Secretary of State being able to stop car park operators from accessing Driver Vehicle Licensing Authority information on the registered keepers of motor vehicles if the operator does not comply with the Code: section 5(2). In such cases the operator will not have legal means of enforcing any charges since it will not know who the name and address of the person responsible for the vehicle.

The Secretary of State published the Private Parking Code of Practice on 7th February 2022, pursuant to the Act.

Euro Car Parks considers that private car parking needs to be properly managed, in a fair way for customers and landowners. The Protection of Freedoms Act 2012 has helped to drive out cowboys from the industry. Euro Car Parks welcome the majority of the Code. It does wish to raise with the Committee a particular and critical concern about the level of parking charges which may be imposed on those that contravene car park terms and conditions in car parks outside London.

The parking charges proposed

The Parking Code would limit the maximum penalty charge for unauthorised parking in the 'lower' category outside London to £50 (Annex C). The lower category comprises overstaying beyond the parking fee paid or beyond a free period of parking. Parking on land where it is prohibited or subject to residents only parking is subject to a higher charge. The parking charge is discounted by 50% if paid within 14 days (Annex C).

The accredited parking trade associations have a voluntary cap of £100 with the expectation that there will be a discount if payment is made within a short period. Euro Car Parks applies a 40% discount, which is standard across the industry.

The objectives of the policy

Ministers consulted on the proposed parking charges. They set three policy objectives:

- i. To ensure that charges are proportionate to the level of harm caused and are consistent with other parking penalties.
- ii. To ensure that the levels of private parking charges are sufficient to prevent non-compliance with parking restrictions on private land.
- iii. To ensure effective delivery of the new parking charges in practice.

The £50/£25 level of charges do not meet those policy objectives, in particular it will not ensure effective delivery of the new parking charges.

Effective delivery of parking control and viability

The reduced maximum charge (of £50) and the increase of the discount from around 40% to 50% severely reduce the income available to fund parking enforcement.

The discount is applied to over 80% of the penalty charge notices which are paid so the effective rate would be £25. This compares with a discount to £60 for a £100 charge or to £40 for a £70 charge which are typical at present. The British Parking Association's impact assessment of the proposed changes found loss of over 40% of income, equating to the loss of some £150m of revenue for parking operators. This would flow through directly to the bottom line, potentially seeing c3,000 jobs lost across the industry. The BPA estimated that because no operators in the review were making sufficient margins to cover a 40% reduction in income, there would also be a considerable impact on the retail and hospitality sectors as many sites across the country will become commercially unviable. Furthermore, the BPA estimated that the proposed changes could result in 46% of parking operators becoming insolvent within a year of the change – 33 of the 71 BPA members surveyed.

The Government's response to the industry position failed to grapple with the impacts or their consequences.

Euro Car Parks are also very concerned that Ministers have not met in person with the industry, any parking operators or parking operator members of the steering group, to discuss the Code and the level of parking charges. There has not been a single meeting, and despite many requests there have only been meetings with junior civil servants. That does not properly reflect the importance of private parking or the impact which the proposals will have, and such crucial decisions for the parking industry. This does not appear to happen in any other industry.

The Government response to the consultation on charges said it was 'important to note that many parking operators set the real parking charge below £100' (para 15). However the government simply relied on a survey showing that 26% of operators used a lower level for 76% or more of their car parks, half of operators had a reduced charge in up to a quarter of their car parks, whilst 22% used £100 throughout. That suggests that many, possibly most, charges are £100. Most importantly though, the Government do not suggest that reduced charges are round £50. They have carried out no quantitative or qualitative assessment of the scale of reductions and the effect on the industry.

The Government's explanatory note on the new code refers to the BPA report (section 8.2). It asserts that some of the assumptions overstate impacts, without assessing impacts themselves, but says that the unspecified economic impact on the industry should be balanced against reduced harms to motorists and the significant level of correspondence with the Department which it generates.

