



Guidelines for the consideration of Representations
against Penalty Charge Notices issued for being in a
Bus Lane

Version 2

Policies set out in this document
provide guidance only.

Each case must be considered on its own merits, taking into
account the exceptionality of the circumstances.

Dated February 2018

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INTRODUCTION

Bus Lanes in Birmingham are for the use of buses, Hackney Carriages (where allowed) and pedal cyclists only. The definition of a bus contained in the Traffic Signs Regulations and General Directions 2002 is 'motor vehicles constructed or adapted to carry more than eight passengers (exclusive of the driver)'. Therefore, a basic interpretation is that a vehicle has a minimum of 10 seats including the driver's seat. However, the vehicle must be approved by the Driver and Vehicle Standards Agency to have that number of seats (previously known as the Vehicle and Operator Services Agency). For some registered local buses this number could be reduced to less than 10 in order to accommodate wheelchair users, again this adaptation must be approved by the Driver and Vehicle Standards Agency.

When observing and capturing bus lane contraventions the operator must bear the following in mind when deciding if a bus lane contravention has taken place:

- The bus lane is clearly marked, signed and operational
- The incident was not exempt under the TRO
- There is no evidence of action being taken by a Police Officer in uniform on that length of road covered by the CCTV camera.
- The vehicle's actions in the bus lane were not merely clipping the start or end of the bus lane.
- If the vehicle entered the bus lane it proceeds for more than 20 metres after so entering.
- At least a significant part of the vehicle infringed the bus lane restriction i.e. more than 50% of the vehicle.
- The vehicle used the bus lane to gain advantage over traffic using the correct lane.

A bus lane contravention begins where a vehicle breaks and crosses the solid white boundary line between the bus lane and the remainder of the carriageway, and travels an unreasonable distance in it without good reason during its time of operation, or passes through relevant traffic signs forming a gateway or bus only street.

Signs ahead of a bus lane show the types of vehicle allowed in the lane and the times of operation. If no times are given, the bus lane is operational 24 hours a day, 7 days a week.

Bus lanes in the City Centre operate at all times of the day, every day of the week. Elsewhere, the operational times are as stated on the signage i.e. 7am-7pm etc.

The policy guidelines in this document have been produced to help and inform members of the public who have received a Penalty Charge Notice for being in a Bus Lane.

This approach is consistent with current best practice and meets with the aspirations of the Traffic Penalty Tribunal and the Local Government Ombudsman. This document aims to provide clarity, consistency and transparency within the enforcement process.

What is important about 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.

The policies address the following:

The statutory grounds upon which representations may be made
Mitigating circumstances
The acceptance or rejection of representations

It is important to recognise that each case is assessed on its individual merits and circumstances for Bus Lane Enforcement cases. If a motorist is able to demonstrate that they fall within one of the exemptions referred to in the Traffic Regulation Order, the PCN will normally be cancelled. Alternatively, a PCN will normally be cancelled if a motorist is able to demonstrate to the Council that there were genuine mitigating circumstances.

These policies will be subject to ongoing review.

CHARGE LEVEL OF PENALTY CHARGE NOTICE

The level of penalty charge applicable to Bus Lane enforcement is £60.00 (discounted to £30 if paid within 14 days beginning with the Date of Service. Please note the Date of Service has been calculated as being 2 working days after the date of positing.

Penalty Charge Notices are issued under Contravention Code 34J – Being in a Bus Lane and there is no observation period given before a Penalty Charge Notice can be issued.

1. IF VEHICLE IS CLASSED AS A BUS

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the registered keeper states that the vehicle is a Bus – proof to be provided that the vehicle has been registered with the DVLA as a Bus ie. copy of Log Book.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If proof cannot be provided that the vehicle has been registered as a Bus.</p>

2. HACKNEY CARRIAGE VEHICLE

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If Hackney carriage vehicles are permitted to travel in the bus lane and a vehicle claims to be a Hackney Carriage – proof to be provided that the vehicle was operating as a licenced Hackney Carriage at the time.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If Hackney Carriage vehicles are not permitted to travel in a bus lane.</p> <p>If proof cannot be provided that the vehicle has been registered as a licenced Hackney Carriage at the time the Penalty Charge Notice was issued.</p> <p>If proof cannot be provided that the vehicle was operating as a Hackney Carriage at the time.</p>

