

IN THE COUNTY COURT

CLAIM No: XXX

BETWEEN:

Civil Enforcement Limited (Claimant)

-and-

XXX (Defendant)

WITNESS STATEMENT

I am the Defendant in this matter, I am unrepresented, with no experience of Court procedures. If I do not set out documents in the way that the Claimant may do, I trust the Court will excuse my inexperience.

In this Witness statement, the facts and matters stated are true and within my own knowledge, except where indicated otherwise.

1. I am XXX , of XXX, the Defendant in this matter.
2. The facts in this statement come from my personal knowledge. Where they are not within my own knowledge there are true to the best of my information and belief
3. I deny every allegation set out in the Particulars of Claim.
4. Whilst I am the Registered Keeper of the vehicle concerned, there is no evidence of the driver.
5. I deny being the driver at the time of the supposed event and was in fact at a KFC in Braintree (around 6 miles away from the alleged location of the parking incident) around the time of the event (**Exhibit EV8**). I therefore put CEL to strict proof that any contract can exist between the Claimant and themselves.
6. More than one family member, who I have no obligation to name to a private parking firm, have access to this vehicle. It remains the burden of the Claimant to prove their case.
7. The Notice to Keeper (NTK) (**Exhibit EV2**) was not received within 14 days as specified in the Protection of Freedoms Act 2012 (PoFA) (**Exhibit EV3**). I put the Claimants to strict proof that this document was sent before this time period.
8. The NTK Schedule 4 Paragraphs 8 & 9 of the PoFA stipulate the mandatory information that must be included in a Notice to Keeper (NTK) in order for it to be valid. In this case this information has not been included and fails to meet the

requirements of Paragraph 6 Schedule 4 of the PoFA in establishing keeper liability.

9. It is acknowledged that the Claimant provided the required information on the payment slip enclosed with the NTK, however, the High Court ruled in the case of *Barnet Council v The Parking Adjudicator* 2006 EWHC 2357 (**Exhibit EV4**) that the payment slip constitutes a separate document to the notice to owner.
10. Even if it was found that the Notice to Keeper was PoFA compliant, I do not believe a contract could be formed from the signage in the car park. I have visited the site of the alleged breach and have read the signage. The signage (**Exhibit EV1**) clearly prohibits anyone who doesn't have a permit from parking there by saying in large letters "PERMIT HOLDERS ONLY". As such no contract could have been in place with someone who allegedly doesn't have a permit. I include a copy of *PCMUK v Bull* (**Exhibit EV5**) regarding prohibited signs that do not form a contract. I also include a copy of *Pace v Lengyel* (**Exhibit EV11**) as per my defence sentence 8.2.
11. **Exhibit EV9** shows the parking sign in the *Parking Eye v Beavis* case as an example of a sign with clear and prominent wording compared to the sign used by the Claimant.
12. At the time of the alleged event it is not clear if there was a sign at the entrance of the car park. In June 2017 the sign is in a different location to where it is now (**Exhibit EV1**) and would have been unlikely that a driver driving straight in would have seen it. Between June 2017 and August 2018 Google Maps shows that at some point there was no sign at all on the entrance. Section 18.2 of the BPA code of practice (**Exhibit EV10**) states:

"Entrance signs play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, you must also have a standard form of entrance sign at the entrance to the parking area."
13. On 4th November 2019 I was advised via phone call to the claimant that they would not be pursuing this case and that a letter to that affect would be received by 6th November 2019. As of 7th November no such letter has been received. I have concerns that the Claimant has deliberately misled myself to delay the Witness Statement being submitted.

Costs on the claim – disproportionate and disingenuous

14. CPR 44.3 (2) states: "Where the amount of costs is to be assessed on the standard basis, the court will –
 - (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and

(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

15. Whilst quantified costs can be considered on a standard basis, this Claimant's purported costs are wholly disproportionate and do not stand up to scrutiny.
16. The standard wording for parking charge/debt recovery contracts is on the Debt Recovery Plus website – 'no recovery/no fee', thus establishing an argument that the Claimant is breaching the indemnity principle – claiming reimbursement for a cost which has never, in fact, been incurred. This is true, whether or not they used a third party debt collector during the process.
17. In fact it is averred that the Claimant has not paid or incurred such damages/costs or 'legal fees' at all. Any debt collection letters were a standard feature of a low cost business model and are already counted within the parking charge itself and there has been no legal advice or personal involvement by any solicitor in churning out this template claim.
18. The Parking Eye Ltd v Beavis case is the authority for recovery of the parking charge itself and no more, since that sum (£85 in Beavis) was held to already incorporate the minor costs of an automated private parking business model. There are no losses or damages caused by this business model and the Supreme Court Judges held that a parking firm not in possession cannot plead any part of their case in damages.
19. Unlike this mendacious and greedy Claimant, ParkingEye themselves took on board the Beavis case outcome and they never add fake costs on top of the parking charge. It is indisputable that an alleged 'parking charge' penalty is a sum which the Supreme Court found is already inflated to more than comfortably cover all costs. The case provides a finding of fact by way of precedent, that the £85 (or up to a Trade Body ceiling of £100 depending upon the parking firm) covers the costs of the letters, and all parking firms are very familiar with this case:
20. "at para 98. {re ...The desirability of running that parking scheme at no cost, or ideally some profit, to themselves} 'Against this background, it can be seen that the £85 charge had two main objects. One was to manage the efficient use of parking space in the interests of the retail outlets, and of the users of those outlets who wish to find spaces in which to park their cars [...] The other purpose was to provide an income stream to enable ParkingEye to meet the costs of operating the scheme and make a profit from its services..."
21. at para 193. "Judging by ParkingEye's accounts, and unless the Chelmsford car park was out of the ordinary, the scheme also covered ParkingEye's costs of operation and gave their shareholders a healthy annual profit."
22. at para 198. "The charge has to be and is set at a level which enables the managers to recover the costs of operating the scheme. It is here also set at a level enabling ParkingEye to make a profit."

23. Any purported 'legal costs' are also made up out of thin air. Given the fact that robo-claim solicitors and parking firms process tens of thousands of claims handled by an admin team or paralegals, the Defendant avers that no solicitor is likely to have supervised this current batch of cut & paste claims. The court is invited to note that no named Solicitor has signed the Particulars, in breach of Practice Direction 22, and rendering the statement of truth a nullity.
24. According to *Ladak v DRC Locums* UKEAT/0488/13/LA a Claimant can only recover the direct and provable costs of the time spent preparing the claim in a legal capacity, not any administration costs allegedly incurred by already remunerated administrative staff.
25. The Protection of Freedoms Act 2012, Schedule 4 (POFA) makes it clear that the will of Parliament regarding parking on private land is that the only sum potentially able to be recovered is the sum in any compliant 'Notice to Keeper' (and the ceiling for a 'parking charge', as set by the Trade Bodies and the DVLA, is £100). This also depends upon the Claimant fully complying with the statute, including 'adequate notice' of the parking charge and prescribed documents served in time/with mandatory wording. It is submitted the claimant has failed on all counts and the Claimant is well aware their artificially inflated claim, as pleaded, constitutes double recovery.
26. Judges have disallowed all added parking firm 'costs' in County courts up and down the Country. In Claim number F0DP201T on 10th June 2019, District Judge Taylor sitting at the County Court at Southampton, echoed earlier General Judgment or Orders of DJ Grand (**Exhibit EV7**), who (when sitting at the Newport (IOW) County Court in 2018 and 2019) has struck out several parking firm claims. These include a BPA member serial Claimant (Britannia, using BW Legal's robo-claim model) and an IPC member serial Claimant (UKCPM, using Gladstones' robo-claim model) yet the Orders have been identical in striking out both claims without a hearing, with the Judge stating: 'It is ordered that The claim is struck out as an abuse of process. The claim contains a substantial charge additional to the parking charge which it is alleged the Defendant contracted to pay. This additional charge is not recoverable under the Protection of Freedoms Act 2012, Schedule 4 nor with reference to the judgment in *ParkingEye v Beavis*. It is an abuse of process from the Claimant to issue a knowingly inflated claim for an additional sum which it is not entitled to recover. This order has been made by the court of its own initiative without a hearing pursuant to CPR Rule 3.3(4) of the Civil Procedure Rules 1998..."
27. That is not an isolated judgment striking a parking claim out for repeatedly adding sums they are not entitled to recover. In the Caernarfon Court in Case number FTQZ4W28 (*Vehicle Control Services Ltd v Davies*) (**Exhibit EV6**) on 4th September 2019, District Judge Jones-Evans stated:

"Upon it being recorded that District Judge Jones-Evans has over a very significant period of time warned advocates [...] in many cases of this nature before this court that their claim for £60 is unenforceable in law and is an abuse of process and is nothing more than a poor attempt to go behind the decision of the Supreme Court *v Beavis* which inter alia decided that a figure of £160 as a global sum claimed in this case would be a penalty and not a genuine pre-

estimate of loss and therefore unenforceable in law and if the practice continued he would treat all cases as a claim for £160 and therefore a penalty and unenforceable in law it is hereby declared [...] the claim is struck out and declared to be wholly without merit and an abuse of process.”

28. In summary, the Claimant’s particulars disclose no legal basis for the sum claimed and it is the Defendant’s position that the poorly pleaded claim discloses no cause of action and no liability in law for any sum at all. The Claimant’s vexatious conduct from the outset has been intimidating, misleading and indeed untrue in terms of the added costs alleged and the statements made, in trying to justify the unjustifiable.
29. There are several options available within the Courts’ case management powers to prevent vexatious litigants pursuing a wide range of individuals for matters which are near-identical, with meritless claims and artificially inflated costs. The Defendant is of the view that private parking firms operate as vexatious litigants and that relief from sanctions should be refused.
30. The Court is invited to make an Order of its own initiative, dismissing this claim in its entirety and to allow such Defendant’s costs as are permissible under Civil Procedure Rule 27.14 on the indemnity basis, taking judicial note of the wholly unreasonable conduct of this Claimant.

I believe that the facts stated in this Witness Statement are true.

Signature

7th November 2019

EV-1 (Parking Signs)

Google Street maps (June 2017)



Google Street maps (August 2018)



Claimants picture of entrance (May 2019)



PARKING CONDITIONS



**PERMIT HOLDERS
ONLY**

If you breach any of these terms you will be charged £100.

Additional costs/recovery charges will be incurred
if payment is not received within 28 days.

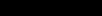
We use manual patrols and ANPR cameras to monitor this
private property and may contact the DVLA to request the Registered
Keeper's details in order to send a Parking Charge Notice (PCN)

www.ce-service.co.uk
0115 822 6027

Civil Enforcement Ltd,
Horton House,
Exchange Flags, L2 3PF
Company No. 05645677

EV-2 (Notice to Keeper)

in WITHAM, CM8 2TL



From: 01/04/2018 11:22:50 To: 01/04/2018 14:12:44

Amount due within 28 days: £100

Reduced amount if paid within 14 days: £60



HOW TO PAY

- By web
- By post
- By phone

Payment can be made online with a debit or credit card at www.ce-service.co.uk
Send a cheque made payable to Civil Enforcement to:
Civil Enforcement, Horton House, Exchange Flags, Liverpool, L2 3PF
Payment can be made by debit or credit card by telephoning 0115 822 5020

This Notice is issued under Schedule 4 of the Protection of Freedoms Act 2012. You can appeal in writing only (by e-mail or post) within 28 days to the above address. You must include your PCN number on any correspondence and include all relevant supporting evidence to assist with your case. If your appeal to us is unsuccessful (and the parking incident took place in England or Wales), we will send you the contact details for Parking on Private Land Appeals (POPLA) who if you wish will determine your appeal independently. If you use the POPLA Service, and your appeal is unsuccessful, the full Parking Charge will apply and you will no longer be able to pay at the reduced rate. Please be advised that POPLA will not consider appeals that have not been sent to us first.

PAYMENT SLIP

FROM:

ADDRESS:

VEHICLE REGISTRATION NO:

PCN NO

PCN ISSUE DATE

11/04/2018

[illegible]

EV-3 (Schedule 4 of PoFA)

SCHEDULE 4 RECOVERY OF UNPAID PARKING CHARGES

Introductory

1(1) This Schedule applies where—

(a) the driver of a vehicle is required by virtue of a relevant obligation to pay parking charges in respect of the parking of the vehicle on relevant land; and

(b) those charges have not been paid in full.

(2) It is immaterial for the purposes of this Schedule whether or not the vehicle was permitted to be parked (or to remain parked) on the land.

2(1) In this Schedule—

- “the appropriate national authority” means—

(a)

in relation to relevant land in England, the Secretary of State; and

(b)

in relation to relevant land in Wales, the Welsh Ministers;
- “the creditor” means a person who is for the time being entitled to recover unpaid parking charges from the driver of the vehicle;
- “current address for service” means—

(a)

in the case of the keeper, an address which is either—

(i)

an address at which documents relating to civil proceedings could properly be served on the person concerned under Civil Procedure Rules; or

(ii)

the keeper’s registered address (if there is one); or

(b)

in the case of the driver, an address at which the driver for the time being resides or can conveniently be contacted;
- “driver” includes, where more than one person is engaged in the driving of the vehicle, any person so engaged;
- “keeper” means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the registered keeper;
- “notice to driver” means a notice given in accordance with paragraph 7;
- “notice to keeper” means a notice given in accordance with paragraph 8 or 9 (as the case may be);
- “parking charge”—

(a)

in the case of a relevant obligation arising under the terms of a relevant contract, means a sum in the nature of a fee or charge, and

(b)

in the case of a relevant obligation arising as a result of a trespass or other tort, means a sum in the nature of damages,

however the sum in question is described;

- “registered address” means, in relation to the keeper of a registered vehicle, the address described in paragraph 11(3)(b) (as provided by the Secretary of State in response to the application for the keeper’s details required by paragraph 11);
- “registered keeper”, in relation to a registered vehicle, means the person in whose name the vehicle is registered;
- “registered vehicle” means a vehicle which is for the time being registered under the Vehicle Excise and Registration Act 1994;
- “relevant contract” means a contract (including a contract arising only when the vehicle was parked on the relevant land) between the driver and a person who is—

(a)

the owner or occupier of the land; or

(b)

authorised, under or by virtue of arrangements made by the owner or occupier of the land, to enter into a contract with the driver requiring the payment of parking charges in respect of the parking of the vehicle on the land;

- “relevant land” has the meaning given by paragraph 3;
- “relevant obligation” means—

(a)

an obligation arising under the terms of a relevant contract; or

(b)

an obligation arising, in any circumstances where there is no relevant contract, as a result of a trespass or other tort committed by parking the vehicle on the relevant land;

- “vehicle” means a mechanically-propelled vehicle or a vehicle designed or adapted for towing by a mechanically-propelled vehicle.

