TRANSCRIPT OF PROCEEDINGS

Ref. 029MC543

IN THE COUNTY COURT AT MILTON KEYNES

Silbury Boulevard
Milton Keynes

Before DEPUTY DISTRICT JUDGE SIMPSON

IN THE MATTER OF

DAVID WALFORD (Claimant)

-v-

UK PARKING CONTROL LTD (Defendant)

The Claimant appeared in person

MR TRAVEDI appeared on behalf of the Defendant

JUDGMENT
20th AUGUST 2019, 09.52-10.49
(AS APPROVED)

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JUDGE SIMPSON:

1. This is a claim brought by Mr Walford in which he seeks to recover £900 from a parking management company for what Mr Walford describes in his claim form as his, and I quote: "proportionate and commercially justifiable loss of earnings incurred in rebutting their case".

2. In June 2018, the Independent Appeals Service - Parking on Private Land Appeals, which I will refer to as POPLA, concluded that a parking charge notice, a PCN, issued by the defendant to Mr Walford on the 18th of March 2018 at Milton Keynes University Hospital had been issued incorrectly.

3. It is Mr Walford's case that during the period he was contesting the issuing of the PCN "the defendant caused my considerable loss by providing variously falsified misleading and irrelevant evidence, and threats of civil legal proceedings".

4. Mr Walford is a volunteer at Milton Keynes University Hospital and has been since 2008. A benefit provided to Mr Walford, which appears to be the same for all volunteers, is that he was supplied with a swipe card and a parking permit by the hospital. These entitle Mr Walford to use the hospital car parks free of charge in the course of his volunteering.

5. None of this is denied by the defendant; indeed, paragraph 5.1 of the hospital policy says: "Free parking permits are issued to volunteers. The permit must be displayed on the vehicle whenever the vehicle is parked on the hospital site." At paragraph 5.6 the policy states: "Volunteers may park in any area using either a swipe card in staff car parks or a validated car park ticket."

6. The defendant is the operator appointed by Milton Keynes University Hospital to undertake parking management at the hospital. The contract between the hospital and the defendant is dated 6 March 2013. No copy of the contract between the defendant and Milton Keynes University Hospital has been produced.

7. In a witness statement dated the 13th of May 2019 from Mr Yaqub, a litigation manager employed by the defendant, opposing Mr Walford's claim, the defendant seeks to rely upon a witness statement dated the 10th of March 2017, from Alan Brooks, who is a security and car parks manager of the landowner, Milton Keynes University Hospital.

8. Mr Yaqub, at paragraph 3 of his witness statement, states: "The defendant was at all material times the contractor appointed at the Milton Keynes University Hospital Standing Way Eaglestone Milton Keynes NK6 5LD site. In light of the contract of services to manage the parking operations as per the terms and conditions stated on the various signages."

9. Leaving to one side that the last sentence of this paragraph from Mr Yaqub does not actually make any sense, the exhibit AY1 relied upon is the witness statement of Alan Brooks, dated the 10th of March 2017. This predates the parking charge notice issued to Mr Walford by 12 months, so it was not a witness statement prepared for these proceedings.

10. The salient paragraphs in Mr Brooks' witness statement, as to terms and conditions which the defendant seeks to rely on, are paragraphs 5 to 7.

11. Paragraph 5 states: "The operator is authorised by the landowner to issue parking charge notices where vehicles are parked on the site in a manner not permitted under the terms and conditions of parking."

12. Paragraph 6 states: "The terms and conditions are as clearly set out on signage at the site and, where applicable, with any permit or dispensation for use of the site."

13. From this it is evident that any signage at the site does not contain the only terms and conditions of parking that apply; there are other terms and conditions of parking with any permit or dispensation for use at the site.

14. Mr Brooks, then, says, at paragraph 7: "The issue of parking charge notices is subject to the agreed criteria and exemptions, also as clearly set out on signage at the site and, where applicable, with any permit or dispensation for use at the site." I note the word "also".

15. From this it is evident that the defendant's ability to issue parking charge notices is limited. It cannot issue a parking charge notice where there is an “agreed criteria and exemption”. Likewise, it cannot issue a parking charge notice where there exists a “permit or other dispensation for use at the site”.

