Claim No:

Between

Vehicle Control Services Limited (Claimant)

and

(Defendant)

WITNESS STATEMENT

I am of and am the registered keeper of the vehicle in question. I am unrepresented with no legal background in county court procedures. I trust that the court will excuse my inexperience, if need be, and if any of the documentation is not presented correctly.

I am the Defendant in this matter. Attached to this statement is a paginated bundle of documents marked Exhibit 01 to 12 to which I will refer.

EXHIBIT 01 - Parking Charge Notice (PCN) Notice to Keeper (NTK) dated X/X/2019 from the claimant showing a photograph of my vehicle stopped near a bust stop.

EXHIBIT 02 - Enlarged copy of the photograph from the PCN

EXHIBIT 03 - My appeal against the Parking Charge Notice submitted through MyParkingCharge.co.uk

EXHIBIT 04 - Claimant's appeal rejection letter dated X/X/2019

EXHIBIT 05 - Copy of Schedule 1 of the Protection of Freedoms Act 2012 (PoFA)

EXHIBIT 06 - Copy of Section 192(1) of the Road Traffic Act

EXHIBIT 07 - Copy of Southend-on-Sea Municipal Airport Byelaws 1980

EXHIBIT 08 - Copy of Civil Procedure Rule 16.4

EXHIBIT 09 - Parking Eye Ltd vs Beavis (2015) UKSC 67

EXHIBIT 10 - Examples of additional charges being considered an abuse of process

EXHIBIT 11 - Civil Procedure Rule 3.3(4)

EXHIBIT 12 - Defendant's Schedule of costs

SUMMARY

1. I received a Parking Charge Notice (PCN) Notice to Keeper (NTK) on or around X/X/2019 (see EXHIBIT 01). The PCN states "Contravention Reason: 47) STOPPING IN A RESTRICTED BUS STOP / STAND" at Southend Airport. The PCN then goes on to state that the driver of the vehicle is liable to the Parking Charge and claims that the period of parking was before the Contravention Time of 15:24. The first and third photograph provided (see EXHIBIT 02) are time stamped 15:23:54 and 15:24:24 respectively.
2. I appealed against the PCN on the Claimants online portal (see EXHIBIT 03) explaining that the vehicle is shown to be stopped (for a period of approximately 30 seconds) is to ask an onsite traffic enforcement officer for directions (the drop-off point in this case), however my appeal was rejected (see EXHIBIT 04)
3. Schedule 1 of PoFA states that 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 but the first paragraph 1 (1) (a) states that it only applies "in respect of parking of the vehicle on relevant land:", (see EXHIBIT 05). The definition of "relevant land" is given in paragraph 3 (1) where subsection (c) excludes "any land ……..on which the parking of a vehicle is subject to statutory control"
4. The road on which the alleged contravention took place is subject to the Road Traffic Act 1988, (RTA), by virtue of Section 192(1) of RTA and it being a road "to which the public has access", (see EXHIBIT 06). It is also subject to the Southend-on-Sea Municipal Airport Byelaws 1980 (see EXHIBIT 07). Schedule 1, of PoFA therefore, does not apply, and the Claimant is unable to hold the driver of the vehicle liable for the charges
5. The Claimant seeks recovery of the original £100 parking charge plus an additional £60 described as "contractual costs and interest" or "Debt collection costs". No further justification or breakdown has been provided as required under Civil Procedure Rule 16.4. (see EXHIBIT 08)
6. Unless the Claimant can clearly demonstrate how these alleged additional costs have been incurred this would appear to be an attempt at double recovery.
7. Previous parking charge cases have found that the parking charge itself is at a level to include the costs of recovery ie: Parking Eye Ltd vs Beavis (2015) UKSC 67 (see EXHIBIT 09).
8. Since 2019, many County Courts have considered claims in excess of £100 to be an abuse of process leading to them being struck out ab initio (see EXHIBIT 10). I am of the opinion that the Claimant in this case has knowingly submitted inflated costs and thus the entire claim should be similarly struck out in accordance with Civil Procedure Rule 3.3(4) (see EXHIBIT 11)

