

POPLA Verification Code: -----

Vehicle Registration: -----

I the registered keeper of this vehicle received **FOUR** identical Parking Charge Notifications dated --/12/2018 acting as a notice to the registered keeper. My appeal to the operator UKPC was submitted and acknowledged by the operator with a letter dated --/02/2019. This appeal was rejected by letter on the --/3/2019.

I contend that I, as the registered keeper, am not liable for the alledged parking charge and wish to appeal against it on the following grounds.

I was not the driver on the day in question.

- 1. Claimed period of stay is incorrect.**
(vehicle left site several times)
- 2. Grace period too short.**
(Disabled Driver)
- 3. Grace Period.**
(Vehicle left site)
- 4. Inadequate and unclear signage.**
- 5. No evidence of landowner authority.**
- 6. No evidence of period parked - NtK does not meet POFA.**

1. Claimed period of stay is incorrect.

UKPC claim the vehicle overstayed by 15 minutes, this is incorrect.

On the day and time in question the carpark was extremely busy and the disabled driver drove in and around and exited the property due to not finding a suitable disabled space. The driver did this on 3 more occasions before finally finding a suitable parking space.

The ANPR appears to have started the clock on the first entry and stopped the clock on the last exit and does not take into account any of the time the vehicle was off the premises, looking for somewhere else to park or turn around and enter the carpark once again. This took place at lunchtime on the day in question and the store and carpark were extremely busy.

I received 4 identical NtK's all identical in every detail. Identical PCN reference, identical date and time stamps on the ANPR photo. Initially I thought all 4 were separate PCN's due to entering and leaving the site so many times. The photographs and time stamps are all identical. No picture supplied of the vehicle entering and exiting several times, Just the first entry and last exit.

The vehicle did not stay or park on the premises for more than 90 minutes in one session due to the lack of a suitable disabled parking space. Having driven around the building and not finding a space the driver left the premises to turn around hoping to find a space on the next visit. The actual length of stay would have been well under 90 minutes if counting the time off the premises.

The ANPR system did not reset the clock with each arrival / exit from the premises. The "meter" was running from the first entry until the last exit.

[illegible]

2. Grace period.

The driver was disabled and uses a walking stick to support themselves and requires adequate parking close to the store with a bay wide enough for their door to swing fully open. Due to their disability they require a reasonable amount of grace period due to the previously mentioned aided walking and also their toiletry requirements.

The Disabled driver uses catheter's to enable them to pass urine, unable to do this naturally, this requires a clean cubicle **with a water source** for hygiene reasons. Water infections are a common problem

<https://www.bladderandbowel.org/conservative-treatment/intermittent-self-catheterisation/>

At this location there is only one disabled cubicle and there is often a queue.

The driver also suffers from IBS which entails longer bathroom visits in which I will leave the gory details out of this appeal.

Information available on the NHS website. <https://www.nhs.uk/conditions/irritable-bowel-syndrome-ibs/>

With these conditions I believe that that UKPC have failed to give the driver enough of a grace period when taking their disabilities into consideration.

Kelvin Reynolds, BPA Director of Corporate Affairs says there is a difference between 'grace' periods and 'observation' periods in parking and that good practice allows for this.

"An observation period is the time when an enforcement officer should be able to determine what the motorist intends to do once in the car park. Our guidance specifically says that there must be sufficient time for the motorist to park their car, observe the signs, decide whether they want to comply with the operator's conditions and either drive away or pay for a ticket," he explains.

"No time limit is specified. This is because it might take one person five minutes, but another person 10 minutes depending on various factors, not limited to disability."

The BPA's guidance defines the 'grace period' as the time allowed after permitted or paid-for parking has expired but before any kind of enforcement takes place.

Kelvin continues: "In the instance of a PCN being issued while a ticket is being purchased, the operator has clearly not given the motorist sufficient time to read the signs and comply as per the operator's own rules. If a motorist decides they do not want to comply and leaves the car park, then a reasonable period of time should be provided also."

Proof of purchases made on the day in question.