(2)The reference in the definition of “parking charge” to a sum in the nature of damages is to a sum of which adequate notice was given to drivers of vehicles (when the vehicle was parked on the relevant land).

(3)For the purposes of sub-paragraph (2) “adequate notice” means notice given by—

(a)the display of one or more notices in accordance with any applicable requirements prescribed in regulations under paragraph 12 for, or for purposes including, the purposes of sub-paragraph (2); or

(b)where no such requirements apply, the display of one or more notices which—

(i)specify the sum as the charge for unauthorised parking; and

(ii)are adequate to bring the charge to the notice of drivers who park vehicles on the relevant land.

3(1) In this Schedule “relevant land” means any land (including land above or below ground level) other than—

(a) a highway maintainable at the public expense (within the meaning of section 329(1) of the Highways Act 1980);

(b) a parking place which is provided or controlled by a traffic authority;

© any land (not falling within paragraph (a) or (b)) on which the parking of a vehicle is subject to statutory control.

(2) In sub-paragraph (1)(b)—

- “parking place” has the meaning given by section 32(4)(b) of the Road Traffic Regulation Act 1984;
- “traffic authority” means each of the following—

the Secretary of State; (a)

the Welsh Ministers; (b)

Transport for London; ©

the Common Council of the City of London; (d)

the council of a county, county borough, London borough or district; ©

a parish or community council; (f)

the Council of the Isles of Scilly. (g)

(3) For the purposes of sub-paragraph (1) © the parking of a vehicle on land is “subject to statutory control” if any statutory provision imposes a liability (whether criminal or civil, and whether in the form of a fee or charge or a penalty of any kind) in respect of the parking on that land of vehicles generally or of vehicles of a description that includes the vehicle in question.

(4) In sub-paragraph (3) “statutory provision” means any provision (apart from this Schedule) contained in—

(a) any Act (including a local or private Act), whenever passed; or

(b) any subordinate legislation, whenever made,

and for this purpose “subordinate legislation” means an Order in Council or any order, regulations, byelaws or other legislative instrument.

Right to claim unpaid parking charges from keeper of vehicle

4(1) The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle.

(2)The right under this paragraph applies only if—

(a)the conditions specified in paragraphs 5, 6, 11 and 12 (so far as applicable) are met; and

(b)the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.

(3)For the purposes of the condition in sub-paragraph (2)(b), the vehicle is to be presumed not to be a stolen vehicle at the material time, unless the contrary is proved.

(4)The right under this paragraph may only be exercised after the end of the period of 28 days beginning with the day on which the notice to keeper is given.

(5)The maximum sum which may be recovered from the keeper by virtue of the right conferred by this paragraph is the amount specified in the notice to keeper under paragraph 8(2)© or (d) or, as the case may be, 9(2)(d) (less any payments towards the unpaid parking charges which are received after the time so specified).

(6)Nothing in this paragraph affects any other remedy the creditor may have against the keeper of the vehicle or any other person in respect of any unpaid parking charges (but this is not to be read as permitting double recovery).

(7)The right under this paragraph is subject to paragraph 13 (which provides for the right not to apply in certain circumstances in the case of a hire vehicle).

Conditions that must be met for purposes of paragraph 4

5(1)The first condition is that the creditor—

(a)has the right to enforce against the driver of the vehicle the requirement to pay the unpaid parking charges; but

(b)is unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and a current address for service for the driver.

(2)Sub-paragraph (1)(b) ceases to apply if (at any time after the end of the period of 28 days beginning with the day on which the notice to keeper is given) the creditor begins proceedings to recover the unpaid parking charges from the keeper.

6(1)The second condition is that the creditor (or a person acting for or on behalf of the creditor)—

(a)has given a notice to driver in accordance with paragraph 7, followed by a notice to keeper in accordance with paragraph 8; or

(b)has given a notice to keeper in accordance with paragraph 9.

(2)If a notice to driver has been given, any subsequent notice to keeper must be given in accordance with paragraph 8.

7(1)A notice which is to be relied on as a notice to driver for the purposes of paragraph 6(1)(a) is given in accordance with this paragraph if the following requirements are met.

(2)The notice must—

(a)specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;

(b)inform the driver of the requirement to pay parking charges in respect of the specified period of parking and describe those charges, the circumstances in which the requirement arose (including the means by which it was brought to the attention of drivers) and the other facts that made those charges payable;

©inform the driver that the parking charges relating to the specified period of parking have not been paid in full and specify the total amount of the unpaid parking charges relating to that period, as at a time which is—

(i)specified in the notice; and

(ii)no later than the time specified under paragraph (f);

(d)inform the driver of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;

©identify the creditor and specify how and to whom payment may be made;

(f)specify the time when the notice is given and the date.

(3)The notice must relate only to a single period of parking specified under sub-paragraph (2)(a) (but this does not prevent the giving of separate notices each specifying different parts of a single period of parking).

(4)The notice must be given—

(a)before the vehicle is removed from the relevant land after the end of the period of parking to which the notice relates, and

(b)while the vehicle is stationary,

by affixing it to the vehicle or by handing it to a person appearing to be in charge of the vehicle.

(5)In sub-paragraph (2)(d) the reference to arrangements for the resolution of disputes or complaints includes—

(a)any procedures offered by the creditor for dealing informally with representations by the driver about the notice or any matter contained in it; and

(b)any arrangements under which disputes or complaints (however described) may be referred by the driver to independent adjudication or arbitration.

8(1)A notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(a) is given in accordance with this paragraph if the following requirements are met.

(2)The notice must—

(a)specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;

(b)inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full;

©state that a notice to driver relating to the specified period of parking has been given and repeat the information in that notice as required by paragraph 7(2)(b), (c) and (f);

(d)if the unpaid parking charges specified in that notice to driver as required by paragraph 7(2)© have been paid in part, specify the amount that remains unpaid, as at a time which is—

(i)specified in the notice to keeper, and

(ii)no later than the end of the day before the day on which the notice is either sent by post or, as the case may be, handed to or left at a current address for service for the keeper (see sub-paragraph (4));

©state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper—

(i)to pay the unpaid parking charges; or

(ii)if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver;

(f)warn the keeper that if, at the end of the period of 28 days beginning with the day after that on which the notice to keeper is given—

(i)the amount of the unpaid parking charges (as specified under paragraph © or (d)) has not been paid in full, and

(ii)the creditor does not know both the name of the driver and a current address for service for the driver, the creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid;

(g)inform the keeper of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;

(h)identify the creditor and specify how and to whom payment or notification to the creditor may be made;

(i)specify the date on which the notice is sent (if it is sent by post) or given (in any other case).

(3)The notice must relate only to a single period of parking specified under sub-paragraph (2)(a) (but this does not prevent the giving of separate notices which each specify different parts of a single period of parking).

(4)The notice must be given by—

(a) handing it to the keeper, or leaving it at a current address for service for the keeper, within the relevant period; or

(b) sending it by post to a current address for service for the keeper so that it is delivered to that address within the relevant period.

(5) The relevant period for the purposes of sub-paragraph (4) is the period of 28 days following the period of 28 days beginning with the day after that on which the notice to driver was given.

(6) A notice sent by post is to be presumed, unless the contrary is proved, to have been delivered (and so “given” for the purposes of sub-paragraph (4)) on the second working day after the day on which it is posted; and for this purpose “working day” means any day other than a Saturday, Sunday or a public holiday in England and Wales.

(7) When the notice is given it must be accompanied by any evidence prescribed under paragraph 10.

(8) In sub-paragraph (2)(g) the reference to arrangements for the resolution of disputes or complaints includes—

(a) any procedures offered by the creditor for dealing informally with representations by the keeper about the notice or any matter contained in it; and

(b) any arrangements under which disputes or complaints (however described) may be referred by the keeper to independent adjudication or arbitration.

9(1) A notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(b) is given in accordance with this paragraph if the following requirements are met.

(2) The notice must—

(a) specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;

(b) inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full;

©describe the parking charges due from the driver as at the end of that period, the circumstances in which the requirement to pay them arose (including the means by which the requirement was brought to the attention of drivers) and the other facts that made them payable;

(d) specify the total amount of those parking charges that are unpaid, as at a time which is—

(i) specified in the notice; and

(ii) no later than the end of the day before the day on which the notice is either sent by post or, as the case may be, handed to or left at a current address for service for the keeper (see sub-paragraph (4));

©state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper—

(i) to pay the unpaid parking charges; or

(ii) if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver;

(f) warn the keeper that if, after the period of 28 days beginning with the day after that on which the notice is given—

(i) the amount of the unpaid parking charges specified under paragraph (d) has not been paid in full, and

(ii) the creditor does not know both the name of the driver and a current address for service for the driver,

the creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid;

(g) inform the keeper of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;

(h) identify the creditor and specify how and to whom payment or notification to the creditor may be made;

(i) specify the date on which the notice is sent (where it is sent by post) or given (in any other case).

(3) The notice must relate only to a single period of parking specified under sub-paragraph (2)(a) (but this does not prevent the giving of separate notices which each specify different parts of a single period of parking).

(4) The notice must be given by—

(a) handing it to the keeper, or leaving it at a current address for service for the keeper, within the relevant period; or

(b) sending it by post to a current address for service for the keeper so that it is delivered to that address within the relevant period.

(5) The relevant period for the purposes of sub-paragraph (4) is the period of 14 days beginning with the day after that on which the specified period of parking ended.

(6) A notice sent by post is to be presumed, unless the contrary is proved, to have been delivered (and so “given” for the purposes of sub-paragraph (4)) on the second working day after the day on which it is posted; and for this purpose “working day” means any day other than a Saturday, Sunday or a public holiday in England and Wales.

(7) When the notice is given it must be accompanied by any evidence prescribed under paragraph 10.

(8) In sub-paragraph (2)(g) the reference to arrangements for the resolution of disputes or complaints includes—

(a) any procedures offered by the creditor for dealing informally with representations by the keeper about the notice or any matter contained in it; and

(b) any arrangements under which disputes or complaints (however described) may be referred by the keeper to independent adjudication or arbitration.

10(1) The appropriate national authority may by regulations made by statutory instrument prescribe evidence which must accompany a notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(a) or paragraph 6(1)(b) (as the case may be).

(2) The regulations may in particular make provision as to—

(a) the means by which any prescribed evidence is to be generated or otherwise produced (which may include a requirement to use equipment of a kind approved for the purpose by a person specified in the regulations); or

(b) the circumstances in which any evidence is, or is not, required to accompany a notice to keeper.

(3) The regulations may—

(a) include incidental, supplementary, transitional, transitory or saving provision;

(b) make different provision for different purposes.

11(1) The third condition is that—

(a) the creditor (or a person acting for or on behalf of the creditor) has made an application for the keeper's details in relation to the period of parking to which the unpaid parking charges relate;

(b) the application was made during the relevant period for the purposes of paragraph 8(4) (where a notice to driver has been given) or 9(4) (where no notice to driver has been given);

© the information sought by the application is provided by the Secretary of State to the applicant.

(2) The third condition only applies if the vehicle is a registered vehicle.

(3) In this paragraph "application for the keeper's details" means an application for the following information to be provided to the applicant by virtue of regulations made under section 22(1)© of the Vehicle Excise and Registration Act 1994—

(a) the name of the registered keeper of the vehicle during the period of parking to which the unpaid parking charges relate; and

(b) the address of that person as it appears on the register (or, if that person has ceased to be the registered keeper, as it last appeared on the register).

12(1) The fourth condition is that any applicable requirements prescribed under this paragraph were met at the beginning of the period of parking to which the unpaid parking charges relate.

(2) The appropriate national authority may by regulations made by statutory instrument prescribe requirements as to the display of notices on relevant land where parking charges may be incurred in respect of the parking of vehicles on the land.

(3)The provision made under sub-paragraph (2) may, in particular, include provision—

(a)requiring notices of more than one kind to be displayed on any relevant land;

(b)as to the content or form of any notices required to be displayed; and

©as to the location of any notices required to be displayed.

(4)Regulations under this paragraph may—

(a)include incidental, supplementary, transitional, transitory or saving provision;

(b)make different provision for different areas or purposes.

Hire vehicles

13(1)This paragraph applies in the case of parking charges incurred in respect of the parking of a vehicle on relevant land if—

(a)the vehicle was at the time of parking hired to any person under a hire agreement with a vehicle-hire firm; and

(b)the keeper has been given a notice to keeper within the relevant period for the purposes of paragraph 8(4) or 9(4) (as the case may be).

(2)The creditor may not exercise the right under paragraph 4 to recover from the keeper any unpaid parking charges specified in the notice to keeper if, within the period of 28 days beginning with the day after that on which that notice was given, the creditor is given—

(a)a statement signed by or on behalf of the vehicle-hire firm to the effect that at the material time the vehicle was hired to a named person under a hire agreement;

(b)a copy of the hire agreement; and

©a copy of a statement of liability signed by the hirer under that hire agreement.

(3)The statement of liability required by sub-paragraph (2)© must—

(a)contain a statement by the hirer to the effect that the hirer acknowledges responsibility for any parking charges that may be incurred with respect to the vehicle while it is hired to the hirer;

(b)include an address given by the hirer (whether a residential, business or other address) as one at which documents may be given to the hirer;

(and it is immaterial whether the statement mentioned in paragraph (a) relates also to other charges or penalties of any kind).

(4)A statement required by sub-paragraph (2)(a) or (c) must be in such form (if any) as may be prescribed by the appropriate national authority by regulations made by statutory instrument.

(5)The documents mentioned in sub-paragraph (2) must be given by—

(a) handing them to the creditor;

(b) leaving them at any address which is specified in the notice to keeper as an address at which documents may be given to the creditor or to which payments may be sent; or

© sending them by post to such an address so that they are delivered to that address within the period mentioned in that sub-paragraph.

(6) In this paragraph and paragraph 14—

(a) “hire agreement” means an agreement which—

(i) provides for a vehicle to be let to a person (“the hirer”) for a period of any duration (whether or not the period is capable of extension by agreement between the parties); and

(ii) is not a hire-purchase agreement within the meaning of the Consumer Credit Act 1974;

(b) any reference to the currency of a hire agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of any period specified in the agreement but otherwise on terms and conditions specified in it; and

© “vehicle-hire firm” means any person engaged in the hiring of vehicles in the course of a business.

14(1) If—

(a) the creditor is by virtue of paragraph 13(2) unable to exercise the right to recover from the keeper any unpaid parking charges mentioned in the notice to keeper, and

(b) the conditions mentioned in sub-paragraph (2) below are met,

the creditor may recover those charges (so far as they remain unpaid) from the hirer.

(2) The conditions are that—

(a) the creditor has within the relevant period given the hirer a notice in accordance with sub-paragraph (5) (a “notice to hirer”), together with a copy of the documents mentioned in paragraph 13(2) and the notice to keeper;

(b) a period of 21 days beginning with the day on which the notice to hirer was given has elapsed; and

© the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.

(3) In sub-paragraph (2)(a) “the relevant period” is the period of 21 days beginning with the day after that on which the documents required by paragraph 13(2) are given to the creditor.

(4) For the purposes of sub-paragraph (2) © a vehicle is to be presumed not to be a stolen vehicle at the material time, unless the contrary is proved.

(5) The notice to hirer must—

(a) inform the hirer that by virtue of this paragraph any unpaid parking charges (being parking charges specified in the notice to keeper) may be recovered from the hirer;

(b) refer the hirer to the information contained in the notice to keeper;

© warn the hirer that if, after the period of 21 days beginning with the day after that on which the notice to hirer is given, the amount of unpaid parking charges referred to in the notice to keeper under paragraph 8(2)(f) or 9(2)(f) (as the case may be) has not been paid in full, the creditor will (if any applicable requirements are met) have the right to recover from the hirer so much of that amount as remains unpaid;

(d) inform the hirer of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;

© identify the creditor and specify how and to whom payment may be made; and

(f) specify the date on which the notice is sent (if it is sent by post) or given (in any other case).

(6) The documents mentioned in sub-paragraph (2)(a) must be given by—

(a) handing them to the hirer;

(b) leaving them at an address which is either—

(i) an address specified in the statement of liability mentioned in paragraph 13(2)© as an address at which documents may be given to the hirer; or

(ii) an address at which documents relating to civil proceedings could properly be served on the hirer under Civil Procedure Rules; or

© sending them by post to such an address so that they are delivered to that address within the relevant period for the purposes of sub-paragraph (2)(a).

(7) In sub-paragraph (5)(d) the reference to arrangements for the resolution of disputes or complaints includes—

(a) any procedures offered by the creditor for dealing informally with representations by the hirer about the notice or any matter contained in it; and

(b) any arrangements under which disputes or complaints (however described) may be referred by the hirer to independent adjudication or arbitration.

Application to Crown vehicles etc

15(1) The provisions of this Schedule apply to—

(a) vehicles in the public service of the Crown that are required to be registered under the Vehicle Excise and Registration Act 1994 (other than a vehicle exempted by sub-paragraph (2)), and

(b) any person in the public service of the Crown who is the keeper of a vehicle falling within paragraph (a).

(2) But this Schedule does not apply in relation to a vehicle that—

- (a) at the relevant time is used or appropriated for use for naval, military or air force purposes, or
- (b) belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952) or is at the relevant time used or appropriated for use by such forces.

Power to amend Schedule

16(1) The appropriate national authority may by order made by statutory instrument amend this Schedule for the purpose of—

- (a) amending the definition of “relevant land” in paragraph 3;
- (b) adding to, removing or amending any of the conditions to which the right conferred by paragraph 4 is for the time being subject.

(2) The power to amend this Schedule for the purpose mentioned in sub-paragraph (1)(b) includes, in particular, power to add to, remove or amend—

- (a) any provisions that are applicable for the purposes of a condition; and
- (b) any powers of the appropriate national authority to prescribe anything for the purposes of a condition by regulations made by statutory instrument.

(3) An order under this paragraph may—

- (a) include incidental, supplementary, transitional, transitory or saving provision;
- (b) make different provision for different purposes.

Parliamentary procedure

17(1) A statutory instrument containing regulations under any provision of this Schedule is subject to annulment by—

- (a) a resolution of either House of Parliament (in the case of regulations made by the Secretary of State); or
- (b) a resolution of the National Assembly for Wales (in the case of regulations made by the Welsh Ministers).

(2) A statutory instrument containing an order made under paragraph 16—

- (a) in the case of an order of the Secretary of State, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament;
- (b) in the case of an order of the Welsh Ministers, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

EV4 (Barnet Council v The Parking Adjudicator)

CO/3355/2006

Neutral Citation Number: [2006] EWHC 2357 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Wednesday, 2nd August 2006

B E F O R E:

MR JUSTICE JACKSON

THE QUEEN ON THE APPLICATION OF THE LONDON BOROUGH OF BARNET
COUNCIL

(CLAIMANT)

-v-

THE PARKING ADJUDICATOR

(DEFENDANT)

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Smith Bernal Wordwave Limited
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(Official Shorthand Writers to the Court)

MR M LEWIS AND MISS X MONTES -MANZANO (instructed by LB Barnet) appeared
on behalf of the CLAIMANT

MR I ROGERS (instructed by Head of Parking & Traffic Appeals Service) appeared on
behalf of the DEFENDANT

J U D G M E N T

64. MR JUSTICE JACKSON: This judgment is in six parts, namely:

Part 1. Introduction

Part 2. The Facts

Part 3. The Present Proceedings

Part 4. The Date of the Notice

Part 5. The Effect of the Extra Day

Part 6. Conclusion

Part 1. Introduction

2. This is a case about two parking tickets. The claimant in these proceedings is the Council of the London Borough of Barnet, to which I shall refer as “Barnet”. The defendant in these proceedings is the Parking Adjudicator who issued a written decision dated 6th March 2006. Mr Hugh Moses is the motorist to whom the two parking tickets the subject of this action relate. Mr Moses is identified in these proceedings as an interested party.
3. The correct name for what is commonly called a parking ticket is “Penalty Charge Notice”. This is generally abbreviated to “PCN”. I shall adopt that abbreviation.
4. I must now outline the statutory framework within which this litigation arises. For many years, the contravention of parking controls was a criminal offence prosecuted in the Magistrates’ Courts. The Road Traffic Act 1991 (to which I shall refer as the “1991 Act”) introduced a new scheme for the civil enforcement of parking controls. Under the new scheme, the enforcement of parking controls is carried out by local authorities. A range of financial penalties are payable for the contravention of parking controls. Under this scheme, the owner of the vehicle rather than the driver is liable for the penalty, subject to certain exceptions.
5. Section 66 of the 1991 Act is headed “Parking penalties in London” and it provides as follows:
 - “(1) Where, in the case of a stationary vehicle in a designated parking place, a parking attendant has reason to believe that a penalty charge is payable with respect to the vehicle, he may - -
 - (a) fix a penalty charge notice to the vehicle; or
 - (b) give such a notice to the person appearing to him to be in charge of the vehicle.
 - (2) For the purposes of this part of this Act, a penalty charge is payable with respect to a vehicle by the owner of the vehicle if - -
 - (a) the vehicle has been left - -
 - (i) otherwise than as authorized by or under any order relating

to the designated parking place; or

(ii) beyond the period of parking which has been paid for;

(b) no parking charge payable with respect to the vehicle has been paid; or

I there has, with respect to the vehicle, been a contravention of, or failure to comply with, any provision made by or under any order relating to the designated parking place.

(3) A penalty charge notice must state - -

(a) the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle;

(b) the amount of the penalty charge which is payable;

I that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;

(d) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion;

I that, if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle;

(f) the address to which payment of the penalty charge must be sent.

(4) In subsection (3)(d) above “specified proportion” means such proportion applicable to all cases, as may be determined by the London authorities acting through the Joint Committee . . .

(7) Schedule 6 to this Act shall have effect with respect to penalty charges, notices to owners and other matters supplementing the provisions of this section.”

6. In this judgment I shall use the term “serve” as a compendious term to embrace the two alternative methods of delivering a PCN set out in section 66(1) of the 1991 Act.

7. Schedule 6 to the 1991 Act provides:

“1(1) Where - -

(a) a penalty charge notice has been issued with respect to a vehicle under section 66 of this Act; and

- (b) the period of 28 days for payment of the penalty charge has expired without that charge being paid,

the London authority concerned may serve a notice (“a notice to owner”) on the person who appears to them to have been the owner of the vehicle when the alleged contravention occurred . . .

2(1) Where it appears to the recipient that one or other of the grounds mentioned in subparagraph (4) below are satisfied, he may make representations to that effect to the London authority who served the notice on him.

(2) Any representations under this paragraph must be made in such form as may be specified by the London authorities, acting through the Joint Committee.

(3) The authority may disregard any such representations which are received by them after the end of the period of 28 days beginning with the date on which the notice was served.

(4) The grounds are - -

- (a) that the recipient - -

- (i) never was the owner of the vehicle in question;

- (ii) had ceased to be its owner before the date on which the alleged contravention occurred; or

- (iii) became its owner after that date;

- (b) that the alleged contravention did not occur;

- I that the vehicle had been permitted to remain at rest in the parking place by a person who was in control of the vehicle without the consent of the owner;

- (d) that the relevant designation order is invalid;

- I that the recipient is a vehicle hire firm and - -

- (64) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

- (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice fixed to the vehicle during the currency of the hiring agreement;

- (f) that the penalty charge exceeded the amount applicable in the circumstances of the case . . .

(7) It shall be the duty of an authority to whom representations are duly made under this paragraph - -

(a) to consider them and any supporting evidence which the person making them provides; and

(b) to serve on that person notice of their decision as to whether they accept that the ground in question has been established.”

8. Paragraph 5 of Schedule 6 to the 1991 Act enables the vehicle owner to appeal against an adverse decision to a Parking Adjudicator. Any reference in this judgment to “Adjudicator” is a reference to a Parking Adjudicator.
9. The Road Traffic (Parking Adjudicators) (London) Regulations 2003 provide for appeals to be brought against the decisions of Parking Adjudicators. An appeal may take the form of a review on paper, or it may be dealt with at a hearing if either party so requests. The person hearing the appeal will be another Parking Adjudicator of equal status to the first Adjudicator.
10. As can be seen from section 66 of the 1991 Act and from Schedule 6 to that Act, the scheme as originally established related only to London. However, the scheme has subsequently been extended to a number of other areas around the country. By way of example, the Road Traffic (Permitted Parking Area and Special Parking Area) (Metropolitan Borough of Bury) Order 2002 provides that section 66 of the 1991 Act and Schedule 6 to that Act should apply, subject to certain modifications, to the Metropolitan Borough of Bury.
11. The London Local Authorities Act 2000 (to which I shall refer as “the 2000 Act”) contains provisions which amplify the scheme for civil enforcement of parking controls. Section 4 of the 2000 Act provides that where a contravention of parking control is detected by camera, a PCN may be served by post on the relevant vehicle owner within 28 days of the contravention. Section 5 of the 2000 Act provides that in a situation where a parking attendant is prevented from issuing a PCN, then a PCN in relation to that contravention may be served by post on the vehicle owner within 28 days.
12. Having outlined the statutory framework, I must now turn to the facts of the present case.

Part 2. The Facts

64. On the morning of 31st March 2005, Mr Moses parked his Mercedes car in a residents’ parking space at Woodville Road in Barnet. A parking attendant observed the vehicle and issued a PCN which read as follows:

“PENALTY CHARGE NOTICE

Road Traffic Act 1991 (AS AMENDED)

Number: BA25117544 VRM: Y562OLF

Make: Mercedes

Contravention believed committed: 15.

Parked in a Residents' parking space without clearly displaying a valid Residents' parking permit.

Street: WOODVILLE ROAD (BX).

Date: 31/03/05.

Time: 11.27.

A PENALTY CHARGE OF £80 IS DUE WITHIN 28 DAYS OF ISSUE.

£40 will be accepted in full and final settlement if received within 14 days of the date of this notice.

Parking Attendant No: 201."

There is then a line of perforations, below which there is a slip reading as follows:

"Number: BA25117544

Date of offence: 31/03/05

Total charge fee: 80.00

Discount if paid within 14 days: 40.00

Payment enclosed

A receipt will not be issued unless requested and a stamped addressed envelope is provided."

On the back of the PCN there are various pieces of information provided, including the address to which payment should be sent, and the following piece of information:

"If the discounted payment is not received within 14 days, and full payment is not made within 28 days the registered keeper or the person who the borough believes to be the owner of the vehicle may receive a Notice to Owner asking for payment."

The parking attendant either fixed the notice to the vehicle or handed it to Mr Moses. On the evidence, it is unclear which method of service was employed.

14. A little while later, Mr Moses drove to Golders Green Road and parked his car there. His car attracted the attention of a different parking attendant who issued a PCN which read as follows:

"PENALTY CHARGE NOTICE

Road Traffic Act 1991 (AS AMENDED)

Number: BA 30078011 VRM: Y562OLF

Make: Mercedes.

Contravention believed committed: 01

Parked in a restricted street during prescribed hours.

Street: GOLDERS GREEN ROAD (BX)

Date: 31/03/05

Time 12:05

A PENALTY CHARGE OF £80 IS DUE WITHIN 28 DAYS OF ISSUE.

£40.00 will be accepted in full and final settlement if received within 14 days of this notice.

Parking Attendant No: 230.”

There was then a perforated line. Below that is a tear -off slip reading:

“Number: BA30078011

Date of offence: 31/03/05

Total charge/fee: 80.00

Discount if paid within 14 days: 40.00.”

On the back of the PCN there is the same information as was given on the other PCN.