9. The Claimant has not provided evidence that the landowner has given them the necessary authority to issue parking charge notices and to pursue payment by means of litigation
10. The Claimant has failed to provide details of the alleged signage upon which they are relying to form a contract with the driver and neither have they demonstrated that it is appropriately positioned to allow all drivers to read and understand the terms of the alleged contract
11. I would also question the existence of the alleged contract which the Claimant claims to have been breached by "stopping in a zone where stopping is prohibited". The signage is wholly prohibitive and makes no offer of consideration. In the absence of consideration, no contract exists

DEFENCE

12. The Defendant denies that the Claimant is entitled to relief in the sum claimed, or at all. It is denied that the Driver of the vehicle entered into any contractual agreement, whether express, implied, or by conduct, to pay a 'parking charge' to the Claimant. Whilst it is admitted that the Defendant was the Driver of the vehicle at the time, the sole reason for the stopping was to ask an onsite traffic warden for directions (the drop-off point in this case). Photos received from the claimant show the driver got off and entered the vehicle. The vehicle stopped for only 30 seconds according to the timestamps.
13. In relation to parking on private land, it is settled law that for any penalty to escape being struck out under the penalty rule, it must be set at a level which already includes recovery of the costs of operating the scheme. However, this Claimant routinely claims (as in this case) a global sum of **£160** per alleged PCN. This figure is a penalty, far exceeding the charge in the *ParkingEye Ltd v Beavis* [2015] UKSC 67 case and falling foul of the binding authority in *ParkingEye Ltd v Somerfield Stores* [2012] EWCA Civ 1338. In the 2012 case, the Court of Appeal held that £135 would be an unrecoverable penalty but a claim for the PCN itself would not *[ref: para 419]*. Thereafter, ParkingEye quietly dropped their 'PCN plus indemnity costs' double recovery business model and pursued £85 in the Beavis case, where it was determined by the Supreme Court that a significant justification for that private PCN was that it already included all operational costs [*ref: paragraphs 98, 193 and 198*].

Double Recovery, Abuse of Process & No Cause of Action

14. It is an abuse of process for a Claimant to issue an inflated claim for a sum which it is not entitled to recover. The above authorities could not be clearer. Parking firms must choose between a 'Beavis-level' charge calculation or loss-based damages. A parking firm cannot seek to plead their claim in both but this Claimant routinely does - and has done in this case.

15. Where it is clear as a matter of law at the outset that even if a Claimant were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks, a trial of the facts would be a waste of time and money, and the Defendant submits that it is proper that this action should be taken out of court as soon as possible.

16. When considering the Claimant's case to the extent that is necessary at allocation or local directions stage, the court is invited to determine as a matter of law that the Claimant is not entitled to the remedy sought. An exaggerated claim such as this will always constitute an abuse of process that can be determined by a glance at the Particulars (before any facts and evidence are even scrutinised) and by applying the court's duty under s71 of the Consumer Rights Act 2015 ('the CRA') at the earliest opportunity. For the avoidance of doubt and to demonstrate that this claim is unfair from the outset, the official CMA Guidance on the CRA clarifies under *'Disproportionate financial sanctions'* and *'Indemnities against risk'*

    [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf]

    ''Other kinds of penal provisions which may be unfair are clauses saying that the business can:

    - *claim all its costs and expenses, not just its net costs resulting directly from the breach;*
    - *claim both its costs and its loss of profit where this would lead to being compensated twice over for the same loss; and*
    - *claim its legal costs on an 'indemnity' basis, that is all costs, not just costs reasonably incurred. The words 'indemnity' and 'indemnify' are also objectionable as legal jargon – see the section on transparency in part 2 of the guidance...'' (p87 - 5.14.3);*

    ''Terms under which the trader must be 'indemnified' for costs which could arise through no fault of the consumer are open to comparable objections, particularly where the business could itself be at fault. The word 'indemnify' itself is legal jargon which, if understood at all by a consumer, is liable to be taken as a threat to pass on legal and other costs incurred without regard to reasonableness.'' (p119 - 5.31.7).

