

Appeal re POPLA Code: [XXX] v Civil Enforcement Ltd.

Vehicle Registration: [XXX]

POPLA ref: [XXX]

I, the registered keeper of this vehicle, received a letter dated [XXX] acting as a notice to the registered keeper. My appeal to the operator – Civil Enforcement Ltd – was submitted and acknowledged on [XXX] but subsequently rejected by a letter dated [XXX]. I contend that I, as the keeper, am not liable for the alleged parking charge and wish to appeal against it on the following grounds:

1. *The alleged contravention did not occur*
2. *NtK not delivered in time per PoFA 2012*
3. *Grace Period: BPA Code of Practice– non-compliance*
4. *There are no entrance signs for the regular entry the parking bays are not marked at the location*
5. *No Evidence of Landowner Authority - the operator is put to strict proof of full compliance with the BPA Code of Practice*
6. *Vehicle Images contained in PCN: BPA Code of Practice – non-compliance*
7. *No Planning Permission from [XXXXXX] District Council for Pole-Mounted ANPR Cameras and no Advertising Consent for signage*

1. The alleged contravention did not occur

Quite simply, the alleged contravention never occurred.

CEL got it wrong and the driver made the payment according to the notified terms. This is due to the fact that the terms stated on the sign boards in the [XXXXXX] Car Park clearly state that the charges are £0.50 for 2 hours. See attached photographic evidence of the boards stating the terms.



The driver of the vehicle made a payment of £0.50 through phoneandpay app (see below a snapshot of the receipt of payment).

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The duration stated on the PCN is from 12:50 to 14:31 which is 1 hour and 41 minutes clearly less than 2 hours allowed for the £0.50 payment made.

The only contract in-force between the driver and CEL is the list of terms stated on the blue sign board (picture shown above) in the parking which clearly states that £0.50 is valid for 2 hours.

Therefore, it is evident that the driver made the correct payment according to the notified terms and that CEL issued a PCN contravening the terms of the contract in the blue sign board.

2. NtK not delivered in time per PoFA 2012

The issue date on the PCN as shown in the highlighted yellow in the following snapshot of the PCN is 20-April-2024. This date is on the 11th day after the alleged contravention occurred.

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I received this NtK on Monday the 25th of April 2024 which is the 16th day after the day the alleged contravention occurred.

CEL have failed to comply with paragraph 9(4) and 9(5) of Schedule 4 of the PoFA 2012 in that CEL failed to deliver the Notice to Keeper within the “relevant period” of 14 days. The alleged infringement occurred on the 9th of April 2024 and no ‘Notice to Driver’ was issued at the time. The Notice to Keeper was issued on 20th of April 2024 which was delivered on 25th of April 2024 through post which is 16 days after the event and too late to ensure delivery within the statutory 14 days prescribed by PoFA paragraph 9(4) & 9 (5) indicates that:

“(4) The notice must be given by—

(a) handing it to the keeper, or leaving it at a current address for service for the keeper, within 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.

(5) The relevant period for the purposes of sub-paragraph (4) is the period of 14 days beginning with the day after that on which the specified period of parking ended.”

CEL PCN disregards the PoFA Schedule 4 paragraph 9(4) and 9(5) in that it delivered the PCN after 14 calendar days.

3. Grace Period: BPA Code of Practice – non-compliance

The BPA’s Code of Practice states (13) that there are two grace periods: one at the end (of a minimum of 10 minutes) and one at the start.

BPA’s Code of Practice (13.1) states that:

“The driver must have the chance to consider the Terms and Conditions before entering into the ‘parking contract’ with you. If, having had that opportunity, the driver decides not to park but chooses to leave the car park, you must provide them with a reasonable consideration period to leave, before the driver can be bound by your parking contract. The amount of time in these instances will vary dependant on site size and type but it must be a minimum of 5 minutes.”

BPA’s Code of Practice (13.3) states that:

“Where a parking location is one where a limited period of parking is permitted, or where drivers contract to park for a defined period and pay for that service in advance (Pay & Display), this would be considered as a parking event and a Grace Period of at least 10 minutes must be added to the end of a parking event before you issue a PCN.”

The BPA Code of Practice (13.1) and (13.3) clearly state that the Grace Period to enter and leave the car park should be a **minimum of 10 minutes**. Whilst (13.1) and (13.3) do not apply in this case (it should be made clear - a contract was never entered in to). The grace

periods have not been mentioned on the contract (blue sign board) between the driver and Civil Enforcement Limited and therefore it was not clear what the grace periods were applicable onsite.

Kelvin Reynolds, Head of Public Affairs and Policy at the British Parking Association (BPA):

“The BPA’s guidance specifically says that there must be sufficient time for the motorist to park their car, observe the signs, decide whether they want to comply with the operator’s conditions and either drive away or pay for a ticket.”

“No time limit is specified. This is because it might take one person five minutes, but another person 10 minutes depending on various factors, not limited to disability.”

