

**THE JOINT REPORT OF THE
BUS LANE ADJUDICATORS
2009/10**

Report of the Bus Lane Adjudicators for England

As Chief Adjudicator I am pleased to present the Annual Report for the Bus Lane Adjudicators to the Bus Lane Committee.

The number of councils undertaking civil enforcement of parking remains small in comparison to those enforcing parking, however, the last year has seen some of England's larger cities joining including Liverpool and Bristol. Bournemouth embarked on bus lane enforcement in relation to a specific location which we discuss below.

Consequently adjudicators have seen an increase in the number of appeals of over thirty per cent however the rate of appeal has remained broadly static. There has however been a reduction in the number of appeals not contested by the councils from 41% in 2008/09 to 37% in 2009/10 which has affected the overall number of appeals allowed (including not contested) which has reduced from 66% to 65%. Similarly appeals refused by the Adjudicators including out of time and withdrawn by the appellant reduced from 30% to 29% in 2009/10.

Whilst the number of penalty charge notices issued has remained broadly constant across authorities who have been enforcing during both 2008/09 and 2009/10, there has been a significant increase in PCNs issued in Bath and NE Somerset (BANES), but there were almost no appeals. We look forward to reading in BANES's own annual report of the approach they take to achieve their remarkable record.

Bus lane enforcement is based on camera footage with the PCN being sent to the vehicle owner a little while after the incident. Most councils include a 'still' shot showing the vehicle registration number, but the picture does not necessarily show the vehicle obviously in a bus lane. Therefore the vehicle owner often asks for more information about the alleged contravention and in many cases a company owning the vehicle needs more information to establish who was driving the vehicle and why. Councils send a video clip to the tribunal and to the appellant with their evidence but it seems that few councils make the footage available at the representations stage, although some send a selected sequence of the still frames. If issues are raised by the pictures the only option the vehicle owner has is to appeal to the Traffic Penalty Tribunal because there is not a further opportunity to raise concerns with the council. This may account for the volume of appeals that are not contested. Adjudicators consider that the sooner the evidence is disclosed to the vehicle owner the more likely that the dispute will be resolved without recourse to the tribunal.

Because of the video evidence it might seem that bus lane appeals would be less suitable for telephone appeals, but that is far from our experience. The development of telephone hearings reported elsewhere is of equal importance to bus lane appeals usually with all parties being able to look at and comment on the video evidence in the hearing.

As with parking regulations, civil bus lane enforcement is predicated on Traffic Regulations Orders (TROs). Again, like parking, Adjudicators in considering evidence from councils have found the TROs to vary enormously between councils. The Adjudicators are therefore pleased that the Bus Lane Adjudication Joint Committee took the lead in commissioning a Working Group to produce specimen articles and clauses in relation to bus lane traffic regulation orders. This initiative will be both of benefit to appellants and councils and will assist in promoting a consistency of approach. This initiative was sparked off by the Judicial Review in the Oxford High Street appeals.

Judicial Review

Last year we reported that permission had been granted to Oxfordshire County Council for Judicial Review concerning the bus lane in the High Street. The hearing took place in Birmingham in March 2010. The application was successful and Mr Justice Beatson provided some helpful insights in bus lane enforcement.

R. (on the application of Oxfordshire County Council v Bus Lane Adjudicator [2010] EWHC 894 (Admin)

A motorist received a PCN for being in a bus lane in the High Street, Oxford. The photograph on the PCN did not show him to be in a bus lane and he could not remember seeing a bus lane in Oxford. He did remember being lost and following instructions from his 'satnav'. He appealed to the Bus Lane Adjudicator on the basis that he was unfamiliar with the area and had not appreciated that he had entered a bus lane. The adjudicator allowed his appeal and the County Council applied for a review. That was rejected by the Chief Adjudicator who upheld the decision to allow the appeal.

Civil penalties for bus lane contraventions are governed by section 144 of the Transport Act 2000.

