

IN THE COUNTY COURT OF BIRMINGHAM

CLAIM NUMBER: GXXXXXXXXX

BANK PARK MANAGEMENT LIMITED

(Claimant)

- V -

XXXXXXXX XXXX

(Defendant)

**WITNESS STATEMENT OF DEFENDANT
FOR TELEPHONE HEARING ON 08/12/2020**

Index

[Contents](#)

WITNESS STATEMENT 2

 Sequence of events and signage 2

 Delayed letters and appeal 3

 The Beavis case is against this claim 3

 Redacted Landowner Contract 3

 Abuse of process - the quantum 4

 EXHIBIT-01 Xxxxxxx xxxx’s Witness Statement..... 6

 EXHIBIT-02 Email to Claimant after receiving the notice 7

 EXHIBIT-03 Response from Claimant 8

 EXHIBIT-04 Sign at the parking entrance from car 9

 EXHIBIT-05 PAY & DISPLAY sign in the parking..... 10

 EXHIBIT-06 The payment terminal and keypad..... 11

 EXHIBIT-07 ParkingEye Limited v Beavis – Paragraphs 98, 193, and 198 12

 EXHIBIT-08 Defendant’s schedule of costs..... 13

IN THE COUNTY COURT OF BIRMINGHAM**CLAIM NUMBER: GXXXXXXX****BANK PARK MANAGEMENT LIMITED****(Claimant)****- V -****XXXXXX XXXX****(Defendant)**

WITNESS STATEMENT**OF DEFENDANT
FOR TELEPHONE HEARING ON 08/12/2020**

1. I am Mr. XXXXXX XXXX of xxxxxxxxxxxxxx, xxxxxxxxxxxx, and I am the defendant against whom this claim is made. The facts below are true to the best of my belief and my account has been prepared based upon my own knowledge.
2. In my statement I shall refer to exhibits within the evidence supplied with this statement, referring to page and reference numbers where appropriate. My defence is repeated and I will say as follows: I am the registered keeper of the vehicle in question in this case.

Sequence of events and signage

3. On 12/05/2018, I parked at The Farley Centre parking to attend the appointment with Santander Bank on Hight Street. This was my first time at this parking.
4. As the sign stated it is a Pay and Display parking so I went to the payment terminal, inserted the coin and typed the registration number. I had difficulties keying in the registration number. Finally, the ticket was printed.
5. I checked the ticket indicating the time it covered and I did notice that the ticket didn't have the registration number.
6. I put the ticket on the dashboard so that the parking managers could see it properly.
7. I went to the bank with my wife to attend the appointment
8. We were still in the office with the bank employee when I asked her to excuse us and I asked my wife to run and extend the parking time. We needed to stay longer than the first parking payment allowed.

9. My wife, the passenger, paid and displayed the ticket to extend our stay. The Witness Statement attached at "EXHIBIT-01".

Delayed letters and appeal

10. During the period of event my family and I were moving from Scotland to England.
11. When the event occurred, the registered address was still my address in Scotland therefore Claimants Notice to Keeper and the reminder were delivered to my Scottish address.
12. Even if the stay was paid on time and correctly the claimant issued the notice. The reason for issue: "ANPR failure to pay the correct parking fee".
13. Claimants proves that the vehicle did enter and exit the car park however the claimant did not prove that the ticket was not displayed.
14. When I read the letters I immediately got in touch with parking firm explaining that the I got letters late and also explained why. I explained that the charge was unfair and that the ticket was paid and displayed regularly. Attached at "EXHIBIT-02"
15. The Claimant replied saying that it is too late. "EXHIBIT-03"

