



Claim Form

Claimant

Vehicle Control Services Limited
 2 Europa Court
 Sheffield Business Park
 Sheffield
 S9 1XE

Address for sending documents and payments (if different)

VCS16576720 01142317851

Defendant

[Redacted]

Particulars of Claim

The Claim is for a breach of contract for breaching the terms and conditions set on private land. The Defendant's vehicle, [Redacted], was identified in the Abbey Walk Retail Park Car Park on the 21/09/2019 in breach of the advertised terms and conditions; namely parked for longer than the maximum period permitted. At all material times the Defendant was the registered keeper and/or driver. The terms and conditions upon entering private land were clearly displayed at the entrance and in prominent locations. The sign was the offer and the act of entering private land was the acceptance of the offer hereby entering into a contract by conduct. The signs specifically detail the terms and conditions and the consequences of failure to comply, namely a parking charge notice will be issued, and the Defendant has failed to settle the outstanding liability. The Claimant seeks the recovery of the parking charge notice, contractual costs and interest.

The Claimant believes that the facts stated in this claim form are true and I am duly authorised by the claimant to sign this statement.

Signed Jake Burgess
 (Claimant)(Claimant's Legal Representative)

In the
 County Court Business Centre

Claim No.	[Redacted]
Issue Date	[Redacted]

Court Address



Defendant

[Redacted]

Important Note

- You have a limited time in which to reply to this claim form
- Please read all the guidance notes on the back of this form - they set out the time limits and tell you what you can do about the claim
- You can respond to this claim online. Log on to www.moneyclaim.gov.uk
- You will need the claim number (see above) and the following password XXXXXXXX

	£
Amount claimed	£160.00
Court fee	£25.00
Legal Representative's costs	
Total amount	£185.00

Notice of Proposed Allocation to the Small Claims Track

Vehicle Control Services Limited
2 Europa Court
Sheffield Business Park
Sheffield
S9 1XE

In the County Court Business Centre	
Claim Number	[REDACTED]
Claimant (including ref.)	Vehicle Control Services Limited VCS16576720 01142317851
Defendant (including ref.)	[REDACTED]
Date	30 June 2020

Important Notice

If you do not comply with this notice the court will make such order as appears to be appropriate. This could include striking out the claim or entering judgment.

TAKE NOTICE THAT

1. This is now a defended claim.
The defendant has filed a defence, a copy of which is enclosed.
2. It appears that this case is suitable for allocation to the small claims track.
If you believe that this track is not the appropriate track for the claim, you must complete box C1 on the Small Claims Directions Questionnaire (Form N180) and explain why.
3. You must by 17 July 2020 complete the Small Claims Directions Questionnaire (Form N180) and file it with the court office

the County Court Business Centre, 4th Floor St Katharine's House, 21-27 St Katharine's Street,
Northampton, NN1 2LH

and serve copies on all other parties.

NOTES FOR GUIDANCE

- (i) The Directions Questionnaire can be downloaded from hmctsformfinder.justice.gov.uk
- (ii) Further information on fees is available in the leaflet EX50 from hmctsformfinder.justice.gov.uk

The court office at Money Claim Online, County Court Business Centre, 4th Floor St Katharine's House, 21-27 St Katharine's Street, Northampton, NN1 2LH. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 0300 123 1057 Fax: 01604 619526. **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.**

IN [REDACTED]

Claim No.: [REDACTED]

Between

VEHICLE CONTROL SERVICES LIMITED

(Claimant)

- and -

[REDACTED]

(Defendant)

DEFENCE

1. The Defendant denies that the Claimant is entitled to relief in the sum claimed, or at all. The points below are within the scope of the Defendant's own knowledge and honest belief. Whilst parts of this defence may be familiar to the Claimant and/or their legal representatives, it would not be right for a litigant-in-person to be criticised for using all relevant resources available. It is noted in any case, that these Claimants use third party pre-written templates as standard. This statement was prepared by the Defendant specifically for this matter and unlike the Claimant's case, it deals properly and individually with the facts, the alleged contract, and the quantum. The contents of this defence represent hours of research by the Defendant, in order to grasp some knowledge of alien concepts of law, codes of practice and procedures relating to the specific area of Parking Charge Notices ('private PCNs').
2. 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].

The Claim is tainted by an abuse of process and should not proceed to trial

3. 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.
4. 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.
5. 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).

6. 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.
7. 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.
8. 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.
9. 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.

10. 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”*
11. 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.
12. 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

13. 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.

14. 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."*

Pre-action protocol breach and nonsensical Particulars of Claim

15. In the alternative, the defence is prejudiced and the court is invited to note that, contrary to the Pre-Action Protocol for Debt Claims, the Letter Before Claim omitted evidence of any breach and failed to append the wording of the sign or consumer notice. Further, the stylised Particulars of Claim are embarrassing and incoherent, lacking specificity re the status of the contracting parties and failing to detail any contract, conduct or liability that could give rise to a cause of action. There is insufficient detail to ascertain the nature, basis and facts of the claim and even the exaggerated quantum has fluctuated, changing with each debt demand and/or letter of claim over the preceding months.

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

16. 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.

17. On the night in question the vehicle was parked in the carpark and the Defendant had attended the supermarket to do some shopping. When the Defendant returned to the car, the car would not start and the Defendant had to call a third party to attend with jump leads in order to start the car. A witness statement from the third party will be provided to confirm this in due course. Upon jump starting the car, the Defendant then left the car park. Unfortunately, the car's breakdown meant that the Defendant's stay in the car park was prolonged.
18. The Claimant's signage in the car park was not lit up and was not seen as it was evening so it was dark and the weather was not very good.
19. 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.

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

20. 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.
21. 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.
22. 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.

23. 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:

"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."

24. 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.

25. 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.

In the matter of costs; if this claim is not struck out, the Defendant seeks:

- 26. (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. The Defendant seeks a finding of unreasonable behaviour in the pre-and post-action phases, by this Claimant. Pursuant 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*].
- 27. 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 Defendant invites the court to find that this exaggerated claim is entirely without merit, and to bring an end to the case without a hearing.

Statement of Truth

I believe that the facts stated in this defence 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.

[Redacted signature block]

I [Redacted]

IN THE COUNTY COURT [REDACTED]

CLAIM NO: [REDACTED]

BETWEEN

VEHICLE CONTROL SERVICES LIMITED

CLAIMANT

V

[REDACTED]

DEFENDANT

WITNESS STATEMENT

I, Mohammed Wali, of Unit P1 Europa Link, Sheffield Business Park, Sheffield, S9 1XU, will say as follows:

Introduction

1. I am employed by Vehicle Control Services Limited as a Paralegal and have been employed since October 2020. The facts and matters referred to in this witness statement are within my own knowledge, except where I have indicated otherwise. Where the facts are within my knowledge, they are true. Where they are not within my own knowledge, they are true to the best of my information and belief.
2. I make this witness statement in readiness for the hearing scheduled for 27th November 2020 in support of the Claimant's claim against the Defendant.
3. Within this statement I make reference to various documents. These are now produced to me in a paginated bundle marked MW1-2. The evidence tendered in the exhibits is taken from the Claimants' Company records.

Background

4. The Claimant is engaged in providing and managing private parking facilities on behalf of Clients throughout Great Britain.
5. At all material times, the Claimant has been an Accredited Member of Approved Trade Associations certified by the Driver and Vehicle Licensing Agency (DVLA), and was awarded Approved Operator Status through its full compliance with their Code of Practice for Private Enforcement on Private Land and Unregulated Car Parks. This Code of Practice gives recommendations in regards to the signage within the Car Parks and the Claimant follows these recommendations.
6. This action relates to a Maximum Stay development known as Abbey Walk Retail Park Car Park situated in Abbey Walk Retail Park Car Park, Abbey Walk, Selby, YO8 4DZ. A Maximum Stay system is in operation to regulate parking within the development which is managed by Automatic Number Plate Recognition Cameras ["ANPR"] to monitor the Car Park.
7. Whilst the vehicle was parked within the development the Defendant was confirmed as the hirer of the vehicle bearing the registration of DU16WTV. The said vehicle was parked within the development in breach of the advertised Terms and Conditions to which the Defendant has failed to settle any outstanding liability.

Title and Interest

8. In order to address the difficulties within the development the lawful occupant, Threadneedle Pensions Ltd, c/o GBR Phoenix Beard, of the Exchange, 17 Newhall Street, Birmingham B3 3PJ ["Our Client"], appointed the Claimant to manage within the development. Following their appointment, the Claimant

erected warning notices throughout the development making clear that anyone parking within the development did so on in accordance with the Terms and Conditions of the sign. This was in order to regulate the parking situation in accordance with the powers conferred upon the property managers of the development.

9. The Claimant submits that they have the authority to implement a parking scheme since 14th September 2015. There has been no notice of termination and the Claimant remains contracted to enforce parking to date. The Claimant is contracted to undertake parking management activities and issue Parking Charge Notices ["PCN"] where vehicles are identified on the development in breach of the advertised Terms and Conditions. A copy of a statement by/the contract with our Client can be identified in exhibit MW1.
10. Further to this role, the Claimant was appointed to monitor the development for compliance with the Terms and Conditions. If particular vehicles were parked in breach of the Terms and Conditions, then a motorist would be issued with a PCN. The Claimant's role was therefore simply to enforce the conditions.
11. In accordance with their contract appointing the Claimant, the Claimant was entitled to pursue any parking charges as a result of breach of the Terms and Conditions of the parking scheme in their own names. The signs throughout the development clearly advise anyone parking within the development that they were entering into a contract with the Claimant. The Claimant was entitled to contract with drivers on behalf of the owners of the development in accordance with their appointments.

Breach of the Terms and Conditions

12. The ANPR camera system is built of infrared cameras which are located on both entry and exit points of the Car Park. These cameras take still images

per minute/second of all vehicles entering and exiting the Car Park. If a vehicle enters the Car Park on one entry point and exits on another, these cameras will capture the vehicle, regardless of whether the vehicle has entered and exited through the same entry & exit point or not. It is upon this system that the length of period of stay is recorded for each vehicle.

13. There are also several other Terms and Conditions such as vehicles must be parked correctly within the lines of a single marked bay and parking is not permitted in restricted areas, hatched areas and roadways etc. In addition, there are disabled bays that require a blue badge to be displayed. These are managed by Foot Patrol Officers ["PO"] as our ANPR cameras are unable to identify these breaches.

14. The Claimants' production enclosed as MW1 contains information as to the development. Within the productions enclosed is;

- A Contract Statement of Authority
- Photographs of the Car Park
- Signage Artwork
- Overhead of the Car Park.

15. The Claimant manages the parking scheme and regularly inspects the development in accordance with their appointment. The Claimants' role is to erect signs within the development explaining the Terms and Conditions associated with parking. The warning signs are visible upon entry to the Car park and throughout the location;

- [1] Entrance Boards
- [over 30] Information Boards

16. Amongst other things the above signs specifically detail the Terms and Conditions of parking and the consequences of failure to comply with these

Terms and Conditions. In particular the signs specifically state that their charge for breaching the Terms and Conditions is £100.00 discounted to £60.00 if paid within 14 days. This is a contractual clause which specifies the amount owed. There is sufficient and adequate signage for the Terms and Conditions to have been brought to the attention of any motorist wishing to use the car park.

