

IN THE COUNTY COURT

CLAIM No: *****

BETWEEN:

VEHICLE CONTROL SERVICES (Claimant)

-and-

***** (Defendant)

DEFENCE

1. The Defendant denies that the Claimant is entitled to relief in the sum claimed, or at all.

No Contract Exists

2. The Claimant's claim is for breach of contract, "namely stopping in a zone where stopping is prohibited" as defined by signage.

2.1. It is denied that the Defendant, or any driver of the vehicle, entered into any contractual agreement with the Claimant, whether express, implied, or by conduct.

2.2. The facts are that the vehicle, registration *****, of which the Defendant was the registered keeper, appears from the sparse evidence supplied by this claimant, to be parked on the material date on a piece of spare land, not causing an obstruction.

2.3. The Claimant's case is that the area is intended as "a zone where stopping is prohibited" at all times. The signage is therefore prohibitive in nature and does not communicate any offer of consideration (ie: such as stopping or parking, at a price). In the absence of any consideration no contract exists.

2.4. Accordingly, it is denied that any contravention or breach of clearly signed/lined terms occurred, and it is denied that the driver was properly informed about any parking charge, either by signage or by a CN.

2.5 This was reflected in the PCM-UK vs Bull et al (B4GF26K6 2016) case, where Defendants were issued parking tickets for parking on private roads with signage stating "no parking at any time". District Judge Glen in his final statement mentioned that "the notice was prohibitive, and didn't communicate any offer of parking and that landowners may have claim in trespass, but that was not under consideration".

RTA 1988 Takes Precedence

3. The road upon which the alleged offence was committed falls under the definition of a road as defined in Section 192(1) of the Road Traffic Act 1988 (RTA 1988) ie: 'any highway and any other road to which the public has access', and is therefore subject to the RTA 1988 and all subordinate legislation.

3.1. The signage relied upon by the Claimant contradicts the Road Traffic Enactments, and in particular the ZPPPCR 1997, in this location and circumstances, and therefore cannot apply.

No Cause of Action

4. The Particulars of Claim does not state whether they believe the Defendant was the registered keeper and/or the driver of the vehicle. These assertions indicate that the Claimant has failed to identify a Cause of Action, and is simply offering a menu of choices. As such, the Claim fails to comply with Civil Procedure Rule 16.4, or with Civil Practice Direction 16, paras. 7.3 to 7.5. Further, the particulars of the claim do not meet the requirements of Practice Direction 16 7.5 as there is nothing which specifies how the terms were breached.

ABUSE OF PROCESS

5. The purported added 'costs' are disproportionate, a disingenuous double recovery attempt, vague and in breach of both the CPRs, and the Consumer Rights Act 2015 Schedule 2 'terms that may be unfair'.

5.1. Alleging that the letters the parking firm claim to have sent have caused an additional loss, is simply untrue. The standard wording for parking charge/debt recovery contracts is/was on the Debt Recovery Plus website - "no recovery/no fee", thus establishing an argument that the Claimant is breaching the indemnity principle - claiming reimbursement for a cost which has never, in fact, been incurred. This is true, whether or not they used a third party debt collector during the process.

5.2. The Defendant has the reasonable belief that the Claimant has not incurred an additional £60 in damages or costs to pursue an alleged £100 debt. The arbitrary addition of a fixed sum purporting to cover 'damages/costs' is also potentially open to challenge as an unfair commercial practice under the CPRs, where 44.3 (2) states: "Where the amount of costs is to be assessed on the standard basis, the court will –

(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and

(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

5.3. Whilst quantified costs can be considered on a standard basis, this Claimant's purported added £60 'damages/costs' are wholly disproportionate, are not genuine losses at all and do not stand up to scrutiny. This has finally been recognised in many court areas. Differently from almost any other trader/consumer agreement, when it comes to parking charges on private land, binding case law and two statute laws have the effect that the parking firm's own business/operational costs cannot be added to the 'parking charge' as if they are additional losses.

The Beavis case is against this Claim

6. Parking Eye Ltd v Beavis [2015] UKSC 67 ('the Beavis case') is the authority for recovery of the parking charge itself and no more, since that sum (£85 in the Beavis case) was held to already incorporate the costs of an automated private parking business model including recovery letters. There are no losses or damages caused by this business model and the Supreme Court Judges held that a parking firm not in possession cannot plead any part of their case in damages. It is indisputable that an alleged 'parking charge' penalty is a sum which the Supreme Court found is already inflated to more than comfortably cover all costs. The case provides a finding of fact by way of precedent, that the £85 (or up to a Trade Body ceiling of £100 depending upon the parking firm) covers the costs of the letters.

