

# Councils should be able to enforce car parks with ANPR, says BPA

Mark Moran

The British Parking Association has called on the government to reconsider its prohibition on local authorities using ANPR enforcement technology in off-street car parks.

The request was made in a letter sent by BPA chief executive Patrick Troy to local government minister Marcus Jones.

Troy wrote the letter in the wake of press coverage of an apparent increase in custom at shops in Cardigan, Mid Wales, where there was a period of 'free parking' following vandalism to payment machines.

The letter cautions the minister against the idea that simply making parking free would be a panacea for town centres. "It would be wrong to conclude that Cardigan's experiences would be replicated in other towns and cities where relationships between drivers and car park provision are different and much more



Patrick Troy

complex," he wrote.

Troy said work done by the BPA demonstrates there is a need for local authorities to have flexibility in how they manage their parking.

"Paying in advance (the traditional way through providing pay & display machines) has its place in some locations but clearly in others can create a deterrent to visitors to towns to have to return to their vehicles sooner than they otherwise would," he wrote.

"This is why we encourage local

authorities to provide alternative methods of payments such as payment by phone (alongside traditional cash payments) and especially where pay by phone providers give motorists reminders that their ticket is due to expire and the ability to update and extend their paid-for time period remotely.

"One of the most effective ways of making it easier for motorists to park without the stress of having to worry about how long they are

parking is to embrace new technology and the increasing use in the private sector of automatic number plate recognition, which enables motorists to park without paying, to stay as long as they like but to make payment either on their return or online within, say, 24 hours. This is the same principle as applies to London's Congestion Charging scheme and the government's Dart Charge on the Dartford Crossing.

"However, you will know that local authorities do not have the powers to use ANPR in this way as the transport minister wrote to all local authorities last year forbidding them from doing so. In your review of car parking policy can I please encourage you to reconsider this decision in the interests of motorists and consumers and most particularly in relation to hard pressed traders and shopkeepers who rely on trade from car-borne customers in many of the UK's towns and cities."

## BPA updates advice to local authorities on ANPR in car parks

The British Parking Association has published an advice note on the use of fixed ANPR cameras by local authorities in car parks. The note reflects the updates brought about by the Deregulation Act in April on camera enforcement in England and the transfer of off-street parking policy in England from the Department for Transport to the Department for Communities and Local Government in March.

Local authorities could seek to set up "criminalised" regimes using ANPR under Road Traffic Regulation Act 1984 powers. "Such use is subject to the authority's assessment that the use of the camera in particular circumstances is otherwise lawful, for example that it would comply with data protection law and individuals' rights to privacy," states the BPA guidance. "Depending upon the outcome of this assessment, such cameras could then be used to capture evidence used for enforcement of parking contraventions which constitute a criminal offence under the 1984 Act."

Car parks regulated under a "decriminalised" parking

regime within Civil or Special Enforcement Area (C/SEA) must be managed in accordance with the powers set out in the Traffic Management Act 2004, states the BPA.

In April 2015, the government's amendments placed restrictions on the use of camera enforcement, meaning local authorities can only enforce parking restrictions by CCTV or ANPR in the following on-street instances: school keep clear markings; bus stop/stand clearways; on 'red routes'; and in bus lanes. The government required that penalty charge notices issued by local authorities in car parks with C/SEAs be fixed to vehicle windscreens, which effectively means PCNs must be issued by civil enforcement officers (CEOs). "All parking penalty charge notices, regardless of whether the contravention was detected by a person or camera, must be issued by a human," the guidance states. CEOs must check the validity of any contraventions captured by camera before agreeing to serve a PCN. The CEO may potentially become a witness in any subsequent adjudication or

court action."

The BPA guidance adds: "So far as off-street car parking is concerned the Secretary of State for Transport wrote to all English local authorities in September 2014 indicating that the government opinion was that it was unlawful for local authorities to use CCTV/ ANPR in public car parks and informing them that DVLA would not supply information to local authorities in those circumstances. That remains the government's position. Some local authorities challenge this position and claim to have legal opinion to the contrary. The matter is likely to require resolution in the Courts."

The BPA refers to trials being undertaken by the Welsh Government, Denbighshire Council and ANPR International to evaluate the use of ANPR technologies.

The guidance notes that "keeper liability" under the TMA does not apply to council land outside of C/SEAs. A dilemma is posed by the fact the form of keeper liability provided under the Protection of Freedoms Act 2012 specifically excludes local authority land managed under

the civil or criminalised regimes. "It applies only to 'relevant land', which does not include highways maintainable at the public expense, parking provided by a traffic authority (which includes local authorities) and any land on which parking is controlled by statute," states the BPA guidance.

When local authorities are managing parking areas that fall outside of the two statutory regimes, in order for local authorities to comply with their contractual terms of access to the DVLA register they need to join an Accredited Trade Association, the BPA advises.

"The DVLA's policy on such access to the register by organisations managing parking outside of the two statutory regimes is that the organisations must be a member of a trade association that is accredited by the DVLA," states the BPA guidance. "This is the case whether or not registered keeper details are sought from the DVLA via the local authority's electronic link or manually."

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