066

Tell us how we did

Get a Big Mac & Fries for just £1.99 on your next visit. Go to www.mcdfoodforthoughts.com and enter this 12 digit code:

NN7C-NKVB-RTX3

At the end of the short survey, write your 5 digit offer code here:

Bring your receipt & code with you on your next visit to redeem the offer (Offer valid for age 16+)

Thank you for eating at

McDonald's

Lincoln Road

Newark On Trent

NG24 2DB

Phone: 01636 610499

E-mail: 00777@uk.mcd.com

TAX INVOICE

EG 1 Date: 12/12/2018 Time: 12:45:06

1 MED STRW SHK 1.69

1 MED CAPPUCCINO 1.69

2 FFT-MAC+M FRY 3.98

2 MEDIUM FRIES 0.00

T Total (incl VAT) 7.36

id GBP 10.00

ange (GBP) 2.64

VAT Number 763762503

	TAX%	AMOUNT	TAX
CL. TAX:	20.00%	5.67	0.94
CL. TAX:	0.00%	1.69	0.00

Cara Restaurants Ltd

A franchisee of McDonald's

Restaurants Limited

Closeup. Shows that the purchase took place approx 45 minutes after the first time stamp from the entrance ANPR camera. The driver was a customer of the store. But required time to use the facilities due to their disabilities.

Thank you for eating at
McDonald's
Lincoln Road
Newark On Trent
NG24 2DB

Phone: 01636 610499

E-mail: 00777@uk.mcd.com

TAX INVOICE

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Grace Period: BPA Code of Practice – non-compliance

The BPA's Code of Practice states (13) that there are two grace periods: one at the end (of a minimum of 10 minutes) and one at the start.

BPA's Code of Practice (13.1) states that:

“Your approach to parking management must allow a driver who enters your car park but decides not to park, to leave the car park within a reasonable period without having their vehicle issued with a parking charge notice.”

BPA's Code of Practice (13.2) states that:

“You should allow the driver a reasonable ‘grace period’ in which to decide if they are going to stay or go. If the driver is on your land without permission you should still allow them a grace period to read your signs and leave before you take enforcement action.”

BPA's Code of Practice (13.4) states that:

“You should allow the driver a reasonable period to leave the private car park after the parking contract has ended, before you take enforcement action. If the location is one where parking is normally permitted, the Grace Period at the end of the parking period should be a minimum of 10 minutes.”

BPA's Code of Practice (18.5) states that:

“If a driver is parking with your permission, they must have the chance to read the terms and conditions before they enter into the contract with you. If, having had that opportunity, they decide not to park but choose to leave the car park, you must provide them with a reasonable grace period to leave, as they will not be bound by your parking contract.”

The BPA Code of Practice (13.4) clearly states that the Grace Period to leave the car park should be a minimum of 10 minutes. Whilst 13.4 does not apply in this case (it should be made clear - a contract was never entered in to), it is reasonable to suggest that the minimum of 10 minutes grace period stipulated in 13.4 is also a “reasonable grace period” to apply to 13.1 and 13.2 of the BPA’s Code of Practice.

Kelvin Reynolds, Head of Public Affairs and Policy at the British Parking Association (BPA):

Four Notice to Keeper PCN's were received on the same day, all with the same time stamp, I believe the ANPR system failed in respect of the vehicle exiting the site and re-entering not once but 3 or 4 times in total. There was obviously a fault in the ANPR system in this case and I believe this is down to the fact the vehicle exited the premises and was not on the site the entire 105 minutes claimed by UKPC.

Driver left the site and returned several times, so the full time on site was less than claimed, add into that the issue of an inadequate grace period especially as the driver was disabled.

4. Inadequate signage.

The signs in this car park are not prominent, clear or legible from all parking spaces and there is insufficient notice of the sum of the parking charge itself

I note that within the Protection of Freedoms Act (POFA) 2012 it discusses the clarity that needs to be provided to make a motorist aware of the parking charge. Specifically, it requires that the driver is given 'adequate notice' of the charge. POFA 2012 defines 'adequate notice' as follows:

"(3) For the purposes of sub-paragraph (2) 'adequate notice' means notice given by: (a) the display of one or more notices in accordance with any applicable requirements prescribed in regulations under paragraph 12 for, or for purposes including, the purposes of sub-paragraph (2); or (b) where no such requirements apply, the display of one or more notices which: (i) specify the sum as the charge for unauthorised parking; and (ii) are adequate to bring the charge to the notice of drivers who park vehicles on the relevant land".

Even in circumstances where POFA 2012 does not apply, I believe this to be a reasonable standard to use when making my own assessment, as appellant, of the signage in place at the location. Having considered the signage in place at this particular site against the requirements of Section 18 of the BPA Code of Practice and POFA 2012, I am of the view that the signage at the site - given the minuscule font size of the £sum, which is illegible in most photographs and does not appear at all at the entrance - is NOT sufficient to bring the parking charge (i.e. the sum itself) to the attention of the motorist.

