

## Mr [REDACTED] J [REDACTED] - v - Brighton & Hove City Council

### Appeal Details

Case number:	BH00245-2204	Appeal Raised:	25/04/2022
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	13/05/2022
Number of PCNs:	1	Adjudicator:	Annie Hockaday

Decision - PCN BH94858995

**Mr [REDACTED] J [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to Brighton & Hove City Council

Penalty Charge Amount: £60.00

Issued: 25/02/2022

Contravention: 15/02/2022 14:45

Marlborough Place (z)

34 - Being in a bus lane

Please see the next page for the Adjudicator's Reasons

## Adjudicator's Reasons

1. Mr J [REDACTED] received two Penalty Charge Notices (PCNs) for driving through a bus lane on Marlborough Place on 15 February and 1 March 2022. He appeals to this Tribunal. This is a combined decision for appeals BH00244-2204 and BH00245-2204.
2. The outcome is that at my invitation the Council have used discretion to cancel the PCN for 1 March so there is nothing to pay for that PCN. This leaves the PCN for 15 February and I find that the contravention is proved and Mr J [REDACTED] is liable to pay £60. My reasons are as follows.

### Introduction

3. The videos shows the car approach northbound on Marlborough Place and travel straight on through the 4.3 metre 'bus gate' type of bus lane at this junction and on into Gloucester Place. If the car had turned right at this junction into the continuation of Marlborough Place, it would have avoided the bus lane.
4. Mr J [REDACTED] replied to the PCNs that the signs direct 'local traffic' to use this lane and he was travelling from the seafront to Gloucester Street, off Gloucester Place, and there is no other way to access Gloucester Street. For this Tribunal he maintains that as 'local traffic' he was permitted to use the route, questions the status of a 'bus gate' and denies that it is a bus lane. The Council replied with their decisions to enforce and enclosed a map of a permitted route to reach Gloucester Street (use North Road driving east towards the junction, left onto Gloucester Place and left into Gloucester Street).

### Different types of bus lane

5. Mr J [REDACTED] is not alone in being unfamiliar with the term 'bus gate'. A 'bus gate' is one type of 'bus lane' within its legal meaning in section 144 of the Transport Act 2000. The use of 'bus lane' in the PCN is appropriate for all the different types (e.g. with-flow, contraflow, bus gate).
6. The 'with-flow' type occupies one lane while leaving a general lane running alongside and is shown by a thick white boundary line and rectangular blue signs. The short 'bus gate' type involved in this case restricts the route north through the junction and this is why it has a round blue sign and marking 'BUS GATE' at the entry point; other traffic needs to take a different route.
7. The marking 'BUS GATE' is in The Traffic Signs Regulations and General Directions 2016. DfT guidance considers 'bus gates' in The Traffic Signs Manuals, Chapter 3 2019. It is unfortunate that the Highway Code and 'Know your traffic signs' have not yet been updated to describe the 'bus gate' marking, but they show the round blue sign that signifies 'bus route only'. The PCN refers to the Transport Act 2000 and The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 (SI 2005 No.2757). The alleged contravention of 'being in a bus lane' is appropriate. The PCN is valid.

### The signs and markings

8. A key question is whether the signage is adequate to inform drivers of this bus lane (regulation 18 The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and The Traffic Signs Regulations and General Directions 2016). The

Council rely on a complex history of traffic regulation orders. The bus lane is in the order with a short reference '638' dated 9 June 2021. The Council provide maps, images and a sample driver's eye video.

9. The information for drivers in this 20 mph area is as follows:

- a. After turning left off the main route north on the A23 Grand Parade, a white sign on the left advises 'All traffic' to continue straight on and that turning right is 'Local Access only'. Straight on is Church Street and leads drivers away from the bus lane at the next junction that is the subject of this PCN;
- b. The mouth of the right turn has a surface marking 'Bus Taxi Access Only'. This marking is becoming faded;
- c. If a driver turns right to drive north on Marlborough Place, there is a large advance sign before the next junction. It shows that from the junction left is blocked, straight on is a 'bus route only' and 'other traffic' needs to turn right. It does not offer an exception to the bus route for 'access' or 'local traffic';
- d. This is followed by a marking 'Turn Right arrow' for 'OTHER TRAFFIC';
- e. Two traffic light signal heads (on a driver's left as they reach the junction and on the far side of junction) carry a blue sign with an arrow right. These signs instruct traffic in the direction they must travel, with an exception only for buses, taxis and cycles. These signs do not state an exception for 'access' or 'local traffic';
- f. The entry point has a round blue 'bus route' sign and a marking 'BUS GATE'. For drivers travelling north to the junction, the bus lane is beyond the yellow box marking. The intention is that drivers should turn right to avoid the bus lane, following the continuation of Marlborough Place eastbound.

10. The marking 'local access only' at the mouth of the earlier junction is to allow access to the properties along that stretch of Marlborough Place before reaching the junction with North Road where this bus lane is located. That information about 'access' is terminated or replaced when a driver reaches more markings and signs that tell drivers that they must turn right at the junction and that 'straight on' from the junction is restricted as a bus lane, without an exception for 'access' or 'local traffic'.

11. The marking at the earlier junction does not cause the later signs and markings to be misleading. I am satisfied that advance signs and the sign and marking at the entry point when considered as a whole in their context sufficiently comply with the regulations and were adequate to inform drivers of the bus lane restriction at the junction and of the option to turn right into Marlborough Place at the junction where the bus lane is located.

12. I accept that Mr J [REDACTED] did not realise the meaning of the signs and marking before the junction or at the entry point, but they were there to be seen. Unfortunately he made a mistake. He has not shown a reason under the law to win. Both contraventions are proved.

### Discretion

13. By message on 13 May, I invited the Council to reduce enforcement to one PCN and to cancel the other, for the following reasons. The first PCN is treated as served during 1 March, not prior to the second journey. It is essentially one and the same mistake. The Council's discretion remains live throughout the process. Under general principles of

public law, authorities have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest. The aim of civil enforcement is to increase compliance and enforcement should be not be viewed as a means of raising revenue. The Council agreed to cancel the PCN for 1 March so there is nothing to pay for that PCN.

14. The amount for a bus lane contravention starts at £60. The law requires the Council to offer a 50% discount in the PCN but after that any later discount is only at their discretion. They gave another chance to pay 50% in the Notice of Rejection for the PCN for 15 February but that offer no longer applies. Mr J [REDACTED] is liable to pay £60 for the PCN for 15 February.

Annie Hockaday  
Adjudicator  
13/05/2022