

Dear POPLA Assessor,

**Re: Total Parking Solutions fake PCN, verification code [POPLA NUMBER]**

I am the registered keeper and I wish to appeal a recent parking charge from Total Parking Solutions. I submit the points below to show that I am not liable for the parking charge:

- 1) No standing or authority to pursue charges nor form contracts with drivers**
- 2) Flawed landowner contract and irregularities with any witness statement**
- 3) The signage was not compliant with the BPA Code of Practice so there was no valid contract formed between Total Parking Solutions and the driver**
- 4) ANPR Accuracy and breach of the BPA Code of Practice 21.3**
- 5) No genuine pre-estimate of loss**

**1) No standing or authority to pursue charges nor form contracts with drivers**

Total Parking Solutions do not own the land mentioned in their Notice to Keeper and have not provided any evidence that they are lawfully entitled to demand money from a driver or keeper. Even if a contract is shown to POPLA, I assert that there are persuasive recent court decisions against Total Parking Solutions which establish that a mere parking agent has no legal standing nor authority which could impact on visiting drivers.

In *ParkingEye v Sharma*, Case No. 3QT62646 in the Brentford County Court 23/10/2013 District Judge Jenkins checked the ParkingEye contract and quickly picked out the contradiction between clause 3.7, where the landowner appoints ParkingEye as their agent, and clause 22, where it states there is no agency relationship between ParkingEye and the landowner. The Judge dismissed the case on the grounds that the parking contract was a commercial matter between the Operator and their agent, and didn't create any contractual relationship between *ParkingEye* and motorists who used the land. This decision was followed by *ParkingEye v Gardam*, Case No. 3QT60598 in the High Wycombe County Court 14/11/2013 where costs of £90 were awarded to the Defendant. District Judge Jones concurred completely with the persuasive view in *ParkingEye v Sharma* that a parking operator has no standing to bring the claim in their own name. My case is the same.

**2) Flawed landowner contract and irregularities with any witness statement**

Under the BPA CoP Section 7, a landowner contract must specifically allow the Operator to pursue charges in their own name in the courts and grant them the right to form contracts with drivers. I require Total Parking Solutions to produce a copy of the contract with the landowner as I believe it is not compliant with the CoP and that it is the same flawed business agreement model as in *Sharma* and *Gardam*.

If Total Parking Solutions produce a 'witness statement' in lieu of the contract then I will immediately counter that with evidence that these have been debunked in other recent court cases due to well-publicised and serious date/signature/factual irregularities. I do not expect it has escaped the POPLA Assessors' attention that Total Parking Solutions witness statements have been robustly and publicly discredited and are - arguably - not worth the paper they are photocopied on. I suggest Total Parking Solutions don't bother trying that in my case. If they do, I contend that there is no proof whatsoever that the alleged signatory has ever seen the relevant contract terms, or, indeed is even an employee of the landowner, or signed it on the date shown. I contend, if such a witness statement is submitted instead of the landowner contract itself, that this should be disregarded as unreliable and

not proving full BPA compliance nor showing sufficient detail to disprove the findings in *Sharma and Gardam*.

**3) The signage was not compliant with the BPA Code of Practice so there was no valid contract formed between Total Parking Solutions and the driver**

I submit that this signage failed to comply with the BPA Code of Practice section 18 and appendix B. The signs failed to properly warn/inform the driver of the terms and any consequences for breach. Further, because Total Parking Solutions are a mere agent and place their signs so high, they have failed to establish the elements of a contract (consideration/offer and acceptance). Any alleged contract (denied in this case) could only be formed at the entrance to the premises, prior to parking. It is not formed after the vehicle has already been parked, as this is too late. In breach of Appendix B (Mandatory Entrance Signs) Total Parking Solutions have no signage with full terms which could ever be readable at eye level, for a driver in moving traffic on arrival. The only signs are up on poles with the spy cameras and were not read nor even seen by the occupants of the car, who were there at the invitation of Jubilee Retail Park Weymouth, to shop and enjoy free parking as expressly offered to customers in the principal's advertising and website.

**4) ANPR Accuracy and breach of the BPA Code of Practice 21.3**

This Operator is obliged to ensure their ANPR equipment is maintained as described in paragraph 21.3 of the British Parking Association's Approved Operator Scheme Code of Practice. I say that Total Parking Solutions have failed to clearly inform drivers about the cameras and what the data will be used for and how it will be used and stored. I have also seen no evidence that they have complied with the other requirements in that section of the code.