There was no contract nor agreement on the 'parking charge' at all. It is submitted that the driver did not have a fair opportunity to read about any terms involving this huge charge, which is out of all proportion and not saved by the dissimilar 'ParkingEye Ltd v Beavis' case.

In the Beavis case, which turned on specific facts relating only to the signs at that site and the unique interests and intentions of the landowners, the signs were unusually clear and not a typical example for this notorious industry. The Supreme Court were keen to point out the decision related to that car park and those facts only:



In the Beavis case, the £85 charge itself was in the largest font size with a contrasting colour background and the terms were legible, fairly concise and unambiguous. There were 'large lettering' signs at the entrance and all around the car park, according to the Judges.

Here is the 'Beavis case' sign as a comparison to the signs under dispute in this case:



This case, by comparison, does not demonstrate an example of the 'large lettering' and 'prominent signage' that impressed the Supreme Court Judges and swayed them into deciding that in the specific car park in the Beavis case alone, a contract and 'agreement on the charge' existed.

Here, the signs are sporadically placed, indeed obscured and hidden in some areas. They are unremarkable, not immediately obvious as parking terms and the wording is mostly illegible, being crowded and cluttered with a lack of white space as a background. It is indisputable that placing letters too close together in order to fit more information into a smaller space can drastically reduce the legibility of a sign, especially one which must be read BEFORE the action of parking and leaving the car.

It is vital to observe, since 'adequate notice of the parking charge' is mandatory under the POFA Schedule 4 and the BPA Code of Practice, these signs do not clearly mention the parking charge which is hidden in small print (and does not feature at all on some of the signs). Areas of this site are unsigned and there are no full terms displayed - i.e. with the sum of the parking charge itself in large lettering - at the entrance either, so it cannot be assumed that a driver drove past and could read a legible sign, nor parked near one.

This case is more similar to the signage in POPLA decision 5960956830 on 2.6.16, where the Assessor Rochelle Merritt found as fact that signs in a similar size font in a busy car park where other unrelated signs were far larger, was inadequate:

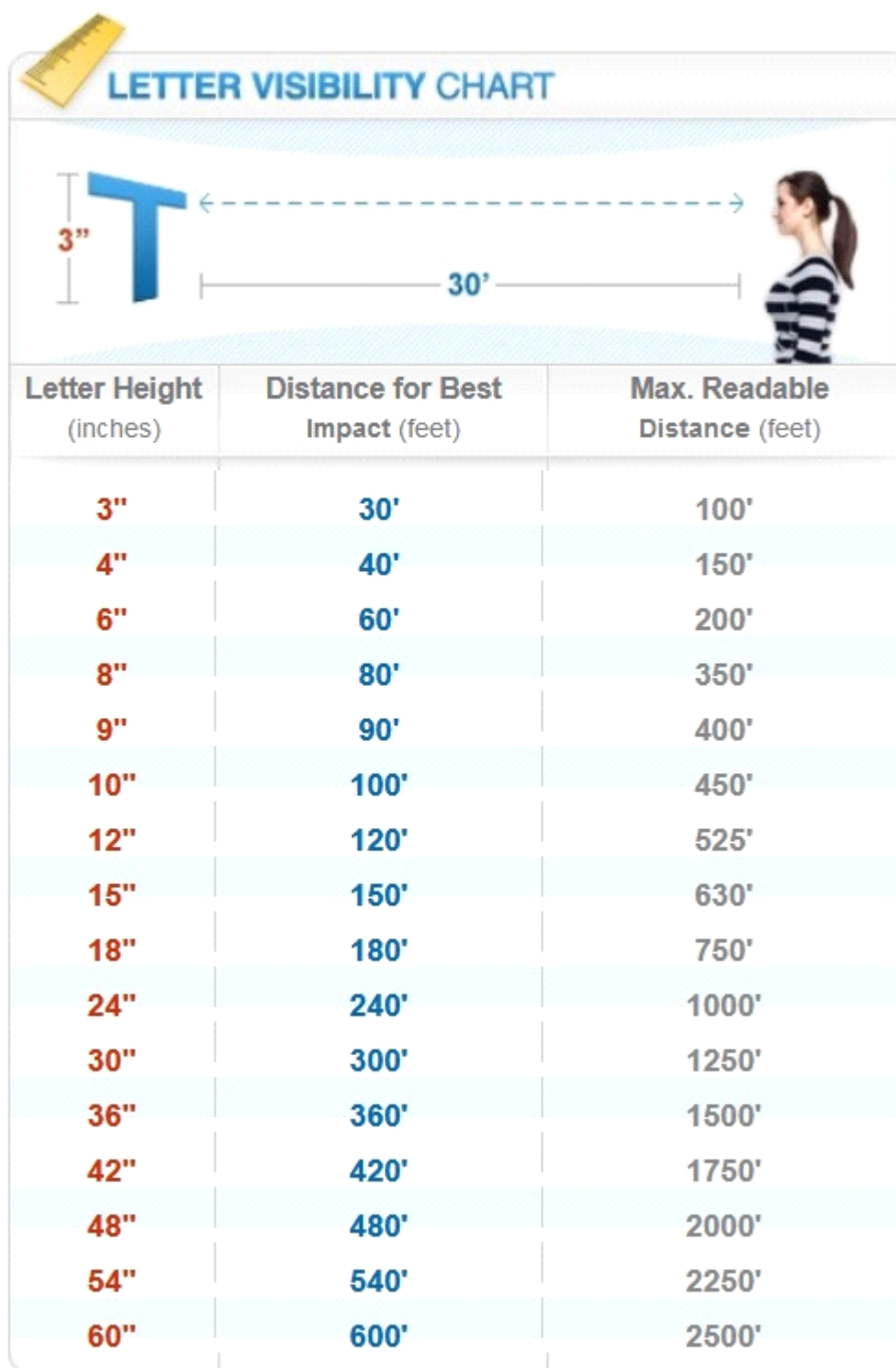
"the signage is not of a good enough size to afford motorists the chance to read and understand the terms and conditions before deciding to remain in the car park. [...] In addition the operators signs would not be clearly visible from a parking space [...] The appellant has raised other grounds for appeal but I have not dealt with these as I have allowed the appeal."

