

POPLA APPEAL DECISION

Decision

Refused

Assessor

Matthew Yorke

Assessor summary of operator case

The operator's case is that it issued a Parking Charge Notice (PCN) because the driver did not pay for sufficient parking.

Assessor summary of appellant case

The appellant's case is that the PCN does not comply with the Protection of Freedoms Act (PoFA) 2012.

The appellant says the appellant has raised section 9 (2) in relation to the timescales and that the operator does not know the name of the driver.

The appellant states the operator has not shown that the individual who it is pursuing is in fact the driver, who may have been potentially liable for the charge.

The appellant says there is no evidence of the period parked, as the Notice to Keeper simply states the entrance and exit times.

The appellant states there is no evidence of landowner authority.

The appellant says the operator is put to strict proof of full compliance with the British Parking Association (BPA) Code of Practice.

The appellant states the Automatic Number Plate Recognition (ANPR) system is neither reliable nor accurate.

The appellant says they require the operator to provide records with the location of the cameras, together with dates and times of when the equipment was checked, calibrated, maintained and synchronised.

The appellant states the signs fail to transparently warn drivers of what the ANPR data will be used for.

The appellant says the entrance signs are inadequately positioned and lit.

The appellant states the signs in the car park are not prominent, clear or legible from all parking spaces,

The appellant says the driver paid the correct tariff.

The appellant states the driver had problems with the machine not accepting the registration number, but contends it was eventually accepted despite no ticket being given.

The appellant says there is sufficient notice of the sum of the parking charge itself.

The appellant has responded to the operator's evidence and reiterated their initial grounds of appeal and advised that the operator's evidence shows there was an issue with the machine.

Assessor summary of reasons

I consider the appellant is the registered keeper, because in the appeal to the operator the appellant has stated, "The driver paid". I will therefore be assessing the appellant's liability as the driver of the vehicle. The operator has provided photographic evidence of the signage at the site that states, "PRIVATE CAR PARK: Parking Tariffs Apply: Tariff is calculated based on stay time. Please note your entry time to correctly calculate your tariff: Failure to comply will result in a Parking Charge of £100".

The site operates using an Automatic Number Plate Recognition (ANPR) system. The cameras captured the driver's vehicle registration, xxxxx, entering the site at 10:20, and exiting at 11:00. The total period of stay was 39 minutes.

The operator has provided a system generated print out, showing a list of all payments made between 10:12 and 11:55. This confirms that the driver did not make a payment, for their vehicle on the day in question. The operator's case is that it issued a PCN because the driver did not pay for sufficient parking. Based on the information provided, I am satisfied that the driver entered into a contract with the operator, and it appears that the driver did breach the terms and conditions.

I will now examine the appellant's grounds of appeal to determine if they make a material difference to the validity of the PCN. After reviewing the evidence provided by both parties, I am not satisfied that the appellant has been identified as the driver of the vehicle in question at the time of the relevant parking event. The operator is therefore pursuing the appellant as the Registered Keeper of the vehicle in this instance. For the operator to transfer liability for unpaid parking charges from the driver of the vehicle, to the registered keeper of the vehicle, the regulations laid out in the Protection of Freedoms Act (PoFA) 2012 must be adhered to. Having reviewed the evidence provided by the operator, I am satisfied that the Notice to Keeper is compliant with the requirements of PoFA 2012. Therefore, the operator is able to transfer the liability onto the keeper.

I note the appellant has commented on the PCN about the timescale. Upon reviewing the Notice to Keeper I can see that it states, "if the parking charge has not been paid in full after 29 days from the given date and we do not know both the name and current address for service of the driver, we have the right to recover any unpaid part of the parking charge from the registered keeper". Section 6 of PoFA 2012 states, "A notice sent by post is to be presumed, unless the contrary is proved, to have been delivered (and so "given" for the purposes of sub-paragraph (4)) on the second working day after the day on which it is posted; and for this purpose "working day" means any day other than a Saturday, Sunday or a public holiday in England and Wales." The timescales set out within PoFA 2012 are based on the given date. A registered keeper has 29 days from the given date to either pay or provide driver details in order to prevent liability from transferring to them. As the appellant will not be able to read the Notice to Keeper from the operator until the notice is given, the reference to within 29 days relates to the given date.

The appellant has made comments about section 9 (2) (e) which is on about the operator now knowing the driver and asking the registered keeper to pass it to them. Upon reviewing the Notice to Keeper, I can see that that it states, "If you were not driving the vehicle.... you should tell us the name and address for service of the driver and pass this notice to them". I note the appellant has responded to the operator's evidence about this. However, the 28 days on the first page is talking about the timescale to make a payment, which the operator has set at 28. The timescale for the driver's details being passed to it are on the second page. There is no requirement of where on the

PCN the information has to be, just that states the information. As stated, I am satisfied the required information is on the PCN. I am therefore satisfied, that this wording is compliant with PoFA 2012.

Operators can choose how to manage a car park whether this is by using ANPR cameras, or by using wardens. In ANPR camera-controlled car parks, operators need to allow a reasonable time for motorists to enter the car park, park and review the terms and conditions to decide whether they want to stay or go. Furthermore, there is a requirement for the operator to allow motorists time to leave the car park before issuing a PCN. The signs in this car park clearly state that the time is calculated based on the stay time and for motorists to note their entry time to calculate the correct tariff. Therefore, I am satisfied that the PCN should clearly state the entry and exit times, as there is no way of knowing when a vehicle has parked.

Section 7.1 of the BPA Code of Practice outlines to operators, "If you do not own the land on which you are carrying out parking management, you must have the written authorisation of the landowner (or their appointed agent). The written confirmation must be given before you can start operating on the land in question and give you the authority to carry out all the aspects of car park management for the site that you are responsible for. In particular, it must say that the landowner (or their appointed agent) requires you to keep to the Code of Practice and that you have the authority to pursue outstanding parking charges". As such, I must consider whether the operator has met the requirements of this section of the BPA Code of Practice. The operator has provided a copy of the contract it holds with the operator. Upon reviewing this I am satisfied that it complies with the BPA Code of Practice, and therefore the operator had the authority to issue PCNs on the day in question.

POPLA considers that the ANPR technology is generally accurate. If an operator provides ANPR images, then we will consider it reliable, unless POPLA is presented with sufficient evidence to prove otherwise. On this occasion, the appellant has not provided any evidence to suggest the ANPR cameras were not accurate. Furthermore, the operator is not required to provide evidence of checks made on the ANPR system or when they were last calibrated. Therefore, this has no effect on my decision.

The signs at the site state, "ANPR and / or vehicle photography by parking attendants is in operation" "If the motorist fails to comply with the terms and conditions, they accept that they are liable to pay a parking charge and vehicle keeper details may be requested from the DVLA". While I appreciate that this is in small text at the bottom of the sign. However, firstly there is no requirement for this to be in large text, and I am not satisfied that this affects the driver's ability to comply with the terms and conditions. Therefore, this has no effect on my decision.

The appellant has raised issues with the signage. However, the appellant has also admitted that the driver has attempted to make a payment. Therefore, I am satisfied the driver was able to read the signs within the car park, and the point the appellant has raised has no effect on my decision. I appreciate the appellant's comments relating to the machine not working. However, I do not consider it reasonable for a driver to remain at a site for 39 minutes, without confirming they have purchased a valid ticket.

When looking at appeals, POPLA considers whether a parking contract was formed and, if so, whether the motorist kept to the conditions of the contract. POPLA cannot allow an appeal if a contract was formed and the motorist did not keep to the parking conditions. If the driver was unable to comply with the terms and conditions of the site and make a payment, there would have been sufficient time to leave the site without entering into a contract with the operator, by remaining and parking at the site this is an acceptance of the terms and conditions.

The appellant has stated that a ticket was not issued from the machine. I am satisfied that this means the payment did not go through correctly and the driver could have left the site. I note the appellant has commented on the list of payments to show that a payment was not made between 10:20 and 11:15 which shows that the machine was not working. However, this has no effect on my decision, as I am satisfied that it was clear at the time the driver's payment did not go through as no ticket was issued.

The appellant has told us in their response that there is not sufficient notice of the PCN itself. This matter was considered at length by the Supreme Court in the case of *ParkingEye v Beavis* [2015] UKSC 67. In this case, the Court recognised that parking charges have all the characteristics of a penalty, but nevertheless were enforceable because there were legitimate interests in the charging of overstaying motorists. This "legitimate interests" approach moved away from a loss-based analysis of parking charges: "In our opinion, while the penalty rule is plainly engaged, the £85 charge is not a penalty. The reason is that although ParkingEye was not liable to suffer loss as a result of overstaying motorists, it had a legitimate interest in charging them which extended beyond the recovery of any loss... deterrence is not penal if there is a legitimate interest in influencing the conduct of the contracting party which is not satisfied by the mere right to recover damages for breach of contract." (paragraph 99) The Court did however make it clear that the parking charge must be proportionate: "None of this means that ParkingEye could charge overstayers whatever it liked. It could not charge a sum which would be out of all proportion to its interest or that of the landowner for whom it is providing the service." (paragraph 100) It concluded that a charge in the region of £85 was proportionate, and it attached importance to the fact that the charge was prominently displayed in large lettering on the signage.

While the specific facts of the case concerned a free-stay car park where the motorist had overstayed, I consider the principles that lie behind the decision remain the same. Taking these principles into account, I am not going to consider whether the loss is a genuine pre-estimate of loss or whether it reflects a correct loss to the landowner. Rather, I am going to consider the charge amount in the appellant's case, as well as the signage. On this, I conclude the charge is appropriately prominent and in the region of £85 and is therefore allowable. Ultimately, it is the motorist's responsibility to ensure that they comply with the terms and conditions of the car park.

POPLA's role is to assess if the operator has issued the PCN in accordance with the conditions of the contract. In this case, as the driver's vehicle has been on site without making a valid payment, the terms and conditions of the car park have not been met. I conclude that the operator has issued the PCN correctly. For the reasons set out above, I consider the charge to be valid. Therefore, I must refuse this appeal.