The Beavis case is against this claim

16. This situation can be fully distinguished from *ParkingEye Ltd v Beavis* [2015] UKSC67, where the Supreme Court found that whilst the £85 was not (and was not pleaded as) a sum in the nature of damages or loss, ParkingEye had a 'legitimate interest' in enforcing the charge where motorists overstay, in order to deter motorists from occupying spaces beyond the time paid for and thus ensure further income for the landowner, by allowing other motorists to occupy the space. The Court concluded that the £85.00 charge was not out of proportion to the legitimate interest (in that case, based upon the facts and clear signs) and therefore the clause was not a penalty clause.
17. However, there is no such legitimate interest where the requisite fee has been paid in full for the time stayed. As such, I take the point that the parking charge in my case is a penalty, and unenforceable. This is just the sort of 'concealed pitfall or trap' and unsupported penalty that the Supreme Court had in mind when deciding what constitutes a (rare and unique case) 'justified' parking charge as opposed to an unconscionable one.

Redacted Landowner Contract

18. The Claimant has appended a redacted 'landowner contract' which has little or no probative value and which offends against the rules of evidence. There is nothing to say what the landowner's approach (whoever they may be) is to penalising genuine patrons who pay, and even the signatories could be anyone (even a stranger to the land?). It is clear that two Directors have not signed this contract for either party, contrary to the Companies Act. The network of contracts are key in these cases, since the parking charges are argued to be contractual and the authority to sue visitors must flow from the landowner, not an agent.

19. In the recent Court of Appeal case of *Hancock v Promontoria (Chestnut) Limited* [2020] EWCA Civ 907 the Court of Appeal are now clear that most redactions are improper where the Court are being asked to interpret the contract.

<https://www.bailii.org/ew/cases/EWCA/Civ/2020/907.html> Ref. paras 74 & 75

"...The document must in all normal circumstances be placed before the court as a whole. Seldom, if ever, can it be appropriate for one party unilaterally to redact provisions in a contractual document which the court is being asked to construe, merely on grounds of confidentiality...confidentiality alone cannot be good reason for redacting an otherwise relevant provision..."

Abuse of process - the quantum

20. The Claimant has added a sum disingenuously described as 'damages/admin' or 'debt collection costs'. The added £60 constitutes double recovery and the court is invited to find the quantum claimed is false and an abuse of process - see **EXHIBIT-0x** - transcript of the Approved judgment in *Britannia Parking v Crosby* (Southampton Court 11.11.19). That case was not appealed and the decision stands.
21. Whilst it is known that another case that was struck out on the same basis was appealed to Salisbury Court (the *Semark-Jullien* case), the parking industry did not get any finding one way or the other about the illegality of adding the same costs twice. The Appeal Judge merely pointed out that he felt that insufficient information was known about the *Semark-Jullien* facts of the case (the Defendant had not engaged with the process and no evidence was in play, unlike in the Crosby case) and so the Judge listed it for a hearing and felt that case (alone) should not have been summarily struck out due to a lack of any facts and evidence.
22. The Judge at Salisbury correctly identified as an aside, that costs were not added in the Beavis case. That is because this had already been addressed in ParkingEye's earlier claim, the preBeavis High Court (endorsed by the Court of Appeal) case *ParkingEye v Somerfield (ref para 419)*: <https://www.bailii.org/ew/cases/EWHC/QB/2011/4023.html>

*"It seems to me that, in the present case, it would be difficult for ParkingEye to justify, as against any motorist, a claim for payment of the enhanced sum of £135 if the motorist took the point that the additional £60 over and above the original figure of £75 constituted a penalty. It might be possible for ParkingEye to show that the additional administrative costs involved were substantial, though I very much doubt whether they would be able to justify this very large increase on that basis. On the face of it, it seems to me that the predominant contractual function of this additional payment must have been to deter the motorist from breaking his contractual obligation to pay the basic charge of £75 within the time specified, rather than to compensate ParkingEye for late payment. Applying the formula adopted by Colman J. in the *Lordsvale* case, therefore, the additional £60 would appear to be penal in nature; and it is well established that, in those circumstances, it cannot be recovered, though the other party would have at least a theoretical right to damages for breach of the primary obligation."*

23. This stopped ParkingEye from using that business model again, particularly because HHJ Hegarty had found them to have committed the 'tort of deceit' by their debt demands. So, the Beavis

case only considered an £85 parking charge but was clear at paras 98, 193 and 198 that the rationale of that inflated sum (well over any possible loss/damages) was precisely because it included (the Judges held, three times) 'all the costs of the operation'. It is an abuse of process to add sums that were not incurred. Costs must already be included in the parking charge rationale if a parking operator wishes to base their model on the *ParkingEye v Beavis* case and not a damages/loss model. This Claimant can't have both

24. This Claimant knew or should have known, that by adding £60 in costs over and above the purpose of the 'parking charge' to the global sum claimed is unrecoverable, due to the POFA at 4(5), the *Beavis* case paras 98, 193 and 198 (EXHIBIT-xx), the earlier *ParkingEye Ltd v Somerfield* High Court case and the Consumer Rights Act 2015 ('CRA') Sch 2, paras 6, 10 and 14. All of those seem to be breached in my case and the claim is pleaded on an incorrect premise with a complete lack of any legitimate interest.

My fixed witness costs - ref PD 27, 7.3(1) and CPR 27.14

25. The fixed sum for loss of earnings/loss of leave apply to any hearing format and are fixed costs at PD 27, 7.3(1) *"The amounts which a party may be ordered to pay under rule 27.14(3)(c) (loss of earnings)... are: (1) for the loss of earnings or loss of leave of each party or witness due to attending a hearing ... a sum not exceeding £95 per day for each person."*

Statement of truth:

I believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNATURE

.....

Xxxxxxx xxxx, Date 23/11/2020

EXHIBIT-01 Xxxxxxx xxxx’s Witness Statement

**WITNESS STATEMENT OF MRS. XXXXXXX XXXX
FOR TELEPHONE HEARING ON 08/12/2020**

1. I am Mrs. Xxxxxxx xxxx of xxxxxxxxxxxxxxx, xxxxxxxxxxxxxxx, and I am the witness. The facts below are true to the best of my belief and my account has been prepared based upon my own knowledge.

Sequence of events

- 2. On 12/05/2018, my husband, parked at The Farley Centre parking to attend the appointment with Santander Bank on Hight Street.
- 3. My husband went to the pay and display terminal to collect the receipt to be displayed
- 4. When my husband returned to the car we went to the appointment together
- 5. We were talking to the bank officer when my husband asked me to go to the car parking to pay display a new ticket
- 6. At the car parking I went to the terminal and inserted the coin. The terminal prompted for the VRN
- 7. I did not remember the VRN and there was queue behind me. With the coin already inserted I asked for permission to the lady behind me to go and read the registration number of my husband’s car
- 8. I came back to the terminal, inserted the VRN with difficulty, printed the ticket and placed it on the dashboard next to the ticket already there

Statement of truth:

I believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNATURE

.....

Xxxxxxx xxxx, Date 23/11/2020

EXHIBIT-02 Email to Claimant after receiving the notice

From: xxxxxxxxxxxxxxxx <xxxxxxxxxxxxxxxxxxxx>
Sent: 09 July 2018 15:25
To: pcn@bankpark.co.uk
Subject: Re: Parking Charge Reference xxxxxx

Dear Sir/Madam,

Re: Parking Charge Reference xxxxxxxx

I was issued with a parking charge for parking at The Farley Centre, West Bromwich on 12/5/2018. I believe that this ticket was issued unfairly. I am not liable for the amount payable because:

The parking was paid regularly. The first payment receipt was printed without the vehicle's registration number as something went wrong while filling the detail in – the receipt was printed with "0" as registration number. When the ticket was about to expire another payment was made to extend the parking time and the second receipt was printed with regular registration number xxxxxxxxxx.

I'm getting in touch only now because we moved from Scotland to West Bromwich and we get the charge letters only last week when our Scottish landlord kindly posted us the bundle of letters we received at the old address.

Address in Scotland was: xxxxxxxxxxxx
Address in xxxxxxxxx is: xxxxxxxxxxxx

Unfortunately I can't find the payment receipts anymore as we threw them away when the car was cleaned. I remember the day when we went to an appointment on Saturday 12th May and my wife had to rush to extend the parking as the appointment went long than expected.

Yours faithfully,

xxxxxxxxxxxxxxxxxx, 09/07/18

EXHIBIT-03 Response from Claimant

From: pcn@bankpark.co.uk <pcn@bankpark.co.uk>
Sent: 12 July 2018 14:15
To: 'xxxxxxxxxx' <xxxxxxxxxx>
Subject: RE: Parking Charge Reference xxxxxxxxxxx

Good afternoon,

Unfortunately we do not accept appeals at this stage, this is with ZZPS debt collectors, please liaise with them.

Kindest Regards

Miss xxxxxxxxxxx

Office Manager

Office: +44(0114)xxxxxxxx

Out of Hours +44 xxxxxxxxxxx

Email: enquires@bankpark.co.uk

www.bankpark.co.uk

<https://theipc.info/>



EXHIBIT-04 Sign at the parking entrance from car

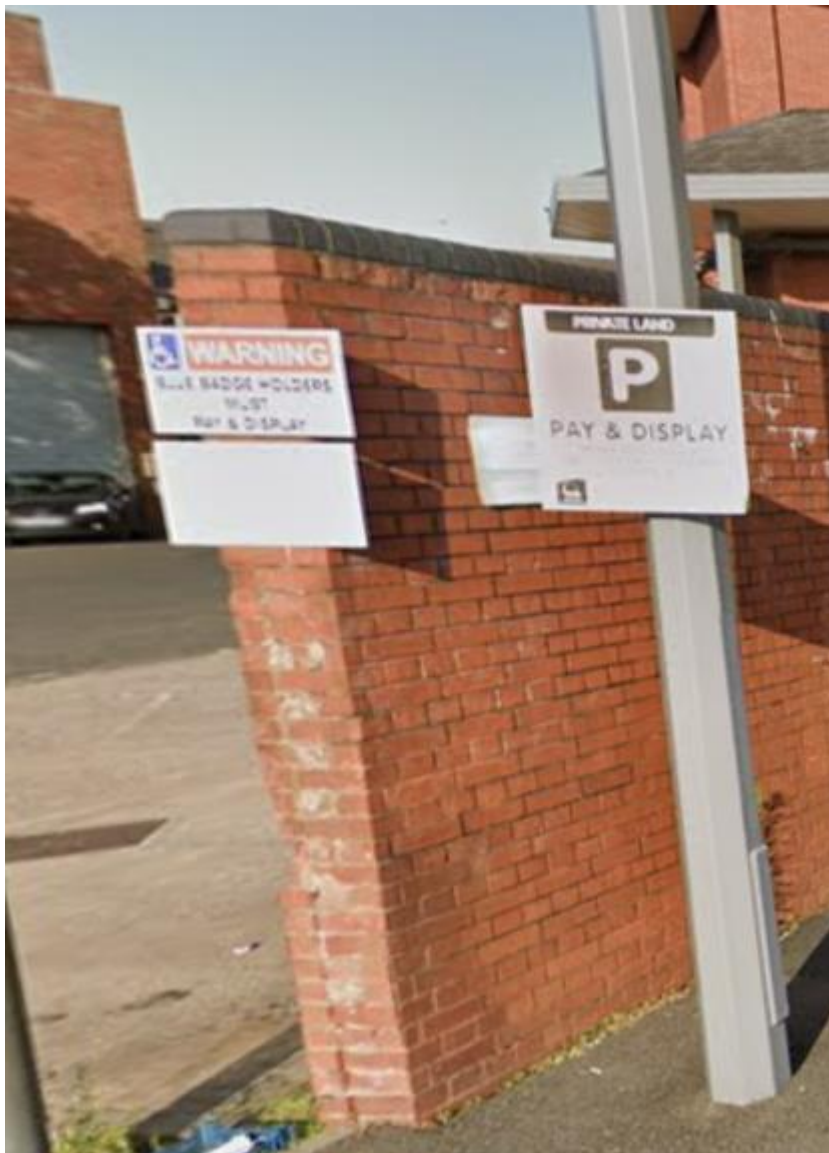


Figure 1 courtesy of Google Maps

EXHIBIT-05 PAY & DISPLAY sign in the parking



Figure 2 courtesy of Google Maps

EXHIBIT-06 The payment terminal and keypad



Figure 3 PDT photo

EXHIBIT-07 ParkingEye Limited v Beavis – Paragraphs 98, 193, and 198

98. 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. This was to be achieved by deterring commuters or other long-stay motorists from occupying parking spaces for long periods or engaging in other inconsiderate parking practices, thereby reducing the space available to other members of the public, in particular the customers of the retail outlets. 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, without which those Page 43 services would not be available. These two objectives appear to us to be perfectly reasonable in themselves. Subject to the penalty rule and the Regulations, the imposition of a charge to deter overstayers is a reasonable mode of achieving them. Indeed, once it is resolved to allow up to two hours free parking, it is difficult to see how else those objectives could be achieved.

193. The penalty doctrine is therefore potentially applicable to the present scheme. It is necessary to identify the interests which it serves. They are in my view clear. Mr Beavis obtained an (admittedly revocable) permission to park and, importantly, agreement that if and so far as he took advantage of this it would be free of charge. ParkingEye was able to fulfil its role of providing a traffic management maximisation scheme for BAPF. The scheme met, so far as appears, BAPF's aim of providing its retail park lessees with spaces in which their customers could park. All three conditions imposed were directed to this aim, and all were on their face reasonable. (The only comment that one might make, is that, although the signs made clear that it was a "Customer only car park", the Parking Charge of £85 did not apply to this limitation, which might be important in central Chelmsford. The explanation is, no doubt, that, unlike a barrier operated scheme where exit can be made conditional upon showing or using a ticket or bill obtained from a local shop, a camera operated scheme allows no such control.) The scheme gave BAPF through ParkingEye's weekly payments some income to cover the costs of providing and maintaining the car park. 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.

198. The £85 charge for overstaying is certainly set at a level which no ordinary customer (as opposed to someone deliberately overstaying for days) would wish to incur. It has to have, and is intended to have, a deterrent element, as Judge Moloney QC recognised in his careful judgment (para 7.14). Otherwise, a significant number of customers could all too easily decide to overstay, limiting the shopping possibilities of other customers. Turnover of customers is obviously important for a retail park. A scheme which imposed a much smaller charge for short overstaying or operated with fine gradations according to the period of overstay would be likely to be unenforceable and ineffective. It would also not be worth taking customers to Page 88 court for a few pounds. But the scheme is transparent, and the risk which the customer accepts is clear. The fact that, human nature being what it is, some customers under-estimate or overlook the time required or taken for shopping, a break or whatever else they may do, does not make the scheme excessive or unconscionable. 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. Unless BAPF was itself prepared to pay ParkingEye, which would have meant, in effect, that it was subsidising customers to park on its own site, this was inevitable. If BAPF had attempted itself to operate such a scheme, one may speculate that the charge might even have had to be set at a higher level to cover its costs without profit, since ParkingEye is evidently a specialist in the area.

EXHIBIT-08 Defendant's schedule of costs

In the County Court at Birmingham

Claim Number: GXXXXXXXXX

Hearing Date: 08/12/2020

DEFENDANT'S SCHEDULE OF COSTS

Ordinary Costs

Half day Loss of earnings for telephone hearing on 08/12/2020: **£47.50**

Further costs for Claimant's misconduct, pursuant to Civil Procedure Rule 44.11

Stationary, printing, photocopying and postage: **£5**

TOTAL COSTS CLAIMED £52.50

SIGNATURE

.....

Xxxxxxx xxxx, Date 23/11/2020