17. The Claimant's claim is entirely tainted by their 'forum-shopping' business model which relies on routine abuse of process and disregard for the protections in the CRA. The Defendant avers that parking firm claims which add a duplicitous 'costs' sum to the private PCN are easily identified to be unlawful from the outset, without any need for a hearing to determine where the truth lies in terms of evidence. The Court is, therefore, invited to strike out the claim *ab initio* as an abuse of process, using its case management powers pursuant to CPR 3.4 and also give serious consideration to

Practice Direction 3C, as to whether the level of similar abusive (and thus, wholly without merit) claims cluttering up the courts may provide grounds for issuing an Extended Civil Restraint Order to protect consumers in future from this Claimant and to save the courts time and money.

18. The Claimant's notices/demands vaguely allude to unidentified sums being claimed *'on an indemnity basis'*. Such imprecise terms would be considered incapable of binding any person reading them under common contract law, and would also be considered void pursuant to Schedule 2 of the CRA. Claims pleaded on this basis by multiple parking firms have routinely been struck out *ab initio* in various County Court areas. Recent examples include multiple Orders from District Judge Fay Wright sitting at Skipton County Court, with similar Orders seen in the public domain from Deputy District Judge Josephs sitting at Warwick County Court, District Judge Taylor at the Isle of Wight and Deputy District Judge Colquhoun sitting at Luton County court in March 2020. All were summarily struck out, solely due to parking firms falsely adding £60 to inflate the claim.

19. This matter was recently determined by District Judge Grand, sitting at Southampton County Court on 11 November 2019, where the Claimants sought to have multiple strike out Orders set aside. The application was dismissed, and a copy of the Approved Judgment is appended to this defence. No appeal was made in that case, where the learned Judge found that £160 parking claims represented an abuse of process that 'tainted' each case. It was not in the public interest for courts to allow exaggerated claims to proceed and merely disallow the added £60 at trial on a case-by-case basis. To continue to do so would restrict the proper protections only to those relatively few consumers robust enough to reach hearing stage.
20. That hearing was attended by BW Legal's barrister, acting for an AOS member of the British Parking Association ('the BPA') but in February 2020, Skipton County Court refused a similar application from a barrister for Excel Parking Services Ltd (members of the rival Trade Body, the International Parking Community -'the IPC'). Whilst these cases are not precedents, it is only right that Defendants should use them and expect no less protection and proactive sanctions against parking firms whose claims happen to fall to other courts.
21. In this situation, it ought not to be left to hardy individuals to raise this issue time and again at trial, yet other disputing consumers are being so intimidated by the threats in a barrage of debt demands and the possibility of facing court, that they pay a legally unrecoverable sum to make it go away. Such conduct has no proper function in the recovery of alleged consumer debt. To use the words of HHJ Chambers QC [ref: *Harrison v Link Financial Ltd* [2011] EWHC B3 (Mercantile) - https://www.bailii.org/ew/cases/EWHC/Mercantile/2011/B3.html]:

''Whatever the strength of the suggestion that the courts should only be a last resort, there can be no excuse for conduct of which the sole purpose must have been to make [...] life so difficult that they would come to heel. In a society that is otherwise so sensitive of a consumer's position, this is surely conduct that should not be countenanced''

22. The quantum claimed is unconscionable and the falsely added sum not there at all (or was buried in small print) on the sparsely-placed car park signs. As such, the Defendant avers that the charge offends against Schedule 2 of the CRA, where s71(2) creates a duty on the Court to consider the fairness of a consumer contract. The court's attention is drawn (but not limited to) parts 6, 10, 14 and 18 of the list of terms that are likely to be unfair and the CMA Guidance linked earlier, and the Defendant invites the court to find this Claimant in breach.

23. Even if the Claimant had shown the global sum claimed in the largest font on clear and prominent signs - which is denied - they are attempting double recovery of costs. The sum also exceeds the maximum amount which can be recovered from a registered keeper as prescribed in Schedule 4, Section 4(5) of the Protection of Freedoms Act 2012 ('the POFA'). It is worth noting that in the Beavis case, even though the driver was known, the Supreme Court considered and referred more than once to the POFA because it was only right that the intentions of Parliament regarding private PCNs were considered.