It is therefore argued that the duration of visit in question (which Civil Enforcement Ltd claim was [xxx]) is not an unreasonable grace period, given:

- a) The lack of sufficient entrance signs and specific parking-terms signage throughout the car park in question (non- compliance with BPA Code of Practice Section C 19.2 and 19.3) and the impact of that upon time taken to locate signage prior to entering into a contract.
- b) There were no marked parking bays available at the time through-out the venue which causes confusion to the applicability of the Civil Enforcement Ltd's contract that was never entered into in the first place.

Factors discussed above serve merely to increase the time taken to:

- Locate a sign indicating entrance
- Locate a sign containing the terms and conditions
- Read the **full** terms and conditions in an overcast cloudy and rainy weather
- Decipher the confusing information being presented
- No information presented about grace periods
- The phone and pay app not working in time to make payment
- My daughter getting hurt in the park after falling down and causing further delays

Therefore, I would like to argue that the duration of the visit in question was not an unreasonable given there were no grace periods stated and various other factors as stated above. Additionally, taking into consideration that the payment was made for the full parking duration according to the contract provided on blue signage.

4. There are no entrance signs for the regular entry and there were no clearly marked parking bays at the location

BPA's Code of Practice (19.2) states:

*“Entrance signs play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, **you must also have a standard form of entrance sign at the entrance to the parking area.** Entrance signs must tell drivers that the car park is managed and that there are terms and conditions they must be aware of.”*

BPA's Code of Practice (19.3) states:

*“Signs must be conspicuous and legible, and written in intelligible language, so that they are **easy to see, read and understand.**”*

BPA's Code of Practice (Appendix B) states:

*“If you think there are other circumstances where it is impractical or undesirable to have an entrance sign, **you must tell us in advance and get our approval** to amend the sign or not have one.”*

*“**Signs should be readable and understandable at all times**, including during the hours of darkness or at dusk if and when parking enforcement activity takes place at those times. This can be achieved in a variety of ways such as by direct lighting or by using the lighting for the parking area. If the sign itself is not directly or indirectly lit, we suggest that it should be made of a retro-reflective material”*

Figure 1 below shows a map of the [XXXXXX] Lane/Entrance to the [XXXXXX] Parking. Point A is the entrance and exit of the road leading to the [XXXXXX] car park. Point B is the location of the entrance to the car park and Point C is the location of the ANPR camera.

Image REDACTED.

Figure1: Map of the [XXXXXX] Car Park

Figure 2 below shows the view at the entrance/exit A, around the similar time but in better

conditions compared to those on the day alleged contravention occurred.



Figure 2: entry/exit of the road leading to [XXXXXX] car park

Figure 3 below shows the view at the entrance/exit to the car park at point B around the similar time but in better conditions compared to those on the day alleged contravention occurred.



Figure 3: entry/exit to the [XXXXXX] car park

It is straightforward to conclude from Figure 2 & 3 that:

- There is no ground boundary marking indicating the start and end of the venue
- There is no clear sign to the entrance road (Figure 2) to the car park stating that the parking beyond that point is ANPR controlled/pay and display/Phoneandpay car park.
- There is no clear sign indicating the entrance/exit of the venue
- In Figure 3 on a bright but overcast day (when the picture was taken), it is not possible to read the sign from the entrance to the car park specially whilst driving the vehicle and there is no safe stopping/give way sign, let alone on a dark rainy day. The sign is clearly not legible.

All items above indicate the contravention of BPA's Code of Practice (19.2) which states: *“you must also have a standard form of entrance sign at the entrance to the parking area.”* and (19.3): *“Signs must be conspicuous and legible, and written in intelligible language, so that they are **easy to see, read and understand.**”*

Figure 4 was taken around the mid of the venue. There is no marking on the road suggesting the boundary of the venue, nor there is any bay marking. As a result, it is impossible for anyone to conclude that a controlled area is entered, especially in the absence of clear signage as explained already.



Figure 4: mid of the venue

In addition to the lack of entry signs, Civil Enforcement Ltd's main car park entrance sign is inadequate and illegible in a number of ways, not least because of the sheer amount of text that must be read. It clearly violates BPA's Code of Practice (19.3) and appendix B.

The image in Figure 5 shows a close up of the entrance main car park sign. It is unremarkable, small, not lit, not immediately obvious as parking terms and the wording is mostly illegible, being crowded and cluttered. It is indisputable that placing letters too close together in order to fit more information into a smaller space can drastically reduce the legibility of a sign, especially one which must be read **before** the action of parking and leaving the car. Notice the sign is high up in the pole, which poses additional difficulty for anyone to read specially while driving in.



Figure 5: Entrance sign

It cannot be reasonably assumed (particularly given this case took place on a rainy and overcast dark day in a car park without any signage being adequately lit) that a driver drove past and could read an illegible sign, observed one upon entrance to the car park.

It is apparent that the initial entrance signs in the car park are poorly located (too high, on the passenger side of the vehicle, not visible from drivers side), invisible in dark weather (not lit, too high to be lit by virtue of reflecting any vehicle headlights, particularly from a moving vehicle), and the terms and conditions illegible at the entrance.