In addition I question the entire reliability of the system. I require that Total Parking Solutions present records as to the dates and times of when the cameras at this car park were checked, adjusted, calibrated, synchronised with the timer which stamps the photos and generally maintained to ensure the accuracy of the dates and times of any ANPR images. This is important because the entirety of the charge is founded on two images purporting to show my vehicle entering and exiting at specific times. It is vital that this Operator must produce evidence in response and explain to POPLA how their system differs (if at all) from the flawed ANPR system which was wholly responsible for the court loss recently in *ParkingEye v Fox-Jones* on 8 Nov 2013. That case was dismissed when the judge said the evidence from ParkingEye was fundamentally flawed because the synchronisation of the camera pictures with the timer had been called into question and the operator could not rebut the point.

So, in addition to showing their maintenance records, I require Total Parking Solutions to show evidence to rebut the following assertion. I suggest that in the case of my vehicle being in this car park, a local camera took the image but a remote server added the time stamp. As the two are disconnected by the internet and do not have a common "time synchronisation system", there is no proof that the time stamp added is actually the exact time of the image. The operator appears to use WIFI which introduces a delay through buffering, so "live" is not really "live". Hence without a synchronised time stamp there is no evidence that the image is ever time stamped with an accurate time. Therefore I contend that this ANPR "evidence" from the cameras in this car park is just as unreliable and unsynchronised as the evidence in the Fox-Jones case. As their whole charge rests upon two timed photos, I put Total Parking Solutions to strict proof to the contrary.

**5) No genuine pre-estimate of loss**

This car park is free and there is no provision for the purchasing of a ticket or any other means for paying for parking. There was no damage nor obstruction caused so there can be no loss arising from the incident. Total Parking Solutions notices allege 'breach of terms/failure to comply' and as such, the landowner/occupier (not their agent) can only pursue liquidated damages directly flowing from the

parking event. Given that Total Parking Solutions charge the same lump sum for a 21 minute overstay as they would for 150 minutes, and the same fixed charge applies to any alleged contravention (whether serious/damaging, or trifling as in my case), it is clear there has been no regard paid to establishing that this charge is a genuine pre-estimate of loss.

This charge from Total Parking Solutions as a third party business agent is an unenforceable penalty. In *Parking Eye v Smith*, Manchester County Court December 2011, the judge decided that the only amount the Operator could lawfully claim was the amount that the driver should have paid into the machine. Anything else was deemed a penalty. And in my case this was a free car park with no payment due whatsoever.

The Office of Fair Trading has stated to the BPA Ltd that a 'parking charge' is not automatically recoverable simply because it is stated to be a parking charge, as it cannot be used to state a loss where none exists. And the BPA Code of Practice states that a charge for breach must wholly represent a genuine pre-estimate of loss flowing from the parking event.

Total Parking Solutions and POPLA will be familiar with the well-known case on whether a sum is a genuine pre-estimate of loss or a penalty: *Dunlop Pneumatic Tyre Company Limited v New Garage and Motor Company* [1915] AC 79. Indeed I expect Total Parking Solutions might cite it. However, therein is the classic statement, in the speech of Lord Dunedin, that a stipulation: "... will be held to be a penalty if the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss which could conceivably be proved to have followed from the breach." There is a presumption... that it is penalty when "a single lump sum is made payable by way of compensation, on the occurrence of one or more or all of several events, some of which may occasion serious and others but trifling damage".

No doubt Total Parking Solutions will send their usual well-known template bluster attempting to assert some "commercial justification" but I refute their arguments. In a recent decision about a ParkingEye car park at Town Quay Southampton, POPLA Assessor Marina Kapour did not accept ParkingEye's generic submission that the inclusion of costs which in reality amount to the general business costs incurred for the provision of their car park management services is commercially justified. "The whole business model of an Operator in respect of a particular car park operation cannot of itself amount to commercial justification. I find that the charge is not justified commercially and so must be shown to be a genuine pre-estimate of loss in order to be enforceable against the appellant.

My case is the same and POPLA must be seen to be consistent if similar arguments are raised by an appellant.

Additionally, The charge is unconscionable and extravagant and unrelated to local Penalty Charge levels in this area. It is believed that the Supreme Court's decision in *ParkingEye v Beavis* will have an impact on the outcome of this POPLA appeal. If the operator does not cancel this charge and/or if there is no other ground upon which the appeal can be determined, I ask that my appeal is adjourned pending the *Beavis* case.

I request that my appeal is upheld and for POPLA to inform Total Parking Solutions to cancel the PCN.

Yours faithfully,

[REGISTERED KEEPER]