The Department acknowledged that parking management may be less efficient, affecting car park operation. It then said:

“If the reduction in the level of parking charges makes it commercially unviable to recover parking charges, this could have an indirect negative impact on the efficiency of parking management for business premises. The assessment commissioned by the BPA suggested a large impact on retail/hospitality sectors.”

The explanatory note does not respond to or disagree with that last point. The government note accepts that retailer and the hospitality sector (who have suffered appallingly through Covid) should find their customers prevented from giving them trade because car parks are taken up by overstaying commuters and workers.

By reducing parking charges and increasing the early-pay discount the Parking Code would reduce the industry’s revenue by about 40%. The government has not seriously challenged those figures and has provided no alternative analysis. No industry or individual business can take such reductions whilst maintaining the service which it is providing. That will not only hit the car parking industry and its employees, but the businesses and services which rely on properly enforced parking control.

Parking charges set and local authority levels

The £50 and 50% discount figures are the same as a band applied to local authorities by the Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007. That allowed £40 or £50 charges, with a 50% early payment discount, for lower category breaches. Since those levels came into force in January 2008, the consumer price index has risen by 51.4%. So the Private Parking Code levels are lower, in value, than those previously imposed on local authorities. Local authorities are concerned that the 2007 Order levels are now too low although there seems to be a reluctance by the government to increase them.

Given the discount, the effective charge is £25. Many people will see that charge, or the risk of having to pay that charge, as an acceptable cost for parking.

The comparative evidence indicates that far more parking charge notices are issued in car parks with £70 (£40 discount) charges than in comparable car parks with £100 (£60 discount) charges. Since the aim of parking charges is to discourage breaches, higher charges are more effective for those purposes, and proportionately so.

Local authorities and private enforcement

Private and local authority car parking controls are not comparable. Local authorities have significantly greater enforcement powers. They are empowered to immobilise vehicles. They are also able to register unpaid charges with the Court system (at the Traffic Enforcement Centre) so they can be enforced as a judgment debt. That means that the powers to seize and sell goods, orders against third parties holding debts, charging orders and attachment of earnings orders are readily available. Private operators have to bring small claims proceedings and so prove their case before being able to enforce a penalty charge notice. In practice therefore private parking charges are harder to enforce, enforcement is therefore less successful and it is more expensive for the operator to pursue. There is no sound basis for treating not paying or overstaying at private car parks the same way as in local authority car parks.

Conclusion

The ‘lower category’ charges outside London apply to non-payment of parking fees or overstaying. Those charges at a maximum of £50 and a discount of 50% would cause a substantial reduction, of around 40%, in car parking operators’ revenue. That is not sustainable for the industry and will cause job losses, business failures and a reduction in the car parks that will be managed. This will hinder shops, hospitality and medical services which need their car parks to operate efficiently and serve to reduce parking availability. At a discounted £25, many more motorists will take the risk of a penalty charge.

These points have been made by the industry but the Government's responses have failed to seriously challenge them or grapple with the adverse consequences. Euro Car Parks asks the Committee to express concern that these parking charge levels have not been set appropriately and need a significant increase. The existing approach of a maximum penalty of £100 and a 40% discount provides a proportionate and fair deterrent, whilst allowing private parking to run efficiently. The Government ought to be asked to immediately review these charges.

21 February 2022

Response from DLUHC

We are aware of the concerns raised by the private parking industry about the impact of the Code, particularly the new levels of private parking charges. We consulted extensively on the proposals and carefully considered all evidence provided before making a final decision. We included a summary of our assessment of the impact within the explanatory document that was published alongside the Code.

We recognise that the primary purpose of parking charges is deterrence. We believe the new levels of private parking charges provide a sufficient deterrent to prevent non-compliant parking, while also ensuring the system is consistent and proportionate for motorists and workable for parking operators. It should be noted that the £50 charge is the lowest level of charge and applies to less serious breaches outside London, such as parking after the expiry of the paid-for time or free parking period. For more serious breaches and breaches that take place inside London, operators are able to charge at a higher level.

