IN THE COUNTY COURT

Claim No.: xxxxxxxxxx

Between

HX Car Park Management LIMITED **(Claimant)**

- and -

xxxxxxxxxxxxxxxxxx **(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. After finding a parking place, the Defendant initially stayed inside their car on arrival to the Claimant's car park to answer a phone call. The car was not vacated at this stage. After the phone call, the Defendant tried to understand the confusing terms and conditions on the signage which directed them to various other signs around the car park. The Defendant then

joined the queue for the PDT machine and realised payment was only by cash. The Defendant then searched their car for the correct amount of cash to pay. The Defendant then had to join a queue at the PDT machine again. On arriving, the PDT machine instructions were confusing. In the case of 3JD08399 ParkingEye v Ms X (Altrincham 17/03/2014), where the defendant spent 31 minutes waiting to park, the judge ruled against ParkingEye saying the ANPR data recorded time in the car park and not the time parked. Additionally, in National Car Parks v HMRC [2019] EWCA Civ 854 (20/05/19) the Court of Appeal found that the parking contract was brought into being from the pressing of the button on the PDT machine to issue the ticket.

18. The Claimant's PDT machine clock is in no way synchronised with the ANPR machine clock. This fact, along with the facts in paragraph 17, demonstrate how the Claimant made it look like the Defendant did not pay for their stay. The Defendant did pay for their stay however, as the Claimant is well aware. Therefore, there is no cause of action.

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 09313114) 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.

Defendant's signature: xxxxx

Defendant's name: XXXXXXXXXXXX

Date: xx/xx/xxxx

IN THE SOUTHAMPTON COUNTY COURT

No. F0DP806M
F0DP201T

Courts of Justice
London Road, Southampton

Monday, 11 November 2019

Before:

DISTRICT JUDGE GRAND

B E T W E E N :

BRITANNIA PARKING GROUP LTD — Claimant

- and -

(1)

Defendants

(2) CHRIS CROSBY

MR H. MAINWARING (instructed by Messrs BW Law) appeared on behalf of the Claimant.

The First Defendant appeared in person.
MRS REEVES appeared on behalf of the Second Defendant.

[*Transcript produced from poor quality audio recording – one channel working out of two*]

J U D G M E N T

THE DISTRICT JUDGE:

1 I have two applications before me in two sets of proceedings although the applications are essentially the same. Both sets of proceedings were before District Judge Taylor in May of this year. They are both claims by Britannia Parking Group Ltd trading as Britannia Parking, one against Mr Chris Crosby and the other against Mr. Both relate to parking penalty charge notices issued against the respective defendants and both include in the claim a claim that is expressed in the claim form as a claim for £60 additional expenses pursuant to PCN terms and conditions.

2 In response to both matters a defence has been put in – the defences are not identical – and the matter came before District Judge Taylor in box work for consideration with directions questionnaires, the matters having been transferred out of the money claims centre. In both matters he struck out the claims as an abuse of process, the reasons given being that the claimant claims a substantial charge additional to the parking charge, which it is alleged the defendants failed to pay; and that the additional charge is not recoverable under the Protection of Freedoms Act 2012 Schedule 4 nor with reference to the judgment in Parking Eye v Beavis ; and that it is an abuse of process for the claimant to issue a knowingly inflated claim for an additional sum which it is not entitled to recover.

3 Of course it also contained a notice pursuant to rule 3.3 that either party has the right to apply and that is exactly what the claimant has done in both cases. They have applied for District Judge Taylor's order to be set aside and for directions to be given. In support of that, I have the statement of Colin Brown and a second statement from Colin Brown and I have had skeleton arguments today from Mr Mainwaring, counsel who appears on behalf of the claimant, and Mrs Reeves who is the lay representative for Mr Crosby.

4 I have heard submissions from Mr Mainwaring, Mrs Reeves, and also very briefly from Mr. who takes a very different position from Mr Crosby. I think it is probably fair to describe him today as almost a spectator in that he raised a defence under the Bills of Exchange Act but does not contest the parking charge and does not really resist the claimant's application.

