

# Annual Report | 2021

## Parking on Private Land Appeals





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# Welcome

Welcome to the 2021 POPLA annual report: the sixth since Ombudsman Services began running the service. It shines a light on our team, whose flexible approach and effort enabled us to provide an accessible service throughout the pandemic.

The 12 months from October 2020 to September 2021 were a time of challenge and change for the POPLA service and the parking industry in general. The impact of rules and restrictions on motorists across the UK was hugely significant.

At the time of writing our last annual report (September 2020), we'd only recently restarted consideration of appeals following the adjournment which was prompted by the lockdown. When we resumed service, we were able to reduce appeal numbers quickly, but the second lockdown (from 5 November 2020) called for a further adjournment. While motorists were still able to register their intent to appeal, we appreciated that the circumstances made it difficult for motorists and parking operators to properly engage with the appeals process.

We then restarted the consideration of appeals from 29 March 2021, when the 'stay at home' message was lifted. Despite fewer cars being either on the roads or parking on private land, we amassed over 16,000 appeals in this period. All of these required us to contact each motorist to gather evidence in order to provide their full file to parking operators for responses.

To deliver quality outcomes to motorists and operators in good time we chose to bring in 25 new colleagues. Training these new colleagues to our high standards enabled us to deal with all adjourned cases by July. Come September, we were able to issue decisions on new cases within two weeks of them being ready for assessment. We're pleased to say that we're now back on track and operating business as usual.

The launch of a new Parking Code of Practice will mean a period of transition for parking operators adjusting to new rules. The good news for motorists is that these new rules include an expectation of fairer appeal handling, where motorists have made innocent errors or experienced mitigating circumstances. We look forward to supporting parking operators and motorists through these changes.



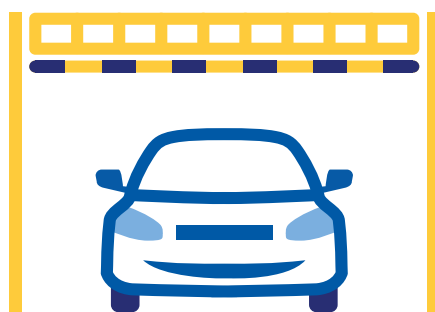
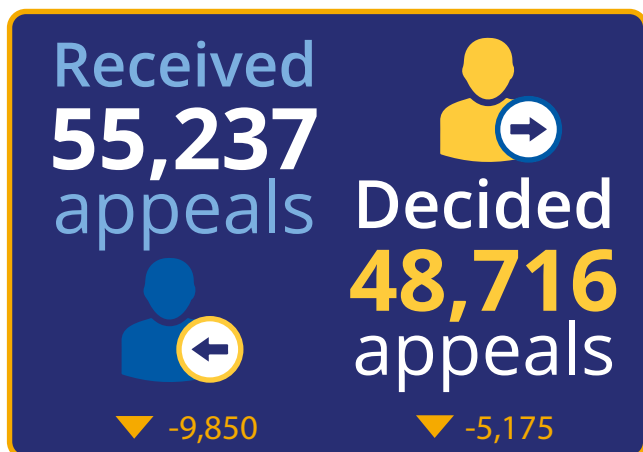
**John Gallagher**

Lead Adjudicator | POPLA

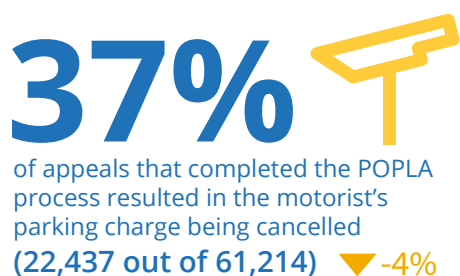
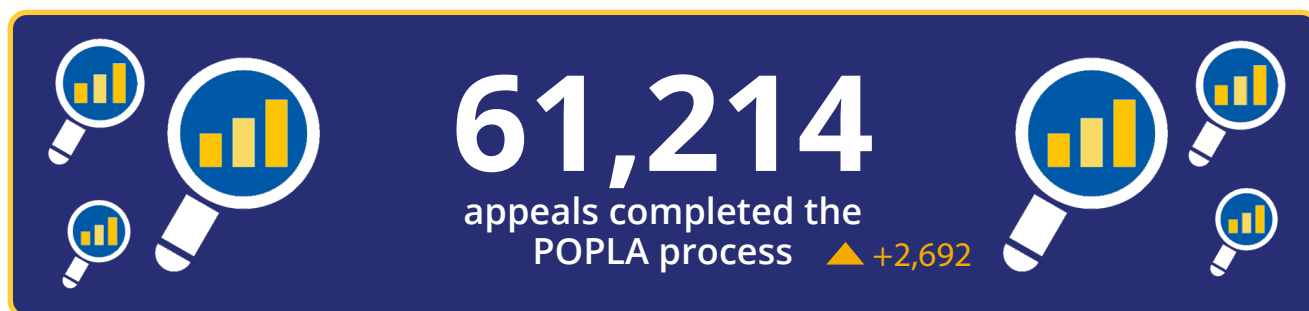


# POPLA's year in numbers

Between 1 October 2020 and 30 September 2021, we ...