(4) A bus lane contravention is a contravention of any such provision of—

- (a) a traffic regulation order,*
- (b) an experimental traffic order, or*
- (c) a temporary traffic restriction order,*

as relates to the use of an area of road which is or forms part of a bus lane.

(5) And an area of road is or forms part of a bus lane if the order provides that it may be used—

- (a) only by buses (or a particular description of bus), or*

(b) only by buses (or a particular description of bus) and some other class or classes of vehicular traffic.

The Oxfordshire TRO was drafted widely. Instead of *reserving* the area of road only for buses, it *prohibited* other classes of vehicle from using it and was signed accordingly with the prohibited vehicle sign (Diagram 619 in the Traffic Signs Regulations and General Directions 2002) and not with bus lane signs. The original adjudicator allowed the appeal on the basis that the signs leading to the prohibited restriction were not adequate to advise motorists of the impending restriction and so the Council had failed in its duty under the Local Authorities Traffic Orders (England and Wales) Regulations 1996 (LATOR)

The County Council sought a review and the reviewing adjudicator went further deciding the length of carriageway did not constitute a bus lane because it went further than Section 144 and that some of the exemptions did not constitute a 'class' of traffic. She confirmed that the appeal should remain allowed. She also held that the sign 619 conveyed a different restriction from a bus lane and that failure to comply with it was an offence due to be decriminalised by the Traffic Management Act 2004, but that those provisions were not yet in force. The County Council applied to the High Court for judicial review.

The application was successful. Beatson J. held that,

1. taken as a whole, the Order provided that the designated section of road could be used only by buses and the other specified vehicles, and that the exemptions, wide though they were, could be construed as classes of vehicles within the meaning of Section 121 of the Road Traffic Act 1884.. This satisfied the requirements of section 144(5). The TRO should be construed with regard to its overall effect. He disagreed that sign 619 should not be used to sign a bus 'gate';
2. that proper regard should be paid to the Traffic Signs Manual, Guidance given by the Secretary of State to local authorities, supplementary to the TSRDG, which advise that in the circumstances described in the TSM sign 619 could be used to sign a bus gate; but
3. In refusing the County Council application for a declaration that the signs leading to the restriction complied with Regulation 18 of LATOR he confirmed that signing in a particular case and whether the council had fulfilled its duty under Regulation 18 of LATOR was a matter of fact for the adjudicator.

The Oxford High Street arrangement included a sign advising drivers who found themselves at the bus gate restriction to make a U-turn. There have been other appeals where this has proved perplexing to a motorist.

In **BH07630L** the appellant was unfamiliar with the area and made a right turn into North Street, which was not prohibited, however, as the adjudicator described, *"the motorist who does so appears to be quickly faced by a 2 way bus only street route and no alternative but to do a U turn and head back*

along North Street in the opposite direction". The appellant had to decide whether to make a U-turn (across the path of oncoming buses) or proceed. She took the latter course of action. The adjudicator found that the plan produced by the council that purported to show where the signs are was not to scale and the bus gate signs were not in fact where marked on the plan.

SQ05097F was another case where vehicles could approach the bus lane but were required to do a U-turn to avoid travelling along it. As well as questioning this arrangement the adjudicator, rejecting the council's assertion that there was a feasible alternative route, found that the times of operation of the bus lane had the effect of restricting access to a yard, where the appellant plumber needed to service premises, for more than eight hours a day, a restriction that appeared to fall foul of Section 3 of the Road Traffic Regulation Act 1984.

The Bournemouth Appeals

It can be seen from Section 144 of the 2000 Act that a temporary bus lane can be created under Section 14 of the 1984 Act. This is what happened in Bournemouth and we received over fifty appeals against PCNs issued for contraventions against the temporary bus lane. It was an unusual set of circumstances where the council had had to close a bridge for repairs necessitating rerouting buses through a gated park, making the gate, by means of a temporary traffic order, a bus gate. Not surprisingly the entire arrangement had become something of a cause célèbre locally and it was consistently claimed by appellants that they were not aware of the bus gate restriction when they travelled through it.

