

Our Ref: [REDACTED]

Date: 31/07/2020

Delivery: [REDACTED] via Post

1847278/8396/000002/1-67



Dear Sir/Madam

Re: Excel Parking Services vs [REDACTED]
Claim Number: [REDACTED]

We write regarding the above Claim.

Please find enclosed a copy of the Claimant's witness statement and evidence that we wish to rely on for the forthcoming hearing. We can confirm that a copy has been served on the Court. [REDACTED]

If you have any queries, please do not hesitate to get in touch.

Yours faithfully

[REDACTED Signature]

[REDACTED]
Excel Parking Services Limited
Litigation Department

Tel: 0114 231 7851

All correspondence is to be addressed to: Excel Parking Services Limited, F.A.O Litigation Department,
2 Europa Court, Sheffield Business Park, Sheffield, S9 1XE.



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Registered Office: 2 Europa Court, Sheffield Business Park, Sheffield, S9 1XE
Registered in England 2878122 VAT No. 646 3361 35



IN THE COUNTY COURT AT WARWICK

CLAIM NO: [REDACTED]

BETWEEN

EXCEL PARKING SERVICES LIMITED

CLAIMANT

V

DEFENDANT

WITNESS STATEMENT

I, Y [REDACTED], of 2 Europa Court, Sheffield Business Park, Sheffield, S9 1XE, will say as follows:

Introduction

1. I am employed by Excel Parking Services Limited as a Paralegal and have been employed since January 2018. The facts and matters referred to in this witness statement are within my own knowledge, except where I have indicated otherwise. Where the facts are within my knowledge, they are true. Where they are not within my own knowledge, they are true to the best of my information and belief.
2. I make this witness statement in readiness for the hearing scheduled for 26th August 2020 in support of the Claimant's claim against the Defendant.
3. Within this statement I make reference to various documents. These are now produced to me in a paginated bundle marked YC1-2. The evidence tendered in the exhibits is taken from the Claimants' Company records.

Background

4. The Claimant is engaged in providing and managing private parking facilities on behalf of Clients throughout Great Britain.
5. At all material times, the Claimant has been an Accredited Member of Approved Trade Associations certified by the Driver and Vehicle Licensing Agency (DVLA), and was awarded Approved Operator Status through its full compliance with their Code of Practice for Private Enforcement on Private Land and Unregulated Car Parks. This Code of Practice gives recommendations in regards to the signage within the Car Parks and the Claimant follows these recommendations.
6. This action relates to a Permit development known as Fort Dunlop situated in Birmingham. A Permit system is in operation to regulate parking within the development. In addition, there are restricted areas of the car park that vehicles are not allowed to park in. It is this condition that is material to this case.
7. Whilst the vehicle was parked within the development the Defendant was confirmed as the registered keeper of the vehicle bearing the registration of [REDACTED]. The said vehicle was parked within the development in breach of the advertised Terms and Conditions to which the Defendant has failed to settle any outstanding liability.

Title and Interest

8. In order to address the difficulties within the development the lawful occupant, Savills (UK) Limited [Our Client], appointed the Claimant to manage within the development. Following their appointment, the Claimant erected warning notices throughout the development making clear that anyone parking within the development did so on in accordance with the Terms and Conditions of the sign.

LEONARD CO

- ## Breach of the Terms and Conditions

12. A Permit system is in operation within the development, which is managed by the Claimant. The Claimant manages the car park by employing Patrol Officers [PO] to monitor the Car Park. It is the role of the PO to issue PCN to any vehicles identified in breach of the advertised Terms and Conditions.

13. The Claimants' production identified within YC1 contains information as to the development. Within the productions enclosed is;

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

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

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

Whilst the vehicle was within the development the said vehicle was recorded parked in a restricted / prohibited area thus resulting in a PCN being issued.

