

**BETWEEN: (Claimant)**

**-and-**

**(Defendant)**

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**DEFENDANT’S CASE SUMMARY AND  
SKELETON ARGUMENT ON THE BEHALF OF THE DEFENDANT**

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I am, of, defendant in this case and will say as follows:

**1. Summary of Claimant’s Case and Defendant’s Response**

	<b>Claimant</b>	<b>Defendant</b>
	<b>Site Details</b>	
i.	12. The signs are clearly displayed, and the Defendant would have had the opportunity to read and understand them when entering and then parking at the Car Park.	<p>There are no signs on entry of .....to inform you that you are entering a restricted parking area. <b>(AB1 page 3)</b>.</p> <p>It is noted from the Claimant’s Witness Statement that the plan indicating the placing of signage is incorrect, which can be verified by the claimant’s own photos. The correct placement has been indicated on a site plan found in <b>AB1 page 4</b>.</p> <p>There was one sign visible when reverse parked, which stated merely ‘vehicles must be parked with authorisation in a designated bay’ giving the driver the right to park, having been invited by the resident to visit Victory Court, <b>(AB1 page 2)</b></p> <p>A second sign that had been obscured by the parked vehicle at the rear of the bay stating, ‘Visitor bays marked VP’ and ‘Max Stay 24hrs’, which as can be seen the Vehicle in question was parked in a bay marked VP and was not there for more than 24 hours. This was not seen by the driver at time of parking and is placed as such that it can be easily missed and obscured as can be seen by the Claimant’s own evidence photo. <b>(AB1 page 5)</b>.</p>
ii.	16. I am instructed by the Claimant that vehicles must be authorised by the Claimant to park in a designated	Marked VP bays are for ‘Visitor Parking’ and not permit as can be seen in the resident’s tenancy agreement (AB1 page 11), which permits the

	<p>bay, including visitor permit (VP) spaces, by way of permit.</p> <p>The Claimant exhibits a copy of an example permit at page 13, which were delivered to each property that requires permits for parking.</p>	<p>parking of visitor's vehicle within any visitor parking space (marked VP).</p> <p>Page 13 exhibit was printed /11/2018, some 10 months after the PCN issue of /01/2018. There is no evidence there was a permit parking system in place at time of at time of PCN.</p>
	<b>Reason for Car Park Management</b>	
iii	<p>17. The Claimant had a clear and legitimate interest in maintaining the Scheme.....which could have a negative effect on the entire operation of the parking facility, and any businesses it supports.</p> <p>AND</p> <p>18. The landowner needs to manage their land in order to ensure that their business can run successfully.</p>	<p>The parking is for residents and their visitors, there are no business facilities that the parking area in question supports.</p>
	<b>Formation of Contract</b>	
vi	<p>22. The signage situated across the car park forms a unilateral offer.....the performance of parking (as apposed to leaving) is the act of acceptance.</p> <p>AND</p> <p>The signs are prominent and the Terms and Conditions are clearly displayed.</p>	<p>Signage is placed in such a position that is impossible to read prior to parking due to the position located 2.2m high with fine print too small to read from a passing vehicle. There are no signs on entry to alert the driver is entering a parking controlled zone. <b>(AB1 page 3).</b></p>
v	<p>24. The Claimant places reliance on the judgement in the appeal case – <i>Vehicle Control Service v Alfred Charles Crutchley [2017]</i>.</p>	<p>This case has no relevance to parking in a residence own space or visitor parking bay and is a case based on 'stopping on a roadway where stopping is prohibited'.</p>
vi	<p>26. The Claimant has a legitimate commercial interest and sufficient standing to: Bring proceedings in its own name.</p>	<p>The Claimant submitted that parking was unauthorised and for permit holders, if this is the case it is a trespassing claim and only the land owner can bring a claim.</p>
	<b>The Defendant's Breach of the Terms and Conditions</b>	
vii	<p>28. On this date [13/01/2018], the Defendant failed to display a valid permit.</p>	<p>The visible signage has no mention of permit parking. <b>(AB1 Page 2).</b> The Claimant's evidence Page 13 exhibit was printed /11/2018, some 10 months after the PCN issue of /01/2018.</p>
	<b>Notice To Keeper</b>	