15. The parking attendant attempted to serve the PCN, but it is now accepted that Mr Moses successfully drove away before service was achieved.
16. Mr Moses did not pay within 28 days the penalty charge which had been demanded in either of the PCNs. Accordingly, Barnet sent a notice to owner in respect of each PCN to Mr Moses in accordance with paragraph 1 of Schedule 6 to the 1991 Act. Mr Moses made representations to Barnet, pursuant to paragraph 2 of Schedule 6, in respect of each of the two incidents. Unfortunately, those representations have not been put in evidence. So I cannot enumerate the points taken by Mr Moses in those representations. Suffice it to say that the representations did not find favour with Barnet. Barnet decided that the grounds relied upon by Mr Moses had not been established.
17. Mr Moses appealed against Barnet’s two adverse decisions to a Parking Adjudicator, pursuant to paragraph 5 of Schedule 6 to the 1991 Act. Mr Moses’ two notices of appeal have not been put in evidence and so I can only speculate about what they said.
18. Mr Moses’ two appeals were heard together by Mr Timothy Thorne, a Parking Adjudicator, on a date which is not revealed by the bundle. Mr Moses was represented by Mr Barry Segal at the hearing. Mr Moses gave oral evidence in support of the two appeals, and he also put in written evidence. Barnet submitted written evidence but was not represented at the hearing of the appeals.
19. Mr Thorne, having considered the oral and written evidence, allowed both appeals in two written decisions dated 18th February 2006. Mr Thorne’s reasons in respect of the first appeal read as follows:

“After hearing oral evidence from Mr Moses I am satisfied that he is an honest and reliable witness. I accept that when he parked his vehicle in the residents’ bay he properly displayed a valid visitor’s permit and that such permit was properly displayed at the time the PCN was issued. He supplied me with the original permit and his evidence was corroborated by the written statement of Mrs Anne Kramer. I therefore conclude that the respondent has failed to prove on a balance of probabilities that the alleged contravention occurred and I therefore allow the appeal on the merits of the case.

In addition, it was submitted by Mr Segal that the PCN was invalid in any event as it did not contain the date of issue. He argued therefore that the PCN was not issued in accordance with the provisions of section 66 Road Traffic Act 1991. He relied upon the analysis of this legislation made by a Parking Adjudicator in the case of **McArthur v Bury Metropolitan Council** [Case No BC 188]. This decision is not binding on me but is persuasive. I agree with the reasoning of the decision and I am satisfied that the PCN in this case is invalidated by its failure to specify the date of issue (as opposed to the date of alleged contravention). The appeal is therefore allowed for all of the reasons specified above.”

20. Mr Thorne’s reasons in respect of the second appeal read as follows:

“After hearing oral evidence from Mr Moses I am satisfied that he is a honest and reliable witness. I accept that he has a clear and accurate recollection of the relevant incident and that, upon seeing the Attendant, he drove off before the Attendant had an opportunity of serving the PCN. I therefore conclude that the respondent has failed to prove on a balance of probabilities that the PCN was lawfully issued by being attached to the vehicle or handed to the driver.

I therefore allow the appeal on the merits of the case.

In addition, it was submitted by Mr Segal that the PCN was invalid in any event as it did not contain the date of issue. He argued therefore that the PCN was not issued in accordance with the provisions of section 66 Road Traffic Act 1991. He relied upon the analysis of this legislation made by a National Parking Adjudicator in the case of **McArthur v Bury Metropolitan Council** [Case No BC 188]. This decision is not binding on me but is persuasive. I agree with the reasoning of the decision and I am satisfied that the PCN in this case is invalidated by its failure to specify the date of issue (as opposed to the date of alleged contravention). The appeal is therefore allowed for all of the reasons specified above.”

21. Barnet accepted the Adjudicator’s factual decisions in respect of both alleged contraventions. Accordingly, Barnet no longer pursued Mr Moses for payment in respect of either PCN. Nevertheless, Barnet took the view that the second reason given by the Adjudicator in each appeal decision was legally incorrect. The second reason was, in each case, that the PCN did not comply with section 66 of the 1991 Act.

22. Since Barnet has issued many PCNs in similar form, the Adjudicator's decisions had far reaching consequences. Accordingly, on 27th February 2006, Barnet appealed against Mr Thorne's two decisions, pursuant to the 2003 Regulations. Barnet served a single "application to review and vary" in respect of both matters. Barnet challenged only the second of the two reasons given by the Adjudicator, namely the invalidity of the PCNs. Barnet did not request an oral hearing and it did not seek to call evidence.
23. Barnet's application dated 27th February was referred to a different Parking Adjudicator, Mr Austin Wilkinson. Mr Wilkinson dismissed that application in a written decision dated 6th March 2006. The core passages in Mr Wilkinson's decision read as follows:

"The issues exercising the Adjudicators in both **McArthur** and **Al's Bar** were more extensive and fundamental than is suggested in the Council's submissions. In both cases the Adjudicators had to consider the wording of the relevant PCNs and apply to them the requirements of section 66. In concluding as they did, both Adjudicators specifically pointed out that the need for substantial compliance was because section 66(3)(c,d and e) required the recipient of the Notice to have communicated to him/her a certainty as to the requirement to pay AND certainty in the period of time given for the payment. There must therefore be a 'date of the notice' and there must be a description of the payment period for both the full penalty and the discounted penalty which refers to that date: 'beginning with the date of the notice'.

In these instant appeals the date half way up the PCN is simply a 'date'. In fact it is the date of the allegation (as a result of section 66(3)(a)).

The base of the PCN has a payment tear -off slip. Strictly this might be regarded as not being part of the PCN at all - - the view of the Adjudicator in **McArthur**. But even if it were an integral part, it does not refer to a date of the Notice. It refers to a date of contravention - - exactly the same thing as the date of the allegation further up. (In fact the sample PCN does this. The ACTUAL notices adjudged by the Adjudicator referred to a date of 'offence'. De -criminalised contraventions are not offences and have not been so since 1991.)

The PCNs inform the recipient that the penalty ' . . . is due within 28 days of issue'. This wording is fundamentally non -compliant for two reasons:

(1) It does not refer to any date; and none of the date positions relied upon are dates 'of issue'. There should be a date of notice described as such and it should relate to the description of time period.

(2) The time period is plainly wrong for reasons fully aired by the Chief Adjudicator in 2002. The time period must 'begin with' the date of the notice to be compliant with Statute. The wording used would appear, upon accepted case law, to add a day onto the payment period ...

'I also consider the nature and extent of parking control as an activity. It is a necessary one of considerable importance that affects the daily lives of millions of motorists. PCNs are issued in their thousands every day; over

4 million every year. Only about 1 per cent gets as far as an appeal before a Parking Adjudicator. In relation to such a routine, everyday, prolific activity it is highly undesirable for non-compliant PCNs to be served in large numbers. My decision should in my view provide every encouragement to local authorities to ensure that the PCNs they serve are compliant with the statutory requirements as to their content. This is not the first occasion this issue has come before a Parking Adjudicator. In the case of **Moulder v Sutton LBC** (PATAS Case No 1940113243, 24 May 1995), an Adjudicator found the PCN in that case to be a nullity because it omitted the statement required by section 66(3)I. Yet it seems that invalid PCNs are still being issued, as both this case and **Sutton v London Borough of Camden** show. The drafting of a compliant PCN is a simple drafting task and it is difficult to understand why these difficulties have arisen and continue to do so. These sentiments apply to every stage of the enforcement process, not just the issue of a valid PCN. The Parking Adjudicators have had cause in their annual report on more than one occasion to comment on procedural irregularities that have come to their attention in appeals. The motoring public deserves nothing less than that the public authorities exercising penal powers understand the importance of their complying with the conditions attached to their powers and are scrupulous about having in place administrative processes that do so. It is imperative that the public can have confidence in the fairness and propriety of the enforcement of parking controls.’

It is up to local councils to ensure their PCNs are drafted in compliance with the Statute. These appeals show only too clearly that the findings and concerns of the Adjudicators over several years have been disregarded - - a most unattractive basis for asserting good administration.

I conclude that Mr Thorne was correct to find as he did that the PCNs in these appeals were not compliant and could not be enforced.”

24. Barnet was aggrieved by Mr Wilkinson’s decision. Accordingly, Barnet commenced the present proceedings.

Part 3. The Present Proceedings

25. By a claim form issued on 19th April 2006, Barnet applied for judicial review of the decision made by the Parking Adjudicator, Mr Austin Wilkinson, on 6th March 2006. Barnet contends in its claim form that, in so far as section 66(3) requires a PCN to state the date of the notice, both PCNs complied with that requirement. Barnet further contends that although the periods of time stated in the PCNs for discounted payment and for full payment are one day longer than the periods specified in section 66(3) of the 1991 Act, this does not render either PCN invalid. Barnet contends that no prejudice was caused by any technical defects in the notices. Accordingly, this court should grant a declaration that the two PCNs “did comply wholly or substantially with the requirements of section 66(3)”. Certain additional parts of the declaration sought in the claim form were not pursued in oral argument.
26. On or about 10th May 2006, the Parking Adjudicator served an acknowledgment of service which included detailed grounds supporting his decision. On 8th June 2006

Dobbs J granted permission to proceed with the claim for judicial review and directed an expedited hearing. Following the grant of permission, the defence evidence was served. This comprises a witness statement by Mr Wood, the Chief Parking Adjudicator for London, together with exhibits.

27. Mr Wood's statement sets out much helpful background information and includes the following facts. There are 52 Parking Adjudicators in London. Approximately 5 million PCNs are issued each year in London alone in respect of parking matters. Approximately 1 per cent of these PCNs are challenged by way of appeal. Over the years, there have been a number of cases in which Parking Adjudicators have held PCNs to be invalid on account of non-compliance with statutory requirements. In their annual reports, the London Parking Adjudicators have drawn attention to this state of affairs and have encouraged local authorities to comply with the statutory requirements, in order to avoid the risk of prejudice to motorists (see the annual reports for the years 2002 to 2003, and 2003 to 2004).
28. On 31st July, Barnet served evidence in reply comprising a witness statement by Mr Edward O'Bree, a barrister employed in Barnet's legal department. Mr O'Bree states that Barnet has now adopted a new form of PCN, which meets the criticisms made by the Parking Adjudicator and which strictly complies with the requirements of section 66 of the 1991 Act. He exhibits a specimen of the new form of PCN which, as can be seen, clearly complies with the statutory requirements. Mr O'Bree also outlines the practice of Barnet in relation to PCNs, but an objection has been taken to that part of his evidence on the ground that it comes too late in the day. The essential objection is that evidence of this nature ought to have been called during the course of the adjudication process so that the evidence could be tested by cross-examination and so that the Adjudicator could make appropriate findings of fact.
29. This action came on for hearing yesterday. Mr Meyric Lewis represents Barnet. Mr Ian Rogers represents the Parking Adjudicator. I am grateful to both counsel for their assistance and for the excellence of their skeleton arguments and oral submissions. Mr Moses, the interested party, has not taken any part in these proceedings before yesterday. However, yesterday Mr Barry Segal, who represented Mr Moses at the hearing of the first appeal to a Parking Adjudicator, attended court. He made brief oral submissions in opposition to Barnet's appeal. I am grateful to Mr Segal for his assistance.
30. I shall now turn to the two principal issues in this case, namely the date of the notice and the effect of the extra day.

Part 4. The Date of the Notice

64. There are 35 different forms of parking contravention which may be committed. These include, for example, parking in a restricted street during prescribed hours, or parking in a residents parking space without displaying a permit, or parking in a car park which is closed. This last form of contravention may require some ingenuity. Section 66(3)(a) of the 1991 Act requires a PCN to state the grounds upon which it is believed that a penalty charge is payable. I would expect any such statement of grounds to identify the form of contravention and to state where and when the contravention occurred. Indeed, both the PCNs in this case did just that. The core part of the first PCN reads as follows:

“Contravention believed committed: 15

Parked in a Residents’ parking space without clearly displaying a valid Residents’ parking permit.

Street: WOODVILLE ROAD (BX)

Date: 31/03/05.

Time: 11.27.

The date 31st March, when read in that context, must be the date upon which the contravention occurred. The core part of the second PCN reads as follows:

“Contravention believed committed: 01

Parked in a restricted street during prescribed hours.

Street: GOLDERS GREEN ROAD (BX)

Date: 31/03/05.

Time: 12.05.”

The date 31st March, when read in that context, must be the date upon which the contravention occurred.

32. Section 66(3)(b) of the 1991 Act requires the amount of the penalty charge to be stated. There is no dispute that this requirement was complied with in the present case. Section 66(3)(f) of the 1991 Act requires the PCN to state the address to which payment must be sent. There is no dispute that this requirement was complied with in the present case.

33. Section 66(3)I requires the PCN to state:

“ . . . that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice.”

Section 66(3)(d) requires the PCN to state:

“ . . . that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion.”

Section 66(3)I requires the PCN to state:

“ . . . that if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle.”

34. In my view, these three subsections, either as a matter of construction or by clear implication, require that the date of the notice should be stated on the notice. If this is not done, the statutory purpose of section 66(3)I,(d) and I will be thwarted.

35. The date of the notice will usually be the same as the date of contravention but this is not always the case. Let me give three examples:

(1) A parking attendant attempts to issue a penalty notice but is prevented from doing so. Accordingly, pursuant to section 5 of the 2000 Act, a PCN is prepared on a later date and posted to the owner.

(2) Many parking attendants work at night. Shortly before midnight a vehicle is observed parked on double yellow lines. At midnight the contravention comes to an end. This is perfectly feasible as the prescribed hours in many streets end at midnight. The parking attendant prepares a PCN and fixes it to the windscreen shortly after midnight. In this example, the date of the notice is one day after the date of the contravention.

(3) A parking contravention is recorded by camera. On a later date a PCN is issued and posted to the vehicle owner pursuant to section 4 of the 2000 Act.

