UK Parking Control Ltd (Claimant)

V

x (Defendant)

Witness Statement of Defendant

1. I am xxx, (xxx) and I am the defendant against whom this claim is made. The facts below are true to the best of my belief and my account has been prepared based upon my own knowledge.

2. In my statement I shall refer to (Exhibits 1-10) within the evidence supplied with this statement, referring to page and reference numbers where appropriate. My defence is repeated and I will say as follows:

3. Preliminary matter: The claim should be struck out

4. The Defendant draws to the attention of the court that there is now a persuasive Appeal judgment to support striking out the claim (in these exact circumstances of typically poorly pleaded private parking claims, and the extant PoC seen here are far worse than the one seen on Appeal). The Defendant believes that dismissing this meritless claim is the correct course, with the Overriding Objective in mind. Bulk litigators (legal firms) should know better than to make little or no attempt to comply with the Practice Direction. By continuing to plead cases with generic auto-fill unspecific wording, private parking firms should not be surprised when courts strike out their claims based on the following persuasive authority.

5. A recent persuasive appeal judgment in Civil Enforcement Limited v Chan (Ref. E7GM9W44) would indicate the POC fails to comply with Civil Procedure Rule 16.4 and Practice Direction Part 16. On the 15th August 2023, in the cited case, HHJ Murch held that 'the particulars of the claim as filed and served did not set out the conduct which amounted to the breach in reliance upon which the claimant would be able to bring a claim for breach of contract'. The same is true in this case and in view of the Chan judgment, the Court should strike out the claim, using its powers pursuant to CPR 3.4 (See Exhibit 01).

6. Similarly, at the Wakefield County Court on 8th September 2023, District Judge Robinson considered mirror image POC in claim K3GF9183 (Parallel Parking v anon) and struck the Claim out without a hearing. (See Exhibit 02).

7. Likewise, in January 2023 (also without a hearing) District Judge Sprague, sitting at the County Court at Luton, struck out a similarly badly-pleaded parking claim with a full explanation of his reasoning. (See Exhibit 03).

8. Furthermore, at Manchester District Judge McMurtrie and District Judge Ranson also struck out a claim (again without a hearing) on the grounds of POC's lacking clarity, detail, and precision. As stated in the final image below, the Claimant's solicitors confirmed they would not file an amended POC, demonstrating again the reliance of a number of firms on robo-letters and illegitimate practices. (See Exhibit 04).

9. The Defendant believes the Claim should be struck out and should not have been accepted by the CNBC due to a represented parking firm Claimant knowingly breaching basic CPRs. The specifics of this case lack clarity, as no explicit statement has been provided to indicate which specific term of the alleged contract was purportedly breached.

10. Facts and Sequence of events

11. Date and Time of the Incident: 06/09/2022 at around 7pm.

12. On the date of the alleged parking event, the Defendant went to Crown Point Shopping Centre to collect an order from Hobbycraft. They parked in a disabled bay. They then drove to Asda Living, as the distance was much too far to walk (410ft or 125m as calculated by Google maps). The defendant again parked in a disabled bay, not noticing that the blue badge was partially obscured.

13. They parked there as they needed the features of a disabled bay. These are the greater width to allow someone with a disability to safely exit the car, parking closer to the shop entrance, and a safer and better paved route than having to traverse the car park.

14. The Defendant chose to visit the centre at 7pm as it would be quieter. There were plenty of spaces available, both regular and disabled and no-one was unable to access the centre due to the parking choice of the Defendant. Parking at Crown Point is free for all vehicles and so no material loss was faced by the landowner or Claimant.

15. The Defendant believes that the circumstances surrounding their stop were reasonable and did not violate any parking regulations as the blue badge scheme has no legal standing on private land. Indeed, by using the Blue

Badge as a proxy for disability the Claimant may discriminate against some disabled people who are not part of the scheme.

16. **Parking Notice: The claimant pursues a claim for 'Parked in a disabled person's space without clearly displaying the expiry date of the disabled person's badge'. This is extremely vague wording and does not specify what disabled person's badge should have been displayed. The Defendant suggests that it would be impossible to comply with this restriction, as 'disabled person's badge' is a meaningless phrase.**

17. **On the day of the alleged parking event, the Defendant parked their vehicle in a disabled bay with no clearly visible signage indicating parking restrictions or regulations. In the absence of contractual signs located proximate to the bay, clearly visible and easily readable from within the vehicle or immediately upon exiting, the absence of any contractual agreement becomes evident. (See Exhibits 05, 06, 07).**

18. **No Contract, No Breach: Without a 'relevant obligation' stipulated by such signage, there can be no breach. A reasonable person could reasonably infer that the use of a disabled bay by a disabled person with a blue badge is within the regulations. Even if this might be thought to be ambiguous, the Consumer Rights Act 2015 confirms: "Section 69: Contract terms that may have different meanings. Contract terms can be ambiguous and capable of being interpreted in different ways, especially if they are not in writing or in an accessible format. In these cases, this section ensures that the interpretation that is most beneficial to the consumer, rather than the trader, is the interpretation that is used."**

19. Exaggerated Claim and 'market failure' currently examined by the Government

20. The alleged 'core debt' from any parking charge cannot have exceeded £100 (the industry cap set out in the applicable Code of Practice at the time). I have seen no evidence that the added damages/fees are genuine.

21. I say that fees were not paid out or incurred by this Claimant, who is to put strict proof of: (i) the alleged breach, and
22. (ii) a breakdown of how they arrived at the enhanced quantum claimed, including how interest has been calculated, which appears to have been applied improperly on the entire inflated sum, as if that figure was immediately overdue on the day of an alleged parking event.

23. This Claimant routinely pursues a disproportionate additional fixed sum(inexplicably added per PCN) despite knowing that the will of Parliament is to ban or substantially reduce the disproportionate 'Debt Fees'. This case is a classic example where the unjust enrichment of exaggerated fees encourages the 'numbers game' of inappropriate and out of control bulk litigation of weak/archive parking cases. No pre-action checks and balances are likely to have been made to ensure facts, merit, position of signs/the vehicle, or a proper cause of action.

24. The Department for Levelling Up, Housing and Communities (the DLUHC) first published its statutory Parking Code of Practice on 7th February 2022 here: https://www.gov.uk/government/publications/private-parking-code-of-practice "Private firms issue roughly 22,000 parking tickets every day, often adopting a labyrinthine system of misleading and confusing signage, opaque appeals services, aggressive debt collection and unreasonable fees designed to extort money from motorists."

25. Despite legal challenges delaying the Code's implementation (marking it as temporarily 'withdrawn' as shown in the link above) a draft Impact Assessment (IA) to finalise the DLUHC Code was recently published on 30th July 2023, which has exposed some industry-gleaned facts about supposed 'Debt Fees'. This is revealed in the Government's analysis, found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1171438/Draft_IA_-_Private_Parking_Code_of_Practice_.pdf

26. Paragraphs 4.31 and 5.19 reveal that the parking industry has informed the DLUHC that the true minor cost of what the parking industry likes to call debt recovery or 'enforcement' (pre-action) stage totals a mere £8.42 per recovery case.

27. With that sum in mind, it is clear that the extant claim has been enhanced by an excessive amount, disingenuously added as an extra 'fee'. This is believed to be routinely retained by the litigating legal team and has been claimed in addition to the intended 'legal representatives fees' cap set within the small claims track rules. This conduct has been examined and found - including in a notably detailed judgment by Her Honour Judge Jackson, now a specialist Civil High Court Judge on the Leeds/Bradford circuit - to constitute 'double recovery' and the Defendant takes that position.

28. The new draft IA now demonstrates that the unnecessarily intimidating stage of pre-action letter-chains actually costs 'eight times less' (says the DLUHC analysis) than the price-fixed £70 per PCN routinely added. This has caused consumer harm in the form of hundreds of thousands of inflated CCJs each year

that District Judges have been powerless to prevent. This abusively enhanced 'industry standard' Debt Fee was enabled only by virtue of the self- serving Codes of Practice of the rival parking Trade Bodies, influenced by a Board of parking operators and debt firms who stood to gain from it.

29. In support of my contention that the sum sought is unconscionably exaggerated and thus unrecoverable, attention is drawn to paras 98, 100, 193, 198 of ParkingEye Ltd v Beavis [2015] UKSC67 ('the Beavis case'). Also ParkingEye Ltd v Somerfield Stores Ltd ChD [2011] EWHC 4023(QB) where the parking charge was £75, discounted to £37.50 for prompt payment. Whilst £75 was reasonable, HHJ Hegarty (decision later ratified by the CoA) held in paras 419-428 that unspecified 'admin costs' inflating a parking charge to £135 was not a true reflection of the cost of a template letter and 'would appear to be penal.

30. This Claimant has not incurred any additional costs because the full parking charge (after expiry of discount) is already high and more than covers what the Supreme Court called an 'automated letter-chain' business model that generates a healthy profit. In Beavis, there were 4 or 5 letters in total, including pre-action phase reminders. The £85 parking charge was held to cover the 'costs of the operation' and the DLUHC's IA suggests it should still be the case that the parking charge itself more than covers the minor costs of pre-action stage, even if and when the Government reduces the level of parking charges.

31. Whilst the new Code is not retrospective, the majority of the clauses went unchallenged by the parking industry and it stands to become a creature of statute due to the failure of the self-serving BPA & IPC Codes. The DLUHC's Secretary of State mentions they are addressing 'market failure' more than once in the draft IA, a phrase which should be a clear steer for Courts in 2023 to scrutinise every aspect of claims like this one.

32. In addition, pursuant to Schedule 4 paragraph 4(5) of the Protection of Freedoms Act 2012 ('the POFA') the sum claimed exceeds the maximum potentially recoverable. It is also disproportionate and in breach of the Consumer Rights Act 2015 (CRA).

33. CRA Breaches

34. Claiming costs on an indemnity basis is unfair, per the Unfair Contract Terms Guidance (CMA37, para 5.14.3), the Government guidance on the CRA which introduced new requirements for 'prominence' of both contract terms and 'consumer notices'. In a parking context, this includes a test of fairness and clarity of signage and all notices, letters and other communications intended to be read by the consumer.

35. Section 71 creates a duty upon courts to consider the test of fairness, including (but not limited to) whether all terms/notices were unambiguously and conspicuously brought to the attention of a consumer. Signage must be prominent, plentiful, well-placed (and lit in hours of darkness/dusk) and all terms must be unambiguous and contractual obligations clear.

36. The CRA has been breached due to unfair/unclear terms and notices, pursuant to s62 and paying due regard to examples 6, 10, 14 & 18 of Schedule 2 and the requirements for fair/open dealing and good faith (NB: this does not necessarily mean there has to be a finding of bad faith).

37. Now for the first time, the DLUHC's draft IA exposes that template 'debt chaser' stage costs less than £9. This shows that HHJ Jackson was right all along in Excel v Wilkinson. (See Exhibit 8)

38. The Beavis case is against this claim

39. The Supreme Court clarified that ‘the penalty rule is plainly engaged’ in parking cases, which must be determined on their own facts. That 'unique' case met a commercial justification test, given the location and clear signs with the charges in the largest/boldest text. Rather than causing other parking charges to be automatically justified, that case, in particular, the brief, conspicuous yellow & black warning signs - (See Exhibit 09) - set a high bar that this Claimant has failed to reach.

40. Paraphrasing from the Supreme Court, deterrence is likely to be penal if there is a lack of a 'legitimate interest' in performance extending beyond the prospect of compensation flowing directly from the alleged breach. The intention cannot be to punish a driver, nor to present them with hidden terms, unexpected/cumbersome obligations nor 'concealed pitfalls or traps'. (See Exhibit 10) for paragraphs from ParkingEye v Beavis).

41. In the present case, the Claimant has fallen foul of those tests. There is one main issue that render this parking charge to be purely penal (i.e. no legitimate interest saves it) and thus, it is unenforceable:

42. (i). Hidden Terms:

43. The £100 penalty clause is positively buried in small print, as seen on the signs in evidence. The purported added (false) 'costs' are even more hidden and are also unspecified as a sum. Their (unlawful, due to the CRA Schedule 2 grey list of unfair terms) suggestion is that they can hide a vague sentence within a wordy sign, in the smallest possible print, then add whatever their trade body lets them, until the DLUHC bans it in 2024. And the driver has no idea about any risk nor

even how much they might layer on top. None of this was agreed by me, let alone known or even seen as I attempted to gain entry to the store. Court of Appeal authorities which are on all fours with a case involving a lack of ‘adequate notice’ of a charge, include:

44. Spurling v Bradshaw [1956] 1 WLR 461 (‘red hand rule’) and

45. Thornton v Shoe Lane Parking Ltd [1970] EWCA Civ 2 Both leading authorities confirming that a clause cannot be incorporated after a contract has been concluded; and

46. Conclusion

47. The claim is entirely without merit and the Claimant is urged to discontinue now, to avoid incurring costs and wasting the court's time and that of the Defendant.

48. The Defendant asks the judge to read the persuasive Judgment from His Honour Judge Murch (August 2023) in the Civil Enforcement v Chan case, and deliver the same outcome given this Claimant has submitted a similarly vague POC. It is worth noting that in the Civil Enforcement v Chan case the POC, while still ambiguous, did contain a subtle indication of the alleged contravention, specifically regarding the duration of the defendant's parking on the premises. In contrast, the POC in this case lacks even a minimal effort to clearly state the alleged violation. In the Civil Enforcement v Chan case, full costs were awarded to the motorist and the claim was struck out.

49. There is now ample evidence to support the view - long held by many District Judges - that these are knowingly exaggerated claims. The July 2023 DLUHC IA analysis surely makes that clear because it is now a matter of record that the industry has told the Government that 'debt recovery' costs eight times less than they have been claiming in almost every case.

50. With the DLUHC's ban on the false 'costs' there is ample evidence to support the view - long held by many District Judges - that these are knowingly exaggerated claims. For HMCTS to only disallow those costs in the tiny percentage of cases that reach hearings whilst other claims to continue to flood the courts unabated, is to fail hundreds of thousands of consumers who suffer CCJs or pay inflated amounts, in fear of the intimidating pre-action demands. The Defendant believes that it is in the public interest that claims like this should be struck out because knowingly enhanced parking claims like this one cause consumer harm on a grand scale.

51. Two

52. (a) The previously reserved costs of £315, and
53. (b) standard witness costs for attendance at Court, pursuant to CPR 27.14, and
54. (c) for a finding of unreasonable conduct by this Claimant, seeking costs pursuant to CPR 46.5.

