APPEAL RE: PARKINGEYE PARKING CHARGE NOTICE xxxxxx/xxxxxx, TOWN QUAY SOUTHAMPTON
DATE OF EVENT: 29/08/2024, ISSUE DATE 05/09/2024
VEHICLE REGISTRATION: xxxxxxxx
POPLA Ref: 6063024653

As the Registered Keeper of the vehicle XXXXXX I contend that I am not liable for the alleged parking charge and wish to appeal against it on the following grounds and would ask that they are all considered.

1. Parking at Southampton Town Quay, land owned by ABP where Associated British Ports Southampton Harbour Byelaws 2003 apply, is subject to statutory control and deemed by Paragraph 3(1) of Schedule 4 of POFA 2012 ‘Non-relevant land’.

2. The operator has not shown that the individual who it is pursuing is in fact the driver who was liable for the charge.

3. Neither the parking company or their client has proved that they have planning consent to charge motorists for any alleged contravention.

4. Failure to comply with the data protection 'ICO Code of Practice' applicable to ANPR (no information about SAR rights, no privacy statement, no evaluation to justify that 24/7 ANPR enforcement at this site is justified, fair and proportionate). A serious BPA CoP breach.

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

6. The signs in this car park are not prominent, clear or legible from all parking spaces and there is insufficient notice of the sum of the parking charge itself.

7. The ANPR System is Neither Reliable nor Accurate.

8. The operator makes much of Beavis case. They are well aware that the circumstances of the Beavis case were entirely different, essentially that case was the abuse of a free time limited public car park where signage could be used to create a contract.

1. Parking at Southampton Town Quay, land owned by ABP where Associated British Ports Southampton Harbour Byelaws (2003) apply, is subject to statutory control and deemed by Paragraph 3 (1) of Schedule 4 of POFA 2012 ‘Non-relevant land’

Southampton Town Quay fails to meet the definition of 'relevant land' under the Protection of Freedoms Act 2012 (POFA) that might otherwise have enabled you to pursue this matter with myself (the registered keeper). ParkingEye Ltd have issued a defective Notice citing an Act which does not apply at this particular site, to attempt to claim an unenforceable charge from the keeper (myself).

Indeed, and as ParkingEye Ltd are already fully aware, no keeper liability can apply at all, due to the ASSOCIATED BRITISH PORTS SOUTHAMPTON HARBOUR BYELAWS 2003 which can be found at:

http://www.southamptonvts.co.uk/admin/content/files/PDF_Downloads/Soton%20Byelaws.pdf

Taking precedence and rendering this land outwith POFA and outwith 'registered keeper liability'. I refer you to Part 1, section 3 which states that Southampton Town Quay is an area to which the byelaws apply.

POFA 2012 is quite clear on this:

“3(1) In this Schedule “relevant land” means any land (including land above or below ground level) other than:

(a) a highway maintainable at the public expense (within the meaning of section 329(1) of the Highways Act 1980);

(b) a parking place which is provided or controlled by a traffic authority;

(c) any land (not falling within paragraph (a) or (b)) on which the parking of a vehicle is subject to statutory control.

(2) In sub-paragraph (1)(b)—
“parking place” has the meaning given by section 32(4)(b) of the Road Traffic Regulation Act 1984;
“traffic authority” means each of the following—
(a) the Secretary of State;
(b) the Welsh Ministers;
(c) Transport for London;
(d) the Common Council of the City of London;
(e) the council of a county, county borough, London borough or district;
(f) a parish or community council;
(g) the Council of the Isles of Scilly.

(3) For the purposes of sub-paragraph (1)(c) the parking of a vehicle on land is “subject to statutory control” if any statutory provision imposes a liability (whether criminal or civil, and whether in the form of a fee or charge or a penalty of any kind) in respect of the parking on that land of vehicles generally or of vehicles of a description that includes the vehicle in question.

(4) In sub-paragraph (3) “statutory provision” means any provision (apart from this Schedule) contained in—

(a) any Act (including a local or private Act), whenever passed; or

(b) any subordinate legislation, whenever made, and for this purpose “subordinate legislation” means an Order in Council or any order, regulations, byelaws or other legislative instrument.”

