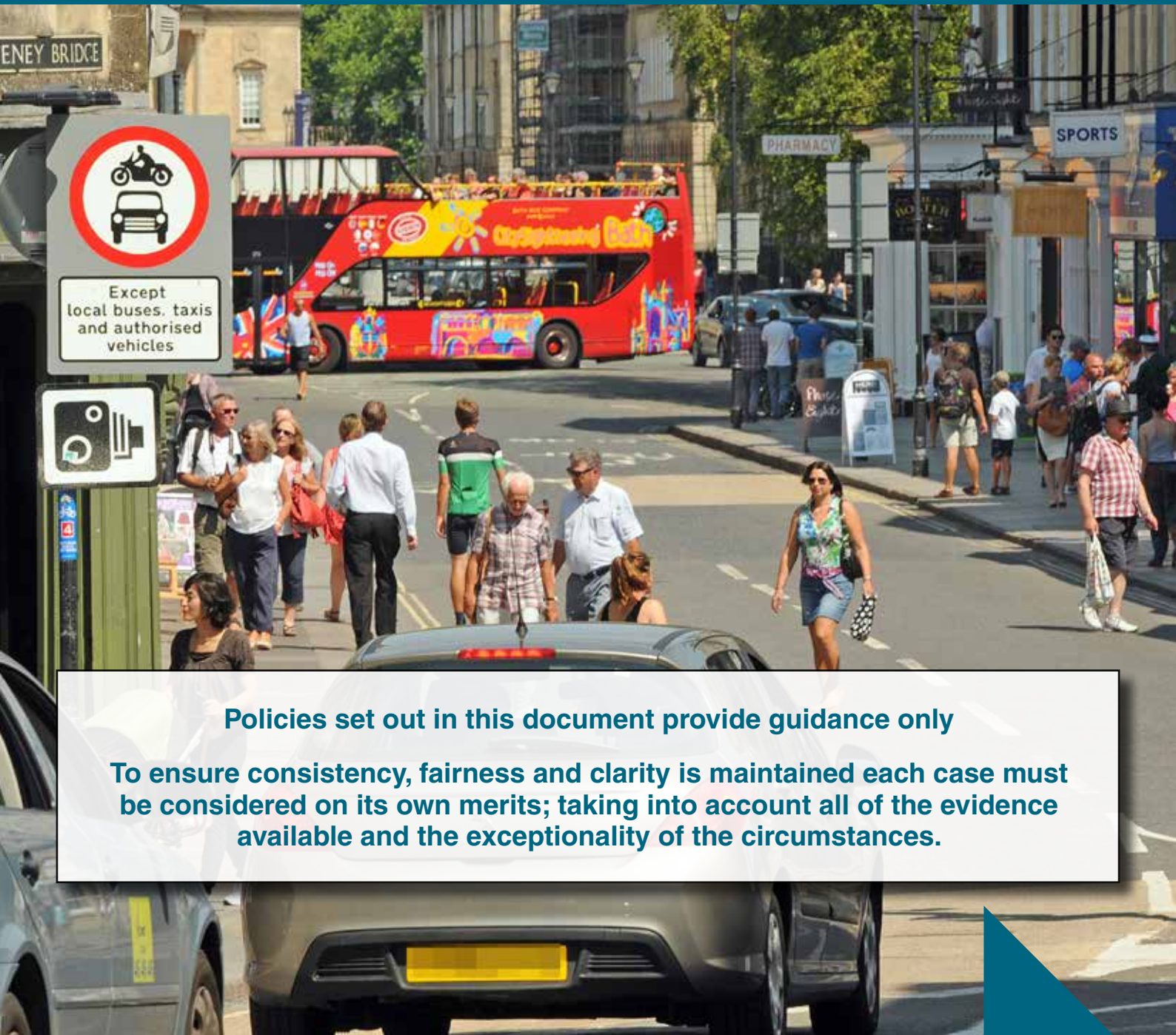


Bus Lane Enforcement

Guidance policies for the enforcement &
cancellation of Bus Lane Penalty Charge Notices



Policies set out in this document provide guidance only

To ensure consistency, fairness and clarity is maintained each case must be considered on its own merits; taking into account all of the evidence available and the exceptionality of the circumstances.

