

Edits from 30.07, Edits from 29.07, Edits from 27.07, Edits from 26.07

Highlighted points of defence	Reference(s)
(VERBAL ONLY. NOT IN OUR WS) Before they are allowed to speak, raise with the judge that you have a concerning preliminary matter about the Claimants witness statement. The Claimants witness statement is NOT signed under the statement of truth which is also an old template bearing the pre-April 2020 statement of truth, making it invalid. It is on a separate page and looks like a facsimile signature which could be appended to anything. How is a Paralegal not aware of the changes to the statement of truth? Believe this is enough to strike the claim out early.	1. Claimant Witness Statement – last page
Parking signage was not present at the entrance into the car park and offered no contract or parking licence of value Parking signage was also not present at the entrance of the Travelodge	2. Witness Statement - Point 3 3. Exhibit XX/02 4. Defence – Point 17 5. Witness Statement – Point 4 (Lidi side) 6. Witness Statement – Point 16 & 17
The Claimant has added £60 that breaches the CRA, POFA and Supreme court case law Multiple appendices to back this up.	1. Witness Statement – Point 12 2. Defence – Point 2 3. Defence – Point 5 4. Defence Appendix A 5. Defence Appendix B 6. Defence Appendix C – Points 22 & 23
A parking ticket was purchased on the date in question.	1. Witness Statement – Points 6 & 7 2. Exhibit XX/06
Extremely poor customer feedback in relation to the car park targeted by predatory Excel ticketing	1. Witness Statement – Point 10 2. Exhibit XX/07 (Multiple Reviews) 3. Exhibit XX/11 (News article)
Contract statement of Authority does not comply with companies act 2006 section 44. It has not been signed by two authorised people as defined by the act.	1. Claimant Statement of Authority 2. Witness Statement – Point 14
Excel claim to have operated the parking scheme from 19 th Dec 2014 yet their Contract Statement of Authority states the alleged contract was not signed until 15 th September 2015	1. Witness Statement – Point 15 2. Claimant Statement of Authority
Claimant images of my car show it against the front of the Travelodge building yet in their overhead plan.. these bays are not within their controlled area, making these unenforceable.	3. Witness Statement – Point 17 4. YC2 – Claimants images of my vehicle 5. YC1 – Overview image of car park
The Claimant makes reference to a sign showing daily rates which does not even exist	1. Witness Statement – Point 23 2. YC1 – day rate sign

in this car park. More importantly, they have just provided a STOCK image of the alleged sign and haven't provided an actual picture of it, much like the other poor signage in the bundle.	
Question – why can I not question the parking attendant's written evidence? Where is his/her witness statement? Why is it not submitted as a statement of truth?	1. Verbal question to Judge if possible.

Defendant Court Bundle for Claim # XXXXXXXX

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Witness Statement 1

In the County Court at XXXXX

Claim No. XXXXX

Between

EXCEL PARKING SERVICES LTD (Claimant)

and

XXX XXXXXX (Defendant)

1. I am **[Name]**, of **[Address]**, the Defendant in this matter and I am unrepresented. I will say as follows:

2. On **[Date]**, myself and my partner were due to stay at Travelodge, **[Location]**, and parked my vehicle registration no, XXX XXXX in the car park at approximately 1445hrs. I attach proof as stay as **Exhibit XX/01**.

3. I had initially thought that a car parking ticket was not required due to the lack of and poor quality signage at the site; as well as the property being a hotel in which most provide free parking. I have taken pictures to demonstrate how I missed the signage upon entering the car park and subsequently where I parked. There are in fact two ways into this car park from the main road and I entered from the side where there's no signage which includes Terms and conditions.

I refer to **Exhibit XX/02** as a view of the car park from the main road where two entrances are clearly shown. From this image, I had taken the road to the left to enter the car park, known as Millers Lane.

To further demonstrate this, I refer to **Exhibit XX/03** which has an overview of the car park and the route I have taken to park my vehicle as denoted by the red arrows. The blue circle indicates a car park sign but with no terms and conditions at this location. The green circle denotes a 3rd entrance to the car park via the Lidi carpark.

4. It is entirely possible for customers to enter the car park from Lidi and see no signage or terms & conditions at the entrance. Due to the importance of this I have also exhibited this as **Exhibit XX/04 and Exhibit XX/05**.

5. During the check-in process, we overheard customers in front of us ask about parking permits. Staff at reception then said permits were not given out at this time and that a ticket is required for pay & display. The check-in process took around 10 minutes.

6. After taking luggage to the room I went outside to look for car parking signage and a machine. The pay and display machine did not accept card payments and I currently had no change on me at the time. I then started walking over to the nearby Lidi to get some. The shop was quite busy at the time. Once I had obtained change I walked back to the car park.

7. I went to purchase a ticket for 24hrs at the cost of £3.00; despite only needing to stay for around 15 hours. I attach this ticket and refer to this as **Exhibit XX/06**.

8. It is at this time I noticed a 'penalty' notice attached to my windscreen at approximately 1610hrs.

9. I did not initially appeal the decision as I did not avoid getting a ticket. I then started receiving debt collection letters and this baseless litigation has caused me significant alarm and distress.