From the evidence I have seen so far, the terms appear to be displayed inadequately, in letters no more than about half an inch high, approximately. I put the operator to strict proof as to the size of the wording on their signs and the size of lettering for the most onerous term, the parking charge itself.

The letters seem to be no larger than .40 font size going by this guide:

<http://www-archive.mozilla.org/newlayout/testcases/css/sec526pt2.htm>

As further evidence that this is inadequate notice, Letter Height Visibility is shown on the next page:



and discussed here: <http://www.signazon.com/help-center/sign-letter-height-visibility-chart.aspx>

"When designing your sign, consider how you will be using it, as well as how far away the readers you want to impact will be. For example, if you are placing a sales advertisement inside your retail store, your text only needs to be visible to the people in the store. 1-2' letters (or smaller) would work just fine. However, if you are hanging banners and want drivers on a nearby highway to be able to see them, design your letters at 3' or even larger."

"When designing an outdoor sign for your business keep in mind the readability of the letters. Letters always look smaller when mounted high onto an outdoor wall or pole".

"...a guideline for selecting sign letters. Multiply the letter height by 10 and that is the best viewing distance in feet. Multiply the best viewing distance by 4 and that is the max viewing distance."

So, a letter height of just half an inch, showing the terms and the 'charge' and placed high on a wall or pole or buried in far too crowded small print, is woefully inadequate in an outdoor car park. Given that letters look smaller when high up on a wall or pole, as the angle renders the words less readable due to the perspective and height, you would have to stand right in front of it and still need a stepladder (and perhaps a torch and/or magnifying glass) to be able to read the terms.

Under Lord Denning's Red Hand Rule, the charge (being 'out of all proportion' with expectations of drivers in this car park and which is the most onerous of terms) should have been effectively: 'in red letters with a red hand pointing to it' - i.e. VERY clear and prominent with the terms in large lettering, as was found to be the case in the car park in 'Beavis'. A reasonable interpretation of the 'red hand rule' and the 'signage visibility distance' tables above and the BPA Code of Practice, taking all information into account, would require a parking charge and the terms to be displayed far more transparently, on a lower sign and in far larger lettering, with fewer words and more 'white space' as background contrast. Indeed in the Consumer Rights Act 2015 there is a 'Requirement for transparency':

- (1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.
- (2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

The Beavis case signs not being similar to the signs in this appeal at all, I submit that the persuasive case law is in fact 'Vine v London Borough of Waltham Forest [2000] EWCA Civ 106' about a driver not seeing the terms and consequently, she was NOT deemed bound by them.

