

MONEY
ADVICE TRUST

BUSINESS
DEBTLINE

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Consultation Response:

MHCLG Parking Code Enforcement Framework

Response by the Money Advice Trust

Date: October 2020

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2019 we delivered this free training to over 981 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

There have been widespread concerns about the poor practice and behaviour of some private parking operators. We are pleased to see the creation of a binding and independent code of practice on private parking firms.

The imperative to place controls on the private parking industry has come from a litany of cases of poor practice. The industry needs to demonstrate that it can build a reputable regime that places fairness and good practice at the centre of its operations. These costs should not be passed on to consumers.

We welcome the opportunity to comment on the draft Code Enforcement Framework to help improve the regulation and practices of the industry.

- ✓ We **strongly agree** that members of APAs should be required to use a single appeals service appointed by the Secretary of State. Redress should be available through a universally applicable, free, independent and simple to access complaints mechanism to a single appeals service.
- ✓ We **fully support a funding model that is self-funding**, and support the idea that this should be through charges to parking operators for handling parking appeals.
- ✓ The code of practice **should be monitored and enforced by a single independent regulatory body**. We do not believe that a membership organisation should seek to regulate its own members.
- ✓ The proposed Scrutiny and Standards Board **should take an independent regulatory role**. The responsibility for investigating bad behaviour, breaches of the code and misconduct by firms should not be undertaken by the firm's own membership body.
- ✓ Private parking firms should be required to **follow the same system as set by the local authority framework**. This would be the simplest solution, and remove the requirement for an entirely separate framework for private parking charges.
- ✓ We see no reason why private parking tickets for parking on private premises should attract a higher penalty amount than local authorities can charge. **It is not proportionate for private schemes to be able to grant a lower percentage discount** and effectively charge more.
- ✓ We agree with the idea **of the appeals charter**. However, the examples given in the appeals charter are fair and appropriate but **do not go far**

enough, particularly in relation to the needs of consumers in vulnerable circumstances.

- ✓ We **agree that the parking industry should contribute towards the costs of regulation**. It is standard practice for the costs of regulation to be borne by the firms that are subject to that regulatory regime. We do not believe that the costs of regulation should be placed on consumers.

We have added comments to the draft NSI code of practice through its own separate consultation process.

Responses to individual questions

Question 1: Do you agree or disagree that members of APAs should be required to use a single appeals service appointed by the Secretary of State?
Strongly agree/Somewhat agree/Neither agree nor disagree/Somewhat disagree/Strongly disagree

We **strongly agree** that members of APAs should be required to use a single appeals service appointed by the Secretary of State.

Question 1.1: Please explain your answer

It is vital that any complaints and dispute resolution process is both free for consumers and independent of the body that is subject to the complaint. The complaints body should be easy to access and offer a fair alternative to expensive and potentially intimidating court action.

We are very pleased to see this statement in the paper.

“The government is supportive in principle of a single appeals service to bring increased consistency, fairness and transparency over how appeals are heard and decisions are made.”

Redress should be available through a universally applicable, free, independent and simple to access complaints mechanism to a single appeals service. This would replace the complex web of complaints mechanisms that are confusing for consumers and give no guarantee of consistency of approach or fairness of outcome for the complainant.

This complaints mechanism should have a statutory basis in law and preferably operated by an ombudsman-type service. The Money Saving Expert (MSE) report into ombudsman services *Sharper teeth: The consumer need for ombudsman reform*,¹ recommended the following.

“All ombudsmen need a statutory basis as a foundation. Ombudsmen should have statutory powers to ensure that firms are cooperative with processes and compliant with decisions that have real legal teeth.”

¹ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

Question 2: Please provide any other feedback on the determination of appeals, including the funding model and features that an appeal service should offer e.g. telephone or in-person hearings, the ability to submit evidence online

We fully support a funding model that is self-funding, and support the idea that this should be through charges to parking operators for handling parking appeals. We agree with the point made in the paper.

“This would incentivise parking operators only to issue legitimate tickets and to resolve issues before they reach the appeal stages.”

We would like to see a limit on the number of stages that our clients have to go through in order to progress their complaint and the process should be streamlined to minimize the number of stages. Most complaints processes should have two stages, first to the firm or body and then to the independent complaints body.

Any appeals mechanism should offer multiple communication channels so that vulnerable consumers have a choice to communicate through a channel most appropriate for their needs. This means that it is made as easy and simple as possible for the consumer to make the appeal in the first place.

