

Appeal re POPLA Code: [XXX] v One Parking Solution LTD

Vehicle Registration: [XXX]

POPLA ref: [XXX]

I, the registered keeper of this vehicle, received a letter dated Thursday 27th March 2019 acting as a notice to the registered keeper. My appeal to the operator – One Parking Solution Ltd – was submitted on Tuesday 23rd April 2019 and subsequently rejected by a letter dated Monday 13th May 2019. I contend that I, as the keeper, am not liable for the alleged parking charge and wish to appeal against it on the following grounds:

- 1) The correct amount for parking was paid**
- 2) The terms and conditions in the car park are not clear and consistent**
- 3) Failure to comply with the data protection 'ICO Code of Practice' applicable to ANPR**
- 4) No Evidence of Period Parked – Notice to Keeper does not meet PoFA 2012 requirements**

1. The correct amount for parking was paid

The vehicle (XXX) entered GS Car Park, Mansfield Street, Leicester, LE1 3DL at approx. 16:25 on Friday 22nd March 2019. A cash payment of £1.30 for 1 hours parking was made and ticket clearly displayed inside the vehicle's windscreen. The vehicle (XXX) left the car park at approx. 15:00. A total time of approx. 35 minutes was spent in the car park.

The letter (reference XXX) dated Thursday 27th March 2019 received from One Parking Solution (OPS), acting as a notice to the registered keeper, alleged that there was NO PAYMENT/TICKET. This was a complete shock and an immediate search for the car parking ticket was undertaken. Unfortunately, it transpired that the ticket had already been taken away in that morning's bin collection. Without the ticket to confirm payment, it is only reasonable to conclude that the alleged charge is either due to the equipment failing to record correctly or that there was a simple mistype of the registration. With regards to the former, I would put to POPLA to request to request from OPS details of when the machine was last serviced by an independent company.

In the case of the latter, the British Parking Association (BPA) have given instructions to its operators that keypad errors should NOT be enforced (POPLA Annual Report 2018, Pages 6-7, <https://popla.co.uk/docs/default-source/default-document-library/popla-annual-report-2018.pdf?sfvrsn=0>). The BPA Code of Practice regarding ANPR requires checks to be made to ensure that a charge is 'appropriate' before issuing a PCN. The payment made would in fact be very easy to identify if this operator had carried out the necessary checks required in the BPA CoP, so I suggest these checks were not made and that the operator has contravened the requirements of professional diligence; a duty of consumer-facing service providers. I put this operator to strict proof that these checks were made (showing full records from that day including a redacted VRN list of payments around the time in question) and to explain why a charge was issued when they would indisputably have identified the matching 1 hour payment. The operator would have been in no doubt that the car parking was paid for, had they made the required checks. And the situation is fully within this operator's control. As cameras are used to record number plates entering and leaving then they should be connected to the ticket machines. As a number-plate begins to be typed, a truly 'connected' system would find the ANPR image and simply require the driver to confirm that this is their vehicle, and the system would show the time of arrival (all details known to the system already).

2. The terms and conditions in the car park are not clear and consistent

Aside from the fact that payment was made, there are several instances of non-compliance with regards to the signage within the car park of the alleged charge. In the appeal rejection letter from OPS, they state:

“it is the driver’s responsibility to always ensure they are fully aware of and adhere to the terms and conditions when parking on private land.”

I have revisited the car park and noted all the signs within the car park. At the entrance to the car park there is a large board with what appears to be two different parking charge amounts. A clearly visible printed £125 with an attempt to paint over and then a handwritten 100 further to the right. Moreover, inside the same car park there are more examples of non-compliance.