In addition, parking operators decided not to contest 12,498 appeals. ▼ -2,234



We also referred **661** appeals back to the operator to ask them to cancel the parking charge as a goodwill gesture due to mitigating circumstances - and they agreed to do this **342** times.



\*An allowed appeal is one where we found in the motorist's favour and allowed their appeal to stand - leading to the parking charge being cancelled.  
\*\* A refused appeal is one where we didn't find in the motorist's favour - the parking charge stood.

# Impact of COVID on appeal numbers

POPLA started the year with a stock of over 10,000 appeals. This was largely due to having adjourned consideration of some 2020 appeals due to lockdowns preventing motorists and parking operators being able to fully engage with the process. While these appeals were on hold, parking operators were unable to pursue motorists for parking charges.

We processed a lot more appeals than we received throughout the year. As a result we're now able to process the vast majority of appeals within a couple of weeks of them being ready for consideration. We saw a reduction in new appeals, with just over 55,000 being registered this year. This figure is nearly 10,000 fewer than in 2019/2020, and nearly 35,000 fewer than in 2018/2019. There is no doubt that the lockdown between November 2020 and March 2021 was a significant driver for this reduction, but even during periods of relative normality, appeal numbers were lower than the 2019 high. The full reason for the reduction in appeals to POPLA is unclear, our message remains the same; if a motorist receives a parking charge they feel is unfair, we're here to independently consider their appeal and ensure a fair outcome.

The year saw a slight increase in parking operators deciding not to contest appeals. When this happens, the parking charge is cancelled and the motorist doesn't have to pay. This may be due to some parking operators furloughing staff and therefore not being able to submit responses.

There was a significant reduction in the number of appeals we referred to operators because of mitigating circumstances. When we do this, we ask operators to cancel the parking charge as a goodwill gesture, even if the charge is technically valid. The reason for the reduction is that we no longer refer cases where the motorist has paid for parking or is a legitimate user of the car park, but has failed to correctly key their registration into a terminal in the car park. Such circumstances are now covered by the British Parking Association's (BPA's) Code of Practice, which requires parking operators to cancel or significantly discount tickets if the motorist has made a genuine error. That means we see few appeals about keying errors – and if we do see an appeal – we can compel the operator to cancel the charge in line with the BPA's direction.



# Appeal reasons and case studies

## General appeals

The shape of appeals hasn't changed significantly over the last few years. Most come from motorists having a different understanding of the parking conditions to the parking operator, or from the motorist believing the parking operator hasn't followed the correct process to pursue them for the ticket.

The below case studies give examples of the type of cases we've seen over the past year.

### Case Study 1: Unclear terms and conditions

The motorist rented an apartment with an allocated parking space. When they completed the paperwork – they were required to provide their Vehicle Registration Mark (VRM) so they could be allocated a parking permit. The application was linked to the space for their apartment. The motorist received their permit through the post, along with a letter that said they should display the permit in their windscreen.

The motorist did not display the permit in their windscreen, and on observing the vehicle parked without displaying a permit, a parking attendant issued a parking charge.

The motorist appealed the parking charge on the basis they were a permit holder. They highlighted that they had to link their VRM to their parking space when applying for the permit – and they believed the parking operator should have been able to identify from this information that the correct car was parked in the correct space. Therefore, they held a view that the operator shouldn't have issued a parking charge. The motorist accepted that the letter they'd received told them they should display the permit in the vehicle windscreen – but it did not explain the consequences of not doing so. They highlighted that the parking conditions set out on the signs in the car park stated that the car park was for permit holders only. Those signs did not set out a requirement to display a permit.

The operator had issued a parking charge because the motorist did not display a permit. However, the signs in the car park did not set out a requirement to display a permit, only that the car park was for permit holders only. Further, the paperwork received with the permit did not set out that failure to display the permit would result in the motorist receiving a parking charge.

There is a fine balance when it comes to managing parking at a residential site. The parking management is in place to protect the spaces of residents – but when residents don't follow the parking operator expectations – they often receive parking charges. Those charges can be valid if the motorist didn't follow the parking conditions correctly – but in this instance, the operator had not made the parking conditions sufficiently clear, so we allowed the motorist's appeal.

### Case Study 2: What am I being accused of?

A vehicle keeper received a parking charge notice through the post in respect of their vehicle. The notice explained that the need to pay a parking charge had arisen because "either the appropriate parking time had not been purchased, or the vehicle had remained at site longer than permitted".

The motorist's wife was driving the car on the day in question. She was satisfied that she had paid and had exited within the time she had paid for. Indeed, she remembered paying for two hours parking – and the Automatic Number Plate Recognition photographs included on the notice showed that the motorist had stayed for less than two hours.