17. Whilst the vehicle was within the development the said vehicle was recorded parked for longer than the maximum period permitted thus resulting in a PCN being issued.

Liability of the Defendant to the Claimant

18. The Claimants' production of exhibit MW2 is evidence of the date, time and location that the Defendant parked their vehicle in contravention of the Terms and Conditions associated with parking within the development. The Claimant would ensure compliance of the Terms and Conditions and ensure that all data from the cameras is consolidated in our eyeTRAFFIC system which compares all data records with vehicle images captured.
19. When a vehicle is found to have parked for longer than the maximum period permitted, then the data and evidence is flagged to an operator to review and confirm that a contravention has occurred. If such is the case, the Claimant has reasonable cause to request the RK details from the Driver and Vehicle Licensing Agency ["DVLA"]. Once the data is received from the DVLA, the Claimant will send out a PCN usually within 14 days of the contravention.
20. The notice informs the RK that a Parking Charge has been issued to the vehicle they are responsible for and provides the opportunity to either pay the reduced charge of £60.00, appeal within 21 days via a portal accessible on www.myparkingcharge.co.uk or transfer liability to the driver of the vehicle. The portal further allows the RK the opportunity to review the photographic evidence.

21. Should the motorists wish to raise an appeal there is a two-tier appeals procedure. The first tier is to appeal directly to the Claimant within 21 days via www.myparkingcharge.co.uk. Once an appeal is received, it is then assessed by an adjudicator within our appeals department, of whom then decides whether to accept or reject the motorists' appeal.
22. Should the adjudicator accept the contents of the appeal, the PCN will be cancelled with immediate effect. However, should the appeal be rejected then a Representation of Rejection ["ROR"] will be sent to the motorists, by the details provided when submitting their appeal, rejecting the appeal and giving their reasons as to why. Further, the motorists will then be provided with the opportunity to escalate the appeal further to the Independent Appeals Service ["IAS"]. This is known as the second tier stage.
23. The IAS is an independent body provided by our Trade Association, the International Parking Community ["IPC"], in order to provide an impartial adjudicator to deal with the appeal. A decision on the appeal is binding on the Claimant but not the motorist.
24. Any appeal made to the IAS must be made within 21 days and should the appeal be upheld in favour of the motorist then the Claimant is bound to cancel the PCN. If the appeal is found in favour of the Claimant then they are able to recover the amount of £100.00 should it still remain outstanding.
25. In the absence of any payment or correspondence from the Charge Notice, the Claimant will send a Final Reminder ["FR"] reiterating the contents of the Charge Notice and allowing the Defendant a final opportunity to pay the charge.
26. It is submitted that liability exists in each instance of parking in accordance with the notice issued to the Defendant on each instance. The Claimant submits that the Claimant's evidence ought to be preferred in this matter. The Claimant implemented a parking scheme and the Defendants' vehicle was identified in

breach of the advertised Terms and Conditions of parking within the development.

Authorities

27. It is settled that individuals may enter into a contract with a sign and reference is made to **Thornton v Shoe Lane Parking 1971 2 QB 163**. The sign was the offer and the act of parking the acceptance of the offer on each occasion.

28. The Claimant is entitled to charge for each instance in which the Defendant was observed parked for longer than the maximum period permitted at the development. In this case, the charge for breaching the Terms and Conditions is £100.00 discounted to £60.00 if paid within 14 days.

29. The Claimant wishes to rely on the precedent set under **Vine v Waltham Forest LBC [2002] 1 WLR 2383, 2390**, where Roch L.J. stated:

“the question whether a person voluntarily assumes a risk or consents to trespass to his or her property is to be judged objectively and not subjectively. Once it is established that sufficient and adequate warning notices were in place, a car driver cannot be heard to say that he or she did not see the notice. Were that to be the law, it would be too easy for car drivers who trespass with their cars to evade the only method land owners have of stopping the unauthorised parking spaces or parking areas on their property”

30. The Claimant further relies upon **Schedule 4 of the Protection of Freedoms Act 2012** and contends that they can hold the Defendant liable for the PCN under the said enactment. The relevant clause is;

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

...5 1 (b)...if they are 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... ”

31. In the Defendants’ failure to act upon each Notice addressed to them by putting forward their position or transferring liability, the Claimant is able to pursue the registered keeper of the vehicle, to which is the Defendant, as confirmed by the DVLA.
32. The signage is prominently displayed and visible on entry to the site. It is submitted that the Claimant has done what is reasonable to draw attention to the existence of the contractual terms and therefore has given sufficient notice of them.
33. The Supreme Court in **ParkingEye v Beavis [2015] UKSC 67** has established that in cases as this, a contract exists between the Motorist and the Operator, whereby the Motorist is granted a contractual licence to park their car in the Car Park on the terms of the notice posted at the site, which are accepted by entering and leaving the vehicle at the site.

The Defendants’ Defence

34. Paragraph 1, The Claimant refutes this assertion and submits that the Claimant is entitled to relief for the contravention at the Abbey Walk Retail Park.
35. On 21 September 2019, the Defendant’s vehicle was observed by the ANPR system in Abbey Walk Retail Car Park in Selby remained in the car park over the maximum 2 hour period as per the Terms and Conditions of the Car Park. This rendered the Driver in breach of the Terms and Conditions of the Car Park and the Defendant liable for the Parking Charge advertised on the signage.

36. The Claimant submits that the Defendant was the hirer of the vehicle parked in contravention on 21 September 2019 at the Abbey Walk Retail Park of the advertised terms and conditions.

37. In summary, the Defendant alleges in her Defence, she disputes the claim for failing to stay at the Abbey Walk Retail Carpark longer than the 2 hour Maximum stay prescribed period . The Claimant submits that that on the date of the contravention (21 September 2019) the signs stated that the Abbey Walk Retail Carpark was a 2 hour maximum stay Carpark The Claimant annexes in Exhibit MW1 sign image of the information board in the contravention images and furthermore the sign images confirming the same on the date of the contravention.

38. The Claimant respectfully refers to the time and dated Site images enclosed, the car park is a 2 hour Maximum stay carpark. The Claimant can confirm that on the date of the contravention the Defendants vehicle was observed entering the car park at 19:28 and exiting the car park on 22:02 on 21 September 2019 over the 2 hour maximum period.. .

39. As on the date of the contravention the Abbey Walk Retail Carpark was a maximum 2 hour stay carpark., and the Defendants vehicle was detected by the ANPR system to have been parked/remained in the Abbey Walk Retail Car park over the 2 hour maximum period, this rendered the Defendant in breach of the terms and conditions of the Car park and liable for the Parking Charge advertised on the signage.

40. The Contravention images show that the vehicle entering 19:28 on 21 September 2019 at the Abbey Walk Retail Car Park maximum stay 2 hour Carpark. The Defendants vehicle was observed entering the car park at 19:28

and exiting the car park on 22:08 on 21 September 2019, remaining at the site over the 2 hour maximum stay.

41. The Claimant submits that the Defendant entered into a contract when he entered the Abbey Walk Retail Car Park maximum 2 hour stay Carpark, there is an entrance board, and over 3 warning signs located at prominent locations at the site which advertise the Terms and Conditions of the site.

42. The Claimant submits that they rely on the case of **ParkingEye v Beavis [2015] UKSC 67** has established that in cases as this, a contract exists between the Motorist and the Operator, whereby the Motorist is granted a contractual licence to park their car in the Car Park on the terms of the notice posted at the site, which are accepted by entering and leaving the vehicle at the site.

43. Furthermore, The Claimant submits that they also rely on the case of **The Vine v Waltham Forest LBC [2002] 1 WLR 2383, 2390** and submit that there were sufficient and adequate signs in place at the Centre 27 Carpark.

44. The Claimant submits that a Notice to Keeper date marked was posted at the Defendants address on 2 December 2019 within 14 days of the contravention. A copy of the same is attached in Exhibit MW2.

45. Paragraph 2, The Claimant submits that they have authority to enforce parking regulations at the Abbey walk Retail Car park. A copy of the contract with the landowner is attached in MW1.

46. The Claimant submits that at all material times, it has complied with the IPC Code of Practice and as such the Defendant is required to particularise which section(s) of the Code of Practice the Claimant has breached.

47. The Claimant submits that £100.00 for a Parking Charge is not an extortionate sum at all, but in line with the recommendation provided by the IPC.

48. To reiterate, the £60.00 is for the debt recovery charge. The Claimant refers to the IPC Code of Practice Part E Schedule 5- Parking Charges which states the following:

'Where a Parking Charge becomes overdue a reasonable sum may be added. This sum must not exceed £60 (inclusive of VAT where applicable) unless Court Proceedings have been initiated.'

The Claimant submits that the debt recovery charge included within the Claim does not exceed £60.00 and therefore is in accordance with the IPC Code of Practice. Thus, the Claimant denies that this is an inflated Claim.

49. The Claimant submits that the Claimant has a cause of action as the Defendant contravened the relevant terms and conditions advertised on the site, by not exiting the site before the maximum period of stay expired.

50. Notwithstanding the above, the Claimant submits that the Defendant could have made a Part 18 request for Further Information. However, this was not utilised by the Defendant.

51. Paragraphs 3- 12

52. There are over 30 warning signs prominently displayed and visible within the Car Park, to alert motorists that they are entering/this is private land and parking is subject to Terms and Conditions. Furthermore, the area is sufficiently lit, the signage is reflective and the Terms and Conditions on the signage are printed in a large font size, in bold and are legible. Thus, it cannot be a valid defence for any motorist to say "I did not see and read the signage because it was dark" in an attempt to absolve liability and expect the Court to uphold this.

53. The signage including the entrance boards is reflective, thus the headlights of the Defendant's vehicle, when entering the site and driving through it, will have hit them and made the warning signs more visible than they already were due to the area being sufficient lit from the surrounding buildings and lampposts within the site.
54. In any event, the Claimant submits that their signage is compliant with the IPC Code of Practice. The Claimant's signage is also audited and approved by the International Parking Community, and is therefore fully capable of creating a legally binding Contract with motorists entering the Car Park.
55. Reliance is placed upon the decision in **ParkingEye v Beavis [2015] UKSC 67** whereby the Defendant was given a contractual licence to park/use the vehicle in the development on the terms of the notice posted on various warning signs throughout the site, which he accepted by entering the car park. In relation to the Defendant, the terms were that the Defendant could only park his vehicle within the maximum period permitted and that on breach of this term, he would pay £100.00, which would be reduced to £60.00 if paid within 14 days. The £100.00 is the consideration.
56. The Protection of Freedoms Act 2012 is a piece of legislation introduced to provide Keeper Liability. This means that if an Operator does not know the name or address of the driver they can hold the keeper liable. To do this, an Operator will need to meet the requirements contained within POFA – such as timescales. However, there may be many reasons why the Claimant is unable to adhere to the timescales such as a delay in a response from the DVLA which is the case for this.
57. This does not, however, give rise to the cancellation of the PCN and the legislation itself makes reference to an Operator or Creditor 'has the right to recover'. It further stipulates that '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'.