Permit Scheme

16. The scheme implemented by our Client entailed warning signs warning all those parking upon the property that a parking protection scheme was in operation and the terms of vehicular entry. The signs are prominently displayed around the entrance points to the property; these informed all who entered with a vehicle, that the property was restricted to vehicles displaying appropriate permits only

in designated areas. Some areas, for safety reasons were excluded from use as parking places to all persons.

17. The rules and regulations implemented by our Client was that anyone parking within the development must display a valid permit so as to identify vehicles that were authorised to park on the property. The permit scheme was to allow enforcement of parking control by staff employed by the Claimant. Any vehicle which did not display a permit would be deemed to be parking without the right and the motorists would be put on notice as to the potential breach.
18. This system was chosen by our Client as it was low tech, relatively inexpensive and proven to work. This was to use signs to create a system where people are warned that they are entering upon private land where parking is controlled by the Claimant and that they offer to admit them only on the published terms. The drivers accept the offer by parking their vehicle.
19. The decision was taken by our Client that they would supply owners with the parking permits to display on their vehicles. This would remove from the Claimant any responsibility for the allocation of parking spaces but would allow enforcement of the will of the proprietors to defend their parking spaces as the Claimants patrol staff would know that the vehicle was authorised. Thus, vehicles would be authorised not persons.
20. This is essentially the only practical way to make such a system work. The Claimant submits that it is not unreasonable or unfair to request a motorist to display the permit inside the windscreen of their vehicle.

Liability of the Defendant to the Claimant

21. The Claimants' production of exhibit YC2 is evidence of the date, time and location that the Defendant parked their vehicle in contravention of the Terms and Conditions associated with parking within the development. The Claimant would ensure compliance of the Terms and Conditions and when noting that the

Defendant's vehicle was parked in breach of the Terms and Conditions the Claimant affixed a card to the Defendant's windscreen informing that they may have breached the Terms and Conditions of parking..

22. The card provided the Driver with a unique code that allowed the Driver the opportunity to access an online portal, www.myparkingcharge.co.uk, in order to view the alleged breach, the photographic evidence and either appeal or pay the charge. In the absence of such an appeal or payment within 5 days of the contravention, the Claimant will apply to the Driver and Vehicle Licensing Agency [DVLA] in order to obtain the Registered Keeper details. Once received, then the Claimant would issue a PCN usually within 14 days of the contravention. This allows the Keeper the opportunity to either appeal or pay the Charge Notice.
23. Should the motorists wish to raise an appeal there is a two-tier appeals procedure. The first tier is to appeal directly to the Claimant within 21 days via www.myparkingcharge.co.uk. Once an appeal is received, it is then assessed by an adjudicator within our appeals department, of whom then decides whether to accept or reject the motorists' appeal.
24. Should the adjudicator accept the contents of the appeal, the PCN will be cancelled with immediate effect. However, should the appeal be rejected then a Representation of Rejection [ROR] will be sent to the motorists, by the email address provided when submitting their appeal, rejecting the appeal and given their reasons as to why. Further, the motorists will then be provided with the opportunity to escalate the appeal further to the Independent Appeals Service [IAS]. This is known as the second tier stage.
25. The IAS is an independent body provided by our Trade Association, the International Parking Community [IPC], in order to provide an impartial adjudicator to deal with the appeal. A decision on the appeal is binding on the Claimant but not the motorist.

26. Any appeal made to the IAS must be made within 21 days and should the appeal be upheld in favour of the motorist then the Claimant is bound to cancel the PCN. If the appeal is found in favour of the Claimant then they are able to recover the amount of £100.00 should it still remain outstanding.
27. In the absence of any payment or correspondence from the Charge Notice, the Claimant will send a Final Reminder [FR] reiterating the contents of the Charge Notice and allowing the Defendant a final opportunity to pay the charge.
28. It is submitted that liability exists in each instance of parking in accordance with the notice issued to the Defendant on each instance. The Claimant submits that the Claimant's evidence ought to be preferred in this matter. The Claimant implemented a parking scheme and the Defendants' vehicle was identified in breach of the advertised Terms and Conditions of parking within the development.