In our response to the further technical consultation, we committed to reviewing the levels of private parking charges as part of the general review of the Code that will be carried out by the Scrutiny and Oversight Board within two years of its implementation. As part of this, we will consider the consequences if local authority penalties change more widely.

We also consider that some of the assumptions contained within the industry assessment may overstate the impact of the new levels of parking charges, including that all parking operator revenue is generated from parking charges. The economic impact on the industry needs to be considered alongside the reduction in harms to motorists from excessive or unfair parking charges. We believe this will boost the high street by making it easier for people to park near their local shops without being unfairly fined. However, we recognise the new Code will create some costs for operators and have been clear that it will not come into full force until the end of 2023 to give them time to adapt to the new requirements, which will help to mitigate the economic impact of the Code on industry.

The Department will continue to work closely with the industry as we implement the new Code and its provisions to ensure that the system is operating effectively. We intend to undertake an impact assessment of the changes introduced by the Code once the single appeals service has been designed to ensure that we have all the necessary information to complete the assessment.

25 February 2022

Submission from ParkingEye

The purpose of this document is to submit evidence relating to the Private Parking Code of Practice (Code of Practice) published by the Department for Levelling Up, Housing and Communities (DLUHC) on 7 February 2022.

The evidence has been compiled by Parkingeye Ltd (Parkingeye), a leading private car park operator in the United Kingdom. Parkingeye manages over 3500 sites nationwide across a range of sectors including healthcare, retail, hospitality and motorway services.

1. Summary

- a) The Code of Practice has been created to specify requirements for the operation and management of parking by private companies engaged in managing activities on four categories of controlled land in England, Wales and Scotland. It covers public use car parks, private use car parks, short stay areas, and prohibited parking areas.
- b) The Code of Practice sought to meet the aims of the Parking (Code of Practice) Act 2019. This was introduced as a Private Members Bill by Sir Greg Knight.
- c) c. The DLUHC have announced that private parking operators will be expected to fully adhere to the new Code of Practice by the end of 2023, by which time the DLUHC expect the new single appeals service to be operational.
- d) d. Parkingeye is concerned that the changes brought into force by the publication of the Code of Practice present a number of practical and technical difficulties for implementation by the operators which in turn increase the likelihood of non-compliant motorists attempting to abuse the system.
- e) e. In the main, these practical and technical issues deal with matters that have unexplainably been left open to interpretation by motorists, including:
 - i. the use of the word ‘parked’ instead of ‘remains’;
 - ii. abuse of ‘genuine first-time errors’;
 - iii. iii. costs incurred to serve notice on multiple keeper’s for a single breach; and
 - iv. iv. pursuing a parking tariff that exceeds the parking charge.
- f) This outcome appears to directly contravene the Government’s stated policy to “*encourage compliance with parking restrictions*”¹, “*to provide greater consistency for motorists and ensure proportionality*”², and “*to ensure effective delivery of the new parking charges in practice*”³.
- g) Parkingeye therefore submits that, as per the DLUHC’s aims stated above, the current Code of Practice fails to fully achieve its policy objectives.
- h) In addition, Parkingeye submits that, as per the DLUHC’s ‘*Private Parking Code of Practice: explanatory document – how was it developed and what will it change?*’⁴, the consultation process relating to the instrument has been somewhat inadequate.

¹ UK Government, 7 February 2022 (updated). Section 3, Paragraph 6. ‘Private parking charges, discount rates, debt collection fees and appeals charter: further technical consultation’. Available at:

www.gov.uk/government/consultations/private-parking-charges-discount-rates-debt-collection-fees-and-appeals-charter-further-technical-consultation/private-parking-charges-discount-rates-debt-collection-fees-and-appeals-charter-further-technical-consultation.

² Ibid. Section 3, Paragraph 9.

³ Ibid. Section 3, Paragraph 13, iii.

⁴ UK Government, 7 February 2022. ‘Private Parking Code of Practice: explanatory document – how was it developed and what will it change?’. Available at: www.gov.uk/government/publications/private-parking-code-of-practice/private-parking-code-of-practice-explanatory-document-how-was-it-developed-and-what-will-it-change.

