Index

IN THE COUNTY COURT

Claim No.:

Between

NAPIER PARKING LIMITED

(Claimant)

-and-

(Defendant)

_____

WITNESS STATEMENT

_____

1. I,. I am the defendant to which this claim is made. The facts below are true to the best of my belief and my account has been prepared based upon my own knowledge.

2. Throughout this Witness Statement I shall refer to documents supplied with this statement referring as exhibits and labeled as **01.

3. The Claimant already knows from the defence the fact that, whilst I was the registered keeper I was not the driver at the time of the alleged contravention. If necessary, I am willing to confirm this fact on oath. The driver on the date in question was in fact my partner and I was the passenger. I have exercised my right not to name him because I have no obligation to do that with a private firm, despite the parking industry and their robo-claim solicitors routinely misleading courts that keepers who don't name the driver have 'failed', which is disingenuous and untrue. I also wanted to protect the driver, my partner, from the onslaught of aggressive letters that I have endured. I have evidence that the parking signs and hidden PDT machines with no arrows pointing to them at the exits on foot are wholly inadequate to draw the attention of drivers to any terms - and vitally, the parking charge itself - and thus it is my position that this Claimant has failed the requirement of 'adequate notice' of the parking charge, as required in Schedule 4 of the Protection of Freedoms Act 2012.

4. Within the Parking On Private Lands Appeal Annual Report in 2015, Henry Greenslade states “there is no ‘reasonable presumption’ in law that the registered keeper of a vehicle is the driver” (**01).

5. On the date in question, my partner drove into what appeared to both of us to be access to some bricked garages behind some the high street shops with parking bays

and not at all what could be assumed as a “shopping centre car park”. As you can see from exhibit **02, ‘*******’ is in fact a large obvious parking area further along Priory Road with its own entrance, not where the Claimant highlights on his map within his witness statement. Therefore, raises the question if the Claimant actually knows which area of land he is authorised to regulate.

6. As you can see from exhibit **03, taken from Google Maps on the 15th September 2020 the entrance of the area and sign claiming to be “Private Land” is not in clear view, as demonstrated by different angles. The sign is small and could be easily obscured from view when driving into the walled area by a nearby tree making it difficult/impossible to see. Even if the sign had been seen, the text on it was so small it would have been impossible to read from any reasonable passing vehicle given the entrance is on a busy town road, with a bus stop opposite, making it dangerous to stop prior to entering.

7. The Claimant is reliant on Terms and Conditions set out within signage in the area and claims it to be contractable. In this case, the signage fails to adhere to the standards laid out by the relevant accredited parking association, the International Parking Community ('IPC'). The IPC mandatory Code says that text on signage “should be of such a size and in a font that can be easily read by a motorist having regard to the likely position of the motorist in relation to the sign”. It also states “the sign should be clearly seen upon entering the site” and that the signs are a vital element of forming a contract with drivers**04.

8. Neither myself or my partner noticed any pay and display or any signs when entering the area stating payment or a permit was required. Once inside the walled area the signage explaining the terms and conditions of such ‘contract’ was too small to see unaided. The font is tiny and unreadable and the sign positioned at such height to make is difficult to see (exhibit **05). Even the Claimants own Witness Statement demonstrates an illegible sign - see page 11 of Claimants Witness Statement. It is, therefore, denied that the Claimant's signage is capable of creating a legally binding contract, and as such, no contract was ever in place, thus rendering a breach impossible.

9. A key factor in the leading authority from the Supreme Court, was that ParkingEye were found to have operated in line with the relevant parking operator’s code of practice and that there were signs that were clear and obvious and 'bound to be seen'. I have included a copy of this sign in exhibit**06 for comparison. In this case, the signage fails to adhere to the standards laid out by the relevant accredited parking association, the International Parking Community ('IPC'). The IPC mandatory Code says that text on signage “should be of such a size and in a font that can be easily read by a motorist having regard to the likely position of the motorist in relation to the sign”. It also states that “they should be clearly seen upon entering the site” and that the signs are a vital element of forming a contract with drivers.