Contents

Introduction	3
Statutory Grounds to Make Representations	4
SG1 The contravention did not occur:	4
SG2 The recipient never was the owner/keeper of the vehicle in question or:	5
SG3 The vehicle had been taken without the consent of the owner	5
SG4 That the recipient is a vehicle-hire firm and:	6
SG5 That the penalty charge exceeded the amount applicable in the circumstances of the case	6
SG6 That there has been a procedural impropriety on the part of the enforcement authority	6
SG7 That the Order which is alleged to have been contravened in relation to the vehicle concerned is invalid.....	6
SG8 Any other information that the motorist/vehicle owner wants the Council to take into consideration	7
SG9 I have been charged separately for this offence by the police.....	7
Mitigating Circumstances	7
MC1 where the motorist/passenger claims to have become unwell and emergency medical intervention was needed	7
MC2 where the motorist claims to be a doctor attending an emergency call out	7
MC3 where the motorist claims to have been unaware of the existence of the restriction	8
MC4 where the motorist claims that snow, foliage, fallen leaves or flooding covered the signs or markings ..	8
MC5 where the motorist claims that their vehicle had broken down.....	8
MC6 where the vehicle in question was on police, fire brigade or ambulance duties.....	8
MC7 where the motorist claims to have been collecting or depositing monies at a bank (cash and valuables in transit –CVIT).....	8
MC8 where the registered keeper liable for payment of the PCN is expected to be absent for a long period of time, e.g. is living abroad or is in prison	9
MC9 where the registered keeper liable for payment of the PCN is said to have died	9
MC10 where the vehicle driven by the motorist is diplomatically registered	9
MC11 where the motorist received a Fixed Penalty Notice (FPN) from the police for the same contravention	9
MC12 where a Council Officer used a bus lane and claims to have been on Council business	9
MC13 where the motorist states they were visiting a friend or relative in urgent circumstances	10
MC14 where the motorist states that the details on the PCN are incorrect, e.g. location.....	10
MC15 where the motorist states they were unaware of enforcement on Bank/Public holidays.....	10
MC16 where the vehicle has an exemption to use the restriction.....	10
MC17 where the motorist claims he/she was loading/unloading.....	10
MC18 where the motorist claims that the restriction is not clearly signed or marked.....	11
MC19 where the motorist was carrying out construction or demolition works etc.....	11
MC20 where the motorist claims that their vehicle was not parked in the alleged location at the time and on the date the PCN was issued	11
MC21 where the motorist claims that a valid authorisation to use the bus lane had been issued	11

Introduction

The guidelines in this document are intended to inform the public and provide guidance to council employees working in the enforcement of parking regulations.

This is consistent with current best practice and aims to provide clarity, consistency and transparency within the enforcement process, compliance with the Department of Transport's policy and Operational Guidance to Local Authorities and with the aspirations of the Traffic Penalty Tribunal and the local Government Ombudsman.

The importance of these guidelines is that they represent a foundation upon which fairness and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be fettered by being unduly formulaic.

This document addresses the following:

The statutory grounds upon which representations may be made

Mitigating circumstances

For ease of reference each statutory ground or mitigating circumstance is split into 2 columns – when we may accept representations and when we may reject representations.

However, it is important to recognise that each case must be considered on its' own merits and clarity, fairness and reasonableness should be paramount.

These policies will be subject to on-going review.

Bus Lane Penalty Charge Notices are issued under the contravention code 34J



Statutory Grounds to Make Representations

The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 set out the grounds under which statutory representations can be made. This section sets them out and common circumstances around each one that we receive.

Representations must be made within 28 days of service of the NtO; however, discretion should be exercised when the vehicle owner provides a valid reason for a delay and has strong ground for representation.

