IN THE COUNTY COURT

Claim No.: **XXXXXXX**

Between

UK Parking Control Limited

(Claimant)

- and -

XXXXXXX

(Defendant)

DEFENCE

1. The parking charges referred to in this claim did not arise from any agreement of terms. The charge and the claim were an unexpected shock. The Defendant denies that the Claimant is entitled to relief in the sum claimed, or at all. It is denied that any conduct by the driver was a breach of any prominent term, and it is denied that this Claimant (understood to have a bare licence as managers) has standing to sue or form contracts in their own name. Liability is denied, whether or not the Claimant is claiming 'keeper liability', which is unclear from the Particulars.

The facts as known to the Defendant:

2. It is admitted that the Defendant was the registered keeper of the vehicle in question however - given that the event allegedly occurred more than 5 years ago - the identity of the driver is not known. No photographic evidence as to the driver's identity nor any breach has been established by the Claimant.

3. The Defendant acknowledges that the location in question is recognised as a local retail park, but the Defendant is not able to confirm or deny parking there. No breach is stated on the Particulars of Claim, which are embarrassing.

4. The Particulars of Claim are entirely inadequate, in that they fail to particularise (a) the contractual term(s) relied upon; (b) the specifics of any alleged breach of contract; (c) the alleged loss or overriding legitimate interest supporting the three figure sum claimed; or (d) the specifics of the 'relevant contract or obligation' relied upon and whether the Claimant is holding the Defendant liable on an unsafe presumption that the Defendant was the driver over 5 years ago (no evidence has been supplied) or as registered keeper (this is not an automatic right).

5. The Defendant is unable, on the basis of the Particulars within the Claim Form, to understand properly and specifically what case is being pursued. The Particulars appear to be in breach of CPR 16.4, 16PD3 and 16PD7, and fail to "state all facts necessary for the purpose of formulating a complete cause of action".

6. The claim has been issued via Money Claims Online and, as a result, is subject to a character limit for the Particulars of Claim section of the Claim Form. In the opinion of the Defendant, it ought to have been entirely possible to deal with the matter within that character limit but for the fact that generic wording appears to have been applied.

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

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

9. No further particulars have been filed and to the Defendant's knowledge, no application asking the court service for more time to serve and/or relief from sanctions has been filed either.

10. In view of it having been entirely within the Claimant's Solicitors' gift to properly plead the claim at the outset and the claim being for a sum, well within the small claims limit, such

that the Defendant considers it disproportionate and at odds with the overriding objective (in the context of a failure by the Claimant to properly comply with rules and practice directions) for a Judge to throw the erring Claimant a lifeline by ordering further particulars (to which a further defence might be filed, followed by further referral to a Judge for directions and allocation) the court is invited to strike this claim out.

11. The facts in this defence come from the Defendant's own knowledge and honest belief. To pre-empt the usual template responses from this serial litigator: the court process is outside of the Defendant's life experience, and they cannot be criticised for adapting some pre-written wording from a reliable advice resource. The Claimant is urged not to patronise the Defendant with (ironically templated) unfounded accusations of not understanding their defence.

12. With regard to template statements, the Defendant observes after researching other parking claims, that the Particulars of Claim ('POC') set out a cut-and-paste incoherent statement of case. Prior to this - and in breach of the pre-action protocol for 'Debt' Claims - no copy of the contract (sign) accompanied any Letter of Claim. The POC is sparse on facts about the allegation which makes it difficult to respond in depth at this time; however, the claim is unfair, objectionable, generic and inflated.

13. 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 well-known 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'.*

14. This finding is 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

15. Adding 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."*

16. 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."*

17. 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, 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, seeking to inflate the sum of the parking charge, which in itself is already sufficiently enhanced.

18. This Claimant has not incurred any additional costs (not even for reminder letters) because the (already high) parking charge more than covers what the Supreme Court in *Beavis* called an automated letter-chain business model that generates a healthy profit.

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

20. 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.

21. 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. In case this Claimant tries to rely upon those cases, the Defendant avers that significant errors were made. Evidence was either overlooked (including inconspicuous signage in *Wilshaw,* where the Judge was also oblivious to the BPA Code of Practice, including rules for surveillance cameras and the DVLA KADOE requirement for landowner authority) or the Judge inexplicably sought out and quoted from the wrong Code altogether (*Percy*). In *Ward*, a few seconds' emergency stop out of the control of the driver was unfairly aligned with the admitted contract in *Beavis*. Those learned Judges were not in possession of the same level of facts and evidence as the DLUHC, whose Code now clarifies all such matters.

POFA and CRA breaches

22. 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'). If seeking keeper/hirer liability - unclear from the POC - the Claimant is put to strict proof of full compliance and liability transferred.

23. 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.

24. 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. Signage must be prominent, plentiful, well placed and lit, and all terms unambiguous and obligations clear. The Defendant avers 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.

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

25. 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.

26. 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. The intention cannot be to punish a driver, nor to present them with hidden terms, unexpected/cumbersome obligations nor any 'concealed pitfalls or traps'.

27. In the present case, the Claimant has fallen foul of those tests. The Claimant's small signs have vague/hidden terms and a mix of small font, and are considered incapable of binding a driver. Consequently, it remains the Defendant's 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).

28. 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."*

Lack of landowner authority evidence and lack of ADR

29. 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.

30. 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: e.g. the IAS upheld appeals in a woeful 4% of decided cases (IPC's 2020 Annual Report).

Conclusion

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

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

33. *In the matter of costs*, the Defendant asks:

(a) at the very least, for standard witness costs for attendance at Court, pursuant to CPR 27.14, and

(b) for a finding of unreasonable conduct by this Claimant, seeking costs pursuant to CPR 46.5.

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

Statement of Truth

I believe that the facts stated in this 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.

Defendant's signature:

Date: 01 March 2023