58. However, notwithstanding the above, the Claimant submits that their Notices are complaint with POFA and therefore they can hold the Defendant liable as the Registered Keeper
59. Further, the Claimant can rely upon the provision of Law of Agency as the Defendant has submitted that other people have access and use of the vehicle in question. Therefore it is clear that the Defendant has allowed permission for other users to drive his vehicle.
60. The Claimant submits that where someone, besides the Defendant, is driving the vehicle they are acting as an agent of the Defendant. Therefore the driver has actual and/or implied authority to enter into contracts on behalf of the Defendant. The law of agency deals with contractual relationships that involve a person, called the agent, that is authorised to act on behalf of another, called the principle, to create legal relations with a third party. The Claimant wishes to rely on the case of *Excel Parking Services Ltd v Nick Jennings* [2017].
61. The Claimant submits that its endorsement on the Claim Form does constitute valid Particulars of Claim. They are compliant with 16.4(1)(a) of the Civil Procedure Rules as they contain a concise statement of the facts.
62. The Claimant's position is that CPR 16.4 (in relation to the Particulars of Claim) has been complied with. As the claim was issued online using Money Claim Online (MCOL) , under paragraph 4 (1) PD 7E- MCOL, the Claimant's claim meets the conditions for starting a claim using MCOL. Under paragraphs 5.2(1) and (2)(b) PD 7E, the Claimant's Particulars of Claim were included in the online claim form, however, it had to comply with the restrictions of having only 1080 characters to set out its particulars. The Claimant relies on paragraph 5.2A PD 7E which states: "The requirement in paragraph 7.3 of Practice Direction 16 for documents to be attached to the particulars of contract claims does not apply to claims started using an online claim form, unless the Particulars of Claim are served separately in accordance with paragraph 5.2 of this practice direction". For the reasons above, there has been no breach of the PD 16 or CPR 16

63. The Claimant submits that the Defendant has been in receipt of ample correspondence from the Claimant in respect of unpaid PCN's. The Defendant has failed to respond to these Notices and therefore the Claimant has pursued the Defendant as to the liable party. The Claimant does not agree with the Defendant's allegations that they must prove on each and every occasion that the Defendant was the driver and failure to do so would give no legal cause for the Claimant to pursue the Defendant. The Claimant submits that there are a number of legal remedies that would allow the Claimant to pursue the Defendant.
64. The Claimant notes that the Defendant is willing to swear on Court that they were not the driver for every ticket yet goes on to state that it was 'mostly' his ex partner. In any civil cases, the Claimant must prove their case on the balance of probabilities if they are to succeed. This means that the Claimant must prove that the facts tip the scale in their favour even if it is only 51% probability that they are correct. The weight of a feather is all that is needed. Proof greater than that is not required.
65. The Protection of Freedoms Act 2012 is a piece of legislation introduced to provide Keeper Liability. This means that if an Operator does not know the name or address of the driver they can hold the keeper liable. To do this, an Operator will need to meet the requirements contained within POFA – such as timescales. However, there may be many reasons why the Claimant is unable to adhere to the timescales such as a delay in a response from the DVLA which is the case for this.
66. This does not, however, give rise to the cancellation of the PCN and the legislation itself makes reference to an Operator or Creditor 'has the right to recover'. It further stipulates that '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'.

67. However, notwithstanding the above, the Claimant submits that their Notices are complaint with POFA and therefore they can hold the Defendant liable as the Registered Keeper
68. Further, the Claimant can rely upon the provision of Law of Agency as the Defendant has submitted that other people have access and use of the vehicle in question. Therefore it is clear that the Defendant has allowed permission for other users to drive his vehicle.
69. The Claimant submits that where someone, besides the Defendant, is driving the vehicle they are acting as an agent of the Defendant. Therefore the driver has actual and/or implied authority to enter into contracts on behalf of the Defendant. The law of agency deals with contractual relationships that involve a person, called the agent, that is authorised to act on behalf of another, called the principle, to create legal relations with a third party. The Claimant wishes to rely on the case of Excel Parking Services Ltd v Nick Jennings [2017].
70. The Defendant alleges that there is no liability as the Claimant has not suffered any loss. That Claimant submits that, in correlation to the Parkingeye Ltd v Beavis case, our charges are a contracted sum for failure to adhere to the advertised terms and conditions of use of the car park, as detailed with our signage. It was a contract to which the motorist had the right to refuse enter into, by leaving the car park.
71. The sum payable is not a charge for loss or damages, but is a commercially justified charge which is in part to cover the cost and provision of the service we provide to the Client, as well as in no small part to act as a deterrent to encourage and influence the motorists behaviour. The level of charge applied is within the scope set out within our Code of Practice as issued by the Independent Parking Committee who are our Accredited Trade Association. In consideration that the charge applied is an "Unfair Contract Term", their Lordships Neuberger and Sumption offered that:

^[107.] "In our opinion the term imposing the £85 charge was not unfair. The term does not exclude any right which the consumer may be said to enjoy under the general law or by statute. But it may fairly be said that in the absence of agreement on the charge, Mr Beavis would not have been liable to ParkingEye. He would have been liable to the landowner in tort for trespass, but that liability would have been limited to the occupation value of the parking space. To that extent there was an imbalance in the parties' rights. But it did not arise "contrary to the requirement of good faith", because ParkingEye and the landlord to whom ParkingEye was providing the service had a legitimate interest in imposing a liability on Mr Beavis in excess of the damages that would have been recoverable at common law."^

72. The Claimant submits that as at 29 September 2014, it was a member of the accredited trade association of the Independent Parking Committee (IPC) to which reference was made on the Notices and to which the Claimant still belongs. The IPC code of practice is a detailed code of regulation governing signs, charges and enforcement. Schedule 5 deals with Parking Charges and provides that "it is suggested the maximum parking charge should be £100.00". The Claimant submits that £100.00 per Parking Charge is not extortionate at all, but in line with the recommendation provided by the IPC.

73. Further it was decided by the Supreme Court that a PCN amount of £85.00 is not a penalty nor does it infringe the UTCCR 1999. It was further considered that a PCN amount of £130.00 was also not a penalty in line with corresponding figures for Greater London (Paragraph 96). The Claimant avers that given the Supreme Court did not find that a PCN of £85.00 or £130.00 to be a penalty then it should be inferred that the sum of £100.00 is not a penalty or unfair pursuant to the UTCCR 1999.

74. The Claimant submits that it operates to the International Parking Community's Accredited Operator Scheme. As a member of the IPC, it is necessary for the Claimant to evidence to the IPC that its signs in situ are compliant in setting out the relevant terms and conditions of use. The

Claimant avers that its signs have been approved and are compliant with the IPC code of practice.

75. The Claimant submits that at all material times, it has complied with the IPC Code of Practice and as such the Defendant is required to particularise which section(s) of the Code of Practice the Claimant has breached.
76. The Claimant submits that its endorsement on the Claim Form does constitute valid Particulars of Claim. They are compliant with 16.4(1)(a) of the Civil Procedure Rules as they contain a concise statement of the facts.
77. The Claimant's position is that CPR 16.4 (in relation to the Particulars of Claim) has been complied with. As the claim was issued online using Money Claim Online (MCOL) , under paragraph 4 (1) PD 7E- MCOL, the Claimant's claim meets the conditions for starting a claim using MCOL. Under paragraphs 5.2(1) and (2)(b) PD 7E, the Claimant's Particulars of Claim were included in the online claim form, however, it had to comply with the restrictions of having only 1080 characters to set out its particulars. The Claimant relies on paragraph 5.2A PD 7E which states: "The requirement in paragraph 7.3 of Practice Direction 16 for documents to be attached to the particulars of contract claims does not apply to claims started using an online claim form, unless the Particulars of Claim are served separately in accordance with paragraph 5.2 of this practice direction". For the reasons above, there has been no breach of the PD 16 or CPR 16
78. The Claimant submits that the Defendant has been in receipt of the Particulars of Claim for approximately 4 months. The Claimant therefore questions why the Defendant chose to sit back and not do anything with this issue until the matter was allocated and listed for a Hearing.
79. Notwithstanding the above, the Claimant submits that the Defendant could have made a Part 18 request for Further Information. However, this was not utilised by the Defendant.

80. The Claimant submits that they did have the right under its contract to grant a license to motorists entering private land. The Defendant should not confuse the making of a contract with the power to perform it. Reliance is placed on the case of *Vehicle Control Services Ltd v HMRC* [2013] EWCA Civ 186, Paragraph 22;
81. “There is no legal impediment to my contracting to sell you Buckingham Palace. If (inevitably) I fail to honour my contract then I can be sued for damages. On the stock market it is commonplace for traders to sell short; in other words to sell shares that they do not own in the hope of buying them later at a lower price. In order to perform the contract the trader will have to acquire the required number of shares after the contract of sale is made. Moreover, in some cases a contracting party may not only be able to contract to confer rights over property that he does not own, but may also be able to perform the contract without acquiring any such right”.
82. The Claimant further adopts the Judgment is so far as *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406 in whereby a housing trust with no interest in land was held to have validly granted a tenancy of the land to a residential occupier. Lord Hobhouse of Woodborough cites;
83. “The case of Mr Bruton depends upon his establishing that his agreement with the Housing Trust has the legal effect of creating a relationship of tenant and landlord between them. That is all. It does not depend upon his establishing a proprietary title good against all the world or against the Council. It is not necessary for him to show that the Council had conveyed a legal estate to the Housing Trust”.
84. The tenancy would not have been binding on the landowner, but bound the two contracting parties in precisely the same way as it would have done if the grantor had had an interest in the land.