Authorities

29. It is settled that individuals may enter into a contract with a sign and reference is made to **Thornton v Shoe Lane Parking 1971 2 QB 163**. The sign was the offer and the act of parking the acceptance of the offer on each occasion.
30. The Claimant is entitled to charge for each instance in which the Defendant was observed parked in a restricted / prohibited area at the development. In this case, the charge for breaching the Terms and Conditions is £100.00 discounted to £60.00 if paid within 14 days.
31. The Claimant wishes to rely on the precedent set under **Vine v Waltham Forest LBC [2002] 1 WLR 2383, 2390**, where Roch L.J. stated:

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

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

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

...5 1 (b)...if they are unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and a current address for service for the driver...”

33. In the Defendants’ failure to act upon each Notice addressed to them by putting forward their position or transferring liability, the Claimant is able to pursue the registered keeper of the vehicle, to which is the Defendant, as confirmed by the DVLA.

34. The signage is prominently displayed and visible on entry to the site. It is submitted that the Claimant has done what is reasonable to draw attention to the existence of the contractual terms and therefore has given sufficient notice of them.

35. The Supreme Court in **ParkingEye v Beavis [2015] UKSC 67** has established that in cases as this, a contract exists between the Motorist and the Operator,

whereby the Motorist is granted a contractual licence to park their car in the Car Park on the terms of the notice posted at the site, which are accepted by entering and leaving the vehicle at the site.

The Defendants' Defence

The Defendant has raised points within the Defence that are irrelevant to the claim.

In summary, the Defendant claims that the £160.00 claimed exceeds the maximum sum prescribed in the Protection of Freedoms Act 2012.

The notice to keeper does not comply with the provisions of Schedule 4 of the Protection of Freedoms Act 2012.


36. In response to the £160.00 claimed exceeding the maximum sum prescribed in the said enactment, the Claimant's submits that signs in and around the development state the following:

"If payment of the Charge is not made in accordance with the payment terms, Excel Parking Services Ltd (EPS) and/or its agents will be entitled to take debt recovery and legal proceedings to recover any outstanding charges, including interest and any additional costs incurred on an indemnity basis."

37. The Claimant submits it is clearly set out in the Terms & Conditions that additional costs may be incurred, if the Parking Charge Notice has not been paid. Therefore the Claimant is pursuing for the £60.00 Debt Recovery Charge it has occurred.
38. The Claimant refers to the IPC Code of Practice Part E Schedule 5- Parking Charges which states the following:

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

39. The Claimant submits that the Debt Recovery Charge included within the Claim does not exceed £60.00 and therefore is in accordance with the IPC Code of Practice.
40. The Protection of Freedoms Act 2012 is a piece of legislation introduced to provide Keeper Liability. This means that if an Operator does not know the name or address of the driver they can hold the keeper liable. To do this, an Operator will need to meet the requirements contained within POFA – such as timescales.
41. The Claimant submits that the Notice sent to the Defendant is compliant with Schedule 4 of the Protection of Freedoms Act 2012. The Defendant has had the opportunity to name the alleged Driver but failed to do so. As such, the Defendant rendered himself liable to the charges levied. The Defendant was naïve in thinking that we could not pursue the Keeper Liability.
42. In the Defendant’s failure to act upon each Notice addressed to him by putting forward his position or transferring liability, the Claimant is able to pursue the Registered Keeper of the vehicle, to which is the Defendant, as confirmed by the DVLA.
43. In this instance, Paragraph 9 relates to Notices which are issued through the post. For a notice to be relied upon under Paragraph 9 certain requirements need to be met these requirements are laid out within Paragraph 9 (2).
44. The first requirements is that the Notice must specify the vehicle, the relevant land on which it was parked and the period of parking to which the notices relates too. The Notice to Keeper clearly stated that the Defendant’s vehicle • (REDACTED), was parked at the relevant land (Fort Dunlop, Birmingham) including the date it relates too.