There should be a “no wrong door” approach to dealing with and passing on complaints to the appropriate body. There should be no barriers to access for an appeal, which should be able to be made by any usual mechanism, in writing, on line, or by phone. We support an appeal system that allows for as wide a choice of mechanism for hearing the appeal as possible. This should include online, telephone hearings with the option of face-to-face hearings were required.

The use of an online portal to exchange information, evidence, and ask questions is a vital component of a modern appeal system. However, this is not a substitute for alternative mechanisms to be provided as a matter of course for people in vulnerable circumstances who may have particular disabilities or who may be digitally excluded, and unable to participate online.

The ombudsman body should have powers to order redress and compensation, as well as put things right for individuals. Ombudsman rules and decisions should be binding and enforceable in court when there is non-compliance.

Question 3: Please provide any comments you have on the proposal to enforce the Code by combining the ATA's existing audit procedures with additional safeguards.

We do not support the proposals to enforce the code by allowing the existing parking trade associations to audit their members for compliance with the code. Even with additional safeguards in place, the proposals allow trade bodies to “mark their own homework”. We would not have confidence that the bodies would deal with their own members’ misbehaviour either swiftly or impartially. We cannot see any incentive for trade bodies to remove their own members from the Approved Operator Scheme as this will prevent them from operating by losing their ability to access DVLA data.

It is not reassuring that there is a plan to allow each individual trade association to produce its own Certification Scheme for approval. This seems to us to undermine the aims set out by government above of the appeals scheme as being those of “*consistency, fairness and transparency*”. At the very least there should be one Certification Scheme in place that must be adhered to by all trade bodies, otherwise there will be no guarantee of consistency or transparency between schemes, or equality of treatment in each case.

Question 4: Please outline any alternative means by which the Code could be monitored and enforced. You may wish to cite evidence from other regulatory frameworks which are relevant.

The code of practice should be monitored and enforced by a single independent regulatory body. We do not believe that a membership organisation should seek to regulate its own members.

We have seen a parallel concern with the regulatory framework for insolvency practitioners (IP) whereby individual insolvency practitioners are regulated by recognised professional bodies (RPBs) under the Insolvency Service. These are IP membership bodies. The Insolvency Service has identified some serious concerns with the effectiveness of the regulatory regime, particularly in respect of volume IVA firms. The Insolvency Service is currently assessing its options for setting up a single regulatory body following their call for evidence on the regulation of IPs which closed in 2019.²

We would also raise our concerns about the lack of independent regulation of bailiffs which we have done so on many occasions, most recently in our response to the *Fairness in government debt management call for evidence*.³ We and other debt advice charities have long called for the introduction of independent regulation of the bailiff industry.

² <https://www.gov.uk/government/consultations/call-for-evidence-regulation-of-insolvency-practitioners-review-of-current-regulatory-landscape>

³ <http://www.moneyadvicetrust.org/SiteCollectionDocuments/Policy%20consultation%20responses/Unilateral%20responses/Money%20Advice%20Trust%20response%20to%20Fairness%20in%20government%20debt%20management%20call%20for%20evidence%20-%20September%202020.pdf>

The government itself has already recognised the need for action. In November 2018, the Ministry of Justice launched a call for evidence on bailiffs,⁴ which closed in February 2019. In July 2019, the government said in a Written Ministerial Statement⁵ that they “believe that regulation of this sector could be strengthened” and would take steps to do so.

We believe that consumers need a robust independent regulator with rule-making and investigatory and supervisory powers to provide confidence in any regulatory system. Therefore, there should be a single independent regulatory body in conjunction with a free independent complaints body.

Question 5: Please provide any feedback you have on the proposed governance arrangements for monitoring the new Code of Practice

We do not support the proposed model for membership bodies to monitor and supervise their own members. However, we are pleased to see that an extra level of scrutiny is envisaged in the role of the proposed Scrutiny and Standards Board.

This body should take more of an independent regulatory role in our view. The responsibility for investigating bad behaviour, breaches of the code and misconduct by firms should not be undertaken by the firm’s own membership body. Decisions on sanctions and other action should be taken by the regulator and not the membership bodies.

Unless the board has investigative powers, it may take a diminished role of “rubberstamping” the decisions taken by membership bodies, and being unaware of misconduct or breaches of the code that are not drawn to their attention.

It is vital that part of the rule of the board is to publish details of cases, and disciplinary action taken against the scheme operators. It is vital that there is public transparency regarding the reasons for disciplinary action and the outcomes of such cases including fines, reprimands and member expulsion.