16. A copy of the contract between the defendant and the hospital has not been produced by the defendant. The criteria and exemptions as agreed between the defendant and the hospital to issue a parking charge notice are, therefore, not known.

17. At paragraph 10 of his witness statement, Mr Brooks says: "UKPC have responsibility under the contract for putting up and maintaining the signage."

18. On Sunday the 18th of March 2018, Mr Walford parked his car in the Cardiology car park at Milton Keynes hospital. Mr Walford says he arrived about 8 am. At 11.26 that day, a parking attendant of the defendant issued a parking charge notice and attached it to the windscreen of Mr Walford's car. The PCN says that terms and conditions of parking were breached, stating: "Staff member parked in no-staff parking area." The PCN states that a parking charge of £70 is outstanding and payable within 28 days, which is reduced to £40 if payment is received within 14 days.

19. That same day, 18 March 2018, Mr Walford lodged an appeal against the PCN with the defendant, using their online facility. The defendant's online facility appears to limit the number of characters that can be used; there also appears to be a limitation on the uploading of any files. Consequently, Mr Walford asked the defendant to contact him if they had not received all the documentation which Mr Walford had listed as part of the online appeal process.

20. On the 11th of April 2018, the defendant informed Mr Walford that "no full appeal was received in your original submission" and asked Mr Walford to provide a full appeal within 14 days.

21. The letter from the defendant concludes with the following statement in capital letters and in bold: "Please do not ignore this letter. UKPC regularly takes motorists to court who ignore their parking charges. Please see www.ukparkingcontrol-com/parkinglegalities for further information."

22. On the 16th of April 2018, Mr Walford sent the defendant a hard copy of his online submission, together with a PDF of his appeal and six photographs; a covering letter was supplied with these documents. In that letter, Mr Walford states that as it appears that the defendant's electronic system is at fault, he intends to charge for his administrative time spent resubmitting documents and media by post.

23. Mr Walford states he intends to charge for three hours' administrative work, at £20 per hour; £60 in total.

24. Mr Walford continues by saying that if the defendant wishes to contest this charge, then he asks the defendant to send him a full copy of all system logs relating to his original electronic submission. Mr Walford states that he will withdraw the charges if the defendant can clearly demonstrate a failure to submit on his part.

25. The defendant signed for the documents submitted by Mr Walford on the 17th of April.

26. On the 1st of May 2019, the defendant notified Mr Walford that they will not be waiving the parking charge notice.

27. The first three paragraphs of that letter reads: "Dear Mr Walford, thank you for your recent communication concerning the above parking charge. Please rest assured that our appeals manager has personally reviewed this case and carefully considered the various points raised. Their view, however, is that the parking charge is neither unreasonable nor unjust, and so we will not be waiving this parking charge. Please note that the vehicle was parked in the visitors' parking area displaying a valid staff permit. Signage near the vehicle informs drivers that staff are not permitted to park in this area; to avoid further parking charge notices being issued for this contravention in the future, please notify the parking office on site of the circumstances of the vehicle being parked in the visitors' parking area, displaying a staff permit."

28. The letter, then, continues: "We do not accept or agree to your claim for expenses in regard to your correspondence with us. There is clearly no statutory, contractual or legal basis to make such a claim and any such claim will not be paid. We do offer the possibility of making an appeal online, which does not incur any cost to you, and it is simply your prerogative to choose a different method of correspondence which may incur some costs."

29. I have seen no evidence to show that the defendant supplied Mr Walford with the system logs so he could review the original electronic submission. The charge Mr Walford has made has come about because the defendant's own system appears to restrict what can be uploaded.

30. It was not, therefore, a case of Mr Walford electing to correspond with the defendant, which might incur some costs; it was caused by the defendant's limits, whatever they may be, or were, in their own system.

31. In the paragraph numbered 3 of the defendant's letter, having told Mr Walford that his claim for expenses has no legal basis, the defendant then says "if you choose to do nothing, the parking charge will automatically increase after 35 days from the date of this letter, to £70, and the matter will be passed to our debt recovery agent, at which point you will be liable to pay an additional charge of £60 in accordance with the terms and conditions of parking."