5. No Evidence of Landowner Authority - the operator is put to strict proof of full compliance with the BPA Code of Practice

As this operator does not have proprietary interest in the land, I require that they produce an un-redacted copy of the contract with the landowner. The contract and any 'site agreement' or 'User Manual' setting out details including exemptions - such as any 'genuine customer' or 'genuine resident' exemptions or any site occupier's 'right of veto' charge cancellation rights – is key evidence to define what this operator is authorised to do and any circumstances where the landowner/firms on site in fact have a right to cancellation of a charge. It cannot be assumed, just because an agent is contracted to merely put some signs up and issue Parking Charge Notices, that the agent is also authorised to make contracts with all or any category of visiting drivers and/or to enforce

the charge in court in their own name (legal action regarding land use disputes generally being a matter for a landowner only).

Witness statements are not sound evidence of the above, often being pre-signed, generic documents not even identifying the case in hand or even the site rules. A witness statement might in some cases be accepted by POPLA but in this case I suggest it is unlikely to sufficiently evidence the definition of the services provided by each party to the agreement.

Nor would it define vital information such as charging days/times, any exemption clauses, grace periods (which I believe may be longer than the bare minimum times set out in the BPA Code of Practice) and basic information such as the land boundary and bays where enforcement applies/does not apply. Not forgetting evidence of the various restrictions which the landowner has authorised can give rise to a charge and of course, how much the landowner authorises this agent to charge (which cannot be assumed to be the sum in small print on a sign because template private parking terms and sums have been known not to match the actual landowner agreement).

Section 7 of the BPA Code of Practice defines the mandatory requirements and I put this operator to strict proof of full compliance:

“ 7.2 If the operator wishes to take legal action on any outstanding parking charges, they must ensure that they have the written authority of the landowner (or their appointed agent) prior to legal action being taken.

7.3 The written authorisation must also set out:

- a) the definition of the land on which you may operate, so that the boundaries of the land can be clearly defined*
- b) any conditions or restrictions on parking control and enforcement operations, including any restrictions on hours of operation*
- c) any conditions or restrictions on the types of vehicles that may, or may not, be subject to parking control and enforcement*
- d) who has the responsibility for putting up and maintaining signs*
- e) the definition of the services provided by each party to the agreement.*

6. Vehicle Images contained in PCN: BPA Code of Practice – non-compliance

The BPA Code of Practice point 21.5a stipulates that:

*"When issuing a parking charge notice you may use photographs as evidence that a vehicle was parked in an unauthorized way. The photographs must refer to and confirm the incident which you claim was unauthorized. A date and time stamp should be included **on the photograph**. All photographs used for evidence should be clear and legible and must not be retouched or digitally altered."*

The NtK in question contains two images (shown Figure 6 below) of the vehicle allegedly entering and leaving the car park. The time and date stamp and license plate have been provided in a separate section and are not part of the photographs. The PCN provided by Civil Enforcement clearly contravenes the BPA Code of Practice point 21.5a. As a result, these images cannot be used as the confirmation of the incident and Civil Enforcement Ltd claim was unauthorized.

Image REDACTED.

Figure 6: Vehicle Photograph

I require Civil Enforcement Ltd to produce evidence of the original images containing the required date and time stamp as part of the photographs (recorded by the ANPR camera) showing the car is actually parked in the location stated. It is also not possible to confirm that the time stamps provided by Civil Enforcement Ltd. in the PCN are the actual time stamps (taken by ANPR) the car was parked at the alleged car park location.

Additionally, it is also not possible to confirm without appropriate certification of the ANPR camera and ANPR systems that the ANPR camera and systems are accurately taking and reporting the time stamps that are used by Civil Enforcement Ltd. to arrive at the conclusion that this contravention occurred.

Based on the facts above, I require Civil Enforcement Ltd to produce strong evidence, **audited by qualified third party and appropriate certifications and vehicle images with the timestamps**, to prove that its process is not biased to suit its financial objective.

7. No Planning Permission from [XXXXXX] District Council for Pole-Mounted ANPR Cameras and no Advertising Consent for signage

A search in [XXXXXX] District Council planning database does not show any planning permission for the pole-mounted ANPR cameras for the [XXXXXX], [XXXXXX] Lane, nor does it show any advertising consent for signage exceeding 0.3m².

UK government guidance on advertisement requires:

“If a proposed advertisement does not fall into one of the Classes in Schedule 1 or Schedule 3 to the Regulations, consent must be applied for and obtained from the local planning authority (referred to as express consent in the Regulations). Express consent is also required to display an advertisement that does not comply with the specific conditions and limitations on the class that the advertisement would otherwise have consent under.

[It is criminal offence to display an advertisement without consent.](#)”

This clearly proves Civil Enforcement Ltd is/has been seeking to enforce Terms & Conditions displayed on **illegally** erected signage, using equipment (pole-mounted ANPR cameras) for which no planning application had been made.

I request Civil Enforcement Ltd provides evidence that the correct Planning Applications were submitted (and approved) in relation to the pole-mounted ANPR cameras and that Advertising Consent was gained for signage exceeding 0.3 m², prior to the date to which this appeal relates (9th April 2024).