

## IN THE COUNTY COURT

Claim No.:

### Between

#### **Vehicle Control Systems Limited**

7 Europa View  
Sheffield Business Park  
Sheffield S9 1XH

(Claimant)

- and -

(Defendant)

---

### DEFENCE

Summary 122 lines for MCOL response:

1. The parking charges referred to in this claim did not arise from any agreement of terms. The charge and the claim was 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 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.

2. The facts in this defence come from the Defendant's own knowledge and honest belief.

#### **The facts as known to the Defendant:**

3. It is admitted that the Defendant was the registered keeper and driver of the vehicle in question.

4. The Defendant was visiting Bristol Airport on the XXXXXXXX to drop his passenger off to catch a plane. They were on time and were intending to use the Drop-off area to facilitate this. Driving northwards on North Side Road, comfortably under the 20 mph speed limit, the Defendant approached the middle of three zebra crossings directly in front of the main terminal. A pedestrian was near the crossing, on the west side, heading towards the car park, so the Defendant duly stopped, as required by law. At this point the Defendant's passenger got out of the car without warning. A few seconds later it was clear the pedestrian was not going to cross, so the Defendant drove on. The car was stationary for approximately six seconds, according to the photographs provided by the Claimant.

#### **No keeper liability**

5. The vehicle, registration XXXXXXXXX, of which the Defendant was the registered Keeper, appears from the evidence supplied by this Claimant to have stopped briefly at a pedestrian crossing. As the Claimant did not know the identity of the driver of the vehicle in question, it must be presumed they are pursuing this claim against the keeper of the vehicle.

6. The land entered is not 'relevant' land as defined in the Protection of Freedoms Act 2012 (POFA). As the land is not 'relevant' land the Claimant does not have the right to recover any unpaid parking charges from the Keeper of the vehicle.

7. A parking charge notice has been issued for a non-parking event. Stopping at a pedestrian crossing is not parking.

### **No contract existed**

8. The Claimant claims that there was a breach of contract for 'breaching the terms and conditions' set on private land.

9. The Claimant's case relies upon the signage at the site constituting a 'contract' between a driver and the Claimant, and the breaching of terms presumably refers to the supposed 'contract' formed by this signage.

10. It is the Defendant's position that no contract existed and that accepting conduct and declining conduct are contradictory as one cannot be performed without first performing the other.

11. It is the Defendant's further position that due to the size of font used on the signage, the nature of the prohibited act is foremost and there is no laying out of what the accepting conduct might be. And given their location on a main thoroughfare they are not readily legible without having first performed the prohibited act, i.e. stopping. It is the Defendant's position that there is doubt before performing the accepting conduct.

### **No Grace Period**

12. The Claimant is an Accredited Operator and a member of the International Parking Community (IPC), and according to the 'Notice to Keeper' issued to the Defendant, operates in accordance with their Code of Practice.

13. The IPC Code of Practice (Eighth Edition that was in force at the time of the event) Clause 13 states that a 'grace' period must be allowed: 'Motorists must be allowed a sufficient Consideration Period so they may make an informed decision as to whether or not to enter or remain on the Private Land.'.

14. A reasonable grace period in any car park would be from 5-10 minutes from the period of stopping. According to the evidence supplied by the Claimant, the Defendant's vehicle was stopped for a period of six seconds. Thus, a grace period was not observed and therefore the Claimant is in breach of the IPC Code of Practice, and therefore in default of the contract that exists between them and the DVLA; hence the Claimant has obtained Keeper details under false pretences. As such the actions of the Claimant were not compliant with PoFa 2012 and as such there is no possibility of a legal parking charge and therefore there was no 'reasonable grounds' to pursue the keeper or driver, such pursuit being a breach of section 13(2) of the Data Protection Act 1998.

15. Additionally, no contract can be in place by conduct until a reasonable period elapses.

### **Sums Claimed**

16. The Claimant is seeking an additional £70 'debt recovery cost' over and above the original Notice to Keeper amount of charge of £100.

17. The Government has 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. In which adding costs/damages/fees (however described) onto a parking charge is now banned.

### **PoFa and CRA breaches**

18. 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.

### **Lack of landowner authority evidence and lack of ADR**

19. 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.

### **Conclusion**

20. 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.

### **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.

### **Full Defence for future court Bundle:**

1. The parking charges referred to in this claim did not arise from any agreement of terms. The charge and the claim was 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.

2. The facts in this defence come from the Defendant's own knowledge and honest belief.

3. Some of the responses in this Defence are drawn from reliable advice resources, so 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 template) unfounded accusations of not understanding their defence.

5. 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.

#### **The facts as known to the Defendant:**

3. It is admitted that the Defendant was the registered keeper and driver of the vehicle in question.

3. The Defendant was visiting Bristol Airport on the 5th April 2022 to drop his passenger off to catch a plane. They were on time and were intending to use the Drop-off area to facilitate this. Driving northwards on North Side Road, comfortably under the 20 mph speed limit, the Defendant approached the middle of three zebra crossings directly in front of the main terminal. A pedestrian was near the crossing, on the west side, heading towards the car park, so the Defendant duly stopped, as required by law. At this point the Defendant's passenger got out of the car without warning. A few seconds later it was clear the pedestrian was not going to cross, so the Defendant drove on. The car was stationary for approximately six seconds, according to the photographs provided by the Claimant.

#### **No keeper liability**

2. The vehicle, registration KA14 SMA, of which the Defendant was the registered Keeper, appears from the evidence supplied by this Claimant to have stopped briefly at a pedestrian crossing. As the Claimant did not know the identity of the driver of the vehicle in question, it must be presumed they are pursuing this claim against the keeper of the vehicle.

3. The land entered is not 'relevant' land as defined in the Protection of Freedoms Act 2012 (POFA). Paragraph 3 of Schedule 4 of POFA states that land is not 'relevant' where byelaws apply to it. In this case, the land in question is covered by Bristol Airport Byelaws 2012. As the land is not 'relevant' land the Claimant does not have the right to recover any unpaid parking charges from the Keeper of the vehicle.

4. A parking charge notice has been issued for a non-parking event. Stopping at a pedestrian crossing is not parking. Stopping at a pedestrian crossing is covered by The Road Traffic Act 1998 which defines a road as any highway or other road to which the public has access; it makes no distinction between private and public ownership. Since the roads are accessible by the

public, they would be covered by the Road Traffic Act. The Airports Act 1986 explicitly states that byelaws do not apply on airport roads to which the road traffic enactments apply. Only the Police have powers to act on breaches of the Road Traffic Act; not private parking companies.

### **No contract existed**

4. The Claimant claims that there was a breach of contract for 'breaching the terms and conditions' set on private land.

5. The Claimant's case relies upon the signage at the site constituting a 'contract' between a driver and the Claimant, and the breaching of terms presumably refers to the supposed 'contract' formed by this signage.

6. In other correspondence, The Claimant invites the Defendant to refer to the 'Parking Eye vs Beavis' 2015 case. In the 'Parking Eye vs Beavis' case, it was found that a contract could exist because there was a meaningful 'offer' made to the Defendant (that of a licence allowing free parking for a set period of time) and that the Defendant's agreeing not to overstay this period could constitute a 'consideration' in respect of this. There is no such 'offer' made by the signage in this case, no 'contractual licence', no 'benefit of free parking', and no conceivable way anyone could have benefitted from this alleged 'contract' without breaching its terms. The 'Parking Eye vs Beavis' judgement is littered with references to the disputed charge being justifiable only in the context of the 'contractual licence to park' being given to the Defendant, e.g. 'They must regard the risk of having to pay £85 for overstaying as an acceptable price for the convenience of parking there'.

7. The parking contract in 'ParkingEye vs Beavis' case was judged to be 'objectively reasonable' partly because 'motorists generally' did accept it. The landowner wanted as many people as possible to use the car park in question so the contractual arrangements were designed to be attractive to the average motorist. This is the complete antithesis of the supposed 'contract' in this case which is designed to actively discourage motorists from parking at the site. The terms of this 'contract' are not 'objectively reasonable', but deliberately designed to be so heinous that no one in their right mind would agree to them. It follows that this is not a 'contract' but a prohibitory notice masquerading as such.

8. In the Parking Eye vs Beavis case the Supreme Court Judges reiterated the requirement for fair and open dealing, 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.'

9. The Court is requested to consider the fairness of a term, where it is not 'prominent and transparent'. At the roadway where the PCN was issued, it was not transparent that anyone was agreeing to some sort of contract to pay £100 to park under some sort of licence. In this case, the unfair terms include the penalty fine itself and also the added £60 'debt collection costs' bolted onto this claim which themselves are unfair and breach Part 2 'Unfair Contract Terms' of the Consumer Rights Act 2015 (CRA).

