

Reference Request Number: IAT/FOIA/135010 – 12 October 2012

Summary

Information regarding the levels of parking charges

Request

I would be grateful therefore if you would provide me with precisely what input the OFT had in respect of the level of those charges and what interpretation the OFT has itself placed on all of the issues that we have highlighted.

Response

We have considered your request for information under the Freedom of Information Act 2000 (FoIA).

Background

As you will be aware the FoIA provides a general right of access to information held by public authorities (s.1). Subject to certain exemptions, any person making a request is entitled (a) to be informed in writing whether the information specified in the request is held and (b) if so, again subject to exemptions, to have that information communicated to him or her.

We have carefully considered your request for information in accordance with the provisions of the FoIA and can confirm we hold the information.

Our response is set out below.

The OFT does not provide specific advice to third parties and makes this clear if providing general advice. The OFT has not given any specific advice to the BPA on the level of charges, this would be a matter for individual businesses.

The OFT has provided the following general input to the BPA on the issue of charges.

- The OFT's view was that what can be charged to the consumer for trespass/breach of contract will depend on the circumstances and with whom the consumer contracts. A parking management company will

need to have the proper legal authorisation to contract with the consumer on the landowner's behalf and enforce for breach of contract. What and whose costs apply stem from this. To claim direct losses for trespass or breach of contract, the company or landowner must prove what the actual losses that were caused by that individual's breach were. However, if the claim is for liquidated damages, the OFT's view is that the liquidated damages that can be recovered are a genuine pre estimate of loss. This is not the same as having to prove, in every case, the actual loss caused by the actual breach.

- The OFT expressed the view to the BPA that when claiming liquidated damages, they must meet the requirement of being a genuine pre estimate of loss. If back office functions are claimed, these must be directly caused by the breaches of contract. The OFT's view was that if you have an office anyway and have to pay rent, rates, insurance, etc., this cannot be attributed to the breach and claimed as costs, as these are the costs of running a parking management company. To be recoverable, all costs, whether in contract or tort, must be caused by the breach.
- The OFT also provided the BPA with a document entitled '[Calculating fair default charges in credit card contracts](#)' by way of explaining some of the OFT's reasoning about how to calculate a genuine pre estimate of loss for the purpose of claiming liquidated damages. This document sets out, in particular at paragraphs 3.20 to 3.26, the OFT's reasoning about what might constitute a genuine pre estimate of loss. The document also contains an explanation of what administrative charges the OFT considered were legitimate to include in credit card contracts (at paragraphs 4.1 to 4.3) and what the OFT considered would not be legitimate to include. This document is attached for ease of reference.
- Further the OFT expressed the view that a parking charge will not automatically be recoverable, simply because it is stated to be a parking charge. It cannot be used to create a loss where none exists. It will not be recoverable if the court finds that it is being imposed as a penalty. If a parking charge is imposed for parking beyond hours permitted under a contract, in order for it to be recoverable as liquidated damages, the court will need to be satisfied of a number of matters, including that it

represents a genuine pre-estimate of the loss incurred and that it meets the requirements of applicable consumer protection legislation, for example the Unfair Terms in Consumer Contracts Regulations 1999. The OFT also expressed the view that the court will also need to be satisfied about who the consumer was contracting with and that this is the party bringing proceedings.

- The OFT advised the BPA that the BPA, and its members, would need to obtain legal advice in relation to whether certain costs would, or would not, be found by a court to fall within a genuine pre-estimate of loss incurred, as part of a liquidated damages term in a parking contract. The OFT explained that ultimately it will be for the court to decide what is, or is not, recoverable, having heard evidence about how the parking fee had been calculated.