6.1. This charge is unconscionable and devoid of any 'legitimate interest', given the facts. To quote from the decision in the Beavis case at Para [108]: "But although the terms, like all standard contracts, were presented to motorists on a take it or leave it basis, they could not have been briefer,

simpler or more prominently proclaimed. If you park here and stay more than two hours, you will pay £85". Ad at [199]: "What matters is that a charge of the order of £85 [...] is an understandable ingredient of a scheme serving legitimate interests."

6.2. In the Beavis case it was said at para [205]: "The requirement of good faith in this context is one of fair and open dealing. Openness requires that the terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps. Appropriate prominence should be given to terms which might operate disadvantageously to the customer."

6.3. At para 98. {re ...The desirability of running that parking scheme at no cost, or ideally some profit, to themselves} "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 [...] 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..."

6.4. At para 193. "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." and at para 198: "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."

The POFA 2012 and the ATA Code of Practice are against this Claim

7. The Protection of Freedoms Act 2012, Schedule 4 ('the POFA') at paras 4(5) and 4(6) makes it clear that the will of Parliament regarding parking on private land is that the only sum potentially able to be recovered is the sum in any compliant 'Notice to Keeper' (further, the ceiling for a 'parking charge', as set by the Trade Bodies and the DVLA, is £100). This also depends upon the Claimant fully complying with the statute, including 'adequate notice' of the parking charge and prescribed documents served in time/with mandatory wording. It is submitted the claimant has failed on all counts and the Claimant is well aware their artificially inflated claim, as pleaded, constitutes double recovery.

The Consumer Rights Act 2015 ('the CRA') is against this claim

8. Further, the purported added 'costs' are disproportionate, vague and in breach of the CRA 2015 Schedule 2 'terms that may be unfair'. This Claimant has arbitrarily added an extra 60% of the parking charge in a disingenuous double recovery attempt that has already been exposed and routinely disallowed by many Courts in England and Wales. It is atrocious that this has been allowed to continue unabated for so many years, considering the number of victims receiving this Claimant's exaggerated Letter before Claim, or the claim form, who then either pay an inflated amount or suffer

a default judgment for a sum that could not otherwise be recovered. It is only those who defend, who draw individual cases to the attention of the courts one by one, but at last in 2019, some areas noticed the pattern and have moved to stop this abuse of process at source.

8.1. In the Caernarfon Court in Case number F2QZ4W28 (Vehicle Control Services Ltd v Davies) on 4th September 2019, District Judge Jones-Evans stated: "Upon it being recorded that District Judge Jones-Evans has over a very significant period of time warned advocates [...] in many cases of this nature before this court that their claim for £60 is unenforceable in law and is an abuse of process and is nothing more than a poor attempt to go behind the decision of the Supreme Court in Beavis which inter alia decided that a figure of £160 as a global sum claimed in this case would be a penalty and not a genuine pre-estimate of loss and therefore unenforceable in law and if the practice continued he would treat all cases as a claim for £160 and therefore a penalty and unenforceable in law it is hereby declared [...] the claim is struck out and declared to be wholly without merit and an abuse of process."

8.2. That decision in Wales was contested in a N244 application by VCS, but the added £60 was still disallowed on 30 Oct 2019. District Judge Jones-Evans stated that even in cases parking firms win, he never allows the £60 add on, and despite parking firms continuing to include it in their Particulars, most advocates have now stopped pushing for it at hearings. The Judge said that a contract formed by signage is a deemed contract, which the motorist does not have the opportunity to negotiate. That, and the fact that there is no specified sum on the signage, means that the extra £60 cannot possibly be recoverable. He said that the £60 was clearly a penalty, and an abuse of process. The considered sum in that case was reduced to £100 with a full case hearing to follow, but the £60 would not be awarded under any circumstances, and further, he ordered that the Claimant must now produce a statement of how they pleaded claims prior to Beavis, and subsequently.

8.3. In Claim numbers F0DP806M and F0DP201T - BRITANNIA PARKING -v- Mr C and another - less than two weeks later - the courts went further in a landmark judgment in November 2019 which followed several parking charge claims being struck out in the area overseen by His Honour Judge Iain Hamilton-Douglas Hughes QC, the Designated Civil Judge for Dorset, Hampshire, Isle of Wight & Wiltshire.

8.3.1. Cases summarily struck out in that circuit included BPA members using BW Legal's robo-claim model and IPC members using Gladstones' robo-claim model, and the Orders from that court were identical in striking out all such claims without a hearing during a prolonged period in 2019, with the Judge stating: "It is ordered that The claim is struck out as an abuse of process. The claim contains a substantial charge additional to the parking charge which it is alleged the Defendant contracted to pay. This additional charge is not recoverable under the Protection of Freedoms Act 2012, Schedule 4 nor with reference to the judgment in the Beavis case. It is an abuse of process from the Claimant to issue a knowingly inflated claim for an additional sum which it is not entitled to recover. This order

has been made by the court of its own initiative without a hearing pursuant to CPR Rule 3.3(4) of the Civil Procedure Rules 1998..."

8.3.2. BW Legal made an application objecting to two 'test' cases that had been struck out by District Judge Taylor against a parking firm for trying to claim for £160 instead of £100 parking charge. This has been repeated conduct in recent years, on the back of the Beavis case, where parking firms have almost unanimously contrived to add £60, or more, on top of the 'parking charge'. Members of both ATAs who have influence on their self-serving 'Trade Bodies' have even voted to have this imaginary 'damages/debt collection' sum added to their respective two Codes of Practice, to create a veil of legitimacy, no doubt to allow their members to confuse consumers and to enable them to continue to 'get away with it' in several court areas which are still allowing this double recovery.

8.3.3. That N244 application to try to protect the cartel-like position of some of the 'bigger player' parking firms, was placed before the area Circuit Judge and a hearing was held on 11th November 2019, with other parking charge cases in that circuit remaining struck out or stayed, pending the outcome. The Defendants successfully argued on points including a citation of the CRA 2015 and the duty of the court to apply the 'test of fairness' to a consumer notice (a statutory duty that falls upon the courts, whether a consumer raises the issue or not). All three points below were robustly upheld by District Judge Grand, sitting at the Southampton Court, who agreed that:

(a) The Claimant knew or should have known, that £160 charge (howsoever argued or constructed) was in breach of POFA, due to paras 4(5) and 4(6).

(b) The Claimant knew or should have known, that £160 charge (howsoever argued or constructed) was unconscionable, due to the Beavis case paras 98, 193, 198 and 287.

(c) The Claimant knew or should have known, that £160 charge where the additional 'recovery' sum was in small print, hidden, or in the cases before him, not there at all, is void for uncertainty and in breach of the Consumer Rights Act 2015, Schedule 2 (the 'grey list' of terms that may be unfair) paragraphs 6, 10 and 14.

8.3.4. At the hearing, the Judge refused their request to appeal. It was successfully argued that the parking firm's consumer notice stood in breach of the CRA 2015, Schedule 2 (the 'grey list' of terms that may be unfair) paragraphs 6, 10 and 14. Using the statutory duty upon the Courts to consider the test of fairness and properly apply schedule 2 of the CRA 2015 it was irrelevant whether or not the consumers' defences had raised it before, which they had not. The same issues apply to this claim.

8.3.5. A transcript will be publicly available shortly. In his summing up, it was noted that District Judge Grand stated: "When I come to consider whether the striking out of the whole claim is appropriate, that the inclusion of the £60 charge means that the whole claim is tainted by it, the claimant should well know that it is not entitled to the £60. The very fact that they bring a claim in these circumstances seems to me that it is an abuse of process of the court, and in saying that, I

observe that with any claim that can be brought before the court that if a party doesn't put in a defence to the claim, default judgments are entered. So, the Claimant, in bringing the claims is, in other cases, aware that if the defendant doesn't submit a defence, the Claimant is going to get a judgment of a knowingly inflated amount. So I conclude by saying that I dismiss the application to set aside Judge Taylor's ruling."

8.4. Consumer notices - such as car park signs - are not excused by the CRA 'core exemption'. The CMA Official Government Guidance to the CRA says: "2.43 In addition, terms defining the main subject matter and setting the price can only benefit from the main exemption from the fairness test ('the core exemption') if they are transparent (and prominent) – see part 3 of the guidance." and at 3.2 "The Act includes an exemption from the fairness test in Part 2 for terms that deal with the main subject matter of the contract or the adequacy of the price, provided they are transparent and prominent. (This exemption does not extend to consumer notices but businesses are unlikely to wish to use wording that has no legal force to determine 'core' contractual issues)." The parking industry is the exception to this rule because they have no consumer 'customers' yet are consumer-facing. Their intention is very clearly in many cases (including this case) for a consumer not to see the onerous terms hidden in their notices and it is averred that no regard is paid to consumer law.

8.5. The definition of a consumer notice is given at 1.19 and the test of fairness is expanded at 1.20: "A consumer notice is defined broadly in the Act as a notice that relates to rights or obligations between a trader and a consumer, or a notice which appears to exclude or restrict a trader's liability to a consumer. It includes an announcement or other communication, whether or not in writing, as long as it is reasonable to assume that it is intended to be seen or heard by a consumer. Consumer notices are often used, for instance, in public places such as shops or car parks as well as online and in documentation that is otherwise contractual in nature. [...] Consumer notices are, therefore, subject to control for fairness under the Act even where it could be argued that they do not form part of the contract as a matter of law. Part 2 of the Act covers consumer notices as well as terms, ensuring that, in a broad sense any wording directed by traders to consumers which has an effect comparable to that of a potentially unfair contract term is open to challenge in the same way as such a term. There is no need for technical legal arguments about whether a contract exists and whether, if it does, the wording under consideration forms part of it."

9. In December 2019 in a different Court circuit, Deputy District Judge Joseph sitting at Warwick County Court had clearly heard about the decisions affecting the IOW, Hampshire, Dorset and Wiltshire circuit because he summarily struck out multiple parking ticket claims from various firms all due to the adding of the false £60 costs to £100 parking charge, that already indisputably (in law and case law) includes those costs.

9.1. The Judge determined that "it is an abuse of process for the Claimant to issue a knowingly inflated claim for an additional sum which it is not entitled to recover." further, in issuing his Orders striking out several £160 parking claims without a hearing, the Judge stated that he had "considered

S71(2) of the Consumer Rights Act 2015 for the fairness of the contract terms and determined that the provision of the additional charge breached examples 6, 10 and 14".

10. In summary, the Claimant's particulars disclose no legal basis for the sum claimed and it is the Defendant's position that the poorly pleaded claim discloses no cause of action and no liability in law for any sum at all. The Claimant's vexatious conduct from the outset has been intimidating, misleading, harassing and indeed untrue in terms of the added costs alleged and the statements made.

11. The Defendant is of the view that this Claimant knew or should have known that to claim in excess of £100 for a parking charge on private land is disallowed under the CPRs, the Beavis case, the POFA and the CRA 2015, and that relief from sanctions should be refused.

12. If this claim is not summarily struck out for the same reasons as the Judges cited in the multiple Caernarfon, Southampton, IOW and Warwick County Court decisions, then due to this Claimant knowingly proceeding with a claim that amounts to an abuse of process, full costs will be sought by the Defendant at the hearing, such as are allowable pursuant to CPR 27.14.

13. On receipt of the court claim paperwork, the defendant requested a copy of the 'Notice to driver', 'Notice to keeper' documentation. The defendant also requested photographic evidence of the land, the vehicle parked on the land, and signage displayed on the date of the alleged incident. The defendant also requested a copy of the contract between claimant and landlord.

14. Due to the sparseness of the particulars, it is unclear as to what legal basis the claim is brought, whether for breach of contract, contractual liability, or trespass. However, it is denied that the Defendant, or any driver of the vehicle, entered into any contractual agreement with the Claimant, whether express, implied, or by conduct.

15. Further and in the alternative, it is denied that the claimant's signage sets out the terms in a sufficiently clear manner which would be capable of binding any reasonable person reading them. The current signage at the land is inadequate and the claimant has provided no evidence of the signage on the date of the parking charge.

15.1. At best, parking without authorisation could be a matter for the landowner to pursue, in the event that damages were caused by a trespass. A parking charge cannot be dressed up by a non-landowner parking firm, as a fee, or a sum in damages owed to that firm for positively inviting and allowing a car to trespass. Not only is this a nonsense, but the Supreme Court decision in

ParkingEye Ltd v Beavis [2015] UKSC 67, confirmed that ParkingEye could not have pursued a sum in damages or for trespass.

15.2. County Court transcripts supporting the Defendant's position will be adduced, and in all respects, the Beavis case is distinguished.

16. The Claimant is put to strict proof that it has sufficient proprietary interest in the land, or that it has the necessary authorisation from the landowner to issue pieces of paper that are not 'charge notices', and to pursue payment by means of litigation.

17. In summary, it is the Defendant's position that the claim discloses no cause of action, is without merit, and has no real prospect of success. Accordingly, the Court is invited to strike out the claim of its own initiative, using its case management powers pursuant to CPR 3.4.

18. At the Bradford County Court, District Judge Claire Jackson (now HHJ Jackson, a Specialist Civil Circuit Judge) decided to hear a 'test case' a few months ago, where £60 had been added to a parking charge despite Judges up and down the country repeatedly disallowing that sum and warning parking firms not to waste court time with such spurious claims. That case was Excel v Wilkinson: G4QZ465V, heard in July 2020 and leave to appeal was refused and that route was not pursued. The Judge concluded that such claims are proceedings with 'an improper collateral purpose'. This Judge - and others who have since copied her words and struck dozens of cases out in late 2020 and into 2021 - went into significant detail and concluded that parking operators (such as this Claimant) are seeking to circumvent CPR 27.14 as well as breaching the Consumer Rights Act 2015. DJ Hickinbottom has recently struck more cases out in that court area, stating: "I find that striking out this claim is the only appropriate manner in which the disapproval of the court can be shown".

I believe that the facts stated in this defence 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.

09/03/2021