3. TO HAVE BEEN UNAWARE OF THE EXISTENCE OF A BUS LANE OR THE BUS LANE RESTRICTION IS NOT CLEARLY SIGNED OR MARKED

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If signs and/or markings were missing or unclear.</p> <p>If signs and/or markings were inconsistent with each other and/or the Traffic Order or legislation.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If site visit records or photographs establish that signs and/or markings were correct and consistent with each other and the Traffic Order, at the time the contravention occurred.</p>

4. MORE THAN ONE PENALTY CHARGE NOTICE HAS BEEN INCURRED WITHIN MINUTES OF EACH OTHER DURING THE SAME JOURNEY

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>Discretion may be exercised not to enforce all of the Penalty Charge Notices if they have been issued during one continuous journey.</p>	<p>If more than one Penalty Charge Notice has been incurred on the same day but were not part of a continuous journey.</p> <p>The Penalty Charge Notice will be enforced in circumstances where a Penalty Charge Notice has been issued in similar circumstances on a previous occasion and has been cancelled with the motorist being advised that their vehicle is not permitted in a Bus Lane, unless there are specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>

5. THE DETAILS ON THE PENALTY CHARGE NOTICE ARE INCORRECT

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If there is reason to doubt that the Penalty Charge Notice was issued incorrectly, taking into account evidence provided by the Civil Enforcement Officer.</p>	<p>If the Penalty Charge Notice was correctly issued.</p>

6. UNAWARE OF ENFORCEMENT ON BANK/PUBLIC HOLIDAYS

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>Where there are specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>In the absence of specific mitigating circumstances.</p>

7. WAS THE HIRER OF THE VEHICLE AND WISH TO MAKE A REPRESENTATION

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>Representation can only be considered if the Hire/Lease Company has discharged liability as the registered keeper of the vehicle and provided the name and address of the hirer. In these circumstances a Notice to Owner will be served on the hirer of the vehicle enabling a representation to be made.</p> <p>Where there are specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If the Hire/Lease Company has made payment for the Penalty Charge Notice on behalf of the hirer (in accordance with the terms and conditions of the signed hire agreement).</p> <p>In the absence of specific mitigating circumstances.</p>

8. PAYMENT OF THE PENALTY CHARGE NOTICE WAS MADE WITHIN THE DISCOUNTED PERIOD AND FORMAL DOCUMENTATION HAS BEEN RECEIVED ADVISING THE CASE IS STILL OUTSTANDING.

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If it can be established from the frank date on the envelope that payment had been posted within the discounted period so as to arrive by the 14th day.</p> <p>If it can be established from records held that the payment was made within the discounted period.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If payment was declined or refused by the bank due to insufficient funds being available in the account and the 14 day discount period has expired.</p>

9. THE VEHICLE WAS NOT AT THE ALLEGED LOCATION AT THE TIME AND ON THE DATE STATED ON THE PCN

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the motorist provides sufficient evidence to confirm that the vehicle cannot have been or was not at the location at the time of the contravention.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If the motorist does not provide sufficient evidence to confirm that the vehicle cannot have been or was not at the location at the time of the contravention.</p> <p>If there is no evidence or if the evidence presented does not support the claim or is inconclusive.</p>

10. THAT THERE HAS BEEN A PROCEDURAL IMPROPRIETY ON THE PART OF THE ENFORCEMENT AUTHORITY.

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
<p>Where it is established that the enforcement authority has failed to observe a legal requirement imposed on it by the Traffic Management Act and/or regulations in relation to the imposition or recovery of a penalty charge or other sums.</p> <p>Where it is established that the enforcement authority has taken 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.</p> <p>If a fixed penalty notice, as defined by Section 52 of the Road Traffic Offenders Act 1988, has been given in respect of that conduct, or the conduct constituting the contravention in respect of which the Penalty Charge Notice has been given is the subject of criminal proceedings; only likely to be the case on or near pedestrian crossings.</p>	<p>If it is established that:-</p> <p>The Traffic Management Act and/or regulations have been fully and correctly observed by the enforcement authority.</p> <p>That service of all documents has taken place in compliance with relevant time scales.</p> <p>A fixed penalty notice has not been served.</p>