The part played by the (non-regulatory) two conflicting Accredited Trade Associations

24. Should this claim continue, the Claimant will no doubt try to mislead the court by pointing to their Trade Association 'ATA' Code of Practice ('CoP') that now includes a clause 'allowing' added costs/damages. The CoP is a self-serving document, written in the parking firms' interests. Further, the 'admin fee' model was reportedly the proud invention of a member of the BPA Board, Gary Osner, owner of ZZPS and whose previous firm, Roxburghe (UK) Limited, folded after being declared 'unfit' by the Office of Fair Trading who refused to renew their consumer credit licence due to 'unfair and misleading' business practices.
25. The BPA's Mr Osner states in an article in the public domain since 2018: https://parkmaven.com/news/gary-osner-zzps-interview "I created the model of 'admin fees' for debt recovery because ticket value was so low that nobody would make any money. Parking is business and business is about money, after all." The Defendant avers that it is clear that the competing 'race to the bottom' ATAs are sanctioning double recovery and both the BPA and the

IPC/Gladstones (who had shared Directors) have engineered a veil of legitimacy to protect this industry for years. The ATAs operate more like a cartel, not 'regulators' and the conflicting CoPs have failed consumers so badly that the Secretary of State is overseeing a new regulatory Code, following the enactment of the Parking (Code of Practice) Act 2019.

In contrast to the BPA Board member's mindset, the will of Parliament as set out in the new 2019 Act is very much consumer-focussed, aiming for: *"good practice...in the operation or management of private parking facilities as appears to the Secretary of State to be desirable having regard to the interests of persons using such facilities."*

The facts - lack of prominently displayed contract and no agreement on the charge

26. Should this poorly pleaded claim not be summarily struck out for any/all of the reasons stated above, it is the Defendant's position that no contract was entered into with the Claimant, whether express, implied, or by conduct. Therefore, as a matter of contract as well as consumer law, the Defendant cannot be held liable to the Claimant for any charge or damages arising from any alleged breach of the purported terms. Whilst there is a lack of evidence from the Claimant, the Defendant sets out this defence as clearly as possible in the circumstances, insofar as the facts below are known.
27. The Claimant's signs have vague/hidden terms and a mix of small font, such that they would be considered incapable of binding any person reading them under common contract law, and would also be considered void pursuant to Schedule 2 of the CRA. Consequently, it is the Defendant's position that no contract to pay an onerous penalty was agreed by the driver.
28. The Claimant's claim is for the breach of contract, 'namely stopping in a restricted bus stop / stand' as defined by the 'clearly displayed' signage. It is not accepted that the location of the contravention included either the prominent signs giving 'adequate notice' of the onerous parking charge nor the prominent sign for 'no stopping' nor the prominent sign for 'bus stop'.
29. Although the Claimant has not provided a signage map, it can be seen from the Claimant's photographic evidence and Google Street photographs, that the signs are positioned in such a way as to create an 'entrapment zone' where signage is not clearly visible. The road where the car was photographed as stopped has not a single 'no stopping' sign facing the drivers in either direction. Additionally, there is no a single 'bus stop' sign facing the drivers anywhere before or at the alleged bus stop. The Claimant is put to strict proof to contrary.
30. The Claimant's case is that the area is intended as 'a zone where stopping is prohibited' at all times. The signage is therefore prohibitive in nature and does not communicate any offer of consideration (ie: such as parking). In the absence of any consideration no contract exists.

31. This was reflected in the PCM vs Bull case, where Defendants were issued parking tickets for parking on private roads with signage stating “no parking at any time”. District Judge Glen in his final statement mentioned that “the notice was prohibitive and didn’t communicate any offer of parking and that landowners may have claim in trespass, but that was not under consideration”.
32. The Claimant is pursuing the Defendant for a breach of contract, however not at any point in material time was any contract agreed.

