

IN THE COUNTY COURT AT SKIPTON

Claim No. C3DP56Q5 and other

The Court House
Otley Street
Skipton
BD23 1RH

Thursday, 17th November 2016

Before:

DISTRICT JUDGE SKALSKYJ-REYNOLDS

Between:

EXCEL PARKING SERVICES LIMITED

Claimant

-v-

MR IAN LAMOUREUX

Defendant

Case No. C3DP56Q5

Counsel for the Claimant:

MR PICKUP

Case No. not known

Counsel for the Claimant:

MS RAYMAN[?]

The Defendant appeared In Person

TRANSCRIPT OF PROCEEDINGS UP TO AND FOLLOWING JUDGMENT

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C

D

E

F

G

H

INDEX TO TRANSCRIPT

	Page
Opening argument by MR PICKUP	1
MR IAN LAMOUREUX – Sworn	
Examined by THE COURT	18
Cross-examined by MR PICKUP	19
Opening argument by MS RAYMAN	23

A [The quality of the recording was poor in parts; the claimant's solicitor and the defendant were difficult to hear at times. The transcriber has endeavoured to provide as accurate a transcript as possible.]

MR PICKUP: Good morning, madam.

THE DISTRICT JUDGE: Good morning, Mr Pickup, is it?

B MR PICKUP: Yes.

THE DISTRICT JUDGE: Yes, morning, and Mr Lamoureux.

MR LAMOUREUX: That's it, yes.

C THE DISTRICT JUDGE: Yes, please take a seat.

MR LAMOUREUX: Thank you very much.

THE DISTRICT JUDGE: Right. For your benefit in particular, Mr Lamoureux, I am sure Mr Pickup has heard this before. This is a small claims hearing. That means that strict rules of evidence do not apply but nevertheless, it is important to tell the truth at all times. I will not be asking you to give evidence on oath, but that does not mean that the matter should be taken lightly.

D
E What I am going to do is I am going to go through the points made on both sides, particularly concentrating on the defence and give you both the opportunity to ask each other questions and address me as to the relevant law. At the end of the matter, I am going to give a judgment, with reasons. You can ask me for further reasons if either side does not understand the reasons. I will also be giving a judgment, as I say, with reasons at the end of the matter.

F
G Any party who is dissatisfied with the judgment or feels that I have got the law or facts wrong can ask me for permission to appeal. I will only give permission to appeal if I think or I agree that I have got the facts or the law wrong, although why I should give a decision if I think the facts or law are wrong I do not really know, but even if I do not give permission to appeal, any party who wishes to appeal has 21 days from today. It is a very strict time limit; 21 days from today takes us to 8th December to make an application to appeal to the designated circuit judge in Leeds. There is a fee for requesting permission to appeal and any judgment in the meantime must still be paid. So that is jumping ahead a bit but I thought I would mention that right at the beginning.

Thank you for your bundle of documents, Mr Lamoureux, it is very useful. I have also got from the claimant a witness statement. Have you seen that detailed witness statement?

H MR LAMOUREUX: Yes, I have.

THE DISTRICT JUDGE: Mr Pickup, have you had the claimant's *[sic]* bundle?

MR PICKUP: Yes, we have had everything, I think, yes.

A THE DISTRICT JUDGE: Right.

MR LAMOUREUX: I have brought copies if anybody...

B THE DISTRICT JUDGE: If anybody needs anything. Right. Just to summarise, the claim is straightforward. Basically, Excel Parking Services Limited operates a car park. Is it called the Cavendish...?

MR PICKUP: Retail Park, yes.

C THE DISTRICT JUDGE: Retail park in Keighley. It does that under licence from the owner of the car park who gives them permission to run the car park. Not only do they give them permission to do so, the owner of the car park relies upon Excel Parking Services to run a parking scheme, otherwise the car park would become blocked and legitimate shoppers visiting the shops in that location – I am not quite sure which shops they are and no doubt Mr Pickup can tell me if it becomes an issue – would not be able to park. They would not be able to go in and make purchases. So it is important that the landowner has a scheme that works and Excel Parking Services will say, “Well, we have put in place a scheme that works in order to limit the use of the car park to legitimate purchasers shopping in the surrounding retail premises.” Now, as I understand it, the way this parking scheme works is that there are notices at the entrance to the Cavendish... What is it called, Cavendish Retail Park?

D MR PICKUP: Cavendish Retail Park, madam, yes.

E THE DISTRICT JUDGE: Retail Park. There are notices at the entry to the car park and dotted around in the car park detailing that this is a 24-hour pay on entry pay and display car park:

F “Customers have ten minutes from entering the car park to purchase a valid pay and display ticket. Disabled parking charges apply. Parking enforcement cameras are in operation. Please refer to the full terms and conditions. Signs located at the pay and display machines.”

G So, in other words, drivers entering the car park are alerted to the fact that this is a pay and display car park and then close to the machines, the actual tariffs are set out, which are also exhibited to the witness statement showing that at all times between Monday and Sunday from 7.00am to 7.00pm, including bank holidays, drivers choosing to park in this car park must pay 50p for the first hour if they just want an hour, £1.00 if they want one to two hours, £1.50 for two to three hours, and £2.50 for three to four hours. Then if they choose to park between 7.00pm and 7.00am at any time, they have got to pay £1.00 for twelve hours’ parking. So those are the signs.

H Now, I know you are saying, Mr Lamoureux, that you do not think those signs are clear or clear enough and the background is yellow, the writing is blue, there are certain signs all around which you say are a little bit confusing with strange sorts of pictures on the side there and we will get to that. Now, my understanding of how this car park works is this that when a driver enters their registration details which they have to do into the machine, this is automatically recorded. A computer obviously

A feeds the numbers back to the camera which photographs the vehicle entering and leaving the car park and this is all mentioned in the witness statement of Mr Krishna [Rao?]. Have you received that witness statement, Mr Lamoureux?

MR LAMOUREUX: I received the witness statement, yes. I'm concerned that the witness isn't here for me to ask questions about this statement and challenge it.

B THE DISTRICT JUDGE: Yes, true, he is not here. I take it he is not here, Mr Pickup?

MR PICKUP: No, madam, but we are just relying on his evidence.

THE DISTRICT JUDGE: His evidence.

C MR PICKUP: Yes.

THE DISTRICT JUDGE: Well, we will see if cross-examination becomes relevant.

MR PICKUP: Yes.

D THE DISTRICT JUDGE: So just to explain, the driver enters a registration number. That automatically tallies with the vehicle's details and registration number which are photographed as the vehicle comes into the car park and leaves. So there is a camera photographing the vehicle entering, a camera photographs the vehicle leaving, and a record is made of how long the vehicle remains in the car park. The entering of the registration number must tally with the photographs of the vehicles entering and leaving. If the vehicle is there for three hours obviously the computer will know that the relevant parking charge is whatever it is. Three hours is £1.50. So the machine will tally with the cameras. It will check the length of time that the car remains in the car park, checks the registration number, and if the correct fee has been paid. So it is all highly digitalised as you can imagine, Mr Lamoureux. So I take it you understand how the system works?

E

F MR LAMOUREUX: Yes, I do. Yes.