10. I was further discouraged from appealing due to the amount of customers who had stayed at the hotel by reading reviews online. It is quite evident that predatory ticketing operates in this car park and that they seek to catch you out. After further research it seems Travelodge offer free car parking permits between 6pm and 8am. **It is evident via online reviews that Excel wardens are literally waiting until just after the permits expire in the morning and proceed with issuing tickets minutes later.**

As I believe this holds relevance to my case and demonstrates the Claimant's aggressive behaviour, I exhibit this as **Exhibit XX/07**.

11. On 04.02.20, I wrote to the Claimant in relation to putting the case on hold to obtain the relevant subject access requests (SAR). The Claimant did not respond to putting the case on hold to obtain the relevant SAR but did eventually provide a SAR on 09.02.20. A print out of payments made at the ticket machine on the date of contravention were requested but they did not provide this.

12. The Claim contains a substantial charge additional to the original parking charge to which they are not entitled to recover and this is an abuse of process, as detailed in my defence.

13. The Claimant under their exhibit YC1 have signed their own supposed landowner authority. There is no identification of the landowner, freeholder nor leaseholder and they have not signed or confirmed the land is leased or the boundary/map of the land is supposedly leased to Excel. They have not provided a copy of this lease nor a land registry title record which would prove if they had a long lease and would include a definitive map. There is no proof they have a valid contract on this basis.

14. The Claimant's 'Contract Statement of Authority' as referenced in exhibit YC1 does not comply with the requirements of the Companies Act 2006, Section 44. I Exhibit XX/08 Section 44 as reference.

The alleged contract has not been executed in accordance with paragraph 1 S44 because it has not been signed by two people from each company nor by a director & witness of each company in accordance with the requirements of paragraph 2. It has also not been signed by authorised signatories as defined in paragraph 3.

As such, the contract is not valid in accordance with the above Act of Parliament and thus the PCNs are invalid.

15. In reference to the Claimant's Witness Statement at point 9 – they refer to having operated their parking scheme from 19th December 2014 yet in their 'Claimants Contract Statement of Authority' under YC1, the alleged contract was not signed until 15th September 2015, making this statement false.

16. From my own Exhibit XX/03, I highlight whereabouts my vehicle was parked in front of the Travelodge overhead. To further assist with this, I attach Exhibit XX/09. This shows the entrance to Travelodge. There is also a P&D machine near the fire escape doors with no car parking signage next to it whatsoever, further promoting how I did not see the signage on the way in. It also should be noted that there's a disabled parking bay between the reception door and this ticket machine... yet again meaning there is potential for customers to miss seeing this machine on the way in because the view is blocked.

17. Following on from Exhibit XX/09, on this google street view image taken Sep 2018, you can see a blocked up window with a gray metal cover and wooden door just to the left of the white car left of centre in the image.

Please refer to the Claimants warden pictures showing my vehicle under YC2. On page 3 of

the wardens pictures you can see two images taken from each side of my vehicle on 09.11.19 14:58; the same gray metal cover and wooden door are in one picture on this page. The blue & yellow sign in the reflection is a 'To Let' sign, which appears twice on that side of the building. This further demonstrates where my vehicle was parked as these can just about be made out but are not clearly visible on the building via the google street image.

With additional visual clarity for the court, please now refer to YC1's overhead picture of the car park. You can clearly see that the parking bays at the front of the building are not covered under the controlled/protected area. By the Claimants own exhibits, it informs the court they do not have the rights to manage those spaces or issue parking charges or court claims.

The images taken by the warden show my vehicle outside the controlled area. It is interesting to note there's a small red protected area box where the P&D machine is to the right of the Travelodge entrance on the YC1 overhead view picture of the Claimant's car park... yet the remaining parking bays as aforementioned are not covered in this area.

18. In reference to the Claimant's YC1 overhead picture of the car park, it implies that there's bays marked 'Excel Car Park Bays' in clearly defined yellow lines.

In the wardens images under YC2, there are no markings of this colour around the vehicle, especially the image showing vehicles behind my own. This again brings in to question the Claimants position to manage this area.

19. The Travelodge building appears to be a grade II Listed building which could highly support the fact there are no parking signs next to entrance of the Travelodge near the P&D machine due to restrictions. It further demonstrates how ambiguous the car park is with its lack of signage. I attach reference to this as **Exhibit XX/10**.

20. The Claimant under their exhibit YC1 shows an overhead picture of the car park yet this fails to outline the actual entrances using blue lines, despite having this in the key.

21. The car park is operated by two different operators and is confusing to customers. I attach **Exhibit XX/11** which contains a recent news article in relation to a customer who paid at the wrong operators machine. The article also contains an overview of the car park and how close parking bays are by both operators. The Claimant fails to mention that there are two different schemes operated here by two separate parking companies with the hotel car park joined up with the nearby Burton-upon-Trent Railway car park.

22. The Claimants Witness Statement at Point 29 references the Vine v Waltham Forest Case. Upon research, it appears the Claimant has taken this completely out of context. Miss Vine actually won her case as she did not see the parking signage due to her view being blocked.

23. Under the Claimants exhibit YC1, there is a stock image of a parking sign which shows not just the hourly rate but the daily rate. This sign is not located in the car park at all. The Claimant has provided pictures of other poor signage around the car park but hasn't provided a picture of this potentially larger sign which could've helped customers in the car park. This makes the stock image a false instrument in a document signed as a statement of truth.

24. Upon further research, the car park also contains a sandwich shop, micro brewery, pub and a taxi firm. All of these have their own signage and deliveries throughout the day which

can easily obstruct other parking signs.

25. I invite the Court to dismiss this claim in its entirety, and to award my costs of attendance at the hearing, such as are allowable pursuant to CPR 27.14.

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

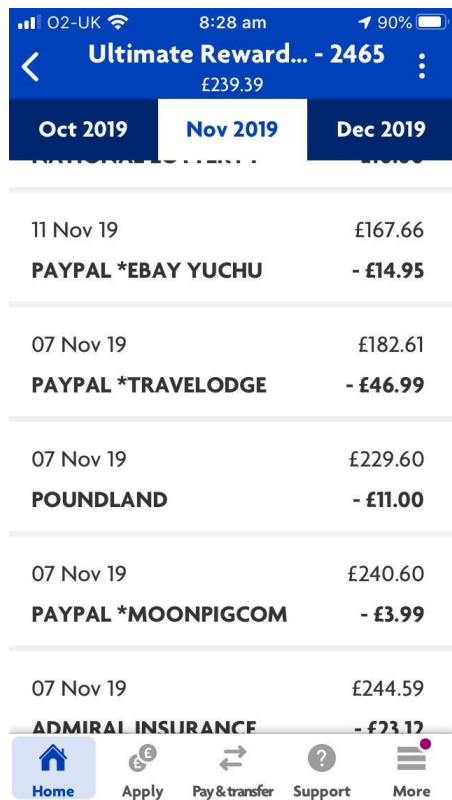
Signature

Date

Witness Statement Exhibits

XX/01

Proof of stay at Travelodge payment, paid on 07.11.19 before the stay on 09.11.19



The screenshot shows a mobile banking app interface. At the top, the status bar displays 'O2-UK', signal strength, time '8:28 am', and battery '90%'. The app header is blue with a back arrow, the title 'Ultimate Reward... - 2465', and a balance '£239.39'. Below the header are three tabs: 'Oct 2019', 'Nov 2019' (selected), and 'Dec 2019'. The main area lists transactions for November 2019. Each transaction entry includes a date, a description, and a balance. The transactions are: 11 Nov 19 with a balance of £167.66, a payment to 'PAYPAL *EBAY YUCHU' for £14.95; 07 Nov 19 with a balance of £182.61, a payment to 'PAYPAL *TRAVELODGE' for £46.99; 07 Nov 19 with a balance of £229.60, a payment to 'POUNDLAND' for £11.00; 07 Nov 19 with a balance of £240.60, a payment to 'PAYPAL *MOONPIGCOM' for £3.99; and 07 Nov 19 with a balance of £244.59, a payment to 'ADMIRAL INSURANCE' for £23.12. At the bottom is a navigation bar with icons and labels: 'Home' (house icon), 'Apply' (credit card icon), 'Pay & transfer' (arrows icon), 'Support' (question mark icon), and 'More' (three lines icon).

	Oct 2019	Nov 2019	Dec 2019
11 Nov 19		£167.66	
PAYPAL *EBAY YUCHU		- £14.95	
07 Nov 19		£182.61	
PAYPAL *TRAVELODGE		- £46.99	
07 Nov 19		£229.60	
POUNDLAND		- £11.00	
07 Nov 19		£240.60	
PAYPAL *MOONPIGCOM		- £3.99	
07 Nov 19		£244.59	
ADMIRAL INSURANCE		- £23.12	

XX/02 – Entrance to car park from Google Maps. Millers Lane shown left of centre. Image date April 2019 with the car park remaining the same to this day.



XX/03 – Overview of carpark from Google Maps. Red arrows – my route into the car park & where I parked. Blue circle = Excel parking sign, no T&Cs. Green circle = Lidi Entrance where there are also no signs.



XX/04 – Image taken showing the way into the Travelodge car park via Millers Lane with Lidi on the right. Image date May 2016 with the car park remaining the same to this day.



XX/05 – The 3rd entrance to the Travelodge car park with no signage visible. Image date May 2016 with the car park remaining the same to this day.



XX/06 – Ticket payment made on the date of staying at Travelodge.



XX/07 – Reviews – Extracted 25.07.20

Review 1 - [Link](#)



karen1967 wrote a review Dec 2019

Chorley, United Kingdom • 3,607 contributions • 85 helpful votes

...



Parking arrangements ruins this hotel

"Firstly, this hotel is OK. Typical Travelodge with nothing great and nothing dreadful about the room. It was cold on arrival but soon warmed up once I cranked up the heating. I didn't eat breakfast so can't comment on that. The building is an old warehouse and the landings and stairwells are cold and draughty. The sheets were clean, as were the pillows and towels.

