

Mr [REDACTED] A [REDACTED] - v - Nottingham City Council

Appeal Details

Case number:	NG00397-2310	Appeal Raised:	25/10/2023
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	29/11/2023
Number of PCNs:	1	Adjudicator:	Annie Hockaday

Decision - PCN NG43424104

Mr [REDACTED] A [REDACTED], you have lost this appeal.

You need to pay the penalty charge to Nottingham City Council

Penalty Charge Amount: £70.00

Issued: 13/09/2023

Contravention: 10/09/2023 04:00

Cheapside / Poultry (bus Gate)

34 - Being in a bus lane

Please see the next page for the Adjudicator's Reasons

Adjudicator's Reasons

1. The PCN is for driving in a bus lane at 04:00 on 10 September 2023. The Council rely on a video of the car driving in the bus lane and on images of the signs in place in advance of the restriction and at its entry point.
2. Mr A brings this appeal to say that he was not driving on 10 September 2023 and the PCN should be sent to Mr Y. I start with what the law says about who is liable to pay a bus lane PCN.
3. The law is clear that liability is not decided by identifying the driver at the time of the journey. Liability is decided by reference to ownership of the car at the time. I refer to The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 and The Traffic Management Act 2004 (TMA).
4. The starting point is that the 'owner' at the date of the contravention is liable. The registered keeper at the DVLA is presumed to be the owner, unless evidence is provided to show otherwise (s.92(1) TMA 2004). On 12 September 2023, the DVLA identified Mr A as the registered keeper and so he is presumed to be the owner as at 10 September 2023. It is for Mr A to provide evidence to overcome the statutory presumption that, as the registered keeper, he is presumed to be the owner.
5. I look at the evidence from Mr A. He says that he bought the car from Mr Y on 5 September 2023, discovered that it had faults and returned it to Mr Y on 6 September 2023. When writing his representations, he stated that he was waiting to receive the V5C to be able to transfer the car back into the name of Mr Y.
6. Mr A provides a screenshot of a diagnostic report that shows faults. He says that he dropped the car back to Mr Y on 6 September, and when Mr Y was not willing to refund the full amount he called the police (crime reference screenshot). The screenshot of a chat on 6 September shows that Mr Y was offering to refund £335 less than the price. When writing his email on 23 October 2023 and starting this appeal on 25 October, Mr A says that he and the seller, Mr Y, are still having a debate over it.
7. The Council asked Mr A to provide more evidence that ownership had transferred back to Mr Y after 5 September. They asked for evidence that Mr A had received a refund, or a DVLA acknowledgement slip or evidence of when Mr A cancelled insurance cover for the car or road tax (letters 27 September and 10 October). Mr A has not provided evidence of receipt of a refund, or from the DVLA, or about insurance cover or tax.
8. I accept Mr A's evidence that he was not driving the car on 10 September 2023. However, I conclude that he has not provided enough evidence to overcome the statutory presumption that, as registered keeper, he was the owner on 10 September 2023. This was a private sale between two individuals by which Mr A acquired ownership on 5 September 2023. There is an ongoing dispute between Mr A and Mr Y, arising out of what Mr A discovered about the condition of the car after he bought it. Mr A has not proved that it is more likely than not that ownership transferred back to Mr Y prior to 10 September 2023. For these reasons, I find that Mr A is liable as registered keeper and owner.

9. The amount starts at £70. 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 offered another chance to pay 50% in the Notice of Rejection, but Mr A did not take that offer. Mr A is liable to pay £70.

Annie Hockaday
Adjudicator
29/11/2023