This judgment is binding case law from the Court of Appeal and supports my argument, not the operator's case:

<http://www.bailii.org/ew/cases/EWCA/Civ/2000/106.html>

This was a victory for the motorist and found that, where terms on a sign are not seen and the area is not clearly marked/signed with prominent terms, the driver has not consented to - and cannot have 'breached' - an unknown contract because there is no contract capable of being established. The driver in that case (who had not seen any signs/lines) had NOT entered into a contract. The recorder made a clear finding of fact that the plaintiff, Miss Vine, did not see a sign because the area was not clearly marked as 'private land' and the signs were obscured/not adjacent to the car and could not have been seen and read from a driver's seat before parking.

So, for this appeal, I put this operator to strict proof of where the car was parked and (from photos taken in the same lighting conditions) how their signs appeared on that date, at that time, from the angle of the driver's perspective. Equally, I require this operator to show how the entrance signs appear from a driver's seat, not stock examples of 'the sign' in isolation/close-up. I submit that full terms simply cannot be read from a car before parking and mere 'stock examples' of close-ups of the (alleged) signage terms will not be sufficient to disprove this.

No sign if entering from Premier Inn.



Perfect position to warn drivers of parking restrictions? Yet no signs at all.



No signs near the drivethrough.



No sign.



No signs along the entire length of the building.



No signs at the store entrance.



Finally a sign at an awkward and virtually impossible to read angle as you exit, where by this time it will be too late to agree or disagree with the terms on the sign. If a tall vehicle parks in that location then the sign will be obscured and the driver would exit totally unaware of there being a sign.



5. No evidence of landowner authority.

No evidence of Landowner Authority - the operator is put to strict proof of full compliance with the **BPA Code of Practice**

As this operator does not have proprietary interest in the land then I require that they produce an unredacted copy of the contract with the landowner.

The contract and any 'site agreement' or 'User Manual' setting out details - such as any 'genuine customer' or 'genuine resident' exemptions or any site occupier's 'right of veto' charge cancellation rights, and of course all enforcement dates/times/days, and the boundary of the site - is key evidence to define what this operator is authorised to do, and when/where.

It cannot be assumed, just because an agent is contracted to merely put some signs up and issue Parking Charge Notices, that the agent is authorised on the material date, to make contracts with all or any category of visiting drivers and/or to enforce the charge in court in their own name (legal action regarding land use disputes generally being a matter for a landowner only).

Witness statements are not sound evidence of the above, often being pre-signed, generic documents not even identifying the case in hand or even the site rules. A witness statement might in some cases be accepted by POPLA but in this case I suggest it is unlikely to sufficiently evidence the definition of the services provided by each party to the agreement.

Nor would it define vital information such as charging days/times, any exemption clauses, grace periods (which I believe may be longer than the bare minimum times set out in the BPA CoP) and basic but crucial information such as the site boundary and any bays where enforcement applies/does not apply. Not forgetting evidence of the only restrictions which the landowner has authorised can give rise to a charge, as well as the date that the parking contract began, and when it runs to, or whether it runs in perpetuity, and of course, who the signatories are: name/job title/employer company, and whether they are authorised by the landowner to sign a binding legal agreement.

Paragraph 7 of the BPA CoP defines the mandatory requirements and I put this operator to strict proof of full compliance:

7.2 If the operator wishes to take legal action on any outstanding parking charges, they must ensure that they have the written authority of the landowner (or their appointed agent) prior to legal action being taken.

7.3 The written authorisation must also set out:

- a. the definition of the land on which you may operate, so that the boundaries of the land can be clearly defined
- b. any conditions or restrictions on parking control and enforcement operations, including any restrictions on hours of operation
- c. any conditions or restrictions on the types of vehicles that may, or may not, be subject to parking control and enforcement

- d. who has the responsibility for putting up and maintaining signs
- e. the definition of the services provided by each party to the agreement

6. No evidence of period parked - NtK does not meet POFA.

Contrary to the mandatory provisions of the BPA Code of Practice, there is no record to show that the vehicle parked or attempting to park before reading the terms and conditions before deciding against parking/entering into a contract.

Furthermore, PoFA 2012 Schedule 4 paragraph 9 refers at numerous times to "**period of parking**". Most notably, paragraph 9(2)(a) requires the NtK to:

"specify the vehicle, the relevant land on which it was parked and the

period of parking to which it relates"

UKPC's NtK simply claims the vehicle had a stay of 105 minutes. The NtK merely states the vehicle Arrived and Departed and at no stage do UKPC explicitly specify the "**period of parking**"

Four identical NtK/PCN's received due to the vehicle **NOT being on the property the entire length of time claimed by UKPC**. The vehicle left the site and returned due to not finding a suitable disabled parking space. The entire length of time on site would have been less when taking into account the time it took the driver to exit the site and turn around and re-enter.