Booked for one night to attend a meeting the following morning in Burton town centre. I experienced a 4 hour delay on the motorway and arrived at around 2am.

Having driven once around the block because the entrance to the hotel wasn't particularly well signed, the first thing I noticed when I arrived was the poor state of the car park. There were pot holes filled with water and on a wet and dark night it was difficult to navigate from the car to the hotel without getting dirty.

I was greeted by a rather surly lady on reception on arrival and I asked about the parking arrangements. She gave me a pass which allowed me to park free of charge only until 8.00am the following morning. She said that if I needed to park any later than 8am I would have to go back outside to the machine and purchase a ticket.

I was tired and I was laden down with my belongings with nowhere to put them down other than the floor so I decided to put the permit in my car then go to bed. I would get up early in the morning rather than trying to find the ticket machine in the dark, the rain and the mud.

My room was at the front of the hotel and overlooked the car park. I have to say that in the daylight the next day it was even worse than I had thought it was the night before. The spaces were very tight and a car had parked beside me so I could hardly open my door. It was very muddy and full of puddles.

However, what really shocked me was that at exactly 3 minutes past 8 the parking warden appeared and started taking photos of all cars that had a red Travelodge pass in the window.

It is clear that Travelodge guests are easy pickings and at £100 fine for staying longer than 8am I think there should be a warning stated very clearly on the hotel booking page. It is for this reason that I will not use this particular hotel again."

Review 2 - [Link](#)



Sarah/Alan G
8 reviews

⋮

5/5 a year ago on Google

Friendly, helpful reception staff. Simple room but clean, tidy, comfortable bed and warm. Very little noise from the railway. Free car **parking** from 6pm to 8am with a slip from reception, but make sure you buy and put your ticket on your car before 8am - the traffic wardens were waiting in their van hidden behind the building in the car park ready to pounce; and indeed they did on the stroke of 8 -and this was the Sunday morning too!

Review 3 - [Link](#)



angelaeden2017 wrote a review Jun 2017

••

📍 Salford, United Kingdom • 1 contribution



You will get a car park fine if you stay here

"We paid for the car park until 6pm when it became free. No mention was made that we needed a token to display in our car in order to leave it in the car park overnight. We received a £60 fine. When I complained they are not interested. The customer service at this company is terrible. I even wondered whether the hotel might have some scam going with the company who issue the **parking** tickets and the system they have set up seems designed to trick people."

[Read less](#) ▲

Review 4 - [Link](#)



donnarocroft wrote a review Apr 2019

•••

📍 Salisbury, United Kingdom • 12 contributions • 2 helpful votes



Normal Travelodge

"Pretty standard to Travelodge really, ordered food on 1st night of 2 night stay and after 30 mins got told it had been burnt so I had to wait another 30-40 mins for some more to be cooked.

The **parking** is a car park at the front of the hotel and I received a **parking** ticket from a local company due to not having a ticket.....not once did the hotel staff mention **parking** but I have since been advised that they should have given me a permit to go in the car. Now appealing the ticket and made hotel aware.....this detail is key when checking in."

[Read less](#) ▲

Review 5 - [Link](#)



Jmac wrote a review May 2019

•••

1 contribution • 1 helpful vote



Check In Warning Needed

"The hotel should display a large sign in reception warning customers the car park is controlled by Excel Parking. I bought a **ticket** but as my car self locked had to go to my room for the car keys to be able to display the **ticket**. I am asthmatic and it took me about 10 mins in which time I got a parking fine. Excel would not back down and took Court action."

Review 6 - [Link](#)



mike f wrote a review Apr 2018

Cumbria • 10 contributions • 3 helpful votes



Reasonable stay but Travelodge need to sort out the parking company

"Nothing particularly wrong with the hotel - its an unusual conversion of a old railway goods shed - bed and shower were fine. The problem is with the private parking company who zealously patrol the spaces outside. We got a £100 (£60 if paid within two weeks) fine at 8am on Easter Sunday morning for parking over the white line down the side of the building (the parking ticket hadn't expired nor was there any obstruction to traffic passing. Whilst I got sympathy from Travelodge after complaining, they said it was a matter for the landlord and private parking company. My issue is that Travelodge (as majority leasor of the site) must have some influence on the behaviour of the parking attendants (it should be brought up on lease renewal) as otherwise it will reduce patronage of the hotel in favour of others in the area without such issues (such as the Premier Inn). If travelling by Rail its fine - otherwise use somewhere outside the centre of Burton"

Review 7 - [Link](#)



Tomasz Trochanowski

3 reviews



1/5 10 months ago on Google

The hotel itself is fine but there is a hidden cost in it. The hotel does not have free parking. They give you a permit only till 8.00 am. If you do not wake up before 8.00 even in Saturday or Sunday to pay extra for your parking. The Council rats are only waiting around the corner to give you a parking ticket. So not cheap at all. I cant recommend this hotel because of that reason.