10. **The Beavis case is against this claim.**
This situation can be fully distinguished from ParkingEye Ltd v Beavis [2015] UKSC67, where the Supreme Court found that whilst the £85 was not (and was not pleaded as) a sum in the nature of damages or loss, ParkingEye had a 'legitimate interest' in enforcing the charge where motorists overstay, in order to deter motorists from occupying spaces beyond the time paid for and thus ensure further income for the

landowner, by allowing other motorists to occupy the space. The Court concluded that the £85.00 charge was not out of proportion to the legitimate interest (in that case, based upon the facts and clear signs) and therefore the clause was not a penalty clause.

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

12. In the recent Court of Appeal case of Hancock v Promontoria (Chestnut) Limited [2020] EWCA Civ 907 the Court of Appeal are now clear that most redactions are improper where the Court are being asked to interpret the contract. https://www.bailii.org/ew/cases/EWCA/Civ/2020/907.html Ref. paras 74 & 75

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

13. **Abuse of process - the quantum**
The Claimant has added a sum disingenuously described as 'damages/admin' or 'debt collection costs'. The added £60 constitutes double recovery and the court is invited to find the quantum claimed is false and an abuse of process - see exhibit xx08 transcript of the Approved judgment in Britannia Parking v Crosby (Southampton Court 11.11.19). That case was not appealed and the decision stands.

14. Whilst it is known that another case that was struck out on the same basis was appealed to Salisbury Court (the Semark-Jullien case), the parking industry did not get any finding one way or the other about the illegality of adding the same costs twice. The Appeal Judge merely pointed out that he felt that insufficient information was known about the Semark-Jullien facts of the case (the Defendant had not engaged with the process and no evidence was in play, unlike in the Crosby case) and so the Judge listed it for a hearing and felt that case alone should not have been summarily struck out due to a lack of any facts and evidence.

15. The Judge at Salisbury correctly identified as an aside, that costs were not added in the Beavis case. That is because this had already been addressed in ParkingEye's earlier claim, the pre- Beavis High Court (endorsed by the Court of Appeal) case ParkingEye v Somerfield (ref para 419): https://www.bailii.org/ew/cases/EWHC/QB/2011/4023.html

"It seems to me that, in the present case, it would be difficult for ParkingEye to justify, as against any motorist, a claim for payment of the enhanced sum of £135 if the motorist took the point that the additional £60 over and above the original figure of £75 constituted a penalty. It might be possible for ParkingEye to show that the additional administrative costs involved were substantial, though I very much doubt whether they would be able to justify this very large increase on that basis. On the face of it, it seems

to me that the predominant contractual function of this additional payment must have been to deter the motorist from breaking his contractual obligation to pay the basic charge of £75 within the time specified, rather than to compensate ParkingEye for late payment. Applying the formula adopted by Colman J. in the Lordsvale case, therefore, the additional £60 would appear to be penal in nature; and it is well established that, in those circumstances, it cannot be recovered, though the other party would have at least a theoretical right to damages for breach of the primary obligation."

16. This stopped ParkingEye from using that business model again, particularly because HHJ Hegarty had found them to have committed the 'tort of deceit' by their debt demands. So, the Beavis case only considered an £85 parking charge but was clear at paras 98, 193 and 198 that the rationale of that inflated sum (well over any possible loss/damages) was precisely because it included (the Judges held, three times) 'all the costs of the operation'. It is an abuse of process to add sums that were not incurred. Costs must already be included in the parking charge rationale if a parking operator wishes to base their model on the ParkingEye v Beavis case and not a damages/loss model. This Claimant can't have both.

17. This Claimant knew or should have known, that by adding £60 in costs over and above the purpose of the 'parking charge' to the global sum claimed is unrecoverable, due to the POFA at 4(5), the Beavis case paras 98, 193 and 198 (exhibit **08), the earlier ParkingEye Ltd v Somerfield High Court case and the Consumer Rights Act 2015 ('CRA') Sch 2, paras 6, 10 and 14. All of those seem to be breached in my case and the claim is pleaded on an incorrect premise with a complete lack of any legitimate interest.