Although ParkingEye’s PCN makes no mention of Southampton Town Quay being subject to statutory control, parking at this site is subject to Associated British Ports Southampton Harbour Byelaws 2003 (or the ABP Byelaws). This location is therefore not relevant land for the purposes of POFA 2012.

I include with my submission a copy of the ABP Byelaws (please find attached), drawing POPLA’s attention to Part IV (Goods and Road and Rail Traffic), in particular the terms of Paragraphs 37 and 39 which specifically refer to leaving vehicles unattended (i.e. parking) thereby confirming that parking on the Port of Southampton’s land is subject to statutory control.

I also draw POPLA's attention to the map on Page 20 of the ABP Byelaws which confirms that Southampton Town Quay lies within the boundaries of the Port of Southampton for the purpose of the ABP Byelaws.

POPLA has previously determined that Southampton Town Quay is not relevant land; I refer you to POPLA case ref. 6060755093 and case ref. 6062356150.

Even if this parking operator states they are not issuing this charge under byelaws (but instead under contract law) POPLA Assessor please note that your Lead Adjudicator confirmed in December 2016 that all Assessors were to receive refresher training after a series of errors where Assessors mistakenly thought that 'not using byelaws' on Port/Harbour land meant they could assume this meant the land wasn't in fact covered by those byelaws.

This is always an error by POPLA and frankly, it needs to stop. POPLA Assessor, please note and with all due respect please check with the Lead Adjudicator before making this decision, if you mistakenly believe that Port land covered by byelaws is suddenly 'relevant land' and open to keeper liability under the POFA, just because a parking operator uses contract law and doesn't mention those byelaws.

Non-relevant Port & Harbour land remains non-relevant land, regardless. This means keeper liability is not possible under the POFA under any circumstances, no matter what the operator may say in their evidence, regardless of PCN or signage wording.

Therefore, ParkingEye has no lawful right to rely upon POFA 2012 to claim unpaid parking charges from the vehicle’s keeper and whilst I have informed the driver of this case, I am under no obligation to disclose the information as to who the driver was at the time.

2. The operator has not shown that the individual who it is pursuing is in fact the driver who was liable for the charge.

In cases with a keeper appellant, yet no POFA 'keeper liability' to rely upon, POPLA must first consider whether they are confident that the Assessor knows who the driver is, based

on the evidence received. No presumption can be made about liability whatsoever. A vehicle can be driven by any person (with the consent of the owner) as long as the driver is insured. There is no dispute that the driver was entitled to drive the car and I can confirm that they were, but I am exercising my right not to name that person.

Where a charge is aimed only at a driver then, of course, no other party can be told to pay. I am the appellant throughout (as I am entitled to be), and as there has been no admission regarding who was driving, and no evidence has been produced, it has been held by POPLA on numerous occasions, that a parking charge cannot be enforced against a keeper without a valid NTK.

As the keeper of the vehicle, it is my right to choose not to name the driver, yet still not be lawfully held liable if an operator is not using or complying with Schedule 4. This applies regardless of when the first appeal was made because the fact remains I am only the keeper and ONLY Schedule 4 of the POFA (or evidence of who was driving) can cause a keeper appellant to be deemed to be the liable party.

The burden of proof rests with ParkingEye, because they cannot use the POFA in this case, to show that (as an individual) I have personally not complied with terms in place on the land and show that I am personally liable for their parking charge. They cannot.

Furthermore, the vital matter of full compliance with the POFA 2012 was confirmed by parking law expert barrister, Henry Greenslade, the previous POPLA Lead Adjudicator, in 2015:

Understanding keeper liability

“There appears to be continuing misunderstanding about Schedule 4. Provided certain conditions are strictly complied with, it provides for recovery of unpaid parking charges from the keeper of the vehicle.

There is no ‘reasonable presumption’ in law that the registered keeper of a vehicle is the driver. Operators should never suggest anything of the sort. Further, a failure by the recipient of a notice issued under Schedule 4 to name the driver, does not of itself mean that the recipient has accepted that they were the driver at the material time. Unlike, for example, a Notice of Intended Prosecution where details of the driver of a vehicle must be supplied when requested by the police, pursuant to Section 172 of the Road Traffic Act 1988, a keeper sent a Schedule 4 notice has no legal obligation to name the driver. [...] If {POFA 2012 Schedule 4} is not complied with then keeper liability does not generally pass."