THE DISTRICT JUDGE: Now, you are saying that you were not the driver.

MR LAMOUREUX: Yes.

G THE DISTRICT JUDGE: That is the thrust of your defence. You were not the driver. Therefore, you are not liable.

MR LAMOUREUX: Correct, yes.

H THE DISTRICT JUDGE: And you are saying that the claimant should be complying with the Protection of Freedoms Act 2012.

MR LAMOUREUX: That is my... That is the only legal route that they have to hold the keeper liable.

A THE DISTRICT JUDGE: Yes. Mr Pickup, you are disputing that, is that right? You are saying you do not have to rely on the protection of—

MR PICKUP: Well, no, madam, we have not used that in the claim form. We are just relying on the fact that it is a contract when you go in and that's been breached by the fact that they... hasn't paid the £100.00.

B THE DISTRICT JUDGE: Sorry, the driver has breached the contract?

MR PICKUP: Well, yes, the relevant—

THE DISTRICT JUDGE: But he says he is not the driver.

C MR PICKUP: But he had not informed the claimant of that. There is absolutely no way it could have known. He has only mentioned this in his defence for the first time.

THE DISTRICT JUDGE: Did he—

MR PICKUP: No, he has never mentioned it. The notice—

D THE DISTRICT JUDGE: Right, hang on, let me get this right.

MR PICKUP: There has been no appeal. The first time we heard it from Mr Lamoureux was when he wrote his defence to the claim after it had been issued. Now, the notice was given—

E THE DISTRICT JUDGE: So let me get this. So the defendant did not respond to the initial letter. Right, let us have a look at that initial letter, Mr Pickup.

MR PICKUP: Yes, it is page 2 of the exhibit.

THE DISTRICT JUDGE: Page 2 of the exhibit.

F MR PICKUP: Well, 2 and 3, actually.

THE DISTRICT JUDGE: Right, let us all look at that.

MR PICKUP: There are two pages to it.

G THE DISTRICT JUDGE: Let us look at that. Page 2, right, and another one.

MR PICKUP: Yes. That is the second page.

THE DISTRICT JUDGE: Right, so it is addressed to you, Mr Lamoureux.

H MR LAMOUREUX: Yes.

THE DISTRICT JUDGE: It says, "This parking charge notice is issued to..." Is that your vehicle, [REGISTRATION REDACTED]...? Well, are you the registered keeper?

A MR LAMOUREUX: I am the registered keeper of that vehicle, yes.

THE DISTRICT JUDGE: Yes:

B “...for allegedly breaching the car park terms and conditions in the privately operated car park at Cavendish Retail Park. The alleged contravention was detected and recorded by the automatic number plate recognition cameras at the site. The reason for the contravention is parked without purchasing a valid pay and display ticket for the vehicle registration mark. The terms and conditions to which the driver agrees to be contractually bound are clearly placed at the entrance to the car park.”

C However, you are saying you do not know anything about that because you are not the driver.

MR LAMOUREUX: Absolutely.

THE DISTRICT JUDGE: Right:

D “If you were not the driver, please complete and return the relevant section on the reverse of this notice giving the driver’s full name and serviceable address in order that we can direct this parking charge notice and please pass this notice to the driver. If the vehicle was on hire on the date of the contravention or had been sold prior to the date of contravention, please provide the relevant details by completing the relevant section on the reverse of this notice and provide relevant supporting evidence. Should the registered keeper either provide an unserviceable name and address of the driver, or the named driver denies they were the driver, we may pursue the registered keeper for any parking charge amount that remains outstanding on the assumption they were the driver.”

F Right, all right. Now, the defendant Mr Lamoureux is saying... Sorry, Mr Lamoureux, did you respond to this notice at all?

MR LAMOUREUX: No, I didn’t. There was absolutely no need for me to respond.

THE DISTRICT JUDGE: And why do you say that?

G MR LAMOUREUX: There’s no legal requirement for me to respond to that. There’s no adverse inference that can be made towards me for not responding to it. I wasn’t the driver. The contravention referred to is absolutely nothing to do with me. I’ve not entered into any contract with Excel whatsoever. So if the parking charge notice had been worded differently in a legal format stating the legal statute of the Protection of Freedoms Act, that would have put upon me a different type of requirement but they haven’t done that. That is their mistake and their, if you want to call, it negligence or something else for not doing that, that’s their choice not to use that statute and therefore there is no requirement for me to name... Even if I did know who the driver was, there would be no need for me to name that driver.

A THE DISTRICT JUDGE: All right. So going through this step by step, Mr Pickup, what is the legal requirement on Mr Lamoureux to respond at all to that? He is not the driver and I take it you cannot prove he was.

MR PICKUP: Well, no.

B THE DISTRICT JUDGE: Well, it cannot be contested, can it? We cannot prove that he was the driver, can we?

MR PICKUP: No.

THE DISTRICT JUDGE: No.

C MR PICKUP: Well, the assumption of course, madam, is that it is his vehicle and it was filmed. I do not think that is denied.

THE DISTRICT JUDGE: Well, he is the registered keeper.

MR PICKUP: The registered keeper.

D THE DISTRICT JUDGE: Yes.

MR PICKUP: So they get the details from the DVLA.

THE DISTRICT JUDGE: To show he is the registered keeper, yes.

E MR PICKUP: That is the only way they can pursue what we say is the contractual obligation to pay the PCN, the parking charge notice. That is then sent obviously to that address, which it was. It clearly states in here about the driver and the terms and conditions to which the driver agrees to. Now, unless we have any other information from Mr Lamoureux to say that he is not the driver, it is assumed that he is the driver, it does say there, "Please note..." Like you have mentioned—

F THE DISTRICT JUDGE: Yes, but does he have to? That is the crux of the matter.

MR PICKUP: Well, on the second page as well, madam, it does say at the bottom, "Notification of the driver, hirer/keeper details" in the yellow box again:

G "If you are not the registered keeper of the vehicle on the contravention date, please provide any information that will lead to the identification of the correct registered keeper responsible for this charge by completing the following section and returning it to the address above within 28 days of the issue date of the notice."

H THE DISTRICT JUDGE: Yes. I take it you got absolutely no response at all until the defence, is that what you are saying?

MR PICKUP: Sorry, what do you mean, madam?

THE DISTRICT JUDGE: The defendant did not respond at all to any of these letters.

A MR PICKUP: No, nothing. Nothing.

THE DISTRICT JUDGE: Do you accept that, Mr Lamoureux, you did not respond to these letters?

B MR LAMOUREUX: Yes, I do. I mean, this is... I don't remember receiving the notices in question, but I don't deny that I didn't respond, if that makes sense.

THE DISTRICT JUDGE: Yes. Letters dated...?

MR PICKUP: 6th August, madam.

C THE DISTRICT JUDGE: 6th August and what was the other one?

MR PICKUP: Sorry, the other one, madam?

THE DISTRICT JUDGE: The next one, what is the date on the next one?

D MR LAMOUREUX: The final reminder notice?

THE DISTRICT JUDGE: Yes, here it is, yes.

MR PICKUP: Sorry, yes, 17th September.

E THE DISTRICT JUDGE: 17th September. So you did not respond at all.

MR LAMOUREUX: No.

