Article

Dispute Resolution

November 2015

After ParkingEye: When will private parking fines still be unenforceable?

Transport and retail sector operators that provide parking schemes on private land, and parking enforcement companies that operate such schemes, may take an interest in a recent decision of the Supreme Court. Many will be familiar with the much-used argument made by consumers faced with large parking charges: that they are unenforceable penalties. The Supreme Court has now held that, on particular facts, an £85 parking charge was not a penalty but an enforceable charge for breach of a parking contract. But before anyone gets too excited about the much publicised decision in ParkingEye they should understand that this conclusion was reached on the facts of the case and may have limited wider application.

Background

The parking scheme in question was operated by a retail park owner, enforced by ParkingEye, and allowed two hours free parking but an £85 charge for any overstay. Against this background, the Court held that two of the main objectives of the parking scheme were to manage the efficient use of parking space, by encouraging two hour turnaround, which was in the interests of the retail outlets (and therefore the park owner) and customers using cars to access it. To achieve that objective the scheme needed enforcement and the £85 charge provided ParkingEye with an income stream to enable it to operate the scheme and make a profit; that was the second main objective.

Questions to answer

The Supreme Court clarified that when assessing whether a parking charge is enforceable the relevant questions are:

- What are the legitimate interests or objectives being pursued by the landowner and any sub-contractor administering the scheme?
- Bearing in mind these interests or objectives, is the scale of the parking charge proportionate, or it is "exorbitant or unconscionable"?
- Irrespective of the above, is the term "unfair" (and therefore not binding on the consumer) applying the statutory fairness test now found in the Consumer Rights Act 2015?

Decision

In the circumstances of Mr Beavis' overstay, the parking charge was proportionate and, when considered against industry standard parking charges, the BPA's suggested maximum, and charges imposed by local authorities, it was not "exorbitant or unconscionable". It was also not "unfair". The Court found that a reasonable customer would have agreed to the term allowing for the £85 charge even if it had been allowed to individually negotiate it. However, in reaching this conclusion the Court was clearly influenced by the overall bargain being struck: the customer would be allowed two hours of free parking in return for which they had to accept the risk of being charged £85 if they overstayed. This was fair in circumstances where many of the customers would be the architects of their own misfortune, by ineffectively managing their shopping time.

What now?

This raises interesting questions about what level of fine might be enforceable in other cases, for example where there is an upfront charge for the initial stay or where the delay in the customer's return to their car is not their fault. Clearly, the Court was not giving a blanket blessing that no level of 'fine' would be found to be an unenforceable penalty, nor did it rule out that, in other circumstances, a charge might be challenged as unfair. So whilst this case does provide useful guidance and clarification of the appropriate test to be applied, it also confirms that whether a parking charge is enforceable will depend on the facts of the case.

Car park owners and operators will still have to carry out an assessment when setting the level of charge for overstaying and specifying the circumstances in which such charges will be incurred.

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