55. Attention is drawn specifically to the (often-seen from this industry) possibility of an unreasonably late Notice of Discontinuance. Whilst CPR r.38.6 states that the Claimant is liable for the Defendant's costs after discontinuance (r.38.6(1)) this does not normally apply to claims allocated to the small claims track (r.38.6(3)). However, the White Book states (annotation 38.6.1): "Note that the normal rule as to costs does not apply if a claimant in a case allocated to the small claims track serves a notice of discontinuance although it might be contended that costs should be awarded if a party has behaved unreasonably (r.27.14(2)(dg))."

Statement of truth:
I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Defendant’s signature:

Date: xxx

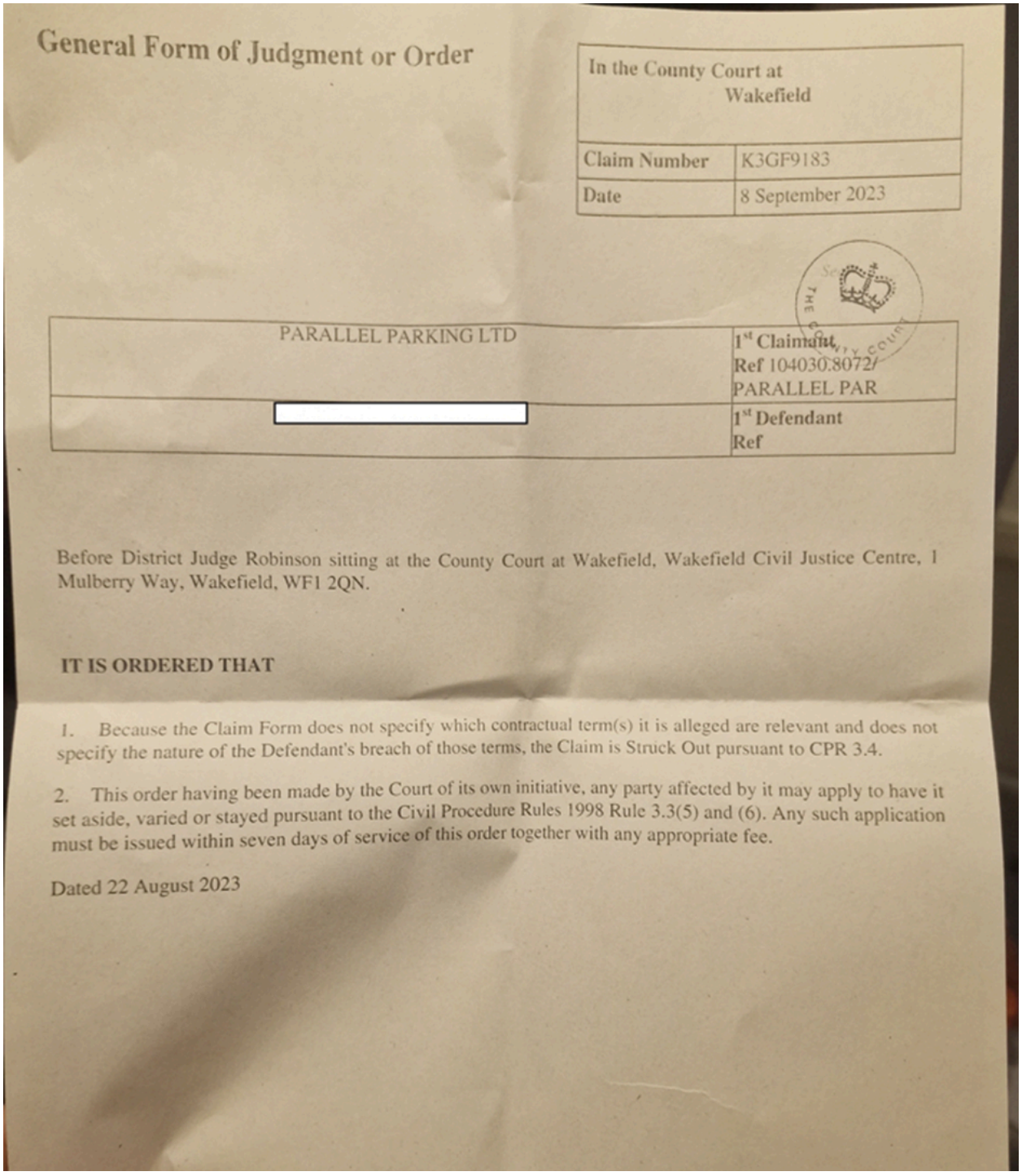
Exhibit 01 – Civil Enforcement v Ming Tak Chan Judgment

Transcribed from the official recording by eScribers Central Court, 25 Southampton Buildings, London WC2A 1AL Tel: 0330 100 5223 | Email: uk.transcripts@escribers.net | uk.escribers.net TRANSCRIPT OF PROCEEDINGS Ref. E7GM9W44 IN THE COUNTY COURT AT LUTON Arndale House The Mall Luton LU1 2EN Before HIS HONOUR JUDGE MURCH IN THE MATTER OF CIVIL ENFORCEMENT LIMITED (Respondent / Claimant) -vMING TAK CHAN (Appellant / Defendant) MR YAMBA appeared on behalf of the Appellant MS CARUS appeared on behalf of the Respondent JUDGMENT 15th AUGUST 2023 (APPROVED) _____ WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable

to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice. This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved. Transcribed from the official recording by eScribers 2 JUDGE MURCH: 1. This appeal raises the meaning of and consequences of failing to comply with Civil Procedure Rule 16.4 and the Practice Direction to Part 16. This is a claim for unpaid parking charges where it is said by the appellant that the claim form upon which the claimant - the respondent before me - relied failed to comply with those requirements. An application was made to set aside a judgment entered in default. That application did not succeed. 2. I gave permission to appeal on the single ground that it was arguable there was a real prospect of success on the argument that the failure to comply with the Practice Direction constituted some other good reason pursuant to CPR 13.3(1)(b) to set judgment aside. I did not give permission on the other ground upon which the appellant sought to rely, namely whether the claim form had been served at the correct address. 3. Reminding myself then of the requirements of the rules before setting out what happened in this case, CPR 16.4 reads as follows: (1) “Particulars of claim must include - (e) such other matters as may be set out in a practice direction.” It is agreed that none of the other parts of that sub-rule are relevant to the decision that I have to reach today. Practice Direction 16 at paragraph 7 is headed “Other matters to be included in the particulars of claim” and then lists them. Pertinent to the present claim is para.7.5 which reads as follows: “Where a claim is based upon an agreement by conduct, the particulars of claim must specify the conduct relied upon and state by whom, when and where the acts constituting the conduct were done.” 4. This was a claim commenced by the claimant, now the respondent before me, using the money claims online facility. It is common ground that the space for the particulars of claim is limited as to the number of characters which can be inserted. Inevitably, one therefore sees in cases commenced using this procedure a degree of simplicity in the way that claims are put. Quite often, they are grammatically inexact, even if it is argued that they set out in terms the bare bones of the claim such as to comply with the rules. It is of course though always open to a claimant - if of the view that the space by way of character allowance is insufficient - to file and serve separate particulars of claim serving them either with the claim form or in accordance with the rules at a later date. 5. The respondent here elected to put its case in the character limit in the box on the claim form and wrote as follows: “Claim for monies relating to a parking charge for parking in a private car park managed by the claimant in breach of the terms and conditions (T&Cs). Drivers are allowed to park in accordance with T&Cs of use. ANPR cameras and/or manual patrols are used to monitor vehicles entering and exiting the site. Debt + damages claimed sum of £236. Violation date: 06.01.2017. Time in: 15:14. Time out: 20:04.” The reference is then given for the penalty charge notice. The registration number of the car said to be involved is given. The name of the car park is set out, namely the Newbury Retail Transcribed from the official recording by eScribers 3 Car Park. It then sets out the sums due and interest which is claimed and the rate at which it is claimed and therefore the sums which are claimed. 6. Now, on behalf of the appellant before me it is argued that, even though there is a measure of detail set out in those words, it is not sufficient to comply with the provision of para.7.5 of the Practice Direction. 7. This is, I think both sides accept, an argument based on conduct - there is no written agreement between the parties; there is no oral agreement between the parties - and the position is that there is an