THE DISTRICT JUDGE: Do you not have to rely on the Protection of Freedoms Act in that situation?

F MR PICKUP: Well, if that is what the defendant is saying, I would say he would have to say where we breach it. It is on the defendant to say what has been done wrong. In his defence, he has not mentioned anywhere how it is wrong or how... So the claimant is unable to locate as to the reasons why he thinks that is the case.

G THE DISTRICT JUDGE: Right. Let me just read out the Protection of Freedoms Act:

H

“(1) This Schedule applies where—

(a) the driver of a vehicle is required by virtue of a relevant obligation to pay parking charges in respect of the parking of the vehicle on relevant land; and

(b) those charges have not been paid in full...”

It is section 4 of the Protection of Freedoms Act 2012. Thank you very much by the way for including that, Mr Lamoureux, very helpful, “Right to claim unpaid parking charges from keeper of vehicle,” yes.

A MR PICKUP: This was sent to the driver though, madam.

THE DISTRICT JUDGE: Well, no, it was sent to the keeper.

MR PICKUP: Well, sorry, it was sent to the keeper.

B THE DISTRICT JUDGE: It was sent to the keeper.

MR PICKUP: It was sent to the keeper, yes, but the... Sorry, carry on. I will not interrupt.

THE DISTRICT JUDGE: Yes. So you do not know who the driver is, that is the point, and you are pursuing him because he is the keeper. You cannot prove he is the driver.

C Right, so paragraph 4 says:

“(1) The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle.

(2) The right under this paragraph applies only if—

D (a) the conditions specified in paragraphs 5, 6, 11 and 12 (so far as applicable) are met; and

(b) the vehicle was not a stolen vehicle...”

E Right, just let us get that out of the way. Mr Lamoureux, was this vehicle stolen at any time?

MR LAMOUREUX: No.

THE DISTRICT JUDGE: No, so you are not relying on that one. Then paragraph 5 goes on to the conditions that must be met:

F “(1) The first condition is that the creditor—

(a) has the right to enforce against the driver of the vehicle the requirement to pay the unpaid parking charges *[let us assume for today’s purposes that the signs were adequate and that the claimant has the right to enforce against the driver]* but;

G (b) is unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and a current address for service for the driver.”

H Right, well, that applies here. You do not know the name of the driver and you have not got a current address. Basically, the defendant to whom you have sent the notice, you know he is the registered keeper, he is doing nothing and he is saying absolutely nothing. Paragraph 6:

- A “(1) The second condition is that the creditor (or a person acting for or on behalf of the creditor)—
- (a) has given a notice to driver in accordance with paragraph 7, followed by a notice to keeper in accordance with paragraph 8; or *[and this is the important one, I think, here because you do not know who the driver is]*
- B (b) has given a notice to keeper in accordance with paragraph 9.”

So we know that paragraph 9 comes into play. Paragraph 9 says:

- C “(1) A notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(b) is given in accordance with this paragraph if the following requirements are met.
- (2) The notice must—
- (a) specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates...”
- D

Now, are we saying that complies, Mr Lamoureux, because you are saying you have not complied.

MR LAMOUREUX: Yes.

E THE DISTRICT JUDGE: So I will go through the Act and you then tell me how they have not complied. So do we accept they have complied with that one?

MR LAMOUREUX: Yes, they have mentioned the place where it was parked and the period of parking, what they refer to as duration of stay.

F THE DISTRICT JUDGE: Yes. Well, it is the same, yes, so they have complied with that bit. Right, let us keep flipping back.

“Inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full.”

G Yes, do we accept that one has been complied with?

MR LAMOUREUX: I think it’s ambiguous because it doesn’t actually say that the driver is required to make payment. It says the driver agrees to be contractually bound.

H THE DISTRICT JUDGE: Contractually bound, yes.

MR LAMOUREUX: But it doesn’t use that wording and correct wording in *[inaudible]* is essential.

A MR PICKUP: It goes on to say, “In accordance with the applicable terms and conditions, a payment of £100.00 is required within 28 days,” following on from what it has just said about that.

MR LAMOUREUX: That is not what my—

B THE DISTRICT JUDGE: Sorry, where does it say?

MR PICKUP: Just in the paragraph below the terms and conditions.

THE DISTRICT JUDGE: Yes, here we are:

C “In accordance with the applicable terms and conditions, a payment of £100.00 is required within 28 days of the issue date of this notice. However, a reduced sum of £60.00 will be accepted if paid within 14 days.”

MR PICKUP: I would say that is enough, madam, to suggest—

D THE DISTRICT JUDGE: Right.

MR LAMOUREUX: I dispute that. The Protection of Freedoms Act is a legal route and the correct wording is mandatory if the Act is going to be used. That’s not what the parking charge notice says and that is their choice not to word it that way. They can choose to word it close to the correct wording, or they can choose to use the correct wording.

E THE DISTRICT JUDGE: And you say what would the correct wording... “The driver is required to pay parking charges in respect of the parking *[inaudible]* not been paid in full.” Right.

F MR PICKUP: So there is a box as well there saying, “Charge now payable £60.00.”

THE DISTRICT JUDGE: Sorry, where is that box?

MR LAMOUREUX: No, that’s not the *[inaudible]*.

G MR PICKUP: Underneath, in between the defendant’s name and the two photographs in the red box.

THE DISTRICT JUDGE: “Charge now payable £60.00.”

MR PICKUP: Yes.

H THE DISTRICT JUDGE: So you are saying, Mr Lamoureux, that (b) has been contravened.

MR LAMOUREUX: Yes.

THE DISTRICT JUDGE: I will reserve judgment on that. At (c):

A

“Describe the parking charges due from the driver as at the end of that period, the circumstances in which the requirement to pay them arose (including the means by which the requirement was brought to the attention of drivers) and the other facts that made them payable.”

B

Well, they have said the terms and conditions to which the driver agrees to be contractually bound upon entering the site are clearly placed at the entrance to the car park. Are you saying they are in breach of that one, or do you accept that they have adequately described the circumstances?

C

MR LAMOUREUX: I’m okay with that. Again, the only thing I have... problem I have with this is, “Describe the parking charges due from the driver as at the end of that period...” I’m not sure that’s made clear in the parking charge notice. Yes, there are references that could be sort of put together to almost make it look like that has been adhered to, but they’re very separate from each other. I’m not sure that’s... I’m not sure that complies in that regard.

D

THE DISTRICT JUDGE: Has there been any decision on whether this notice complies with—

MR LAMOUREUX: Excel admit it doesn’t comply.

E

MR PICKUP: Well, I have done many of these cases, madam, and whilst I appreciate they are all different and they are only persuasive, I have never had a judgment where the judge has said that this notice does not comply.

THE DISTRICT JUDGE: Yes.

MR PICKUP: It has always been taken as a proper notice.

F

THE DISTRICT JUDGE: What puzzles me, Mr Pickup, is why Excel argues it does not have to comply with the Protection of Freedoms Act and they do not have to rely on it. I find that difficult.

MR PICKUP: Yes.

G

THE DISTRICT JUDGE: I think for today’s purposes you are relying on it, and I can understand why, but why does Excel take the view that it does not have to rely because there is case law that the keeper is not the driver? We know the registered keeper. There is presumption in law that the registered keeper is the driver, is there?

