

Headings will be inserted.

1. I, (name) of (address) am the Defendant in this claim. The facts in this statement come from my personal knowledge.

2. I am an unrepresented defendant who has never attended the county court before.

3. On the XX/4/2012 I received a Notice To Owner from Vehicle Control Services Ltd dated XX/4/2012 (Exhibit A) asking for payment of £120 for an unpaid Parking Charge Notice issued on X/3/2012 at XXXpm. The reason for the alleged contravention was described as: "Parked after the expiry of time in a pay & display car park".

There is the suggestion that there had been some payment. There is no reference to the length of the overstay.

A Final Demand Prior to Court Action from VCS dated X/5/2012 arrived on X/5/2012. (Exhibit B)

4. I was the registered keeper of the vehicle in question at the time of the alleged contravention.

5. More than four years later, XX/7/2016, I received a letter from VCS informing me that they had passed my account to their legal team BW Legal and, in the same envelope, a letter from BW Legal requiring payment of £120 plus "Our Client's initial legal costs of £54" within 16 days of the date of the letter. (Exhibits C.1 & C.2)

6. The Claimant did not identify the driver. I was not the driver of the vehicle on XX/3/2012 and have no knowledge of the events, or signage terms on that date. The Claimant's solicitor, BW Legal Services Ltd, has been informed of this fact on at least two occasions (Exhibits D & G) and has knowingly issued the claim against a party that has no liability. Car insurance documents from 2011/12 have not been kept and, after six years, it is not possible to identify the driver on XXX 2012.

7. I was attending a family celebration in a hotel in Basingstoke over the weekend XX/3/2012. There are a number of people willing to vouch for my presence at the celebration. I also have an email confirming our hotel booking from the XXX hotel, Basingstoke, dated XX/9/2011 (Exhibit Q) and a credit card statement showing payment to XXX hotel, Basingstoke on the XX/3/2012. (Exhibit R).

8. The alleged contravention took place before the enactment of The Protection of Freedoms Act, 2012, and the Claimant has never had any right to recover payment from the registered keeper. In a letter dated XX August 2016 (Exhibit E), the Claimant's solicitor informed me that their client did not rely on POFA and referred me to the case of Elliot v Loake 1982. In the case of Elliot v Loake, the court decided that there was evidence of the driver's identity.

9. On the 17th November 2016 District Judge Skalsky-Reynolds sitting at Skipton County Court dismissed the claim by Excel Parking Services Limited against Mr Ian Lamoureux because she thought "the claim against Mr Lamoureux is totally misconceived because it has no evidence that he is the driver and it seems to be relying on some assumption that the registered keeper is the driver because it is not seeking to rely on the Protection of Freedoms Act 2012 or keeper liability".

(Exhibits S.1 & S.2)

Excel v Lamoureux C3DP56Q5 transcript of proceedings to judgment.

Excel v Lamoureux C3DP56Q5 transcript judgment.

10. The Particulars of Claim disclose no cause of action. The Claimant has not supplied any evidence at all that the alleged contravention ever occurred. The Claimant's solicitor has refused my requests sent on XX February by mail and email (Exhibits J & K) to provide copies of photographic evidence and data that VCS has claimed to possess to support the claim. (Exhibits A & B)

They did acknowledge receipt of both the letter and the email. (Exhibits L & M)

11. Withholding any relevant photos of the car, particularly the full view of the windscreen and any

signage terms, despite being asked for, is against the SRA code as well as contrary to the 'overriding objective' in the pre action protocol.

12. The Claimant's solicitor advertises that it can issue more than 24000 claims per month. With this level of experience in dealing with private parking issues there can be no excuse for these omissions.

13. The claimant failed to send a copy of their written contract as per Practice Direction 16 7.3(1) and Practice Direction 7C 1.4(3A). No indication is given as to the Claimant's contractual authority to operate there as required by the Claimant's Trade Association's Code of Practice B1.1 which states:

1.1 If you operate parking management activities on land which is not owned by you, you must supply us with written authority from the land owner sufficient to establish you as the 'Creditor' within the meaning of the Protection of Freedoms Act 2012 (where applicable) and in any event to establish you as a person who is able to recover parking charges. There is no prescribed form for such agreement and it need not necessarily be as part of a contract but it must include the express ability for an operator to recover parking charges on the landowner's behalf or provide sufficient right to occupy the land in question so that charges can be recovered by the operator directly. This applies whether or not you intend to use the keeper liability provisions.

The car park in question no longer exists. It was initially referred to as The Percy Car Park by the Claimant, Vehicle Control Services on the Notice to Owner XXX and the Final Demand Notice XXX. It was later called The Percy Car Park Hanro Group in all correspondence from BW Legal. The car park was already a building site when BW Legal first contacted me in July 2016, after more than four years of hearing nothing further from the Claimant.

According to a press release dated 16/9/2016, Kier Property had bought from Hanro a portfolio of properties which included the car park in question. (Exhibit P)

14. The Final Demand Prior to Court Action, XX/5/2012, suggested that, should I fail to "pay this notice", court proceedings could "lead to a warrant being issued to the bailiffs to recover payment/seize goods". (Exhibit B)

15. Four years later I received a demand from BW Legal for £174. This was described as £120 PCN charge plus "Our Client's initial legal costs of £54". (Exhibit C2)

In their letter, dated XX/8/2016, I was further informed that payment of such fees was detailed in the terms and conditions in the car park (Exhibit E). At this point the car park was no longer in existence and I have yet to see any evidence, including signage, from the Claimant or their solicitors. The £54 "client's initial legal fees" was also referred to in BW Legal's "Discount Offer", dated XX/8/2016, (Exhibit F) when they reduced the £120 PCN amount to £72 but still requested £126.