85. The analysis is no different to this case. The Claimant has contracted with the Defendant based upon the signage situated at the entrance and throughout the Site. The scheme cannot depend on whether the landowner operates it himself or employs a contractor like the Claimant.
86. The Claimant would not know or care what, if any, interest the Claimant has in the land, or what relationship it has with the landowner if it has no interest. This conclusion is reinforced when one bears in mind that the question whether a contractual provision is a penalty turns on the construction of the contract, which cannot normally turn on facts not recorded in the contract unless they are known, or could reasonably be known, to both parties. This is supported in the recent Supreme Court case of *ParkingEye v Beavis* 2014 [2015] EWCA Civ 402, Paragraph 99;
87. “It is an interest of ParkingEye, because it sells its services as the managers of such schemes and meets the costs of doing so from charges for breach of the terms (and if the scheme was run directly by the landowners, the analysis would be no different). As we have pointed out, deterrence is not penal if there is a legitimate interest in influencing the conduct of the contracting party which is not satisfied by the mere right to recover damages for breach of contract. Mr Butcher QC, who appeared for the Consumers’ Association (interveners), submitted that because ParkingEye was the contracting party its interest was the only one which could count. For the reason which we have given, ParkingEye had a sufficient interest even if that submission be correct. But in our opinion it is not correct. The penal character of this scheme cannot depend on whether the landowner operates it himself or employs a contractor like ParkingEye to operate it. The motorist would not know or care what if any interest the operator has in the land, or what relationship it has with the landowner if it has no interest. This conclusion is reinforced when one bears in mind that the question whether a contractual provision is a penalty turns on the construction of the contract,

which cannot normally turn on facts not recorded in the contract unless they are known, or could reasonably be known, to both parties”

88. It is trite law that a court should look at the issue of both formation of contracts and construction of contracts on an objective basis (*ICS v West Bromwich BS* [1998] 1 WLR 2303). The correct construction of these signs where the entrance sign makes it clear that the Defendant was entering private property and that Terms and Conditions on entry are in place. When judged on an objective basis the signs are clear as to the terms.
89. The court ought to consider and/or apply the approach adopted set out by the Supreme Court in *ParkingEye Ltd v Beavis* [2016] AC 1172 so far as it was applicable to people entering the site and/or contract formation. The contractual formation is the same on the basis of signs in the main at the entrance as a driver enters. It is only by reference to the signs that a driver would discover these matters.
90. Lord Neuberger at para 94 of *Beavis* stated as follows: It was common ground before the Court of Appeal, and is common ground in this court, that on the facts which we have just summarised there was a contract between Mr Beavis and ParkingEye. Mr Beavis 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. Those terms were that he would stay for not more than two hours, that he would park only within the marked bays, that he would not park in bays reserved for blue badge holders, and that on breach of any of those terms he would pay £85. Moore-Bick LJ in the Court of Appeal was inclined to doubt this analysis, and at one stage so were we. But, on reflection, we think that it is correct. The £85 is described in the notice as a “parking charge”, but no one suggests that that label is conclusive. In our view it was not, as a matter of contractual analysis, a charge for the right to park, nor was it a charge for the right to overstay the two-hour limit. Not only is the £85 payable on certain breaches which may

occur within the two-hour free parking period, but there is no fixed period of time for which the motorist is permitted to stay after the two hours have expired, for which the £85 could be regarded as consideration. The licence having been terminated under its terms after two hours, the presence of the car would have constituted a trespass from that point on. In the circumstances, the £85 can only be regarded as a charge for contravening the terms of the contractual licence.

91. The approach as set out in *Beavis* is the correct analysis of contractual formation. The terms of the licence having been broken by the defendant at that point becomes a trespasser and so liable to the charge. Further this was also the conclusion of HHJ Wood in *VCS Ltd v Crutchley* (Unreported 2017 County Court at Liverpool) hence it is clear that the Entrance sign alone is sufficient for contract formation or put correctly it is clear from the signs the terms of the contractual licence the basis that a user is entitled to use the Site roads.
92. The Claimant submits that there are warning notices all setting out the Terms and Conditions of entering private land. It is the Claimant's submission that the signage is prominently displayed and visible on entry to private land. The Claimant has done what is reasonable to draw attention to the existence of the contractual terms and therefore has given sufficient notice of them.
93. The Claimant reiterates the Judgment of under *Vine v Waltham Forest LBC* [2002] 1 WLR 2383, 2390, where Roch L.J. stated:
94. Once it is established that sufficient and adequate warning notices were in place, a car driver cannot be heard to say that he or she did not see the notice. Were that to be the law, it would be too easy for car drivers who trespass with their cars to evade the only method land owners have of stopping the unauthorised parking spaces or parking areas on their property”

95. In addition, Roch L.J. found the following;
96. “To show that the car owner consented or willingly assumed the risk of his car being clamped, it has to be established that the car owner was aware of the consequences of his parking his car so that it trespassed on the land of another. That will be done by establishing that the car owner saw and understood the significance of a warning notice or notices that cars in that place without permission were liable to be clamped. Normally the presence of notices which are posted where they are bound to be seen, for example at the entrance to a private car park, which are of a type which the car driver would be bound to have read, will lead to a finding that the car driver had knowledge of and appreciated the warning. In this case the recorder might have reached such a conclusion about the appellant’s state of knowledge, but he did not do so”
97. The Claimant has reasonably brought to the Defendant’s attention the Terms and Conditions of entering private land. That mere fact that the Defendant did not look out for the warning notices is through a fault of their own. The warning notices are made available for motorists to utilise and adhere to whatever Terms and Conditions are made available to enter its private land.
98. The Claimant would contend that a contractual charge of £60.00 is reasonable and within the spirit of our ATE Trade Association, The International Parking Community (“IPC”) and The British Parking Association (“BPA”) given the steps that have been taken by the Claimant to recover the PCN. It must be noted that costs incidental to proceedings are recoverable so long as such costs are reasonably incurred. See *Ross v Caunters* [1980] Ch.297 at Page 323.
99. Further the Claimant would make reference to Paragraph 25 of *Beavis* and avers that there is commercial justification for such a contractual

clause which might otherwise be regarded as penal. The Claimant would argue that their approach is directly in point with the Beavis authority and it is in no way a poor attempt to go behind such.

100. The Claimant admits that they are engaged in managing Private Land and that Parking Charge Notices are issued by the Claimant in respect of vehicles which have failed to adhere to the Terms and Conditions of the development.
101. The Claimant further admits that Parking Charge Notices are issued to motorists for breaching the Terms and Conditions of entering the development. As such, the Claimant was entitled to make a request to the Driver and Vehicle Licensing Agency (DVLA) for the Registered Keeper details.
102. The Claimant submits that this claim is most likely to be issued to the Small Claims Track, of which costs are limited to Fixed Costs and Expenses, albeit discretionary, to the winning party in any event.
103. The Defendant alleges that there is no liability as the Claimant has not suffered any loss. That Claimant submits that, in correlation to the *Parkingeye Ltd v Beavis* case, our charges are a contracted sum for failure to adhere to the advertised terms and conditions of use of the car park, as detailed with our signage. It was a contract to which the motorist had the right to refuse enter into, by leaving the car park.
104. The sum payable is not a charge for loss or damages, but is a commercially justified charge which is in part to cover the cost and provision of the service we provide to the Client, as well as in no small part to act as a deterrent to encourage and influence the motorists behaviour. The level of charge applied is within the scope set out within our Code of Practice as issued by the Independent Parking Committee who are our Accredited Trade Association. In consideration that the

charge applied is an "Unfair Contract Term", their Lordships Neuberger and Sumption offered that:

105. [107.] "In our opinion the term imposing the £85 charge was not unfair. The term does not exclude any right which the consumer may be said to enjoy under the general law or by statute. But it may fairly be said that in the absence of agreement on the charge, Mr Beavis would not have been liable to ParkingEye. He would have been liable to the landowner in tort for trespass, but that liability would have been limited to the occupation value of the parking space. To that extent there was an imbalance in the parties' rights. But it did not arise "contrary to the requirement of good faith", because ParkingEye and the landlord to whom ParkingEye was providing the service had a legitimate interest in imposing a liability on Mr Beavis in excess of the damages that would have been recoverable at common law."

106.

Summary

107. The Claimant was entitled to erect signs with the development in accordance with their appointment by the freeholder. The signs were duly erected at the development. The Defendant ought to have been made aware of the Terms and Conditions of parking. The Defendant could not have been in doubt, at worst, after the issue of the first PCN.

108. The Claimant wishes to rely on **ParkingEye v Beavis [2015] UKSC 67** and submits that it has a legitimate interest in enforcing the Parking Charges as stated. This is how the Claimant can support the services they provide to their client. The Claimant avers that its charges are "neither extravagant nor unconscionable".

109. Accordingly the Claimant is entitled to a Judgment. It is a matter of agreement that the instance of parking in contravention of the Terms and Conditions of the signs. Liability is agreed to be £100.00 in accordance with the

amount stated on the signs. The Claimant submits that they are therefore entitled to a Judgment for the amount claimed together with expenses of the cause.

110. In view of the Defendant not paying the charge within 28 days the breach of the contract entitles the Claimant to damages as of right in addition to the CN incurred. The warning notices make it clear that damages will be sought and added to the value of the charge levied. The maximum amount awarded is £60.00 which is identified as a debt recovery charge. The Claimant would place reliance upon the Court of Appeal ruling in **Chaplain Limited v Kumari [2015] EWCA 798**:

“that does not alter the fact that it remains a contractual entitlement which the Court will enforce subject to its equitable power to disallow unreasonable expenses. There is nothing in the rule making powers in respect of the CPR which enable the rules to exclude or override that contractual entitlement and I therefore agree with Arden LJ that the Judge had jurisdiction to assess the costs free from any restraints imposed by CPR 27.14”.

STATEMENT OF TRUTH

I believe the contents of 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.

Date: 10th November 2020

Sign:



Mohammed Wali

Paralegal

For and on behalf of Vehicle Control Services Limited

IN THE COUNTY COURT [REDACTED]

CLAIM NO: [REDACTED]

BETWEEN

VEHICLE CONTROL SERVICES LIMITED

V

CLAIMANT

[REDACTED]

DEFENDANT

MW1 – SITE INFORMATION

VEHICLE CONTROL SERVICES LIMITED
TERMS AND CONDITIONS OF CONTRACT
(ANPR PCN Scheme)

THIS AGREEMENT is made on the 17th day of **FEBRUARY 2015** between **VEHICLE CONTROL SERVICES LTD** whose registered office is at **2 EUROPA COURT, SHEFFIELD BUSINESS PARK, SHEFFIELD. S9 1XE** ("The Company") and **THREADNEEDLE PENSIONS LIMITED c/o GBR PHOENIX BEARD of THE EXCHANGE, 19 NEWHALL STREET, BIRMINGHAM. B3 3PJ.** (hereinafter called "the Client")