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
SG1 The contravention did not occur:	
Proof provided that the vehicle did not contravene the restriction	No evidence to substantiate the claim and recorded footage clearly shows vehicle in contravention

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
<p>SG2 The recipient never was the owner/keeper of the vehicle in question or:</p> <ol style="list-style-type: none"> 1) Had ceased to be its owner/keeper before the date on which the alleged contravention occurred; or 2) Became its owner/keeper after that date. <p><i>Where a recipient makes representations under the circumstances above, they are legally obliged to include a statement of the name and address of the person to whom the vehicle was disposed of (or from whom it was acquired, as the case may be), if they have that information.</i></p>	
<ol style="list-style-type: none"> a) If the DVLA confirm the motorist was not the registered keeper at the time of the contravention. b) If the previous registered keeper provides proof that the motorist purchased or acquired the vehicle after the contravention, or the subsequent registered keeper provides proof that the motorist sold or disposed of the vehicle before the contravention. 	<ol style="list-style-type: none"> a) If the DVLA confirm the motorist was the registered keeper at the time of the contravention. b) If the previous registered keeper provides proof that the motorist purchased or acquired the vehicle before the contravention, or the subsequent registered keeper provides proof that the motorist sold or disposed of the vehicle after the contravention. c) If the motorist is proven to have hired the vehicle for the day on which the contravention occurred and signed an agreement to take responsibility for PCNs incurred, subject to the time of hire (see S4).
<p>SG3 The vehicle had been taken without the consent of the owner</p> <p><i>This ground for representation covers stolen vehicles and vehicles which were not stolen, but which were used without the owner's consent. It may apply in limited circumstances where a vehicle was being used by a member of the owner's family without the owner's consent, such as where the family member has no permission to use the vehicle and has taken the keys without the owner's knowledge.</i></p>	
<p>If the registered keeper/owner confirms that the matter has been reported to the police as a crime by providing a valid police crime report reference number.</p>	<p>If the current registered keeper is unable to provide any proof of theft or taking without consent.</p> <p>If the police crime report reference number provided does not exist, it does not match the date of the theft or taking without consent, or the details in the report do not match the date of the contravention.</p>

SG4 That the recipient is a vehicle-hire firm and:

The vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

The person hiring it has signed a statement of liability acknowledging his liability in respect of any PCN served in respect of any contravention involving the vehicle

If the hire company are able to provide proof that the vehicle was hired at the time of the contravention, i.e. a signed agreement.

If the hire company are able to provide the full name and address of the person to whom they hired the vehicle.

ACTION – send a new Notice to Owner to the person named by the hire agreement. That person is legally deemed to be the owner of the vehicle for the purposes of processing the PCN.

If the person named by the hire company as the person to whom they hired the vehicle, without proof, either does not exist, cannot be traced or denies responsibility for the contravention.

If the vehicle was being used as a courtesy car without an agreement that had been signed to accept responsibility for PCNs issued.

If the hire company are unable to prove that they neither hired out the vehicle on the date of the contravention nor provide the name and address of the person to whom the vehicle was hired.

SG5 That the penalty charge exceeded the amount applicable in the circumstances of the case

If the PCN/Notice to Owner showed the incorrect amount of penalty charge, i.e. the wrong differential penalty charges level.

If the PCN/Notice to Owner showed the correct amount of penalty charge.

SG6 That there has been a procedural impropriety on the part of the enforcement authority

- 1) Where it is established that the enforcement authority has failed to observe any requirement imposed on it by the Bus Lane Contraventions Regulations in relation to the imposition or recovery of a penalty charge or other sums.
- 2) The taking of any step, whether or not involving the service of a document and the purported service of a Charge Certificate in advance of the time scale set out in the regulations.

If it is established that:

- 1) All requirements of the Bus Lane Contraventions Regulations have been fully and correctly observed by the enforcement authority.
- 2) That service of all documents has taken place in compliance with relevant time scales.
- 3) A fixed penalty notice has not been served for the same contravention on the date and at the time the contravention occurred

SG7 That the Order which is alleged to have been contravened in relation to the vehicle concerned is invalid.

- 1) If the relevant Order was found to be invalid.
- 2) It is established satisfactorily that the penalty charge had been paid.

- 1) If the relevant Order was found to be valid.
- 2) If payment has not been received.

SG8 Any other information that the motorist/vehicle owner wants the Council to take into consideration

The decision whether or not a PCN should be cancelled will only be taken following full consideration of all the evidence available.

SG9 I have been charged separately for this offence by the police

A copy of the ticket issued by the police or a letter from the police confirming that a ticket was issued for this contravention

No evidence to substantiate the claim

Representations must be made within 28 days of service of the NtO; however, discretion should be exercised when the vehicle owner provides a valid reason for a delay and has strong ground for representation.