Question 6: Which parking charge system is most appropriate for private parking?

- a) the Three-tiered system
- b) Mirroring the Local Authority system

We would support the private parking charge system mirroring the local authority system.

Question 6.1: Please explain your answer. You may, for example, wish to make reference to other deterrent frameworks (for example, for railway tickets or traffic violations)

⁴ Ministry of Justice (2018) *Review of enforcement agent (bailiff) reforms: call for evidence*

⁵ Enforcement Update: Written statement - [HCWS1776](#), 22 July 2019

We would normally support an approach that allows consumers to recognise that a consistent and fair system is in place. There seems no reason for the private parking charge system to operate a separate charging system that is set to charge higher amounts. It is not reasonable to charge higher fees for parking on private land than those that can be charged for public parking penalties.

Private parking firms should be required to follow the same system as set by the local authority framework. This would be the simplest solution, and remove the requirement for an entirely separate infrastructure and set of rules, review process and so on to set a separate framework up for private parking charges.

However, this should not be a licence to blur the boundaries between the two schemes. The regime should set out prescribed requirements for notices for parking on private land to prevent the deliberate use by industry of 'Parking Charge Notices' which appear to be designed to confuse consumers with statutory 'Penalty Charge Notices'. We are pleased to see that this is addressed in the draft NSI code of practice.

Question 7: What level of discount is appropriate: 40% as is currently offered in private parking and suggested in the three-tiered system, or 50% as is offered in Local Authority parking? a) 40% b) 50%

We would favour the 50% discount or higher.

Question 7.1: Please explain your answer, including whether the discount should be set at a different level

We see no reason why private parking tickets for parking on private premises should attract a higher penalty amount than local authorities can charge. It is not proportionate for private schemes to be able to grant a lower percentage discount and effectively charge more.

Question 8: How should the level of parking charges be set and how should the levels be revised in future?

If the charges are aligned to the local authority parking regime, there is no need to set charges separately. We do not see any requirement for firms to be allowed to deviate from the cap on charges.

If the local authority parking regime fees are not adopted, it would make sense for the Standards Board to review the fees on a regular basis.

Question 9: Do you agree or disagree in principle with the idea of the Appeals Charter? Agree/Disagree

We agree with the idea of the appeals charter.

Question 9.1: Please explain your answer

It is clearly vital that the appeals charter interacts with the code of practice. This should set out practices and behaviour that are not allowed under the code. In theory this should eliminate most reasons for complaint and minimise the requirement to appeal.

Question 10: Do you agree or not that the examples given in the Appeals Charter are fair and appropriate? Agree/Disagree

We agree that the examples given in the appeals charter are fair and appropriate but do not go far enough.

Question 10.1: Please explain your answer. You may wish, for example, to suggest additional cases to be covered in an Appeals Charter or query existing examples.

The appeals charter is silent on the major problem identified by consumers relating to poorly placed, non-existent or substantially misleading signage in private parking areas. This should be a specific area of mitigation.

In addition there are often accounts of parking payment machines not working or malfunctioning. This should also be a set mitigation area.

There is no recognition in the charter of the potential of mitigation due to consumers being in particular vulnerable circumstances. This should also be a set area of mitigation.

We would expect there to be the charter to set out further examples under the “significant evidence of mitigation” and “non-evidenced mitigation” as this is too vague at present.

We would assume examples would be where there is an emergency such as sudden illness, long-term illness, pregnancy, dealing with small children, the impact of age, the effect of a disability, caring responsibilities or an external event such as hospital appointments overrunning, traffic or police incidents.

Question 11: Do you agree or disagree that the parking industry should contribute towards the cost of the regulation? Agree/Disagree

We agree that the parking industry should contribute towards the costs of regulation.

Question 11.1: Please explain your answer.

It is standard practice for the costs of regulation to be borne by the firms that are subject to that regulatory regime. We do not believe that the costs of regulation should be placed on consumers. The imperative to place controls on the private parking industry has come from a litany of cases of poor practice. The industry needs to demonstrate that it can build a reputable regime that places fairness and good practice at the centre of its operations. These costs should not be passed on to consumers.

For more information on our response, please contact:

Meg van Rooyen, Policy Manager

meg.vanrooyen@moneyadvicetrust.org

0121 410 6260



The Money Advice Trust

21 Garlick Hill

London EC4V 2AU

Tel: 020 7489 7796

Fax: 020 7489 7704

Email: info@moneyadvicetrust.org

www.moneyadvicetrust.org