

# Report

on an investigation into  
complaint nos 11 002 630, 11 003 513,  
11 003 455, 11 004 866 and 11 003 634  
against  
Cherwell District Council

14 February 2012

# Investigation into complaint no 11 002 630 and others against Cherwell District Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

## Key to names used

Mrs A	A Complainant
Mr and Mrs B	Complainants
Mr C	A Complainant
Mr D	A Complainant
Ms E	A Complainant

## **Report summary**

### **Subject**

#### ***Parking – Excess Charge Notices***

Five people complain that the level of publicity surrounding the introduction of parking charges for blue badge holders and evening users, who had previously been able to use the car parks free of charge, was inadequate.

The Council made efforts to attempt to raise awareness of the changes to its charging policy within the Cherwell area, but the Ombudsman considers the Council did not adequately take account of the fact that people from outside the area would also be affected by the changes, and would not be aware of this publicity.

The Ombudsman does not consider the Council gave adequate consideration to the fact that blue badge holders and evening users would have no cause to use the ticket machine and, therefore, any notice displayed there would have been futile in terms of notifying them of any change.

The Ombudsman considers that had such failings not occurred Mrs A, Mr and Mrs B, Mr C and Ms E would not have incurred Excess Charge Notices of £80 each.

### **Finding**

Maladministration causing injustice.

### **Recommended remedy**

The Ombudsman recommends that in order to put Mrs A, Mr and Mrs B, Mr C, and Ms E in the position they would have been in had no maladministration occurred, the Council reimburses the Excess Charge Notice of £80 each to Mrs A, Mr and Mrs B, Mr C, and Ms E.



## Introduction

1. Four complainants are blue badge holders who live outside the area but have parked with varying degrees of frequency in the Council's car parks. Ms E is not a blue badge holder, but uses one of the Council's car parks of an evening once a week. All of the complainants have been issued with Excess Charge Notices (ECNs) following the implementation of changes to the Council's parking charges on 4 April 2011. The complainants all complain that the level of publicity surrounding the introduction of parking charges for blue badge holders and evening users, who had previously been able to use the car parks free of charge, was inadequate.
2. Mr C also complains that the ticket machine at the car park is not disabled friendly as it does not have a ramp and hand rails which would mean that many disabled people would be unable to access it to make a payment.
3. The complainants say that as a consequence they have incurred ECNs of £80, which they would like to be reimbursed or, where still unpaid, cancelled.
4. During the course of the investigation of this complaint, the Commission's Investigators have discussed the complaints with each complainant. They have also interviewed officers of the Council and considered information provided by the Council.

## Legal and administrative background

5. The Road Traffic Regulation Act 1984 allows a local authority to make an order that sets out how it will provide parking spaces, the terms for their use and how charges for parking will be made. The relevant order here is the Cherwell District Council Off Street Parking Order which introduced parking charges for blue badge holders and evening users in the Council's car parks.
6. The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 set out the procedure for the Council to follow before and after introducing traffic orders.
7. Regulation 7 sets out the procedure to be followed before introducing traffic orders:

### "7 Publication of proposals

- (1) An order making authority shall, before making an order, -

- (a) publish at least once a notice (in these Regulations called a "notice of proposals") containing the particulars specified in Parts I and II of Schedule 1 in a newspaper circulating in the area in which any road or other place to which the order relates is situated;

....

- (c) take such other steps as it may consider appropriate for ensuring that adequate publicity about the order is given to persons likely to be affected by its provisions and, without prejudice to the generality of this sub-paragraph, such other steps may include -
  - (i) in the case of an order to which sub-paragraph (b) does not apply, publication of a notice in the London Gazette;
  - (ii) the display of notices in roads or other places affected by the order; or
  - (iii) the delivery of notices or letters to premises, or premises occupied by persons, appearing to the authority to be likely to be affected by any provision in the order.”

8. Regulation 17 sets out the procedure to be followed after introducing traffic orders:

“17 Action after making

- (1) As soon as practicable after an order has been made, the order making authority shall include among the deposited documents a copy of the order as actually made.
- (2) The order making authority shall, within 14 days of the making of the order, -
  - (a) publish in a newspaper circulating in the area in which any road or place to which the order relates is situated, a notice (in these Regulations called a “notice of making”) –
    - (i) stating that the order has been made; and
    - (ii) containing the particulars specified in Parts I and III of Schedule 1; and
  - (b) in the case of an order under section 6 or an order made by a London authority under section 9 of the 1984 Act, publish a similar notice in the London Gazette.
- (3) Within 14 days of making an order, the order making authority shall notify the making of the order in writing to any person who has objected to the order under regulation 8 and has not withdrawn the objection and, where the objection has not been wholly acceded to, shall include in that notification the reasons for the decision.