1. "The Car Park" means the car park or land situated at **ABBEY WALK RETAIL PARK, ABBEY WALK, SELBY. YO8 4DZ** as detailed in **SCHEDULE 3** of this agreement, of which the Client is the lawful occupier (Boundary plans and site instructions to accompany **SCHEDULE 3**).
2. The Company will provide a parking control service at the Car Park for a fixed period of 36 months from the 14 day of ~~SEPTEMBER~~ **2015** upon the terms and conditions hereinafter set forth.
3. **The Company's Rights and Obligations:**
 - 3.1 The Company shall install the System as outlined in **SCHEDULE 2** and throughout the period of this Agreement take good care of the System and operate the same in the proper manner.
 - 3.2 The Company shall enforce the Parking Policy as defined in **SCHEDULE 1** through the use of the system and where appropriate through Patrol Officers conducting random visits to the Car Park.
 - 3.3 The Company shall erect and maintain appropriate Signage at the Car Park indicating that it is private property and stating that terms and conditions of use apply (as per Schedule 1) including the Charge and that vehicles found in breach of the Parking Policy or any other stated terms and conditions will be liable for the payment of a Parking Charge ("Charge"). The Signage will act as an extension to this agreement and may be altered in context at the Company's discretion from time to time.
 - 3.4 The Company shall issue Users contravening the Parking Policy with a Parking Charge Notice (hereinafter called a "PCN") either through the post or affixed to vehicle.
 - 3.5 The Company shall at its discretion have the absolute right to demand, collect and retain all Parking Charges levied (which may extend to debt recovery and/or court action) together with any costs or fees incurred in recovering such Charges.
 - 3.6 The Parking Charges received by the Company shall belong to the Company absolutely and the Client shall have no interest or entitlement to them.
 - 3.7 The Parking Charges may be amended from time to time by the Company at its discretion. The Company shall notify the Client not less than twenty eight days of the alteration of the Parking Charges.
 - 3.8 Save for exceptional circumstances the Company shall have the absolute right to determine whether any Parking Charge is properly due and owing and the Client shall raise no objection to the decision of the Company which shall be final.
 - 3.9 The Company will provide a staff presence at the Premises from time to time to check on compliance with parking in marked bays. Additional staffing of the site will be chargeable to the Client at the Company's normal staffing rate.
 - 3.10 For the avoidance of doubt the duties set out within this clause 3 shall not include: -
Repair of the Car Park, clearing snow, ice, petrol, oil, grease or any other substance or matter, maintenance of any landscaped area, provision and sprinkling grit on the surface of the Car Park, maintenance and repair of the lighting, graffiti removal.
 - 3.11 The Company hereby indemnifies the Client against all claims, actions, loss, damage or expense arising as a result of any breach by the Company of the terms of this agreement but not further or otherwise.
 - 3.12 The Company will be a member of an Approved Trade Association formally certified by the Driver and Vehicle Licensing Agency (the DVLA) and operate in accordance with the Approved Trade Association's Code of Practice.
4. **The Client's Rights and Obligations:**
 - 4.1 The Client requests and authorises the Company to carry out its obligations herein and warrants to the Company it has full title and authority to do so.
 - 4.2 To the extent that is necessary, the Client authorises the Company to collect all unpaid parking Charges (including suing for their recovery in the Company's own name) and agrees to give the Company all reasonable assistance, including executing any relevant documents if required in relation to such recovery.
 - 4.3 The Client shall permit the Company and any person authorised by the Company to install the System and to have access to the System at all reasonable times and not make or endeavour to make any alterations or additions to the System or any part thereof nor permit any other person to do so without the prior written consent of a Director of the Company.
 - 4.4 The Client shall throughout the period of this Agreement either a) provide the Company with a written schedule of vehicle registration numbers of vehicles and/or the name of registered keepers to whom the Parking Policy shall not apply or b) maintain such record of vehicle registrations by self management using the web based eyeTRAFFIC permit management system. Such schedule to be reviewed and updated at a frequency that guarantees effective and efficient management of the system. This may be daily, weekly or monthly whichever is deemed appropriate by the Company.
 - 4.5 The Client shall provide the Company a suitable power supply for the operation of the system and maintain the same for the duration of the contract.
 - 4.6 The Client is responsible for the repair and maintenance of the Car Park and for the health and safety of the Users.
 - 4.7 The Client shall use its reasonable endeavours to support the Company's enforcement of the Parking Policy.
 - 4.8 The Client hereby agrees that during the term of this contract it will not engage on its own behalf or enter into any arrangement formal or otherwise with any person, firm or body corporate for the provision of a car park management and/or parking enforcement service on their premises of which are managed by the Company.
 - 4.9 The Client shall indemnify the Company in the event of a claim by an authorised user against whom a Parking Charge has been levied due to such users failure to correctly register their vehicle on the Permit system.
 - 4.10 The Client shall indemnify the Company in the event of any damage or loss caused to the Company, its property and/or equipment whilst performing their obligations under this agreement.

4.11 The Client may request the cancellation of a correctly issued PCN which will be considered at the Company's sole discretion. Where the request is granted the Client agrees to pay the Company a cancellation charge of £10.00 per PCN cancelled. All requests for cancellation must be received in writing by the Company from an authorised named signatory of the Client.

5. It is hereby agreed:

- 5.1 The system and equipment referred to in SCHEDULE 2 are and shall remain the property of the Company, which shall be entitled to take possession thereof and remove the same if deemed necessary by the Company upon the expiration of this agreement.
- 5.2 Under no circumstances shall the Company have any liability for any deliberately wrongful act, default or omission by any employee, agent or sub-contractor of the Company acting in the course of their agreement with the Company unless such act, default or omission could have been avoided by the exercise of due care and diligence on the part of the Company.
- 5.3 That this agreement shall be extended immediately following the expiration of the Term and will continue to roll over each anniversary for a further fixed period of 12 months ("the Extended Term"), unless the Client gives notice of termination in writing to the company's registered office by recorded delivery not less than three months prior to the expiration date or subsequent anniversary dates.
- 5.4 The 'Late Payment of Commercial Debts (Interest) Act 1998' applies to any payments falling late by the Client under this agreement.
- 5.5 The Company may assign all or part of its rights under this agreement to a third party to perform its obligations without the prior consent of the Client.
- 5.6 The Company's obligations are limited to carrying out the tasks specified in this agreement, verbal arrangements shall not form part of the agreement. Any variation in this agreement can be made only by letter from the registered office of the Company, signed by a duly authorised executive director.

6. Force Majeure:

6.1 The Company shall be relieved of liabilities incurred under this contract wherever and to the extent to which the fulfilment of such obligation is prevented, frustrated or impeded as a consequence of such event or by any statute, rules, regulations, order or requisitions issued by any government department, Council or any duly constituted authority or circumstances beyond the Company's control.

7. Limitation of Liability:

- 7.1 These conditions shall not be deemed to constitute or imply any warranty by the Company that the System will at all times operate satisfactorily without malfunction, and the Company gives no such warranty.
- 7.2 The Company shall not be held liable for failing to enforce any breach of the Parking Policy.
- 7.3 The Company shall not be liable for any technical failure of the System.

8. Termination:

- 8.1 In the event that either party (the "party in default") commits a material breach of any of its obligations under this Agreement (and, where such breach is capable of remedy, has not remedied the same within twenty eight days of receipt of a notice from the other party (the "innocent party") requiring that the same is remedied) then the innocent party may by notice to the party in default terminate this Agreement, such termination to take effect immediately upon the receipt by the party in default of such notice.
- 8.2 At the end of the Term howsoever determined the Company shall yield up the Premises and remove the Signage and the Company's fixtures and fittings (if any) and shall be required to make reasonable repairs to any damage caused by their removal.
- 8.3 The Company may terminate this agreement without notice in the event of vandalism to the System or on three month's written notice if in the Company's opinion acting reasonably it is not financially viable to continue to enforce the Parking Policy using the System at the Premises.
- 8.4 Should the Client vacate, sell or otherwise dispose of the Car Park, the Client shall not less than one month prior to such event give notice thereof in writing to the Company's registered office by recorded delivery. In any such event this agreement shall transfer to the new Landowner.

9. Entire Agreement and Applicable Law:

- 9.1 This Agreement constitutes the entire agreement between the Company and the Client and supersedes all other agreements, statements, representations or warranties made by or between the parties or either of them concerning the same.
- 9.2 No waiver, alteration, variation or addition to the Agreement shall be effective unless made in writing on or after the date of signature of this Agreement by both parties and accepted by an authorised signatory of both parties.
- 9.3 The interpretation, construction, effect and enforceability of this Agreement shall be governed by English Law, and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 9.4 If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.
- 9.5 No term of the Agreement may be enforced solely by virtue of Section 1 of the Contracts (Rights of Third Parties) Act 1999.

I/We have read these terms and conditions and fully understand and agree to be bound by them.

Authorised to Sign for and on behalf of the Company
VEHICLE CONTROL SERVICES LTD

Signature: _____

Name: _____

Position: _____

Authorised to Sign for and on behalf of the Client
THREADNEEDLE PENSIONS LIMITED c/o GBR PHOENIX BEARD

Signature: _____

Name: _____

Position: _____

Abbey Walk Retail Park: Overhead



-  Protected Area
-  Entrance Board
-  Entrance
-  Information Board
-  Disabled Parking Information Board



Welcome to
Abbey Wa
Retail Park

Maximum Stay
2 Hours



Refer to the Term
Conditions signs l
around the car park



ANPR Parking Com
Cameras operate in t
park.



Any Vehicle/Driver rema
this car park 10 minut
entry is subject to and a
full to the Terms & Conc

If you fail to comply with the contractual Terms and Conditions of this private car park you agree to pay a Parking Charge of £100.

PRIVATE LAND



Site No.
02769

VEHICLE CONTROL SI
MANAGE AND CONTROL THIS F

HELPLINE ☎ (0114) :

FOR WRITTEN APPEALS/CHALLENGES: PO BOX 47

WWW.VEHICLECONTROL.CO.UK VAT No. 755780006 REGISTERED



Abbey Wal Retail Park

Parking Terms and Conditions

Maximum Stay 2 Hours



Any Vehicle/Driver remaining in this car park for more than 2 hours after entry is subject to and agrees to these Terms and Conditions. The maximum stay is calculated from the time the vehicle enters the car park to the time it exits.



Park only between the lines of a single marked parking space.



Disabled Bays - A valid blue disabled bay badge must be displayed in the front windscreen of the vehicle. The details must be clearly visible at all times.



No parking or waiting on double yellow lines, kerbs, doorways, entrances or exits, roadways, pedestrian walkways, or cycle paths.



This car park is monitored by Parking Cameras and Foot Patrols for the purpose of space maximisation and compliance with these Terms and Conditions.



If you fail to comply with these Terms and Conditions, Vehicle Control Services Ltd and/or its agents may request the registered keeper's details from the DVLA to trace the driver responsible.

By parking or remaining on this private land otherwise than in accordance with any of the above, you, the driver, agree to pay a Parking Charge in the sum of £100.00 (Per Day or Part Day). The Parking Charge must be paid within 28 days of the Notice Issue Date.

If payment of the charge is not made in accordance with the payment terms, Vehicle Control Services Ltd reserves the right to pursue debt recovery and legal proceedings to recover any outstanding charges, including interest and any additional costs.



