

xx xxxx 2013

Reference: xxxxxxxx
always quote in any communication with POPLA

Kxxxxxxx (Appellant)

-v-

Combined Parking Solutions (Operator)

The Operator issued parking charge notice number xxxx xxx arising out of the presence at xx on xx xxxxxx xxxx, of a vehicle with registration mark xxxx xxx.

The Appellant appealed against liability for the parking charge.

The Assessor considered the evidence of both parties and determined that the appeal be **refused**.

The Assessor's reasons are as set out.

In order to avoid any further action by the operator, payment of the £100 parking charge should be made within 14 days.

Details of how to pay will appear on previous correspondence from the operator.

Reasons for the Assessor's Determination

The Operator issued a parking charge notice in relation to the vehicle with registration mark xxxx xxx because it was parked at The xxxxxxxxx without authorisation.

The Operator's case is that the terms and conditions for parking are displayed at the site and state that parking is for "Customers of xxxxxxxxxxxxxxxx whilst using the facilities". Copies of the conditions have been produced. They also state that "the landowner and its agents also offers all members of the public who are not parking in accordance with the above terms, the right to park on this land at a cost of £100 per vehicle per 24 period. A parking charge notice will be issued with instructions on how to pay this amount". The Appellant does not dispute this.

The Appellant made various representations, stating that she did not see any signs displaying the parking restrictions on entering the site, so when she exited the vehicle she read the nearest sign and decided to leave after informing the person she was meeting that she was moving her vehicle. The Appellant submits therefore that she did not agree to the terms and conditions, and that the Operator should have given her a reasonable period, as required by the British Parking Association Code of Practice, to leave the site. The Appellant does not dispute that she was not a customer of xxxxxxxxxxxxxx.

In addition, the Appellant submits that any evidence produced by the Operator is unreliable, but has not submitted any reasons as to why this she believes this is the case. Therefore this will not affect my decision on this occasion.

It is further noted that the Appellant submits that she would not be able to afford the charge, however I am unable to consider mitigating circumstances as part of my decision.

The Appellant's reasons on the appeal form appear to end mid sentence, ending "so there is no charge applicable. However, for t..." I will only be able to consider the submissions before me.

The Appellant submits that as the British Parking Association has stated that parking charge notices do not attract Value Added Tax, parking charges cannot be a contractual matter. I am unable to decide whether or not the payment should attract Value Added Tax, as this is a matter for HMRC.

However, I am able to consider whether or not, on the evidence before me, this appears to be a contractual agreement.

The Operator rejected the representations, as set out in the copy of the notice of rejection they sent, because parking is only free for customers of xxxxxxxxxxxx. The Operator submits that the Appellant saw the signs displaying the parking restrictions and then left the vehicle, indicating her acceptance of the terms and conditions displayed.

Operators are required to give a reasonable period to allow motorists to read the terms and conditions, and decide whether to agree to them or to leave the site. Operators should also allow a reasonable period to allow motorists to comply with the terms and conditions, for example to obtain and display a permit or pay and display ticket. However, I must find that operators are not obliged to allow extra time for motorists to complete any other tasks. In this case, I must find that once the Appellant had read and understood the terms and conditions, she should have left the site. By remaining at the site after reading the restrictions, she indicated her acceptance of the conditions and the Operator was not obliged to offer a reasonable period for the Appellant to go and inform a friend that she was leaving.

The Appellant also states that the amount of the charge should represent a genuine pre-estimate of loss, indicating that she does not believe that £100 is a genuine pre-estimate of loss. The Operator submits that the amount of the parking charge is a core term of the parking contract and therefore falls outside The Unfair Terms in Consumer Contracts Regulations 1999.

I must find as a fact that a term of the contract was that if the vehicle parked without complying with the conditions of the contract, the Appellant agreed to park on the land at a cost of £100 by way of a parking charge notice being issued. The Operator is seeking to enforce the contract, by seeking payment of the charge which the Appellant accepted as a term of the contract by parking and leaving her vehicle at xxxxxxxxxxxxxx. The contract cannot now in effect be renegotiated.

The parking charge is therefore not classed as damages or a penalty for breach, either of which might be linked to actual loss resulting from a breach, and would need the Operator to prove that the parking charge was proportionate, and amounted to a genuine pre-estimate of loss. The parking charge is a contractual term.

The Appellant further submits that the Operator does not have a contract with the landowner to give them sufficient interest to issue parking charge notices or enter into contracts with motorists. The Operator also submits that they have written authority from the landowner to issue and pursue parking charge notices.

The case of *Vehicle Control Services Limited - and - The Commissioners for Her Majesty's Revenue and Customs [2012] UKUT 129 (TCC)* the Upper Tribunal (Tax and Chancery Chamber) concerned Value Added Tax but, in Paragraph 46 of the Decision, it states:

VCS is permitted under the contract [with the landowner] to collect and retain all fees and charges from parking enforcement action.

This case has now been considered by the Court of Appeal ([2013] EWCA Civ 186) where, in allowing the appeal of VCS, the Court held:

In the present case the contract between VCS and the landowner gives VCS the right to eject trespassers. That is plain from the fact that it is entitled to tow away vehicles that infringe the terms of parking. The contract between VCS and the motorist gives VCS the same right. Given that the motorist has accepted a permit on terms that if the conditions are broken his car is liable to be towed away, I do not consider that it would be open to a motorist to deny that VCS has the right to do that which the contract says it can. In order to vindicate those rights, it is necessary for VCS to have the right to sue in trespass. If, instead of towing away a vehicle, VCS imposes a parking charge I see no impediment to regarding that as damages for trespass.

The material events occurred before the coming into force of Section 54 of the Protection of Freedoms Act 2012. However, it is clear that, subject to the terms of the contract between them and the landowner, an operator may issue a parking charge notice to a vehicle for a breach of conditions of parking.

Membership of the Approved Operator Scheme does require the parking company to have clear authorisation from the landowner (if the Operator is not the landowner) to manage and enforce parking. This is set out in the British Parking Association Code of Practice. The Operator has produced a copy of the written agreement they have with the landowner that appears to show that the Operator has the right to patrol and issue parking charge notices at The xxxxxx in accordance with the displayed signage.

Therefore, having carefully considered all the evidence before me, I must find as a fact that, on this particular occasion, the Operator has authority from the landowner to issue parking charge notices in accordance with the displayed terms and conditions.

The terms and conditions stated that parking was for customers of Txxxxx xxxxx only. The Appellant parked her vehicle at the site but was not a customer. This was a breach of the terms and conditions. By parking and leaving her vehicle at the site, the Appellant agreed to comply with the terms and conditions of the site, and therefore agreed to pay the parking charge if she did not comply with the restrictions.

Accordingly, this appeal must be refused.

Shona Watson
Assessor