### **Inadequate, Contradictory, Unclear and Confusing Signage**

10. It is the Defendant's position that the accepting conduct and declining conduct are contradictory as one cannot be performed without first performing the other.

11. In *Ransomes vs. Anderson* ('the Ransomes case'), a persuasive County Court judgement on appeal, Judge Moloney QC said:-

12. 'the notice was insufficiently clear to constitute a valid contractual offer capable of acceptance by conduct. [...] Although the doctrine of acceptance by conduct, on the basis of the terms on a notice in a parking place or similar zone, is an obviously right, valuable and useful one, it is an essential minimum that the contract be sufficiently simple and clear that the motorist is in no doubt before he performs the accepting conduct what he is letting himself in for'.

13. It is the Defendant's further position that due to the size of font used on the signage, the nature of the prohibition is foremost and there is no laying out of what the accepting conduct might be. And given their location on a main thoroughfare they are not readily legible without having first performed the prohibited act. It is the Defendant's position that the signs fail when viewed in the context of the Judge's comments in the Ransomes case in that there is doubt before performing the accepting conduct.

### **Unfair Terms Contrary to the Consumer Rights Act 2015**

14. If, by pursuing this claim, the Claimant is denying that the Defendant has declined the alleged contract in accordance with the declining conduct, then the Defendant avers that the Claimant is forcing the contract irrevocably on the Defendant who has not had reasonable time to read and digest the terms, rendering it an unfair term as stated in Schedule 2 to the Consumer Rights Act 2015:-

'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.'

### **No Grace Period**

15. According to the current Contract between DVLA and parking companies, in order to obtain 'Keeper of a Vehicle at the Date of an Event' (KADOE) information from the DVLA, Clause A6.1 states that 'The Customer shall at all times be a member of a DVLA Accredited Trade Association ('ATA') and maintain membership of the ATA and comply with the ATA's Code of Practice or Conduct'.

16. The Claimant is an Accredited Operator and a member of the International Parking Community (IPC), and according to the 'Notice to Keeper' issued to the Defendant, operates in accordance with their Code of Practice.

17. The IPC Code of Practice (Eighth Edition that was in force at the time of the event) Clause 13 states that a 'grace' period must be allowed:

'Motorists must be allowed a sufficient Consideration Period so they may make an informed decision as to whether or not to enter or remain on the Private Land.'

18. A reasonable grace period in any car park would be from 5-10 minutes from the period of stopping. According to the evidence supplied by the Claimant, the Defendant's vehicle was stopped for a period of six seconds. Thus, a grace period was not observed and therefore the Claimant is in breach of the IPC Code of Practice, and therefore in default of the contract that exists between them and the DVLA; hence the Claimant has obtained Keeper details under false pretences. As such the actions of the Claimant were not compliant with PoFa 2012 and as such

there is no possibility of a legal parking charge and therefore there was no 'reasonable grounds' to pursue the keeper or driver, such pursuit being a breach of section 13(2) of the Data Protection Act 1998.

19. Additionally, no contract can be in place by conduct until a reasonable period elapses.

20. Thus, the signage is simply a device to entrap motorists into a situation whereby the Claimant sends them invoices for unwarranted and unjustified charges, for which motorists can have no contractual liability due to the terms and conditions not having been sufficiently brought to their attention.

### **Sums Claimed**

21. The Claimant is seeking an additional £70 'debt recovery cost' over and above the original Notice to Keeper amount of charge of £100.

6. 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'.

7. 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>

8. 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.'

9. 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.'

10. 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.

11. 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.

12. 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.

13. 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.

14. 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**

15. 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.

16. 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.

17. 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)**

18. 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.

19. 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'.

20. In the present case, the Claimant has fallen foul of those tests. The Claimant's signs that lack any meaningful detail are considered incapable of binding a driver. Consequently, it remains the Defendant's position that no contract to pay an onerous penalty was 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).

21. 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**

22. 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.

23. 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**

24. 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.

25. 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 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.

26. 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.

27. 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:**

Counterclaim:

Distress

Breach of DPA

#### Distress & Anxiety

A total of six vexatious and baseless notices received over the course of four months, has been the cause of significant anxiety and stress to the Defendant and his wife.

#### Breach of the Data Protection Act

With no reasonable cause to pursue the keeper, the Claimant's request for protected data from the DVLA was a clear breach of the act.