Site No. **02769** **VEHICLE CONTROL SERVICES LTD**
MANAGE AND CONTROL THIS PARK
HELPLINE (0114) 414141
FOR WRITTEN APPEALS/CHALLENGES: PO BOX 47
WWW.VEHICLECONTROL.CO.UK VAT No. 755780006 REGISTERED



May24 2018 3:17pm



May24 2018 3:18pm



May24 2018 3:18pm



May24 2018 3:18pm



May24 2018 3:19pm



May24 2018 3:19pm



May24 2018 3:19pm



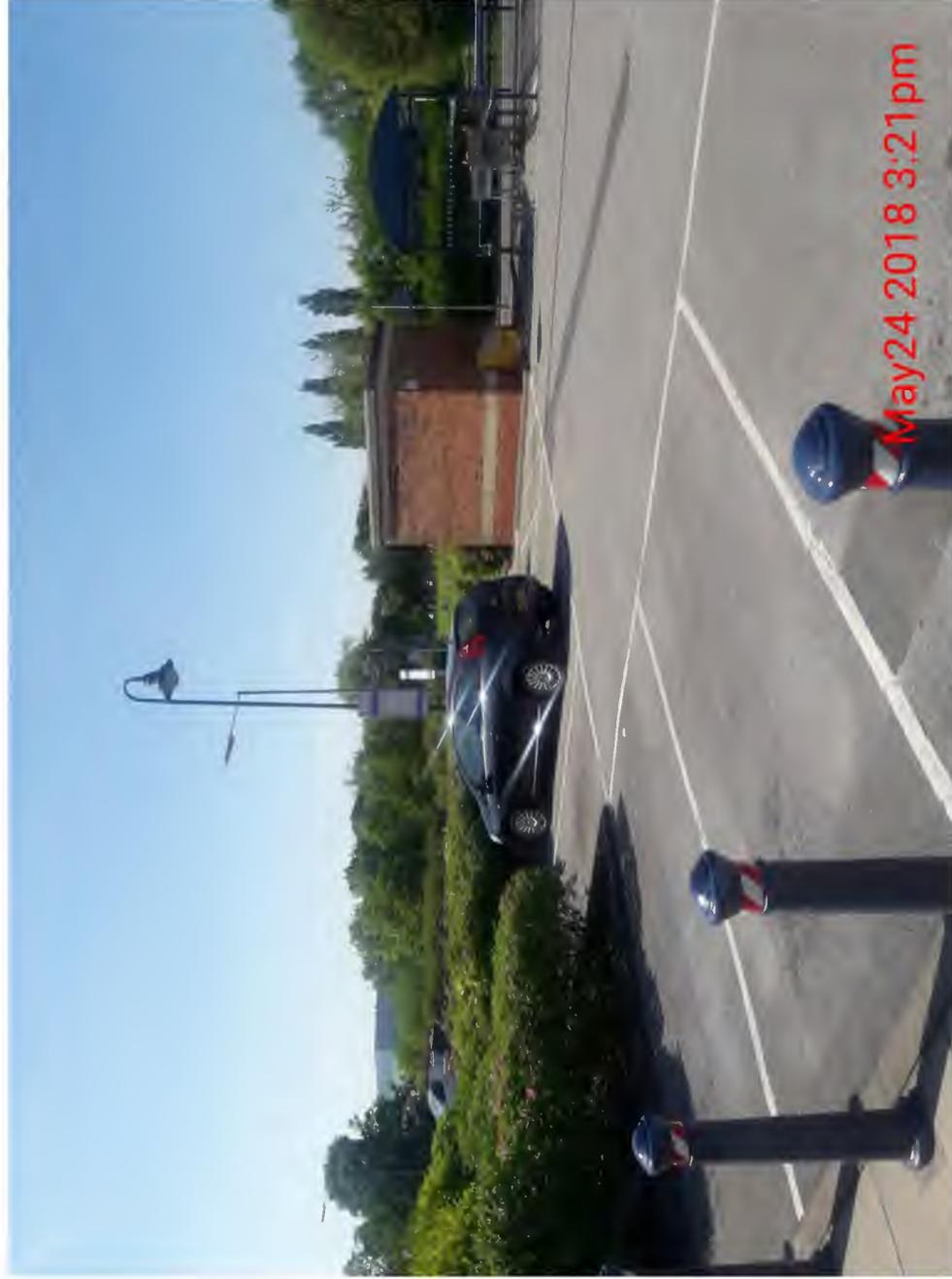
May24 2018 3:19pm



May24 2018 3:20pm



May24 2018 3:20pm





May24 2018 3:16pm



May24 2018 3:17pm



IN THE COUNTY COURT [REDACTED]

CLAIM NO: [REDACTED]

BETWEEN

VEHICLE CONTROL SERVICES LIMITED

V

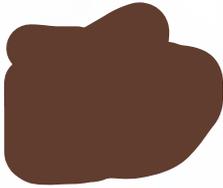
CLAIMANT

[REDACTED]

DEFENDANT

MW2 – NOTICES & EVIDENCE

PARKING CHARGE NOTICE (PCN) NOTICE TO DRIVER (NTD)



Amount of Charge: £100.00

Payment details are on the reverse of this Notice

The Contravention was detected and recorded by Automatic Number Plate Recognition (ANPR) cameras at the Privately Operated Car Park/Site specified opposite. The driver of the above vehicle is liable for the Parking Charge for which payment is now due. This charge relates to the **period of parking** (including remaining at the Car Park/Site) between the entry and exit times specified in this Notice, the charge having been incurred for the reason stated and liability for the same having been brought to the attention of the driver by clear signage in and around the Site at the time of parking.

Data Processing: A Notice to Keeper has previously been served on the Registered Keeper of the vehicle who, in turn, has named you as the driver at the time of the contravention. If you consider that such information has been used or obtained inappropriately you may complain to the Information Commissioner (www.ico.org.uk). Photographic evidence and data is held on file to support this claim in accordance with relevant Data Protection Legislation and is used for the sole purpose of pursuing settlement of this Parking Charge. Details of our **Privacy Notice** together with relevant contact details can be found on the reverse of this Notice.

Payment is now required in the sum of **£100.00** within 28 days of the Issue Date of this Notice, i.e. no later than **30/12/2019**.

However, if payment is received within 14 days of the Issue Date of this Notice, i.e. no later than **16/12/2019** then a reduced amount of **£60.00** will be accepted as full and final settlement.

The creditor is: Vehicle Control Services Limited

Failure to make a payment within 28 days of the Issue Date of this Notice will result in the full charge of **£100.00** being applied plus additional costs incurred through debt recovery and/or court action. Where debt recovery action is taken, further charges may be incurred that will be added to the value of the PCN up to the value of an additional £60.00. Where Court action is taken, additional charges and interest may be incurred. Non-payment of a Court Order may adversely affect your credit rating and employability.

As the driver of the vehicle, you are now invited to:

- (i) Pay the unpaid Parking Charge (see section A on the reverse of this Notice);
OR
- (ii) If you were not the driver of the vehicle, to notify us of the full name of the driver and a current address for service for the driver by following the instructions in section C on the reverse of this Notice AND pass this Notice on to the driver
OR
- (iii) If you deny you were the driver, or you wish to appeal the Parking Charge, you will need to use our appeals procedure in section B on the reverse of this Notice AND provide relevant supporting evidence.

Important Note: If, after the period of 28 days beginning with the day after the Issue Date of this Notice, the amount of the unpaid Parking Charge specified in this Notice has not been paid in full, or an appropriate response has not been provided to (ii) or (iii) above, we may pursue you for any unpaid balance of the Parking Charge on the basis that it arose from a vehicle associated with your company. This Notice will be deemed to have been received by you on the second working day after the Issue Date stated above unless the contrary is proved.

Issue Date (posted): 02/12/2019

PCN Ref No: [REDACTED]

VRM (Reg. No.): [REDACTED]

Vehicle Make: [REDACTED]

Vehicle Model: [REDACTED]

Contravention Date: 21/09/2019

Contravention Time: 22:02

Site Name & Location: PRIVATE LAND

Abbey Walk Retail Park Car Park,
Selby, YO8 4DZ



Contravention Reason:

80) PARKED FOR LONGER THAN THE MAXIMUM PERIOD PERMITTED.

The Maximum period allowed at this site is 120 minutes

Period of Parking (occurred between the times stated below):

TIME OF ENTRY

19:28:03



TIME OF EXIT

22:02:07



Duration of Stay: 154 mins

PLEASE SEE THE REVERSE OF THIS NOTICE FOR MORE INFORMATION ON WHAT TO DO NEXT, INCLUDING HOW TO APPEAL.



NetBiosName: SelbyIN
Plate : DU16WTU-GBR
Date : 2019/09/21
Time : 19:28:03:992
Gain : 400
Shutter(us) : 1000
Strobo(us) : 340

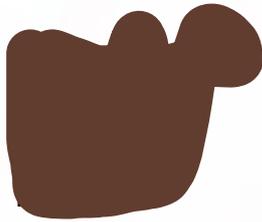


NetBiosName: SelbyOUT
Plate : DU16WTU-GBR
Date : 2019/09/21
Time : 22:02:07:739
Gain : 400
Shutter(us) : 1000
Strobo(us) : 340



PARKING CHARGE NOTICE (PCN)

FINAL REMINDER - DO NOT IGNORE



Issue Date (posted):	01/11/2019	
PCN Ref No:	[REDACTED]	
VRM (Reg. No.):	[REDACTED]	
Vehicle Make:	[REDACTED]	
Vehicle Model:	[REDACTED]	
Contravention Date:	21/09/2019	
Contravention Time:	22:02	
Contravention Reason:	80) PARKED FOR LONGER THAN THE MAXIMUM PERIOD PERMITTED. 	
Duration of Stay:	154	minutes

Amount of Charge: £100.00

See details below before taking any action

Site Name & Location: PRIVATE LAND
Abbey Walk Retail Park Car Park, Selby, YO8 4DZ

Time of Entry: 19:28:03 **Time of Exit: 22:02:07**

A Parking Contravention was detected and recorded by Automatic Number Plate Recognition (ANPR) cameras at the Privately Operated Car Park/Site specified above. The reason for the contravention is also specified above.

The driver of the above vehicle is liable for the Parking Charge for which payment is now overdue. This charge relates to the period of parking (including remaining at the Car Park/Site) between the entry and exit times specified in this Notice, the charge having been incurred for the reason stated and liability for the same having been brought to the attention of the driver by clear signage in and around the Site at the time of parking. Photographic evidence and data is held on file to support this claim in accordance with relevant Data Protection Legislation and is used for the sole purpose of pursuing settlement of this Parking Charge. You can view this evidence by visiting www.myparkingcharge.co.uk. If you consider that such information has been used or obtained inappropriately you may complain to the Information Commissioner (www.ico.org.uk).

A Notice to Keeper was issued to you, the Registered Keeper of the vehicle, by post on **03/10/2019** and our records indicate that we have had no response to that Notice. **It is now too late for you to appeal** as the timescale for doing so has elapsed. At our sole discretion, we may consider a late appeal if there are exceptional mitigating circumstances. Payment is now required in the sum of **£100.00** within **14 days** of the Issue Date of this Notice, i.e. no later than **15/11/2019**.

As the Registered Keeper, you are now invited to:

- (i) Pay the unpaid Parking Charge – see below for methods of payment, **OR**
- (ii) If you were not the driver or keeper of the vehicle, visit www.myparkingcharge.co.uk in order to notify us of the full name and address of the driver/keeper AND pass this Notice on to the driver.

Important Note: If the amount of the unpaid Parking Charge specified in this Notice has not been paid in full, or an appropriate response has not been provided, by **15/11/2019** we will pursue you for any unpaid balance of the Parking Charge. This Notice will be deemed to have been received by you on the second working day after the Issue Date stated above unless the contrary is proved.

Late Appeals: For further details visit www.myparkingcharge.co.uk but, as stated above, it is at our sole discretion whether to consider an appeal.

 **Online:** www.myparkingcharge.co.uk  **We Accept All Major Credit & Debit Cards**     

 **By Phone:** 0845 226 9138 A processing fee applies to payments made by Credit Card. Payments by Debit Card are free.

The creditor is: Vehicle Control Services Limited.

Note: Failure to settle this Parking Charge by the timescales notified to you may result in additional costs being incurred through debt recovery and/or court action. Where debt recovery action is taken, further charges may be incurred that will be added to the value of the PCN up to the value of an additional £60.00. Where Court action is taken, additional charges and interest may be incurred. Non-payment of a Court Order may adversely affect your credit rating and employability.

  **International Parking Community**
Membership No. VEH0011

We are an Accredited Operator and a member of the International Parking Community (IPC) www.theIPC.info and operate in accordance with their Code of Practice.

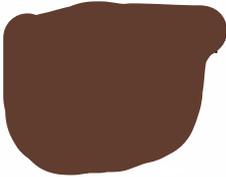
COMPLAINTS: If you wish to challenge the validity of this PCN you MUST use the appeals procedure detailed above. If you wish to complain, you must do so to us in the first instance at the PO Box address below. If you are not satisfied with the response you receive, you may then complain to the IPC (further details can be found at www.theIPC.info).

PO Box 4777, Sheffield S9 9DJ

Data Protection
We are registered as a Data Controller with the Information Commissioner's Office
Registration No. 29662939

DEMAND FOR PAYMENT



Date (Posted):	13/01/2020
Serial (Ref) No:	[REDACTED]
VRM: (Reg. No.)	[REDACTED]

OUTSTANDING BALANCE: £160.00

DEADLINE FOR ACTION: 27/01/2020

 Details can be viewed on:
www.myparkingcharge.co.uk

Your account has now been passed to our Debt Management Team for recovery of the outstanding Charge amount. Any option to pay a reduced amount has now elapsed.

Debt collection costs of **£60.00** have now been added to the outstanding Charge making the total amount now payable **£160.00** (this amount takes into account any payments previously received).

What To Do Now

In order to avoid further costs, you should pay the Outstanding Balance of **£160.00** no later than the **Deadline for Action** date specified above (i.e. within 14 days from the date of this Letter).

How To Make Payment

Full details of how you can make payment, along with the methods of payment, are set out on the reverse of this Letter.

What Happens If You Do Not Settle The Outstanding Balance?

If the Outstanding Balance is not fully paid by the **Deadline for Action** date we may commence legal proceedings against you. In the event that County Court proceedings are issued, we will also be seeking recovery of the associated court fees, solicitor's costs, and statutory interest - **the Outstanding Balance would therefore increase.**

References

You may wish to reference the case of *ParkingEye Limited v Beavis* [2015] UKSC 67 in which the Supreme Court held that parking charges serve a legitimate commercial interest and are neither extravagant nor unconscionable.

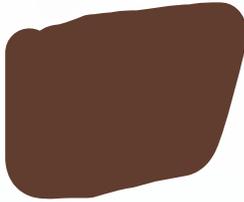
Important

Your opportunity to appeal this debt has already lapsed, **we will not** accept any further disputes or challenges at this stage.



DO NOT IGNORE

FINAL DEMAND



Date (Posted):	28/01/2020
Serial (Ref) No:	[REDACTED]
VRM: (Reg. No.)	[REDACTED]

OUTSTANDING BALANCE:	£160.00
DEADLINE FOR ACTION:	04/02/2020

 Details can be viewed on:
www.myparkingcharge.co.uk

Despite sending you a **Demand for Payment** letter, it is disappointing to note that full payment of the Outstanding Balance remains outstanding.

We are giving you a **final opportunity** to settle your account before we commence County Court Proceedings. In order to avoid further action being taken, payment of the Outstanding Balance **must be made within 7 days from the date of this Letter**, i.e. by the **Deadline for Action** date specified above. In the event that we commence County Court Proceedings against you for the recovery of any Outstanding Balance, we will also seek recovery of any associated Court Fees, Solicitors Costs and Statutory Interest.

County Court Proceedings

If we successfully obtain a County Court Judgment ("CCJ") against you, this may have a detrimental effect on your future creditworthiness and employability. In addition, we will then commence enforcement proceedings against you for the recovery of the debt. The potential impacts of having a CCJ are listed below:

- Negative impact on your Credit Rating which may prevent or restrict further lending.
- Affect your current employment or future prospects of employment.
- Enables enforcement action to commence, such as obtaining an attachment of earnings, placing a charge or restriction on property or applying for a Warrant of Execution (which will result in Bailiffs being appointed).

Making a Payment

We can accept payment by a variety of methods which are specified overleaf.

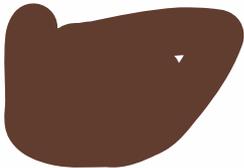
Important

Your opportunity to appeal this debt has already lapsed, **we will not accept any further disputes or challenges at this stage.**



Our Ref: **JB/Lit** [REDACTED]

Date: **11/02/2020**



Delivery Method: Post - 2nd Class

LETTER BEFORE CLAIM

Dear [REDACTED]

We are contacting you in relation to an outstanding liability (debt).

This matter has now been passed to our Legal Department in order to recover the sum of **£160.00** (the Principle Debt) in respect of an outstanding Charge Notice for breaching the Terms and Conditions relating to the use of private land, details of which are set out below.

Vehicle Registration Mark: [REDACTED]

Date of the Event: **21/09/2019**

Location: **Abbey Walk Retail Park Car Park, Selby, YO8 4DZ**

Reason: **80) PARKED FOR LONGER THAN THE MAXIMUM PERIOD PERMITTED.**

More Details can be viewed at www.myparkingcharge.co.uk

The sum specified above includes a debt collection charge of £60.00, as previously notified to you. Despite our best endeavours to recover payments it has proved unsuccessful, and as such, we have no alternative but to commence legal proceedings. Should the outstanding balance not be settled by **12/03/2020** we will commence legal proceedings against you without further notice. If we are forced to issue legal proceedings to recover the above debt, we will seek to claim our court costs and further interest in addition to the outstanding balance. For the avoidance of doubt, the fees are broken down as follows:

Item	Amount	Notes
Principle Debt	£ 160.00	Amount currently payable
Estimated Court Fees	£ 25.00	
Plus Interest	Calculated in accordance with relevant County Court rates at 8% per annum, 0.02% daily	

Please note that any further Charges issued to you by Vehicle Control Services Ltd may be included in any legal (court) proceedings issued against you.

-----Original Message-----

From: [REDACTED]

To: info@vehiclecontrol.co.uk

Date: 09/11/2019 08:09

Subject: Your ref [REDACTED]

Dear Sirs

Your ref [REDACTED]

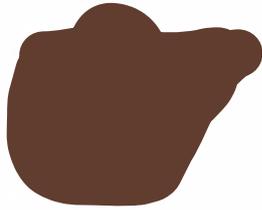
Reg no [REDACTED]

As registered keeper, your invoice of 1.11.19 has come to me. I have tried to use your online submission form but it is not working, hence the email.

Your invoice headed up "final reminder", dated 1.11.19, was the first that I have received. No notice to keeper was recieved. Your invoice therefore does not comply with the notice to keeper rules set out in the Protection of Freedoms Act and your invoice will not be paid.

Kind regards

[REDACTED]



18/11/2019

Dear [Redacted]

Re: Parking Charge Notice Number [Redacted]

Site: Abbey Walk Retail Park Car Park

Issue date: 03/10/2019

We refer to correspondence received from you concerning the above numbered Charge Notice.

We note your comments in respect of not receiving the original Notice sent to you and must advise that we cannot be held responsible for losses or delays in the post.

The following options are now available to you at the portal www.myparkingcharge.co.uk; you will need the serial number of the Notice issued and the registration number of your vehicle to log in to the portal:

1. If you were not the driver on the date in question and wish to transfer liability for the Notice to another person, you may change the liable party details by visiting the above portal address and selecting the "Enter Liable Party Details" button.
2. Submit a full appeal to us by visiting the above portal address and selecting the "Appeal the PCN" button. Please remember to include all information relevant to your appeal including any relevant documentation and photographs.
3. Pay the Charge. Payments can be made online by visiting the above portal address and following the links for "Pay Now", or over the phone by calling 0845 226 9138 and using a valid Credit or Debit Card to make payment. It is your responsibility to ensure that payment is received within our office by the date specified.

As a gesture of goodwill we are willing to re-offer you the original discounted charge of £60 as full and final settlement of this Notice, if payment is received within our office on or before the 02/12/2019.

If payment is not received by this date, the amount payable will revert to £100. Failure to pay this charge within the stated times, may result in Debt Recovery Action being taken and further costs up to an additional £60 being incurred.

Vehicle Control Services Limited
 Central Payment Office, P.O. Box 4777, Sheffield. S9 9DJ
 t: 0114 242 1111 f: 0114 244 5299



Yours sincerely,

Appeals Administration Team
CENTRAL PROCESSING OFFICE

-----Original Message-----

From: [REDACTED]

To: [REDACTED]

Date: 25/11/2019 17:39

Subject: [REDACTED]

Dear Sirs

Your invoice number: [REDACTED]

I write to you by email as your online portal does not work.

The hirer of the vehicle at the time was:

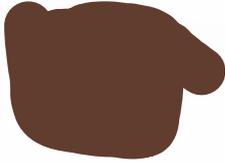
[REDACTED]

Please address future correspondence to them.

Regards

[REDACTED]

PARKING CHARGE NOTICE (PCN) NOTICE TO DRIVER (NTD)



Amount of Charge: £100.00

Payment details are on the reverse of this Notice

The Contravention was detected and recorded by Automatic Number Plate Recognition (ANPR) cameras at the Privately Operated Car Park/Site specified opposite. The driver of the above vehicle is liable for the Parking Charge for which payment is now due. This charge relates to the **period of parking** (including remaining at the Car Park/Site) between the entry and exit times specified in this Notice, the charge having been incurred for the reason stated and liability for the same having been brought to the attention of the driver by clear signage in and around the Site at the time of parking.

Data Processing: A Notice to Keeper has previously been served on the Registered Keeper of the vehicle who, in turn, has named you as the driver at the time of the contravention. If you consider that such information has been used or obtained inappropriately you may complain to the Information Commissioner (www.ico.org.uk). Photographic evidence and data is held on file to support this claim in accordance with relevant Data Protection Legislation and is used for the sole purpose of pursuing settlement of this Parking Charge. Details of our **Privacy Notice** together with relevant contact details can be found on the reverse of this Notice.