11. ATTENDING AN EMERGENCY OR ANOTHER VEHICLE THAT HAD BROKEN DOWN.

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the motorist is able to provide satisfactory evidence of the emergency, or that they were attending to a vehicle that had broken down, i.e. a report of an accident or incident.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If the motorist is unable to provide satisfactory evidence that they were attending an emergency or another vehicle which had broken down.</p> <p>If the CCTV footage contradicts the motorist's version of events.</p>

12. THE VEHICLE HAD BROKEN DOWN

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the motorist is able to provide satisfactory evidence of a breakdown i.e. proof of vehicle recovery, which confirms the date, time and location.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If the motorist is unable to provide satisfactory evidence 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, e.g. the vehicle had not been properly maintained, had run out of petrol or water or a similar reason.</p> <p>If the CCTV footage contradicts the motorist's version of events.</p>

13. IS A CURRENT BLUE BADGE HOLDER/TRANSPORTING A CURRENT BLUE BADGE HOLDER

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>Disabled Badge Holders are not permitted to travel through a bus lane. However, consideration may be given where there are specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>In the absence of specific mitigating circumstances.</p>

14. THE VEHICLE IN QUESTION WAS ON POLICE, FIRE BRIGADE OR AMBULANCE DUTIES.

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If a senior officer of the service concerned supports the representation and there is no reason to doubt that the vehicle was engaged on operational activities.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>In all other circumstances.</p>

15. THE REGISTERED KEEPER LIABLE FOR PAYMENT OF THE PENALTY CHARGE NOTICE IS SAID TO HAVE DIED.

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>Where the circumstances can be confirmed i.e. copy of a death certificate.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If there is reason to doubt the representation.</p>

16. COMPASSIONATE REASONS

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the motorist provides satisfactory evidence that may give reason for discretion to be applied on compassionate grounds.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If there is reason to doubt the representation.</p>

17. BECAME UNWELL WHILE DRIVING

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the motorist provides satisfactory evidence of a medical condition, temporary or permanent, that is consistent with the conditions described.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If the motorist cannot provide satisfactory evidence of a medical condition, temporary or permanent, consistent with the conditions described.</p>

18. VISITING A FRIEND OR RELATIVE IN URGENT CIRCUMSTANCES i.e MEDICAL REASONS

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the motorist provides satisfactory evidence that due to an emergency the contravention could not be avoided due to the exceptional nature of the reason for the journey.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If there is reason to doubt the representation.</p>

19. CARRYING OUT CONSTRUCTION OR DEMOLITION WORKS ETC.

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If evidence confirms that the motorist was simply loading/unloading (see Statutory Grounds to Make Representations number 1(a) below).</p> <p>If a valid waiver had been issued.</p> <p>If works were of a statutory nature or are exempted from restrictions by a Traffic Order or legislation.</p> <p>If it can be proved that works were an emergency.</p>	<p>In all other circumstances</p>

Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.	
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20. THAT SNOW, FOLIAGE, FALLEN LEAVES OR FLOODING COVERED OR OBSCURED THE SIGNS OR MARKINGS

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<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>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If it can be established that such conditions did not cause signs and markings to be obscured as claimed.</p> <p>If photographic evidence directly contradicts the motorist's version of events.</p> <p>If any reasonable alternative indication of the restriction was available to the motorist.</p>

21. WAS REQUIRED TO ENTER THE BUS LANE TO EXIT/GAIN ACCESS TO A PROPERTY

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If footage shows that the vehicle crossed the bus lane in order to exit or gain access to a property, but only when the vehicle was immediately adjacent to the property.</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>If footage shows that the vehicle travelled along the bus lane before gaining access to or after exiting a property.</p>

STATUTORY GROUNDS TO MAKE REPRESENTATIONS

The Road Traffic Regulation Act 1984 Sections 1, 2, 4 and 9 (as amended)
The Transport Act 2000 Section 144(1), (2) and (9) (as amended)
The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005
Bus Lane Enforcement PCN (Approved Device) (In this case a camera with a digital recording system capturing digital video images)