There is a main large board close to the payment machine which contains a significant amount of text. Within the text, there is reference to a “parking ticket” instead of charge and 5 conditions:

1. Failure to display a valid ticket or permit
2. Under payment
3. Failure to park in marked bay
4. Parking in disabled bay, without displaying a valid badge
5. Ticket transfer from vehicle to vehicle

On the other side of the car park by the pedestrian entrance/exit, there is a small board that states 3 conditions for a parking charge notice:

1. Failure to purchase a ticket
2. Expired tickets
3. Failure to correctly display a valid ticket within your windscreen

Firstly, these conditions have not been breached as payment was made and there is no mention that a registration number needs to be entered. Moreover, BPA’s Code of Practice (18.2) states:

*“Entrance signs play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, **you must also have a standard form of entrance sign at the entrance to the parking area.** Entrance signs must tell drivers that the car park is managed and that there are terms and conditions they must be aware of.”*

BPA’s Code of Practice (18.3) also states:

*“Signs must be conspicuous and legible, and written in intelligible language, so that they are **easy to see, read and understand.**”*

In addition to the confusing terms and conditions, the main car park sign is inadequate and illegible in a number of ways, not least because of the sheer amount of text that must be read. It clearly violates BPA’s Code of Practice (18.3) and appendix B.

Recently (September 2017) a not dissimilar POPLA appeal versus Euro Car Parks (car park: Kay Street, Bolton) was successful as the Assessor was not satisfied that adequate signage

was placed throughout the site and therefore compliant with section 18.3 of the BPA Code of Practice.

Bearing all the evidence above in mind, there was categorically no contract established with One Parking Solution LTD. To draw on the basic guidelines of contract law for a contract to be effective the offer must be communicated. Therefore, there can be no acceptance of an agreement if the other person is without knowledge of the offer.

3. Failure to comply with the data protection 'ICO Code of Practice' applicable to ANPR

In addition to the signage mentioned above, there is a separate small sign close to the payment machine that states, "*This is an ANPR car park*". The sign does not form part of any contract and neither does it state that ANPR will be used to record my registration number and collect data.

BPA's Code of Practice (21.4) states that:

"It is also a condition of the Code that, if you receive and process vehicle or registered keeper data, you must:

- be registered with the Information Commissioner
- keep to the Data Protection Act
- follow the DVLA requirements concerning the data
- follow the guidelines from the Information Commissioner's Office on the use of CCTV and ANPR cameras, and on keeping and sharing personal data such as vehicle registration marks.

The guidelines from the Information Commissioner's Office that the BPA's Code of Practice (21.4) refers to is the CCTV Code of Practice found at:
<https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>

The ICO's CCTV Code of Practice makes the following assertions:

"This code also covers the use of camera related surveillance equipment including:

- Automatic Number Plate Recognition (ANPR);"

"the private sector is required to follow this code to meet its legal obligations under the DPA. Any organization using cameras to process personal data should follow the recommendations of this code."

"If you are already using a surveillance system, you should regularly evaluate whether it is necessary and proportionate to continue using it."

"You should also take into account the nature of the problem you are seeking to address; whether a surveillance system would be a justified and an effective solution, whether better solutions exist, what effect its use may have on individuals"

"You should consider these matters objectively as part of an assessment of the scheme's impact on people's privacy. The best way to do this is to conduct a privacy impact assessment. The ICO has produced a 'Conducting privacy impact assessments code of practice' that explains how to carry out a proper assessment."

“If you are using or intend to use an ANPR system, it is important that you undertake a privacy impact assessment to justify its use and show that its introduction is proportionate and necessary.”

“Example: A car park operator is looking at whether to use ANPR to enforce parking restrictions. A privacy impact assessment is undertaken which identifies how ANPR will address the problem, the privacy intrusions and the ways to minimize these intrusions, such as information being automatically deleted when a car that has not contravened the restrictions leaves a car park.”

“Note:

... in conducting a privacy impact assessment and an evaluation of proportionality and necessity, you will be looking at concepts that would also impact upon fairness under the first data protection principle. Private sector organisations should therefore also consider these issues.”