Therefore, no lawful right exists to pursue unpaid parking charges from myself as keeper of the vehicle, where an operator is NOT capable of transferring the liability for the charge using the Protection of Freedoms Act 2012.

I also note case ref.6061796103 against ParkingEye in September 2016, where POPLA Assessor Carly Law stated:

"I note the operator advises that it is not attempting to transfer the liability for the charge using the Protection of Freedoms Act 2012 and so in mind, the operator continues to hold the driver responsible. As such, I must first consider whether I am confident that I know who the driver is, based on the evidence received. After considering the evidence, I am unable to confirm that the appellant is in fact the driver. As such, I must allow the appeal on the basis that the operator has failed to demonstrate that the appellant is the driver and therefore liable for the charge. As I am allowing the appeal on this basis, I do not need to consider the other grounds of appeal raised by the appellant. Accordingly, I must allow this appeal."

This is relevant due to the fact that, although in the case she refers to ParkingEye did not use POFA on that occasion, in this case on the other hand ParkingEye are unable to use POFA to transfer the charge to myself as the keeper of the vehicle.

3. Neither the parking company or their client has proved that they have planning consent to charge motorists for any alleged contravention.

Planning consent is required for car parks and have conditions that grant permission as the car park provides a service to the community. To bring in time limits, charges and ANPR cameras, planning consent is required for this variation. I have no evidence that planning consent was obtained for this change and I put the parking company to strict proof to provide evidence that there is planning consent to cover the current parking conditions and chargeable regime in this car park.

Council for Pole-Mounted ANPR Cameras and no Advertising Consent for signage
A search in ABP's planning database does not show any planning permission for the pole-mounted ANPR cameras for the Town Quay, Southampton, nor does it show any advertising consent for signage exceeding 0.3 m2. 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 a criminal offence to display an advertisement without consent."

This clearly proves ParkingEye 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 ParkingEye 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 (12 May 2018).

"I note that the parking company has not been engaged by the landowner, but by a lessee or tenant of the land. I require proof from the actual landowner that their contract with the

lessee/tenant gives authority for any form of parking restrictions or charges to be brought in. There are VAT implications when a car park is a revenue generating business that may impact upon a landowner and that is why it needs to be established that they need to have granted permission in their lease.".

4. Failure to comply with the data protection 'ICO Code of Practice' applicable to ANPR (no information about SAR rights, no privacy statement, no evaluation to justify that 24/7 ANPR enforcement at this site is justified, fair and proportionate). A serious BPA CoP breach.

BPA's Code of Practice (21.4) states that:

"It is also a condition of the Code that, if you receive and process vehicle or registered keeper data, you must:

• be registered with the Information Commissioner
• keep to the Data Protection Act
• follow the DVLA requirements concerning the data
• follow the guidelines from the Information Commissioner's Office on the use of CCTV and ANPR cameras, and on keeping and sharing personal data such as vehicle registration marks".

The guidelines from the Information Commissioner's Office that the BPA's Code of Practice (21.4) refers to is the CCTV Code of Practice found at:

https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/cctv-and-video-surveillance/guidance-on-video-surveillance-including-cctv/

The ICO's CCTV Code of Practice makes the following assertions:

"This code also covers the use of camera related surveillance equipment including: Automatic Number Plate Recognition (ANPR);"

"the private sector is required to follow this code to meet its legal obligations under the DPA. Any organization using cameras to process personal data should follow the recommendations of this code."

"If you are already using a surveillance system, you should regularly evaluate whether it is necessary and proportionate to continue using it."

"You should also take into account the nature of the problem you are seeking to address; whether a surveillance system would be a justified and an effective solution, whether better solutions exist, what effect its use may have on individuals"

"You should consider these matters objectively as part of an assessment of the scheme's impact on people's privacy. The best way to do this is to conduct a privacy impact

assessment. The ICO has produced a ‘Conducting privacy impact assessments code of practice’ that explains how to carry out a proper assessment.”

“If you are using or intend to use an ANPR system, it is important that you undertake a privacy impact assessment to justify its use and show that its introduction is proportionate and necessary.”