16. The Claimant appeared to be uncertain as to whether the PCN charge was £120 or £100 in their letter of XX/8/2016 (Exhibit E). At the beginning of the letter, the claim is for the sum of £174. There are later references to the £54 legal fees. The penultimate paragraph claims that PCN charges are not a penalty and that the car parking Codes of Practice "give guidance that £100 is a reasonable sum to charge". I pointed out these discrepancies in my response (Exhibit G). I heard nothing more from the Claimant or their solicitors until after the Claim Form arrived from the County Court Business Centre.

17. The Claimant's solicitor has also misrepresented the consequences of a judgement - a CCJ "may have a detrimental effect on your future creditworthiness and employability". (Exhibit C.2)

They also attempted to mislead me by demanding £54 legal costs, which cannot be recovered in the Small Claims Court, as per CPR 27.14. I pointed this out to them in my response to their initial demand, (Exhibit D) dated XX/8/2016 and my more detailed response, (Exhibit G) dated XX/9/2016.

18. On the XX/1/2018 I received a Claim Form from CCBC (Exhibit H). I did not receive a Letter Before

Claim or even a final demand indicating that litigation was imminent.

19. On the XX/1/2018 BW Legal sent a "Notice of County Court Claim Issued" (Exhibit I), dated 1/2/2018. This Notice broke down the outstanding balance of £313.26:

Principle Debt	£120.00
Interest	£64.26
Court Fees	£25.00
Solicitors' Costs	£104.00

The Claimant's legal costs appear to have almost doubled. I dispute that the Claimant has incurred £104 solicitors' costs to pursue an alleged £120 debt, the costs of which are in any case not recoverable. On the Claim Form (Exhibit H) the legal representative's costs are listed as £50 and the Particulars of Claim describes the £54 as "contractual costs pursuant to PCN terms and conditions".

The Claimant's solicitor, who signed the Claim Form as BW Legal Services Limited, seems confused about the amount they are charging VCS.

20. The Claimant has included six years interest charges of £64.26. I would like to refer the Court to the unreasonable delay in issuing a claim when the Claimant sent a "Final Demand Prior to Court Action" almost six years ago on XX May 2012.

21. The Claimant has not complied with the pre-court protocol as No Letter of Claim or initial information was sent to me.

22. I would like to refer the court to Paragraph 4 on non-compliance and sanction, and also point out that there can be no reasonable excuse for the Claimant's failure to follow the Pre-Action Conduct process, especially bearing in mind that the Claim was issued by their own Solicitors. They clearly had legal advice before issuing proceedings.

23. PRACTICE DIRECTION – PRE-ACTION CONDUCT AND PROTOCOL Steps before issuing a claim at court.

6. Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include—

(a) the claimant writing to the defendant with concise details of the claim. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;

(b) the defendant responding within a reasonable time - 14 days in a straight forward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well as providing details of any counterclaim; and

(c) the parties disclosing key documents relevant to the issues in dispute.

24. The claimant has not provided enough details in the Particulars of Claim to enable me to file a full defence. In particular, the full details of the contract, which it is alleged was breached, have not been provided.

1. The Claimant has disclosed no cause of action to give rise to any debt.

2. The Claimant has stated that a parking charge was incurred.

3. The Claimant has given no indication of the nature of the alleged charge in the Particulars of Claim. The Claimant has therefore disclosed no cause of action.

25. The Particulars of Claim contains no details and fails to establish a cause of action which would

enable me prepare a specific defence.

It just states Parking Charge Notice (PCN) which does not give any indication of the basis on which the claim is brought.

There is no information regarding why the charge arose, what the original charge was, what the alleged contract was nor anything which could be considered a fair exchange of information.

26. The Particulars of Claim are incompetent in disclosing no cause of action.

27. The Claimant has in previous correspondence (Exhibit E) referenced ParkingEye v Beavis. The present case can be easily distinguished as the Claimant has not shown any valid 'legitimate interest' allowing them the unusual right to pursue anything more than a genuine pre-estimate of loss. Neither has it complied with its trade association Code of Practice.

If it is not the landowner, it has no capacity to take legal action unless specifically provided for in its contract.

The Claimant has not explained if the claim is founded on a contractual charge, a breach of a contract or trespass that require different defences.

28. Since 2012 the Claimant has described the charge of £54 as 'legal fees'. Only in the Particulars of Claim does this become 'contractual costs'. CPR 31.14 does not permit these to be recoverable in the Small Claims Court.

29. The amount claimed is a charge and evidently disproportionate to any loss suffered by the Claimant and is therefore unconscionable.

30. I submit that the amount demanded cannot possibly be a genuine pre-estimate of the Claimant's loss.

31. The Claimant has at no time provided an explanation how the sum has been calculated or the conduct that gave rise to it.

32. I watched the recent Parliamentary debate on the planned Private Parking (Code of Practice) Bill, which particularly singled out the current unacceptably high numbers of unfair 'parking charges' received by ordinary residents, and how this is considered completely unreasonable. Stephen Doughty MP referred to the Claimant's solicitor in his speech: "there are other firms of solicitors that use the same name—as is BW Legal. I have been involved in a lengthy case concerning a constituent. This week, I raised concerns about such firms with the Solicitors Regulation Authority, and I am hopeful that it will take a close look at the matter and consider whether the firms are complying with the regulatory environment for solicitors, and with best practice." Full transcript of the debate - (Exhibit S)

33. I believe that the facts stated in this witness statement are true.

Signed

Dated