45. The second requirement is that the Notice to Keeper must inform the driver that they are required to pay a Parking Charge in respect of a specified period parking and the Parking Charge remains unpaid. The Notice to Keeper states the date of the contravention and states that the outstanding balance had not been paid.
46. The third requirement is that the Notice to Keeper must describe the Parking Charge due from the driver, the circumstances in which the requirements to pay arose and other facts that make them payable. The Notice to Keeper clearly sets out the breach in which the Parking Charge Notice occurred and states the Terms & Conditions of parking are clearly displayed in the signage in and around the development.
47. The fourth requirement is to specify the total amount of the Parking Charge that is unpaid as specified in the notice. The Parking Charge Notice sent to the Defendant specifies that the outstanding balance is £100.00 discounted to £60.00 if paid within 14 days.
48. The fifth requirement is that the Notice to Keeper must state that the Creditor does not know the name and address of the driver and must invite the keeper to either a) Pay the Parking Charge Notice or B) notify the creditor of the name and address of the driver and to pass the notice to the driver. The Parking Charge Notice was issued to the Defendant gave the Defendant the opportunity to pay the Parking Charge Notice, appeal the Parking Charge Notice or transfer the liability of the Parking Charge Notice.
49. The sixth requirement is that the Notice to Keeper must warn the keeper, that after a period of 28 days beginning with the day after that on which the Notice is given the amount of unpaid Parking Charges have not been paid in full and the creditor does not know both the name and address of the current driver then the creditor will have the right to recover from the keeper so much of that amount as remains unpaid. The Claimant submits that they have complied with this point.
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50. The seventh requirement is that the Notice to Keeper must inform the keeper if any discounted offered prompt payment and the arrangement for resolution of disputes or complaints that are available. The Claimant submits that they have complied with this point as the Parking Charge Notice issued gives the keeper the opportunity to pay the reduced charge of £60.00 in addition to the opportunity to appeal the charges and/or lodge a complaint about the Parking Charge Notice if they wish.
51. The eighth requirement is that the Notice to Keeper must identify the creditor and specify how and to whom payment or notification to the creditor may be made too. The Notice to Keeper clearly states how to make payment, the deadlines for payments to be made and who the payment is to be made to.
52. The final requirement is that the Notice to Keeper specifies the date in which the Notice is sent via post. On each occasion the Parking Charge Notice was issued it clearly stated in the top right corner the date the notice was sent.
53. Paragraph 9 (3) states that the Notice to Keeper must only relate to a single period of parking. Each Parking Charge Notice issued by the Claimant was for an individual parking event.
54. Paragraph 9 (4) states that the Notice must be given by either a) handing it to the keeper, or leaving it at a current address for service for the keeper, within in the relevant period or b) sending it by post to a current address for service for the keeper so that it is delivered to that address within the relevant period. The Parking Charge Notice was sent to the Defendant, it was sent by post to the address provided by the DVLA.
55. Paragraph 9 (5) states that the Notice must be sent within 14 days beginning with the day after the contravention. The Claimant can confirm that the Parking Charge Notice issued to the Defendant was sent within 14 days of the contravention date.

56. Paragraph 9 (6) states that a Notice sent by post is presumed, unless the contrary is proved, to have been delivered on the second working day after the day on which it is posted. The Claimant submits that their Notice was issued by post to the Defendant. It is therefore deemed served as per the above as to date no evidence has been received to prove otherwise.

57. In accordance with Paragraph 11 of Schedule 4 POFA 2012 the Claimant has made an application for the Registered Keeper details in relation to the period parking to which the unpaid Parking Charges relate. The Claimant made the application during the relevant period for the purposes of Schedule 4, Paragraph 4 of the Protection of Freedoms Act 2012 and posted the Notice to the Driver through the post to the registered keeper address. At all times the details of the keeper were provided from the Secretary of State in this cases the DVLA.

58. The Claimant submits that at all materials they have compiled with the requirements and conditions of the Protection of Freedoms Act 2012. Due to this, the Claimant has the right to pursue the Defendant as the Registered Keeper of the vehicle and not the driver of the vehicle in respect of these Parking Charge Notices.

59. The terms and conditions of private land state the following: **'Park only between the lines of a single marked parking bay. Strictly no parking outside of marked bays.'**

60. The Claimant's evidence within YC2 shows that the Defendant's vehicle was observed parked in a restricted/ prohibited area of the car park, as the vehicle was not parked within the lines of a single marked bay, thus breaching the terms and conditions of parking and incurring a parking charge accordingly.

Summary

61. The Claimant was entitled to erect signs with the development in accordance with their appointment by the freeholder. The signs were duly erected at the

development. The Defendant ought to have been made aware of the Terms and Conditions of parking. The Defendant could not have been in doubt, at worst, after the issue of the first PCN.

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

63. Accordingly the Claimant is entitled to a Judgment. It is a matter of agreement that the instance of parking in contravention of the Terms and Conditions of the signs. Liability is agreed to be £100.00 in accordance with the amount stated on the signs. The Claimant submits that they are therefore entitled to a Judgment for the amount claimed together with expenses of the cause.

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

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

STATEMENT OF TRUTH

מחלקת המחקר והפיתוח

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For and on behalf of Excel Parking Services Limited

IN THE COUNTY COURT AT WARWICK

CLAIM NO: [REDACTED]

BETWEEN

EXCEL PARKING SERVICES LIMITED

CLAIMANT

V

MR [REDACTED]

DEFENDANT

YC1 – SITE INFORMATION

Authority Agreement

I confirm that I am authorised on behalf of Savills (UK) Limited, acting as agent for and on behalf of the Owner.

To instruct **Excel Parking Services Limited** to enforce parking control and issue enforcement notices in keeping with the agreed terms and wording as set out upon the warning notices affixed on the land known as:-

Fort Dunlop, Fort Parkway, Birmingham

with B24 9FD I also confirm that **Excel Parking Services Limited** are hereby authorised to carry out the collection of all unpaid charges connected to the issue of parking charge notices (PCNs) whilst acting within the law.

Parking Charge Notices may be issued for all or any of the reasons below: _

Parking without a valid permit or authority

Parking out of a marked bay

Parking in a disabled bay without a valid disability badge on display

Parking on yellow lines/hatched areas

Parking and leaving site

Overstaying a defined time limit

Provide Car Park Management Services including the issuing of Parking Charge Notices (PCNs) for the following:

Drop Off/Pick Up Zone. "Maximum Stay 10 Minutes" with a 5 Minute Grace Period. E-Permits Exempt.

Residential Parking / Service Yard. "Valid E-Permit Holders Only"

Rear Access Road leading from East Drive. "No Stopping or Parking"

Parking Bays on Rear Access Road. "Valid Permit Holders Only"

Underground Parking Area. "Valid Permit Holders Only"/"Park Only within the Lines of your Allocated Bay"

Pay on Exit Car Park including Multi Level Decked Car Park. "Park Only within the Lines of a Single Marked Bay"

Disabled Bays in Pay on Exit Car Park "Valid Blue Badge Holders Only in Disabled Marked Bays" / "A Valid Blue badge must be Clearly Displayed with all details Clearly Visible"

Supply and Fit:

4 x ANPR Cameras

1 x Whitelist Touchscreen Terminal

280 Notice (Warning) Signs

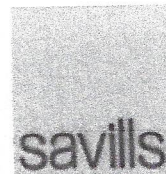
PCN Charges applicable to this property

Parking Charge Notices issued for this property are:

£100.00 reducing to £60.00 if full payment is received within 14 days of the Parking Charge Notice issue date

This contract incorporates the General Contract Terms referred to in Section A above.

Any other reason as agreed between **Excel Parking Services Limited** and Savills (UK) Ltd. This agreement can be terminated by EITHER PARTY by giving to the other not less than one months notice, this to be given in writing with rights for **Excel Parking Services Limited** to collect any unpaid charges issued up to termination date to be carried over until all outstanding charges are collected.



Authorisation is given subject to **Excel Parking Services Limited** acting at all times within the guidelines as set out by the DVLA and the clamping and removal of vehicles is only to be carried out by Government SIA registered and licensed operatives.

Excel Parking Services Limited will patrol the site on a daily basis and /or will attend the site at the request of the space owner or a management company official for enforcement purposes.

Installation and removal costs (Labour Only):

Equipment installation costs for this property are: [REDACTED] plus VAT
Equipment removal costs for this property are: £0.00

Service Charge

There will be a service charge of £0.00 per annum payable in 12 monthly instalments of £0.00 payable by **Excel Parking Services Limited** to Savills (UK) Ltd. After that the charge to be negotiated three yearly.

Framework Agreement Number: [REDACTED] 38 Type: Addition of a Property Specification: Car Park Control	Annual Cost £ + vat
Car Park Control in line with the specification below: Cost Centre Number: [REDACTED]	
TOTAL:	£0.00

We, the undersigned, agree to the Order of the aforementioned contract as described above. We also agree and reconfirm that all other terms and conditions contained in the Contract remain unchanged.

Signed for and on Behalf of **Excel Parking Services Limited;**

Signed for and on behalf of EPISO 3 Tyre Properties Ltd c/o Savills (UK) Limited acting as agent for and on behalf of each of its owners;

[REDACTED SIGNATURE]

[REDACTED SIGNATURE]

Invoices should clearly display the Order Number, failure to do so may result in a delay to payment.
Invoices must be addressed to the Owner c/o Savills (UK) Limited at the address stated on the order.

Payment Terms 45 Days following the end of the month in which the invoice was received by Savills

Any works carried out under or pursuant to this Order will be subject to and governed by the Terms and Conditions of the Framework Agreement referenced above

התאחדות הסטודנטים



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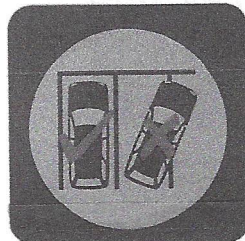
PRIVATE LAND

Parking Terms and Conditions

PARK ONLY WITHIN THE LINES OF A SINGLE MARKED BAY



By entering this private land you are entering into a contract with Excel Parking Services Ltd. Any Vehicle/Driver entering this restricted zone is subject to and agrees in full to the Terms and Conditions.



Park only within the lines of a single marked parking bay. Strictly no parking outside of marked bays.



Disabled Bays

Disabled Parking Only. A valid Blue Badge must be displayed on the dashboard or facia panel with all details clearly visible through the windscreen of the vehicle.



If you fail to comply with the contractual Terms and Conditions of this private land you agree to pay Excel Parking Services Ltd a Charge of £100 (per day or part day) within 28 days of the notice issue date.

If payment of the Charge is not made in accordance with the payment terms, Excel Parking Services Ltd (EPS) and/or its agents will be entitled to take debt recovery and legal proceedings to recover any outstanding charges, including interest and any additional costs incurred on an indemnity basis. EPS and/or its agents may request the vehicle's Registered Keeper details from the DVLA to trace the driver responsible in order to collect the Charge.



Site No.
355

EXCEL PARKING SERVICES LTD

MANAGE AND CONTROL THIS PRIVATE LAND

HELPLINE ☎ (0114) 261 7111

PO BOX 4777, SHEFFIELD. S9 9DJ

VAT No. 646336135 Registered in England & Wales: 02878122

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