2. Use of the word 'parked' instead of 'remains'

- a) The Code of Practice defines 'parked/parking' as *"an instance of a vehicle being caused by the driver to remain stationary other than in the course of driving (excluding instances where the driver has stopped to enable passengers leave or enter the vehicle)...A vehicle may be deemed to be parked whether or not the driver has left the vehicle or turned off the ignition"*⁵.
- b) The Code of Practice also recognises that *"many premises where public parking is invited are only monitored automatically using camera systems that record when a vehicle enters and departs the site...The Code, and its provisions for consideration and grace periods, is drafted on the basis that a vehicle is not parked until it has come to a stop"*⁶.
- c) Parkingeye is concerned by this imprecise definition, as parking operators who use Automatic Number Plate Recognition (ANPR) technology are unable to determine when a vehicle is 'parked' or 'stationary', as per the definition in 2.19 of the Code of Practice. Instead, ANPR technology is only able to detect when a vehicle has entered or departed a premises.
- d) This presents a possible loophole to be exploited by motorists who can reasonably submit they were never 'parked' or were 'stationary' at a premises, but merely circled the car park.
- e) As is currently drafted, the Code of Practice provides no recourse for operators and their customers who are faced with this issue of non-compliance. Parkingeye therefore anticipates that due to the inadequate understanding and wording in the Code of Practice this will be a significant issue faced by operators during implementation.

3. Abuse of genuine 'first-time errors'

- a) Section F.3 of the Code of Practice covers 'Appeals' and in particular the mitigating circumstances parking operators must consider that warrant cancellation of a Parking Charge, subject to evidence being provided.
- b) It has been suggested throughout the drafting of the Publicly Available Specification 232 (PAS 232) by the BSI Steering Group that cancellations of a Parking Charge should only apply once for a genuine 'first-time error', such as a keying error defined in F.3 (a).
- c) Parkingeye has concerns that, as the Code of Practice is currently drafted, Section F.3. allows motorists to commit multiple 'first-time' errors which will mean the operator has to unreasonably incur the costs of serving notice to keeper.

4. Costs incurred to serve notice on multiple keepers for a single breach

- a) The Code of Practice outlines the process for appealing a notice of Parking Charge in 8.3. At 8.3.1 e) the Code of Practice states:

"in the event that a physical notice of parking charge is served but not responded to and/or, a notice to keeper is sent and the keeper chooses to appeal, and their appeal is rejected, or then appeals to the Appeals Service, and that appeal is also rejected, the keeper may still then identify the driver, if they

⁵ UK Government, 7 February 2022. Clause 2.19. 'Private Parking Code of Practice'. Available at: www.gov.uk/government/publications/private-parking-code-of-practice/private-parking-code-of-practice.

⁶ UK Government, 7 February 2022. 'Private Parking Code of Practice: explanatory document – how was it developed and what will it change?'. Available at: www.gov.uk/government/publications/private-parking-code-of-practice/private-parking-code-of-practice-explanatory-document-how-was-it-developed-and-what-will-it-change.

were not the driver themselves, at which point the liability of the keeper falls in favour of that of the driver who may still then exercise their right of appeal.”⁷

- b) As is currently drafted, the keeper can go through the process of appealing a Parking Charge, which the operator would have to fund, and then identify the driver who may still then exercise their right of appeal, which the operator will also have to fund. If this occurred, the operator would incur costs of c. £70-£80 to fund the two appeals, and yet the non-compliant motorists still are not forced to pay the initial Parking Charge, which could be as little as £50 under the Code of Practice.
- c) Parkingeye has serious concerns with this clause, particularly considering that there has been limited consultation conducted by the DLUHC on the single appeals service, including the costs of funding and running that service. It has been strongly indicated by the DLUHC that the costs of finding the single appeals service will be born by the operators.
- d) It is in direct contravention to one of the stated original aims of the policy, concerning proportionality, that a situation is created by the Code of Practice where the costs borne by the operator to fund an appeal of a Parking Charge are greater than the Parking Charge itself.