18. Not drawing onerous terms to the attention of a consumer breaches Lord Denning's 'red hand rule' and in addition the global sum on the particulars of claim is unfair under the CRA. Consumer notices are never exempt from the test of fairness and the court has a duty under s71 of the CRA to consider the terms and the signs to identify the breaches of the CRA. The official CMA guidance to the CRA makes it clear that words like 'indemnity' are objectionable in themselves and any term trying to allow a trader to recover costs twice would (of course) be void, even if the added sum was on the signs.

19. CPR 44.11 - further costs

I am appending with this bundle, a fully detailed costs assessment which also covers my proportionate but unavoidable further costs and I invite the court to consider making an award to include these, pursuant to the court's powers in relation to misconduct (CPR 44.11).

Statement of Truth:

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

Signed - xx
Date x

Keeper liability

The person who may be liable for a charge arising out of the presence of a vehicle on private land is the person who last caused the vehicle to be at rest in that position, that is the ‘driver’, although he or she may no longer be physically in the vehicle when a parking charge notice is issued to it, or the event is recorded. The only presumption that anyone else is liable for such a charge is under Schedule 4 of the Protection of Freedoms Act 2012. This provides that, in certain prescribed circumstances, the creditor (in practice the operator) has the right to recover any unpaid parking charge from the keeper of the vehicle. There is separate provision for hirers of vehicles, although Assessors find that such cases rarely come before them.

The Driver and Vehicle Licensing Authority (DVLA) may provide details of registered keepers for what they term ‘reasonable cause’. They state that this can include such things as finding out who was responsible for an accident or tracing people responsible for driving off without paying for goods and services, as well as tracing the owner of an abandoned vehicle.

However, the DVLA say that private car parking management companies can only request information from them if they are members of the British Parking Association or the Independent Parking Committee. If an operator is a member of the BPA Approved Operator Scheme, they should only act in accordance with the BPA Code of Practice.

Nevertheless, there appears to be continuing misunderstanding about Schedule 4. Provided certain conditions are strictly complied with, it provides for recovery of unpaid parking charges from the keeper of the vehicle. Whether or not the keeper is the owner is not relevant. Unlike the statutory schemes, under Schedule 4 there is no concept of ‘owner liability’. The word ‘keeper’ means the person by whom the vehicle is kept at the material time, which, in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the person in whose name the vehicle is registered, that is the registered keeper. Presumption is just that, it is something that can be rebutted and may be an issue for the Assessor to determine.

The release of keeper details by the DVLA may be another matter of public controversy and even legal action. The matter has recently been the subject of a case in the High Court4 involving the Secretary of State for Transport, on whose behalf the DVLA holds the keeper records. In that case, the claimant submitted that he should not be subject to a requirement to join an accredited trade association (ATA) if he wished to be able to access large amounts of data from the register, in order that he could recover sums of money from the keepers or drivers of vehicles which have trespassed on his clients’ land. The Secretary of State took a different view and the Court found that the decision was not irrational and that there was no arguable basis for quashing it.

However keeper information is obtained, there is no ‘reasonable presumption’ in law that the registered keeper of a vehicle is the driver. Operators should never suggest anything of the sort. Further, a failure by the recipient of a notice issued under Schedule 4 to name the driver, does not of itself mean that the recipient has accepted that they were the driver at

the material time. Unlike, for example, a Notice of Intended Prosecution where details of the driver of a vehicle must be supplied when requested by the police, pursuant to Section 172 of the Road Traffic Act 1988, a keeper sent a Schedule 4 notice has no legal obligation to name the driver. Any evidence in this regard may therefore be highly relevant.

As you can see from this Google maps, Wales Court Shopping Centre highlighted in yellow is further along Priory Road with its own entrance to an obvious pay and display car park.

Note the obscured sign under the tree with font impossible to read from a vehicle.