36. It seems to me that section 66 requires two dates to be stated on a PCN. These are the date of the contravention and the date of the notice. The need for both dates to be stated has been stressed by Parking Adjudicators on more than one occasion. In **Al's Bar and Restaurant Ltd v London Borough of Wandsworth** (28th October 2002 Case No 2020106430) the Parking Adjudicator, Mr Martin Wood, considered a number of criticisms which were levelled at a PCN issued by the London Borough of Wandsworth. Mr Wood held that literal compliance with section 66 was not required. It was sufficient if there was substantial compliance. I agree with that analysis. In relation to the third criticism levelled at the Wandsworth PCN, Mr Wood said this at pages 6 to 7 of his decision:

“In order to calculate the period, it is necessary to know ‘the date of the notice’. Implicitly, therefore, paragraph I requires the notice to bear its date. The date ‘20/11/01’ appears twice on the PCN. It appears about halfway down where it is stated that the vehicle ‘was seen in Lockington Road, SW8 at 9.24 on 20/11/01’. That is in fact part of the ‘grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle’ required by paragraph (a). It appears again on the part of the document described as ‘Payment Slip’. At the top of the document, the ‘notice number’ appears. This also appears on the Payment Slip adjacent to ‘Date: 20/11/01’. In contrast to the Payment Slip, the date does not appear adjacent to the notice number at the top.

Mr Pitt -Payne conceded that it might have been clearer if the date had appeared at the top with the notice number. He contended, however, that there was no reasonable ground for uncertainty and that no reasonable person looking at the PCN could be in any doubt about its date.

I asked Mr Pitt -Payne what would happen if I, having received a PCN, tore off the Payment Slip and sent it with my remittance for the penalty charge. If I later wanted to know the date of the notice for some reason - - for example, because an issue arose between me and the local authority about whether I had paid the reduced penalty within the time allowed - - where would I then find the date of the notice on what I was left with? Mr Pitt -Payne suggested that I might ask the local authority for a copy of the

Payment Slip. If that is so, it follows that the date does not appear on what I am left with - - the PCN after detaching the Payment Slip. That seems to me to be the position. It is not sufficient for a date to appear in the paragraph (a) statement of grounds. The date appears there for the purpose of describing the grounds, not as stating the date of the notice. As to the payment slip, it is in my view not part of the PCN at all; it is a separate document that is, for convenience, attached to the PCN. I note that on the Wandsworth NTO, both the number and date appear at the top of the notice and the attached Payment Slip, in contrast to the PCN.

The PCN as drafted would in my view still not be adequate even if the date of the alleged contravention and the date of the notice were always the same. But in any event this is not the case. A PCN may be served by post where enforcement is carried out remotely by camera and where the parking attendant has been prevented by someone from serving a PCN on the street. In such cases, the date of the notice will be different from the date of the alleged contravention.

Again, therefore, the PCN fails the compliance test.”

37. Three years later, a similar issue arose in relation to a PCN issued by the Bury Metropolitan Borough Council. In **McArthur v Bury MBC** (4th April 2005, Case No BC 188) a PCN was issued which showed the date of contravention but not the date of the PCN. A Parking Adjudicator, Mr Mark Hinchliffe, held that the PCN was invalid on this ground. At pages 5 to 6 of his decision, Mr Hinchliffe said this:

“I am not the first Parking Adjudicator to consider these matters, and I am mindful of the desirability of consistency. I am required to reach my own decisions whilst having regard to the previous decisions of colleagues both in England and Wales, and in London. Accordingly, I have reached a number of conclusions:

- Section 66(3)I,(d) and I requires every PCN to convey certain specified information. The use of the words ‘must state *that*’ suggests that the exact words of the section are not mandatory, but the PCN must accurately convey the information set out in the subsections . . .

- To comply with section 66(3)I, a PCN must have a date. The date of the contravention is not the date of the notice even if, in most cases, the PCN will be issued on the same day as the contravention. I accept that, in Bury, there are no notices issued after the event. Nevertheless, the absence of a date of notice is a serious problem because a motorist will not always be sufficiently *au fait* with the Act to appreciate that as a matter of practice (but not as a matter of law) the date of the contravention will usually be the same as the date of the notice. It is perhaps worth remarking, by way of example, that in certain circumstances in London contraventions can be photographed and then subsequently followed up with a PCN issued on a completely different date. In Bury, a motorist will search in vain for a ‘Date of Notice’ or ‘Date of Issue’ on the face of the PCN. A date is necessary because the 28 day period begins with “the date of the notice”. In my view, if Parliament had intended the date of the contravention to be the starting

point for the relevant periods, it would have said so. The specimen PCN in the guidance specifically shows a 'Date of Issue' at the top. **The tear-off slip is not part of the PCN and may be detached.** The Bury PCN does not comply with section 66(3)I, nor was it modelled on the guidance. There is a serious possibility that real prejudice could be caused as a consequence of this omission because of potential uncertainty as to when the 28 day period begins. The same reasoning applies to 'the period of 14 days beginning with the date of the notice' referred to in section 66(3)(d)."

38. **I find the reasoning in the passages quoted from McArthur and Al's Bar to be compelling.** The statutory requirements are simple and clear. Compliance is not difficult. The Department of Transport has published a specimen form of PCN for the assistance of local authorities. This specimen form has been available for over 10 years. It has "Date of Issue ..." on the top line. There really is no excuse for local authorities who persist in issuing PCNs which do not state the date of the notice.
39. There are good policy reasons why PCNs should comply with the statutory requirements. These documents are issued in large numbers. They often change hands. A PCN may, for example, be issued to a driver on one date and handed over by the driver to the owner on a later date. When a PCN reaches the owner, he or she may wish to pay the discounted charge. There must always be certainty about the date when the notice was issued and the dates when the various periods for payments will expire.
40. Let me now turn to the present case. The two PCNs issued by the parking attendant in Barnet on 31st March 2005 both showed the date of the contravention. Neither PCN showed the date of the notice. The date on which the notice was issued ought to have been shown as a separate entry on the notice. On this ground alone, I hold that neither PCN achieved substantial compliance with section 66 of the 1991 Act.
41. Mr Lewis submits that even if there was non-compliance in this respect, nevertheless no prejudice was caused. PCNs should not be regarded as invalid. I do not accept this submission. Prejudice is irrelevant and does not need to be established. The 1991 Act creates a scheme for the civil enforcement of parking control. Under this scheme, motorists become liable to pay financial penalties when certain specified statutory conditions are met. If the statutory conditions are not met, then the financial liability does not arise.
42. In the present case, the two PCNs issued by Barnet on 31st March 2005 did not comply with section 66(3)I(d) and I of the 1991 Act. Accordingly, the requirements of section 66 were not satisfied and no financial liability was triggered either by the PCN or by any subsequent stage in the process such as the notice to owner.
43. For the above reasons, I conclude that Mr Wilkinson, the second Parking Adjudicator in the present case, was correct to hold that the two PCNs were not compliant with the 1991 Act and were therefore invalid. It follows from this conclusion that Barnet is not entitled to the relief which it seeks and these proceedings must be dismissed.

Part 5. The Effect of the Extra Day

44. Since the defendant has succeeded on the first issue, it follows that Barnet's claim must be dismissed and the second issue does not arise for decision. Nevertheless, having heard argument upon this issue, I shall comment upon it.
45. Both PCNs contain the sentence "a penalty charge of £80 is due within 28 days of issue." As that phraseology has been interpreted by the courts, the computation of the 28 days begins on the day after the date of issue. Both PCNs contain the sentence:

"£40 will be accepted in full and final settlement if received within 14 days of the date of this notice."

As that phraseology has been interpreted by the courts, the computation of the 14 days begins on the day after the date of issue. Both PCNs have on the back a sentence which reads:

"If the discounted payment is not received within 14 days and full payment is not made within 28 days, the registered keeper or the person who the borough believes to be the owner of the vehicle may receive a notice to owner asking for payment."

As that phraseology has been interpreted by the courts, the computation of the 14 day period and the 28 day period referred to in that sentence begins on the day after the date of issue.

46. Thus it can be seen that in each case the PCN adds one day to the time period stipulated by section 66(3) of the 1991 Act. Mr Rogers, for the Parking Adjudicator, contends that this departure invalidates the notice. Mr Lewis, for Barnet, contends that the gifting of an extra day is an indulgence which benefits the motorist and cannot invalidate the notice.
47. This issue arose in **Al's Bar**. The Adjudicator heard evidence from a Senior Parking Officer of Wandsworth Borough Council, from which it emerged that in practice the Council did not always allow the extra time indicated in the PCN. The Adjudicator held that the incorrect statement of the time period in the PCN (in conjunction with other defects) invalidated the PCN.
48. In **McArthur**, a similar point arose. At page 6 of his decision the Adjudicator said this:

"The phrases 'within 28 days' and 'within 14 days' convey different information from that specified in section 66(3). By legal convention, where the 'within' formula is deployed, the day upon which the triggering event occurs is excluded from the period. The 14 and 28 day periods referred to in section 66, however, include the date of the notice. The wording on the Bury PCN, therefore, does not comply with the requirements imposed by section 66(3). The Guidance, however, also uses the 'within' formula and it is hard to see how real prejudice could arise by virtue of allowing an extra day for payment. Modelling a PCN on the specimen at ANNEX 12.1 of the Guidance is urged by the bold italics of paragraph 12.1 of the Guidance. I therefore find that, in this respect, the wording of the Bury PCN does not warrant judicial criticism, and it is therefore without adverse legal consequence."

49. It seems to me that the different decisions which were reached on this point in **Al's Bar** and **McArthur** arise from differences in the evidence. In **McArthur** there appears to have been no evidence that what the Council gave with one hand it took away with the other.
50. In the present case, there has been no investigation of this issue before either Parking Adjudicator. The effect of the extra day was not an issue in the appeal to the first Adjudicator, Mr Thorne. Likewise, the effect of the extra day was not a matter raised in Barnet's "application to review and vary" dated 27th February 2006. No evidence relevant to this issue was adduced at the hearing before the first Adjudicator, Mr Thorne, or in the proceedings before the second Adjudicator, Mr Wilkinson.
51. In those circumstances, I do not think that Mr Wilkinson ought to have dealt with the effect of the extra day in his decision dated 6th March 2002. This was a new point. If Mr Wilkinson was minded to invalidate the two PCNs on this additional ground, he ought to have informed all parties of what he had in mind and given them an opportunity to comment. If either party had wished to adduce evidence on this point (as was done in **Al's Bar**), Mr Wilkinson ought to have admitted such evidence.
52. It follows from the foregoing that Mr Wilkinson's decision on the effect of the extra day cannot stand. If the two PCNs were otherwise valid notices, the proper course might possibly be to remit the matter to the Parking Adjudicator so that he could (a) receive any evidence which either party wished to submit and (b) hear argument on the effect of the extra day. In the present case, however, no useful purpose would be served by such a course. I shall not, therefore, invite counsel to make further submissions on what, hypothetically, would be an appropriate remedy. For the reasons set out in Part 4 above, I have already held that the two PCNs are non-compliant and that the claimant is not entitled to the relief sought.

Part 6. Conclusion

53. For the reasons set out in Part 4 of this judgment, both the first and second Parking Adjudicators were correct to hold that the two PCNs issued by Barnet on 31st March 2006 failed to comply with section 66 of the 1991 Act. Both Parking Adjudicators were correct to hold that the PCNs were invalid on that ground. Accordingly, Barnet is not entitled to the declaratory relief which it seeks and these proceedings must be dismissed.
54. MR ROGERS: My Lord, may I thank you for the speed with which you have managed to deliver judgment and also the care which you have obviously taken. It has been agreed between the parties that there should be no order as to costs, subject to your view.
55. MR JUSTICE JACKSON: I am perfectly content to make no order as to costs. You are both public authorities and that sounds very sensible.
56. MISS MONTES -MANZANO: My Lord, in light of the judgment I have a brief application for permission to appeal.
57. MR JUSTICE JACKSON: Yes, Miss Montes -Manzano.
58. MISS MONTES -MANZANO: My Lord, we say that this matter has a reasonable prospect of success on the issue, which has never been previously judicially decided by

the court, that the PCN in the form previously adopted by Barnet is substantially compliant with the requirements of section 66 of the 1991 Act. Also, there are compelling reasons why this should be heard by the Court of Appeal. First of all, the importance attached by both parties to the matter and to the issue, and secondly, the fact that this issue has never been judicially decided before. Those are my submissions, my Lord, unless I can assist you any further.

59. MR JUSTICE JACKSON: Thank you.
60. MR ROGERS: My Lord, it is obviously a matter for you. I can only assist the court in saying that it is true that you are the first judge to consider this issue. However, you have applied the approach set out in **London & Clydeside** and **Jeveanthan**, and the House of Lords has also added that that is the approach to be followed. My Lord, it is a matter for you, but I would feel confident in urging you to refuse permission to appeal.
61. MR JUSTICE JACKSON: This is an application for permission to appeal to the Court of Appeal against the judgment which has just been delivered. There are two grounds upon which permission to appeal might be granted. They are: (a) that the court considers that the appeal would have a reasonable prospect of success, or (b) that there is some other compelling reason why the appeal should be heard (see rule 52.3(6) of the Civil Procedure Rules). Counsel for the claimant relies upon both grounds in the application for permission.
62. So far as the first ground is concerned, on the view which I take of the matter the outcome of this case is clear. This court has come to a decision which is in line with a body of jurisprudence developed by Parking Adjudicators. I do not consider that this appeal has a reasonable prospect of success.
63. So far as the second ground is concerned, it should be borne in mind that Barnet has now amended its form of penalty charge notice so as to comply with the requirements of the Act. Therefore, the judgment which has just been given will have no impact upon the current form of notices being issued by Barnet. The interest in this matter from Barnet's point of view is purely a historical one, in so far as there are outstanding challenges to old penalty charge notices.
64. In that situation, in my view, this is not a case where there is some other compelling reason why the appeal should be heard. Accordingly, for all of the above reasons, this application for permission to appeal is refused.

EV5 (PARKING CONTROL MANAGEMENT (UK) v CHRISTOPHER BULL)

IN THE COUNTY COURT AT HIGH WYCOMBE

Claim No. B4GF26K6
& 2 OTHER CLAIMS

The Magistrates and Family Court
Easton Street
High Wycombe
HP11 1LR

Thursday, 21st April 2016

Before:

DISTRICT JUDGE GLEN

Between:

PARKING CONTROL MANAGEMENT (UK)

Claimant

-v-

CHRISTOPHER BULL

Defendant

Counsel for the Claimant:

MR THOMAS SAMUELS

Lay Representative for the Defendant:

MR DAVID CARROD

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

DISTRICT JUDGE GLEN:

1. I give this judgment in all three cases brought by Parking Control Management (UK) Limited against the following defendants: Mr Christopher Bull, Miss Jane Lyndsay and Mr Christopher Woolford. My decision in each case is identical and there has been no distinction between the defendants that has been brought to my attention which is material to this case. I have heard these claims together because all parties agree that they raise identical issues of fact and law and there are very small differences and that they can be resolved by this single judgment.
2. In each case the claimant brings an action against the defendant for what are described, and I will call them, parking charges. In the case of Mr Bull it is alleged that he parked his car, registration number [REDACTED] on the roadways of what is known as the Wye Dene Estate on various dates between 6th October 2014 and 12th November 2014. On each occasion it is said he incurred a charge of £150, making a total of £750 made up of a £100 charge and £50 as an additional enforcement amount, as I will call it as neutrally as I can. In the case of Mr Woolford, he parked a series of different vehicles on various occasions between 22nd September 2014 and 21st December 2014. Again on each occasion he has been visited with a £150 total charge, making a total of £1,350. In the case of Miss Lindsay, she parked a vehicle, [REDACTED], on various occasions between 6th October 2014 and 16th December 2014 and in the same way has incurred a total charge of £900. There is no dispute in this case that the vehicles in question were parked on the roadways of the estate on the dates and times that are said to have incurred the charge.
3. The claimant in this case has been represented by Mr Samuels of counsel and I am grateful to him for both his succinct skeleton argument and his succinct submissions on the points at issue which I will identify in a moment. Mr Carrod has come to represent the defendants. I have allowed him to speak on their behalf and he has done so again with economy and clarity and I am grateful to him also for his skeleton argument on the points in issue.
4. As part of this case I have read the various documents presented to me by the parties, which include but are not limited to a witness statement from each defendant in more or less identical terms, their original defences, again in more or less identical terms, and the replies to those defences and the witness statements in each case of Miss Philpott, again in pretty much identical terms. I have taken all of those matters into account in reaching my decision together with the oral submissions made to me by the parties in the course of this morning's, now this afternoon's, hearing.
5. The facts of this matter are simply as follows. The Wye Dene Estate is, as I understand it, a development of properties which, for relevant purposes, have been let on shared ownership leases by Thames Valley Housing Association. Each of the defendants holds a property (it may be a flat or a house, I do not know, I suspect it is probably a flat) on a shared ownership lease and that shared ownership lease appears to have included not only the flat itself but also a single parking space for their use.
6. I indicated during the course of the hearing that I would assume, and I do assume, for the purposes of this judgment because unfortunately no copy of the leases are before

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me, that the leases in the usual way contain the demise of a term of years in relation to both the flat and the parking space and grant rights of way or easements, to give them their technical term, over the communal roadways. For these purposes I am sure they grant rights of way over other areas too, but over the communal roadways on the estate. As a matter of law, a right of way does not convey a right to park.

B

7. In 2013 it appears that the managers of the estate and the residents had a meeting at which an indication was given that there was an intention to introduce a parking regulation scheme relating to the roadways. One of the issues that we had to resolve at the start of this case was that it was said at that meeting that the purpose of the parking scheme was to deter offsite parking, ie, by people who do not live on the estate. I had to consider whether that was an issue which had its own separate life in the context of these proceedings. I decided that it would be wrong, as it was not raised in the defence, to allow it to be used for anything other than an indication of one purpose for the scheme, but we have no evidence of what was said at the meeting other than what Miss Lindsay says and we have no evidence from Thames Valley Housing Association about the purpose for which they appointed, as I am satisfied they did appoint, the claimant to regulate parking on the land.

C

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8. At some time, perhaps in 2013 but probably more likely in 2014, the claimant erected various signs at various points along the roadways of the estate and there has been no suggestion to me in argument that those signs did not adequately draw to the attention of persons on the estate what they have to say. Those signs say this. They are headed by Parking Control Management's logo and they say this:

E

"This site is private land and is managed and operated by PCM (UK) Ltd.
Parking conditions apply."

Those parking conditions are stated to be as follows:

F

"No parking on this roadway at any time. No parking either wholly or partially on paved, landscaped or access areas at any time. Enforcement in operation 24 hours."

Then in slightly smaller type underneath those one would have thought fairly clear words are these words:

G

"By parking or remaining at this site otherwise than in accordance with the above you, the driver, are agreeing to the following contractual terms."

There is a box saying "Parking charge notice" and it says:

H

"You agree to pay consideration in the form of a parking charge in the sum of £100 to be paid within 28 days of issue. This is reduced to £60 if paid within 14 days. You will be liable for additional parking charges for each and any subsequent 24-hour period or part thereof that the vehicle remains or if it returns at any time."

Then there are other bits which I am not going to mention, but I will mention this other note:

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“Failure to pay this charge may result in the vehicle keeper’s details being requested from the DVLA. Enforcement action may incur additional costs that will be added to the value of the parking charge and for which the driver will be responsible.”

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9. I have seen some limited photographs of the estate and from those photographs I notice that the estate roads are relatively wide, they have fairly generous pavements, they, as Mr Samuels has suggested, pass by the various flats including the balconies and windows of those flats and obviously they permit circulation of traffic around the estate including, of course, delivery vehicles, emergency vehicles and potentially rubbish disposal vehicles. It is always dangerous to form any opinion from looking at photographs but I would have said that parking on one side of the road was unlikely to impede traffic except in the sense that they may have to stop and pass. Parking on both sides almost certainly would impede certainly larger traffic. The photographs suggest that people do park on the side of the road on a regular basis, but that is in one sense neither here nor there.

10. At the start of the case we identified three issues which needed to be resolved in this case in order to establish whether the claimant was going to succeed or not. The first of those issues is whether in any sense a contract arose between the claimant on the one hand and each of the defendants on the other at the time that they parked their car on the roadways within the estate. The second issue if there is a contract, because it becomes academic if there was not, was whether the charge was either potentially a consideration for parking or alternatively a penalty for breach of the contract which one assumes exists. The last issue was the meaning of the part of the notice which talks about additional costs being added to the parking charge and the extent to which the claimant is entitled to add an arbitrary, or a fixed figure at £50, to the claim in each case for those charges.

11. The issue of parking and charges for parking has been a difficult one over the years and in particular the issue of whether or not these charges can be considered to be penalties has been one that has attracted some lively litigation involving another parking firm, a well-known firm known as ParkingEye. In the case of *ParkingEye Limited v Beavis* [2015] UKSC 67, the Consumer Association intervening, the dispute eventually reached the highest court in this country, the Supreme Court, and, as I understand it, on 4th November last year a seven judge court gave an opinion on the outcome of that appeal. I will not summarise the outcome of that decision but I will deal with what the findings were in relation to the issues which we are concerned with.

12. The first issue is the question of contract. In the *Beavis* case ParkingEye regulated the use of a car park serving commercial premises where a free parking period was permitted and where thereafter anybody overstaying the two-hour free parking period was required to pay a charge of £85. The Supreme Court decided there essentially was a contract for two hours free parking which, if breached, resulted in a fixed damages clause requiring payment of £85 and the Supreme Court went on to decide that that was not a penalty.

13. Analysing the route by which the Supreme Court decided the issue of contract is not easy because the parties were agreed, as they were before the Court of Appeal, that there was a contractual relationship between the parties and therefore the matter was

- A not argued before the court. However, there are some useful parts of the analysis and I am going to deal with those because this is an important issue.
- B 14. Lord Justice Neuberger, with whom Lord Hodge agreed at paragraph 284 of the judgment, at paragraph 94 held that Mr Beavis in that case had a contractual licence to park his car in the retail park on the terms of the notice posted at the entrance which he accepted by entering the site and those terms were that he would not stay for more than two hours etc. He notes that the Court of Appeal, and indeed the Supreme Court, doubted this analysis, but on reflection he says this was correct and he became clear that this was a contractual licence.
- C 15. Lord Mance, dealing with the same issue at paragraph 189, had a bit more difficulty with this analysis. He was unhappy with the idea of a contractual licence because, of course, ParkingEye did not have any interest in the car park itself out of which it could grant a licence. I am not sure that would necessarily, with respect to a much more eminent lawyer than myself, have been a fact which would have prevented the grant of a licence. You do not need a legal title to grant a licence. What he does go on to say is this. In paragraph 190 he says:
- D “It may be suggested that Mr Beavis thereby promised nothing which can in law constitute valuable consideration. He was being given a licence, on conditions, and he would have been a trespasser if he overstayed or failed to comply with its other conditions. But ParkingEye was not in possession of the car park, or capable of bringing proceedings in trespass. It had a mere right to control parking at the site – the right to permit or refuse others to park there on such conditions as it might stipulate. By promising
- E ParkingEye not to overstay and to comply with its other conditions, Mr Beavis gave ParkingEye a right, which it would not otherwise have had, to enforce such conditions against him in contract. Even if no parking charge had been stipulated, enforcement would still have been possible in law, even if a claim for damages or for an injunction might not in practice have been likely. With the stipulated parking charge, the nature of the intended contract is even clearer, although the question arises whether the
- F Parking Charge is an unenforceable penalty. The *quid pro quo* provided by ParkingEye in return for Mr Beavis’s promise was the grant of permission to park for up to two hours in its discretion free of charge, on conditions. Each party thus gave the other valuable consideration.”
- G 16. I simply record that Lord Toulson also provided an analysis of the matter which I find rather inconclusive and there was no other consideration of the issue by the Supreme Court judges.
- H 17. Why is this important? It is important for this reason. In the *Beavis* case the scheme was categorised by the permission the ParkingEye gave Mr Beavis to be in the car park for a limited period of time. So whether you call it a contractual licence or whether you simply call it a contractual permission, as Lord Mance in the end did, that was the consideration and the consideration flowing the other way was Mr Beavis’s agreement to be bound by those terms.
18. I am afraid that in my judgment that analysis just does not work in this case. It does not work for this reason. If the notice had said no more than if you park on this

- A roadway you agree to pay a charge then it would have been implicit that PCM was saying we will allow you to park on this roadway if you pay £100 and I would agree with Mr Samuels' first analysis that essentially the £100 was a part of the core consideration for the licence and was not a penalty for breach. The difficulty is that this notice does not say that at all. This notice is an absolute prohibition against parking at any time, for any period, on the roadway. It is impossible to construct out of this in any way, either actually or contingently or conditionally, any permission for anyone to park on the roadway. All this is essentially saying is you must not trespass on the roadway. If you do we are giving ourselves, and we are dressing it up in the form of a contract, the right to charge you a sum of money which really would be damages for trespass, assuming of course that the claimant had any interest in the land in order to proceed in trespass.
- B
- C 19. I think Mr Samuels recognised the difficulty of his conditional obligation argument, ie you must not park here but if you do then you have got to pay, and he urged upon me in the alternative that one had to look outside of just the roadways and look at the leases and the rights and obligations under the leases as a whole and to construct, as it were, a package of mutual obligations and benefits which gave rise to consideration for a contract whereafter a breach would result in a charge.
- D 20. I am not with him on that argument. The leases are a self-contained set of rights and obligations. They grant a leasehold title in relation to the parking space and the flat. They probably grant a right of way over the roadways, but they say nothing at all about the right to park on the roadways. In my judgment the question of the ability to park on the roadways is a quite separate matter. On each occasion when the defendants parked on the roadway they trespassed against the interest of Thames Valley Housing Association Limited and Thames Valley Housing Association Limited would have been entitled to seek an injunction from doing it and would have been entitled to sue them for damages and those damages might have represented a reasonable charge for doing what they had done. However, in my judgment, there was never any contractual relationship, whether one categorises it as a licence or simply some form of contractual permission, because that is precisely what PCM were not giving to people who parked on the roadway.
- E
- F 21. For that reason alone I will dismiss this claim, but as the parties have taken the trouble to argue the other issues that arise and in case the matter has to go to any higher court, I will indicate what my views were on the remaining issues.
- G 22. As I have already indicated in the course of argument, the question of whether a clause is a penalty, assuming we get this far, is whether it is a secondary obligation imposing a detriment which is out of all proportion to the legitimate interests of the innocent party to the contract. At paragraph 97 of Lord Neuberger's judgment he identified in short form the various legitimate interests of ParkingEye Limited. They were essentially on the one hand the commercial interests of controlling parking in terms of the interests of the various commercial entities who would expect customers to use their car park, and also the commercial interests of ParkingEye itself in being able to make a profit and cover the costs of running the scheme.
- H 23. Mr Samuels in argument before me has urged upon me that essentially identical considerations apply, or at least comparable considerations apply, and I agree with him. In my judgment either ParkingEye or Thames Valley had a legitimate interest in

A regulating the use of the roadways, in ensuring amongst other things that people from off the estate did not park there, ensuring that access by people to their own parking spaces was not restricted, preventing obstruction of the roadways to emergency or delivery vehicles, and preventing disturbance to residents from people who park right outside their windows or underneath their balconies and may or may not decide to exit their car before listening to some music they are particularly fond of. I also find that it is a legitimate interest on the part of the claimant to recover money and to make a commercial profit and I would not have been persuaded that £100 was disproportionate to the legitimate interests that I have identified.

B

24. I would, however, have not made any additional award in relation to the £50. In my judgment this is not a liquidated damages clause. It is not more than telling the parker that additional costs may be generated if you do not pay. That is a statement of the obvious, it is not a contractual entitlement and to the extent that it keys up, as it were, a claim for damages for breach of contract, there is not a shred of evidence before me to prove that that sum was £50. I suspect that most of the additional costs identified in Miss Philpotts' witness statement would have been caught up in the £100 flat charge in any event and I would have refused to make an award of that sum.

C

25. As I have already indicated, for the reasons I have given, all three of these claims will be dismissed.

D

MR CARROD: Thank you, sir. I would just like to ask the defendants if they have any costs they wish to claim?

THE DISTRICT JUDGE: Yes, please do.

E

MR CARROD: They have taken time off work, if they could do that *[inaudible]*. The maximum figure you can claim is £95. You have to be able to justify that.

THE DISTRICT JUDGE: Let us just be clear about what we are talking about here, Mr Carrod. Someone who comes to court as a witness, which effectively also means a party because they may be called upon to give evidence, is entitled to recover a maximum of £95 for loss of earnings. So in each case I need to ask you, I am assuming you are Mr...?

F

MR BULL: Bull.

THE DISTRICT JUDGE: Are you working currently?

G

MR BULL: Yes.