Protection of Freedoms Act 2012

33. The Defendant contends that the POFA is not applicable because Airport land is not 'relevant land' within the meaning provided by paragraph 3 of schedule 4 of the POFA, and this is further confirmed by the Department for Transport's Official Guidance regarding 'Section 56' (as it was in 2012) of that Act. The site of Southend Airport is subject to statutory control by virtue of the Southend on Sea Municipal Airport Byelaws 1980.
34. It is further contended that the act of stopping a vehicle does not amount to parking. This predatory operation pays no regard to the byelaws at all. It is likely that this Claimant may try to rely upon two 'trophy case' wins, namely VCS v Crutchley and/or VCS v Ward, neither of which were at an Airport location. Both involve flawed reasoning and the Courts were wrongly steered by this Claimant's representative; there are worrying errors in law within those cases, such as an irrelevant reliance upon the completely different Supreme Court case. These are certainly not the persuasive decisions that this Claimant may suggest.
35. In Ransomes vs. Anderson (“the Ransomes case”), a persuasive County Court judgement on appeal, Judge Moloney QC said: “the notice was insufficiently clear to constitute a valid contractual offer capable of acceptance by conduct. […] Although the doctrine of acceptance by conduct, on the basis of the terms on a notice in a parking place or similar zone, is an obviously right, valuable and useful one, it is an essential minimum that the contract be sufficiently simple and clear that the motorist is in no doubt before he performs the accepting conduct what he is letting himself in for”.

The ParkingEye Ltd v Beavis [2015] UKSC 67 case is distinguished

36. Unlike in this case, ParkingEye demonstrated a commercial justification for their £85 private PCN, which included all operational costs, and they were able to overcome the real possibility of the charge being struck out as punitive and unrecoverable. However, their Lordships were very clear that ‘the penalty rule is plainly engaged’ in such cases. Their decision was specific to that ‘unique’ set of

facts: the legitimate interest argued, the car park location, and the 'brief and clear' signs with the parking charge itself in bold and the largest text. The unintended consequence is that, rather than persuade courts considering other cases that all private PCNs are automatically justified, the Beavis case facts and pleadings (and in particular, the brief and prominent signs) set a high bar that this Claimant has failed to reach.

37. Due to the authority set by their earlier Somerfield case - mentioned at the start of this defence - it is worth noting that ParkingEye no longer add 'debt letter costs/damages' to their private PCNs and their own claims have escaped any reports of being summarily struck out for abuse of process. This Claimant has failed to plead their case or to set out their terms or construct their charges in the same way as in Beavis and the penalty rule remains firmly engaged.
38. Without the Beavis case to prop it up, and no alternative calculation of loss/damage, this claim must fail. Paraphrasing from the Supreme Court, deterrence is likely to be penal if there is a lack of an overriding legitimate interest in performance extending beyond the prospect of compensation flowing directly from the alleged breach. The intention cannot be to punish a motorist - nor to present them with concealed pitfalls, traps, hidden terms or unfair/unexpected obligations - and nor can the operator claim an unconscionable sum.
39. Further, in its conduct and signage, this Claimant has failed to comply with the CoP that they are signed up for, such as it is. Under the Consumer Protection from Unfair Trading Regulations, it is an unfair/misleading business practice to state that a Trader complies with a Code of Practice, but in reality, does not. This Claimant's conduct is also significantly different from the Beavis case [para 111.] where even the Supreme Court were wrongly convinced that the CoP was some sort of regulatory framework:
40. "And, while the Code of Practice is not a contractual document, it is in practice binding on the operator since its existence and observance is a condition of his ability to obtain details of the registered keeper from the DVLA. In assessing the fairness of a term, it cannot be right to ignore the regulatory framework which determines how and in what circumstances it may be enforced.''
41. A more relevant list of binding Court of Appeal authorities which are on all fours with a case involving unclear terms and a lack of 'adequate notice' of an onerous parking charge, would include:

    (i) *Spurling v Bradshaw* **[1956] 1 WLR 461** and
    (ii) *Thornton v Shoe Lane Parking Ltd* [1970] EWCA Civ 2,
    both leading examples of the 'red hand' rule, that an unseen/hidden clause cannot be incorporated after a contract has been concluded; and

(iii) *Vine v London Borough of Waltham Forest:* CA 5 Apr 2000, where the Court of Appeal held that it was unsurprising that the appellant did not see the sign *"in view of the absence of any notice on the wall opposite the southern parking space".* In other cases where parking firm Claimants and/or their legal teams have cited *Vine* in their template witness statements, they have misled courts by quoting out of context from Roch LJ, whose words related to the Respondent's losing case, and not from the decision. In fact, Miss Vine won because it was held as a fact that she was not afforded a fair opportunity to learn of the terms by which she would be bound.