If you believe that the penalty charge should not be paid, there are six statutory grounds on which representations may be made, which are set out below:-

1. THE PENALTY CHARGE NOTICE WAS ISSUED INCORRECTLY BECAUSE:

1(a) The alleged contravention did not occur

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If a vehicle was being used to load and unload goods to a premises situated within bus lane or bus only road when the parking restrictions at the location did not prevent loading and unloading to take place – satisfactory evidence should be provided.</p> <p>Where there are specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>In the absence of specific mitigating circumstances or where loading is prohibited.</p>

1(b) The penalty exceeded the relevant amount

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If the Penalty Charge Notice showed the incorrect amount of penalty charge.</p>	<p>If the Penalty Charge Notice showed the correct amount of penalty charge.</p>

1(c) The circumstances leading to the issue of the PCN are subject to criminal proceedings or a Fixed Penalty Notice (FPN) has been issued.

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If confirmation is provided by the police that proceedings for a criminal offence in connection with the same incident have been instituted to prevent ('double jeopardy').</p> <p>Where there are other specific mitigating circumstances requiring the case to be assessed on its individual merits.</p>	<p>In all other circumstances.</p>

2. I AM NOT LIABLE TO PAY THE PENALTY CHARGE NOTICE BECAUSE:

2(a) I was not the owner/keeper of the vehicle at the time of the alleged contravention

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
<p>If the DVLA confirm the motorist was not the registered keeper at the time of the contravention.</p> <p>If the previous registered keeper provides satisfactory evidence that the motorist purchased or acquired the vehicle after the contravention, or the subsequent registered keeper provides satisfactory evidence that the motorist sold or disposed of the vehicle before the contravention.</p>	<p>If the DVLA confirm the motorist was the registered keeper at the time of the contravention.</p> <p>If the previous registered keeper provides satisfactory evidence that the motorist purchased or acquired the vehicle before the contravention, or the subsequent registered keeper provides satisfactory evidence that the motorist sold or disposed of the vehicle after the contravention.</p> <p>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 Penalty Charge Notices incurred, subject to the time of hire (see Statutory Grounds for Making a Representation number 2c).</p>

2(b) I was not the hirer of the vehicle at the time of the alleged contravention

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
If the hirer of the vehicle is able to provide satisfactory evidence that the vehicle was hired at the time of the contravention but they had not signed a statement of liability.	If the hirer of the vehicle is unable to prove that they did not sign a statement of liability at the time the vehicle was hired.

2(c) I was the registered owner/keeper of the vehicle on the date of the alleged contravention, however;

- (i) We are a hire company and the hirer had signed a statement accepting liability.**
- (ii) The vehicle was being kept by a vehicle trader at the time of the contravention**
- (iii) The vehicle was being used without my consent at the time of the contravention.**

MAY ACCEPT REPRESENTATIONS	MAY REJECT REPRESENTATIONS
<p>If the hire company are able to provide satisfactory evidence that the vehicle was hired at the time of the contravention, i.e. a signed agreement.</p> <p>If the hire company are able to provide the full name and address of the person to whom they hired the vehicle.</p> <p>If the hire company are able to supply the name and address of the trader and documentary evidence.</p> <p>If the vehicle had been stolen, details of Police crime number or insurance claim number to be provided.</p>	<p>If the person named by the hire company as the person to whom they hired the vehicle, either does not exist, cannot be traced or denies responsibility for the contravention.</p> <p>If the vehicle was being used as a courtesy car without an agreement that had been signed to accept responsibility for Penalty Charge Notices issued.</p> <p>If the hire company are unable to prove that they 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.</p> <p>If unable to prove that the vehicle had been stolen.</p>

3. OTHER REASONS

MAY ACCEPT REPRESENTATION	MAY REJECT REPRESENTATION
<p>If there are any other reasons other than the grounds listed which require the case to be assessed on its individual merits.</p> <p>The decision whether or not a Penalty Charge Notice should be cancelled, will only be taken following very careful consideration taking into account all of the evidence available.</p>	<p>The decision whether or not a Penalty Charge Notice should be cancelled will only be taken following very careful consideration, taking into account all of the evidence available.</p>