THE DISTRICT JUDGE: And have you lost income as a result of coming to court today?

MR BULL: Yes.

H

THE DISTRICT JUDGE: Does your income exceed the sum of £95 per day?

MR BULL: Yes.

A	THE DISTRICT JUDGE: Do you require that to be given on oath, Mr Samuels?
	MR SAMUELS: No, sir, I do not think so.
	THE DISTRICT JUDGE: Same questions for you please, Miss Lindsay.
B	MISS LINDSAY: Yes, I work.
	THE DISTRICT JUDGE: You are in work.
	MISS LINDSAY: Full time, yes.
C	THE DISTRICT JUDGE: Have you lost income as a result of coming here today?
	MISS LINDSAY: Yes.
	THE DISTRICT JUDGE: Do you earn more than £95 a day?
	MISS LINDSAY: <i>[No?]</i> .
D	THE DISTRICT JUDGE: Do you want to tell me how much you earn a day?
	MISS LINDSAY: <i>[Probably £80?]</i> .
	THE DISTRICT JUDGE: Mr Woolford?
E	MR WOOLFORD: Yes. <i>[£95 as well?]</i> .
	THE DISTRICT JUDGE: All right. Very well. In each case I will order the defendant recover against the claimant witness expenses in Mr Bull's case of £95, in Miss Lindsay's case £80 and in Mr Woolford's case £95. Anything else?
F	MR CARROD: That is all, thank you, sir.
	THE DISTRICT JUDGE: Thank you.
	MR BULL: Thank you.
G	MISS LINDSAY: Thank you very much.
	THE DISTRICT JUDGE: That is my judgment.
	MR WOOLFORD: Thank you, sir.
H	<i>[Court adjourns]</i>

EV6

General Form of Judgment or Order

In the County Court at
Caernarfon

Claim Number	F2QZ4W28
Date	4 September 2019



VEHICLE CONTROL SERVICES LIMITED	1 st Claimant Ref VC04982786
MR JONATHON DAVIES	1 st Defendant Ref

Before District Judge Jones-Evans sitting at the County Court at Caernarfon, Caernarfon Justice Centre, Llanberis Road, Caernarfon, Gwynedd, LL55 2DF.

Upon it being recorded that District Judge Jones-Evans has over a very significant period of time warned advocates appearing on behalf of the Claimants in many cases of this nature before this court that their claim for £60.00 in unenforceable in law and is an abuse of process and is nothing more than a poor attempt to go behind the decision of the Supreme Court in Beavis which inter alia decided that a figure of £160 as a global sum claimed in this case would be a penalty and not a genuine pre estimate of loss and therefore unenforceable in law and if the practice continued he would treat all cases as as claim for £160 and therefore a penalty and unenforceable in law it is hereby

ORDERED AND DECLARED:

1. This is a claim for the global sum of £160.
2. It is a penalty and unenforceable in law.
3. It is nothing more than a poor attempt to go behind the decision of the Supreme Court in Beavis.
4. The claim is struck out and declared to be wholly without merit and an abuse of process.
5. This order having been made by the court of its own initiative a party affected by it may apply to have it set aside or varied or stayed pursuant to CPR rule 3.3(5) and (6) such application to be issued by 4pm on 12th September 2019.

The court office at the County Court at Caernarfon, Caernarfon Justice Centre, Llanberis Road, Caernarfon, Gwynedd, LL55 2DF. When corresponding with the court please address forms or letters to the Court Manager and quote the claim number. Tel: 01286 669700 Fax: GOLDFAX 01264 347958. Check if you can issue your application online. It will save you time and money. Go to www.moneyclaim.gov.uk to find out more.

Produced by

EV7

General Form of Judgment or Order

In the County Court at
Manchester

Claim Number	E8GF1V7V
Date	24 November 2018



UK CAR PARK MANAGEMENT LIMITED	1st Claimant Ref 101295.24327/UK CAR PARK
ESPLANADE LTD	1st Defendant Ref

Before District Judge Grand sitting at the County Court at Newport (I O W), 1 Quay Street, Newport, Isle Of Wight, PO30 5YT.

IT IS ORDERED THAT

The claim is struck out as an abuse of process.

Reasons

The claim contains a substantial charge additional to the parking charge which it is alleged the Defendant contracted to pay. This additional charge is not recoverable under the Protection of freedoms act 2012 Schedule 4 nor with reference to the judgment in Parking Eye v Beavis. It is an abuse of process for the Claimant to issue a knowingly inflated claim for an additional sum which it is not entitled to recover. This order has been made by the court of its own initiative without a hearing pursuant to Rule 3.3(4) of the Civil Procedure Rules 1998 and a party affected by the order may apply to have it set aside varied or stayed not more than 7 days after the date the order was served upon that party.

Dated 21 November 2018

The court office at the County Court at Manchester, Civil Justice Centre, 1 Bridge Street West, Manchester, M60 9D1. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 0161 2405000 Fax: 01264 785032. Check if you can issue your claim online. It will save you time and money. Go to www.moneyclaim.gov.uk to find out more.

N24 General Form of Judgment or Order

Produced by: Fiona Mitchell
CJR065C

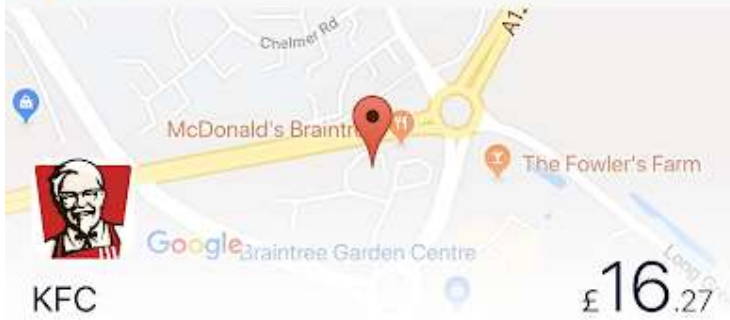
EV8 (Showing location of Defendant on the day involved)

08:49



[< Back](#)

Sunday, 1 Apr 2018, 11:10



KFC

Braintree Road, Braintree CM77 8GA

£16.27



Eating Out



Add notes and #tags



Add receipt



SHARE THE COST



Add to Shared Tab

A simple way to manage shared expenses



Split this bill

Instantly get paid back by your friends

SUBSCRIPTIONS

Repeating payment

We'll predict this for you in Summary



KFC HISTORY



KFC, A120, Cressing, Braintree CM77 8GA

CM8 2TL Witham



18 min (5.7 mi) via B1018

 [DIRECTIONS](#)

EV9 (Parking Eye v Beavis) signage

2 hour max stay

Customer only car park

4 hour maximum stay for Fitness Centre Members

Failure to comply with the following
will result in a Parking Charge of:

£85



**Parking limited to 2 hours
(no return within 1 hour)**



Park only within marked bays



**Blue badge holders only in
marked bays**

ParkingEye Ltd is solely engaged to provide a traffic space maximisation scheme. We are not responsible for the car park surface, other motor vehicles, damage or loss to or from motor vehicles or user's safety. The parking regulations for this car park apply 24 hours a day, all year round, irrespective of the site opening hours. Parking is at the absolute discretion of the site. By parking within the car park, motorists agree to comply with the car park regulations. Should a motorist fail to comply with the car park regulations, the motorist accepts that they are liable to pay a Parking Charge and that their name and address will be requested from the DVLA.
Parking Charge Information: A reduction of the Parking Charge is available for a period, as detailed on the Parking Charge Notice. The reduced amount payable will not exceed £75, and the overall amount will not exceed £150 prior to any court action, after which additional costs will be added.

This car park is private property.

ParkingEye Ltd
Telephone 0844 247 2981
PO BOX 565, Chorley, PR6 6HT



Car park monitored
by ANPR systems



THIS IS A REGISTERED TRADEMARK OF BPA. ANY UNAUTHORIZED USE OF THIS MARKING IS A BREACH OF THE TRADE MARK ACT 1994. IF YOU ARE IN DOUBT, PLEASE CONTACT BPA ON 0800 020 020.

EV10 (BPA Code of Practice on Entrance Signage)

B OPERATIONAL REQUIREMENTS IN ENGLAND AND WALES

17 Introduction to the operational requirements

- 17.1 Sections 18 to 24 below apply to England and Wales only. They take into account the changes to private parking management following the Protection of Freedoms Act 2012 (POFA 2012).

Schedule 4 to POFA 2012 is set out in Appendix C of the Code.

18 Signs

- 18.1 A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

- 18.2 **Entrance signs** play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, you must also have a standard form of entrance sign at the entrance to the parking area. Entrance signs must tell drivers that the car park is managed and that there are terms and conditions they must be aware of. Entrance signs must follow some minimum general principles and be in a standard format. The size of the sign must take into account the expected speed of vehicles approaching the car park, and it is recommended that you follow Department for Transport guidance on this. See Appendix B for an example of an entrance sign and more information about their use.

A standard form of entrance sign must be placed at the entrance to the parking area. There may be reasons why this is impractical, for example:

- when there is no clearly defined car park entrance
- when the car park is very small
- at forecourts in front of shops and petrol filling stations
- at parking areas where general parking is not permitted

- 18.3 **Specific parking-terms signage** tells drivers what your terms and conditions are, including your parking charges. You must place signs containing the specific parking terms throughout the site, so that drivers are given the chance to read them at the time of parking or leaving their vehicle. Keep a record of where all the signs are. Signs must be conspicuous and legible, and written in intelligible language, so that they are easy to see, read

and understand. Signs showing your detailed terms and conditions must be at least 450mm x 450mm.

- 18.4 If you intend to use the keeper liability provisions in Schedule 4 of POFA 2012, your signs must give 'adequate notice'. This includes:
- specifying the sum payable for unauthorised parking
 - adequately bringing the charges to the attention of drivers, and
 - following any applicable government signage regulations.

See paragraphs 2(2), 2(3) and 12 of the Schedule.

- 18.5 The wording you include on your specific parking terms signage is your decision. However, you should try to use plain and intelligible language in all your signs and information.
- 18.6 If you provide a telephone line to respond to complaints, challenges and appeals from motorists relating to the terms and conditions of parking they have entered into, these calls must not be charged above the basic rate.
- 18.7 You should display the BPA's AOS logos at all sites. This will help the public to see that you are a legitimate operator, and show that the site is run properly.
- 18.8 Important: you may have to give other information on signs and notices under companies and consumer protection law and other legislation.
- 18.9 So that disabled motorists can decide whether they want to use the site, there must be at least one sign containing the terms and conditions for parking that can be viewed without needing to leave the vehicle. Ideally this sign must be close to any parking bays set aside for disabled motorists.
- 18.10 Where there is a change in the terms and conditions that materially affects the motorist then you must make these terms and conditions clear on your signage. Where such changes impose liability where none previously existed then you must consider a transition to allow regular visitors to the site to adjust and familiarise themselves with the changes. Best practice would be the installation of additional/ temporary signage at the entrance and throughout the site making it clear that new terms and conditions apply. This will ensure such that regular visitors who may be familiar with the previous terms become aware of the new ones.

19 Charges, and terms and conditions

- 19.1 When you issue a parking charge notice the charges you make have to be reasonable. This section explains what reasonable charges are.

19.2 In the Code 'parking charges' means charges arising from enforcement under three different circumstances:

- when a motorist breaks the terms and conditions of a parking contract
- when a motorist trespasses by parking without permission
- agreed charges that are advertised in the contract; for example, for an overstay.

It does not mean the normal tariff fees for parking. These are a matter for the landowner and operator and are outside the scope of the Code. Your terms and conditions will include your normal tariffs for parking, plus any parking charges if the driver breaks the contract or commits a trespass.

19.3 If the driver breaks the contract, for example by not paying the tariff fee or by staying longer than the time paid for; or if they trespass on your land, they may be liable for parking charges. These charges must be shown clearly and fully to the driver on the signs which contain your terms and conditions.

19.4 If you want to enforce a parking charge notice under the keeper liability provisions of POFA 2012 you will need to show how you brought the requirement to pay parking charges to the attention of drivers. See paragraphs 2 (2) and (3) of Schedule 4.

19.5 If the parking charge that the driver is being asked to pay is for a breach of contract or act of trespass, this charge must be proportionate and commercially justifiable. We would not expect this amount to be more than £100. If the charge is more than this, operators must be able to justify the amount in advance.

19.6 If your parking charge is based upon a contractually agreed sum, that charge should not be punitive or unreasonable. If it is more than the amount in Clause 19.5 and is not justified in advance, it could lead to an investigation by Trading Standards or another appropriate authority.

19.7 If prompt payment is made (defined as 14 days from the issue of the parking charge notice) you must offer a reduced payment to reflect your reduced costs in collecting the charge. This reduction in cost must be by at least 40% of the full charge.

19.8 If you are asked, you must be able to justify the level of parking charges to the AOS Board, a member of our compliance team or to their specified agent.

19.9 You must warn drivers that if they delay payment beyond a payment period of 28 days and you need to take court action or use debt recovery methods to recover a debt, there may be extra 'recovery' charges for debt recovery action. However, you do not need to say how much these

recovery charges are in advance, on your signs or notices.

19.10 If an Operator seeks to use extracts from the 'ParkingEye v Beavis' judgement laid down by the Supreme Court, the judgement must be referenced and that extracts from it must be properly quoted. Best practice would be adding the website link to the summary of the judgement, when making reference to it.

20 Parking charge notices

20.1 When a vehicle is parked in a private car park, the normal rule is that the driver is responsible for paying the tariff fee (if any) for parking, for following the terms and conditions which apply, and for paying any parking charges.

Because of the difficulties of identifying who drivers are and where they live, the law in England and Wales now allows car park owners and operators to recover unpaid parking charges from registered vehicle keepers, or; where relevant, from vehicle hirers.

20.2 Schedule 4 of POFA 2012 creates the new legal basis to claim unpaid parking charges from vehicle keepers and hirers. As long as the strict conditions of Schedule 4 are met, you may claim payment from the keeper or the hirer of the vehicle rather than from the driver. To do this you need to follow the procedures set out in the Schedule. You can do this whether the parking originally took place under the terms of a contract or was an act of trespass.

20.3 You can find more information on the procedures in Schedule 4 of POFA, which is set out in full in Appendix C of the Code.