32. The letter, again, concludes with the following statement in capital letters and in bold: "Please do not ignore this letter. UKPC regularly take motorists to court who ignore their parking charges. See www... for further information."

33. Following the defendant's rejection of Mr Walford's appeal, on the 15th of May 2018, Mr Walford submitted an appeal to POPLA.

34. The defendants responded to that appeal by submitting their documents on or about 5 June 2018.

35. On the 11th of June 2018, Mr Walford provided POPLA with two responses to the evidence pack of the defendant.

36. The first response simply stated that the defendants, in their submission to POPLA, were relying on a sign that said "staff parking only".

37. The parking charge notice issued by the defendant alleged that the breach of contract was a staff member parked in a non-staff-parking area. On that basis alone, Mr Walford said to POPLA, that the defendant, therefore, had, on their own case, no reasonable cause to believe that the vehicle was parked in a non-staff parking area, and that the parking charge notice should be withdrawn.

38. In the event that that was not acceptable to POPLA, the second response was a far more detailed analysis of the evidence submitted by the defendant.

39. I do not intend going through each point made by Mr Walford, which are set out in 45 pages. What is clear, however, is that some of the documentation submitted to POPLA by the defendant were not true copies of documents or letters. Mr Walford, in his response to POPLA, refers to “false, misleading and irrelevant information”.

40. The first inaccurate document is the parking charge notice itself. The PCN submitted by the defendant to POPLA is not a true copy of the PCN issued on the 18th of March 2018; Mr Walford highlighted the differences to POPLA.

41. The next inaccurate documents are the letters that the defendant sent to Mr Walford on the 11th of April 2018 and the 1st of May 2018; Mr Walford highlighted the differences to POPLA.

42. One of Mr Walford's complaints made to the defendant on 16th of April and again to POPLA, was that the defendants were seeking payment of the PCN despite an ongoing appeal. This complaint is said to arise from the defendant including, in their letters of 11th of April and 1st of May, the wording, in capital letters and in bold: "Please do not ignore this letter. UKPC regularly takes motorists to court who ignore their parking charges. Please see www.ukparkingcontrol-com/parkinglegalities for further

information." That wording has been omitted from the copy letters which the defendant submitted to POPLA.

43. The defendant's position regarding the wording is that it does not amount to a breach of the British Parking Association Approved Operator Scheme code of practice, paragraph 22.9, which states: "You must not ask the motorist to send payment of the parking charge with their appeal." The defendant, in their submission to POPLA, simply say that "the parking charge was on hold, and Mr Walford was offered the option of settling the charge at the reduced rate of £40 but was at no time instructed to submit payment of the parking charge with his appeal".

44. If that is the defendant's case, then it does not explain, nor was an explanation provided to POPLA, as to why the wording was omitted from the letters the defendant submitted to POPLA.

45. No explanation has been proffered in the evidence before me today, either.

46. In the absence of any explanation, I can only find that this was deliberately done by the defendant. This may, perhaps, have been an attempt to present to POPLA that the defendant had at all times sought to act as a responsible operator. Deliberate exclusion of such wording does not, however, sit well with such a position. It suggests to me that when dealing with an authority - here, POPLA, the face the defendant presents is misleadingly different from the face it presents to the driver or registered keeper of a vehicle.

47. As part of the defendant's submissions to POPLA, the defendant has produced various site photographs.

48. It was part of Mr Walford's submissions to POPLA that the defendant has digitally cropped some of the photographs; I express no view on that assertion.

49. What is of concern, however, is that some of the photos on which the defendant seeks to rely are dated 15 February 2008. If those dates are accepted, then those are photographs taken 10 years before the parking charge notice was issued to Mr Walford, but, perhaps, of more concern, the dates of 15 February 2008 on the salient photographs are five years before the defendant was engaged by the hospital.

50. I note that the British Parking Association code of practice at paragraph 20.5 (a) states: "When issuing a parking charge notice, you may use photographs as evidence that a vehicle was parked in an unauthorised way. The photographs must refer to and confirm the incident which you claim was unauthorised. A date and time stamp should be included on the photograph. All photographs used for evidence should be clear and legible and must not be retouched or digitally altered."