“Example: A car park operator is looking at whether to use ANPR to enforce parking restrictions. A privacy impact assessment is undertaken which identifies how ANPR will address the problem, the privacy intrusions and the ways to minimize these intrusions, such as information being automatically deleted when a car that has not contravened the restrictions leaves a car park.”

“Note:
... in conducting a privacy impact assessment and an evaluation of proportionality and necessity, you will be looking at concepts that would also impact upon fairness under the first data protection principle. Private sector organisations should therefore also consider these issues.”

“A privacy impact assessment should look at the pressing need that the surveillance system is intended to address and whether its proposed use has a lawful basis and is justified, necessary and proportionate.”

The quotations above taken directly from the ICO’s CCTV Code of Practice state that if ParkingEye wish to use ANPR cameras then they must undertake a privacy impact assessment to justify its use and show that its introduction is proportionate and necessary. It also states that ParkingEye must regularly evaluate whether it is necessary and proportionate to continue using it.

It therefore follows that I require ParkingEye to provide proof of regular privacy impact assessments in order to comply with the ICO’s CCTV Code of Practice and BPA’s Code of Practice. I also require the outcome of said privacy impact assessments to show that its use has “a lawful basis and is justified, necessary and proportionate”.

The ICO’s CCTV Code of Practice goes on to state:

“5.3 Staying in Control

Once you have followed the guidance in this code and set up the surveillance system, you need to ensure that it continues to comply with the DPA and the code’s requirements in practice. You should:

tell people how they can make a subject access request, who it should be sent to and what information needs to be supplied with their request;”

“7.6 Privacy Notices

It is clear that these and similar devices present more difficult challenges in relation to providing individuals with fair processing information, which is a requirement under the first principle of the DPA. For example, it will be difficult to ensure that an individual is fully informed of this information if the surveillance system is airborne, on a person or, in the case of ANPR, not visible at ground level or more prevalent then it may first appear.

One of the main rights that a privacy notice helps deliver is an individual's right of subject access."

ParkingEye has not stated on their signage a Privacy Notice explaining the keepers right to a Subject Access Request (SAR). In fact, ParkingEye has not stated a Privacy Notice or any wording even suggesting the keepers right to a SAR on any paperwork, NtK, reminder letter or rejection letter despite there being a Data Protection heading on the back of the NtK. This is a mandatory requirement of the ICO's CCTV Code of Practice (5.3 and 7.6) which in turn is mandatory within the BPA's Code of Practice and a serious omission by any data processor using ANPR, such that it makes the use of this registered keeper's data unlawful.

As such, given the omissions and breaches of the ICO's CCTV Code of Practice, and in turn the BPA's Code of Practice that requires full ICO compliance as a matter of law, POPLA will not be able to find that the PCN was properly given

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 then I require that they produce an unredacted copy of the contract with the landowner.

The contract and any 'site agreement' or 'User Manual' setting out details - such as any 'genuine customer' or 'genuine resident' exemptions or any site occupier's 'right of veto' charge cancellation rights, and of course all enforcement dates/times/days, and the boundary of the site - is key evidence to define what this operator is authorised to do, and when/where.

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 authorised on the material date, 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 CoP) and basic but crucial information such as the site boundary and any bays where enforcement applies/does not apply. Not forgetting evidence of the only restrictions which

the landowner has authorised can give rise to a charge, as well as the date that the parking contract began, and when it runs to, or whether it runs in perpetuity, and of course, who the signatories are: name/job title/employer company, and whether they are authorised by the landowner to sign a binding legal agreement.

Paragraph 7 of the BPA CoP 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. The signs in this car park are not prominent, clear or legible from all parking spaces and there is insufficient notice of the sum of the parking charge itself.

I note that within the Protection of Freedoms Act (POFA) 2012 it discusses the clarity that needs to be provided to make a motorist aware of the parking charge. Specifically, it requires that the driver is given 'adequate notice' of the charge. POFA 2012 defines 'adequate notice' as follows:

"(3) For the purposes of sub-paragraph (2) 'adequate notice' means notice given by:

(a) the display of one or more notices in accordance with any applicable requirements prescribed in regulations under paragraph 12 for, or for purposes including, the purposes of sub-paragraph (2); or

(b) where no such requirements apply, the display of one or more notices which:

(i) specify the sum as the charge for unauthorised parking; and

(ii) are adequate to bring the charge to the notice of drivers who park vehicles on the relevant land".