The adjudicator inspected the site and held a consolidated hearing of a significant proportion of the appeals. In allowing them the adjudicator, emphasizing that he took the whole circumstances into account said that the signing:

"... in the context of the particular circumstances prevailing at the time these PCNs were issued did not adequately draw the attention of a driver using the road, whether in daylight or at night, to the restriction.

The Council might have been expected to realise that the operation of a bus only restriction on a narrow road in the middle of parkland on a route which was normally gated when normal traffic flow in the area had been substantially disrupted was bound to cause confusion.

I have no doubt that the particular circumstances required much clearer advisory signing on the approach to the restriction and signing appropriate for a bus gate at the point where it began.

I find that the signing was ambiguous in daylight and practically invisible at night.

Although the Council considers that all drivers who have contravened the restriction have done so deliberately and as a matter of convenience I cannot sensibly ignore the contrary evidence given by the Appellants and the fact that over 4000 journeys were made through the restriction in a nine week period. In my judgement this is clear evidence that the signing was ambiguous.”

It must be emphasised that this was an extremely unusual situation. However the number of appeals that arose shows that it is important for the council to assess how well the temporary arrangements are working and recognise that there may be genuine misunderstandings on the part of drivers.

As in these cases, in many bus lane appeals Adjudicators hear council officers expressing their view that most people who contravene bus lane regulations do so knowingly and deliberately. While this may be the case of many motorists, and no doubt they are the people who are sent PCNs who quite rightly do not appeal, this is not the adjudicators' experience of most appellants. It is common sense that if a particular site generates a significant number of representations and appeals there may be fundamental problems with how the restrictions are perceived by road users.

In the past we have referred to the 'hotspots' identified by a disproportionate number of appeals in relation to a particular location, we are therefore pleased to report that it has become apparent this year that the signing has been altered in some of the 'hotspots' we have drawn attention to in the past, resulting in far fewer contraventions. The Adjudicators therefore hope that this experience will be shared for the benefit of other authorities.

Bus Lane Table 1

SPA/PPA Area by year of operation and month of commencement	Appeals Rec'd	PCN's issued	Rate of appeal per PCN	Not Contested by council	Allowed by Adjudicator	Total allowed including not contested by council	Refused by Adjudicator incl. out of time and withdrawn by appellant	Awaiting decision incl. other decided
All Areas Apr 09 - Mar 10	634	172,390	0.37%	237 37%	175 28%	412 65%	187 29%	35 6%
Bath and NE Somerset Apr 09 - Mar 10	2	21,642	0.01%	0 0%	1 50%	1 50%	1 50%	0 1%
Bournemouth Oct 09 - Mar 10	65	4,045	1.61%	10 15%	55 85%	65 100%	0 0%	0 0%
Brighton & Hove Apr 09 - Mar 10	74	6,737	1.10%	44 59%	13 18%	57 77%	10 14%	7 9%
Bristol Nov 09 - Mar 10	8	4,216	0.19%	5 63%	3 38%	8 100%	0 0%	0 0%
Essex Apr 09 - Mar 10	0	0	0%	0 0%	0 0%	0 0%	0 0%	0 0%
Liverpool Sept 09 - Mar 10	5	28,642	0.02%	5 100%	0 0%	5 100%	0 0%	0 0%
Manchester Apr 09 - Mar 10	166	37,161	0.45%	33 20%	40 24%	73 44%	89 54%	4 2%
Nottingham Apr 09 - Mar 10	52	10,716	0.49%	19 37%	13 25%	32 62%	20 38%	0 0%
Oxfordshire Apr 09 - Mar 10	31	11,932	0.26%	7 23%	0 0%	7 23%	2 6%	22 71%
Reading Apr 09 - Mar 10	139	27,512	0.51%	71 51%	27 19%	98 71%	40 29%	1 1%
Sheffield Apr 09 - Mar 10	87	18,882	0.46%	43 49%	21 24%	64 74%	22 25%	1 1%
Stockton-On-Tees Apr 09 - Mar 10	5	905	0.55%	0 0%	2 40%	2 40%	3 60%	0 0%