51. As part of its submission to POPLA, the defendant states that "obtaining a visitors' parking ticket for the site would not have authorised Mr Walford to park in the car park whilst displaying a valid staff parking permit in the vehicle."

52. The defendant goes on to say that "should Mr Walford wish to visit the site in a private capacity, the staff permit should be removed from the windscreen." That is a wholly

inaccurate statement by the defendant to POPLA, without any legal basis. It is, perhaps, indicative, however, of the defendant's general approach.

53. None of the signage on which the defendant sought to rely supports the defendant's assertion.

54. If a staff member parks in an area not designated for use by staff, but then purchases a ticket, that staff member is lawfully entitled to park in that area. Indeed, that is clear from paragraph 5.6 of the hospital's own parking policy, to which I have already referred.

55. If the representation made to POPLA on this aspect is the guidance that the defendant provides to its staff who issue parking charge notices at the hospital, then the defendant needs to revise its guidance to staff. I suspect that the hospital may themselves also want to ensure that the defendant complies with its contractual obligations as between the two parties.

56. The defendant, in its defence to Mr Walford's claim, denies it is liable to Mr Walford. One reason put forward by the defendant is that *Parking Eye v Beavis* a decision from 2015 has, according to the defendant, endorsed the charge for the parking charge notice as being commercially justifiable. *Parking Eye v Beavis* has no relevance to the claim brought by Mr Walford.

57. In submissions before me, Mr Travedi, who appeared on behalf of the defendant, clarified the defendant's position. In short, he firstly says that the Consumers Rights Act 2015 does not apply, as he asserts the defendant is not a trader for the purposes of the Consumer Rights Act; I reject that submission. The contract the defendant sought to rely upon in issuing the parking charge notice is a consumer contract; that is clear from part 2 of the Consumer Rights Act 2015, dealing with unfair terms.

58. Secondly, it is submitted that section 62 of the Consumer Rights Act, which Mr Travedi says is the main plank of Mr Walford's claim, deals solely with the fairness or unfairness of contract terms. Mr Travedi submits that it does not imply into a contract or impose any term. Again, I reject the submission that section 62 is solely limited, as Mr Travedi seeks to say.

59. The effect of section 62 is that terms used in contracts and/or consumer notices will only be binding on consumers if they are fair. Section 62 does not use the word "express" term of the contract. Fairness equally applies to implied terms.

60. Section 62 sets out the factors that a court should take into account, notably the specific circumstances existing when the term was agreed, other terms in the contract and the nature of the subject matter of the contract.

61. Effectively, what Mr Travedi contends for is that the defendant should have the benefit of the contract with a consumer, which, it says, enabled it to issue the parking charge notice, but then not suffer any consequences or bear the burden, if it transpires that it was not entitled to issue the parking charge notice. Mr Travedi also submits that Mr Walford has failed to establish any nexus between Mr Walford and the defendant

outside of the signage. Mr Travedi asks where are the express terms of the contract that allow Mr Walford to claim £900.

62. There is no express term to that effect. Mr Travedi goes on to say that it would set a dangerous precedent if the court was to impose a contract whereby £900 could be recovered.

63. Damages are a common law remedy of financial compensation, to be paid by one party to another, where a breach has occurred. Generally, an award of damages in contract is intended to compensate the injured party for the loss suffered. This can be by way of nominal damages if a party has failed to prove the actual loss claimed.

64. I find that the defendant cannot seek to have the benefit of the contract that, it says, justifies the issuing of the PCN without having the burden that consequently flows, if it transpires that there was no justification for issuing the parking charge notice in the first instance.

65. This does not mean that in every case where a parking charge notice is issued and, then, either withdrawn or the operator fails to satisfy POPLA that a parking charge notice was issued incorrectly, that the other party is entitled to seek damages.

66. I do, however, find that there is an implied term in the parking contract that - in dealing with POPLA - that the defendant is to act bona fide and in good faith. Indeed, section 62, subsection 4 of the Consumer Rights Act says: "A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer." It is evident from the issues that I've highlighted that documents submitted to POPLA were inaccurate, misleading and with copy correspondence omitting the warning at the end of the letter sent to Mr Walford, and the reliance on photographs where the date stamp was evidently inaccurate by many, many years.