- (4) The order making authority shall take such other steps of the kinds referred to in regulation 7(1)(c) as it considers appropriate for the purpose of ensuring that adequate publicity is given to the making of the order.”
9. The 1974 Local Government Act says that the Ombudsman should not usually investigate a complaint where the complainant has had the “alternative remedy” of appeal to a tribunal. The Council does not operate a civil parking enforcement scheme so the complainants do not have a right of appeal to the Traffic Penalty Tribunal, which would prevent the Ombudsman from investigating this complaint.
10. The Council’s Vehicle Parks Information and Enforcement Policy for 4 April 2011 to 6 October 2011 states:
- “The Council rigorously enforces its regulations through the issue of Excess Charge Notices (ECN), and will ONLY cancel these where there are clear and exceptional extenuating circumstances, as follows:
- Where an ECN is issued for no valid payment/not displaying a valid ticket - on the production of the ticket or confirmation of phone payment valid for the time of the contravention for the vehicle and vehicle park concerned.
  - In the case of personal illness that results in an overstay - on the production of a Doctor’s certificate.
  - In the case of a vehicle breakdown – on production of a certificate or invoice from a vehicle recovery or repair company.”

## Investigation

11. The Council exercised its powers under the Road Traffic Regulation Act 1984 to make The Cherwell District Council (Off-Street Parking Places) (Banbury, Bicester and Kidlington) Order, which came into effect on 4 April 2011. This order included the introduction of parking charges for blue badge holders and evening users in the Council’s car parks.
12. The Council states that it undertook a range of initiatives from October 2010 through to implementation in April 2011 to try and ensure car park users were aware of the changes. This included:
- Publishing the proposed and actual traffic orders in local papers;
  - Advisory notices on windscreens for the week prior to implementation of the changes;

- Warning notices on windscreens for one week after implementation of the changes;
  - Press releases in local papers;
  - Radio interviews advising of the changes on local radio stations;
  - A4 signs on Public Information Boards in every car park;
  - Updating of the car park information boards on 3 April 2011;
  - 7,000 letters to Cherwell registered blue badge holders
  - Updating the Council's website on 4 April 2011 with the new policy and charges;
  - The Council's News Letter Cherwell Link was delivered to 57,000 households in the Cherwell District and was available in libraries, public offices and on the Council's website; and
  - Presentations to local groups and forums.
13. The Council considers this work significantly exceeded the requirements of The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.
14. The complainants all dispute this and consider that more should have been done to bring the introduction of charges for blue badge holders and evening users to their attention. Although the Council wrote to the 7,000 blue badge holders in Cherwell to inform them of the changes to parking arrangements this was not until after the changes had been implemented, and did not include Mrs A, Mr and Mrs B, Mr C or Mr D as they all live outside the area.
15. Mrs A does not live in Banbury but has visited the town with her mother who is a blue badge holder, once a month for the last five years. On each occasion Mrs A has parked free of charge in a disabled bay in the same car park in Banbury. Mrs A considers she is a person likely to be affected by the introduction of parking charges for blue badge holders but was unaware of any of the publicity in the local press or on the local radio and did not see any signs or notices publicising the changes at the car park. As Mrs A had not previously had to purchase a parking ticket and was not prompted to check the ticket machine she did not notice an A4 notice on the ticket machine. Mrs A did not therefore purchase a ticket when she parked on 13 April 2011, and was issued with an ECN for £80.
16. Mrs A immediately appealed the ECN via the Council's website and was referred to the Council's Parks Enforcement Policy. Mrs A states that the policy published at that time confirmed that blue badge holders could park for free. Mrs A contacted her neighbour, a Director with the Council, to inform him the Council's website was out of date. Mrs A's neighbour responded that the main pages were



correct and up to date, but there was an offsite link to an appeal form which referred to the old policy. He confirmed this would be changed as soon as possible. The Council dismissed Mrs A's appeal on 14 April 2011 stating that the regulations governing the use of the Council's car parks were noted on the tariff board and the charge for failing to display a valid ticket was clearly signed. The Council also stated that notices were attached to information boards and ticket machines three weeks prior to the introduction of the changes.

