IN THE COUNTY COURT

Claim No.: **J999999**

Between

Britannia Parking Group

(Claimant)

Joe Smith

(Defendant)

WITNESS STATEMENT OF DEFENDANT FOR COURT HEARING ON 09/08/23

1. I am Mr Smith of Billericay, Essex, 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

3. I drove to Wickford Train Station on 30/09/21 and parked in the car park.

4. The only visible Pay & Display Terminal (PDT) was out of order.

5. Whilst walking around train station car park and surrounding area looking for a working PDT, by the time I got back to my vehicle I already had a Parking Charge Noticed (PCN) raised, as informed to me from the staff member on site. They informed me that tickets need to be purchased within 20 minutes from entering the car park.

6. The claimant has admitted the PDT machine was out of order on their Witness Statement.

7. Whilst on the train, I tried paying online to get the PCN revoked but it was not possible to pay from an earlier parking time.

8. With regards to paragraph 2.1 of the claimants Witness Statement, the "letter of authority dated 7th November 2016" between Britannia Parking Group Ltd and John Holman & Sons, the letter of authority included in their evidence is not a letter of authority, it is a letter requesting a letter of authority. Besides, a letter of authority is not a contract.
They state in the last paragraph that a service contract dated 29/03/2010 is ongoing, but the issue from this is neither Britannia Parking Services Ltd or Britannia Parking Group Ltd existed at this date; (both companies were not incorporated until August 2012-more than 2 years later*)*. John Holman & Sons Ltd were incorporated in May 2014, some 4 years later, so their Witness Statement cannot be true.

8. In the sparse/generic POC in this case compared to the sudden (different and accusatory) allegations in the Claimant's legal representative's witness statement, my alleged lack of intelligence was not pleaded; certainly not an embarrassing and unjustified accusation about my intelligence and ability to understand my own defence, no matter how I researched it, to which I take offence and which constitutes a personal attack and an unpleaded ambush defying any reasonable explanation.
Unjustified attacks in witness statements like this should affect costs. It is not a paralegal's place to suddenly attack me with bald assertions and hypocritically using their own template for their Witness Statement.
Further, I ask that the Judge might consider striking out all or part of the so-called witness

statement of the paralegal who has most likely never been to the car park in question. The person making these unpleaded and unevidenced allegations is not a true witness, nor are they even an employee of the Claimant. The court requires the witness statements of the 'parties' and there is nothing from the Claimants themselves, who are also unlikely to attend the hearing.
The word "nonsensical" features a lot in Witness Statements written by employees of BW Legal Services Ltd... so much so that one might come to the conclusion that BW Legal Services Ltd are actually using a template - a process frowned upon by the Claimant in their very own paragraph 23. To use BWL's words once more... is this not "unreasonable behaviour"?

9. If the Claimant's Witness Statement is allowed to stand, and bears scrutiny at the hearing, naturally I believe that less weight should be given to it than to my own account.

The ParkingEye v Beavis is distinguished (lack of legitimate interest/prominence of terms)

8. ParkingEye overcame the possibility of their £85 charge being dismissed as punitive, however 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 parking charge in the largest/boldest text. Rather than causing other parking charges to be automatically justified, the Beavis case facts (in particular, the brief, conspicuous yellow & black warning signs) set a high bar that this Claimant has failed to reach (Exhibit xx-01).

9. Without the Beavis case to support the claim and no alternative calculation of loss/damage, this claim must fail. 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.

10. The intention cannot be to punish a driver, nor to present them with hidden terms, unexpected/cumbersome obligations nor any 'concealed pitfalls or traps'. Nor can a firm claim an unconscionable sum. In the present case, the Claimant has fallen foul of those tests (See Exhibit xx-02 for paragraphs of ParkingEye v Beavis).

11. In the alternative, if the Claimant alleges signage was present, I aver that the small signs had vague/hidden terms and a mix of small font, and are considered incapable of binding a driver. Consequently, it remains my position that no contract to pay an onerous penalty was seen or agreed. Binding Court of Appeal authorities which are on all fours with a case involving unclear terms and a lack of 'adequate notice' of a parking charge,
include:
(i) Spurling v Bradshaw [1956] 1 WLR 461 ('red hand rule') and
(ii) Thornton v Shoe Lane Parking Ltd [1970] EWCA Civ2,
both leading authorities confirming that a clause cannot be incorporated after a contract has been concluded;
and
(ii) Vine v London Borough of Waltham Forest: CA 5 Apr 2000,
where Ms Vine won because it was held that she had not seen the terms by which she would later be bound. It was unsurprising that she did not see the sign, due to "the absence of any notice on the wall opposite the parking space" (NB: when parking operator Claimants cite Vine, they often mislead courts by quoting out of context, Roch LJ's words about the Respondent's losing case, and not from the ratio).

12. Fairness and clarity of terms and notices are paramount in the statutory Code and this is supported by the BPA & IPC Trade Bodies. In November 2020's Parking Review, solicitor Will Hurley, CEO of the IPC, observed: "Any regulation or instruction either has clarity or it doesn't. If it's clear to one person but not another,there is no clarity. The same is true for fairness. Something that is fair, by definition, has to be all-inclusive of all parties involved - it's either fair or it isn't. The introduction of a new 'Code of Practice for Parking' provides a wonderful opportunity to provide clarity and fairness for motorists and landowners alike."
If the Claimant alleges a sign was present, my position is that the signs and terms the Claimant is relying upon were not clear, and were in fact, unfair and the Beavis case is fully distinguished.

POFA and CRA breaches

13. Pursuant to Schedule 4 paragraph 4(5) of the Protection of Freedoms Act 2012 ('the POFA') the sum claimed exceeds the maximum potentially recoverable from a registered keeper, even in cases where a firm may have complied with other POFA requirements (adequate signage, Notice to Keeper wording/dates, and a properly communicated 'relevant contract/relevant obligation').

14. Claiming costs on an indemnity basis is unfair, per the Unfair Contract Terms Guidance (CMA37, para 5.14.3), the Government guidance on the Consumer Rights Act 2015 ('CRA'). The CRA introduced new requirements for 'prominence' of both contract terms and 'consumer notices'. In a parking context, this includes signage and all notices, letters and other communications intended to be read by the consumer.

15. 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. In the case of a 'PCN', this must have been served to the driver whilst the vehicle was stationary or, at sites remotely monitored by ANPR/CCTV, served to the keeper so that the motorist learns about it quickly. Signs must be prominent, plentiful, well placed and lit, and all terms unambiguous and obligations clear. If the Claimant alleges signage was present, I aver that 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 dealing and good faith

Lack of landowner authority evidence and lack of ADR

16. DVLA data is only supplied to pursue parking charges if there is an agreement flowing from the landholder (ref: KADOE rules). It is not accepted that the Claimant has adhered to a defined enforcement boundary, grace period or exemptions (whatever the landowner's definitions were) nor that this Claimant has authority from the landowner to issue charges in this specific area. The Claimant is put to strict proof of all of this, and that they have standing to make contracts with drivers and litigate in their own name, rather than merely acting as agents.

17. I further aver the Claimant failed to offer a genuinely independent Alternative Dispute Resolution (ADR). The Appeals Annex in the new Code shows that genuine disputes such as this - even if the facts were narrowed later - would have seen the charge cancelled, had a fair ADR existed. Whether or not a person engaged with it, the Claimant's consumer blame culture and reliance upon the industry's own 'appeals service' should not sway the court into a belief that a fair ADR was ever on offer. The rival Trade Bodies' time-limited and opaque 'appeals' services fail to properly consider facts or rules of law and would have rejected almost any dispute.

