

10 October 2013

Reference 6062073007
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Ann Carter-Jones (Appellant)

-v-

ParkingEye Ltd (Operator)

The Operator issued parking charge notice number 790001/000761 arising out of the presence at Blackpool Airport, Car Park 1, FY4 2QY, on 11 June 2013, of a vehicle with registration mark LM10 WHB.

The Appellant appealed against liability for the parking charge.

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

The Assessor's reasons are as set out.

The Operator should now cancel the parking charge notice forthwith.

Reasons for the Assessor's Determination

The Operator issued a parking charge notice ('PCN') for being "parked in a no parking area" and for having "abused patron parking". The Operator submits that a parking charge is now due in accordance with the clearly advertised terms of parking which stated "Strictly no parking on grass verges". The Operator has produced photos of the Appellant's vehicle and site signage in support of its case.

The Appellant disputes that the PCN was properly issued. Amongst other grounds, it is the Appellant's case that the £100 parking charge is unenforceable because the Operator has been unable to justify it as a genuine pre-estimate of loss.

The signage produced in evidence by the Operator states that a PCN would be issued for "failure to comply" with the parking conditions. This wording appears to indicate that the parking charge represents damages for a breach of the parking contract. Accordingly, the charge must be a genuine pre-estimate of loss. The estimate must be based upon loss flowing from a breach of the parking terms. This might be, for example, loss of parking revenue or even loss of retail revenue at a shopping centre.

The Operator submitted that the charge is "a genuine pre-estimate as we incur significant costs in managing this car park to ensure motorists comply with the stated terms and conditions and to follow up any breaches of these." The Operator gave examples of such costs, including the cost of erecting site signage and the cost of membership of the Driver and Vehicle Licensing Authority.

The entirety of the parking charge must be a genuine pre-estimate of loss in order to be enforceable. However, some of the costs referred to do not represent a loss resulting from the alleged breach. For example, were no breach to have occurred, then the cost of parking enforcement, such as erecting signage, would still have been the same.

Consequently, I do not have the evidence before me to refute the Appellant's submission that the parking charge is unenforceable.

I must allow the appeal on this ground. Accordingly, it does not fall for me to decide any remaining issues.

Matthew Shaw
Assessor