H

MR PICKUP: No, madam. I think they are just trying to say that because they have done all they can, the fact that all they have heard from... Well, eventually they have heard from Mr Lamoureux, but until they had heard from anyone, all they can do is rely on what they have already sent. They have not had... Sorry, go on.

THE DISTRICT JUDGE: I think in law if the registered keeper keeps quiet, I do not think they can then assume that the registered keeper is the driver. I think they then have to rely on the Protection of Freedoms Act 2012. Anyway, let us carry on.

A

MR PICKUP: All right.

THE DISTRICT JUDGE:

“Specify the total amount of those parking charges that are unpaid, as at a time which is—

B

(i) specified in the notice...”

Now, have they said... Have they complied with that, do you say?

C

MR PICKUP: Yes, madam, it does say, “In accordance with the applicable terms and conditions, a payment of £100.00 is required within 28 days of the issue date of notice” and then it goes on about the reduced sum.

THE DISTRICT JUDGE: Yes.

D

MR PICKUP: Above that, madam, it does say the reason for the contravention, parked without purchasing.

THE DISTRICT JUDGE: Yes.

E

MR PICKUP: And then it also mentions the means by which the requirement was brought to the attention of drivers. Those are the terms and conditions and it describes how it has been done above that the alleged contravention was detected and recorded by the cameras.

THE DISTRICT JUDGE: Yes. Strictly speaking, it does not actually say nothing has been paid, or does on the... Let us have a look at the second one. “Payment of the outstanding amount of £100.00.” I suppose by implication that is saying it has not been paid otherwise—

F

MR PICKUP: And again, that is—

THE DISTRICT JUDGE: The amount payable is £100.00 and so clearly it has not been paid. I must say, the wording could be clearer:

G

“Specify the total amount of those parking charges that are unpaid, as at a time which is—

(i) specified in the notice; and

H

(ii) no later than the end of the day before the day on which the notice is either sent by post or, as the case may be, handed to or left at a current address for service for the keeper...;

(e) state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper—

A

(i) to pay the unpaid parking charges...”

MR LAMOUREUX: I definitely dispute that. There’s no reference to that whatsoever.
THE DISTRICT JUDGE: Yes, where does it say that? It does not seem to say, “We do not know the name of the driver. Therefore, we are inviting you to pay.”

B

MR PICKUP: Well, the previous paragraphs are assuming or it is implied that you are the driver unless you say so otherwise because then it goes on to say in bold, “If you were not the driver...”

C

MR LAMOUREUX: The Protection of Freedoms Act, paragraph 9(2)(e) does say to state that the creditor does not know both the name of the driver and the... *[Inaudible]* imply it, just state it.

MR PICKUP: But they do not yet know whether it is... There is no way anybody can say, “We do not know the name of the driver because we have not heard anything.”

D

MR LAMOUREUX: Well, of course they can say that because you do not know the name of the driver. Of course they can say that.

MR PICKUP: But until we have any more information, there is no way they could say that, “We do not know the name of the driver.”

E

MR LAMOUREUX: I, again, don’t understand what you mean by that. You don’t know the name of the driver so you can say, “At this stage, we don’t know the name of the driver and we are inviting you to pay.” That seems... I don’t have much, if any, legal knowledge but that seems clear enough to me.

THE DISTRICT JUDGE: It does not seem to say that, Mr Pickup. I am quite surprised this point has not arisen before, time and time again. It says that:

F

“Should the registered keeper either provide an ... or the named driver denies they were the driver, we may pursue the registered keeper for any parking charge amount that remains outstanding on the assumption that they were the driver.”

G

However, it does not say, “State that the *[inaudible]* does not know both the name of the driver and current address.” Yes. You have informed them of the discount and you have identified the creditor and specified how and to whom payment or notification should be made. So, Mr Lamoureux, which of those provisions are you saying have been breached?

H

MR LAMOUREUX: I’m not happy with subparagraph (b) from section 2.

THE DISTRICT JUDGE: Yes, “

“Inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full.”

A

So those words, “The parking charges have not been paid in full.” Yes, and then—

MR LAMOUREUX: Yes, I submit that subparagraph (e) has not been complied with in any way, shape, or form.

B

THE DISTRICT JUDGE: Yes:

“(e) state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper—

(i) to pay the unpaid parking charges...”

C

MR LAMOUREUX: And I know I haven’t got to it yet, but I also submit that subparagraph (f) has not been complied with in any way, shape, or form.

THE DISTRICT JUDGE: Right, (f), let us go on to that. It says:

D

“(f) warn the keeper that if, after the period of 28 days beginning with the day after that on which the notice is given—

(i) the amount of the unpaid parking charges specified under paragraph (d) has not been paid in full, and

E

(ii) the creditor does not know both the name of the driver and a current address for service for the driver,

the creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid.”

F

Right, Mr Pickup, where is that mentioned?

MR PICKUP: Well, again, it is implied through the final sentence of that if you are not the driver paragraph:

G

“Should the registered keeper either provide an unserviceable name and address of the driver, or the named driver denies they were the driver, we may pursue the registered keeper for any parking charge amount that remains outstanding on the assumption that they were the driver.”

MR LAMOUREUX: That’s irrelevant to that point. Where is there any mention, “Warn the keeper that if, after the period of 28 days beginning with the day after that on which the notice is given...”?”

H

MR PICKUP: On the second page, the yellow box mentions the 28 days, that it needs to be... “If you are not the registered keeper...”

MR LAMOUREUX: Within 28 days that says, not the day after.

A THE DISTRICT JUDGE: Yes, it does look to me as if it has not been strictly adhered to this Act. Obviously, you will have to address me later, Mr Pickup, on why the Act... Are you saying you do not have to adhere to the Act, or you do?

MR PICKUP: Well, my instructions, madam, are that we do not because—

B THE DISTRICT JUDGE: Why?

MR LAMOUREUX: May I just add a point?

THE DISTRICT JUDGE: Just let Mr Pickup finish.

C MR LAMOUREUX: Sorry, yes, of course.

THE DISTRICT JUDGE: I am puzzled as to why the claimant thinks that it can... What is the authority for saying that if you send this notice to the keeper, which you have to do, and he does not respond, you do not then have to rely on the Protection of Freedoms Act 2012?

D MR PICKUP: I think it is merely saying that they are relying on the evidence they have got rather than they are saying that we are using the Act... Sometimes, I have seen claim forms which refer to the Act and specifically mention the fact that they are using that Act.

E THE DISTRICT JUDGE: Yes.

MR PICKUP: But they are not using the Act. They say they are just using it through—

THE DISTRICT JUDGE: Sorry, this company Excel sometimes relies on that?

MR PICKUP: No.

F THE DISTRICT JUDGE: Other companies do?

MR PICKUP: Yes.

THE DISTRICT JUDGE: Yes, Parking Eye certainly does.

G MR PICKUP: Yes. Because it has come up as an issue in the defence, we are saying—

THE DISTRICT JUDGE: “We did not know before.”

H MR PICKUP: —we never mentioned that we were going to rely on it anyway, effectively.