5 What I should also mention is that when the claimant submitted its application, it requested that it be placed in front of a circuit judge. His Honour Judge Hughes QC is the designated civil judge for this area. He directed that the matter be listed with a time estimate of 30 minutes before a full time district judge which is what it has been, although it has overrun its time estimate. The skeleton arguments, with which I have been provided, can only be described as very full.

6 All these parking cases now operate under the shadow of the Supreme Court decision of *Parking Eye v Beavis*. Prior to the Supreme Court's decision in *Parking Eye v Beavis* there was litigation going on up and down the country around all sorts of issues which were raised by defendants but resisted by parking companies. The bringing of the case before the Supreme Court --- maybe I should not say it was intended to provide a definitive answer to the issues being raised, but certainly it was the hope that the decisions which were being made by the courts up and down the country would become very much simpler as a result of the matter going to the highest court in the land and that court giving a judgment. The charge in that case (Beavis) was £85. One may say it was disproportionate for such a case to go to the Supreme Court but the volume of cases and the amounts of money involved overall, led to that happening. Those challenging parking charges were to be disappointed

by the decision of the Supreme Court which essentially decided that the parking charges were not a penalty. They did that after careful consideration, and a lengthy case report of the judgments given was released.

7 So it is against that background that we have this case before us. What the Supreme Court decided was that the charge of £85 as a parking charge was reasonable and acceptable, lawful, legitimate and entirely defensible and appropriate within the scheme of the regime of parking charges.

8 The reason District Judge Taylor gave for striking out the claim in this case is that there is an additional substantial charge which the claimant in this case is seeking to make. He is criticised for giving very brief reasons for the strike out but in fact his reasons are substantially longer than the original particulars of claim which set out the additional parking charge of £60.

9 It seems to me that there are two issues here; first of all, whether it is appropriate for the additional charge to be struck out and then, secondly, whether the striking out should take with it the whole of the claim or whether the court should strike out the £60 charge and leave outstanding the £100 charge which is within the bounds of what the Supreme Court considered reasonable in *Parking Eye v Beavis*.

10 Mr Mainwaring on behalf of the claimant says that this is more a matter for evidence or substantial consideration at trial whereas Mrs Reeves on behalf of Mr Crosby cites a number of paragraphs from the *Beavis* judgment, suggesting that the Supreme Court decided that the charge of £85 for overstaying in a car park was reasonable but higher charges were not to be.

11 It is difficult to do justice to absolutely everything which has been put before me in the skeleton arguments and the submissions today but I will deal with them, I hope, as clearly and as briefly as I can.

12 Reference is made by the Claimant to the guidance provided by the British Parking Association (and the British Parking Association code of practice was referred to in the Supreme Court decision of *Parking Eye v Beavis)*. That judgment also refers to the statutory instrument which sets out what local authorities may charge by way of parking charges. It does seem to me that the Supreme Court gives a somewhat uncritical consideration of the BPA Code of Practice, in that the BPA is an association of parking companies. The guidance is produced by parking companies for parking companies largely for their own benefit. They refer to the fact that there is only one such association. So when the claimant asks me to look at the BPA Code of Practice, which says that a £60 charge is a reasonable charge to make, I treat it with massive scepticism because it seems to me that it is entirely self-serving for the British Parking Association to give guidance to parking companies of what are appropriate additional charges. I have much greater respect as I should to the Supreme Court decision about what is reasonable.

13 I was taken by Mrs Reeves in her submissions to para.98 of *Beavis* where it is explained why the £85 charge is reasonable. It says that it has two main objectives; one is to manage the efficient use of parking spaces and this was to be achieved by deterring commuters or other long-stay motorists from occupying parking spaces for long periods. The other purpose was to provide an income stream to enable Parking Eye to meet the costs of operating the scheme and make a profit from its services. The judgment goes on at para.193 to say that the scheme also covered Parking Eye's costs of operation and gave their shareholders a healthy annual profit.

