

POPLA Verification Code XXXXXXXXXXXXXXXX
Civil Enforcement Ltd Parking PCN no XXXXXXXXXXXXXXXX

1. Occupant could have received a refund for the parking if the signage was clear
2. 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
3. Authority to Issue Tickets – No Evidence of Landowner Authority
4. No evidence of period parked – NtK does not meet the PoFA 2012 requirements
5. PAS 232: Privately managed parking – Operation and management - Specification

1. Occupant could have received a refund for the parking if the signage was clear

The occupant of the vehicle spent over £5.00 in store and could have obtained a £1.00 parking refund, however, due to the unclear and illegible signage (which does not adhere to the BPA Code of Practice – see Section 2 of this appeal) they were not aware of this.

Evidence of shopping and spending over £5.00 in store is shown in Picture 1, it can be seen from the receipt that the shopping took place on 09/01/2021 at 11:54:14 which is within the timeframe noted in the NtK. As the picture of the car park sign shows (picture 2) “up to 1 hour” of parking will cost “£1.00” – as the vehicle was pictured entering at 11:16:40 and leaving the car park at 11:56:36 – a total of 30 minutes – so the occupant would have been fully reimbursed for the parking if the signage was prominent and clear.



Picture 1.

2. 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



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:



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.

CEL's main car park sign for the "Car Park at 99 High Street" is inadequate and illegible in a number of ways, not least because of the amount of text that must be read (Picture 2), the signs at the entrance also are unclear as to which car park they refer to as the entrance to (Picture 3) "Car Park at 99 High Street" is via a Broxbourne Borough Council pay and display car park – there is no clear definition of where one car park ends and the other begins (either by road markings or clear signs). Furthermore, the signs within the car park are placed behind certain parking bays (Picture 5), as the car park is also used for loading and unloading deliveries there are often large vehicles and forklifts parked in these bays or working in front of these bays, as was the case on 09/01/2021 these signs are obscured – this is also the case for the payment machine (Picture 5) which at the time of parking was also obscured due to a vehicle being parked at the bay in front of it (a re-visit to site had the same issue showing it is

a regular occurrence – Picture 5), there is no large sign over the payment machine saying “Pay Here” as is the norm for pay at machine private car parks.



Picture 2



Picture 3



Picture 4 - Used a stock google picture from 2018 as the bay with the payment machine was never empty.



Picture 5 – Pay Machine Completely obscure by vehicle and no sign to show it is there

The section in white text with a purple background at the bottom of the sign (see Picture 2) that is apparently “terms and conditions” is in tiny text that’s impossible to read. Why is something so important so small and illegible? Furthermore, small white text on a purple background is difficult to read, particularly in low light conditions or with urban artificial light introducing a glare onto the reflective surface of the sign.

Indeed, in relation to design principles, it is widely known that colour contrast plays a key role in terms of accessibility as it “*affects some people’s ability to perceive information (in other words to be able to receive the information visually)*” Government Digital Service, 17 June 2016). Whilst this web page discusses design principles in relation to web design, the same points are true of print-based materials which would include signage.

Many areas of the site are unsigned and there are no full terms clearly indicating non-compliance with the BPA Code of practice (19.3) which states:

“Specific parking-terms signage tells drivers what your terms and conditions are, including your parking charges. You must place signs containing the specific parking terms throughout the site, so that drivers are given the chance to read them at the time of parking or leaving their vehicle. Keep a record of where all the signs are. Signs must be conspicuous and legible, and written in intelligible language, so that they are easy to see, read and understand. Signs showing your detailed terms and conditions must be at least 450mm x 450mm.”

In September 2017 an almost identical POPLA appeal versus Euro Car Parks (car park: Kay Street, Bolton) was successful as the Assessor was not satisfied that adequate signage was placed throughout the site and therefore compliant with section 19.3 of the BPA Code of practice.

It is therefore suggested once again CEL is in non-compliance with the BPA Code of Practice (19.3), specifically:

*“Signs must be **conspicuous and legible, and written in intelligible language**, so that they are **easy to see, read and understand**”*. Picture 2 shows that the signs are absolutely not easy to read, see or understand.

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 (noted to be £100) which is hidden in **small print** (and does not feature at all on the entrance signs), the sum doesn’t stand out from the rest of the text and is part of the smallest text on the entire sign. 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.

It also should be noted that the evidence provided by CEL it is an outdated picture (taken 08/04/2019) which does not show the current signs being used which have a purple background (see pictures 2, 3 and 5) and not blue. Therefore their argument that appropriate signage is present is arguable inadmissible as they are not using evidence temporally relevant to this case.

This case is more similar to the signage in POPLA decision 5960956830 on 02/06/16, 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 operators 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."

Very recently (April 2019) here was a not dissimilar POPLA Appeal versus CEL which was successful on the grounds that the assessor (Gemma West). Gemma West wrote the following:

"Having reviewed the operator's evidence pack, I am not satisfied the amount of the parking charge is clearly highlighted."

"I am of the view that the signage at the site is not sufficient to bring the parking charge to the attention of the motorist. The operator has provided evidence of the signage at the site. After reviewing the evidence, I can see that the charge is in small writing with a lot of other information and does not stand out from a distance. I appreciate that the amount of the charge is in bold writing, however it does not stand out from a distance."

Gemma West's reasoning for not being satisfied that the parking charged if clearly highlighted is just and fair, the same reasons for her decision can be seen to also be true of the signs at the car park in question here (Picture 2), in fact the charge in this case is even less highlighted as it is not even in bold as was the case in the appeal that Gemma West dealt with.

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.***"

...and the same chart is reproduced here:

https://www.thesignchef.com/sizing_guide.php

*"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.

In addition, the BPA Code of Practice (19.1) clearly states that:

“A driver who uses your private car park with your permission does so under a licence or contract with you...In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.”

Bearing this paragraph in mind, there was categorically no contract established between the driver and CEL. To draw on the basic guidelines of contract law for a contract to be effective the offer must be communicated. Therefore, there can be no acceptance of an agreement if the other person is without knowledge of the offer. When the driver arrived at the car park it was impossible to read, let alone understand the terms and conditions being imposed. As a result, the driver did not have a fair opportunity to read about any of the terms and conditions involving this charge.

The BPA Code of Practice provides requirements of Entrance Signs in Appendix which states: *“There must be at least one item from Group 1. But no more than three items from Group 1 should appear before, and more prominently than, text from Group 2..”*

Group 1

*Pay and display [except/free for blue badge holders]
[x minutes'/hour's/hours'] free parking [for [business name]
customers only]
Pay on exit
Pay [on foot/at machine] when leaving
Parking for [business name] customers only
Permit holders only*

Group 2

*Charges apply [after this][after x minutes/hours]
Private land
Terms and conditions apply
See the notice[s] [in the car park] for details*

None of the terms in Group 1 are used in any of the signs within The Car Park at 99 High Street.

3. Authority to Issue Tickets – 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

4. No evidence of period parked – NtK does not meet the PoFA 2012 requirements

Contrary to the mandatory provisions of the BPA Code of Practice, there is no record to show that the vehicle was **parked** versus attempting to read the terms and conditions before deciding against parking/entering into a contract.

Furthermore, PoFA 2012 Schedule 4 paragraph 9 refers at numerous times to the “*period of parking*”. Most notably, paragraph 9(2)(a) requires the NtK to:

“specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;”

CELs NtK simply claims “Location of Parked Vehicle: CAR PARK AT 99 HIGH STREET, WALTHAM CROSS, EN8 7AH”

The NtK separately states times of “From 09/01/2021 11:26:00 and To 09/01/2021 11:56:36”. At no stage do CEL explicitly specify the “*period of parking to which the notice relates*”, as required by PoFA 2012. Neither does it directly relate the details of the vehicle provided in the letter with the “location of parked vehicle”.

The photographs provided do not show the vehicle in question parked, only at the entrance/exit of the car park. It is not in the gift of CEL to substitute pictures of a vehicle entering/exiting the car park in place of the POFA requirement - “period of parking” - and hold the keeper liable as a result.

By virtue of the nature of an ANPR system recording only entry and exit times, CEL are not able to definitively state the period of parking.

I require CEL to provide evidence to show the vehicle in question was parked on the date/time (for the duration claimed) and at the location stated in the NtK.

5. PAS 232: Privately managed parking – Operation and management – Specification

As a final point I would like to bring to your attention to section 4.2 of the PAS 232: Privately managed parking – Operation and management – Specification which states:

“Signs and surface markings – adjoining parking premises Where different terms and conditions apply to adjoining stretches of controlled land where there is no physical segregation, signs and/or surface markings shall be used by the parking operator to delineate

clearly between these premises and alert drivers to the terms and conditions applying. NOTE For example, there may be adjoining premises on business/industrial estates or multi-occupant premises with parking provision specifically earmarked for specific businesses and their clients. Parking operators should also have regard to confusion that might arise where a site is adjacent to a public highway with signs that could be taken to apply to the site.”

Whilst this is a draft document and currently under review, it clearly shows the direction future regulations are going. The clear intent is to enforce much better distinction where two car parks are adjoining. Picture 3 shows there is no clear surface markings and the signs do not clearly state a new parking premises.