THE DISTRICT JUDGE: Sorry, are you a solicitor agent, Mr Pickup?

MR PICKUP: Yes, madam.

A THE DISTRICT JUDGE: You do not work for the company?

MR PICKUP: No, I do not.

B THE DISTRICT JUDGE: Yes, helpfully, I do know that there is case law that says the keeper is not the driver and there is no such assumption, but helpfully, Mr Lamoureux has produced part of an extract. It is *R (on the application of Duff) v Secretary of State for Transport [2015] EWHC 1605*, but there is other case law to this effect. There is no reasonable presumption in law that the registered keeper of a vehicle is the driver. It is trite law. I do not even need to rely on *R (on the application of Duff v Secretary of State for Transport)*. Everybody knows that you cannot assume that the keeper is the driver which is why most parking companies, such as Parking Eye, always rely on the Protection of Freedoms Act 2012 and the notice should comply. Any other points in there that you say do not comply, Mr Lamoureux?

C MR LAMOUREUX: No, I was just going to draw your attention and you have probably already read it, to just underneath subparagraph (f), it does say:

D “The creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid.”

E THE DISTRICT JUDGE: Yes, so the Act actually makes that very clear. Yes. Right, I am puzzled as to why Excel does not think it needs to comply with this Act. I feel there is some oversight on its part here and cross-examination of Mr... What is his name again?

F MR PICKUP: Krishna Rao.

G THE DISTRICT JUDGE: Mr Krishna Rao may have assisted us but, of course, he is not here and he does not deal with why the Act does not apply. Let us just see what he says on this. At paragraph 19:

H “For the avoidance of any doubt, the claimant does not seek to rely on the Protection of Freedoms Act or keeper liability in respect of this claim. Therefore, the defendant’s reliance on the Protection of Freedoms Act is misconceived.”

I do not understand that. Now, Mr Pickup, can you help me?

MR PICKUP: I cannot offer anymore. I [*inaudible*] ask if the matter to be stood down if I could speak to—

THE DISTRICT JUDGE: For a short time. Could you do that please?

MR PICKUP: Yes.

THE DISTRICT JUDGE: Because I am very confused. I am wondering if we have missed something here.

A MR PICKUP: Yes, madam.

THE DISTRICT JUDGE: I will stand it down for 15 minutes and then depending on what you say, I must tell you, Mr Pickup, I am minded to say that the claimant has to rely on the Protection of Freedoms Act in this situation because there is no assumption that this man is the driver. He is the registered keeper and therefore the whole thrust of the case will be: has the claimant complied with the Act? I just say, on the face of it, it looks as if they have not.

B MR PICKUP: All right, madam, yes.

THE DISTRICT JUDGE: All right.

C MR PICKUP: I appreciate there is another case with Mr Lamoureux—

THE DISTRICT JUDGE: It is exactly the same point because I—

MR PICKUP: Well, I do not know. I cannot say.

D THE DISTRICT JUDGE: Sorry, are there two?

MR PICKUP: Yes, there is one at 11.30.

THE DISTRICT JUDGE: Is that on the same points?

E MR PICKUP: Well, I am not representing Excel on that case.

THE DISTRICT JUDGE: You are not?

MR PICKUP: But there is somebody else who is here.

F THE DISTRICT JUDGE: There is someone else.

MR LAMOUREUX: I just wanted to—

THE DISTRICT JUDGE: No, let me just stand this down for the 15 minutes and I will then look at the other... I did not appreciate there was another file as well.

G MR LAMOUREUX: Yes, sorry. With regards to that, I did email you. I sent you a letter, sorry, an email, a few days ago. You might not have got it because I sent it to Harrogate because that was the only address I had and they said they forwarded it to you. It was actually to draw your attention to how I thought it was unreasonable for Excel to have these two cases against me and *[inaudible]*.

H THE DISTRICT JUDGE: Yes. Well, I did not see that. Well, we will deal with that in the second case.

MR LAMOUREUX: I appreciate it was probably a bit short notice.

THE DISTRICT JUDGE: We will deal with that in the second case.

A MR LAMOUREUX: Right.

THE DISTRICT JUDGE: You can leave those papers if you wish, it is entirely up to you. I will not touch them.

B MR LAMOUREUX: I will leave the bag, if that is all right, but I will just take my stuff to have a read through it.

THE DISTRICT JUDGE: Yes, fair enough. Yes.

MR PICKUP: Thank you very much, madam.

C THE DISTRICT JUDGE: Fair enough. Thank you.

[Short adjournment]

THE DISTRICT JUDGE: Mr Pickup, any assistance from those instructing you?

D MR PICKUP: I finally got through to them but I did not have my reference number to hand and then the matter was called on. I do have it now.

THE DISTRICT JUDGE: Right.

E MR PICKUP: In the absence of leaving again, I think really the point is that if Mr Lamoureux could be cross-examined, I would have to ask him whether or not he was the driver.

THE DISTRICT JUDGE: Well, let us just do that.

MR PICKUP: We have to do that anyway, do we not?

F THE DISTRICT JUDGE: Yes. He has already said that he was not, but all right, we will do that. Mr Lamoureux, you are not under oath but nevertheless, it is extremely important for you to answer this question truthfully. In fact, I can put Mr Lamoureux on oath if you prefer.

MR PICKUP: Yes, I think—

G THE DISTRICT JUDGE: Shall we do that?

MR PICKUP: Yes.

H MR IAN LAMOUREUX – Sworn
By THE COURT

Q. Right, just give your full name and address if you would please. No, it is not on the card.

A. Sorry, I don't know what I were thinking then. Ian Lamoureux, [ADDRESS REDACTED]

A

Cross-examined by MR PICKUP

Q. All right. On the date of 25th July 2015, did you park in Cavendish Retail Park?
A. No, I did not.

B

Q. You did not and is your vehicle registration number [REGISTRATION REDACTED]?
A. I am the registered keeper of that vehicle.

Q. Who else can drive that vehicle?
A. Lots of people who have insurance policies that cover them to drive other cars on that basis of their policy. On the actual insurance policy is myself and my wife.

C

Q. Right. So you are saying on that day you do not know... You have not adduced whether or not it was you, or your wife, or was it your son or daughter, did you say?
A. No, I've said other people can drive the car on the basis that they have an insurance policy that allows them to drive other cars.

D

Q. So if it was not you, you don't know who was driving your car on the day?
A. I'm not saying that, no.

Q. Right. So you are not prepared to answer?

E

THE DISTRICT JUDGE: So you are not saying you do not know.
A. I'm not saying that, no.

MR PICKUP: You are just not prepared to answer who was driving.
A. I'm saying that there's no legal requirement for me to answer that question and you have the *[inaudible]*.

F

Q. Well, I think that might be helpful for the court if you did.
A. It would have been helpful for the court if you'd followed the Protection of Freedoms Act mandatory wording.

G

Q. Madam, I do not know whether you might allow this evidence into the court today. I have just been given a print off of a forum which the defendant has made assertions in. Now, I appreciate that it has not been adduced into evidence, but I just wanted to just show it to you and Mr Lamoureux and see whether he could clarify anything that is mentioned on it.
A. Madam, I object to this. I have no knowledge of the—

H

THE DISTRICT JUDGE: It is a bit late in the day, Mr Pickup.
A. I've no knowledge of this forum. I wouldn't—

Q. I know unfortunately the case was called on late because another matter of 45 minutes had been slipped in.

MR PICKUP: As in it was given to him this morning before that.