42. The Claimant is also put to strict proof, by means of contemporaneous and unredacted evidence of a chain of authority flowing from the Landowner or Lessor of the relevant land to the Claimant. It is not accepted that the Claimant has adhered to the landholder's definitions, exemptions, grace period, hours of operation, etc. and any instructions to cancel charges due to complaints. There is no evidence that the freeholder authorises this particular Claimant (Companies House lists their company number as 02498820) to issue private PCNs or what the land enforcement boundary and start/expiry dates are/were, and whether this Claimant has standing to enforce such charges by means of civil litigation in their own name rather than a bare licence to issue PCNs 'on behalf of' the landowner on an agency basis.

Trespass is a Matter for a Landowner Only - The Claimant Has No Locus

43. If it is the Claimant's case that the area is intended as a 'no stopping zone' then they cannot also offer parking at a price, if the landowner (Southend on Sea Airport) in fact intends to prohibit stopping. If cars are never authorised to stop under any circumstances, then any breach would be a matter that falls firmly under the tort of trespass.
44. In the Beavis Case it was reiterated that only a landowner can sue for damages/loss for alleged trespass, and ParkingEye could not have recovered monies for unauthorised parking/trespass. It was only because they were able to offer something of value (a parking space) and that the charge was part of that contractual licence that ParkingEye could charge more than any nominal loss that a landowner could have recovered under tort.
45. If it is the Claimant's case that they were offering a parking licence or a space that had value, then they have produced no evidence to this effect and will be in difficulty if the signage in fact attempts to create a 'no stopping zone'. This would void any credible legal argument relying upon a 'legitimate interest' supporting the intentions of the landowner, because in a 'no-stopping zone' the landowner intends 'no stopping at all' on the one hand, and any Driver conduct in breach of that rule could not on

the other hand be allowed by a private company offering the prohibited behaviour under a pseudo contract.

46. It is believed that the contract this Claimant has with the Airport, limits the parking firm to act as agent of the Airport who remains the (known) principal, in which case only the Airport can sue, not the agent in their own name.
47. The Claimant is put to strict proof of their locus and cause and right of action in their own name, and to disclose the un-redacted contract with the Airport, before any hearing.

Airport Approach Roads are Subject to Road Traffic Enactments (Public Highway)

48. Even if the Claimant is able to overcome the difficulties they face in showing that:

    A. they have locus to sue in their own name regarding this location, and that;

    B. they offered a parking space with value, and a licence to park there, and that;

    C. the Defendant was afforded the opportunity to accept contractual terms and that;

    D. this charge which is somehow saved from the penalty rule;

49. The Claimant is also put to strict proof that this access road is not part of the public highway. A 'public highway' is any road maintained by public expense where the public would normally have a right to drive a mechanically propelled vehicle.
50. It is the Defendant's position that the road comes off a roundabout and is not clearly marked as a private car park and thus, any parking traffic contraventions would be a matter for the local authority. Such roads are subject to the rules of the Road Traffic Act and statutory instrument and any 'PCN' must be a proper penalty charge notice issued under the Traffic Management Act 2004.
51. The Claimant is put to strict proof that this approach road is a part of 'the Airport' site where road traffic enactments do not apply.

Data Keeper of a Vehicle at the Date of an Event (KADOE) & CCTV

52. It is the Defendant's further position that the Claimant's blanket use of CCTV is excessive and disproportionate regardless of circumstances (contrary to the CCTV rules issued by the ICO)
53. This Claimant uses CCTV camera systems (365 days a year, 24 hours a day, seven days a week) and processes personal data excessively and disproportionately, and thus fails to comply with the Information Commissioner's 'Data Protection Code of Practice for Surveillance Cameras and Personal Information' ('the ICO Code').