Abuse of process - the quantum

18. This Claimant continues to pursue a hugely disproportionate fixed sum (routinely added per PCN) despite knowing that this is now banned. It is denied that the quantum sought is recoverable (authorities: two wellknown ParkingEye cases where modern penalty law rationale was applied). Attention is drawn to paras 98,100, 193, 198 of ParkingEye Ltd v Beavis [2015] UKSC67. 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 (sitting at the High Court; later ratified by the CoA) held in paras 419-428 that unspecified 'admin costs' inflating it to £135 'would appear to be penal', i.e. unrecoverable.

19. My stance regarding this punitive add-on is now underpinned by the Government, who have now stated that attempts to gild the lily by adding 'debt recovery costs' were 'extorting money'. The Department for Levelling Up, Housing and Communities ('DLUHC') published in February 2022, a statutory Code of Practice, found here: https://www.gov.uk/government/publications/private-parking-code-of-practice.

20. Whilst it is known that the rogue parking industry have just filed Judicial Reviews and have delayed the new Code of Practice (as per paragraph 27), the Government is pressing ahead and has conceded to undertake a final Public Consultation and Impact Assessment, as the latter was missing from their rationale. Going by the damning words of the Minister, and the fact that two consultations and an industry and consumer represented Steering Group have already informed the DLUHC's decision over the past two years, I believe there is no reason to think the Government's view will significantly change about adding unconscionable costs that were not incurred and which merely exist as a mechanism to enhance already-doubled parking charges, to fuel the roboclaim race to court and to side-step the £50 legal fees cap set in the Small Clams Track.

21. Adding debt recovery/costs/damages/fees (however described) onto a parking charge is now banned. In

a section called 'Escalation of costs' the incoming statutory Code of Practice says: "The parking operator must not levy additional costs over and above the level of a parking charge or parking tariff as originally issued."

22. This particular Claimant's legal team routinely continues to pursue a sum on top of each PCN, despite indisputably knowing that these are banned costs. The claim is exaggerated by inclusion of a false, wholly disproportionate and unincurred 'damages' enhancement of £60 upon which the Claimant seems to have also added interest at 8% calculated from the date of parking. Clearly an abuse of the court process.

23. The Code's Ministerial Foreword is unequivocal about abusive existing cases such as the present claim: "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."

24. The DLUHC consulted for over two years and considered evidence from a wide range of stakeholders. Almost a fifth of all respondents to the 2021 Technical Consultation called for false fees to be scrapped altogether; this despite the parking industry flooding both public consultations, some even masquerading as consumers. The DLUHC saw through this and in a published Response (also in February 2022), they identified that some respondents were 'parking firms posing as motorists'. Genuine consumer replies pointed out that successful debt recovery does not trigger court proceedings and the debt recovery/robo-claim law firms operate on a 'no win, no fee' basis, and are effectively Trade Body Board member colleagues passing motorists' data around electronically and seeking to inflate the sum of the parking charge, which in itself is already sufficiently enhanced.

25. This Claimant has not incurred any additional costs (not even for reminder letters) because the full parking charge itself more than covers what the Supreme Court in Beavis called a 'letter chain' business model that generates a healthy profit.

26. The driver did not agree to pay a parking charge, let alone unknown costs, which were not quantified in prominent text on alleged signage. It comes too late when purported debt recovery fees are only quantified after the event.

27. These are now banned costs which the Claimant has neither paid nor incurred and were not quantified in prominent lettering on alleged signage. Introducing the purported 'costs' add-on in later debt demands is a moneymaking exercise to extract a high fixed sum from weaker motorists and came far too late. I did not agree to it.

28. Whilst the new Code and Act is not retrospective, it was enacted due to the failure of the self-serving BPA & IPC Codes of Practice. The Minister is indisputably talking about existing (not future) cases when declaring
that 'recovery' fees were 'designed to extort money'. A clear steer for the Courts.

29. This overrides mistakes made in the appeal cases that the parking industry try to rely upon (Britannia v Semark-Jullien, One Parking Solution v Wilshaw, Vehicle Control Services v Ward and Vehicle Control Services v Percy). Far from being persuasive, regrettably these one-sided appeals were findings by Circuit Judges who appeared to be inexperienced in the nuances of private parking law and were led in one direction by Counsel for parking firms, and the litigant-in-person consumers lacked the wherewithal to appeal further.

30. It is pertinent to note that the Britannia v Semark-Jullien appeal judgment by HHJ Parkes criticised the District Judges at Southampton, for apparently not having enough evidence to conclude that Britannia 'knew' that their added costs were abusive (unincurred, unpaid and unjustified). Unbeknown to HHJ Parkes, of course all District Judges deal with template, generic evidence and arguments from parking operators every week, and BPA member firms including Britannia, certainly had been told this by Judges up and down the Country for many years. And the decision and words used by the DLUHC show that DJ Grand and DJ Taylor were right all along. As was HHJ Jackson in Excel v Wilkinson (not appealed - see Exhibit xx-03) where she went into great detail about this abuse.

31. The Semark-Jullien case is now unreliable going forward and is fully distinguished now that the Government has at last stepped in and exposed and published the truth. This Claimant indisputably has knowledge (and always had knowledge) that they have not paid a penny in debt recovery costs, nor incurred any additional costs that the £100 parking charge is not designed to more than cover. The abuse is now clearly established and a new judgment re-stating this position, in the light of the damning words in the Foreword and the Explanatory Document published alongside the Code of Practice and stating (for the avoidance of doubt) the knowledge that District Judges have from years of experience of seeing these template enhanced claims and telling this Claimant to stop bringing exaggerated parking claims to court, would be welcomed to bring muchneeded clarity for consumers and Judges across England and Wales.

32. In case this Claimant tries to rely upon those old cases, significant errors were made. Evidence – including unclear signage and Codes of Practice - was either ignored, even when in evidence at both hearings (Wilshaw, where the Judge was also oblivious to regulatory DVLA KADOE rules requiring landowner authority) or the judgment referred to the wrong rules, with one Judge seeking out the inapplicable BPA Code after the hearing and using it erroneously (Percy). In Ward, a few seconds' emergency stop out of the control
of the driver, was inexplicably aligned with Beavis. The learned Judges were led in one direction by Counsel for parking firms, and were not in possession of the same level of facts and evidence as the DLUHC.

CPR 44.11 - further costs

33. 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 the Claimants representative did not have reasonable cause to issue the PCN (on my vehicles windscreen), as there were no Claimant signs clearly and prominently displayed on the approach road to my workplace car park, upon which my vehicle was parked. The very words "clearly and prominently displayed" are actually taken from the Claimants PCN details in relation to the Claimants signs (as to how they should be). It is denied that signage exists on this road; therefore it is denied I am in breach of terms and conditions. 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.

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

34. 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.

35. 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.

Defendant's signature:

Date: 24/07/2023

Exhibit xx-01

The ParkingEye Ltd v Beavis [2015] UKSC 67 – case sign in comparison to any alleged Claimant sign

Exhibit xx-02

The ParkingEye Ltd v Beavis [2015] UKSC 67 - 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

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

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—03

Copy of Excel Parking Services vs Wilkinson (G4QZ465V) Approved Judgement by Judge Jackson of Bradford County Court

Bradford County Court

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
MISS ANN WILKINSON	**1st Defendant** **Ref**

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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.

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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 -	
Ann Wilkinson	**Defendant**

- -

- -

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

Hearing date: 1 July 2020

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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 AN55NAN, 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

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 xx-04

In the County Court at Basildon

Claim Number: J89999999

Hearing Date: 09/08/2023

DEFENDANT'S SCHEDULE OF COSTS

Ordinary Costs
Loss of earnings through attendance at court hearing:
£95.00

Further costs for Claimant's misconduct, pursuant to Civil Procedure Rule 44.11
Research, preparation and drafting documents (4 hours at Litigant in Person rate of £19 per hour):
£76.00

Stationary, printing, photocopying and postage:
£3.50

TOTAL COSTS CLAIMED £174.50

Signature
…………………….

Joe Smith

24/07/2023