Mitigating Circumstances

This section gives information on circumstances that can be received in regard to Penalty Charge Notices that are not covered in the statutory reasons above. This is not a comprehensive list but gives an idea of what you may need to deal with. To ensure that we are consistent and fair it is necessary to ensure that each case is assessed on its own merits and a full response provided showing that they have been considered.

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
MC1 where the motorist/passenger claims to have become unwell and emergency medical intervention was needed	
<p>If the motorist provides proof of a medical condition, temporary or permanent, that is consistent with the conditions described and would be grounds for entering the bus lane.</p>	<p>If the motorist cannot provide proof of a medical condition, temporary or permanent, consistent with the conditions described.</p> <p>Or</p> <p>Where other evidence contradicts the motorist's claims.</p>
MC2 where the motorist claims to be a doctor attending an emergency call out	
<p>Where the recorded footage clear shows that the vehicle was displaying a flashing green light to indicate that it was a doctor on an emergency call out.</p> <p>If there was not a flashing green light on the vehicle or it is not evident from the recorded footage then documentary proof is provided by the medical practice whom the GP is employed</p>	<p>If the motorist was not attending a patient in urgent circumstances or there is not any evidence that the doctor was attending an emergency call out</p>

MC3 where the motorist claims to have been unaware of the existence of the restriction	
<p>If it can be established that the signing and markings of the bus lane are at fault (missing and/or unclear), see policy SG1.3, above.</p> <p>Or the evidence/recorded footage shows signage/markings were clearly obscured at the time the contravention occurred.</p>	<p>In all other circumstances.</p>
MC4 where the motorist claims that snow, foliage, fallen leaves or flooding covered the signs or markings	
<p>If it can be established that such conditions prevailed and it is likely that signs and markings were obscured as claimed and there was no alternative indication of the restriction.</p>	<p>If it can be established that such conditions did not cause lines and signs to be obscured as claimed.</p> <p>If the recorded footage directly contradict the motorist's version of events.</p> <p>If any reasonable alternative indication of the restriction was available to the motorist.</p>
MC5 where the motorist claims that their vehicle had broken down	
<p>If the motorist is able to provide satisfactory evidence of a breakdown, i.e. proof of vehicle recovery or a bill of sale for repair or parts and the recorded footage clear shows that the vehicle entered the restriction to leave the remaining carriage way clear and was seen to come to a standstill</p>	<p>If the motorist is unable to provide satisfactory evidence of any kind that their vehicle had broken down.</p> <p>If the cause of the vehicle "breaking down" was due to negligence on the part of the motorist, i.e. the vehicle had not been properly maintained, had run out of petrol or water or a similar reason.</p> <p>If the recorded footage contradicts the motorist's version of events.</p>
MC6 where the vehicle in question was on police, fire brigade or ambulance duties	
<p>If a senior officer of the service concerned supports the representations and there is no reason to doubt that the vehicle was engaged on operational activities.</p>	<p>In all other circumstances.</p>
MC7 where the motorist claims to have been collecting or depositing monies at a bank (cash and valuables in transit –CVIT)	
<p>If the procedure explained in the motorist's representations is consistent with the allowance for loading and unloading; see policy SG1.1, above.</p> <p>If specific arrangements have been agreed with the Authority.</p>	<p>In all other circumstances</p>

<p>The recorded footage clearly shows that the vehicle is specifically adapted for CVIT.</p> <p>Documentary proof is provided to substantiate the claim</p>	
<p>MC8 where the registered keeper liable for payment of the PCN is expected to be absent for a long period of time, e.g. is living abroad or is in prison</p>	
<p>If it is a custodial sentence proof of term would be required. It would not be worthwhile to pursue a PCN if the person is serving a lengthy term. i.e. in excess of two years</p>	<p>On all other occasions.</p>
<p>MC9 where the registered keeper liable for payment of the PCN is said to have died</p>	
<p>Where the circumstances can be confirmed (by sensitive enquiry).</p>	<p>Only if there is significant evidence to doubt the sincerity of the representations.</p>
<p>MC10 where the vehicle driven by the motorist is diplomatically registered</p>	
<p>In all circumstances. <u>A bus lane PCN/Notice to Owner should never be sent to the keeper of a diplomatically registered vehicle.</u></p> <p>All unrecovered penalty charges from keepers of diplomatically registered vehicles, the information concerning these debts should be passed on to the Foreign & Commonwealth Office.</p> <p>[Source – Secretary of State’s Traffic Management and Parking Guidance, Vienna Convention on Diplomatic Relations, Diplomatic Privileges Act 1964 and Government Report on Review of Vienna Convention...]</p>	<p>In no circumstances.</p>
<p>MC11 where the motorist received a Fixed Penalty Notice (FPN) from the police for the same contravention</p>	
<p>To prevent ‘double jeopardy’, if confirmation provided by the police that proceedings for a criminal offence in connection with the same incident have been instituted.</p>	<p>In all other circumstances.</p>
<p>MC12 where a Council Officer used a bus lane and claims to have been on Council business</p>	
<p>If the officer was carrying out emergency or other statutory work within the bus lane and there is evidence to substantiate the necessity for the vehicle to use the bus lane and evidence is provided</p>	<p>If there is no evidence to substantiate the claim or confirmation provided by a senior officer/manager/director</p>