Rooms 4.0 Service 4.0 Location 3.0

Companies Act 2006

[◀ Previous: Provision](#)[Next: Provision ▶](#)**44 Execution of documents**

- (1) Under the law of England and Wales or Northern Ireland a document is executed by a company—
 - (a) by the affixing of its common seal, or
 - (b) by signature in accordance with the following provisions.
- (2) A document is validly executed by a company if it is signed on behalf of the company—
 - (a) by two authorised signatories, or
 - (b) by a director of the company in the presence of a witness who attests the signature.
- (3) The following are “authorised signatories” for the purposes of subsection (2)—
 - (a) every director of the company, and
 - (b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.
- (4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).
A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.
- (6) Where a document is to be signed by a person on behalf of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.
- (7) References in this section to a document being (or purporting to be) signed by a director or secretary are to be read, in a case where that office is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.
- (8) This section applies to a document that is (or purports to be) executed by a company in the name of or on behalf of another person whether or not that person is also a company.

Modifications etc. (not altering text)

- C1 Ss. 43-47 applied (with modifications) (1.10.2009) by [The Limited Liability Partnerships \(Application of Companies Act 2006\) Regulations 2009 \(S.I. 2009/1804\)](#), regs. 2, 4
- C2 S. 44 applied (with modifications) (1.10.2009) by [The Overseas Companies \(Execution of Documents and Registration of Charges\) Regulations 2009 \(S.I. 2009/1917\)](#), reg. 4 (with Sch.)
- C3 S. 44 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, Sch. 1 para. 3(d) (with transitional provisions and savings in regs. 7, 9, Sch. 2)
- C4 S. 44 applied (with modifications) (30.6.2011) by [The Yarmouth \(Isle of Wight\) Harbour Revision Order 2011 \(S.I. 2011/1347\)](#), art. 24 (with arts. 27, 28)

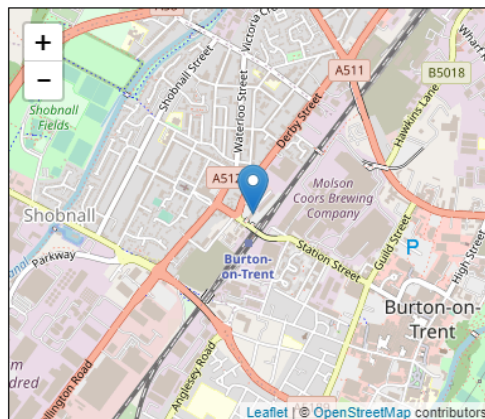
XX/09 – Travelodge Entrance showing a P&D machine with no signage at all next to the fire escape door. Image Date Sep 2018.



XX/10 - Listed building

We don't have any photos of this building yet. Why don't you be the first to send us one?

[Upload Photo »](#)



[Large Map »](#)

Coordinates

Latitude: 52.807 / 52°48'25"N
Longitude: -1.6422 / 1°38'32"W

OS Eastings: 424214
OS Northings: 323334
OS Grid: SK242233

Mapcode National: GBR 5DV.5LP
Mapcode Global: WHCG5.RP5Y
Plus Code: 9C4WR945+R4

Entry Name: Former Midland Railway Grain Warehouse Number 2
Listing Date: 22 June 1979
Grade: II
Source: Historic England
Source ID: 1038724
English Heritage Legacy ID: 272954

Location: Shobnall, East Staffordshire, Staffordshire, DE14
County: Staffordshire
Civil Parish: Shobnall
Built-Up Area: Burton upon Trent
Traditional County: Staffordshire
Lieutenancy Area (Ceremonial County): Staffordshire
Church of England Parish: Burton St Aidan and St Paul
Church of England Diocese: Lichfield

<https://britishlistedbuildings.co.uk/101038724-former-midland-railway-grain-warehouse-number-2-shobnall#.Xx85k55KiUl>

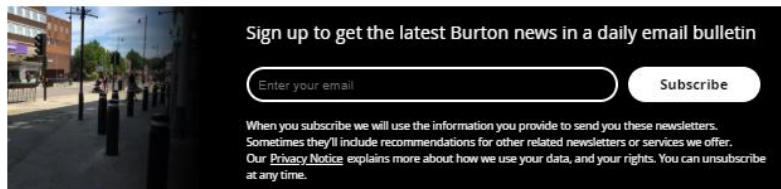
Mum's outrage at parking fine at Burton Railway Station

She thought she'd paid at the right machine

SHARE    30 SHARES  COMMENTS

By **Ben Waldron** Trainee Reporter
15:58, 5 FEB 2020 | UPDATED 08:03, 6 FEB 2020

BURTON



A mum-of-two was left "outraged" after being slapped with a parking fine at Burton Railway Station despite believing she had bought a correct ticket for the day.

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70215408337



Julie Bayley, from Hilton, had parked in the car park, just off Millers Lane, [opposite Burton Railway Station](#), on Friday, January 10.

As she tried to pay, she found there was an error at the pay machine which would not accept her card.

As there was a queue at the nearest alternative machine, she says she walked "a hundred or so yards" to another nearby machine.

She displayed the ticket in her car and thought nothing more about it.

She had parked there to get a train to Birmingham and returned later that same day.

However, she was stunned a few days later when she received a £60 fine in the post because she had used the wrong machine for the area she was parked in.

Mrs Bayley had inadvertently used a paying machine not for the railway station car park but for a nearby one car park.

Drivers can walk from one part of car park to the other as there is no barrier between them.

The mum said she had not realised she had used the wrong machine, assuming it one car park and it was ok to use any of the pay machines.

The two car parks, which butt up to each other, are served by machines from two separate companies, East Midlands Railway and Excel Parking, with tickets issued by each firm's machines only covering certain spaces.



📍 This graphic shows which areas of the car park are operated by which firm (Image: Google Maps)

This graphic shows how the car park divided up. The blue area is operated by East Midlands Railway, while the red area is operated by Excel Parking.

Mrs Bayley's parking fine was served by Excel Parking.

The 48-year-old said: "I paid the correct amount and displayed the ticket correctly.

"There was no indication anywhere in the car park that I was supposed to use a particular machine - it looks like one big car park.

"I was astounded to get a ticket and I'm convinced others must have made the same mistake.

"I think when someone has paid a valid fee to park and displayed their ticket correctly yet still be landed with a £60 fine is outrageous."

When approached for comment on Mrs Bayley's concerns around the machines, a spokesman of Excel Parking said it had not received complaints from any other motorists about the use of the car park.

The representative said: "Mrs Bayley did not purchase a pay and display ticket that was valid for the area of the Derby Street private car park operated by Excel Parking Services Ltd.

Witness Statement 2

In the County Court at XXXXXXXX

Claim No. XXXXXXXX

Between

EXCEL PARKING SERVICES LTD (Claimant)

and

XXX XXXX (Defendant)

1. I am [Name], of [Address], a witness to the Defendant in this matter. I will say as follows:
2. On [Date], the defendant and I were due to stay at Travelodge, [Location], and we parked our vehicle registration no, XXX XXXX in the car park at approximately 1445hrs.
3. I did not see any parking related signage at the entrance to Millers Lane upon entering the car park and subsequently when we turned into the parking bay to park which was directly at the front of the hotel building.
4. As the property I was staying at was a hotel, I had initially also assumed that the car parking charge was included with the cost of the room booking as well.
5. Upon exiting the vehicle we collected our luggage and walked into the Travelodge.
6. During the check-in process, we overheard customers ask about parking permits. Staff replied saying permits were not given out at this time and that you were required to obtain a ticket from the pay and display machines. This was a little disconcerting as I did not see any signage related to pay and display for the Travelodge car park.
7. I then helped take the luggage to the room and once everything had been brought up, my partner, the defendant, then went outside to get a pay & display ticket.
8. Within the hour my partner came back and I was distraught to find out that we had received a parking charge.

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

Signature

Date

END OF WITNESS STATEMENTS AND EXHIBITS

In the County Court at XXXXXXXX
Claim No. XXXXXXXX
Between
EXCEL PARKING SERVICES LTD (Claimant)
and
XXX XXXX (Defendant)

Defendant's Schedule of costs

Ordinary Costs

Loss of earnings/leave, incurred through attendance at Court 18/08/2020 £95.00

Return mileage from home address to Court (15 miles x £0.45) £6.75 (If applicable)

Parking near Court £4.00 (If applicable)

Sub-total £105.75

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

Research, preparation and drafting of documents (16 hours at Litigant in Person rate of £19 per hour)
£304

Stationery, printing, photocopying and postage: £20

Sub-total £324

£ TOTAL COSTS CLAIMED £429.75

Date:

Signature:

Between

EXCEL PARKING SERVICES LTD

(Claimant)

-and-

XXXXXX XXXXXX

(Defendant)

DEFENCE

1. The Defendant denies that the Claimant is entitled to relief in the sum claimed, or at all. It is denied that the driver of the vehicle entered into any contractual agreement, whether express, implied, or by conduct, to pay a 'parking charge' to the Claimant.
2. In relation to parking on private land, it is settled law from the Supreme Court, that a parking charge must be set at a level which includes recovery of the costs of operating a scheme. However, this Claimant is claiming a global sum of £160. This figure is a penalty, far exceeding the £85 parking charge in the *ParkingEye Ltd v Beavis* case.
3. The global sum claimed is unconscionable and it was not shown in large lettering on any consumer signs, and it is averred that the charge offends against Schedule 2 of the Consumer Rights Act 2015 ('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.
4. 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 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 where the driver was known, the Supreme Court considered and referred more than once to the POFA.

5. Claims pleaded on this basis by multiple parking firms have routinely been struck out *ab initio* in various County Court areas in England and Wales since 2019. Recent examples are appended to this defence; a February 2020 Order from District Judge Fay Wright, sitting at Skipton County Court (**Appendix A**) and a similar Order from Deputy District Judge Josephs, sitting at Warwick County Court (**Appendix B**).
6. Applications by AOS member parking firms to try to reach the usually low threshold to set aside multiple strike-out orders have been reviewed by more than one area Circuit Judge, including His Honour Iain Hughes QC, occasioning District Judge Grand at Southampton to hear submissions from a barrister on 11th November 2019. The court refused to set aside the Orders and, tellingly, no appeal was made.
7. The Judge found that the claims - both trying to claim £160, with some ten or more similar cases stayed - represented an abuse of process that 'tainted' each claim. It was held to be not in the public interest for a court to let such claims proceed and merely disallow £60 in a case-by-case basis, thus restricting and reserving the proper application of the relevant consumer rights legislation only for those relatively few consumers who reach hearing stage. That Judgment is appended (**Appendix C**).
8. The CCBC and/or the allocated Court Judge is invited to read the Appendices at the earliest opportunity. The Defendant avers that parking firm claims which add a duplicitous 'costs' sum to the parking charge are now easily identified to be unlawful. Such claims are against the public interest, requiring no further assessment, and listing such cases for trial should be avoided. The Court is invited to exercise its case management powers pursuant to CPR 3.4 to strike out this claim, which is entirely tainted by abuse of process and breaches of the CRA.

9. 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 hastily-added clause 'allowing' added costs/damages. The Defendant points out that the CoP is a self-serving document, written in the parking firms' interests. Further, the 'admin fee' model was reportedly invented by a member of the British Parking Association Board, Gary Osner, 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. Mr Osner states in an article that has been in the public domain since 2018: "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."*
10. The two competing 'race to the bottom' ATAs have engineered a veil of legitimacy to protect this industry for too long. They are not regulators and have failed consumers so badly, that Parliament is currently working on replacing them with a new CoP overseen by the Secretary of State, following the enactment of the Parking (Code of Practice) Act 2019. Many courts have now recognised that a predatory parking firm Claimant using unfair and predatory business practices and inflating their claims with false 'admin fees', is not the 'innocent party' in a dispute. In stark 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."*
11. 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 Particulars of Claim are embarrassing and incoherent, lacking specificity re the location of the event and status of the contracting parties and failing to detail any 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 case but the sum claimed includes unrecoverable costs/damages and is clearly an abuse of process.

12. The court is invited to note that the *Beavis* case would not have passed had it been pleaded in damages by ParkingEye, and the penalty rule applies to charges that are penal or unconscionable in their construction. The Supreme Court held at [14] ‘*where a contract contains an obligation on one party to perform an act, and also provides that, if he does not perform it, he will pay the other party a specified sum of money, the obligation to pay the specified sum is a secondary obligation which is capable of being a penalty.*’ And at [99] ‘*the penalty rule is plainly engaged.*’

13. Unlike in this case, ParkingEye demonstrated a commercial justification for their £85 parking charge which included all operational costs and was constructed in such a way and offered on such ‘brief and clear’ signs with terms set in the interests of the landowner, that they were able to overcome the real possibility of the charge being struck out as penal and unrecoverable. The unintended consequence is that, rather than persuade courts considering other cases that all parking charges are automatically justified, the *Beavis* case facts and pleadings set a high bar that other claims fail to reach. Unusually for this industry, it is worth noting that ParkingEye do not add false ‘debt letter costs/damages’ to their parking charges and as a consequence, their own claims have escaped any reports of being summarily struck out.

14. This Claimant has failed to plead their case, or to set out their terms or construct their contractual charges in the same way as in *Beavis* and the penalty rule remains firmly engaged. 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 drivers nor to present a motorist with concealed pitfalls or traps, nor to claim an unconscionable total sum.

15. Should this poorly pleaded claim not be summarily struck out for any/all of the reasons stated above, the Defendant sets out this defence as clearly as possible in the circumstances, insofar as the facts below are known.
16. The Defendant is not the main/only driver of this vehicle. It is not established thus far, whether the car was parked, or just stopped momentarily and caught by predatory ticketing. It is not accepted that the location included prominent signs giving 'adequate notice' of the onerous parking charge. A compliant Notice to Keeper ('NTK') was not properly served in strict accordance with section 8 or 9 (as the case may be) of the POFA.
17. The Claimant's particulars refer to the car park terms and conditions being 'clearly displayed at the entrance and in prominent locations'. There are no terms and condition signs at the entrance of the car park from the main road. The only relevant sign states that it is a public car park and lists the appropriate charges. The entrance of the car park splits off into two roads; both of which the car park in question is accessible from. There are significant differences depending on which direction the user takes in regards to the signage seen by users of the car park upon entry.
18. 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 entered into with the Claimant, whether express, implied, or by conduct.
19. The Beavis case is fully distinguished and a more relevant list of binding Court of Appeal authorities which are on all fours with a case involving unclear terms and a lack of 'adequate notice' of an onerous parking charge, would include:
- (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 - i.e. 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".

- 20.** Further and in the alternative, the Claimant is put to strict proof that it has sufficient proprietary interest in the land, or the necessary landowner authorisation to issue PCNs under these circumstances and to pursue keepers by means of civil litigation.

It is not accepted that the Claimant has adhered to the landholder's definitions, exemptions, grace period, other terms (or instructions to cancel charges due to a surge of complaints) and there is no evidence that the freeholder authorises this particular Claimant (Companies House lists their company number as 02878122). Any purported landowner 'contract' which fails to properly identify the two contracting parties and/or which is in any way redacted (including the signatories, which in some parking claims have been revealed not to be that of the landowner) should be disregarded, along with any undated and/or unsubstantiated records, documents, boundary maps or aerial views, or photos which are capable of manipulation.

- 21.** For any or all of the reasons stated above, the Court is invited to dismiss this claim.

22. *In the matter of costs. If the claim is not struck out, the Defendant seeks:*

- (a) standard witness costs for attendance at Court, pursuant to CPR 27.14, and
- (b) the Court to reserve, assess and award the Defendant's Summary Costs Assessment, to be filed and served at Witness Statement stage in anticipation of a typical late Notice of Discontinuance ('NoD') from this Claimant.

- 23.** At NoD stage, or at a hearing if the case proceeds that far, the Court will be taken to facts to support a finding of wholly unreasonable conduct 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. The Defendant will ask for a fairly assessed rate for the hours spent on this case, referencing *Spencer & anor v Paul Jones Financial Services Ltd*.

24. In summary, the Claimant's Particulars disclose no legal basis for the sum claimed. This Claimant knew, or should have known, that an exaggerated 'parking charge' claim where the alleged 'debt' exceeds the £100 ATA CoP ceiling is disallowed under the CPRs, the Beavis case, the POFA and the CRA, The Judge in the instant case is taken to the Appendices, demonstrating that several court areas continue to summarily strike out private parking cases that include an extravagant and unlawful costs sum.

Statement of Truth

I believe that the facts stated in this Defence are true.

Defendant's signature: XXXXXXXXX

Defendant's name: XXXXXXXXX

Date: 11.04.20

Defence Appendix

Appendix A: Order to strike out a similar claim; abuse of process (Skipton)

Appendix B: Order to strike out a similar claim; abuse of process (Warwick)

Appendix C: Judgment and reasoning for refusal to set aside Order (Southampton)

Skipton

Claim Number

G0QZ8631

Date

13 February 2020



EXCEL PARKING SERVICES LTD

1st Claimant

Ref XL09056599

MR ADRIAN COCKSHOTT

1st Defendant

Ref

Before District Judge Wright sitting at the County Court at Skipton, The Court House, Otley Street, Skipton, BD23 1RH.

IT IS ORDERED THAT

The claim is struck out as an abuse of process.

Reasons

The claim contains a substantial charge additional to the parking charge which it is alleged the Defendant contracted to pay. This additional charge is not recoverable under the Protection of Freedoms Act 2012 Schedule 4 nor with reference to the judgment in *Parking Eye v Beavis*, which expressly approved the parking charge because it included costs of administration. Additionally, s71(2) of the Consumer Rights Act 2015 requires the court to consider the fairness of a contract term and the provision for additional charges falls into examples 6, 10 and 14 of the indicative list of unfair terms in schedule 2 of that Act. 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.

This order has been made by the court of its own initiative without a hearing pursuant to Rule 3.3(4) of the Civil Procedure Rules 1998 and a party affected by the order may apply to have it set aside varied or stayed no more than 7 days after the date the order was served upon that party.

Dated 12 February 2020

General Form of Judgment or Order

In the County Court at Warwick	
Claim Number	F5DP2D6Y
Date	6 December 2019



PREMIER PARK LIMITED	1 st Claimant Ref T1085395
MR JONATHAN SHAW	1 st Defendant Ref

Before Deputy District Judge Josephs sitting at the County Court at Warwick, The Justice Centre Leamington Spa, Newbold Terrace, Leamington Spa, Warwickshire, CV32 4EL.

Upon considering the Court file

IT IS ORDERED THAT

The claim is struck out as an abuse of process.

Reasons.

The claim contains a substantial charge additional to the parking charge which it is alleged the Defendant contracted to pay. This additional charge is not recoverable under the Protection of Freedoms Act 2012 Schedule 4 nor with reference to the judgment in *Parking Eye v Beavis*, which expressly approved the parking charge because it included costs of administration. Additionally, S71(2) of the Consumer Rights Act 2015 requires the Court to consider the fairness of a contract terms and the provision for additional charges falls into examples 6, 10 and 14 of the indicative list of unfair terms in Schedule 2 of that Act. 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.

This order has been made by the Court of its own initiative without a hearing pursuant to Rule 3.3(4) of the Civil Procedure Rules 1998 and a party affected by the order may apply to have it set aside, varied or stayed not more than 7 days after the date the order was served upon that party.

Dated 5 December 2019

The court office at the County Court at Warwick, The Justice Centre Leamington Spa, Newbold Terrace, Leamington Spa, Warwickshire, CV32 4EL. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 03001235577 (8.30-17:00) Fax: 01264 347971. 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.

N24 General Form of Judgment or Order

Produced by: G McLean
CJR065C

Appendix C will be shown below in plain text but it will also be easier to read in the correctly formatted



Appendix C.pdf

PDF -

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person

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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.

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