Payment is now required in the sum of **£100.00** within 28 days of the Issue Date of this Notice, i.e. no later than **30/12/2019**.

However, if payment is received within 14 days of the Issue Date of this Notice, i.e. no later than **16/12/2019** then a reduced amount of **£60.00** will be accepted as full and final settlement.

The creditor is: Vehicle Control Services Limited

Failure to make a payment within 28 days of the Issue Date of this Notice will result in the full charge of **£100.00** being applied plus additional costs incurred through debt recovery and/or court action. Where debt recovery action is taken, further charges may be incurred that will be added to the value of the PCN up to the value of an additional £60.00. Where Court action is taken, additional charges and interest may be incurred. Non-payment of a Court Order may adversely affect your credit rating and employability.

As the driver of the vehicle, you are now invited to:

- (i) Pay the unpaid Parking Charge (see section A on the reverse of this Notice);
OR
- (ii) If you were not the driver of the vehicle, to notify us of the full name of the driver and a current address for service for the driver by following the instructions in section C on the reverse of this Notice AND pass this Notice on to the driver
OR
- (iii) If you deny you were the driver, or you wish to appeal the Parking Charge, you will need to use our appeals procedure in section B on the reverse of this Notice AND provide relevant supporting evidence.

Important Note: If, after the period of 28 days beginning with the day after the Issue Date of this Notice, the amount of the unpaid Parking Charge specified in this Notice has not been paid in full, or an appropriate response has not been provided to (ii) or (iii) above, we may pursue you for any unpaid balance of the Parking Charge on the basis that it arose from a vehicle associated with your company. This Notice will be deemed to have been received by you on the second working day after the Issue Date stated above unless the contrary is proved.

Issue Date (posted): 02/12/2019

PCN Ref No: [REDACTED]

VRM (Reg. No.): [REDACTED]

Vehicle Make: [REDACTED]

Vehicle Model: [REDACTED]

Contravention Date: 21/09/2019

Contravention Time: 22:02

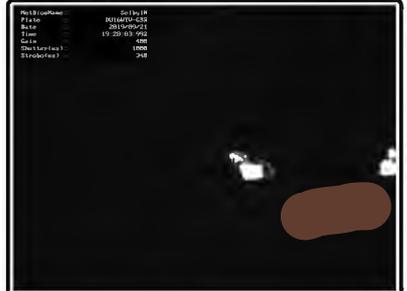
Site Name & Location: PRIVATE LAND
Abbey Walk Retail Park Car Park,
Selby, YO8 4DZ



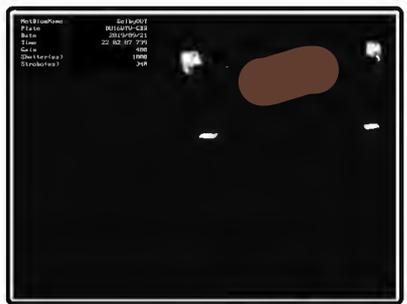

Contravention Reason:
80) PARKED FOR LONGER THAN THE MAXIMUM PERIOD PERMITTED.
The Maximum period allowed at this site is 120 minutes

Period of Parking (occurred between the times stated below):

TIME OF ENTRY
19:28:03



TIME OF EXIT
22:02:07



Duration of Stay: 154 mins

PLEASE SEE THE REVERSE OF THIS NOTICE FOR MORE INFORMATION ON WHAT TO DO NEXT, INCLUDING HOW TO APPEAL.



Submitted at 15:16 on 8th December 2019



Ticket Number: 

Vehicle Registration: 

Note: Hirer was the selected choice.

Appeal Reason: I did not park for the stated time

Appeal:

Re PCN number: 

I dispute your 'parking charge', as the hirer of the vehicle. I deny any liability or contractual agreement and I will be making a formal complaint about your predatory conduct to your client landowner and to my MP. There will be no admissions as to who was driving and no assumptions can be drawn. Since your PCN is a vague template, I require ALL photos taken and an explanation of the allegation and your evidence, i.e.:

- If the allegation concerns a PDT machine, the data supplied in response to this appeal must include the record of payments made - showing partial VRNs - and an explanation of the reason for the PCN, because your Notice does not explain it.

- If the allegation involves an alleged overstay of minutes, your evidence must include the actual grace period agreed by the landowner. If you fail to evidence the actual grace period that applies at this site or suggest that only one period applies, this will be disregarded as an attempt to mislead. In the absence of evidence, it will be reasonably taken to be a minimum of twenty minutes (ten on arrival and ten after parking time) in accordance with the official BPA article by Kelvin Reynolds about 'observation periods' on arrival being additional and separate to a 'grace period' at the end.

- in all cases, you must include a close up actual photograph of the sign you contend was at the location on the material date.

Formal note:

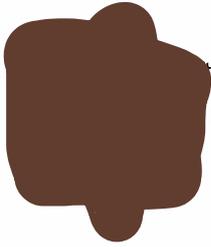
Should you later pursue this charge by way of litigation, note that service of any legal documents by email is expressly disallowed and you are not entitled to assume that the data in this dispute/appeal remains the current address for service in the future.

Yours faithfully



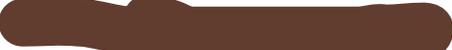
2 Europa Court,
Sheffield Business Park,
Sheffield, S9 1XE

for more information please visit www.myparkingcharge.co.uk



13/12/2019

Dear 

Re: Parking Charge Notice Number 

Site: Abbey Walk Retail Park Car Park **Post Code:** YO8 4DZ

Contravention Date: 21/09/2019

We refer to your appeal in respect of the above Charge Notice (CN) received on 08/12/2019.

Having considered the points you have raised and reviewed our records, we are unable to accept your appeal. Our main reason(s) for this decision are as follows:

The signs at the car park make it clear that a maximum period of parking is allowed for all vehicles using the car park, giving clear notice that the land is private property and that a Charge of £100 will be levied if vehicles park outside of the Terms and Conditions displayed. It is the motorist's responsibility to ensure that they return to their vehicle and remove it from the car park before the maximum period of parking permitted expires; in this case the above detailed vehicle remained for longer than the period permitted and you became liable for the Charge advertised.

In your appeal it is unclear who the driver was when your vehicle was seen to be parked in the car park.

It is important we highlight that we will continue to pursue this matter on the reasonable assumption that you were the driver of the vehicle on the date in question until information/evidence to the contrary is provided.

We maintain that the signs on this site meet the requirements set by the International Parking Community (IPC) Code of Practice. The signs are large, prominent and legible, so that any reasonable user of the car park would be aware of their existence and nature, and would have a fair opportunity to read them if he or she wished to do so. It can never be a defence to a claim in contract law to say, "I did not read the terms", so long as the existence of those terms is reasonably advertised.

Please find enclosed the images as requested.

We have fully reviewed this case and we are satisfied that the Charge Notice was correctly issued. We are unable to accept the mitigating circumstances raised in your representations, your appeal is therefore rejected and the charge will stand; photographic evidence which supports this can be viewed at www.myparkingcharge.co.uk.

What you should do next - Either:

Vehicle Control Services Limited

Central Payment Office, P.O. Box 4777, Sheffield. S9 9DJ

t: 0114 242 1111 f: 0114 244 5299

64

Registered Office: 2 Europa Court, Sheffield Business Park, Sheffield S9 1XE
Registered in England 2498820 VAT No. 755 7800 06



1. Pay the Charge Notice (CN): In order to settle the Charge, the payment of £60 to reach us by 27/12/2019 or £100 to reach us by 10/01/2020 must be made. Failure to pay this charge within the stated times, may result in Debt Recovery Action being taken and further costs up to an additional £60 being incurred. Payments can be made online at www.myparkingcharge.co.uk by following the links for "Pay Now", or over the phone by calling **0845 226 9138** by using a valid Credit or Debit Card.

OR:

2. Appeal to the Independent Appeals Services (IAS): If you believe this decision is incorrect, you are entitled to appeal to the IAS. In order to appeal, the IAS will need the following information (which is also contained in the subject header of this correspondence).

Notice Serial No: [REDACTED] Vehicle Registration Mark: [REDACTED]

Appeals must be submitted to the IAS within 21 days of the date of this correspondence. Please visit www.theias.org for full details on how to submit an appeal online.

It is important you note that if you do make an appeal to the IAS, the reduced charge offered above will no longer apply. You should also be aware that if a payment is made prior to an appeal being made to, or adjudicated by, the IAS **AND** this is accepted as Full and Final settlement against the CN, the appeal will automatically be dismissed and the matter will be deemed closed. Should you appeal to the IAS and it is unsuccessful, the full amount outstanding (£100) will become payable within 14 days of the date the IAS decision is notified to you. Failure to pay this sum in the 14 day period will result in debt recovery costs of £60.00 being added to the outstanding balance.

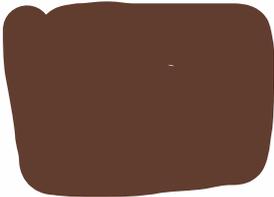
It is important we also highlight that **no further appeals will be accepted at this office**; any such appeal must be made to the IAS.

Please also note that further costs may be incurred should it be necessary for us to subsequently recover any outstanding charge using further debt recovery and/or court action.

Yours sincerely

Appeals Administration Team
CENTRAL PROCESSING OFFICE

Our Ref: [REDACTED]
Date: 06/07/2020
Delivery: via Post



Dear Sir/Madam

RE: [REDACTED]

We write regarding the above matter.

We have now received notification from the County Court Business Centre that this is now a defended claim. As such, we will wait for confirmation that this matter has been transferred to the appropriate Court for the case management directions to be set by the District Judge.

Pursuant to the Civil Procedure Rules, insofar as litigants are expected to try and resolve their disputes wherever possible, we are willing to accept a reduced settlement charge of £125.00 payable within 14 days from the date of this letter. This offer is made on a "without prejudice" (save as to costs) basis.

Should you fail to accept our offer of settlement then we will continue with our Claim for the full amount claimed and bring this letter to the Courts' attention upon the question of costs. To make payment, please transfer £125.00 to the following bank details using the reference VCS16576720.

Account Number: 03881002
Sort Code: 30-97-51

Upon receipt of payment, we will discontinue our claim with the Courts.

Yours faithfully

L Bradley

Liam Bradley
Vehicle Control Services Limited
Litigation Department



Vehicle Control Services Limited
Central Payment Office, P.O. Box 4777, Sheffield. S9 9DJ
t: 0114 242 1111 f: 0114 244 5299
Registered Office: 2 Europa Court, Sheffield Business Park, Sheffield. S9 1XE
Registered in England 20660000 VAT No. 755 7800 06



Contact Details



Active

History

Contact name	Address	Telephone	Mobile	Email	Type	Source	Action
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	Hirer	Appeal	Redact Contact Details
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	Driver	Liability Notifier	Make active Redact Contact Details
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	Driver	Liability Notifier	Make active Redact Contact Details
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	Keeper		Make active Redact Contact Details

 - Active details