A THE DISTRICT JUDGE: Well, just ask him questions, if you wish.

MR PICKUP: Yes. *[To the witness]* This is a print off of a forum topic on “Far *[inaudible]*” as it is called, private parking, tickets, and clamping, court claim for BW Legal Excel Parking. The first one is by someone called, “I am I Lad” on 19th June 2016 and id says:

B “I’ve received County Court claim forms from Northampton County Court for an unpaid PCN. The claimant is Excel Parking Services Limited. The particulars of claim, the claimant’s claim is for the sum of £100.00 with monies due from the defendant to the claimant in respect of the parking charge notice on 25th July 2015.”

C It is blanked out the times and everything for obviously different reasons. It then goes on to say:

“Background – I do not have any specific recollection of this occurrence. I use this car park regularly, as does my wife who also drives my car. Other family has also used my car. I usually pay for my parking, but I know I’ve forgotten on occasions to buy tickets and I’ve received other

D PCN letters from Excel and BW Legal.”

I just wondered whether you could confirm or deny that that was yourself who made those comments.

A. I have absolutely no idea what you’re talking about.

E Q. All right.

THE DISTRICT JUDGE: Right.

MR PICKUP: That is all I can *[inaudible]*.

F THE DISTRICT JUDGE: Yes. Right. All right, is there anything else? I feel I need to go on and make a judgment now.

[Judgment follows]

G THE DISTRICT JUDGE: Anything else?

MR LAMOUREUX: Well, with respect, madam, I’d like to make an application for my costs.

THE DISTRICT JUDGE: What are they?

H MR LAMOUREUX: Could I ask for time to get them to you and work it out? Because I’ve been working on the case so much, I haven’t brought a costs schedule with me, but if I could provide something to you in the next few days—

THE DISTRICT JUDGE: Right.

A MR PICKUP: Well, none were claimed in the defence or the witness statement.

MR LAMOUREUX: I do mention it in my defence, sorry, in my witness statement that *[inaudible]*.

B THE DISTRICT JUDGE: Well, I can accept you might have expenses attending today. I might not need evidence of those. Are you claiming loss of earnings?

MR LAMOUREUX: No, litigant in person expenses as well as—

THE DISTRICT JUDGE: Just attending today?

C MR LAMOUREUX: The amount of time I've had to spend... Madam, my time has been spent on defending this misconceived claim against me. I've had to spend hours and hours, time that has been taken away out of my—

THE DISTRICT JUDGE: It is a small claim matter and—

MR LAMOUREUX: Waste my time.

D THE DISTRICT JUDGE: What provision is this under? The normal rule is that a defendant can claim loss of earnings, but they have to be substantiated, and travelling expenses which generally the court can accept without proof. That is about as far as it goes. Mr Pickup?

E MR PICKUP: Yes, that is what I was about to say. Yes.

THE DISTRICT JUDGE: That is as far as it goes.

MR LAMOUREUX: I am aware from my research that in similar cases to this that have reached the same judgment as yourself that the defendant has been awarded costs on a litigant in person basis for the time that it's taken then to prepare their case and defend the case and it's on that basis—

F THE DISTRICT JUDGE: Are you sure they were small claims?

MR LAMOUREUX: Yes, absolutely, yes, from the research that I've done on these cases. I'm happy to—

G THE DISTRICT JUDGE: Let us have a quick look at the two judgments you have. I am not sure we are allowed to adjourn for that reason, but I am minded to adjourn the case because, unfortunately, I do not think I am going to get to it, but then there are other reasons. Accordingly, I am going to dismiss the claim. So Excel Parking and Mrs S—

H MR PICKUP: Well, I was actually the advocate on that *[inaudible]*.

THE DISTRICT JUDGE: Yes, you were, I see that. What happened on that, were there any costs?

MR PICKUP: No, there were not any costs.

A THE DISTRICT JUDGE: No costs were awarded and the next one is... Well, it is this Court of Appeal decision, I think. Yes, it is the Court of Appeal. So they can award costs. I think you may be mistaken, Mr Lamoureux. What we can award in the small claims court is loss of earnings but they have got to be substantiated up to a maximum of £95.00 and we can award travel and expenses. So I can certainly award your travelling expenses today from Keighley to Skipton.

B MR LAMOUREUX: It's okay.

THE DISTRICT JUDGE: Nominal.

MR LAMOUREUX: But thank you.

C THE DISTRICT JUDGE: Right. So no costs order. So the claim is dismissed.

MR PICKUP: All right.

D THE DISTRICT JUDGE: That is the judgment. The claim is dismissed. You stay in, Mr Lamoureux. Mr Pickup, what is the lady called in the matter?

MR PICKUP: I think Ms Rayman.

THE DISTRICT JUDGE: Yes. Could you send her in?

E MR PICKUP: I will.

THE DISTRICT JUDGE: Ms Rayman.

MR LAMOUREUX: Again, I've brought copies of this next case if you want?

F THE DISTRICT JUDGE: Yes, I think I have got everything. Yes, unfortunately we are running a bit late due to the fact that another matter was put in. I might have to adjourn today.

MR LAMOUREUX: Right.

THE DISTRICT JUDGE: Are you raising the same defence in this one?

G MR LAMOUREUX: Essentially, yes.

THE DISTRICT JUDGE: Yes.

H MR LAMOUREUX: That's why I've... There are differences and in my witness statement I've been able to refer to specifics of the claimant's witness statement even though she is not the representative [*inaudible*] again. I have been able to, you know, refer to points in that because I got their bundle before I submitted my witness statement. So I've been able to be a bit more detailed and thorough in the witness statement for this one, but essentially, the alleged contraventions are the same.

A THE DISTRICT JUDGE: The same.
MR LAMOUREUX: Yes and the main points of the defence are the same.
THE DISTRICT JUDGE: Yes, come in. Please come in, Ms Rayman.

B MS RAYMAN: Good afternoon.
THE DISTRICT JUDGE: Good afternoon. Unfortunately, yes, I have had quite a morning. Let me explain what has happened. These two matters were listed correctly at ten o'clock and 11.30, one and a half hours each.

C MS RAYMAN: Yes.
THE DISTRICT JUDGE: For some reason, a rather lengthy telephone conference which lasted for an hour was slipped in to the list in a situation where, frankly, it should not have been. All I can do is apologise at how late this matter is starting. What I wanted to say is this. I have just heard the matter of Excel Parking Services v Lamoureux, the other case number, C3DP56Q5, in which I made a finding that the defendant or the defendant admits he is the registered keeper, but clearly he denied, on oath, that he was the driver of the vehicle and I accepted that. What troubled me is that the maker of the witness statement on behalf of the claimant was not seeking to rely on the Protection of Freedoms Act 2012.

D MS RAYMAN: Right.

E THE DISTRICT JUDGE: Which, in my view, the claimant would have to do in a case where they cannot prove who the driver was. They then can proceed against the registered keeper but only in very specific circumstances they have to comply with the notice. Now, let me just check, which witness statement is Excel relying on here, is it the witness statement of Anita [Dyal]??

F MS RAYMAN: Yes, that is correct, madam.
THE DISTRICT JUDGE: What I was going to suggest is really I feel that the claimant needs to provide further information here as to why it does not feel that it needs to rely on the Freedom of Information Act [sic].

G MS RAYMAN: Madam, if I may. I understand what has happened because I had a quick two minutes as Mr Pickup exited the room. So he gave me a brief just as much as you have advised. I am not sure what madam's understanding is of the Act or whether my understanding is incorrect in that with the parking charge notices that have been issued [inaudible] the bundle for Mr Pickup's previous claim, it says parking charge notice. It does not actually stipulate notice to keeper or notice to driver.

H THE DISTRICT JUDGE: Yes.
MS RAYMAN: With [inaudible] a parking charge notice it is akin to when the old format in which the parking attendant would have affixed a parking charge notice on the vehicle's windscreen and that is what this is. It is that, in effect, save for the fact that

A because of the ANPR systems, it is no longer manually *[inaudible]* to the vehicle. It is then computerised and sent out.

THE DISTRICT JUDGE: Yes, indeed.

B MS RAYMAN: Now, my understanding of Protection of Freedoms Act was that if you do want to rely on it, you need to say you are relying on it and then once you have said you are relying on it, you need to be compliant with what the *[inaudible]* is.

THE DISTRICT JUDGE: Yes, absolutely.

C MS RAYMAN: From looking through my documents and the evidence that the claimant has provided me with, it has not stated that it relies *[inaudible]* this claim.

THE DISTRICT JUDGE: No, they have specifically said they are not. I am looking at paragraph 43.

MS RAYMAN: Yes, of the witness statement.

D THE DISTRICT JUDGE: The witness says:

“The defendant states that the Protection of Freedoms Act 2012 schedule 4 has not been complied with. Notwithstanding that, the claimant claims no right to pursue the defendant as the registered keeper under POFA.”

E MS RAYMAN: Right.

THE DISTRICT JUDGE: Sorry, she is saying this.

MS RAYMAN: Yes.

F THE DISTRICT JUDGE: Yes. She is saying the claimant has failed to meet the conditions of the Act and has never acquired any right to pursue the defendant in this capacity.

MS RAYMAN: No, madam, that is the defendant’s—

THE DISTRICT JUDGE: I see, she *[inaudible]*.

G MS RAYMAN: *[Inaudible]*.

THE DISTRICT JUDGE: Right.

MS RAYMAN: So that is the defendant’s position.

H THE DISTRICT JUDGE: Yes.

MS RAYMAN: And the claimant *[inaudible]* is that they do not rely on it. They *[inaudible]* statute for the benefit of the court in response to the *[inaudible]*. All right, we are not relying on it. We do not have to because we have not stated we are relying on it. There is nowhere on these parking charge notices that says notice to keeper or

A notice to driver. In fact, it says within these parking charge notices that, “If you are
not the driver, please complete the relevant section...” *et cetera*. Having no evidence
to suggest otherwise and no evidence to the contrary, the claimant would have no other
option but to go down the route to pursue the owner of the vehicle because it has not
B complied with the terms and conditions that state, “If you were not the driver, get in
touch. If you were not the driver, appeal on these *[inaudible]*.” As we have
[inaudible] practice directions, these also have specific rules to follow in this event, “If
you were not the driver, this is the rule. This is your ground of appeal” but the
defendant has not done that. Like I said, *[inaudible]* no notice of keeper noted on
here. Therefore, that is my understanding of why they perhaps have said that they are
not relying on the Protection of Freedoms Act. There is some case law that is
C mentioned in the witness statement, madam, *[inaudible]*. Yes, it applies to a different
matter, however, the principle again is what the claimant seeks to rely on. The
principle determined by a judge, determined in the courts, said that this is the
[inaudible]. There is no evidence otherwise and then you would pursue that individual
and you would pursue the registered keeper. I am not sure madam’s opinion as stands
is on—

THE DISTRICT JUDGE: Let me tell you what I was minded to do, Ms Rayman.

D MS RAYMAN: Yes, of course.

THE DISTRICT JUDGE: I was minded to adjourn the matter.

MS RAYMAN: Right.

E THE DISTRICT JUDGE: For several reasons.

MS RAYMAN: Yes.

F THE DISTRICT JUDGE: First of all, it is unfortunate that the court has run out of time.
There are some fairly significant issues here which I feel the claimant needs to think
about. On the one hand, it seems to be saying in this witness statement that it is not
placing reliance on the Protection of Freedoms Act 2012. In that case, it needs to
explain to the court how it is going to assert that the registered keeper is liable. So
either it is asserting that this defendant is the driver in which case there has got to be
evidence of it, or it is asserting that he is liable as the registered keeper in which case it
must comply with the Protection of Freedoms Act 2012.

G MS RAYMAN: Yes, madam.

THE DISTRICT JUDGE: If it is saying that it does not need to comply with the Protection
of Freedoms Act 2012, it needs to say why and...

H MS RAYMAN: I understand. Having read what has been submitted and in light of the
submissions that *[inaudible]*, if you are still minded to... Again, I am not—

THE DISTRICT JUDGE: You would not oppose it?

MS RAYMAN: I would not oppose an adjournment on those grounds.

A THE DISTRICT JUDGE: No and you have made a careful note of what I said and indeed I have done a judgment on the other matter.

MS RAYMAN: Yes, of course.

B THE DISTRICT JUDGE: It has to say either, “This man is the driver and we have the following evidence,” or, “He is not the driver. Therefore, we rely on Protection of Freedoms Act” POFA.

MS RAYMAN: Yes.

C THE DISTRICT JUDGE: To say, “We have no evidence that he is the driver,” which I think they are saying, I do not know, “But we are not relying on POFA” I do not understand their legal position. It needs to be clarified.

MS RAYMAN: All right. Madam, in mind of what I said, did that hold any substance for you in terms of when I was referring to the parking charge notices not having notice to keeper and therefore would not go down that [*inaudible*] down to the normal as akin to fixing the parking charge notice on the vehicle? Is that a submission that you...

D THE DISTRICT JUDGE: I do not really want to deal with submissions due to a lack of time.

MS RAYMAN: Right, that is not a problem. Of course, I understand.

E THE DISTRICT JUDGE: I feel that the witness statement needs to elaborate on why it does not feel that it needs to rely on the Protection of Freedoms Act 2012.

MS RAYMAN: Yes. Not a problem, madam. The other thing, if I may, I understand that the claimant provided you with some extracts relating to this claim. They had not been provided previously so they have not been submitted into court. So you may not want to—

F THE DISTRICT JUDGE: Make a direction on that. Do you want a direction?

MS RAYMAN: Yes, please.

G THE DISTRICT JUDGE: Right and what directions are you—

MS RAYMAN: That in the [*following?*] extracts the defendant actually states that he may have been driving the vehicle, he just cannot remember, but he is going to say it anyway and he hopes he does not get [*inaudible*] consent to park. That is what it states in those extracts. If you want to view those or if you want to leave it until the next—

H THE DISTRICT JUDGE: Well, no, as I say, unfortunately I am having to adjourn for various reasons.

MS RAYMAN: Yes, of course. I understand.

A THE DISTRICT JUDGE: I did think there were some extracts like that because Mr Pickup mentioned them and I actually felt it would be rather unfair to rely on them now when they have not been put in evidence.

MS RAYMAN: Yes. I understand.

B THE DISTRICT JUDGE: So adjourn to next available date after and we will go back to the date. How long will those instructing you need to put in this new piece of evidence?

MS RAYMAN: I would say a maximum of 14 days. It should not take that long, madam.

C THE DISTRICT JUDGE: We will say, “The claimant shall file and serve the evidence from...” what is it called The Internet Forum?

MS RAYMAN: Yes.

D THE DISTRICT JUDGE: “...upon which it wishes to rely.” So, “Claimant shall file and serve any evidence from The Internet Forum upon which it wishes to rely by 4.00pm on...” Seven days should be sufficient. Yes, let me just have a look. You can have 14 days if you prefer. We will say by 1st December. Do you want to serve any further evidence, Mr Lamoureux about this Internet Forum thing?

MR LAMOUREUX: I would like to review my defence and, yes, and I may want to submit additional evidence.

E THE DISTRICT JUDGE: You may want to submit additional evidence. All right. “Defendant shall file—

MR LAMOUREUX: Or rebuttals.

F THE DISTRICT JUDGE: —and serve any rebuttal evidence by 4.00pm on...” I will give you 14 days after that.

MR LAMOUREUX: Thank you.

G THE DISTRICT JUDGE: By 15th December 2016. Then the next available... I think 1.5 hours was rather short for these matters given that there are some serious defence issues here.

MS RAYMAN: Given the defence, yes.

H THE DISTRICT JUDGE: I do not understand why it was listed for such a short period. So adjourned to the next available date after... I am afraid we are now going to after Christmas.

MS RAYMAN: Yes.

THE DISTRICT JUDGE: So after 9th January... No, I will say after 11th January 2017. I am going to say time estimate three hours.

A MS RAYMAN: Yes.

THE DISTRICT JUDGE: I think it warrants it.

MS RAYMAN: I saw this *[inaudible]*.

B THE DISTRICT JUDGE: It is a short time estimate, is it not, given all the issues that we have to go through?

MS RAYMAN: Yes.

C THE DISTRICT JUDGE: So, “Adjourned until the next available date after 11th January 2017 time estimate three hours. Claimant shall file and serve any evidence from The Internet Forum upon which it wishes to rely by 4.00pm on 1st December 2016. The defendant shall file and serve any rebuttal evidence by 4.00pm on 15th December 2016.”

D MS RAYMAN: In light of the issues you wanted clarifying, will that just be the standard before the hearing 14 days *[inaudible]* fresh witness statement *[inaudible]*?

THE DISTRICT JUDGE: Yes. Do you think those instructing you will want to? Yes, I think they should clarify—

E MS RAYMAN: They should, given that that may be the issue again when we get to that hearing.

THE DISTRICT JUDGE: Well, this reliance on the Protection of Freedoms of Act, they are going to have to clarify their position on that.

MS RAYMAN: Yes.

F THE DISTRICT JUDGE: It could be done in the form of submissions.

MS RAYMAN: Unless that...

THE DISTRICT JUDGE: It is normally.

G MS RAYMAN: If it is not yourself, maybe they may deem that as additional evidence—

THE DISTRICT JUDGE: Which we need. I will tell you what, what I would prefer is that both parties put forward submissions on—

MS RAYMAN: In advance of the hearings?

H THE DISTRICT JUDGE: In advance of the hearing particularly on the Protection of Freedoms Act 2012. I understand what the defendant’s point is. I am not even sure he needs to do it, but I will give him permission to—

MS RAYMAN: Yes, that is *[inaudible]*—

A THE DISTRICT JUDGE: But I think the claimant definitely needs to put in submission as to why it is not placing reliance on the Protection of Freedoms Act 2012.

MS RAYMAN: Yes.

B THE DISTRICT JUDGE: Yes and whether they have complied with that or not. “The parties shall file and serve written submissions as to why Protection of Freedoms Act 2012 is applicable or not applicable and whether it has been complied with by...” So you will have each other’s additional evidence and that is by 15th December. So by 29th December. So presumably all you will need to say, Mr Lamoureux, is, “It does apply because I am the registered keeper, not the driver” and you are saying it has not been complied with and you need to rehearse why.

C MS RAYMAN: Yes, a repeat of his defence.

THE DISTRICT JUDGE: A repeat of his defence today.

MS RAYMAN: Yes.

D THE DISTRICT JUDGE: I think the claimant has a lot more to explain.

MS RAYMAN: Yes.

THE DISTRICT JUDGE: Yes. Yes, Ms Rayman, anything else that we need so that we can make today as useful as possible?

E MS RAYMAN: In respect to *[inaudible]* assistance, to specify the paragraphs in particular...

THE DISTRICT JUDGE: That you are saying have not been complied with?

F MS RAYMAN: Yes that have not been complied with so that should the claimant, even if it is *[inaudible]* at the hearing, then at least we have got something to go by instead of spending the majority of the hearing going through the Act.

THE DISTRICT JUDGE: Yes.

G MS RAYMAN: That may be helpful.

THE DISTRICT JUDGE: Yes.

MS RAYMAN: That is great, thank you, madam.

H THE DISTRICT JUDGE: All right. Right, thank you, Ms Rayman. Thank you, Mr Lamoureux.

MS RAYMAN: You have had a long day.

A THE DISTRICT JUDGE: Obviously, if you want to seek costs on the next occasion, Mr Lamoureux, come armed with evidence.

MR LAMOUREUX: Yes, I will *[inaudible]*.

B THE DISTRICT JUDGE: As I say, the small claims rules are fairly clear, I think, but there may be some case law that I am unaware of where it has been allowed.

MR LAMOUREUX: Okay, yes.

THE DISTRICT JUDGE: Yes. It may be arguable and you may want to argue that the claimant has unreasonably pursued the case, something like that.

C MR LAMOUREUX: Right.

THE DISTRICT JUDGE: Yes.

MR LAMOUREUX: Okay.

D MS RAYMAN: Good luck for the rest of the afternoon.

THE DISTRICT JUDGE: Yes. I hope it is better than this. Are you in the next—

MS RAYMAN: It is Mr Pickup that is in the next hearing.

E THE DISTRICT JUDGE: Right. It is a totally different case, yes.

MS RAYMAN: The defence is different, relying on different grounds, and we may have a hearing. If not, it may be wise to do the same as we have in this one.

THE DISTRICT JUDGE: Yes.

F MS RAYMAN: Thank you very much.

THE DISTRICT JUDGE: Thank you very much.

MR LAMOUREUX: Thank you.

G THE DISTRICT JUDGE: Thank you, Mr Lamoureux.

MR LAMOUREUX: Thanks.

THE DISTRICT JUDGE: Good afternoon to both of you. Goodbye.

H MR LAMOUREUX: Thank you very much, and to you. Bye.

[Hearing ends]