5. Pursuing a parking tariff that exceeds the parking charge

- a) In 8.2 of the Code of Practice it is outlined that “where the parking tariff exceeds the parking charge, the full payment of the tariff may be pursued”.⁸
- b) Clause 8.2 can reasonably be interpreted to mean that should a motorist not pay the tariff due at the time of parking, the only recourse available to the landowner and/or operator is to request payment of the tariff amount and incur the costs in order to do so. This includes submitting a DVLA request, correspondence and tracing, among other internal associated costs.
- c) Clause 8.2 removes the imposition of a deterrent as under 8.2 a Parking Charge is unable to be issued alongside recovering the tariff amount (which exceeds the Parking Charge). As there is no incentive for motorists to initially pay, this has the result of undermining the stated policy objective to “encourage compliance with parking restrictions”⁹.
- d) In our view, if this policy objective is to be fulfilled, an operator should be able to have a higher Parking Charge value than the tariff amount or be able recover the tariff plus issue a Parking Charge.

6. Inadequacies in consultation process

- a) Parkingeye is concerned that the changes being introduced by the implementation of the Code of Practice are being brought in without adequate consideration of the evidence that has been submitted to the DLUHC throughout the consultation process, particularly as it concerns reducing the level of the Parking Charge on non-compliance of parking rules.
- b) Among the DLUHC’s core policy objectives was to “encourage compliance with parking restrictions”¹⁰.

⁷ UK Government, 7 February 2022. Clause 8.3.1. ‘Private Parking Code of Practice’. Available at: www.gov.uk/government/publications/private-parking-code-of-practice/private-parking-code-of-practice.

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⁹ UK Government, 7 February 2022 (updated). Section 3, Paragraph 6. ‘Private parking charges, discount rates, debt collection fees and appeals charter: further technical consultation’. Available at:

www.gov.uk/government/consultations/private-parking-charges-discount-rates-debt-collection-fees-and-appeals-charter-further-technical-consultation/private-parking-charges-discount-rates-debt-collection-fees-and-appeals-charter-further-technical-consultation.

¹⁰ Parkingeye, September 2021. ‘Delivering a Private Parking Code Enforcement Framework which is fit for purpose’.

- c) During the consultation process, stakeholders raised concerns on reducing the level of the Parking Charge on non-compliance of parking rules at multiple junctures with both the current and former Minister, Members of Parliament, the DLUHC Select Committee and the BSI Steering Group. These efforts appear to have had little effect – the changes brought in as it concerns the level of the Parking Charge are identical to those published by the DLUHC (then MHCLG) in its response to the Public Consultation on 20 March 2021.
- d) Parkingeye submitted an independently verified impact assessment using over 10 years of data across over 2000 parking sites in the UK to highlight the impact Parking Charge levels have on non-compliance rates.¹¹ This was the first comprehensive, independently verified analysis of this impact to date in the UK. Despite its submission and recognition by government bodies including the DLUHC Select Committee, who itself requested that the DLUHC publish its own impact assessment, there was no engagement from the DLUHC with Parkingeye on this evidence. Furthermore, the evidence was not recognised in either the DLUHC’s response to the Technical Consultation or in the Code of Practice Explanatory Document.
- e) The DLUHC seem to recognise that there is a possibility that the reduction of Parking Charge levels may lead to greater non-compliance - “if the new caps lead to an erosion in the deterrent effect of parking charge, this could incentivise motorists to break the rules”¹².
- f) Given that one of the core policy objectives of the Code of Practice was to “encourage compliance with parking restrictions”¹³, Parkingeye is greatly concerned that evidence on Parking Charge levels vis-e-vis non-compliance rates was not thoroughly considered by the DLUHC during the consultation process. Furthermore, Parkingeye is greatly concerned that at no point during the two year consultation process, Government did not conduct its own impact assessment to determine what the impact of reducing the Parking Charge levels may be.