agreement by conduct namely, as one knows in these cases, the bringing of the car onto land where signs are sufficiently displayed which amounts to conduct accepting those terms and conditions. 8. On behalf of the respondent it was submitted that the claim form states that this is a private car park. It is stated that the defendant was in breach of the terms and conditions: the registration number is given; the location of the car park is given; the times in and out are given as well. Ms Goodchild submitted that the information given was sufficient to comply with the Practice Direction. She referred to pre-action correspondence but accepted that it was not part of the particulars of claim and did not assist in showing whether there had been compliance. 9. On behalf of the appellant though, it is argued that the information set out is not sufficient to set out the conduct relied upon as amounting to a breach of contract. Mr Yamba argues that there are a number of ways in which one might breach the terms and conditions. This is not set out in the brief claim form. By way of example, he said, there may be a failure to buy a parking ticket at all. There may be a failure to park properly in a bay. By way of further example, he said, a person might use a space allocated for use by drivers with disabilities. Alternatively, he submits, it may be a case of overstaying whereby a ticket bought for a certain period of time and the defendant stays longer than he or she has paid for. 10. I am persuaded by these arguments. It is incumbent upon the claimant (the respondent before me) to set out how it is that the entitlement to the charge arises. It is correct that this claim form sets out that there was a contract. One can safely infer that it is as a result of the driver bringing the car onto the land that it is being said by conduct a contract arose. It is also clear which vehicle is said to have been used in a manner which breached the contract. It is also clear where and when the breach is said to have occurred. The breach itself however is not set out. The conduct giving rise to the breach is not set out. 11. This is, I think as Mr Yamba accepts, a technical point, but nonetheless the rules are clear. The particulars of claim must set out that conduct and, in my view, Mr Yamba has shown that the particulars of claim as filed and served did not set out the conduct which amounted to the breach in reliance upon which the claimant would be able to bring a claim for breach of contract. 12. Now, the application that was before Judge Chattaway was to set the judgment aside entered in default and also for an order striking out the claim form. The Judge did not set aside judgment and did not therefore proceed to consider the point whether the claim should be struck out. Of course, it may follow from a set aside application where a failure to comply with Practice Direction is relied upon, that an application might also be made to strike out the claim form. Both advocates are agreed that – and this intends no disrespect to either party - this being a tolerably low value claim for some £250 odd with court fees, I should exercise a Transcribed from the official recording by eScribers 4 discretion to set aside judgment also to strike out the claim for failing to comply with the rules. They agree that it is not proportionate to re-list this for hearing before a District Judge. 13. I am persuaded that the right thing to do in this case is to strike out the claim form. Therefore, for those reasons, despite the endeavours of Ms Carus who went through with great care what the particulars of claim said, I conclude there has been a failure to comply with the rules. The conduct amounting to the breach was not set out; it was open to the respondent either to attach a separate particulars of claim or set out a little less of the detail as to the interests calculations and perhaps in that way set out how it was argued that there had been a breach amounting to conduct in breach of a contract. 14. The appeal therefore succeeds. Judgment is set aside and I further strike out the claim. ---------- This transcript has been approved by the Judge

Exhibit 02 – Parallel Parking v Anon



General Form of Judgment or Order

In the County Court at Wakefield	
Claim Number	K3GF9183
Date	8 September 2023

PARALLEL PARKING LTD	1st Claimant Ref 104030.8072/ PARALLEL PAR
[redacted]	1st Defendant Ref

Before District Judge Robinson sitting at the County Court at Wakefield, Wakefield Civil Justice Centre, 1 Mulberry Way, Wakefield, WF1 2QN.

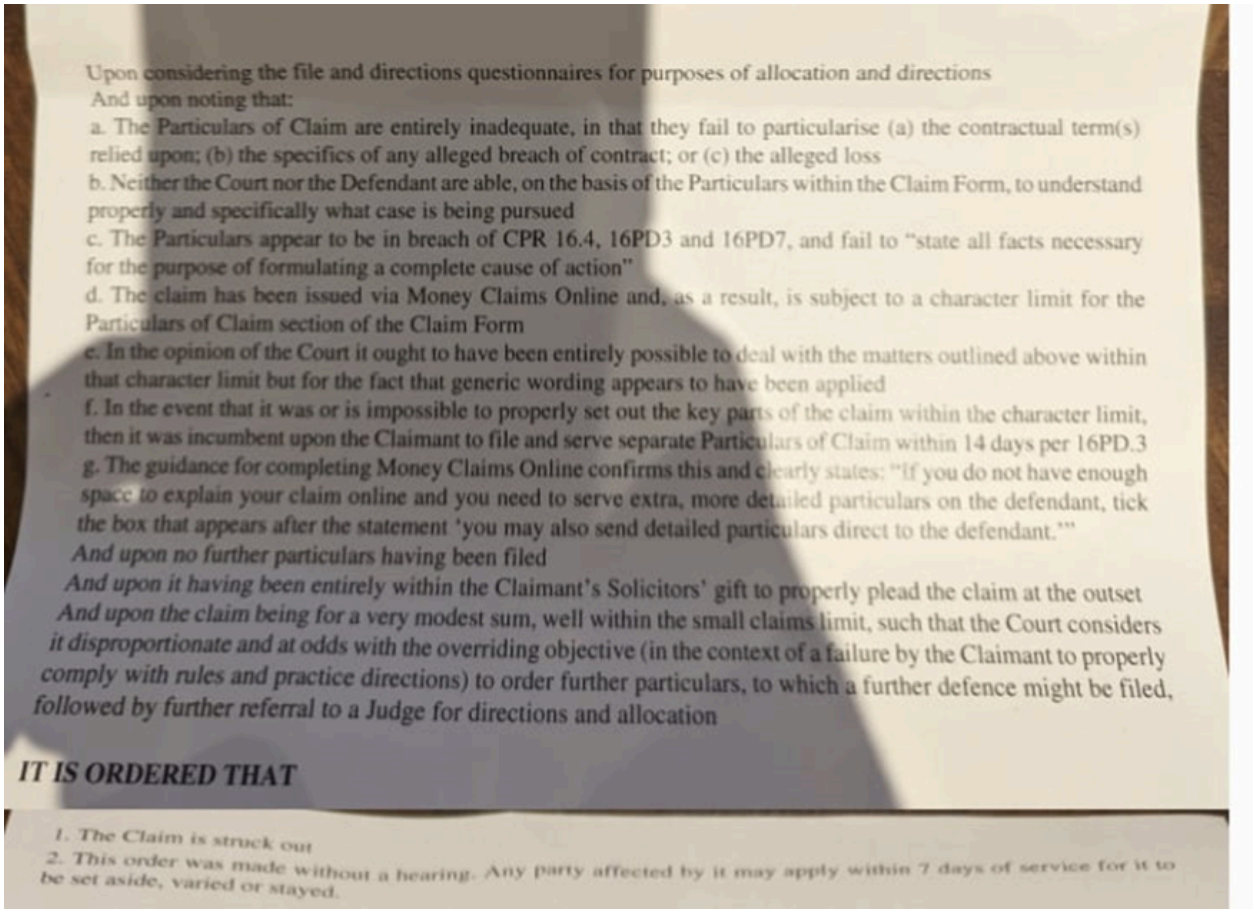
IT IS ORDERED THAT

1. Because the Claim Form does not specify which contractual term(s) it is alleged are relevant and does not specify the nature of the Defendant's breach of those terms, the Claim is Struck Out pursuant to CPR 3.4.

2. This order having been made by the Court of its own initiative, any party affected by it may apply to have it set aside, varied or stayed pursuant to the Civil Procedure Rules 1998 Rule 3.3(5) and (6). Any such application must be issued within seven days of service of this order together with any appropriate fee.

Dated 22 August 2023

Exhibit 03 – Another Badly Pleaded Parking Claim 1



Upon considering the file and directions questionnaires for purposes of allocation and directions

And upon noting that:

a. The Particulars of Claim are entirely inadequate, in that they fail to particularise (a) the contractual term(s) relied upon; (b) the specifics of any alleged breach of contract; or (c) the alleged loss

b. Neither the Court nor the Defendant are able, on the basis of the Particulars within the Claim Form, to understand properly and specifically what case is being pursued

c. The Particulars appear to be in breach of CPR 16.4, 16PD3 and 16PD7, and fail to "state all facts necessary for the purpose of formulating a complete cause of action"

d. The claim has been issued via Money Claims Online and, as a result, is subject to a character limit for the Particulars of Claim section of the Claim Form

e. In the opinion of the Court it ought to have been entirely possible to deal with the matters outlined above within that character limit but for the fact that generic wording appears to have been applied

f. In the event that it was or is impossible to properly set out the key parts of the claim within the character limit, then it was incumbent upon the Claimant to file and serve separate Particulars of Claim within 14 days per 16PD.3

g. The guidance for completing Money Claims Online confirms this and clearly states: "If you do not have enough space to explain your claim online and you need to serve extra, more detailed particulars on the defendant, tick the box that appears after the statement 'you may also send detailed particulars direct to the defendant.'"

And upon no further particulars having been filed

And upon it having been entirely within the Claimant's Solicitors' gift to properly plead the claim at the outset

And upon the claim being for a very modest sum, well within the small claims limit, such that the Court considers it disproportionate and at odds with the overriding objective (in the context of a failure by the Claimant to properly comply with rules and practice directions) to order further particulars, to which a further defence might be filed, followed by further referral to a Judge for directions and allocation

IT IS ORDERED THAT

1. The Claim is struck out
2. This order was made without a hearing. Any party affected by it may apply within 7 days of service for it to be set aside, varied or stayed.

Exhibit 04 – Another Badly Pleaded Parking Claim 2

WARNING: You must comply with the terms imposed upon you by this Order. Otherwise, your case is liable to be struck out or some other sanction imposed. If you cannot comply, you are expected to make a formal Application to the Court before any deadline imposed upon you expires.

Before Deputy District Judge McMurtrie sitting at the County Court at Manchester, Civil Justice Centre, 1 Bridge *Street West, Manchester, M60 9DJ.*

Upon considering the Court file;

IT IS ORDERED THAT:

1. The Particulars of Claim do not comply with CPR 16.4(1)(a) and are by this Order struck out;

2. The Claimant must **by 4.00pm on 22 August 2023**, file and serve a Particulars of Claim, supported by a Statement of Truth, identifying:

a) Whether the claim is brought under Schedule 4 to the Protection of Freedoms Act 2012; If so,

b) By reference to the definition of "relevant obligation" in paragraph 2 of Schedule 4 to the Protection of Freedoms Act 2012, whether it is alleged that the claim is based on a relevant obligation:

i) "arising under the terms of a relevant contract"; or

Exhibit 05 – Signage seen from inside car. (1)

Exhibit 06 Signage seen from inside the car (2)


UKPC
UK PARKING CONTROL LTD
DISABLED PERMIT HOLDERS ONLY
TERMS OF PARKING APPLY AT ALL TIMES

Exhibit 07 – Difficult to read signage standing directly below.

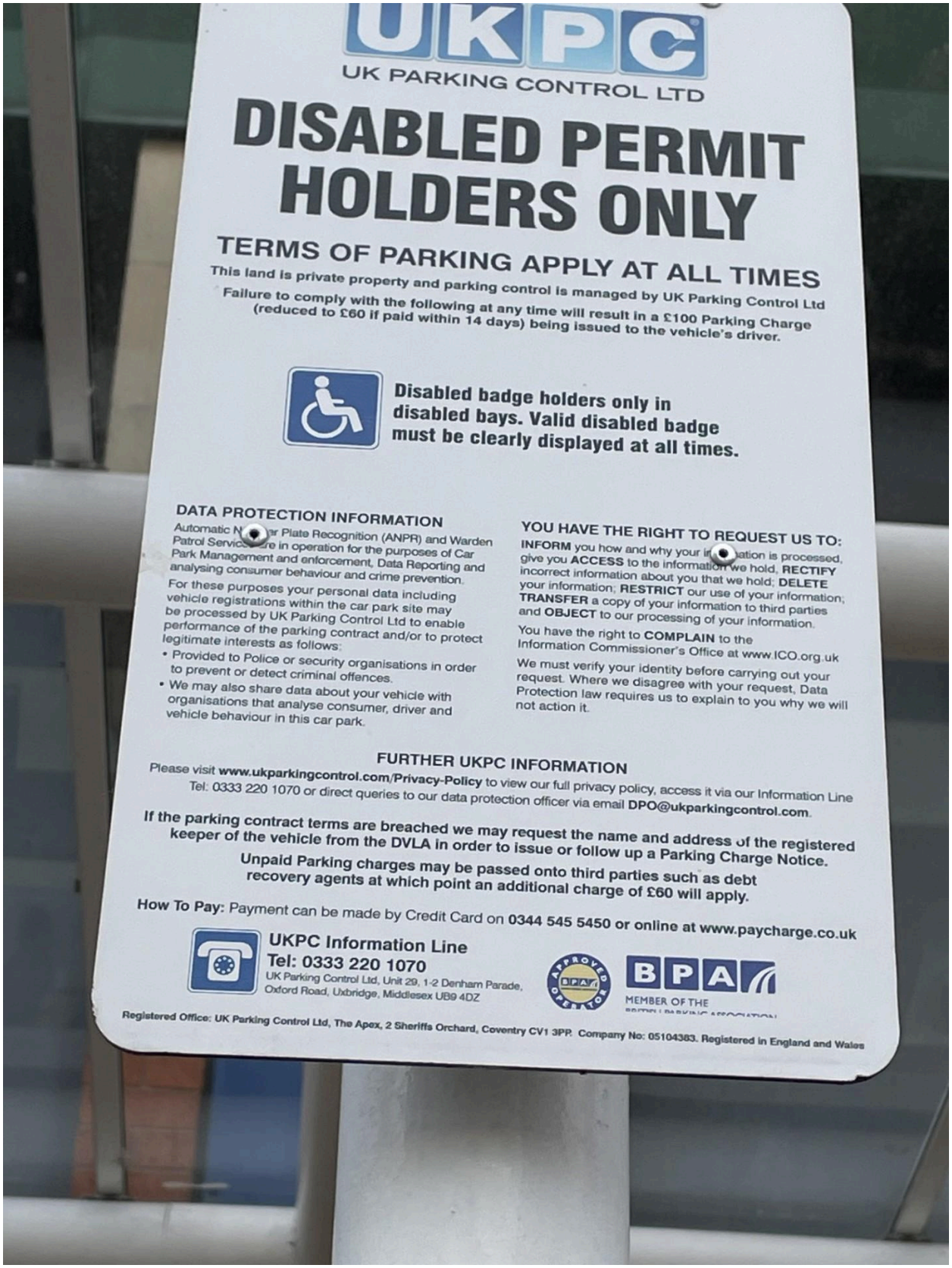


Exhibit 08 – Excel v Wilkinson Case Transcript

General Form of Judgment or Order

In the County Court at Bradford	
Claim Number	G4QZ465V
Date	2 July 2020

EXCEL PARKING SERVICES LTD	**1st Claimant Ref** XL11305889
[redacted] WILKINSON	**1st Defendant Ref**

Before District Judge Jackson sitting at the County Court at Bradford, Civil And Family Centre, Exchange Square, Drake Street, Bradford, BD1 1JA on 01 July 2020.

Upon hearing the Agent for the Claimant and the Defendant in person

And Upon the hearing being conducted by telephone and in private in accordance with CPR 51PDY due to the global health emergency

IT IS ORDERED THAT

1. The claim is struck out as an abuse of process.

2. Permission to the Claimant to appeal is refused.

3. An appeal from this order lies, and any further requests for permission to appeal should be made, to the Circuit Judge at Leeds.

Dated 1 July 2020

Case No: G4QZ465V

IN THE COUNTY COURT AT BRADFORD

The Court House
Exchange Square
Drake Street
Bradford

Before :

District Judge Jackson

Between :

Excel Parking Services Ltd — **Claimant**

- and -

[redacted] **Wilkinson** — **Defendant**

Mr Simon Cannard for the **Claimant**
The Defendant appeared in person

Hearing date: 1 July 2020

JUDGMENT

1. In this claim the Claimant seeks to recover the sum of £160 from the Defendant based on a parking charge notice issued by the Claimant against the Defendant and relating to the Defendant's use of a car park at Cavendish Retail Park, in Keighley. The facts of the case are relatively straightforward.

2. The claim form in this matter states that "*The claim is for a breach of contract for breaching the terms and conditions set on private land. The Defendant's vehicle* [redacted] *was identified in the Cavendish Retail Park on 8/12/2016 in breach of the advertised terms and conditions; namely parked without purchasing a valid pay & display ticket for vehicle registration. At all material times the Defendant was the registered keeper and/or driver. The terms and conditions upon entering private land were clearly displayed at the entrance and in prominent locations. The sign was the offer and the act of entering private land was the acceptance of the offer hereby entering into a contract by conduct. The sign specifically detail the terms and conditions and the consequences of failure to comply, namely a parking charge notice will be issued, and the Defendant has failed to settle the outstanding liability. The Claimant seeks the recovery of the parking charge notice, contractual costs and interest.*" The sum claimed in the claim form is £160 together with the court fee of £25 forming a total amount of £185.

3. The Defendant denies that the Claimant is entitled to the sum claimed o any sum for five reasons:

    a. First the Defendant denies that there was any contractual agreement which arose as a result of the parking as the Defendant asserts that the Claimant has not shown the right to charge for parking at the site and that the signs at the car park were sufficient to result in an agreement;
    b. Second the Defendant denies that the sum claimed is recoverable as it is set at a level which is above the costs of recovery or operating the scheme;
    c. Third the sum claimed is unconscionable and unfair as a result of the Consumer Rights Act 2015;
    d. Fourth the claim involves an element of double recovery and is an abuse of process as it is an inflated claim;
    e. Fifth the Defendant was disadvantaged by the letter before action not complying with the pre-action protocol and the particulars of claim are embarrassing, incoherent and lacking detail.

4. In regards to the third and fourth limbs of the defence the Defendant seeks to rely on decisions in other courts including orders by District Judge Wright, orders of Deputy District Judge Joseph and a decision of District Judge Grand sitting in the Southampton County Court dated 11 November 2019. These orders and the decision of District Judge Grand are not binding on me.

5. Other than the pleadings and exhibits thereto the only additional document before me was the witness statement of Mr Arshad and the exhibits thereto. Mr Arshad did not attend the trial and therefore both the Defendant and the Court were prevented from asking questions of Mr Arshad. The Defendant has given evidence on the facts today and has answered questions. In relation to the law she relies on her defence and the exhibits thereto. The Defendant did not make submissions on the law beyond this as she explained that this had been prepared for her by her daughter who could not attend today.

6. In dealing with the trial today I have had an e-bundle. The bundle was prepared by the Claimant. I was sent to the court in two emails. The bundle is not paginated, there is no index and it has no hyperlinks in it. As a result, it has proven extremely difficult to manoeuvre around bundles during this hearing. Luckily, I have had the entire day to prepare this case and therefore this morning was able to write my own index to the bundles so that at least I knew which email I needed look at. It is imperative for as long as the court is undertaking cases remotely that parties prepare bundles for the court in accordance with the CPR and in accordance with the guidance on bundles. The Claimant in this case has chosen not to do so and that has made the claim far harder to manage than it needed to be. This has not however influenced my decision in this case.

7. I therefore turn to the facts of this case. On the evidence before me the Claimant has the right to manage parking at the Cavendish Retail Park. At that car parking site they have erected a number of signs. The signs are in two different formats: The first in a portrait format is attached to a number of lampposts throughout the car park. It is a sign that tells parties limited details of how the car park should used and otherwise directs users to the full terms and conditions which can be found in the signs at pay-and-display machines Those first signs cannot of themselves form a contract.

8. Moving to the second set of signs these provide more detail. The second set of signs contain information which provides as follows: By parking you enter into a contract and agreed to pay parking charge for any breach of the terms and conditions. Any vehicle remaining on the land 10 minutes after entry is subject to and agrees in full to the terms and conditions. You agree to pay a parking charge notice for breach. Parking charge notices are charged at £100 discounted to £60 if payment is received within 14 days of the notice to issue. The terms and conditions then state if payment is not made the Claimant is entitled to issue legal proceedings to recover "the outstanding charge including interest and any additional costs incurred." There is then a pictorial sign which states that the parking charge notice is £100.

9. The Claimant's evidence goes on to show that on 8 December 2016 a vehicle entered their car park at 9:00:24 and left at 9:27:18. The Defendant accepts this is the case. She states she parked in a disabled space and therefore thought she did not have to pay to park as users with disabled badges did not previously have to pay to park in that car park. On 14 December 2016 a parking charge notice was sent to the Defendant claiming £60 and on 23 January 2017 a reminder notice was sent claiming £100. The Defendant states she did not receive the letters. Both letters set out why the sums were sought and had exhibited to them photographic evidence of the breach. Finally the evidence shows that there was no payment on the date in question for a vehicle with the same registration number as the vehicle in the photos and the DVLA details show the Defendant as the registered keeper of the vehicle.

10. Applying those facts to the law in my judgment the Claimant has shown, on the balance of probabilities, that on 8 December 2016 the Defendant's vehicle entered its, the vehicle remained in the property for 27 minutes and no

payment was made on that date for parking. There are sufficient signs throughout the car park of sufficient size and with sufficiently large writing to result in a contract arising upon a vehicle entering the property and remaining there in excess of 10 minutes. The signs also confirm that disabled drivers have to pay to park in the car park.

11. Those signs give adequate notice that the parking charge applicable for a breach of contract, and recoverable under Schedule 4 to the Protection of Freedoms Act 2012, is £100. The Defendant admits she was the driver on the date in question.

12. In my judgment therefore the Claimant has shown that the Claimant and the Defendant entered into a contract, it has shown the terms of the contract required a parking ticket to be purchased and displayed and it has shown that the terms of the contract were breached. It has therefore shown that, save for the abuse of process point, it is entitled to judgment for £100 being the parking charge.

13. The first and fifth limbs of the defence do not run on the facts before me and, to the extent the challenge in the second limb of the defence is a challenge to the amount of the parking charge, this cannot succeed following the decision in *Parking Eye v Beavis [2015] UKSC 67.*

14. That is not however where the matter ends because in this claim this Claimant seeks to claim not just the £100 parking charge recoverable under Schedule 4 to the Protection of Freedoms Act 2012 but rather £160, or a £100 parking charge and £60 for contractual costs.

15. I must therefore go on to consider in this case whether the additional £60 is recoverable as this is denied in the third and fourth limbs of the defence. If it is not recoverable I must also go on to consider whether as the Defendant asserts in the fourth limb of her defence the inclusion of the £60 is an abuse of process which taints the entire claim and requires the claim to be struck out as an abuse of process.

16. In relation to abuse of process the court's powers are governed by Civil Procedure Rules 3.4(2) this provides:

The court may strike out a statement of case if it appears to the court

a. *the statement of case discloses no reasonable grounds for bringing or defending the claim*
b. *that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings*
c. *that there has been a failure to comply with a rule, practice direction or court order.*

17. Looking at this case there can be no suggestion that the claim form discloses no reasonable grounds bringing or defending the claim and there is no evidence before me of a failure by the Claimant to comply with a rule, practice direction or court order. Therefore the Defendant's assertion that the claim should be struck out is brought solely on the basis of rule 3.4 (2)(b) i.e. that

the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings

18. I have had time before the proceedings today to consider the commentary in the White Book Service 2020 volume 1 at pages 87 to 100 in considering this issue.

19. I must therefore first consider whether the £60 claimed for "contractual costs" is recoverable. The use of the phrase contractual costs is taken directly from the Claimant's claim form, it is of note it does not appear anywhere in the Claimant's signage at the car park. The car park instead refers to additional costs incurred whilst the witness statement for the Claimant refers to the debt recovery process.

20. There are no details given on the signs as to what those additional costs could be or a breakdown of how those costs will be calculated. In the claim form there is no breakdown of the contractual costs which are sought to be recovered, how they are calculated nor any reference to the specific terms pursuant to which they are recoverable.

21. The witness evidence refers to the debt recovery process and to the IPC Code, which is not a creature of statute, statutory instrument or binding case law. It is not code which binds this court. In any event all that code says is if a parking charge is overdue a charge may be added to it £60. Again it does not state for what purpose that may be added or how it is to be calculated. No details of how £60 has been expended on the debt recovery process are given.

22. The witness statement then further goes on to contradict the claim in the claim form that the entitlement to £60 is based on a contract by stating that "*in view of the Defendant not paying the charge within 28 days the breach of contract entitles the Claimant to damages as of right in addition to the CN incurred. The warning notices make it clear that damages will be sought and added to the value of the charge levied. The maximum amount awarded is £60 which is identified as a debt recovery charge.*" The Claimant then relies on "*Chaplair Limited v Kumari* [2015] EWCA 798" in support of this submission. However that case is not relevant to this head of claim as *Chaplair* is a case concerning the right to contractual costs in a small claim as opposed to fixed costs. Even then the contractual costs must be evidenced as the court retains the power to fix the quantum of costs payable.

23. The claim to the £60 is therefore wholly confused: It is either a claim to additional costs, or to contractual costs, or to a debt recovery process, or to damages. It is for £60 but no justification for an award of £60 is put forward whether as costs, charges, debt recovery or damages.

24. There is therefore no firm evidence before me as to whether these costs are said to be costs incurred in operating the scheme, costs incurred in dealing with administration of the scheme, costs in dealing with the legal proceedings up to the date of issue or if they are costs of the proceedings themselves other than the court fees. However given the reference in the witness evidence to

the costs being the costs of the debt recovery process I find that the costs are the costs of chasing the Defendant for payment and/or the costs of proceedings. They are therefore either costs of operating the scheme or costs governed by court rules.

25. That is of importance for two reasons. First the defence of the Defendant in this case relies upon Schedule 2 to the Consumer Rights Act 2015 which requires the court to consider whether the terms of a consumer contract are fair or not whether a party who is a consumer pursues that point at trial or not. Second given my finding as to what the costs relate to the costs are potentially seeking a double recovery.

26. I deal first with the Consumer Rights Act 2015. Section 61 of the Act applies to a contract between a trader and a consumer. I am satisfied having regard to the definitions in the Act and the facts in this case that:
    a. the Claimant is a trader and the Defendant is a consumer (section 2 of the Act);
    b. the contract that arose between them is a consumer contract (section 61(3) of the Act)
    c. any notices which relate to the obligations as between the Claimant and the Defendant are consumer notices (section 61(7) of the Act).

27. Pursuant to section 62(1) an unfair term in a consumer contract is not binding on the consumer. The term is unfair if contrary to the requirements of good faith it causes significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer (section 62(4)). Whether a term is fair is to be determined taking into account the nature of the subject matter of the contract and reference to all the circumstances existing and the other terms agreed. Schedule 2 to the Act contains an indicative and non-exhaustive list of the terms in consumer contracts that can be regarded as unfair for the purposes of the Act. Section 67 of the Act provides that "*Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.*"

28. Hence if I were to find that the additional costs provision in the contract was unfair that would not as a matter of law prevent the Claimant from pursuing the parking charge notice, subject to the abuse of process point. It would however prevent the Claimant from recovering the £60 claimed as contractual costs.

29. Turning therefore to schedule 2 to the Act the following considerations are engaged:

10 A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract;
14 A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.

30. There can be no doubt that the provision in the contract that the Claimant can pursue the Defendant in legal proceedings for "*any additional costs incurred*" without giving any details of the costs that may be incurred or how they will be calculated to the Defendant before the contract was entered into fall squarely within the considerations of paragraphs 10 and 14 of Schedule 2 to the Act. The question is whether taking into account the nature of this contract and all the circumstances of the case and the contract it is fair for the Claimant to be entitled to rely on such clause.

31. To this end one needs to turn to the decision of the Supreme Court in ***Parking Eye v Beavis***. In that case the Supreme Court was considering whether a parking charge notice was reasonable in the sum of £85 or whether it was a penalty clause. The Supreme Court in its decision found that the charge of £85 was reasonable as it was a genuine estimate of the costs of operating the scheme including the losses which would be suffered by the operator of the parking scheme were its terms and conditions not complied with (see paragraphs 188 and 193 of the decision).

32. The Supreme Court in dealing with the case allowed the sum of £85 as it permitted the parking operator the right to not only cover the costs of operating the scheme so far as Mr Beavis was concerned but to cover the costs of operating the parking scheme generally and to make a healthy profit for its shareholders but with only drivers who breached the contract funding the scheme. In therefore finding that the charge of £85 was reasonable the Supreme Court was satisfied that it was a sufficient charge to cover the costs incurred by the operator of the parking scheme including pursuing drivers who breached its terms and conditions.