20.4 The parking charge notice is the document you:

- give to drivers, or attach to their vehicle windscreen, to tell them they have broken your terms and conditions and are now liable for parking charges, or
- send to vehicle keepers asking them to pay the parking charges, if you do not have the driver's details, or
- send to vehicle hirers, asking them to pay the parking charges, if you discover that the vehicle was rented.

POFA 2012 refers to the 'Notice to Driver', the 'Notice to Keeper' and the 'Notice to Hirer'. All are types of parking charge notice.

20.5a When issuing a parking charge notice you may use photographs as evidence that a vehicle was parked in an unauthorised way. The photographs must refer to and confirm the incident which you claim was unauthorised. A date and time stamp should be included on the photograph. All photographs used for evidence should be clear and legible and must not be retouched or digitally altered.

APPENDIX B

ENTRANCE SIGNS

A standard form of entrance sign must be placed at the entrance to the parking area.

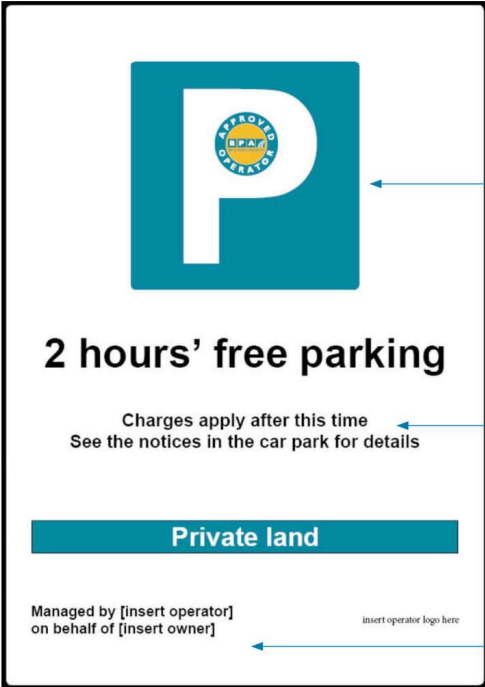
There may be reasons why this is impractical:

- when there is no clearly defined car park entrance
- when the car park is very small
- at forecourts in front of shops and petrol filling stations
- at parking areas where general parking is not permitted.

If you think there are other circumstances where it is impractical or undesirable to have an entrance sign, you must tell us in advance and get our approval to amend the sign or not have one.

Ideally the AOS logo should be incorporated on the entrance sign as it will show motorists that the site is managed by an organisation who have signed up to a recognised Code of Practice. However exemptions will be considered by the BPA Compliance Team if a legitimate reason is given.

You should try to keep to the following design principles:



The diagram shows a rectangular sign layout with the following elements and callouts:

- Top section:** A blue rectangle containing a white 'P' with a circular AOS (Approved Operator Scheme) logo in the center.
 - Callout 1: "This blue rectangle with the 'P' symbol can be left out if public parking is not invited and it is trespass you are managing."
 - Callout 2: "If you do not have the 'P' symbol, you may move the AOS roundel to the bottom of the sign alongside the operator's name."
- Middle section:** The text "2 hours' free parking" in bold, followed by "Charges apply after this time" and "See the notices in the car park for details".
 - Callout 3: "You must always mention that terms and conditions apply and say where to find more details about them."
- Bottom section:** A blue bar with the text "Private land". Below this, the text "Managed by [insert operator] on behalf of [insert owner]" is shown, with a small "insert operator logo here" label and arrow pointing to the right.
 - Callout 4: "'Managed by' is **required**"
 - Callout 5: "'On behalf of' is **optional**"

The sign may be portrait or landscape in layout, depending on where it is placed.

BRITISH PARKING ASSOCIATION CODE OF PRACTICE

Signs at the entrance to the parking area should clearly show the type of parking; and if, when and how any payment should be made. Ideally the AOS logo should be incorporated to indicate that the parking is managed under a Code of Practice.

We consider it to be good practice that the landowner's name is on the sign, but we understand that in some cases the owner may not want to be mentioned. You may also place your 'private parking' banner above your company details and below your terms and conditions.

If one of the following standard wordings applies to your parking area you should use it. If not, you may alter the wording to fit the situation. Words in square brackets may be left out.

There must be at least one item from Group 1. But no more than three items from Group 1 should appear before, and more prominently than, text from Group 2. You must always mention that terms and conditions apply and say where drivers can find more details – this will usually be on the other notices in the parking area.

If there are different payment terms for blue badge holders, you should also show these. The words 'blue badge holders' should generally be replaced by the blue badge symbol (exactly as shown in the Traffic Signs Regulations Guidance Document, not a local version).

Group 1

Pay and display [except/free for blue badge holders]
[x minutes/hours/hours] free parking [for [business name] customers only]
Pay on exit
Pay [on foot/at machine] when leaving
Parking for [business name] customers only
Permit holders only

Group 2

Charges apply [after this][after x minutes/hours]
Private land
Terms and conditions apply
See the notice[s] [in the car park] for details

Text size

The capital height for Group 1 text will depend on the approach speed of traffic. Group 2 text should be at least 50% of this size. All other text should be smaller than 50% of the Group 1 text size. However, the name of the car park or parking area, or a brief welcome message (if included), may be larger.

Situation	Typical approach speed (mph)	Minimum capital height for Group 1 text (mm)
Barrier control	under 10	50
Parking area entered immediately by turning off a 30 mph road	15	60
Car park entered from higher-speed road or using a length of access road	25	90
Service areas on motorways and dual carriageways	40	120

The sign should be placed so that it is readable by drivers without their needing to look away from the road ahead. Any text on the sign not intended to be read from a moving vehicle can be of a much smaller size.

Contrast and illumination

There must be enough colour contrast between the text and its background, each of which should be a single solid colour. The best way to achieve this is to have black text on a white background, or white text on a black background.

Signs should be readable and understandable at all times, including during the hours of darkness or at dusk if and when parking enforcement activity takes place at those times. This can be achieved in a variety of ways such as by direct lighting or by using the lighting for the parking area. If the sign itself is not directly or indirectly lit, we suggest that it should be made of a retro-reflective material similar to that used on public roads and described in the Traffic Signs Manual. Dark-coloured areas do not need to be reflective.

EV11 (Pace v Lengyel)

ORDER In the Manchester County Court
District Judge Iyer

Case number:
C7GF6E3R

Parties	Pace Recovery And Storage Ltd	Claimant
	Zoltan Lengyel	Defendant

Warning: You must comply with the terms imposed upon you by this order otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.

On 24 May 2017

Before District Judge Iyer at the Civil Justice Centre, Manchester without a hearing/at a paper hearing under CPR 27.9

IT WAS ORDERED that:

The Claimant's claim against the Defendant is dismissed for the reasons in the attached judgment.

STAFF

A copy of this order has been emailed to manchestercourtorders@hmcts.gsi.gov.uk under the filename as below. It should be received (at the latest) by the morning after the date when the order was made. If you have not received it or if you have any questions, please inform District Judge Iyer ASAP.

Pace Recovery And Storage Ltd v Zoltan Lengyel (24.05.2017).docx

NOTES (not part of order)



IN THE COUNTY COURT (MANCHESTER) CASE NUMBER: C7GF6E3R

BETWEEN

PACE RECOVERY AND STORAGE LTD CLAIMANT

AND

ZOLTAN LENGYEL DEFENDANT

JUDGMENT

1. This is a claim for unpaid parking charges under Schedule 4 to the Protection of Freedoms Act 2012. It has been allocated to the Small Claims Track and the parties have agreed that I should deal with it without a hearing, under CPR 27.9.
2. On 21 April 2016, the Defendant parked his vehicle, a hired motor car, in the Fleming Road Car Park, London SE17 3QY. He did not display a permit to park.
3. The Claimant, which manages the car park, considered that the Defendant had breached their terms and conditions and sent a parking charge notice to the hire company, which was passed onto the Defendant.
4. Paragraphs 13 to 14 of Schedule 4 allow a parking company to recover unpaid parking charges from the hirer of a vehicle, where “the driver of a vehicle is required by virtue of a relevant obligation to pay parking charges in respect of the parking of the vehicle on relevant land” and “those charges have not been paid in full”: par. 1(1).

5. By virtue of par. 1(2):
 - a. A “relevant obligation” means “an obligation arising under the terms of a relevant contract” or, “where there is no relevant contract, as a result of a trespass or other tort committed by parking the vehicle on the relevant land”. For the purposes of this claim, the Claimant relies on a “relevant contract”.
 - b. A “relevant contract” means “a contract (including a contract arising only when the vehicle was parked on the relevant land) between the driver and a person who is - (a) the owner or occupier of the land, or (b) authorised, under or by virtue of arrangements made by the owner or occupier of the land, to enter into a contract with the driver requiring the payment of parking charges in respect of the parking of the vehicle on the land”.
6. I must therefore be satisfied that:
 - a. The Claimant had the authority of the owner or occupier of the site to enter into contracts with people who parked their cars in the car park.
 - b. The Claimant and the Defendant entered into such a contract.
 - c. It was a valid and enforceable contract.
7. If I am satisfied of these, I must further be satisfied that the Defendant was in breach of the terms of the contract to display a permit, though this is admitted, subject to the other requirements.
8. The Claimant has produced, as an exhibit to the witness statement of Michael Charman, its Director, a two-page agreement dated 13 September 2012 with Westcott (Southwark) Management Co. Ltd (“Westcott”) which gives the Claimant:

... authority to begin issuing charge notices to vehicle parked without our authority from the start date [1 October 2012]

The agreement appears to have been drafted by the Claimant, and, in accordance with the “*contra proferentem*” rule, I must interpret any ambiguity against the Claimant.

9. This raises the first concern, which is that the language of this agreement does not specifically permit the Claimant to enter into contracts with drivers.
 - a. The agreement merely authorises the Claimant to “*issue charge notices*”, which is quite different from “[*entering*] *into a contract with the driver*”.
 - b. The Claimant is not given the power to *authorise* parking, since that clearly remains vested in Westcott, by virtue of the words “*parked without our authority*”. Without the power to authorise parking, the Claimant is unable to provide any contractual benefit to a driver.

I consider that the agreement amounts to nothing more than an agency agreement that allows the Claimant to issue charge notices *on behalf of* Westcott (which would be for Westcott to sue upon) but no more.

10. The second concern is about whether, even if I am wrong in the above, the Claimant *did* enter into a contract with the Defendant. Such a contract would be one which allowed the Defendant to park in the car park on the display of a valid permit. As this would be a consumer contract, it must be “fair”: s. 62 of the Consumer Rights Act 2015. As the Supreme Court held in *ParkingEye Ltd v Beavis* [2013] EWCA Civ 1539 and [2015] EWCA Civ 402, the concept of fairness requires the parking firm to comply with the requirements of the relevant code of practice, being either the British Parking Association’s code or the International Parking Committee’s code.
11. Par. 18.2 of the former provides:

Entrance signs play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, you must also have a standard form of entrance sign at the entrance to the parking area.

Part 28.1 provides:

A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

Par. 2 of Part B of the latter provides:

2.1 Where the basis of your parking charges is based in the law of contract it will usually be by way of the driver of a vehicle agreeing to contractual terms identified by signage in and around a controlled zone. It is therefore of fundamental importance that the signage meets the minimum standards under The Code as this underpins the validity of any such charge.

2.2 Signs must conform to the requirements as set out in a schedule 1 to the Code.

The recommended sign has a large image of the letter "P" with the words "Pay and Display" under it, though this can be adapted to different situations.

Part E states that such signs must:

Have clear and intelligible wording and be designed such that it is clear to the reasonable driver that he is entering into a contract with the creditor or committing a trespass as the case may be;

It is an important element of both of these that the signs inform the driver that he is entering into a contract with the Claimant.

12. The Claimant's sign has a large box with the words:

WARNING PRIVATE LAND

24 Hour Enforcement Zone

This site is managed and operated by Ace Security Services

Terms and Conditions

Vehicles must display a valid permit prominently and comply with any conditions on that permit;

Vehicles must not cause an obstruction to roadways, other road users, emergency access areas or bin areas.

The driver, by breaching any of the above Terms and Conditions while parking or remaining on this land, accepts liability for a

Charge of £100

Payable within 28 days of issue. A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

13. Nowhere within this sign does it inform the reader that by parking in the car park, he is entering into a contract with the Claimant. Indeed, the words “contract” or “agreement” do not appear at all within the sign, which merely refers to the driver “accepting liability for a charge”. The phrase “terms and conditions” are not synonymous with a contract. Further, the opening words of the sign appear to be designed more to ward off trespassers than to enter into a contract with the driver. In the circumstances, I consider that the Defendant did not enter into a contract with the Claimant by parking his vehicle in the car park.
14. The third concern is that, even if I am wrong about the Claimant’s authority and the sufficiency of the signage to advise drivers that they are entering into a contract with the Claimant, the contract requires the driver to display a parking permit, which is something that the Defendant says that he could not do, because he was visiting a resident of the apartments, Mr. Villon, who the Defendant says “was informed that his apartment was not one of those eligible for a parking permit” (par. 5 of the Defendant’s witness statement). Mr. Villon has produced his own witness statement verifying this. Insofar as the Claimant’s

Mr. Charman's evidence suggests that Mr. Villon was provided with a permit, no details are offered, I note that the Claimant is not the company which distributes these, there is no evidence from Westcott that it gave Mr. Villon a permit, and I accept that no such permit was provided to him.

15. The consequence of this is that any contract between the Claimant and the Defendant required the Defendant to do something which he simply could not do, that is, display a permit. His inability to do this was not caused by any act or omission by the Defendant but by a state of affairs over which he had no control. Indeed, it must have been obvious to the Claimant that if it erected a sign proving that it was a term of the contract that the driver of any parked vehicle displays a permit, it must have known in advance that many drivers would simply be unable to do this. Therefore, insofar as there was any contract between the parties, it was invalid under the doctrine of impossibility of performance.
16. It may be that the Claimant's claim may have more properly been phrased in trespass than in breach of contract but that is not something about which I need to speculate, since it is not the Claimant's case that the Defendant is liable as a trespasser.
17. For these reasons, the Claimant's claim against the Defendant fails and is dismissed.

District Judge Iyer
Manchester
24 May 2017