Even in circumstances where POFA 2012 does not apply, I believe this to be a reasonable standard to use when making my own assessment, as appellant, of the signage in place at the location. Having considered the signage in place at this particular site against the requirements of Section 18 of the BPA Code of Practice and POFA 2012, I am of the view that the signage at the site - given the minuscule font size of the £sum, which is illegible in most photographs and does not appear at all at the entrance - is NOT sufficient to bring the parking charge (i.e. the sum itself) to the attention of the motorist.

There was no contract nor agreement on the 'parking charge' at all. It is submitted that the driver did not have a fair opportunity to read about any terms involving this huge charge, which is out of all proportion and not saved by the dissimilar 'ParkingEye Ltd v Beavis' case.

In the Beavis case, which turned on specific facts relating only to the signs at that site and the unique interests and intentions of the landowners, the signs were unusually clear and not a typical example for this notorious industry. The Supreme Court were keen to point out the decision related to that car park and those facts only:

http://imgur.com/a/AkMCN

In the Beavis case, the £85 charge itself was in the largest font size with a contrasting colour background and the terms were legible, fairly concise and unambiguous. There were 'large lettering' signs at the entrance and all around the car park, according to the Judges.

Here is the 'Beavis case' sign as a comparison to the signs under dispute in this case:

http://2.bp.blogspot.com/-eYdphoIIDgE/VpbCpfSTaiI/AAAAAAAAE10/5uFjL528DgU/s640/Parking%2Bsign_001.jpg

This case, by comparison, does not demonstrate an example of the 'large lettering' and 'prominent signage' that impressed the Supreme Court Judges and swayed them into deciding that in the specific car park in the Beavis case alone, a contract and 'agreement on the charge' existed.

Here, the signs are sporadically placed, indeed obscured and hidden in some areas. They are unremarkable, not immediately obvious as parking terms and the wording is mostly illegible, being crowded and cluttered with a lack of white space as a background. 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.

It is vital to observe, since 'adequate notice of the parking charge' is mandatory under the POFA Schedule 4 and the BPA Code of Practice, these signs do not clearly mention the parking charge which is hidden in small print (and does not feature at all on some of the signs). Areas of this site are unsigned and there are no full terms displayed - i.e. with the sum of the parking charge itself in large lettering - at the entrance either, so it cannot be assumed that a driver drove past and could read a legible sign, nor parked near one.

This case is more similar to the signage in POPLA decision 5960956830 on 2.6.16, where the Assessor Rochelle Merritt found as fact that signs in a similar size font in a busy car park where other unrelated signs were far larger, was inadequate:

“the signage is not of a good enough size to afford motorists the chance to read and understand the terms and conditions before deciding to remain in the car park. [...] In addition the operator’s signs would not be clearly visible from a parking space [...] The appellant has raised other grounds for appeal but I have not dealt with these as I have allowed the appeal.”

From the evidence I have seen so far, the terms appear to be displayed inadequately, in letters no more than about half an inch high, approximately. I put the operator to strict proof as to the size of the wording on their signs and the size of lettering for the most onerous term, the parking charge itself.

The letters seem to be no larger than .40 font size going by this guide:

http://www-archive.mozilla.org/newlayout/testcases/css/sec526pt2.htm

As further evidence that this is inadequate notice, Letter Height Visibility is discussed here:

http://www.signazon.com/help-center/sign-letter-height-visibility-chart.aspx

“When designing your sign, consider how you will be using it, as well as how far away the readers you want to impact will be. For example, if you are placing a sales advertisement inside your retail store, your text only needs to be visible to the people in the store. 1-2' letters (or smaller) would work just fine. However, if you are hanging banners and want drivers on a nearby highway to be able to see them, design your letters at 3' or even larger.”

“When designing an outdoor sign for your business keep in mind the readability of the letters. Letters always look smaller when mounted high onto an outdoor wall.”

“...a guideline for selecting sign letters. Multiply the letter height by 10 and that is the best viewing distance in feet. Multiply the best viewing distance by 4 and that is the max viewing distance.”

So, a letter height of just half an inch, showing the terms and the 'charge' and placed high on a wall or pole or buried in far too crowded small print, is woefully inadequate in an outdoor car park. Given that letters look smaller when high up on a wall or pole, as the angle renders the words less readable due to the perspective and height, you would have to stand right in front of it and still need a stepladder (and perhaps a torch and/or magnifying glass) to be able to read the terms.

Under Lord Denning's Red Hand Rule, the charge (being 'out of all proportion' with expectations of drivers in this car park and which is the most onerous of terms) should have been effectively: 'in red letters with a red hand pointing to it' - i.e. VERY clear and prominent with the terms in large lettering, as was found to be the case in the car park in 'Beavis'.

A reasonable interpretation of the 'Red Hand Rule' and the 'signage visibility distance' tables above, and the BPA Code of Practice, taking all information into account, would require a parking charge and the terms to be displayed far more transparently, on a lower sign and in far larger lettering, with fewer words and more 'white space' as background contrast.

Indeed in the Consumer Rights Act 2015 there is a 'Requirement for transparency':

(1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.
(2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

The Beavis case signs not being similar to the signs in this appeal at all, I submit that the persuasive case law is in fact 'Vine v London Borough of Waltham Forest [2000] EWCA Civ 106' about a driver not seeing the terms and consequently, she was NOT deemed bound by them.

This judgment is binding case law from the Court of Appeal and supports my argument, not the operator's case:

http://www.bailii.org/ew/cases/EWCA/Civ/2000/106.html

This was a victory for the motorist and found that, where terms on a sign are not seen and the area is not clearly marked/signed with prominent terms, the driver has not consented to - and cannot have 'breached' - an unknown contract because there is no contract capable of being established. The driver in that case (who had not seen any signs/lines) had NOT entered into a contract. The recorder made a clear finding of fact that the plaintiff, Miss Vine, did not see a sign because the area was not clearly marked as 'private land' and the signs were obscured/not adjacent to the car and could not have been seen and read from a driver's seat before parking.

So, for this appeal, I put this operator to strict proof of where the car was parked and (from photos taken in the same lighting conditions) how their signs appeared on that date, at that time, from the angle of the driver's perspective. Equally, I require this operator to show how the entrance signs appear from a driver's seat, not stock examples of 'the sign' in isolation/close-up. I submit that full terms simply cannot be read from a car before parking and mere 'stock examples' of close-ups of the (alleged) signage terms will not be sufficient to disprove this.

7. The ANPR System is Neither Reliable nor Accurate.

ParkingEye's PCN simply claims that the vehicle "entered Town Quay at xx:xx:xx and departed at xx:xx:xx". ParkingEye states the images and time stamps are collected by its ANPR camera system installed on site.

In terms of the technology of the ANPR cameras themselves, POPLA please take note and bin your usual 'ANPR is generally OK' template because: The British Parking Association DOES NOT AUDIT the ANPR systems in use by parking operators, and the BPA has NO

WAY to ensure that the systems are in good working order or that the data collected is accurate. Independent research has NOT found that the technology is 'generally accurate' or proportionate, or reliable at all, and this is one of the reasons why Councils are banned from using it in car parks.

As proof of this assertion here are two statements by the BPA themselves, the first one designed to stop POPLA falling into error about assumed audits:

Steve Clark, Head of Operational Services at the BPA emailed a POPLA 'wrong decision' victim back in January 2018 regarding this repeated misinformation about BPA somehow doing 'ANPR system audits', and Mr Clark says:

"You were concerned about a comment from the POPLA assessor who determined your case which said:

"In terms of the technology of the cameras themselves, the British Parking Association audits the camera systems in use by parking operators in order to ensure that they are in good working order and that the data collected is accurate “You believe that this statement may have been a contributory factor to the POPLA decision going against you, and required answers to a number of questions from us. This is not a statement that I have seen POPLA use before and therefore I queried it with them, as we do not conduct the sort of assessments that the Assessor alludes to.

POPLA have conceded that the Assessor's comments may have been a misrepresentation of Clause 21.3 of the BPA Code which says:

‘’21.3 You must keep any ANPR equipment you use in your car parks in good working order. You need to make sure the data you are collecting is accurate, securely held and cannot be tampered with. The processes that you use to manage your ANPR system may be audited by our compliance team or our agents."

Our auditors check operators’ compliance with this Code clause and not the cameras themselves."