33. In this case what the Claimant seeks to do is to operate a parking scheme to recover its £100 parking charge being liquidated damages based on the *Beavis* decision and then to add £60 for the costs of recovery suggesting that the additional charge is for additional expenses caused by people who do not pay. The Supreme Court was however concerned with the case of somebody who did not pay. This was the whole nub of what the case was about.

34. Given the costs of recovery are already therefore built into the parking charge as a cost of operating the scheme, this is a double recovery or an attempt by the Claimant to try to add in an additional charge. The only alternative is that it is an attempt to recover legal costs without expressly stating this.

35. If it is double recovery then the clause is obviously unfair. It is an attempt to gild the lily and to recover what is already provided for by the Supreme Court in what they judged to be a reasonable charge. If it is an additional charge then that cannot be fair as what the Claimant is seeking to do in this case is to charge far more to somebody who does not comply with the parking terms than was approved by the Supreme Court in ***Beavis***. It does seem to me that the additional sum charged is unlawful as a result as it is unfair. If it is said to be legal costs then the terms and conditions in this case are not sufficiently

clear to entitle the Claimant to depart from the fixed costs rules in CPR 27.14 and hence if this is what the term in the contract seeks to achieve it is unfair.

36. As a result in my judgment the contract term permitting the Claimant to seek additional charges in the proceedings is unfair and is not enforceable in accordance with section 67 of the Consumer Rights Act 2015. As a result the Claimant is not entitled to recover that sum.

37. That is of course not where the defence concludes: The fourth limb of the defence goes on to say that because the claim is inflated and seeks double recovery the entire claim should be struck out.

38. That is an entirely separate consideration to the unfair point because of section 67 of the Act. Simply because a term is unfair it does not mean the whole contract is unfair therefore subject to the abuse of process point it is possible as a matter of law for the Claimant to recover the £100 parking charge notice even though the £60 additional costs has been dismissed. Given the defence in this case however I am required to consider whether in claiming both the parking charge and £60 additional costs this Claimant should be penalised by having its claim struck out as an abuse of process.

39. In my judgment the claim should be struck out as an abuse of process. There can be no doubt that the inclusion of the additional costs claim is inclusion of a claim based either on an unfair clause which will not be enforced by the court, double recovery or an attempt to circumvent CPR 27.14 when it is unfair to do so.

40. Why then has this additional sum of £60 been included in this claim, and it would appear in a number of claims made by this Claimant? There can be only one reason it is an attempt by the Claimant to recover sums they are not entitled to either by seeking unliquidated damages as liquidated damages to avoid a hearing before a Judge in relation to default judgment, or by seeking to recover unfair sums which would be recovered in a default judgment application despite the sums not being recoverable at law or by seeking to circumvent CPR 27.14. I do not need to decide which of these is applicable here. It be one of these three.

41. Whichever it is, it is an attempt to abuse the process of the Court as it is an attempt to use the courts process in a way significantly different from its ordinary or proper course and is an attempt to use the courts process to achieve something not properly available to the Claimant. These are therefore proceedings with an improper collateral purpose. This a serious matter requiring disapproval by the Court. Striking out the claim is therefore an option.

42. Is it however the proper option in this case given that strike out should be the last option? In my judgment it is. Having regard to the overriding objective and in particular the need to deal with cases justly and at proportionate cost and the need for a sanction to be proportionate in my judgment the case should be struck out. Simply disallowing the £60 claim or disallowing the Claimant's

costs is not sufficient to show the court's disapproval of the abuse of its process. The Claimant must be shown that including irrecoverable heads of loss in its claims has consequences otherwise I have not doubt they will continue to claim £60 damages/costs etc to profit from undefended cases.

43. Having regard to all elements of the overriding objective and the need for a sanction to be proportionate I find that striking out this claim is the only appropriate manner in which the disapproval of the court can be shown.

44. The claim is therefore struck out.

Exhibit 09 – The Beavis case sign for comparison

Exhibit 10 – ParkingEye Limited v Beavis
Paragraphs 98, 193, and 198

98. Against this background, it can be seen that the £85 charge had two main objects. One was to manage the efficient use of parking space in the interests of the retail outlets, and of the users of those outlets who wish to find spaces in which to park their cars. This was to be achieved by deterring commuters or other long-stay motorists from occupying parking spaces for long periods or engaging in other inconsiderate parking practices, thereby reducing the space available to other members of the public, in particular the customers of the retail outlets. The other purpose was to provide an income stream to enable ParkingEye to meet the costs of operating the scheme and make a profit from its services, without which those Page 43 services would not be available. These two objectives appear to us to be perfectly reasonable in themselves. Subject to the penalty rule and the Regulations, the imposition of a charge to deter overstayers is a reasonable mode of achieving them. Indeed, once it is resolved to allow up to two hours free parking, it is difficult to see how else those objectives could be achieved.

193. The penalty doctrine is therefore potentially applicable to the present scheme. It is necessary to identify the interests which it serves. They are in my view clear. Mr Beavis obtained an (admittedly revocable) permission to park and, importantly, agreement that if and so far as he took advantage of this it would be free of charge. ParkingEye was able to fulfil its role of providing a traffic management maximisation scheme for BAPF. The scheme met, so far as appears, BAPF's aim of providing its retail park lessees with spaces in which their customers could park. All three conditions imposed were directed to this aim, and all were on their face reasonable. (The only comment that one might make, is that, although the signs made clear that it was a "Customer only car park", the Parking Charge of £85 did not apply to this limitation, which might be important in central Chelmsford. The explanation is, no doubt, that, unlike a barrier operated scheme where exit can be made conditional upon showing or using a ticket or

bill obtained from a local shop, a camera operated scheme allows no such control.) The scheme gave BAPF through ParkingEye's weekly payments some income to cover the costs of providing and maintaining the car park. Judging by ParkingEye's accounts, and unless the Chelmsford car park was out of the ordinary, the scheme also covered ParkingEye's costs of operation and gave their shareholders a healthy annual profit.

198. The £85 charge for overstaying is certainly set at a level which no ordinary customer (as opposed to someone deliberately overstaying for days) would wish to incur. It has to have, and is intended to have, a deterrent element, as Judge Moloney QC recognised in his careful judgment (para 7.14). Otherwise, a significant number of customers could all too easily decide to overstay, limiting the shopping possibilities of other customers. Turnover of customers is obviously important for a retail park. A scheme which imposed a much smaller charge for short overstaying or operated with fine gradations according to the period of overstay would be likely to be unenforceable and ineffective. It would also not be worth taking customers to Page 88 court for a few pounds. But the scheme is transparent, and the risk which the customer accepts is clear. The fact that, human nature being what it is, some customers under-estimate or over-look the time required or taken for shopping, a break or whatever else they may do, does not make the scheme excessive or unconscionable. The charge has to be and is set at a level which enables the managers to recover the costs of operating the scheme. It is here also set at a level enabling ParkingEye to make a profit. Unless BAPF was itself prepared to pay ParkingEye, which would have meant, in effect, that it was subsidising customers to park on its own site, this was inevitable. If BAPF had attempted itself to operate such a scheme, one may speculate that the charge might even have had to be set at a higher level to cover its costs without profit, since ParkingEye is evidently a specialist in the area.