14 And again at para.198:

> "The charge has to be and is set at a level which enables the managers to recover the costs of operating the scheme. It is here also set at a level enabling Parking Eye to make a profit.

15 It seems to me absolutely clear from the Supreme Court judgment that what they were determining was what a reasonable charge was in the context of running these parking schemes. Some people will stay within the rules and will pay nothing or pay a small charge. Others will overstay and will pay much larger charges which the Supreme Court has found to be a proportionate and reasonable penalty. The Supreme Court considered a charge of £85 and determined that that is not an unacceptable charge.

16 What we have here is essentially a charge of £160 for parking although the advertised figure for the charge on the signage is £100. The £60 is based on the vague additional sentence on the sign saying that there may be other charges. The particulars of claim then refer to this almost as an afterthought in that it comes as the last line after reference to the claim for interest. The claim form says it is £60 for contractual costs pursuant to the PCN and the terms and conditions. It seems to me that that the £60 charge is quite transparently an attempt to gild the lily, to garnish the margin of what is provided in the Supreme Court decision of *Beavis* as to what is a reasonable charge in the circumstances and, to use District Judge Taylor's words, it is an inflated charge.

17 It has been suggested to me by Mr Mainwaring that somehow it is an additional charge for additional expenses which are caused by people who do not pay. The Supreme Court was concerned with a case of somebody who did not pay. This was the whole nub of what the case was about and it does not seem to me that it is appropriate for the parking companies, having won in the case of *Beavis* decided by the Supreme Court for the reasons given then to try to add on an additional charge.

18 It seems to me that it is absolutely clear from the Supreme Court decision that the intention was not for parking schemes to make charges for overstayers that amount to £160 or for there be one charge and then another substantial charge. Therefore what the claimant is seeking to do in this case is to charge far more to somebody who does not comply with the parking terms than was approved by the Supreme Court in *Beavis*. It does seem to me that the additional sum charged is unlawful.

19 I should mention that Mrs Reeves has raised before me the Consumer Rights Act and the court's responsibility under s71 to consider potentially unfair terms even if the issue is not raised by any of the parties. Mrs Reeves sought to take me to the Act and she has identified to me the three examples in schedule to the Act which she says makes this additional charge unfair. It is Schedule 2 to the Act which gives the examples of terms which may be regarded as unfair. Mrs Reeves refers to examples 6, 10 and 14. I have to say that it seems to me that Mrs Reeves is right to refer to them and even if I had not been with her on the question of the parking fine it does seem to me that these charges are unfair terms in that they fit the three examples of unfair terms.. The reference on the signs to charges seems to me simply to leave entirely to the discretion of the parking company what additional charges they may levy and is completely against the intention of the Consumer Rights Act legislation and the question of what terms are fair.

20 Example term 14 says:

> "A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound."

21 That is bang on. It does not say that there will be an additional charge of £60. It just vaguely refers to further charges.

22 I further say that the charge of £60 on a parking charge of £100 is 60 per cent which is disproportionate. So, I find that the charge falls foul of the decision of *Beavis*, it falls foul of the unfair contract terms provisions of the Consumer Rights Act and it is quite clearly not a lawful charge.

23 It follows from that that I must come to consider whether striking out the whole claim is appropriate. The inclusion of the additional £60 charge is an attempt to go beyond the decision in *Parking Eye v Beavis* about what is reasonable and so not a penalty. The whole claim is tainted by it. Even if one treats it as separate from the parking charge, the claimant should have well known that it is not a charge which is lawful. The very fact that they bring a claim in these circumstances, it seems to me is an abuse of the process of the court. In saying that, I observe that with any claim which is put before the court, if a party does not put in a defence to the claim, then it is open to the claimant to enter a default judgment. I have no information about the numbers but I do not doubt that many default judgments are entered in cases containing these additional charges and the claimant then has the benefit of those judgments, including, as they do, additional charges which I have found to be unlawful. That reinforces why it is abusive to include unlawful additional charges in these claims.

24 So I conclude by saying that I dismiss the application to set aside District Judge Taylor's order.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

** This transcript has been approved by the Judge **