Conclusion

- a) Parkingeye is extremely concerned that not only does this policy introduce a range of practical and technical issues for implementation and adherence, it has been introduced without serious consideration and engagement with the insights and evidence supplied by relevant industry stakeholders.
- b) The DLUHC stated to stakeholders at multiple junctures that, in its view, no impact assessment was required. However, for the reasons outlined above, Parkingeye considers that the proposed Code of Practice will introduce significant technical and practical issues for implementation which, through its drafting, presents loopholes for non-compliant motorists to exploit. As evidence submitted to the DLUHC has indicated without a sufficient deterrent in the form of a Parking Charge, this will have a significant impact on non-compliance of parking rules, impacting businesses in key sectors the private parking industry supports.
- c) We are seeking from this process to achieve clarification on the technical issues raised in this submission, and that an impact assessment be conducted by the department on the Parking Charge levels ahead of implementation.

¹¹ UK Government, 7 February 2022. Paragraph 8.2. ‘Private Parking Code of Practice: explanatory document – how was it developed and what will it change?’. Available at: www.gov.uk/government/publications/private-parking-code-of-practice/private-parking-code-of-practice-explanatory-document-how-was-it-developed-and-what-will-it-change.

¹² Ibid.

22 February 2022

Response from DLUHC

The Code of Practice has been produced through extensive consultation with the public and key stakeholders, including an expert steering group composed of industry and consumer representatives. The Government carefully considered all issues raised before making a final decision on the content of the Code.

We have committed to reviewing the Code within two years of its implementation to ensure it is operating effectively. This will be carried out by the Scrutiny and Oversight Board, which will be established this spring to oversee the operation of the new system and monitor its effectiveness. In the meantime, we are working closely with industry and consumer representatives to ensure we are aware of any issues in understanding or applying the Code. If any issues emerge, we will decide whether these should be resolved as part of the next review of the Code or an alternative route, such as further guidance or clarification in the certification scheme to which parking trade associations must adhere.

In future versions of the Code, we expect the mitigating circumstances contained in Annex F.3 to be refined and updated in line with the judgements of the new single appeals service. We are currently undertaking a product Discovery to inform the design and delivery of the single appeals service, as part of which we have consulted with a range of industry representatives along with consumer organisations and motorists. We will be able to provide more detail on plans for the single appeals service once the Discovery has concluded.

We are aware of the concerns raised by the private parking industry about the impact of the Code, particularly the new levels of private parking charges. We included a summary of our assessment of the impact within the explanatory document that was published alongside the Code.

We believe the new levels of private parking charges provide a sufficient deterrent to prevent non-compliant parking, while also ensuring the system is consistent and proportionate for motorists and workable for parking operators. In our response to the further technical consultation, we committed to reviewing the levels of private parking charges as part of the general review of the Code, including the consequences if local authority penalties change more widely.

The economic impact on the industry needs to be considered alongside the reduction in harms to motorists from excessive or unfair parking charges. We believe this will boost the high street by making it easier for people to park near their local shops without being unfairly fined. However, we recognise the new Code will create some costs for operators and have been clear that it will not come into full force until the end of 2023 to give them time to adapt to the new requirements, which will help to mitigate the economic impact of the Code on industry.

We intend to undertake an impact assessment of the changes introduced by the Code once the single appeals service has been designed to ensure that we have all the necessary information to complete the assessment.

25 February 2022

Submission by GK Strategy on behalf of the Parking Group (which includes Debt Recovery Plus (DRP), Smart Parking, UK Parking Control (UKPC), Met Parking and Creative Car Park)

I am writing on behalf of the Parking Group, consisting of best practice organisations from the private parking sector, including Debt Recovery Plus (DRP), Smart Parking, UK Parking Control (UKPC), Met Parking and Creative Car Park.

You will be aware that the Private Parking Code of Practice has now been published, and subject to imminent review by the Committee. We recognise the Government's intentions to clarify the position for motorists which we are in firm agreement with.