International Parking Community Mandatory Code

Part E - Schedule 1

Signage

Signs should, where practicable, be placed at the entrance to a site. Otherwise the signage within the site must be such as to be obvious to the motorist. The example above provides for an entrance sign befitting of a ‘Pay and Display’ operation. The precise wording on a sign is a matter for the Operator but such wording should not go on to explain the terms and conditions of parking unless ALL of the terms and conditions are then listed.

Text size

The size of text on a sign will be determined by a number of factors such as the position of it, to whom it is aimed and the information that it needs to convey. Text should be of such a size and in a font that can be easily read by a motorist having regard to the likely position of the motorist in relation to the sign.

A copy of the sign at approx 6-7ft from the pavement.

Please note the tiny font on this sign.

A copy of the sign from the Beavis case to compare.

Transcript from Britannia Parking Group v Crosby.

IN THE SOUTHAMPTON COUNTY COURT

No. F0DP806M F0DP201T

Courts of Justice London Road, Southampton

Monday, 11 November 2019

BETWEEN:

Before: DISTRICT JUDGE GRAND

BRITANNIA PARKING GROUP LTD - and -

(1)

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]

Claimant

Defendants

(2) CHRIS CROSBY

JUDGMENT

THE DISTRICT JUDGE:

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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."

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

41. 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.

42. 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.

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

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CERTIFICATE

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

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

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ParkingEye Limited v Beavis – Paragraphs 98, 193, and 198

98. Against this background, it can be seen that the £85 charge had two main objects. One was to manage the efficient use of parking space in the interests of the retail outlets, and of the users of those outlets who wish to find spaces in which to park their cars. This was to be achieved by deterring commuters or other long-stay motorists from occupying parking spaces for long periods or engaging in other inconsiderate parking practices, thereby reducing the space available to other members of the public, in particular the customers of the retail outlets. The other purpose was to provide an income stream to enable ParkingEye to meet the costs of operating the scheme and make a profit from its services, without which those Page 43 services would not be available. These two objectives appear to us to be perfectly reasonable in themselves. Subject to the penalty rule and the Regulations, the imposition of a charge to deter overstayers is a reasonable mode of achieving them. Indeed, once it is resolved to allow up to two hours free parking, it is difficult to see how else those objectives could be achieved.

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

198. The £85 charge for overstaying is certainly set at a level which no ordinary customer (as opposed to someone deliberately overstaying for days) would wish to incur. It has to have, and is intended to have, a deterrent element, as Judge Moloney QC recognised in his careful judgment (para 7.14). Otherwise, a significant number of customers could all too easily decide to overstay, limiting the shopping possibilities of other customers. Turnover of customers is obviously important for a retail park. A scheme which imposed a much smaller charge for short overstaying or operated with fine gradations according to the period of overstay would be likely to be unenforceable and ineffective. It would also not

be worth taking customers to Page 88 court for a few pounds. But the scheme is transparent, and the risk which the customer accepts is clear. The fact that, human nature being what it is, some customers under-estimate or over- look the time required or taken for shopping, a break or whatever else they may do, does not make the scheme excessive or unconscionable. The charge has to be and is set at a level which enables the managers to recover the costs of operating the scheme. It is here also set at a level enabling ParkingEye to make a profit. Unless BAPF was itself prepared to pay ParkingEye, which would have meant, in effect, that it was subsidising customers to park on its own site, this was inevitable. If BAPF had attempted itself to operate such a scheme, one may speculate that the charge might even have had to be set at a higher level to cover its costs without profit, since ParkingEye is evidently a specialist in the area.

Consumer Rights Acts 2015

6. A term which has the object or effect of requiring a consumer who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation.

10. A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.

14. 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.

DEFENDANT'S SCHEDULE OF COSTS

Ordinary Costs

Loss of earnings through attendance at court hearing xx/10/2020: £95.00

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

Research, preparation and drafting documents (16 hours at Litigant in Person rate of £19 per hour):

£304
Stationary, printing, photocopying and postage: £24

TOTAL COSTS CLAIMED £423.00

Signature xxxx

Date xxxx