

**I, Annie Clark, OF The Courtyard, 1A Cranbourne Road, SL1 2XF  
WILL SAY AS FOLLOWS:**

1. I am the Employee of the Claimant Company ('my Company') and I am duly authorised to make this statement on its behalf. The facts and matters set out in this statement are within my own knowledge unless otherwise stated and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
2. Exhibited to this Witness Statement at 'GSL1' are the following documents which my Company
  - i) The Agreement authorising my Company to manage parking on the relevant land (as described therein and hereinafter referred to as 'the Relevant Land');
  - ii) The Sign ('the Contract');
  - iii) TheSitePlan;
  - iv) Notices;
  - v) Photographs of the incident.
3. The Defendant is liable for a parking charge relating to the parking of a vehicle on the Relevant Land in a manner so as to incur the same pursuant to the Contract (i.e. the Sign). Set out in the Schedule below are details of the parking charge;

**CLAIM NO: E1GF5C0X**

| <b>PCN Number</b> | <b>Date of Charge</b> | <b>Location</b>    | <b>Description</b>        |
|-------------------|-----------------------|--------------------|---------------------------|
| PM09499640        | 18/03/2017            | Heath Parade - NW9 | Parked in restricted area |

1

## **The Defence**

### **Personal Mitigation**

4. Whilst the Defendant has provided some detail of the reason for the charge being incurred. Unfortunately, while this may explain the reason for the charge being incurred it does not avoid the Defendant's liability to pay the charge. It is an integral part of the parking scheme that vehicles do not park in restricted areas as otherwise the scheme would be unmanageable. If my Company were to waive one charge on the basis put forward in the Defence it would open the floodgates to the waiver of many more charges, making the parking management process that has been put in place entirely redundant.
  
5. The parking charge was clearly advertised and the Defendant was in possession of all the information needed to make a decision. The Defendant chose to park. In our view, this act, by the defendant, constituted acceptance of the offer to pay the charge and formed a binding contract between the parties. It would follow that there was no inherent unfairness in the way this agreement was reached. The Defendant could have rejected the charge by parking somewhere else.

### **Signs**

6. The photographic evidence of the Defendant's vehicle shows the Defendant is within a clear view of one of the many warning signs throughout the Relevant Land and all signage states the terms and conditions of parking within the Relevant Land. Upon reading the signage the Defendant

contractually agreed to pay a parking charge fee if restrictions were breached. It is the driver's responsibility to ensure parking is permitted prior to leaving the vehicle unattended within the restricted area.

7. My Company rejects any argument that you did not see the sign or the signs are inadequate. It is evident from the site plan that there are sufficient signs. Further, the road markings clearly alerts a driver on their approach that restrictions are in place. The signage at the site is clearly visible and the information on the signage informs the driver of the parking conditions at the location. Signage is prominent throughout the parking area. Signage location, size, content and font has been audited by the International Parking Community. It is the driver's responsibility, to check for signage, check the legality and obtain any authorisation for parking before leaving their vehicle. The signage on site is the contractual document.
8. What is more, without concession, even in the unlikely event the Defendant didn't see the signs I submit they ought to have done so. As Lord Justice Roch observed in the Court of Appeal case of *Vine v London Borough of Waltham Forrest* 2000;  
*"Once it is established that sufficient and adequate warning notices were in place, a car driver cannot be heard to say that he or she did not see the notice. Were that to be the law, it would be too easy for car drivers who trespass with their cars to evade the only method land owners have of stopping the unauthorised parking of cars in parking spaces or parking areas on their property"*

Charge is excessive/ no loss suffered

9. The charge sought is industry standard and is set at a rate so as to suitably satisfy my Company's legitimate interest. In the case of *Parking Eye -v- Beavis* [2015] it was held that an £85.00 charge was neither extravagant nor unconscionable. The Accredited Trade Associations of which parking

operators must be a member in order to apply for DVLA data prescribe a maximum charge of £100. My Company's charges are within this level. The charge is therefore not excessive.

#### No contract

10. The Defendant avers she has not been provided with a contract. The Defendant enters in a contract with the operator when they parked on the Relevant Land otherwise than in accordance with the rules of parking. As such, the Defendant accepts a charge of £100 for the privilege of doing so.
11. My Company rely on the case of *Parking Eye V Beavis* where at paragraph 108 the Judgment is stated "the concept of a negotiated agreement to enter a car park is somewhat artificial but it is perfectly workable provided one bears in mind its objective ..." "In our view a reasonable motorist would have agreed to the term".
12. The principles in this case are the same as in the *Parking Eye* case, save that in the *Parking Eye* case, as the particular parking rules were different, the rules breached was that motorists must leave the site within 2 hours, whereas here, the rule was no parking in a restricted area.
13. The Court may conclude that the Land is managed as follows; the Claimant grants a contractual license to all; this license allows anyone permission to be on the Land. This is referred by the nature of the land and the lack of any general prohibition of entry on the signage. In this regard, the Defendant (as were all the motorists) was offered to comply with the normal conditions (as clear on the sign), or park otherwise than in accordance with normal conditions and incur a £100 charge. The acceptance was at the point the Defendant decided to park, having read the sign, and his consideration was the promise to pay £100 for the privilege of parking outside the normal

conditions. The Claimant's consideration is the provision of parking services.

14. I refer to the Court to Judge Hegarty's comments in *ParkingEye v Somerfield* (2011) that "if this is the price payable for the privilege, it does not seem to me that it can be regarded as a penalty, even though it is substantial and obviously intended to discourage motorists from leaving their cars on the car park".
15. My Company's signs are clear and unambiguous and clear state "This loading bay is only for authorised vehicles loading and unloading whilst delivering goods to the commercial tenants at Heath Parade. No parking for any other vehicle at any time". Further, the road markings on the Defendant's approach clearly evidences parking is restricted in this area. By parking in the manner in which the Defendant did, the charge was correctly incurred.

### **The Current Debt**

16. In view of the Defendant not paying the charge within the 28 days allowed they are in breach of the contract. Breach of contract entitles the innocent party to damages as of right in addition to the parking charge incurred.

---

3

17. My Company is an Accredited Operator of the International Parking Community (IPC) who prescribes a maximum charge of £100. The Code of Practice states:  
"Parking charges must not exceed £100 unless agreed in advance with the IPC. Where there is a prospect of additional charges, reference should be made to this where appropriate on the signage and/ or other documentation.  
Where a parking charge becomes overdue a reasonable sum may be added. This sum must not exceed £60 (inclusive of VAT where

applicable) unless Court Proceedings have been initiated."

18. In view of the Defendant not paying the charge within the initial 28 days allowed or the further 28 days allowed after the Notice to Keeper has been sent, the parking charge has become overdue and a reasonable sum of £60 has been added.
19. *The Sign states the prescribed charge for failing to comply with the terms is £100, however it also specifies, "Failure to pay the charge my result in the vehicle's keeper details being obtained from the DVLA. Enforcement action may incur additional costs that will be added to the value of the parking charge and for which the driver will be liable". Further, the Letter Before Claim also made it clear the debt may increase in respect of costs and interest if a claim had to be issued. Due to the Defendant not paying the charge the matter was passed to my Company's legal representatives, Gladstones Solicitors Ltd, who were instructed to commence legal proceedings. The potential additional costs mentioned above are now sought.*
20. The debt has, as a result of this referral risen as my Company's staff have spent time and material in facilitating the recovery of this debt. This time could have been better spent on other elements of my Company's business. My Company believes the costs associated with such time spent were incurred naturally as a direct result of the Defendant's breach and as such asks that this element of the claim be awarded as a damage. The costs claimed are a pre-determined and nominal contribution to the actual losses. Alternatively, my Company does have a right to costs pursuant to the sign (i.e. the contract).

#### **STATEMENT OF TRUTH**

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

Signed:

Print: Annie Clark Dated: 09 October 2018



Incoming: Incoming Correspondence - Email  
From: msandbythomas@btinternet.com  
Date: 10-Apr-2017 17:27:41  
Referred To: - Online Challenge  
Regarding: TICKET PM09499640  
Subject: PM09499640 Online Challenge

I am appealing as registered keeper on the following grounds.

The driver pulled over to the area for 2 reasons:

- 1) A child was feeling unwell in the car and this was the safest area in which to pull over in a timely fashion
- 2) the driver needed to confirm that parking was available in central London and to enter these details into the Satnav system in a safe fashion.

No member of the party in the car exited the car at any time. No attempt was made by any member of the parking enforcement team to indicate to the driver that the car should move on. The car was stationary for less than 5 minutes - well within the grace period recommended by the BPA. I have telephone and satnav data that confirm this information. I notice that on your NTK you do not give a time period for the alleged infraction which in itself is a breach the mandatory information required by protection of freedom act 2012 (Schedule 4, paragraphs 8,9)

Should you fail to uphold my appeal then I will also appeal to POPLA/IAS on the following grounds. You will be expected to provide a full breakdown of your alleged loss, and your full unredacted contract with the landowner.

- 1) The amount being claimed is not a genuine pre-estimate of loss to your company or the landowner
- 2) The amount is an unfair term according to the Consumer Rights Act 2015 regulation 62(4)
- 3) Your signage does not comply with the BPA/IPC Code of Practice and does not form a contract between motorist and yourself
- 4) The signage does not contain the information required by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 regulation 13(a) and is therefore not binding
- 5) You have no authority from the landowner to issue and collect charges

If you do reject the challenge and insist on taking the matter further I must inform you that I may claim my expenses from you. The expenses I may claim are not exhaustive but may include the cost of stamps, envelopes, travel expenses, legal fees, etc. By continuing to pursue me you agree to pay these costs when I prevail.

Any communication that does not either confirm cancellation or include a POPLA verification code/IAS appeal information will be reported to the BPA/IPC as a breach of their Code of Practice - the BPA recently issued guidance to all members to remind them of this fact. Such communication may also be deemed harassment and pursued accordingly.