However, we have some technical concerns regarding the Code of Practice in its current form which we would be keen to discuss. We have outlined some key areas below which would benefit from review and consideration by the Committee.

- Within the Code itself there are numerous references to the Protections of Freedoms Act (2012) intimating that parking charges are issued under this Act and if not, would not be valid. This is inaccurate. POFA provides an important regulatory backdrop and additional protections. However, POFA's Schedule 4 stipulates that it only applies for the recovery of unpaid parking charges, not the issuances of the charges themselves.
- Critically, under the Code there are many areas of land, such as railway land which do not have the same level of regulatory protection and will become unmanageable for technical reasons.
- The Code references GDPR and not the Data Protection Act 2018 which applies to the UK.
- Definitions within the Code are unclear, open to interpretation and risk unintended consequences for motorists, landowners, and parking operators. These include where and when parking is permitted, what is defined as controlled land and who has legal powers on that land, what is defined as parked, stopping/stopped and when a contract for parking begins and ends. This can have numerous unintended consequences, such as on car parks with gates for entry and putting drivers at risk of no stopping charges.
- The Code enables drivers to stop and ensure passengers can leave or enter vehicles at any juncture which creates significant issues for safety and accessibility.
- The Code of Practice and the Government's response to the Technical Consultation differ in their wording on whether debt recovery fees are permissible or not. Aside from policy precedent across other fines/charges areas for the debtor to fund recovery, this is fundamentally unclear for the sector. We would note that without the proper process of recovery, the right to recourse legally would be a County Court Judgement, an increase in which is at odds with the Government's parking aims and does not serve the interests of motorists.
- The Code implies that where byelaws are in place, the Code does not have coverage. To bring up standards and ensure clarity for drivers and landowners, this should be clarified and not create a potential loophole.
- There are a number of grammatical, typo and inconsistencies within the Code itself which would benefit from being tidied up to prevent unintended consequences. For example, the Code notes that in pay and display settings 'tickets' rather than a 'ticket' should be displayed. In theory, this would mean that a charge could be issued if multiple tickets were not presented.

18 February 2022

Response from DLUHC

The Code of Practice has been produced through extensive consultation with the public and key stakeholders, including an expert steering group composed of industry and consumer representatives. The Government carefully considered all issues raised before making a final decision on the content of the Code.

We have committed to reviewing the Code within two years of its implementation to ensure it is operating effectively. This will be carried out by the Scrutiny and Oversight Board, which will be established this spring to oversee the operation of the new system and monitor its effectiveness. In the meantime, we are working closely with industry and consumer representatives to ensure we are aware of any issues in understanding or applying the Code. If any issues emerge, we will decide whether these should be resolved as part of the next review of the Code or an alternative route, such as further guidance or clarification in the certification scheme to which parking trade associations must adhere.

The introduction to the Code is clear about the land on which the provisions of the Code apply and its relationship to the Protection of Freedoms Act 2012 (POFA). The provisions of the Code apply equally to the management of parking and stopping obligations on private land, whether or not the keeper liability provisions within POFA are being relied upon, unless provisions relating to parking and stopping are regulated by byelaws.

The drafting also makes clear that the Code may be applicable where a parking operator is managing private land where byelaws are in place. However, unless specific provision has been made to suspend those byelaws, they take precedence and careful consideration must be given to ensuring that the parking management arrangements are consistent with them.

The main reference in the Code is to the UK General Data Protection Act 2018, but it also references the General Data Protection Regulations 2016. The latter still forms part of EU retained law.

Both the Code and Government's response to the further technical consultation do not permit parking operators or debt recovery agencies (DRAs) to collect additional fees on top of the parking charge. Operators are permitted to use DRAs, subject to additional safeguards including a ban on misleading and intimidatory language in communications. We will review this as part of the general review of the Code within two years of its implementation. This will consider such factors as the level of compliance with parking charges, the amount of court claims relating to unpaid parking charges, and any changes in the practices and behaviour of DRAs as a result of the new certification scheme.

25 February 2022