

FREQUENTLY ASKED QUESTIONS

- 1. I am the registered keeper, but I was not the driver. Can I be liable for the charge?**
The Criminal Case of Elliott v Loake 1983 Crim LR 36 held that the Registered Keeper of a vehicle may be presumed to have been the driver unless they sufficiently rebut this presumption. Unless you provide details of the driver before proceedings are issued, we will invite the Court to conclude it more likely than not that you were the driver.

Alternatively, you may be pursued as the Registered Keeper of the vehicle pursuant to Schedule 4 of the Protection of Freedoms Act 2012 Paragraph 4(1) which states *"The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle."*
- 2. I was the registered keeper, but I had sold the vehicle when the charge was issued. Can I be liable for the charge?**
Your details have been provided by the DVLA as you were on record as the registered keeper of the vehicle at the time the charge was issued. We will continue to pursue you unless you can prove;

 - a. that you had sold the vehicle; and
 - b. that you had informed the DVLA.
- 3. I have not received any correspondence from your client previously. Can I be liable for the charge?**
You have been written to on many occasions at the address provided by the DVLA as your last known address. You have provided no reasonable explanation as to why the correspondence wouldn't have been received. Notwithstanding this, this would not impact your liability for the charges as all such correspondence occurred after your liability for the charge arose.
- 4. There was no parking charge notice affixed to the windscreen of the vehicle. Can I be liable for the charge?**
The contract was formed at the time of parking; whether there was a notice on the windscreen does not impact your liability to pay the charge.
- 5. Can I set up a payment plan?**
We do not encourage repayment plans, however we may be able to offer you a stay period in which the case will be put on hold to allow you time to make payment. Please indicate on the response form if you would like this.
- 6. The charge was issued [X] number of months/years ago. Why am I being contacted now?**
The relevant legal limitation period is six years. This means our client has six years from the date the charge was issued to commence legal proceedings for recovery.
- 7. I have a permit, but it had slipped down/wasn't displayed/had expired. Can I be liable for the charge?**
You were aware of the terms when you obtained a permit (i.e. that it must be on display in the vehicle). It is an integral part of the parking scheme that a valid permit is displayed as otherwise the scheme would be unmanageable, and as such the charge has been issued correctly.
- 8. Another vehicle was parked in my parking bay, so I had to park elsewhere. Can I be liable for the charge?**
If your parking space was occupied by another vehicle you ought to have contacted the operator using details provided on their signs. Where a designated space is occupied by another vehicle this does not give you license to park elsewhere.
- 9. I only overstayed on a pay and display car park for [X] minutes. Can I be liable for the charge?**
It is your obligation pursuant to the contract (the Sign) to ensure that you pay the correct fee for the length of your parking. If you did not do so, the charge has been issued correctly.
- 10. I bought a pay and display ticket, but it was displayed upside down. Can I be liable for the charge?**
It is your obligation pursuant to the contract (the Sign) to ensure that your ticket is displayed. It is an integral part of the parking scheme that a valid ticket is displayed as otherwise the scheme would be unmanageable.
- 11. The pay and display machine wasn't working. Can I be liable for the charge?**
If it were the case that the machine was faulty, you could have contacted the operator on the number stated on the signs. You instead chose to park in a manner which incurred the parking charge. The requirements to pay the fee and display a ticket are not dependent on the machine being functional. If it is not possible to satisfy this requirement then there is no authority to park.

12. Can I dispute the charge because I think it is unfair?

Your opinion on the fairness of the parking charge cannot impact your liability to pay. In parking in the manner you did, you understood a charge would apply. The operators charges are issued in accordance with the guidelines set out by their trade association.

13. How can I be liable for the charge when I do not believe that I entered a contract?

In the case of *ParkingEye v Beavis* [2015] it was accepted as an established principle that a valid contract can be made by an offer in the form of the terms and conditions set out on the sign, and accepted by the driver's actions. By parking in the manner in you did, the charge was properly incurred.

14. Can you provide a copy of the contract?

The contract (i.e. the signs) are on display on the relevant land. You can visit the land to view the contract again. Copies will not be provided prior to our clients witness statements.

15. I did not see the signs. Can I be liable for the charge?

We are confident that the land our clients manage is adequately signposted. However, even in the unlikely event that you didn't see the signs, you ought to have done so. As Lord Justice Roch observed in the Court of Appeal case of *Vine v London Borough of Waltham Forrest* 2000;

"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 of cars in parking spaces or parking areas on their property"

16. The operator does not own the relevant land so had no authority to issue the charge. Can I be liable for the charge?

The contract is between you and operator, not the landowner. Both *VCS v HM Revenue & Customs* (2013) and *Parking Eye v Beavis* (CA 2015) made it clear that a contracting party need not show they have a right to do what they have promised in the performance of a contract, nor is (in the case of a parking operator) the agreement between Operator and Landowner of any relevance. Notwithstanding this, we are confident that all of our clients have the relevant authority, but in view of the above such authority will not be disclosed to you prior to our clients witness statement, if at all.

17. I think the charge is too much – can I dispute it on this basis?

The charge sought is industry standard and is set at a rate so as to suitably satisfy our clients legitimate interest. In the case of *ParkingEye v Beavis* 2015 it was held that an £85.00 charge was neither extravagant nor unconscionable. The Accredited Trade Associations of which parking operators must be a member in order to apply for DVLA data prescribe a maximum charge of £100. The charge is not, therefore, excessive.

18. I think the charge isn't a genuine pre-estimate of the operator's loss – can I dispute it on this basis?

ParkingEye v Beavis 2015 made it clear that the charges are not penal nor do they have to be reflective of the parking operator's loss. Furthermore, they are they are entitled to be at a level that provides a deterrent effect.

19. Can I take part in a form of alternative dispute resolution (ADR)?

All of our clients have an appeals procedure in place which is a form of ADR. This was offered to you when the charge was issued.

20. I didn't appeal within the timeframe give in the notice to driver, can I appeal now?

Our clients do not accept appeals outside of the requisite timeframes. If you wish to dispute the claim as this stage you should do so by filling out the response form.

21. Does the new Pre-Action Protocol for Debt Claims apply to a case where the debtor is a Company?

No. The Pre-Action Protocol for Debt Claims only applies when the debtor is an individual (including a sole trader).

22. What is the breakdown of the amount being recovered?

The initial amount of the charge was set out in the contract (i.e. on our clients' signs). For example "By parking or remaining at this site otherwise than in accordance with ... you agree to pay a parking charge of £100". Some operators offer a discounted rate if the charge is paid in full within 14 days of it being issued. For example "This is reduced to £60 if paid within 14 days". Upon referral to us each charge is increased by £60, which accounts for our clients' time and resource spent in facilitating the recovery of the charge(s). The amount is a pre-determined and nominal contribution to our clients' losses as a direct result of your non-payment. For our clients that are accredited by the International Parking Community ('the IPC') this £60 complies with Part E, Schedule 5 of the IPC's Code of Practice

23. Can I appeal the charge on the basis that I allege I ought to have had a permit, but didn't?

Our clients signs make it clear that a valid permit must be displayed and you failed to do so. If you allege you ought to have had a permit, this does not change the fact that you did not. If you did not want to incur a charge, you ought to have sought alternative parking arrangement until such time as you could properly display a permit.

24. Was the Notice to Keeper ('NTK') sent to me within the timeframe permitted by Schedule 4 of the Protection of Freedoms Act 2012 ('POFA')?

Pursuant to Paragraph 8(5) of POFA, if our client wishes to pursue the Registered Keeper of a vehicle for payment of a charge, it is obliged to send a NTK within 56 days from the day after the Notice to Driver ('NTD') was issued. If a NTD was affixed to the windscreen of your vehicle, the NTK should have been sent within 57 days from the day the charge was issued. If the NTD was sent to you via post, the NTK should have been sent to you within 57 days from the date of sending stating on the NTD. If our client has kept within these timeframes, you can be pursued as the Registered Keeper of the Vehicle.

25. Does the Disabled Blue Badge Scheme automatically apply on private land in the same way as Council-owned land?

No - the scheme does not automatically apply on private land, however our clients' often (but not already) provide disabled parking bays on the private land for those with blue badges on display to use. If this is the case our clients' signs will make it clear that the blue badge must be displayed, or otherwise a charge will be issued.

26. I admit that I did not display a disabled blue badge when parking in a disabled bay, but I do have one. Will my appeal be successful?

Your appeal will not succeed on this basis. Our client's signs made it clear that a disabled blue badge must be displayed. You were aware of the terms when you obtained a permit (i.e. that it must be on display in the vehicle). It is an integral part of the parking scheme that a valid permit is displayed as otherwise the scheme would be unmanageable, and as such the charge has been issued correctly.

27. Do I owe the debt?

You parked in a manner which incurred a charge pursuant to the signs and in our client's opinion you are therefore liable for the debt, however if you are unsure, you may wish to seek independent legal advice.

28. The vehicle was hired out at the time the charge was issued and I am the Hirer - can I transfer liability to the Hiree?

In the case of a hire vehicle, pursuant to the Protection of Freedoms Act 2012 Paragraph 13(2), liability could have been transferred if within 28 days you, the Hirer, provided our client with;

- a) a statement signed by or on behalf of the vehicle-hire firm to the effect that at the material time the vehicle was hired to a named person under a hire agreement;
- b) a copy of the hire agreement; and
- c) a copy of a statement of liability signed by the hirer under that hire agreement.

If you did not comply with the above, liability will remain with you, the hirer.

29. I have made an offer to settle the claim for less than the full amount – has my offer been accepted?

If your offer is accepted we will contact you to take payment. If we do not call to take payment before a claim is issued you can presume your offer has been rejected. In this regard, you should bear in mind that a claim may be issued without further notice.