MC13 where the motorist states they were visiting a friend or relative in urgent circumstances	
If due to an emergency the contravention could not be avoided due to the exceptional nature of the incident and proof of the emergency is provided	If there is no evidence to substantiate the claim.
MC14 where the motorist states that the details on the PCN are incorrect, e.g. location	
If there is reason to doubt that the PCN was issued correctly, having reviewed the case and the recorded footage and photographic evidence	If the PCN was fully and correctly issued
MC15 where the motorist states they were unaware of enforcement on Bank/Public holidays	
In no circumstances.	On all occasions.
MC16 where the vehicle has an exemption to use the restriction	
If a PCN has been issued as it is not evident from the footage that the vehicle has an exemption and proof is provided .i.e. unmarked taxi	On all other occasions
MC17 where the motorist claims he/she was loading/unloading	
<p>This is only applicable to Pulteney Bridge Bus Lane. All other bus lanes are subject to a loading ban</p> <p>If evidence is available or provided to show:</p> <ol style="list-style-type: none"> 1. Goods being delivered or collected were heavy, bulky, or numerous and it would be unreasonable to expect them to be carried from a 'legal' parking place. 2. Loading/unloading activity was adjacent to the premises concerned, but includes taking goods to where the recipient may reasonably require them in the premises. 3. Loading/unloading must be continuous while the vehicle is parked in the restricted area. 4. Loading/unloading activity was timely (includes checking goods and signing paperwork, but not delayed by unrelated activity. <p>If in the course of business, including commercial delivery/collections, couriers, multi drop parcel carriers, removal services etc.</p>	No evidence to prove that loading/unloading took place and the recorded footage shows the vehicle enter and travel through the entire length of the restriction without stopping to load/unload

MC18 where the motorist claims that the restriction is not clearly signed or marked	
<p>If signs and/or markings are missing or unclear.</p> <p>If signs and markings are inconsistent with each other and/or Traffic Order or legislation.</p>	<p>If site visits records or photographs establish that signs and/or markings are correct and consistent with each other and the Traffic Regulation Order and the Traffic Signs Regulations General Directions 2002</p>
MC19 where the motorist was carrying out construction or demolition works etc.	
<p>If evidence confirms that the motorist was simply loading/unloading (see policy S1.1, above)</p> <p>If works are of a statutory nature or are exempted from restrictions by a Traffic Order or legislation.</p> <p>If it can be proven that works were an emergency.</p>	<p>In all other circumstances.</p>
MC20 where the motorist claims that their vehicle was not parked in the alleged location at the time and on the date the PCN was issued	
<p>Following consideration of all available evidence, paying particular attention to the vehicle registration mark, make, model and colour of the vehicle:</p> <p>If the motorists can prove the vehicle was not in the location at the time. The VRM had been incorrectly recorded. The recorded footage clearly shows the vehicle to be a different make model to that registered at DVLA and shown on the vehicles registration document</p>	<p>If there is no evidence or if the evidence presented does not support the claim</p>
MC21 where the motorist claims that a valid authorisation to use the bus lane had been issued	
<p>If the motorist can produce a valid authorisation or records show that the motorist held a valid authorisation to park.</p>	<p>If the motorist cannot provide a copy of the valid authorisation or if there is no record of any issue of the authorisation.</p>



Contacts and Further information

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