The couple checked their joint bank statement and found that they had made a payment of £2.50 to the parking operator on the day in question. The vehicle keeper then revisited the car park and saw that £2.50 was the correct payment for 2 hours of parking. They appealed to the operator confirming evidence of the payment. The operator rejected the appeal on the basis that the payment they had made had not been registered against their vehicle when using the payment terminal in the car park.

Before appealing to POPLA, the keeper conducted some research about private parking charges. They found that as the parking operator was trying to transfer liability for the parking to them as the registered keeper of the vehicle – the notice they received needed to comply with certain rules, including describing the circumstances in which the requirement to pay the parking charge arose. The keeper appealed to POPLA making the argument that the notice sent by the operator did not accurately describe the circumstances in which the requirement to pay the parking charge arose. The original notice had stated they had not paid, or had stayed at site longer than permitted – but they had since realised that what they were being accused of was not registering payment against the correct vehicle.

POPLA agreed with the motorist that the operator was required to accurately describe the circumstances on which the parking charge arose – and had not done so. Therefore, we allowed the motorist's appeal.

### COVID related appeals

The pandemic has seen some new types of appeal, with people's parking experiences impacted by concerns around catching COVID.

Motorists told us they were not able to pay for parking because of queues at the payment machine, and fears over social distancing. Similarly, they've told us they couldn't interact with payment terminals because the parking operator had not provided a hand sanitiser and they worried about catching COVID from touching the relevant screen or buttons.

We recognise that these were legitimate health concerns – but they were not reasons for us to allow the motorists' appeals. Motorists parking on private land have an opportunity to consider the terms and conditions of the contract before making a decision on whether to stay or go. If a motorist identified that they were not able to comply with the terms and conditions because of health concerns – they were able to leave the car parks.

We've also seen some appeals related to confusion regarding Government and industry policy on free parking. In late 2019, the Government announced expectations that free parking would be provided to thousands of patients, staff and carers from April 2020. Further to this, the British Parking Association created a website to help NHS staff, health and social care workers and NHS volunteers to find free parking locations quickly and easily. Several parking operators also launched schemes to support the NHS (although these were time limited).

We accepted appeals from motorists who received parking charges when they should have been entitled to free parking. Equally we refused appeals from motorists who believed that they should be entitled to free parking when they weren't.

Unfortunately, some people ended up staying in hospital for longer than they expected because of COVID – which meant they didn't pay for enough parking. The below case study sets out one such example.





### **Case Study 3: Motorist had to stay in a hospital**

The motorist suffered from regular migraines and often had injections at the hospital as part of their ongoing care. The motorist had a hospital appointment to get an injection – and paid for enough parking to cover the expected time of their appointment.

When the motorist arrived at hospital, the doctor identified that they had symptoms of COVID. They were kept in hospital for a test and deteriorated quickly – ending up in an Intensive Care Unit (ICU) for 11 nights. When the motorist left the hospital – paying for additional parking was the last thing on their mind.

As the motorist hadn't paid for enough parking – the parking operator issued a parking charge. The motorist appealed to the operator, who refused the appeal on the basis that they were able to pay for more parking before leaving the car park.

When the appeal came to POPLA – we recognised that the parking charge was technically valid because the motorist hadn't paid for enough parking time. But we also recognised how unfair the situation must have felt for the motorist – who'd been through a traumatic time.

As per current process, POPLA contacted the parking operator and asked them to reconsider their decision to refuse the appeal – because of the motorist's mitigating circumstances. The parking operator considered the request but decided not to cancel the parking charge. They explained that the policy of the hospital they were working for was to not cancel parking charges in such circumstances.

As POPLA has to make decisions based on the validity of a parking charge, and the motorist had not paid for enough parking, we had to refuse their appeal.

This case study is particularly interesting in that it highlights that a parking charge being valid might not necessarily mean it is fair. It also shows that a parking operator is representing a landowner whose policies they need to follow. It demonstrates that the current appeal system isn't always set up to consider circumstances such as this.







# The future of private parking

In the last annual report, we talked about the progress that had been made towards the implementation of the Parking (Code of Practice) Act 2019. It will take some time for parking operators to transition to this new Code, but we are hopeful it will provide more consistency across private parking and an improved experience for motorists.

For POPLA, the most exciting of the proposed changes relates to fairer handling of appeals. The new Code sets expectations on how parking operators should handle certain types of appeal - cancelling tickets for innocent errors or mitigating circumstances. This will provide a safety net for motorists and ensure parking charges are issued fairly by operators.

We expect this to revolutionise the way appeals are handled. Indeed, in two of the three case studies we've detailed in this report, the appeals might have been handled quite differently if the new Code of Practice was in place. This includes the expectation that a parking charge would be cancelled if a permit holder later showed evidence that they held a valid permit (as was the case in Case Study 2) - or where the motorist evidences compelling mitigating circumstances (as was the case the Case Study 3).

A Code of Practice that compels parking operators to treat motorists more fairly - and allows an independent appeal handler to overturn the parking operator's decision if they haven't been fair - should create an improved experience for motorists.

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