“A privacy impact assessment should look at the pressing need that the surveillance system is intended to address and whether its proposed use has a lawful basis and is justified, necessary and proportionate.”

The quotations above taken directly from the ICO’s CCTV Code of Practice state that if One Parking Solution Ltd wish to use ANPR cameras then they **must undertake a privacy impact assessment to justify its use and show that its introduction is proportionate and necessary. It also states that One Parking Solution Ltd must regularly evaluate whether it is necessary and proportionate to continue using it.**

It therefore follows that I require One Parking Solution Ltd to provide proof of regular privacy impact assessments in order to comply with the ICO’s CCTV Code of Practice and BPA’s Code of Practice. I also require the outcome of said privacy impact assessments to show that its use has “a lawful basis and is justified, necessary and proportionate”.

The ICO’s CCTV Code of Practice goes on to state:

“5.3 Staying in Control

Once you have followed the guidance in this code and set up the surveillance system, you need to ensure that it continues to comply with the DPA and the code’s requirements in practice. You should:

- **tell people how they can make a subject access request, who it should be sent to and what information needs to be supplied with their request;”**

“7.6 Privacy Notices

It is clear that these and similar devices present more difficult challenges in relation to providing individuals with fair processing information, which is a requirement under the first principle of the DPA. For example, it will be difficult to ensure that an individual is fully informed of this information if the surveillance system is airborne, on a person or, in the case of ANPR, not visible at ground level or more prevalent than it may first appear. **One of the main rights that a privacy notice helps deliver is an individual’s right of subject access.”**

One Parking Solution Ltd has not stated on their signage a Privacy Notice explaining the keepers’ right to a Subject Access Request (SAR). In fact, One Parking Solution Ltd has not stated a Privacy Notice or any wording even suggesting the keepers’ right to a SAR on any paperwork, NtK, reminder letter or rejection letter despite there being a Data Protection heading on the back of the NtK. This is a mandatory requirement of the ICO’s CCTV Code of Practice (5.3 and 7.6) which in turn is

mandatory within the BPA's Code of Practice and a serious omission by any data processor using ANPR, such that it makes the use of this registered keeper's data unlawful.

As such, given the omissions and serious breaches of the ICO's CCTV Code of Practice, and in turn the BPA's Code of Practice that requires full ICO compliance as a matter of law, I strongly believe that POPLA will not be able to find that the PCN was properly given.

4. No Evidence of Period Parked – Notice to Keeper does not meet PoFA 2012 requirements

Contrary to the mandatory provisions of the BPA Code of Practice, there is no record to show that the vehicle was parked versus attempting to read the terms and conditions before deciding against parking/entering into a contract. PoFA 2012 Schedule 4 paragraph 9 refers at numerous times to the "period of parking". Most notably, paragraph 9(2)(a) requires the Notice to Keeper to: "specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;"

The letter (reference XXX) dated Thursday 27th March 2019 acting as a notice to the registered keeper simply states,

"You are notified under paragraph 9(2)(b) of schedule 4 of the Protection of Freedoms Act 2012 that the drive is required to pay this PCN in full"

and includes a "contravention date & time" which corresponds to the time the vehicle exited the car park. At no stage does One Parking Solution Ltd explicitly specify the "period of parking to which the notice relates", as required by POFA 2012.

One Parking Solution Ltd uses ANPR (while failing to comply with the data protection 'ICO Code of Practice' applicable to ANPR) to capture images of vehicles entering and leaving to calculate their length of stay. It is not in the gift of One Parking Solution Ltd to substitute "entry/exit" or "length of stay" in place of the POFA 2012 requirement - "period of parking" - and hold the keeper liable as a result. By virtue of the nature of an ANPR system recording only entry and exit times, One Parking Solution Ltd are not able to definitively state the period of parking. I require One Parking Solution Ltd to provide evidence to show the vehicle in question was parked on the date/time (for the duration claimed) and at the location stated.

END