Secondly, ANPR data processing and/or system failure is well known, and is certainly inappropriate at the location in question. The BPA even warned about ANPR flaws:

https://www.britishparking.co.uk/anpr

As with all new technology, there are issues associated with its use:

a) Repeat users of a car park inside a 24 hour period sometimes find that their first entry is paired with their last exit, resulting in an ‘overstay’. Operators are becoming aware of this and should now be checking all ANPR transactions to ensure that this does not occur.

b) Some ‘drive in/drive out’ motorists that have activated the system receive a charge certificate even though they have not parked or taken a ticket. Reputable operators tend not to uphold charge certificates issued in this manner (unless advised differently by the

Landowner/Landlord), but operators should also now be factoring in a small ‘grace period’ to allow a driver time either to find a parking space (and to leave if there is not one) or make a decision whether the tariff is appropriate for their use or not. This ‘grace period is however at the discretion of the Landlord/Landowner and will also vary in duration, dependant on the size/layout/circumstances of the car park.

In this case, as the driver drove in and briefly stopped where there are no signs or bays at all, the ANPR system has indeed failed and the operator has breached the first data protection principle by processing flawed data from their system.

Excessive use of ANPR 24/7 when such blanket coverage is overkill in terms of data processing, was also condemned by the BPA and the ICO:

http://www.britishparking.co.uk/News/excessive-use-of-anpr-cameras-for-enforcement

As POPLA can see from that, excessive use of ANPR is in fact, illegal, and no-one audits it except for the ICO when the public, or groups, make complaints. ParkingEye is put to strict proof that the system has not failed visitors to this site.

POPLA cannot use your usual 'the BPA audits it' erroneous template which needs consigning to the bin.

Kindly stop assuming ANPR systems work, and expecting consumers to prove the impossible about the workings of a system over which they have no control but where independent and publicly available information about its inherent failings is very readily available.

8. The operator makes much of Beavis case. They are well aware that the circumstances of the Beavis case were entirely different, essentially that case was the abuse of a free time limited public car park where signage could be used to create a contract.

In this case, there is no abuse of a free time limited parking, therefore, there has been no loss to the owner. While the courts might hold that a large charge might be appropriate in the case of a public car park, essentially as a deterrent, there is nothing in this case to suggest that a reasonable person would accept that a £100 (or £60 if paid promptly) fine is a conscionable amount to be charged, considering the minimum payment is for 2 and a half hours and it costs £2.50, whilst a driver visits the ferry terminal, drops off a friend to the ferry terminal, drives around in order to pick up another friend from the arriving ferry operating in the area and leaves.

Unlike the findings regarding the Beavis case car park, the driver here was certainly not 'bound to' have seen the terms nor could be considered to have 'agreed' to a parking contract like Mr Beavis did. An unfair 'out of all proportion' charge for non-parking activity of merely dropping off, driving around, picking up and leaving.

In simple terms, there can be no contractual relationship without an offer being read and accepted and in this case there was never any agreement on a parking charge as the driver did not park. No 'promise' was made, no offer nor charge was seen, no acceptance of terms occurred and no parking activity took place.

In the absence of any promise to comply with any primary obligation and due to there being no single 'period of parking', keeper liability under the POFA 2012 is not possible. This is because Schedule 4 is dependent upon the existence of a 'relevant contract' or 'relevant obligation' and neither existed for a driver circling the car park. In addition, 'keeper liability' under Schedule 4 fails where there was a lack of 'adequate notice' of a charge and where a PCN does not relate to a 'single period of parking'. Here there was no period of parking, merely a wrong assumption made that the car had parked (with no evidence at all) contrary to the Grace Periods set out in the BPA CoP.

In the Beavis case it was held at 190:

"By promising ParkingEye not to overstay and to comply with its other conditions, Mr Beavis gave ParkingEye a right, which it would not otherwise have had, to enforce such conditions against him in contract."

And it was held that: "the contractual relationship [was] created by Mr Beavis's acceptance of the terms of the notice'' and "But it may fairly be said that in the absence of agreement on the charge, Mr Beavis would not have been liable to ParkingEye. He would have been liable to the landowner in tort for trespass, but that liability would have been limited to the occupation value of the parking space.''

This concludes my appeal.
Yours faithfully,