

IN THE

COUNTY COURT

CLAIM NO:

PARKING CONTROL MANAGEMENT (UK) LIMITED

(CLAIMANT)

-AND-

MR

(DEFENDANT)

WITNESS STATEMENT OF ANNIE CLARK

I, **Annie Clark**, OF The Courtyard, 1A Cranbourne Road, SL1 2XF WILL SAY AS FOLLOWS:

1. I am the Employee of the Claimant Company ('my Company') and I am duly authorised to make this statement on its behalf. The facts and matters set out in this statement are within my own knowledge unless otherwise stated and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
2. Exhibited to this Witness Statement at 'GSL1' are the following documents which my Company wishes to rely upon;
 - i) The Agreement authorising my Company to manage parking on the relevant land (as described therein and hereinafter referred to as 'the Relevant Land');
 - ii) The Sign ('the Contract');
 - iii) The Site Plan;
 - iv) Notices;
 - v) Photographs of the incident.
3. The Defendant is liable for a parking charge relating to the parking of a vehicle on the Relevant Land in a manner so as to incur the same pursuant to the Contract (i.e. the Sign). Set out in the Schedule below are details of the parking charge;

PCN Number	Date of Charge	Location	Description
		Development	Parked in restricted area

The Defence

Parked in Restricted Area

4. The signage on the Relevant Land is clear and unambiguous; parking is permitted for: vehicles fully displaying a valid green resident permit within the windscreen and parked wholly within the confines of a marked bay appropriate for the permit on display. As evident from the photographs exhibited, the Defendant did not park wholly within the confines of a marked bay and therefore in a restricted area. As such, the parking charge was issued correctly.

Particulars of Claim

5. The Claim is issued via the County Court Business Centre which is a procedure specifically provided for in the Civil Procedure Rules. This only allows the Claimant to insert brief details of the Claim. In any event, I can confirm that the Particulars of Claim contained sufficient information for the Defendant to be aware of what the claim relates to; namely:-
 - i) The date of the charge;
 - ii) The vehicle registration number;
 - iii) The Parking Charge Notice number;
 - iv) The amount outstanding;
 - v) That it relates to parking charges; and
 - vi) That it is debt.
6. Further, prior to proceedings being issued the Defendant was sent notices in accordance with the Act and a Letter Before Claim. As such, the Defendant would have been aware of the charge which is the subject of this claim.

The Defendant avers that they were not the driver

7. 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. To date the Registered Keeper has been invited on numerous occasions to identify the driver, yet has failed to do so. The Court is therefore invited to conclude it more likely than not that the Registered Keeper (i.e. the Defendant) was the driver.
8. In the alternative, if the Court is not able to infer that the Defendant was the driver then the Defendant is pursued as the Registered Keeper of the vehicle pursuant to Schedule 4 of the Protection of Freedoms Act 2012 ('the Act') Paragraph 4(1) which states:

"The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle."
9. Paragraph 2 of the Act states that; the "keeper" means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the registered keeper.
10. The relevant Notice was sent to the Defendant in accordance with the Act and the Registered Keeper (the Defendant) failed to nominate who was driving the vehicle prior to these proceedings which is required under paragraph 5(2) of the Act.

Amount of time taken to issue proceedings

11. My Company has issued proceedings within the relevant legal limitation period.

Unfair Charge

12. The Defendant's opinion on the fairness of the parking charge cannot impact their liability to pay. Quite simply, in parking in the manner they did, they understood a charge would apply. My Company's charges are issued in accordance with the guidelines set out by its trade association and are industry standard.
13. Paragraph 108 of the Judgment in the Supreme Court case of Parking Eye and Beavis (2015) said "the concept of a negotiated agreement to enter a car park is somewhat artificial but it is perfectly workable provided one bears in mind it is objective..." ... "In our view a reasonable motorist would have agreed to the term." I submit that the term in my Company's contract was no more, or no less unreasonable than that in the ParkingEye case.

Targeted charges

14. The Defendant alleges that my Company targets certain motorists. Without concession, this is unsubstantiated. My Company issues charges to all vehicles that it finds to be parked in a manner which incurs a charge. It would be of no benefit whatsoever to my Company to be selective about which motorists to charge. The fact that another vehicle may not have been issued with a charge would not impact on the validity of a charge issued to the defendant.

No contract

15. The Defendant suggests there was no contract. The rules of interpretation require simply that the parties knew of their obligations to one-another. The Defendant was offered to use the Land and thereafter either follow the rules and park for free or in breach of the rules and agree to pay £100. The rules here just so happen to be that to park, they need to be parked wholly within a marked bay.
16. My Company relies on the case of Parking Eye -v- Beavis [2015], in which 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 as prescribed therein.
17. In the case of Alder v Moore (1961) the Court concluded that one should consider the obligations imposed by the agreement, not the terminology used i.e. the agreement's substance, not form.
18. The principles in this case are the same as in the Parking Eye case, save that in the Parking Eye case, as the particular parking rules were different, the rule breached was that motorists must leave the site within 2 hours, whereas here, as set out above, the rule was to be parked in a marked bay. In that case 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 as prescribed therein.
19. The Court may conclude that the Land is managed as follows; the Claimant grants a contractual license to all; this license allows anyone permission to be on the Land. This is inferred by the nature of the land and the lack of any general prohibition of entry on the signage. In this regard, the Defendant (as were all the motorists) was offered to comply with the normal conditions (as

clear on the sign), or park otherwise than in accordance with the normal conditions and incur a £100 charge. The acceptance was at the point the Defendant decided to park, having read the sign, and his consideration was the promise to pay £100 for the privilege of parking outside the normal conditions. The Claimant's consideration is the provision of parking services.

20. I refer the Court to Judge Hegarty's comments in *ParkingEye v Somerfield* (2011) that "If this is the price payable for the privilege, it does not seem to me that it can be regarded as a penalty, even though it is substantial and obviously intended to discourage motorists from leaving their cars on the car park".

21. Alternatively; it could be concluded that, any person can use the Land provided they do not exceed the licensed activity as set out on the sign and in failing to comply with the license granted to them, they in turn agree to the Claimant's entirely distinct offer from that license which is to park otherwise than in accordance with the license for a charge of £100.

The Defendant's right to park

22. The evidence provided by the Defendant may suggest they are at liberty to park on the Relevant Land, however pursuant to the same evidence, this was always subject to amendment (i.e. parking scheme and conditions as per the clear signage on site)

Did not see the signs/the terms are unfair

23. My Company rejects any argument that the Defendant did not see the sign. The signage at the site is clearly visible and the information on the signage informs the driver of the parking conditions at the location. Signage is prominent throughout the parking area. Signage location, size, content and font has been audited by the International Parking Community. It is the driver's responsibility, to check for signage, and obtain any authorisation for parking before leaving their vehicle. The signage on site is the contractual document.

24. What is more, without concession, even in the unlikely event the Defendant didn't see the signs I submit they ought to have done so. As Lord Justice Roch observed in the Court of Appeal case of *Vine v London Borough of Waltham Forest* 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"

No authority to enforce charges

25. As the contract is between my Company and the Defendant, my Company does have the authority to enforce parking charges. However, 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. In any event, and without concession, the Agreement exhibited to this Witness Statement evidences my Company's authorisation to operate / manage the Relevant Land on behalf of the Landowner.

26. Lord Justice Lewison commented in *VCS v HM Revenue & Customs* [2013] EWCA Civ 186;

(1) *"The Upper Tribunal's reasoning on this part of the case was that since VCS did not have the right under its contract with the car park owner to grant a licence to park, it could not have contracted with the motorist to grant such a right. In my judgment there is a serious flaw in this reasoning.*

(2) *The flaw in the reasoning is that it confuses the making of a contract with the power to perform it. There is no legal impediment to my contracting to sell you Buckingham Palace. If (inevitably) I fail to honour my contract then I can be sued for damages. On the stock market it is commonplace for traders to sell short; in other words to sell shares that they do not own in the hope of buying them later at a lower price. In order to perform the contract the trader will have to acquire the required number of shares after the contract of sale is made. Moreover, in some cases a contracting party may not only be able to contract to confer rights over property that he does not own, but may also be able to perform the contract without acquiring any such right. Thus in *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406 a housing trust with no interest in land was held to have validly granted a tenancy of the land to a residential occupier. The tenancy would not have been binding on the landowner, but bound the two contracting parties in precisely the same way as it would have done if the grantor had had an interest in the land.*

(3) *Thus in my judgment the Upper Tribunal were wrong to reverse the decision of the FTT on the question whether VCS had the power to enter into a contract. Having the power to enter into a contract does not, of course, mean that VCS necessarily did enter into a contract with the motorist to permit parking"*

Charge is excessive/No loss suffered

27. The charge sought is industry standard and is set at a rate so as to suitably satisfy my Company's legitimate interest. In the case of *Parking Eye -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. My Company's charges are within this level. The charge is therefore not excessive.

28. The decision of the Supreme Court made it clear that the charges are not penal, nor do they have to be reflective of the parking operator's loss. Further, the charges can be set at a level that provides a deterrent effect.

Compliance with the Civil Procedure Rules

29. A Letter Before Claim was sent to the Defendant, which contained:-

- i) The date of the charge;
- ii) The Parking Charge Notice Number;
- iii) The location of the charge;
- iv) The amount outstanding;
- v) The Claimant; and
- vi) That the balance relates to unpaid parking charge.

30. Without concession, if there has been any minor deviation from the Civil Procedure Rules then it is (or would be) within the tolerances provided therein whereby the court is required to interpret any provision having regard to the 'overriding objective', namely to deal with matters in a just, proportionate and cost-effective way (rules .1.1 and 1.2)

Costs

31. My Company has included a claim for costs as is its right on issuing proceedings. The costs claimed are in accordance with CPR 27.14 and CPR 45.

Aggressive Tactics/Automated debt recovery

32. It is denied that my Company uses the small claims track as a form of aggressive automated debt collection. My Company is a member of the International Parking Community which is an accredited trade association within the parking sector, authorised to issue charges and seek recovery of unpaid charges.
33. Further Paragraph 5.2A of Practice Direction 7E specifically states the requirement in paragraph 7.3 of Practice Direction 16 for documents to be attached to the particulars of contract claims does not apply to claims started using an online claim form, unless the particulars of claim are served.

Grace Period/Time to read the Signage

34. A grace period is not a 'free parking period' where the restrictions do not apply. In fact, a grace period is intended for one to be able to comply with the terms. As such, any term that required a permit to be displayed has an implied grace period to obtain a permit. As per the IPC Code of Practice, a "reasonable" grace period should be applied for the driver to read and consider the terms. However, if there is no evidence of the driver reading the signs or making any attempt to do so, I would submit that the length of stay is irrelevant and the issue of grace period is not particularly pertinent.
35. In this case, the vehicle was parked in an area where parking is not permissible. Therefore, a grace period would only be appropriate for the driver to read the signage. The submissions of the Defendant make it clear that reading the signs was not the purpose of parking; they make it clear that the reason for parking was for dropping a passenger.
36. The BPA implement a 'blanket' policy that a ten minute grace period should be applied to all vehicles prior to enforcement. With the IPC, this is not the case and only a "reasonable" period should be applied. Of course, a motorist should be entitled to a period to read the signage and comply with the terms, but when it is clear that the driver is not doing so, the length of stay is irrelevant and should not be considered. The standard ten minute grace period imposed by the BPA allows for abuse of parking areas and essentially allows every vehicle an unfettered right to park for ten minutes.

The Current Debt

37. In view of the Defendant not paying the charge within the 28 days allowed they are in breach of the contract. Breach of contract entitles the innocent party to damages as of right in addition to the parking charge incurred.

38. My Company is an Accredited Operator of the International Parking Community (IPC) who prescribes a maximum charge of £100. The Code of Practice states:

"Parking charges must not exceed £100 unless agreed in advance with the IPC. Where there is a prospect of additional charges, reference should be made to this where appropriate on the signage and/ or other documentation.

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. In view of the Defendant not paying the charge within the initial 28 days allowed or the further 28 days allowed after the Notice to Keeper has been sent, the parking charge has become overdue and a reasonable sum of £60 has been added.

40. The Sign states the prescribed charge for failing to comply with the terms is £100, however it also specifies 'enforcement action may incur additional costs that will be added to the value of the parking charge and for which the driver will be responsible.' Further the Letter Before Claim also made it clear the debt may increase in respect of costs and interest if a claim had to be issued. Due to the Defendant not paying the charge the matter was passed to my Company's legal representatives, Gladstones Solicitors Ltd, who were instructed to commence legal proceedings. The potential additional costs mentioned above are now sought.

41. The debt has, as a result of this referral risen as my Company's staff have spent time and material in facilitating the recovery of this debt. This time could have been better spent on other elements of my Company's business. My Company believes the costs associated with such time spent were incurred naturally as a direct result of the Defendant's breach and as such asks that this element of the claim be awarded as a damage. The costs claimed are a pre-determined and nominal contribution to the actual losses. Alternatively, my Company does have a right to costs pursuant to the sign (i.e. the contract).

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: 

Print: Annie Clark

Dated: .