67. Furthermore, it is clear that the defendant does not understand its own legal position when asserting to POPLA that Mr Walford was not allowed to park in a non-staff parking area even if he had purchased a valid ticket.

68. Drivers and/or registered keepers of vehicles issued with parking charge notices are entitled to expect that an operator firstly understands its own contract which it seeks to enforce, and secondly that in dealings with them, and in dealings with POPLA, that they will act in good faith.

69. The defendant's position is that it provides an appeal process; first internally, and, then, to POPLA, such that the driver/registered keeper has no need to incur any costs.

70. That argument, if it was to be accepted, of course, provides a win-win situation for those who issue parking charge notices without any justification.

71. In any claim for breach of contract, the party can only recover damages for loss which was caused by the breach of the term and which was reasonably foreseeable. The last element is often referred to as the remoteness of damage. The classic statement of the rule regarding remoteness of damages arises from an original decision in 1854 called *Hadley v Baxendale*. Mr Travedi submits that it's the defendant's case that it was not

reasonably in the contemplation of the parties that the loss claim would be incurred; there is no evidence from the defendants in support of that submission.

72. The principles in *Hadley v Baxendale* were interpreted and restated in 1949, in the case of *Victoria Laundry v Newman* and then again, in 1967, by the House of Lords, in what is known as *Heron II*. The party who has suffered damage does not have to show that the contract breaker ought to have contemplated as being not unlikely the precise detail of the damage or the manner of it happening; it is enough if he should have contemplated that damage of that kind is not unlikely. The essential factor in determining liability is whether the damage is of such a kind as the reasonable man should have foreseen.

73. I find that the defendant should have contemplated, that, in producing to POPLA inaccurate and misleading documents, and asserting as part of its case something that was patently wrong in law, that it was reasonably foreseeable that a person faced with such a situation would go to the lengths that Mr Walford did, in identifying the inaccuracies, et cetera, which resulted in POPLA concluding that the parking charge notice was issued incorrectly.

74. At paragraph 7 of the witness statement of Mr Yaqub on behalf of the defendant, Mr Yaqub says: "The claim to the alleged monies owed is a way for the claimant to exploit a situation where they were required to adequately represent themselves against a parking charge notice. The defendant contends this is frivolous and exploitive."

75. The defendants only have themselves to blame for the representations they made to POPLA. They cannot seek to lay blame at Mr Walford's door for dealing with their own shortcomings.

76. Whilst the type of loss claimed was reasonably foreseeable, the burden nevertheless is still on Mr Walford to prove his claim for damages.

77. The invoice rendered by Mr Walford is dated the 2nd of July 2018. It is for £900 and is for, and I quote, "loss of earnings while dealing with your breaches of contract from 18 March 2018 to 22nd of June 2018"; a breakdown of the figure of £900 then follows.

78. On the basis of my findings, any claim for damages by Mr Walford has to be limited to the appeal to POPLA.

79. The elements of Mr Walford's invoice under the headings 5/5/18 and, then, 7/5/18 to 11/5/18, are the relevant entries.

80. The heading 22/6/18 is the same date as POPLA's decision and the letter from the defendants confirming that the parking charge notice has been cancelled. I do not find that element of damage claimed is proven.

81. As to the 5/5/8 heading and the heading 7/5/18 to 11/5/18, Mr Walford seeks to recover a total of 40 hours.

82. No issue has been taken by the defendants that Mr Walford did not spend that amount of time claimed. As per his invoice, Mr Walford states that his standard charge for - and I quote "administrative work" is £20 per hour. A charge for administrative work is

not a claim for loss of earnings. I have seen no evidence whereby Mr Walford has suffered a loss of any income as a result of dealing with the appeal to POPLA. Mr Walford put the defendant on notice, in his letter dated 16 April 2018, that he would be charging for administrative work at £20 per hour. The defendant was therefore on notice that a financial claim from Mr Walford would follow.

83. The stance from the defendant was that it was not liable to pay expenses and it has maintained that stance throughout.

84. Whilst I therefore have no evidence to support Mr Walford's claim for loss of earnings, an award of general - of nominal damage is, however, appropriate, which I assess at £400. As Mr Walford has succeeded with his claim, the usual order is for the defendant to pay the claimant's costs.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge