Index

In the County Court at xxxxx

Claim Number: xxxxxx

HX CAR PARK MANAGEMENT LIMITED (Claimant)

V

xxxxxxxxxxxxxxx (Defendant)

WITNESS STATEMENT OF DEFENDANT
FOR TELEPHONE HEARING ON xx/xx/xxxx

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1. I am Mr xxxxxx of xxxxxxxxxxx, 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 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:

Sequence of events and signage

3. Firstly, it should be noted that the claimant has appended to their witness statement signage that does not exist at this car park. I have appended the actual signage, photographed myself on November 24th 2019, and will refer to them throughout.

4. The approach and entrance to the car park is on a single-track road with double yellow lines (exhibit xx-01). This is a busy road beside the bus station where stopping is both impossible due to the double yellow lines and traffic (including many buses) not being able to pass. The only safe way to stop to view the car park terms and conditions is by entering.

5. At the point of entry, the entrance terms and conditions sign is not visible or readable (exhibit xx-02 and xx-03). The only viewable signage is the pay and display machine sign (exhibit xx-04) and an ANPR sign (exhibit xx-06) which do not mention anything related to a risk of paying £100 or that tickets must be purchased within 10 minutes.

6. After finding a suitable place to park I took a short phone call, staying in the car. Then, I endeavoured to fully understand the terms and conditions signage around the car park as I was

highly aware of how purposely deceiving private parking terms can be. As seen in exhibits xx-04, xx-05, xx-07 and xx-08 each sign directs the reader to various other signs for “full terms and conditions” leaving me confused whether I had read enough to understand the full terms.

7. I first went to the pay and display signage to read the smaller print that cannot be read from the car. After this, I went to the entrance sign but could not read all the terms and conditions as the sign is too high and the font is too small to read from standing beside it. Exhibit xx-07 is of the entrance sign, taken from eye level whilst standing. I then took a photo of this sign and zoomed in to read the terms from the top. The first term says “please refer to the full terms and conditions sign(s) located at the pay and display machine”.

8. The pay and display terms and conditions instructed me to read the signage displayed around the car park for full terms and conditions. These signs were heavily worn and torn, missing large amounts of vital information as seen in exhibit xx-08. I tried my best to read all the terms by going around all the signs. The total number of words needed to be read to understand the full terms and conditions comes to 820. At the average reading speed of 200 words per minute, this takes a minimum 4 minutes to just read the words, not counting walking back and forth around the car park, being directed to different places by the signs, and struggling to read small print.

9. I then went to the pay and display machine to buy a ticket and joined a queue. The claimant disputes this queue in their witness statement with their payment machine records but they may have just been reading the signs like I was earlier. After reaching the machine, I realised there is only cash payment accepted, despite what the claimant suggests in their witness statement by appending false signage to their witness statement that does not exist at this car park. There is no mention of “parkonomy” or app payment, only cash payment, as is clear in exhibit xx-05.

10. Therefore, as I expected a modern car park to have a card payment option, I had to return to my car to try to find some cash which took a few extra minutes. I then had to join a queue again. The pay and display machine was confusing and I had to enter my registration number a few times before it was correct on the screen. I paid for an hour and displayed the ticket in my car. I then went into town. I returned to my car and left the car park, respecting the time that I entered the car park rather than when I paid for my ticket. Thus, my total stay is 1 hour 6 minutes and 13 seconds – an acceptable stay given the grace period of 10 minutes and the time paid for.

11. However, I received a PCN and now am asked to pay an inflated charge of £160. This is not because I did not pay fully for my stay (which the claimant also agrees I did), but because I paid later than the Claimant would have liked.

12. A key factor in the leading authority from the Supreme Court, was that ParkingEye were found to have operated in line with the relevant parking operator’s code of practice and that there were signs that were clear and obvious and 'bound to be seen'. I have included a copy of this sign in exhibit xx-09 for comparison. In this case, the signage fails to adhere to the standards laid out by the relevant accredited parking association, the International Parking Community ('IPC'). The IPC mandatory Code says that text on signage “should be of such a size and in a font

that can be easily read by a motorist having regard to the likely position of the motorist in relation to the sign". It also states that "they should be clearly seen upon entering the site" and that the signs are a vital element of forming a contract with drivers.

The Beavis case is against this claim

13. This situation can be fully distinguished from *ParkingEye Ltd v Beavis* [2015] UKSC67, where the Supreme Court found that whilst the £85 was not (and was not pleaded as) a sum in the nature of damages or loss, ParkingEye had a 'legitimate interest' in enforcing the charge where motorists overstay, in order to deter motorists from occupying spaces beyond the time paid for and thus ensure further income for the landowner, by allowing other motorists to occupy the space. The Court concluded that the £85.00 charge was not out of proportion to the legitimate interest (in that case, based upon the facts and clear signs) and therefore the clause was not a penalty clause.

14. However, there is no such legitimate interest where the requisite fee has been paid in full for the time stayed. As such, I take the point that the parking charge in my case is a penalty, and unenforceable. This is just the sort of 'concealed pitfall or trap' and unsupported penalty that the Supreme Court had in mind when deciding what constitutes a (rare and unique case) 'justified' parking charge as opposed to an unconscionable one.

Redacted Landowner Contract

15. The Claimant has appended a redacted 'landowner contract' which has little or no probative value and which offends against the rules of evidence. There is nothing to say what the landowner's approach (whoever they may be) is to penalising genuine patrons who pay, and even the signatories could be anyone (even a stranger to the land?). It is clear that two Directors have not signed this contract for either party, contrary to the Companies Act. The network of contracts are key in these cases, since the parking charges are argued to be contractual and the authority to sue visitors must flow from the landowner, not an agent.

16. In the recent Court of Appeal case of *Hancock v Promontoria (Chestnut) Limited* [2020] EWCA Civ 907 the Court of Appeal are now clear that most redactions are improper where the Court are being asked to interpret the contract. https://www.bailii.org/ew/cases/EWCA/Civ/2020/907.html Ref. paras 74 & 75 *''...The document must in all normal circumstances be placed before the court as a whole. Seldom, if ever, can it be appropriate for one party unilaterally to redact provisions in a contractual document which the court is being asked to construe, merely on grounds of confidentiality...confidentiality alone cannot be good reason for redacting an otherwise relevant provision...''*

Abuse of process - the quantum

17. The Claimant has added a sum disingenuously described as 'damages/admin' or 'debt collection costs'. The added £60 constitutes double recovery and the court is invited to find the quantum claimed is false and an abuse of process - see exhibit xx-12 - transcript of the Approved

judgment in *Britannia Parking v Crosby* (Southampton Court 11.11.19). That case was not appealed and the decision stands.

18. Whilst it is known that another case that was struck out on the same basis was appealed to Salisbury Court (the *Semark-Jullien* case), the parking industry did not get any finding one way or the other about the illegality of adding the same costs twice. The Appeal Judge merely pointed out that he felt that insufficient information was known about the *Semark-Jullien* facts of the case (the Defendant had not engaged with the process and no evidence was in play, unlike in the Crosby case) and so the Judge listed it for a hearing and felt that case (alone) should not have been summarily struck out due to a lack of any facts and evidence.

19. The Judge at Salisbury correctly identified as an aside, that costs were not added in the Beavis case. That is because this had already been addressed in ParkingEye's earlier claim, the pre-Beavis High Court (endorsed by the Court of Appeal) case *ParkingEye v Somerfield (ref para 419):* https://www.bailii.org/ew/cases/EWHC/QB/2011/4023.html
''It seems to me that, in the present case, it would be difficult for ParkingEye to justify, as against any motorist, a claim for payment of the enhanced sum of £135 if the motorist took the point that the additional £60 over and above the original figure of £75 constituted a penalty. It might be possible for ParkingEye to show that the additional administrative costs involved were substantial, though I very much doubt whether they would be able to justify this very large increase on that basis. On the face of it, it seems to me that the predominant contractual function of this additional payment must have been to deter the motorist from breaking his contractual obligation to pay the basic charge of £75 within the time specified, rather than to compensate ParkingEye for late payment. Applying the formula adopted by Colman J. in the Lordsvale case, therefore, the additional £60 would appear to be penal in nature; and it is well established that, in those circumstances, it cannot be recovered, though the other party would have at least a theoretical right to damages for breach of the primary obligation.''

20. This stopped ParkingEye from using that business model again, particularly because HHJ Hegarty had found them to have committed the 'tort of deceit' by their debt demands. So, the Beavis case only considered an £85 parking charge but was clear at paras 98, 193 and 198 that the rationale of that inflated sum (well over any possible loss/damages) was precisely because it included (the Judges held, three times) 'all the costs of the operation'. It is an abuse of process to add sums that were not incurred. Costs must already be included in the parking charge rationale if a parking operator wishes to base their model on the *ParkingEye v Beavis* case and not a damages/loss model. This Claimant can't have both.

21. This Claimant knew or should have known, that by adding £60 in costs over and above the purpose of the 'parking charge' to the global sum claimed is unrecoverable, due to the POFA at 4(5), the *Beavis* case paras 98, 193 and 198 (exhibit - xx-10), the earlier *ParkingEye Ltd v Somerfield* High Court case and the Consumer Rights Act 2015 ('CRA') Sch 2, paras 6, 10 and 14. All of those seem to be breached in my case and the claim is pleaded on an incorrect premise with a complete lack of any legitimate interest.

22. This Claimant has failed to provide adequate notice of any terms, let alone the parking charge, which is not 'prominent' in reality. It is noted that the Claimant is relying upon 'stock' images of signs which are not as they appear in situ, and a mock-up 'aerial view' where an unidentified person has dotted markings all over the image yet with no evidence that this is true. I am local and took the evidence photographs appended to this statement myself (on November 24th 2019). I can state from my own knowledge that there are nothing like that many signs in this car

park and nothing beside the Pay & Display machine about a risk of paying £100 or about paying within 10 minutes. There is a tariff list in large lettering and nothing more at the machine where the keys are input.

23. Not drawing onerous terms to the attention of a consumer breaches Lord Denning's 'red hand rule' and in addition the global sum on the particulars of claim is unfair under the CRA. Consumer notices are never exempt from the test of fairness and the court has a duty under s71 of the CRA to consider the terms and the signs to identify the breaches of the CRA. Not only is the added vague sum not stated on the notices at all (despite the Claimant claiming it is in their Witness Statement in writing and by appending signage that does not exist at the car park), but the official CMA guidance to the CRA covers this and makes it clear that words like 'indemnity' are objectionable in themselves and any term trying to allow a trader to recover costs twice would (of course) be void, even if the added sum was on the signs.

CPR 44.11 - further costs

24. I am appending with this bundle, a fully detailed costs assessment which also covers my proportionate but unavoidable further costs and I invite the court to consider making an award to include these, pursuant to the court's powers in relation to misconduct (CPR 44.11). In support of that argument, I remind the court that I appealed and engaged with the Claimant at every step and they knew all along that the tariff has been paid. Not only could this claim have been avoided and the Claimant has no cause of action but it is also vexatious to pursue an inflated sum that includes double recovery. This is compounded by the witness altering the Statement of Truth (an attempt to avoid a personal duty) and attaching stock images of signs instead of actual images and a redacted 'landowner authority' document that could be from anyone.

My fixed witness costs - ref PD 27, 7.3(1) and CPR 27.14

25. As a litigant-in-person I have had to learn relevant law from the ground up and spent a considerable time researching the law online, processing and preparing my defence plus this witness statement. I ask for my fixed witness costs. I am advised that costs on the Small Claims track are governed by rule 27.14 of the CPR and (unless a finding of 'wholly unreasonable conduct' is made against the Claimant) the Court may not order a party to pay another party's costs, *except fixed costs such as witness expenses* which a party has reasonably incurred in travelling to and from the hearing (including fares and/or parking fees) plus the court may award a set amount allowable for loss of earnings or loss of leave.