viii	39. The NTK set out their following information: The date and time of the PCN The date and time of the contravention	The NTK did not include the time of contravention, stating simply 'N/A' in the 'First Seen' box. This indicates that there was no grace time given, against the Claimant's own Code of Practice. <b>(AB1 Page 6)</b>
xi	41. In fact, the Defendant failed to respond to the NTK altogether.	This is a false statement. The defendant responded to the NTK 02/18 requesting information to resolve the dispute. No information was provided by the Claimant.
	<b>Costs of Recovery</b>	
xii	47. The Claimant is seeking recovery of its dept recovery costs in the sum of £60.  AND  The Claimant refers to the bottom of the sign at page 4, which states ' <i>Enforcement action may incur additional costs</i> '	The Claimant has supplied no evidence of costs incurred. In addition this is not recoverable from the Keeper in any event as set out in 'POFA' <b>(AB1 Page 13)</b> . This attempt at double recovery is also in breach of the Consumer Rights Act 2015 Schedule 2 'terms that may be unfair'.  No contract can be held liable to the term 'may' and is not legally binding.
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## 2. Costs of Recover - Consumer Rights Act 2015 Schedule 2 'terms that may be unfair'

2.1. The purported added 'costs' are disproportionate, vague and in breach of the CRA 2015 Schedule 2 'terms that may be unfair' **(SA - 1)**. This Claimant has arbitrarily added an extra 60% of the parking charge in a disingenuous double recovery attempt that has already been exposed and routinely disallowed by many Courts in England and Wales. It is atrocious that this has been allowed to continue unabated for so many years, considering the number of victims receiving this Claimant's exaggerated Letter before Claim, or the claim form, who then either pay an inflated amount or suffer a default judgment for a sum that could not otherwise be recovered. It is only those who defend, who draw individual cases to the attention of the courts one by one, but at last in 2019, some areas noticed the pattern and have moved to stop this abuse of process at source.

2.2. In the Caernarfon Court in Case number F2QZ4W28 (Vehicle Control Services Ltd v Davies) 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 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 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." (SA - 2)

2.3. That decision in Wales was contested in a N244 application by VCS, but the added £60 was still disallowed on 30 Oct 2019. District Judge Jones-Evans stated that even in cases parking firms win, he never allows the £60 add on, and despite parking firms continuing to include it in their Particulars, most advocates have now stopped pushing for it at hearings. The Judge said that a contract formed by signage is a deemed contract, which the motorist does not have the opportunity to negotiate. That, and the fact that there is no specified sum on the signage, means that the extra £60 cannot possibly be recoverable. He said that the £60 was clearly a penalty, and an abuse of process. The considered sum in that case was reduced to £100 with a full case hearing to follow, but the £60 would not be awarded under any circumstances, and further, he ordered that the Claimant must now produce a statement of how they pleaded claims prior to *Beavis*, and subsequently.

2.4. In Claim numbers F0DP806M and F0DP201T - BRITANNIA PARKING -v- Mr C and another - less than two weeks later - the courts went further in a landmark judgment in November 2019 which followed several parking charge claims being struck out in the area overseen by His Honour Judge Iain Hamilton-Douglas Hughes QC, the Designated Civil Judge for Dorset, Hampshire, Isle of Wight & Wiltshire. (SA - 3)

2.4.1. Cases summarily struck out in that circuit included BPA members using BW Legal's robo-claim model and IPC members using Gladstones' robo-claim model, and the Orders from that court were identical in striking out all such claims without a hearing during a prolonged period in 2019, 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 the *Beavis* case. 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..."

2.4.2. BW Legal made an application objecting to two 'test' cases that had been struck out by District Judge Taylor against a parking firm for trying to claim for £160 instead of £100 parking charge. This has been repeated conduct in recent years, on the back of the Beavis case, where parking firms have almost unanimously contrived to add £60, or more, on top of the 'parking charge'. Members of both ATAs who have influence on their self-serving 'Trade Bodies' have even voted to have this imaginary 'damages/debt collection' sum added to their respective two Codes of Practice, to create a veil of legitimacy, no doubt to allow their members to confuse consumers and to enable them to continue to 'get away with it' in several court areas which are still allowing this double recovery.

2.4.3. That N244 application to try to protect the cartel-like position of some of the 'bigger player' parking firms, was placed before the area Circuit Judge and a hearing was held on 11th November 2019, with other parking charge cases in that circuit remaining struck out or stayed, pending the outcome. The Defendants successfully argued on points including a citation of the CRA 2015 and the duty of the court to apply the 'test of fairness' to a consumer notice (a statutory duty that falls upon the courts, whether a consumer raises the issue or not). All three points below were robustly upheld by District Judge Grand, sitting at the Southampton Court, who agreed that:

(a) The Claimant knew or should have known, that £160 charge (howsoever argued or constructed) was in breach of POFA, due to paras 4(5) and 4(6). **(AB1 Page 13)**

(b) The Claimant knew or should have known, that £160 charge (howsoever argued or constructed) was unconscionable, due to the Beavis case paras 98, 193, 198 and 287. **(SA - 4)**

(c) The Claimant knew or should have known, that £160 charge where the additional 'recovery' sum was in small print, hidden, or in the cases before him, not there at all, is void for uncertainty and in breach of the Consumer Rights Act 2015, Schedule 2 (the 'grey list' of terms that may be unfair) paragraphs 6, 10 and 14. **(SA - 1)**

2.4.4. At the hearing, the Judge refused their request to appeal. It was successfully argued that the parking firm's consumer notice stood in breach of the CRA 2015, Schedule 2 (the 'grey list' of terms that may be unfair) paragraphs 6, 10 and 14. Using the statutory duty upon the Courts to consider the test of fairness and properly apply schedule 2 of the CRA 2015 it was irrelevant

whether or not the consumers' defences had raised it before, which they had not. The same issues apply to this claim.

2.4.5. A transcript will be publicly available shortly. In his summing up, it was noted that District Judge Grand stated: "When I come to consider whether the striking out of the whole claim is appropriate, that the inclusion of the £60 charge means that the whole claim is tainted by it, the claimant should well know that it is not entitled to the £60. The very fact that they bring a claim in these circumstances seems to me that it is an abuse of process of the court, and in saying that, I observe that with any claim that can be brought before the court that if a party doesn't put in a defence to the claim, default judgments are entered. So, the Claimant, in bringing the claims is, in other cases, aware that if the defendant doesn't submit a defence, the Claimant is going to get a judgment of a knowingly inflated amount. So, I conclude by saying that I dismiss the application to set aside Judge Taylor's ruling."

2.5. Consumer notices - such as car park signs - are not excused by the CRA 'core exemption'. The CMA Official Government Guidance to the CRA says: "2.43 In addition, terms defining the main subject matter and setting the price can only benefit from the main exemption from the fairness test ('the core exemption') if they are transparent (and prominent) – see part 3 of the guidance." and at 3.2 "The Act includes an exemption from the fairness test in Part 2 for terms that deal with the main subject matter of the contract or the adequacy of the price, provided they are transparent and prominent. (This exemption does not extend to consumer notices but businesses are unlikely to wish to use wording that has no legal force to determine 'core' contractual issues)." The parking industry is the exception to this rule because they have no consumer 'customers' yet are consumer-facing. Their intention is very clearly in many cases (including this case) for a consumer not to see the onerous terms hidden in their notices and it is averred that no regard is paid to consumer law.

2.6. The definition of a consumer notice is given at 1.19 and the test of fairness is expanded at 1.20: "A consumer notice is defined broadly in the Act as a notice that relates to rights or obligations between a trader and a consumer, or a notice which appears to exclude or restrict a trader's liability to a consumer. It includes an announcement or other communication, whether or not in writing, as long as it is reasonable to assume that it is intended to be seen or heard by a consumer. Consumer notices are often used, for instance, in public places such as shops or car parks as well as online and in documentation that is otherwise contractual in nature. [...] Consumer notices are, therefore, subject to control for fairness under the Act even where it

could be argued that they do not form part of the contract as a matter of law. Part 2 of the Act covers consumer notices as well as terms, ensuring that, in a broad sense any wording directed by traders to consumers which has an effect comparable to that of a potentially unfair contract term is open to challenge in the same way as such a term. There is no need for technical legal arguments about whether a contract exists and whether, if it does, the wording under consideration forms part of it."

### **3. Striking of Claims with false ad on costs.**

9. In December 2019 in a different Court circuit, Deputy District Judge Joseph sitting at Warwick County Court had clearly heard about the decisions affecting the IOW, Hampshire, Dorset and Wiltshire circuit because he summarily struck out multiple parking ticket claims from various firms all due to the adding of the false £60 costs to £100 parking charge, that already indisputably (in law and case law) includes those costs.

9.1. The Judge determined that "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." further, in issuing his Orders striking out several £160 parking claims without a hearing, the Judge stated that he had "considered S71(2) of the Consumer Rights Act 2015 for the fairness of the contract terms and determined that the provision of the additional charge breached examples 6, 10 and 14".

### **4. Summary**

10. 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, harassing and indeed untrue in terms of the added costs alleged and the statements made.

4.1. The Defendant is of the view that this Claimant knew or should have known that to claim in excess of £100 for a parking charge on private land is disallowed under the CPRs, the Beavis case, the POFA and the CRA 2015, and that relief from sanctions should be refused.

4.2. If this claim is not summarily struck out for the same reasons as the Judges cited in the multiple Caernarfon, Southampton, IOW and Warwick County Court decisions, then due to this Claimant knowingly proceeding with a claim that amounts to an abuse of process, full costs will be sought by the Defendant at the hearing, such as are allowable pursuant to CPR 27.14.

I believe that the facts stated in this skeleton argument are true.

Signed

Dated