17. Mrs A states that on the basis she had not had to pay to park in this car park for the previous five years she had no reason to consult the tariff board or the ticket machine. Mrs A disputes that there were any 'A' boards or other signs over the parking bays, or that there were any other obvious warnings about the charges when she visited on 13 April 2011.
18. Mr and Mrs B also visited a car park in Banbury on 13 April 2011. Mr and Mrs B visit the area a couple of times a month for hospital appointments and shopping trips, and have regularly parked free of charge in Market Place car park, Banbury, by displaying their blue badge. Mr and Mrs B were also unaware of the publicity in the local press or on the local radio and did not see any signs or notices publicising the changes at the car park. As Mr and Mrs B had not previously had to purchase a parking ticket and were not prompted to check the ticket machine they did not notice an A4 notice on the ticket machine. Mr and Mrs B did not therefore purchase a ticket and were issued with an ECN for £80.
19. Mr and Mrs B's daughter appealed the ECN on their behalf on 28 April 2011. She requested that the ECN be waived on the basis Mr and Mrs B were unaware the parking policy had changed since they last used the car park, and there were no signs at the entrance to the car park to prompt them to check the ticket machine. The Council rejected the appeal on 28 April 2011 again stating that the regulations governing the use of the car park were noted on the information board and the charge for failing to display a valid ticket was clearly signed. The Council considered the ECN was properly issued and in order to maintain a consistent approach refused to waive the charge.
20. Mr C is complaining on behalf of his wife Mrs C. They do not live in Bicester but have regularly used a car park in Bicester for more than 10 years, during which time parking for blue badge holders has been free. Mr C considers he is a person likely to be affected by the introduction of parking charges for blue badge holders but like Mrs A and Mr and Mrs B, Mr and Mrs C were unaware of the publicity in the local press or on the local radio and did not see any signs or notices publicising the changes at the car park.
21. During week commencing 28 March 2011 the Council states that it placed warning notices on blue badge holder cars, informing them that blue badge holders would be liable for car park charges in Cherwell car parks from week commencing 4 April 2011. Mr C states that he and his wife parked in the same

car park in Bicester twice during the week commencing 28 March 2011 and received no such warning notice.

22. Parking charges for blue badge holders were introduced on 4 April 2011. The Council states that during the first week of implementation warning notices were placed on blue badge holder cars, informing them that charges were in force and that parking without obtaining a ticket from 11 April 2011 would result in an ECN being incurred. Mr C states that he and his wife parked in the same car park during week commencing 4 April and say they did not receive a warning notice.
23. On 13 April 2011 Mrs C again parked in the same car park and displayed her blue badge. She received an ECN as she had not paid and displayed.
24. Mr C submitted an appeal against the parking charge on behalf of his wife on 19 April. He argued that the Council should cancel the ECN as his wife had been unaware of the introduction of charges. He noted that there were no notices in the car park in any prominent positions confirming the change, with the only notice being the main pay station point which his wife would have had no reason to visit, having parked in the same car park free of charge for 10 years.
25. The Council rejected Mr C's appeal on 4 May 2011, stating that notices had been attached to the information boards and ticket machines five weeks prior to 4 April 2011, which should have put his wife on notice of the impending increase. The letter advised him that it was the motorist's responsibility to make themselves aware of the current rules and regulations governing the car park on each visit and therefore the ECN had been correctly issued.
26. On 6 May Mr C wrote to the Council to complain about the decision and to advise that despite parking in the car park one week prior to the charges being introduced no warning notice had been affixed to his wife's car. He also complained that although temporary signs had been erected they were insufficient and in one place the sign was hanging upside down. He also emailed the Council on 27 May 2011 to say that the pay station in the car park in which his wife received an ECN is not disabled accessible as it is set on a plinth and does not have a ramp and hand rails, which would mean that many disabled people would be unable to access it to make a payment. He reiterated his concerns about the accessibility of the pay station in an email on 1 June 2011, referring to the requirements of the Equality Act 2010. The Council responded on 2 June 2011 to advise Mr C that his wife's ECN had been placed on hold pending the outcome of the Ombudsman's investigation. The email also advised him that no improvements were planned to the car park in which his wife had parked given that the Council's intention was to close it. He was informed that alternative methods of payment, such as payment by telephone, were introduced to facilitate payment for those unable to access the pay station.
27. Mr D lives outside the area but uses Market Square car park in Bicester once a quarter and has previously parked free of charge by displaying his blue badge.

Mr D states that when he visited on 28 May 2011 he parked and displayed his blue badge as usual. When he returned to his car 40 minutes later he had been issued with an ECN because he had not purchased or displayed a ticket. Mr D was unaware of any of the publicity in the local press or on the local radio and did not see any signs or notices publicising the changes at the car park.

28. As Mr D had used the car park previously, he had an expectation that parking would be free for a blue badge holder. As a result Mr D says he did not have any reason to approach the public information boards, which are located with the payment machine. There were no temporary signs elsewhere in the car park to tell him that charges had been changed.
29. Ms E lives in Bicester, but works in Oxford and states she was unaware of any of the publicity surrounding the changes to the parking charges as she is not a blue badge holder, or a member of any of the groups or forums which received presentations from the Council and did not receive any of the free publications advertising the changes. She complains that the Council issued her with an ECN when she parked her car in a Council car park on the evening of 7 April 2011, three days after the changes to the Council's charging policy had been implemented. Ms E says she had parked her car in the same car park one evening a week for the past year and there was no charge after 6.00 pm. Ms E was unaware of the changes to the charging policy and says that only after she had received the ECN did she discover small and inconspicuous notices on the pay stations advising of the changes.
30. Ms E states that as a regular evening visitor to the car park, when parking was free, she could not reasonably be expected to examine the ticket machine each time she visited, but would have reacted to an obviously new sign erected at the entrance or prominently displayed elsewhere in the car park.
31. Ms E submitted an appeal against the ECN on 11 April 2011. This was considered and rejected by the Council on 12 April 2011. In its letter of 12 April 2011 the Council advised Mrs E that the regulations covering the use of the Council's car parks were noted on the information board and the charge for failing to display a valid ticket was signed. The Council said that in a pay and display car park payment is required from the outset, however the warden does not issue a ticket at the outset but permits a period of time to elapse between the warden's first observation and the issue of the ECN to enable a motorist to buy a ticket. The Council explained that the tariffs increased on 4 April 2011 and notices were attached to the information boards and ticket machines five weeks prior to the date to inform motorists of the impending increase. The Council considered the ECN was correctly issued and rejected Ms E's appeal.
32. Evening users were not given the same "honeymoon period" as blue badge holders and did not receive advisory notices in the week before the charges were introduced, or warning notices in the following week.

33. The Council erected additional 'A' board signage on the entrance to all car parks where possible on 14 April 2011. Additional temporary signage was also erected where possible adjacent to designated disabled parking bays. It was not possible to erect additional signage at the Market Square car park in Bicester (where Mr D parked) because of the open nature of the car park, which made putting signs elsewhere in the car park impractical and potentially hazardous.
34. Mr C disputes that A boards signs were erected on 14 April 2011, and states they were not erected until late April 2011. He says the signs erected in Bicester were of the type used at road works and frequently collapsed.
35. In June and July 2011 the Council reviewed the new car parking charges and policies in recognition of concerns raised by Councillors and the public. In a report of 12 July 2011 it was acknowledged that lessons had been learned. These included:

“ ...

- significant advance publicity and awareness raising undertaken but main criticism was that not enough done with temporary signage on entrances and by disabled spaces. Ensure in place before implementation and for a lengthy period past implementation.
  - complaints that honeymoon period was not long enough. We ran this only for blue badge holders a week before with info under windscreens then first week of implementation with warning notices. This should have been extended to evening users and for a longer period past implementation.
  - database of blue badge holders from OCC... letters should have been issued prior to the changes being implemented.
  - website updating. Ensure links on electronic applications are also updated.”
36. The Council considers that it did more than enough to satisfy the requirements of the regulations, but could have done more in terms of erecting temporary signs.
37. I have received a number of other complaints from blue badge holders who have been issued with ECNs during the period May to September 2011. Each complaint has been considered on its merits taking account of the level of publicity in place at the time each ECN was issued.

## **Conclusions**

38. Local Authorities are free to determine whether or not they wish to charge blue badge holders for parking in their car parks. I have not reviewed, and I do not

intend to criticise, the Council's decision to introduce parking charges for blue badge holders.

39. I accept that the Council made efforts to attempt to raise awareness of the changes to its charging policy, both before the order was made and subsequently, but do not agree that the work done by the date the changes were implemented was adequate.
40. Regulations 7 and 17 of The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 impose similar yet quite separate duties on a local authority. Regulation 7(1)(c) requires a council to take appropriate steps to ensure "that adequate publicity about the order is given to *persons likely to be affected* by its provisions" (my italics). Given that the proposed order related to the use of car parks in Cherwell, it was likely to affect more than those people who actually lived in the area. Many people from the neighbouring counties were likely to visit these car parks, and be affected by the changes imposed by the order. Whilst the Council took steps to publicise the order in the local press and made presentations to local groups and forums in the Cherwell District, the Council failed to take account of the fact that such publicity would be insufficient for people from outside the Cherwell District, who were nevertheless likely to be affected by the order.
41. Regulation 17(4) requires a council to consider what steps need to be taken *in addition* to the minimum requirements of 17(1) and (3) to ensure that adequate publicity is given to the order that has been made. That is to respond to the specific circumstances of the situation before them. I consider that publicising the order after it had been made was particularly important for blue badge holders and evening users, who until this point had been able to park in the Council's car parks free of charge. The A4 size sign added to the information board/ticket machine lacked prominence and in many cases given the layout of the car parks would not have been seen by a disabled user.
42. The Council failed to take into account the fact that blue badge holders and evening users would have had no reason to use the ticket machine and, therefore any notice displayed there would have been futile in terms of notifying them of any change. This failure to adequately consider the steps to be taken amounts to maladministration causing the injustice of unexpectedly receiving an ECN.
43. This failing was relatively short lived as the Council responded promptly to concerns about a lack of awareness of the changes, by erecting temporary signage, where possible, at the entrance to all of its car parks and adjacent to designated disabled spaces and thus prompting users of the car parks to check the information boards. I do consider however that these temporary signs should have been in place at the time the changes were implemented. If they had been I consider that the Council would have fulfilled its duty under Regulation 17(4).

44. I recognise that additional temporary signage has not been erected at Market Square car park, Bicester, but accept the Council's view that the open layout of this particular car park made temporary signs impractical and potentially unsafe.
45. Once this additional signage was in place where possible on 14 April 2011, I consider there was adequate publicity for the changes to the parking charges and users of the car park should have ensured that they were aware of and abided by the charging policy now in place. I consider therefore that there was maladministration by Council during the period 4 April 2011 to 13 April 2011.
46. The Council states that it placed warning notices advising of the changes to the parking charges, on the vehicles of blue badge holders in the week prior to and immediately subsequent to the introduction of the changes, but did not extend this feature to evening users, who were equally affected by the changes. Neither blue badge holders nor evening users had previously had to pay to park in the car parks, but the Council's attempts to publicise the changes to these users were inconsistent, and could be said to have placed regular evening users, such as Ms E, at a disadvantage, as they were not prompted to check the information board. The Council's failure to issue evening users with warning notices and to afford them the same honeymoon period as blue badge holders amounts to maladministration causing the injustice of unexpectedly receiving an ECN.
47. The ticket machines in two car parks in Cherwell are raised on a plinth and would not therefore be easily accessible to wheelchair users and those with mobility difficulties. This does not impact directly upon any of the complainants, but I have nevertheless considered how the Council has addressed this issue. I consider the Council's decision not to alter or remove the plinths for these ticket machines to be reasonable in this instance, as the Council intends to close both car parks, and it would not therefore be a cost effective use of public funds. In the interim period, the Council has introduced alternative methods of payment, such as payment by telephone to facilitate those who are unable to access the ticket machine. I consider this to be reasonable.
48. I have received a number of other complaints relating to ECNs issued after the erection of the temporary signs. Each has been considered on its merits and I have determined that they should not be pursued based on the specific circumstances of each and the level of publicity of the charging policy at the time.

### **Finding and recommendation**

49. For the reasons given in paragraphs 40 to 43, 45 and 46, I find maladministration by the Council during the period 4 April 2011 to 13 April 2011, causing injustice. As a consequence of the Council's failure to erect additional signage until 14 April 2011 Mrs A, Mr and Mrs B, Mr C, and Ms E have incurred ECNs of £80. I now seek to put Mrs A, Mr and Mrs B, Mr C, and Ms E in the position they would have been in had no maladministration occurred. I therefore recommend that the

Council reimburses the ECN of £80 each to Mrs A, Mr and Mrs B, and Ms E, and cancels the ECN issued to Mr C which remains unpaid.

50. For the reasons set out in paragraph 45 I am satisfied that the publicity of the changes at Market Street car park, Bicester was reasonable, and do not find any maladministration causing injustice to Mr D.



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**14 February 2012**