26. The fixed sum for loss of earnings/loss of leave apply to any hearing format and are fixed costs at PD 27, 7.3(1) ''*The amounts which a party may be ordered to pay under rule 27.14(3)(c) (loss of earnings)... are: (1) for the loss of earnings or loss of leave of each party or witness due to attending a hearing ... a sum not exceeding £95 per day for each person.*''

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.

SIGNATURE

……..

xxxxxxxxxxxx

DATE xx/xx/xxxx

Exhibit - xx-01

The double yellow lined road to the car park entrance

Note how far a car needs to pull into the car park to be off the road

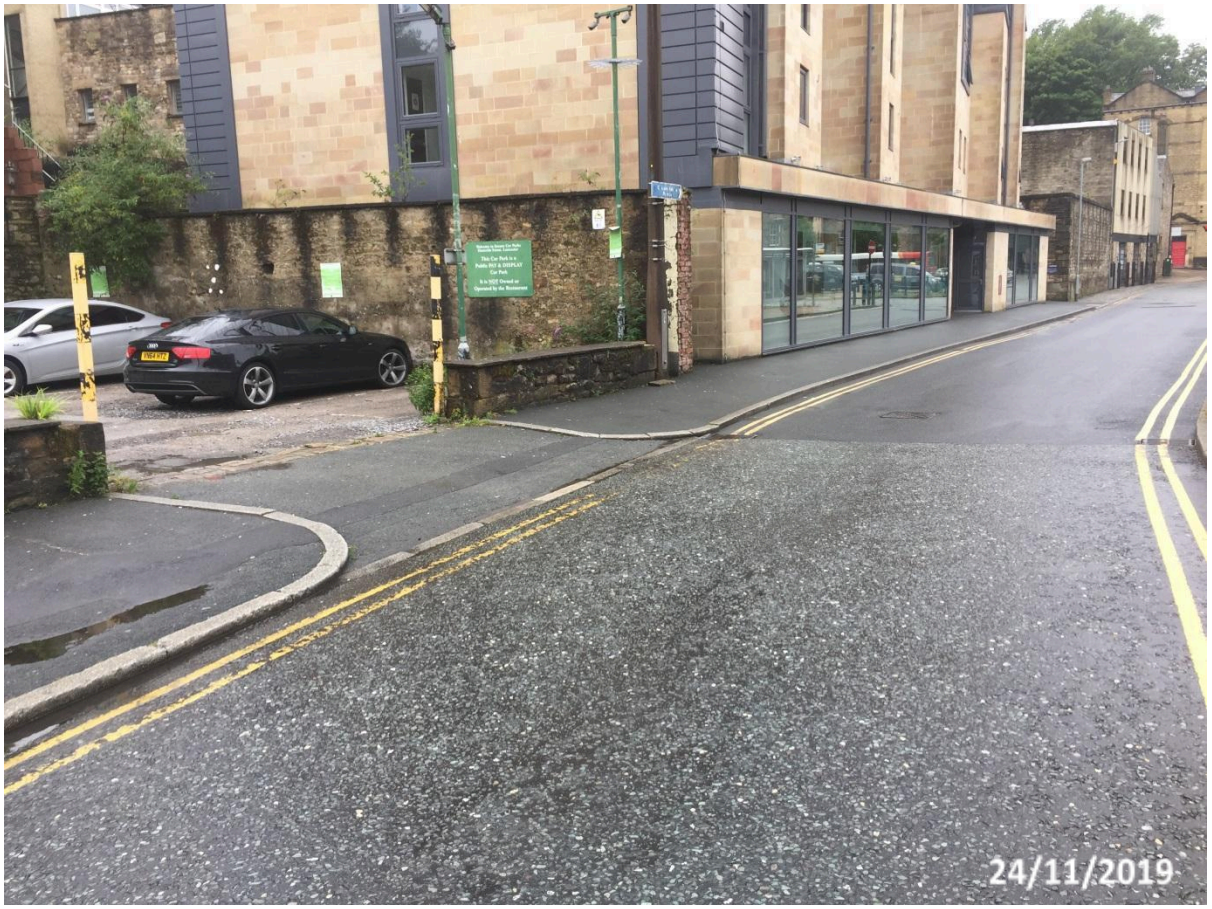


Exhibit - xx-02

The view entering the Damside street car park

Note the inability to read the entrance sign on the left hand pole

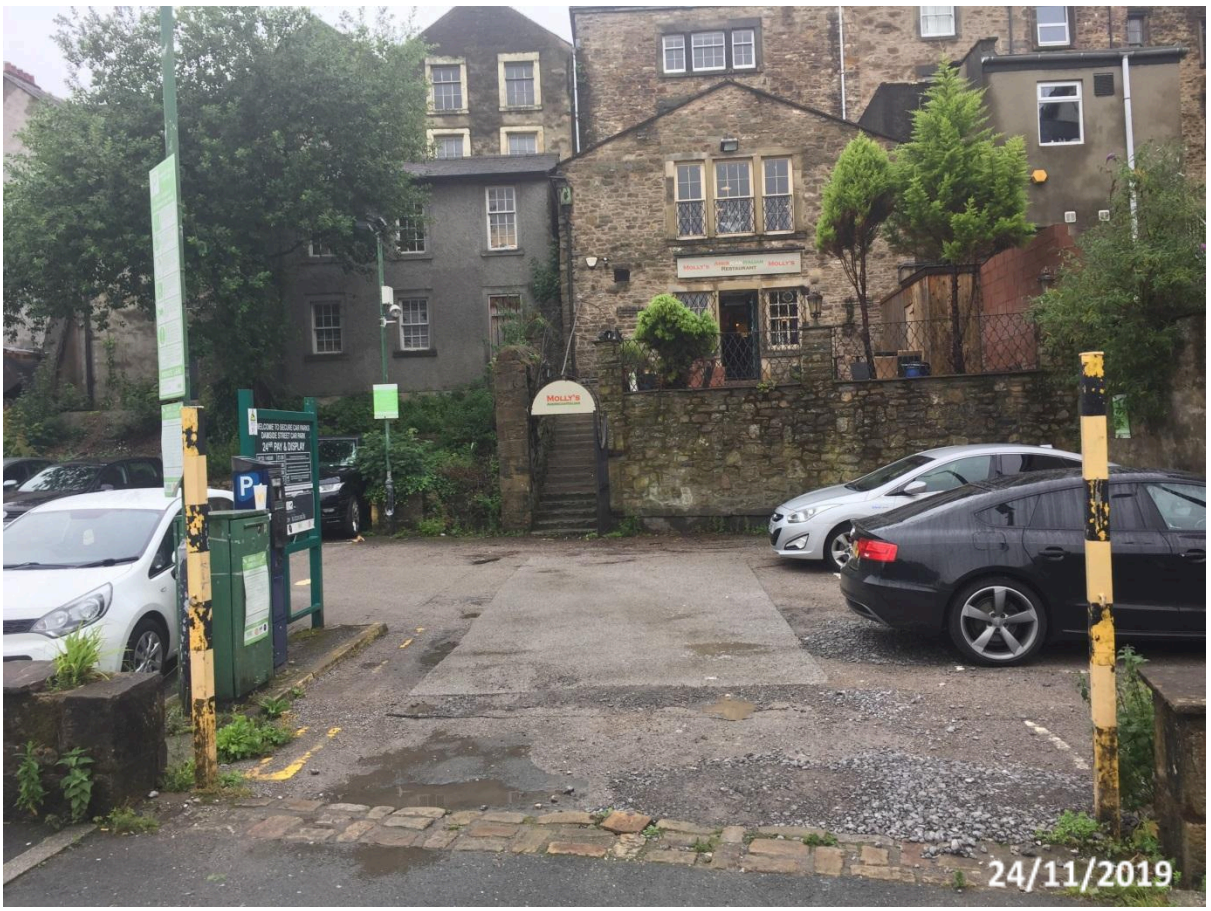


Exhibit - xx-03

The view of the entrance sign from a car

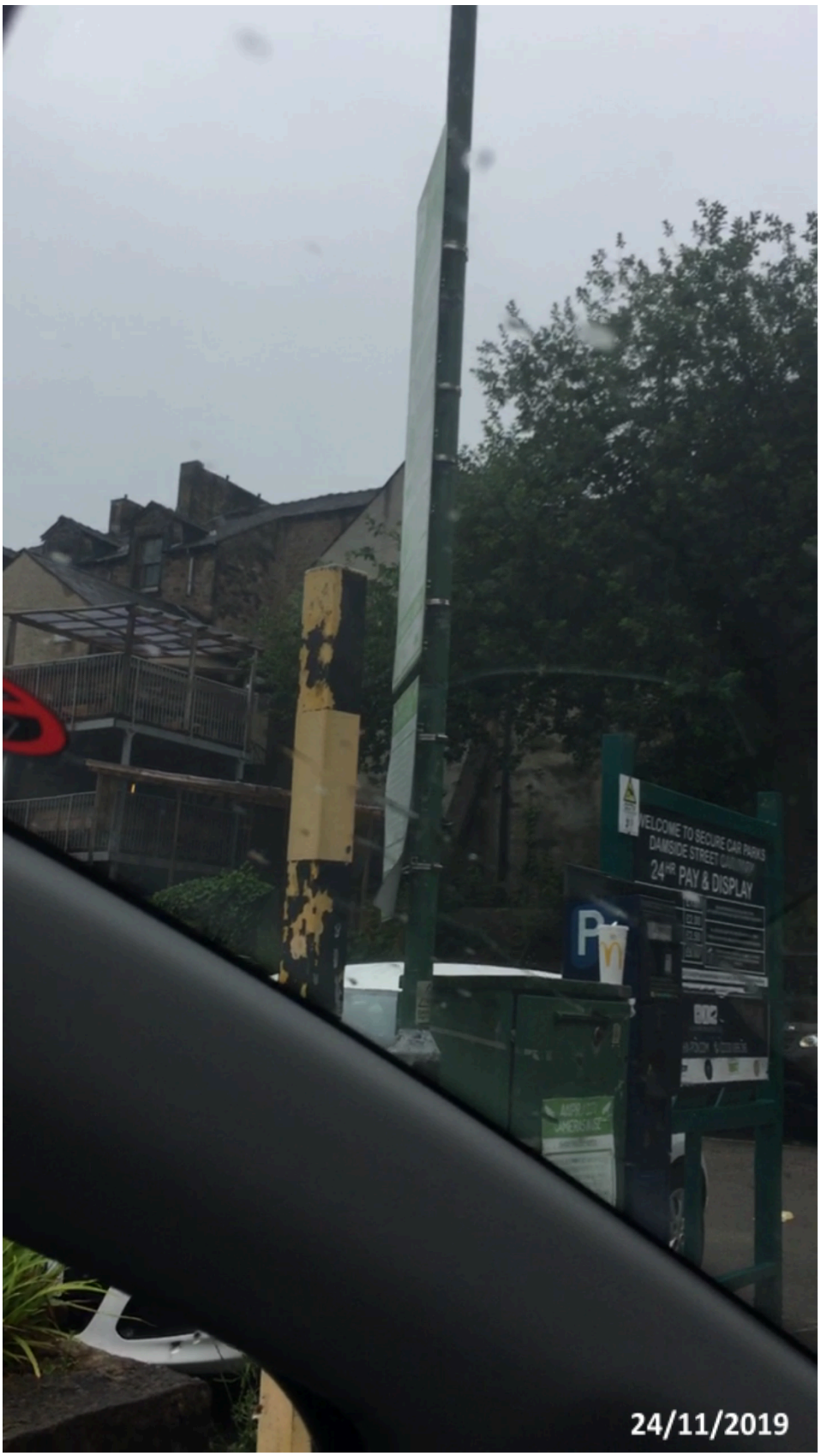


Exhibit - xx-04

The signage by the pay and display machine

This is where the entrance sign (in its, first term) directs you for “full terms and conditions”

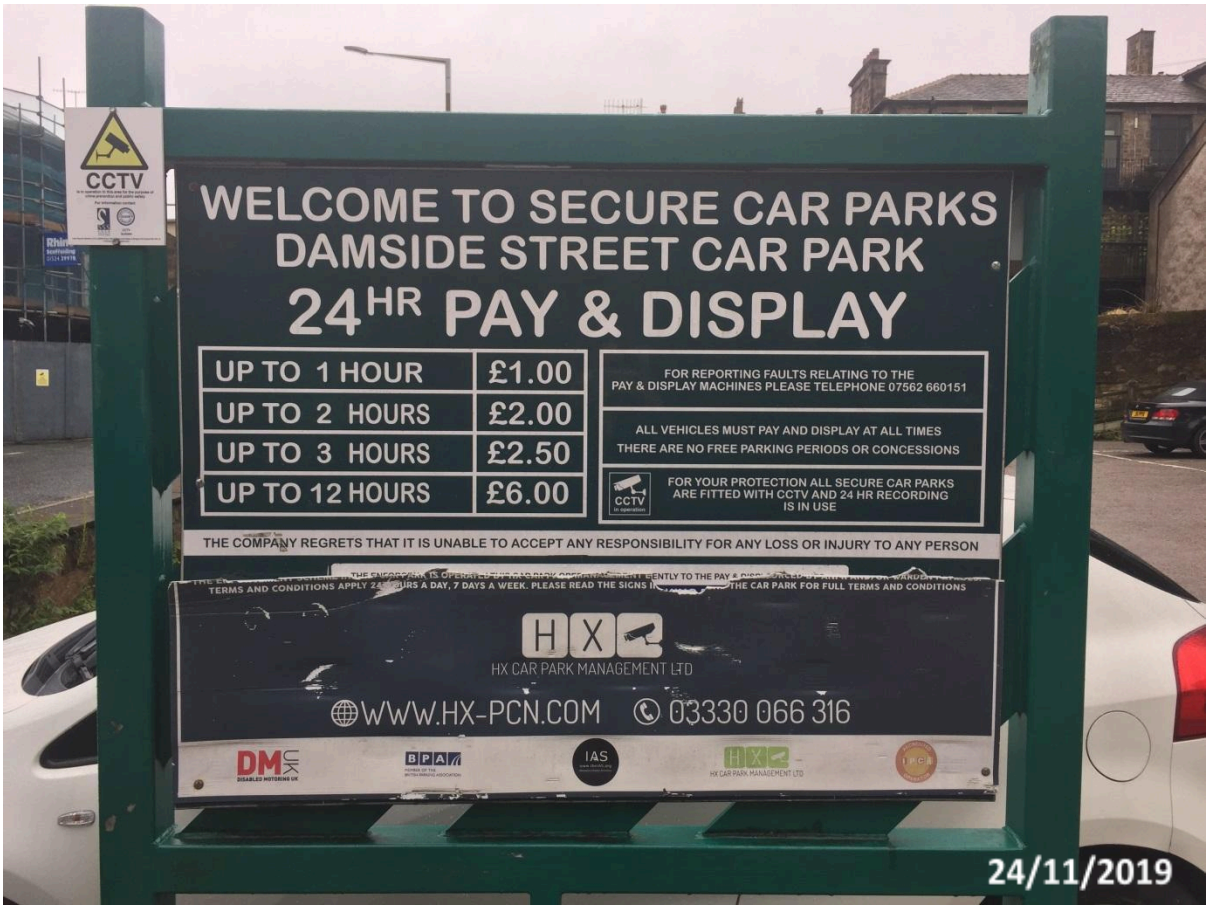


Exhibit - xx-05

The pay and display machine

Note the lack of card, app or online payment methods, as the claimant suggests there is.

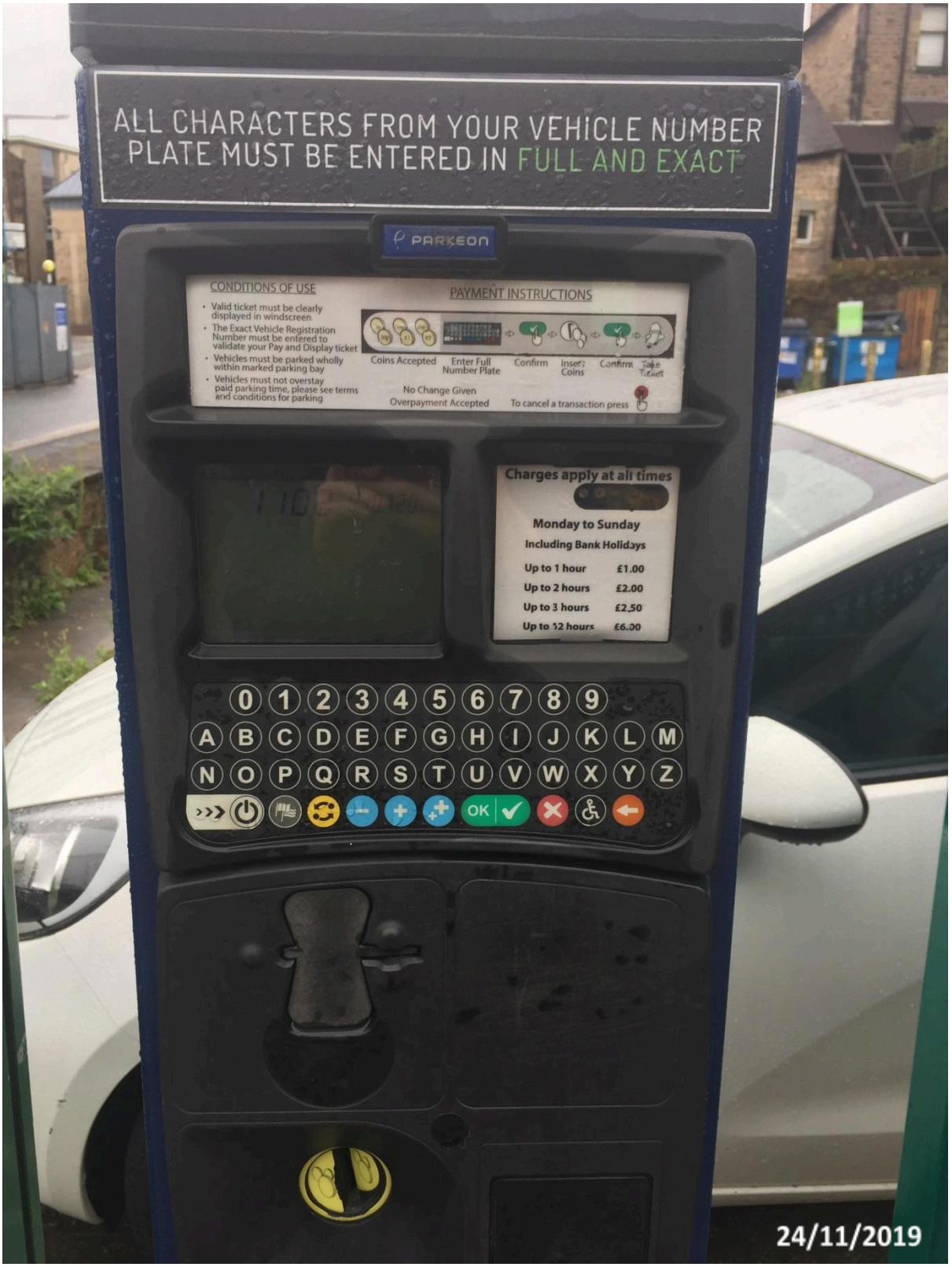


Exhibit - xx-06

ANPR signage

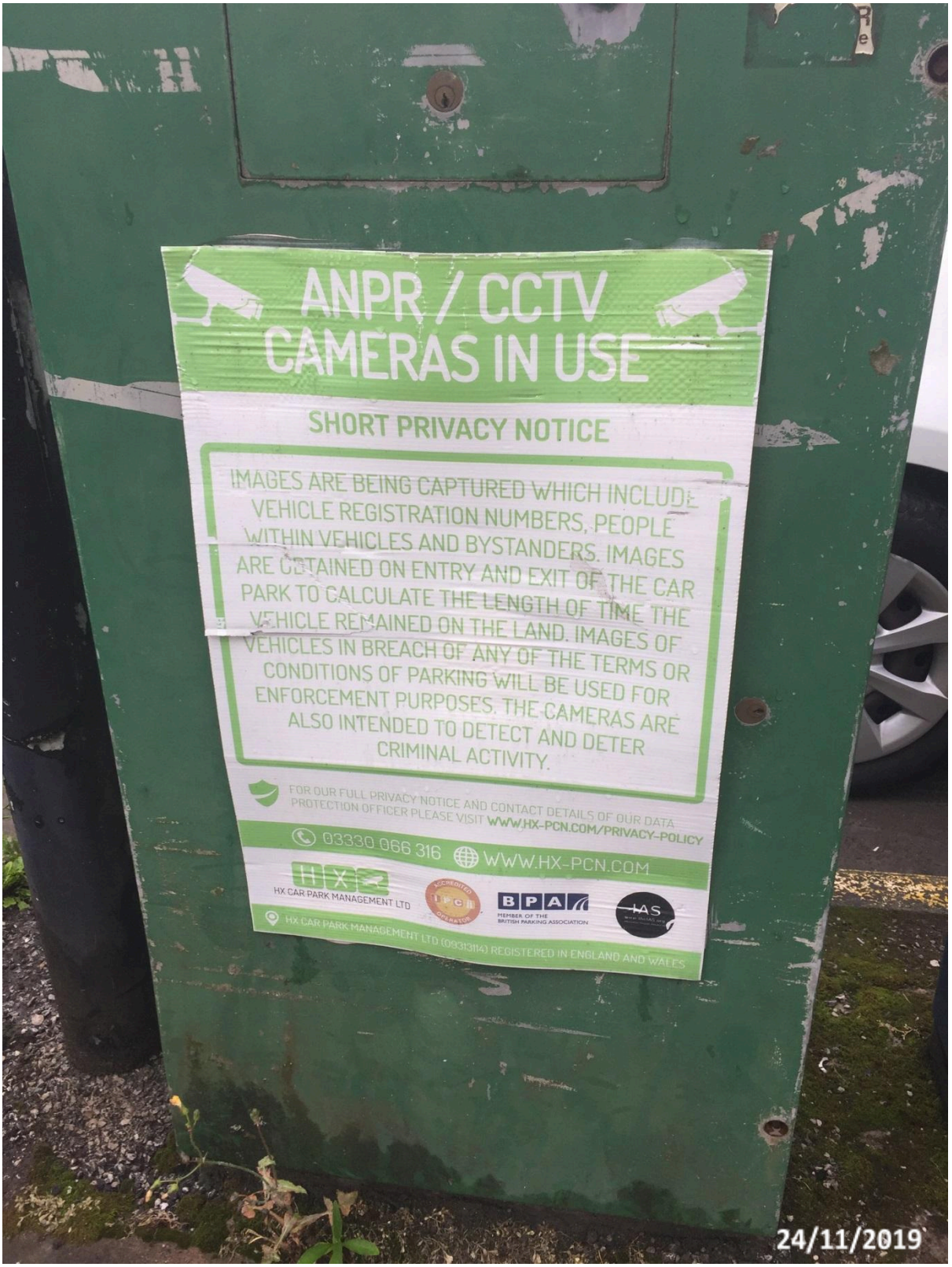


Exhibit - xx-07

The Entrance sign

Taken at standing eye level – I am 6’2” (1.88m) tall

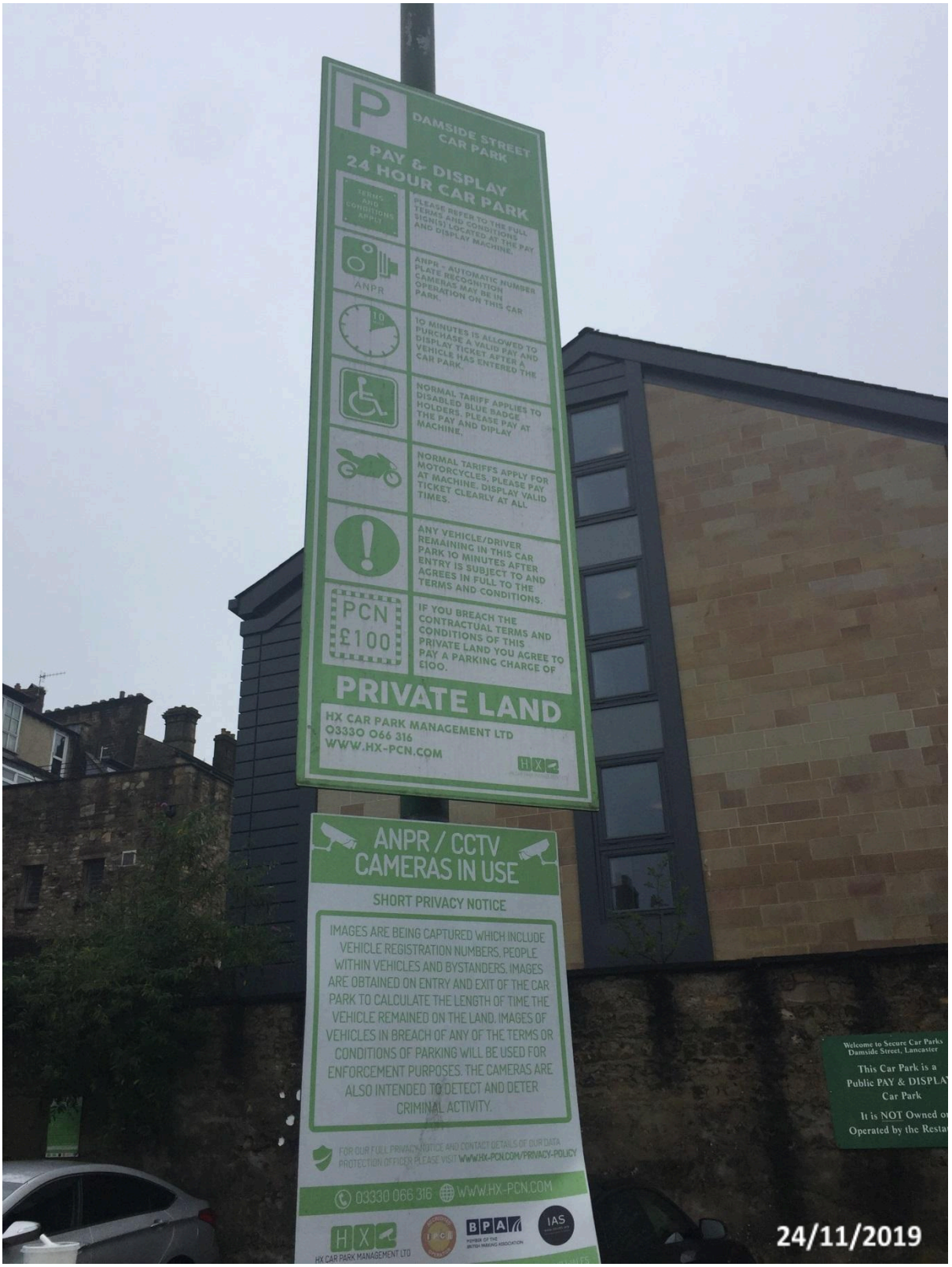


Exhibit - xx-08

One of the badly maintained signs around the car park

Note the small font and difficulty in reading this in comparison to the Beavis case sign

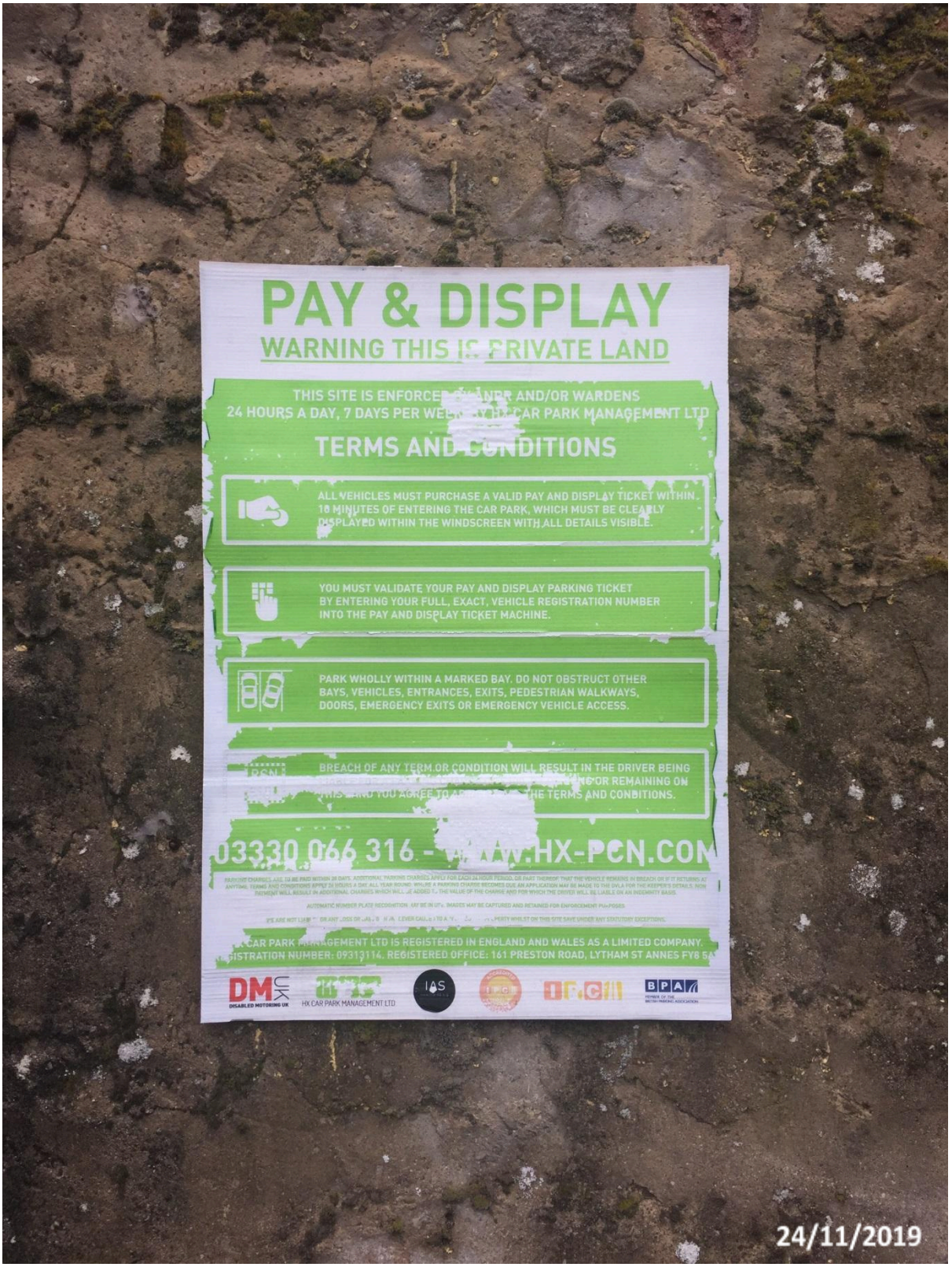
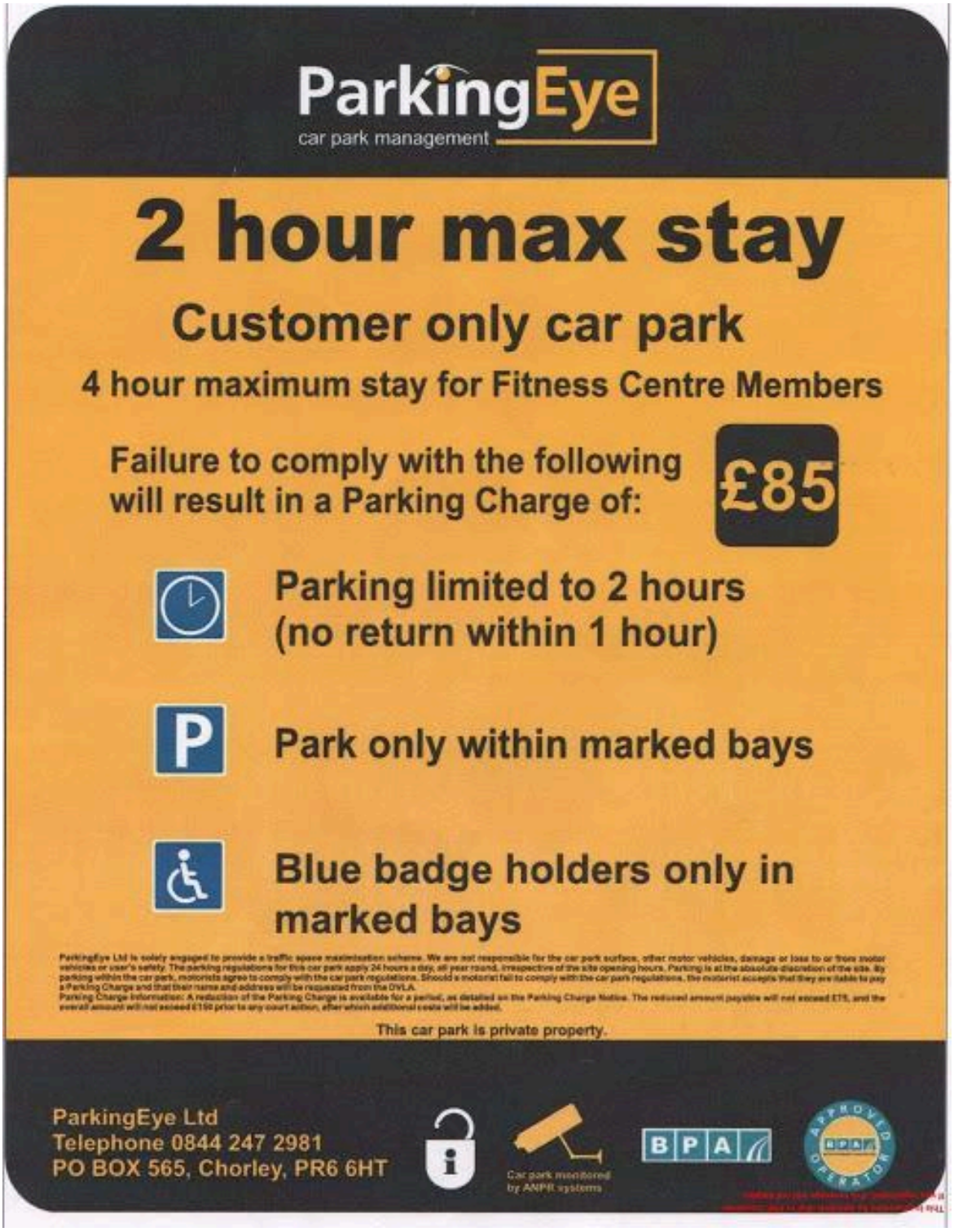


Exhibit - xx-09

The Beavis case sign, for comparison



Claim number xxxxMr xxxxx (Defendant)Hearing date: xx/xx/xxxx

Exhibit – xx-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.

Exhibit - xx-11

In the County Court at xxxxxx
Claim Number: xxxxxxxxx
Hearing Date: xx/xx/xxxx

DEFENDANT'S SCHEDULE OF COSTS

Ordinary Costs

Loss of earnings through attendance at court hearing 13/10/2020: **£95.00**

Further costs for Claimant's misconduct, pursuant to Civil Procedure Rule 44.11

Research, preparation and drafting documents (16 hours at Litigant in Person rate of £19 per hour): **£304**

Stationary, printing, photocopying and postage: **£24**

TOTAL COSTS CLAIMED £423.00

Signature

……..

xxxxxxxxxxxxx

Xx/xx/xxxx