

Before Adjudicator:
Edward Houghton

The London Borough of Hammersmith and Fultha

-v-

Mr Stephen William Des Banks
Appeal Number 2130483643

Date of Decision: 14 February 2014

DECISION

Appeal Decision: Refused **Direction:** None

This case raises, not for the first time at this Tribunal, the question of the interpretation and extent of the statutory contravention relating to the stopping of vehicles in box junctions. I have heard the carefully argued submissions of the Appellant, a solicitor, in person, and the Council has put forward detailed written submissions in response.

Schedule 19 Part II Para 7 Traffic Signs Regulations and General Directions 2002 (as amended) provides as follows:-

Prohibition conveyed by markings in diagram 1043 or 1044

7. (1) Subject to paragraph 9, the road markings shown in diagrams 1043, 1044 and 1044.1 shall each convey the prohibition that no person shall cause a vehicle to enter the box junction so that the vehicle has to stop within the box junction due to the presence of stationary vehicles.

(2) The prohibition in sub-paragraph (1) does not apply to any person where the box junction is at a junction between two or more roads (but not at a gyratory system or roundabout) and the person-

- (a) causes a vehicle to enter the box junction for the purpose of turning right; and*
- (b) stops the vehicle within the box junction for so long as the vehicle is prevented from completing the right turn-*
 - (i) by oncoming vehicles; or*
 - (ii) by vehicles which are stationary whilst waiting to complete a right turn."*

The facts of the case are seen in the CCTV evidence. The Appellant's vehicle is seen to enter the box junction in the middle lane of a bunch of moving traffic. At that point none of the three exit lanes are clear (by which I mean that there is unoccupied space sufficient to accommodate the vehicle on the far side with no vehicles between the appellant and that space). In the Appellant's

lane there is a black car moving ahead approaching the exit point of the junction. As the Appellant's vehicle crosses the junction that black car clears the junction and comes to a halt. The Appellant's vehicle was eased to a halt behind him. It remains stationary in that position on the edge of the junction but fully within it for approximately 6 seconds before moving on again with the traffic. At the time the Appellant stops there is space available in the lane to his right and also, probably, in the lane to his left, but the Appellant's vehicle shows no sign of intending to occupy either.

The Council's case is that this is a contravention. The Appellant submits that this is not so as at the time he entered the junction traffic was moving and that therefore he did not enter the junction so that he had to come to a halt behind a stationary vehicle. He submits that provided there are moving vehicles ahead at the point of entry no contravention occurs even though the vehicle subsequently has to stop due to the presence of a vehicle then stationary; and he submits that this is so even if it would be clear to the driver that the traffic ahead would bunch up and prevent him clearing the Junction.

The Council essentially relies on the panel decision in the cases of Gillingham -v- L.B. of Newham [2013] (PATAS 2130193949), Essoo -v- L.B. of Enfield [2013] (PATAS 2130232767), and Khan -v- Transport for London [2013] (PATAS 2130261437) where the panel stated:-

"The relevant Regulation is, in our view, drafted so as to place upon the driver the duty of exercising a judgment at the point of entry as to whether s/he can proceed into the box without the consequence that the vehicle will have to stop due to the presence of stationary vehicles. The "prohibition" is that of "causing a vehicle to enter.." followed by the consequence. It is the entering into the box junction which constitutes the contravention, once the vehicle has had to stop. 23 We regard it, therefore, as axiomatic that, in determining whether or not the Regulation has been breached, the essence of the case is crystallised in the choices and judgments made by the driver at the point of entry: the judgment to proceed, the choice of exit lane he directed his vehicle towards and the state of the traffic at that exit which could have been predicted by him at the point of entry."

Whilst I largely agree with this I am uneasy with the notion that the contravention depends on predictability of traffic movement, developed later in that decision. I have difficulty understanding, for example, why a vehicle unexpectedly emerging from the left and taking the expected clear space is unpredictable whilst the sudden breakdown of a vehicle in the lane ahead bringing the moving line of traffic to a halt is predictable, or presumed to be so.

It seems to me that one thing is clear. The intention and purpose of the Regulation is to keep the yellow box free of stationary vehicles at all times. The regulation should be construed in such a way as to give effect to this intention unless its wording makes that construction impossible. The construction for which the Appellant contends is in my view incompatible with that intention. If the Appellant is right junctions would be routinely blocked by stationary vehicles. It is a matter of common motoring experience, and it is certainly the case in the vast majority of box junction appeals one sees, that motorists come to a halt in box junctions after following a line of moving vehicles into the junction. Motorists, on this view of the law, could safely enter the box junction following moving traffic even if it were all but certain that they would end up stationary within it. It seems to me this construction is not what the draftsman intended, and would effectively leave box junctions largely unenforceable.

In my view a Council has to prove:-

- 1) that the driver caused the vehicle to enter (i.e. that it was not pushed by another vehicle)
- 2) that it then stopped within the junction.
- 3) that the reason it stopped was the presence of vehicles, and that those vehicles were stationary vehicles

If the vehicle continues to move, or it stops due to the presence of moving vehicles, or it stops

for some other reason, such as, to allow the driver to make a phone call or admire the view, no contravention occurs.

Motorists are therefore required to organise their driving so that this does not happen. This is not demanding the impossible. Motorists are not required to have psychic powers of anticipation.

The motorist protects himself against the possibility of having to stop due to stationary vehicles by waiting until he can see unoccupied space on the far side, and nothing in between, into which he can then drive. That is in my view why the Highway Code gives the advice it does, and that advice is in accordance with the interpretation of the regulation. In 99 cases out of a hundred the motorist following this advice will not be in contravention.

But what, it might be said, about the 100th case where having followed this advice to the letter the motorist is in the process of heading across the junction to his free space awaiting him, only to find that it is snatched from before his eyes by, for example, a vehicle changing lanes without warning, or a vehicle forcing its way into the junction from a side road?. Strictly speaking he too would nevertheless be in contravention through circumstances entirely beyond his control. That, it is argued, cannot be right.

In many of these situations what will cause the motorist to brake will be the presence of what is at that point a moving vehicle and the difficulty will not arise; the motorist has a defence.

However in those very rare cases where this would not apply I do not shrink from saying that a contravention does in law occur but that, as in all cases of strict liability, this situation has to be dealt with by the exercise of discretion on the part of the Council, the equivalent of deciding not to prosecute or the grant of an absolute discharge in a criminal case. I note that the Council in this case states, very properly, that in such circumstances a PCN would not be issued.

The question might also be asked why then the draftsman did not simply create a contravention of stopping in a box junction and have done with it? What is the point of the reference to entering so that...? This must be a matter of speculation, but the draftsman could hardly create such a contravention which, if read literally, would prohibit a motorist from stopping at all and thereby require the motorist to drive on into the rear of the stationary vehicle ahead. Exempting vehicles which had to stop to avoid doing so (obviously necessary from a common sense point of view) would then create an exemption for all vehicles doing what the junction was intended to prevent. Almost every motorist stationary in the junction would simply say, truthfully enough, "I had to stop to avoid running into the vehicle in front of me". The drafting of the contravention with its reference to "entering" places the emphasis on the motorist holding back at the entrance and avoiding the necessity to stop in the first place.

I do not share the view that if the motorist can show that there was another lane free which he could in theory have used no contravention occurs. It seems to me that the regulation require the position to be assessed in the light of the what the motorist actually did and the course he actually took, not what he might have done.

I am therefore unable to accept the Appellant's submissions as to the construction of these regulations attractively and meticulously put though they were. The vehicle as seen in the CCTV was in contravention albeit briefly and the PCN was lawfully issued.