

XXXXXX XXX

Reference: xxxxxxxxxxx0
always quote in any communication with POPLA

G (Appellant)

-v-

Combined Parking Solutions (Operator)

The Operator issued parking charge notice number 4xxx arising out of the presence at Exeter Road, on xx xxxxxx 2013, of a vehicle with registration mark xxxxx.

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

This case had been adjourned after it appeared from the operator's evidence that the evidence pack which was sent to the appellant was not the same as the evidence pack which was sent to POPLA. I wrote to the operator informing it that the same evidence must be sent to the appellant as is relied on at POPLA. The operator has responded to state that the appellant has been sent the same evidence as is before me.

It is the operator's case that a parking charge notice was correctly issued, giving the reason as: '*No permit*'. The operator submits that a parking charge is now due in accordance with the clearly displayed terms of parking which state,

"Clearly displayed valid CPS permits only".

The appellant does not dispute that he failed to display a valid permit.

It is the appellant's case that:

- a) The terms of parking were not sufficiently well signed.
- b) The building which was located inside the car park, next to which the appellant parked, appeared to be derelict.
- c) It is unclear whether the operator has authority to issue parking charge notices in this location.
- d) The wording used on the back of the parking charge notice is strange and unclear.
- e) The date given on the parking charge notice is 22 xxxxxx 2013. The appellant submits that his vehicle was not parked in the location in question on that date.

The operator is seeking to rely on an agreement between itself and the appellant that the appellant would display a valid permit or face liability for a parking charge. For such a term to be included in the agreement, it must be 'incorporated' into the agreement. The only relevant method of incorporation, in this case, is by notice. This means that the appellant must have been made aware of the term, before the agreement was made, in order for it to be deemed part of the agreement. The appellant will be

deemed to have been made aware of the term if the operator had taken reasonable steps to bring the term to the appellant's attention. The usual method by which an operator takes 'reasonable steps' is by displaying clear signs around the site advertising the terms of parking.

Once an appellant submits that the terms of parking were not displayed clearly enough, the onus is then on the operator to demonstrate that the signs at the time and location in question were sufficiently clear.

The appellant submits that there were only two signs displaying the terms of parking at the location in question.

The operator has produced a photograph of the appellant's vehicle which shows that a large, clear, sign displaying the terms of parking was located on the wall, very close behind the appellant's vehicle. Accordingly, on the evidence before me, I find that the operator had taken reasonable steps to bring the terms of parking to the attention of the appellant.

The appellant has submitted that the building, next to which he parked, was derelict. Although it appears from the photographs provided by the operator that the building next to which the appellant parked was, in fact, derelict, this is not of relevance to the parking agreement. The signs displaying the terms of parking were themselves clear and clear, and there was no indication that they did not apply.

The appellant has questioned the authority of the operator to issue parking charge notices at this site. Membership of the Approved Operator Scheme does require the parking company to have clear authorisation from the landowner, if it is not itself the landowner, as to its role in relation to the control and enforcement of parking. This is set out in the BPA Code of Practice. However, as with any issue, if the point is specially raised by an appellant in an appeal, then the operator should address it by producing such evidence as it believes refutes a submission that it has no authority.

The operator has produced a copy of its contract with the landowner which indicates that the operator has been granted authority to issue parking charge notices at this site in accordance with the terms of parking displayed. Consequently, I find that the operator has demonstrated that it has authority to issue parking charge notices at this site.

The appellant has submitted that the wording on the back of the parking charge notice is unclear. The operator has produced a copy of the wording; it appears that the text on the back of the parking charge notice details how

the motorist may pay the parking charge, and the appeals procedure available. Accordingly, it seems clear that the wording has no relevance to the parking charge notice itself, and so is not a reason for which I have the discretion to allow an appeal.

The appellant submits that the parking charge notice states that its date of issue is 22 xxxxxxxx 2013. The operator disputes this, and submits that the parking charge notice was correctly issued, on 23 xxxxxx 2013. The operator has produced a close-up copy of the parking charge notice. The date of issue appears to be 23 xxxxxxxx 2013, although the line of the box in which the date is to be entered, and the ink of the '3' in '23 xxxxxx, appear to overlap and so it appears at first glance that the date of issue may be 22 xxxxxx; however, on closer inspection it seems clear to me that the date of issue given was 23 xxxxxxxx 2013. The appellant does not dispute that his vehicle was parked on this date, and the operator has produced photographs of the appellant's vehicle parked at the site without displaying a permit, prior to the issue of the parking charge notice. Taking together all the evidence before me, it appears that the parking charge notice was issued in the correct manner.

I find that, by failing to display a valid permit, the appellant became liable for a parking charge notice, in accordance with the terms of parking displayed.

Accordingly, I must refuse the appeal.

Christopher Adamson
Assessor