54. The ICO Code applies to all CCTV systems, and states that the private sector is required to follow it, in order to meet its legal obligations as a data processor. Members of the International Parking Community ('IPC') trade body are required to comply fully with the Data Protection Act ('DPA') and all ICO rules and guidelines, as a pre-requisite of being able to use the DVLA KADOE system to harvest VRN data, including the addresses of registers Keepers.
55. Whilst CCTV has its uses to keep Airport approach roads clear - to stop Drivers from choosing to park and leaving their vehicles - this must be with reasonable and proportionate application, with sufficient checks and balances being an ICO Code requirement when operating such a data-intrusive regime.
56. The Claimant's failures to comply include, but are not limited to the following, and the Claimant is put to strict proof otherwise on all counts:
57. Lack of an initial Surveillance Camera privacy impact assessment, and
58. Lack of an evaluation of proportionality and necessity, considering concepts that would impact upon fairness under the first data protection principle, and
59. Failure to regularly evaluate whether it is necessary and proportionate to use CCTV to issue penalties in all cases, applying no human intervention or common sense approach e.g. having no checks and balances to exclude from the 'immediate penalty' approach.
60. Failure to prominently inform users in large lettering on clear signage, of the 'commercial intent' and purpose of the hidden van CCTV system and how the data captured would be used, and
61. It is the Defendant’s position that in any case involving a consumer contract, Courts must evaluate and apply a test of fairness, whether the Defendant raises the issue or not, and transparency of terms must also be considered carefully in every case.
62. It is averred that this Claimant at this location, fails on all counts and therefore the charge is unjustified and just the sort of 'unconscionable' parking charge that the Supreme Court had in mind when retaining the 'penalty rule' for use in cases such as this, where the facts are less complex than in Beavis Case.
63. The Beavis Case is fully distinguished and a more relevant list of binding Court of Appeal authorities which are on all fours with a case involving unclear terms and a lack of ‘adequate notice’ of an onerous parking charge, would include:

    A. *Spurling v Bradshaw* [1956] 1 WLR 461 and

    B. *Thornton v Shoe Lane Parking Ltd* [1970] EWCA Civ 2, both leading examples of the ‘red hand’ rule - i.e. that an unseen/hidden clause cannot be incorporated after a contract has been concluded; and

C. *Vine v London Borough of Waltham Forest:* CA 5 Apr 2000, where the Court of Appeal held that it was unsurprising that the appellant did not see the sign "in view of the absence of any notice on the wall opposite the southern parking space".

The Defendant Seeks Costs

64. (a) standard witness costs for attendance at Court, pursuant to CPR 27.14, and (b) that any hearing is not vacated but continues as a costs hearing, in the event of a typical Notice of Discontinuance (EXHIBIT 12). The Defendant seeks a finding of unreasonable behaviour in the pre-and post-action phases, by this Claimant. **P**ursuant to CPR 46.5, whilst indemnity costs cannot exceed two thirds of the applicable rate if using legal representation, the Defendant notes that LiP costs are not necessarily capped at £19 ph. It is noted that a Defendant may ask in their Summary Costs Assessment for the court to award their usual hourly rate for the many hours spent on this case [ref: Spencer & anor v Paul Jones Financial Services Ltd].

65. In summary, the Claimant's Particulars disclose no legal basis for the sum claimed and the abuse of process taints this Claim. The Claimant knew, or should have known, that an exaggerated claim where the alleged 'debt' exceeds £100 (ATA Code of Practice ceiling for a private PCN) is disallowed under the CPRs, the Beavis case, the POFA and the CRA. The Judge in the instant case is taken to EXHIBIT 10, demonstrating that several court areas continue to summarily strike out private parking cases that include an extravagant and unlawful costs sum.

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.

Defendant's signature: ……..…….

Defendant's name: ……..…….

Date: ……..…….

Claim No:

Between

Vehicle Control Services Limited (Claimant)

and

(Defendant)

EXHIBIT 12 - Defendant's Schedule of costs

Ordinary Cost

Loss of earnings/leave, incurred through attendance at Count on date to be scheduled - £180

Parking near the court - £8.00

Sub Total - £188.00

Further costs for Claimant's unreasonable behaviour, pursuant to Civil Procedure Rule 27.14(2)(g)

Research, preparation and drafting of documents (20 hours at Litigant in Person rate of £19 per hour) - £318

Stationery, printing, photocopying and postage - £24

Sub Total - £342

£ Total Costs Claimed - £530.00

Signed

Date: