

OVERVIEW AND SCRUTINY BOARD

1 JULY 2014

BRIEFING NOTE

A review of private parking in Middlesbrough and enforcement of charges

SUMMARY

1. The briefing note provides an overview of the actions of private parking operators in Middlesbrough and the legal controls that they must work within.
2. Some failings in procedures are identified – the Council’s Trading Standards team is seeking to address problems with the industry representatives.

INTRODUCTION

3. There are a number of sites in central Middlesbrough where parking is controlled via a fee paid to a private company, in a manner similar to a public car park. There are also areas of private land where the owner seeks to restrict any trespass by motorists parking for their convenience. This discussion is limited to the former situation only.
4. Operators of such private car parks will seek to impose some form of charge on drivers who either don’t pay or overstay their time to discourage abuse of the facility. This is generally by a set of terms and conditions which is made known to the driver before parking and leaving their car.
5. Concern has been expressed over the charges imposed in some Middlesbrough car parks, alleging that they amount to a disproportionately high ‘fine’ on the motorist.

BACKGROUND INFORMATION

6. A driver who is invited to park on private land does so under a contract with the landowner. A parking contract must set out the terms and conditions that apply, including the fees payable and the charges that are apply if the terms of the contract are broken e.g. overstaying or not paying. By law, charges for breaking a parking contract must be reasonable and a **genuine pre-estimate of loss**. This means that charges to cover the issue of the ticket, staffing costs associated with enforcement and administration of fee collection, loss of a fee from another vehicle etc. may be charged but not general business costs such as erection of signage or resurfacing of car parks.

7. In order to address the problems associated with parking on private land enforcement measures have been introduced via the Protection of Freedoms Act 2012. This Act banned the use of clamping of vehicles on private land, but it was recognised that landowners still had the right to recover fees from drivers who had breached the parking rules.
8. Private parking companies are now allowed access to DVLA records to trace vehicle keepers and hold the keeper liable for any parking charge unless they identified another person who was the driver at the time. Parking companies are only allowed this facility if they are members of an approved trade body; currently the only such body is the British Parking Association (the BPA).
9. The Act also requires members of an approved trade body to offer appeals from aggrieved drivers to an independent body - "Parking on Private Land Appeals" – POPLA.
10. Consumer protection laws also apply to the signage of car parks etc. – if this is found to be unfair then the charge cannot be enforced.
11. The BPA has incorporated the legal provisions into its Code of Practice for members, including prominence of signage, the use of premium rate telephone lines for contacting the company and restricting sanctions to genuine pre-estimate of loss. The BPA state that in general this should also **not exceed £100**.
12. BPA is a company limited by guarantee with a Board of Directors and a Council of Representatives. The Board is responsible for management and operational matters and the Council deal with strategy and policy making. The Council is made up of regional reps and other bodies such as local councils and Equita. There are currently 720 members and BPA represents the parking and traffic profession in the UK and Europe.
13. It appears the funding is largely down to membership fees. Fees are levied depending on the size of a company's turnover and range from £154 plus VAT to £5925 plus VAT annually. Applying for membership is straightforward. You complete a form with company details, get a current member plus a trading/client reference (or 2 references if a member will not support you), pay the fee and sign to agree to the Code of Professional Conduct and Code of Practice.
14. The BPA mission statement on the home page of its website confirms that it is there to represent the profession. Therefore it is not an independent adjudicator or ombudsman. (Copy of BPA Approved Operator Scheme Code of Practice attached). It "regulates" its members and applies sanctions where there has been a breach of the BPA Code. Sanctions are imposed using a points system similar to driving offences.
15. The website states the in April 2014 5 operators received breach points averaging 1.6 each. In the previous 11 months 56 operators received on average 2.75 points. If an operator reaches 12 points in any 12 month rolling period they "may be referred to BPA Council for disciplinary action which may result in suspension or termination of membership from the AOS and the BPA."

16. Soon after the Protection of Freedoms Act was introduced, the DVLA suspended 6 companies who had been granted the right to access driver details. The suspensions were for issues such as misleading or confusing "Penalty Charge Notices" and inadequate signage. The BPA considered these minor transgressions and did not suspend the membership of the companies concerned.
17. In Middlesbrough during the period 5th June 2011 to 5th June 2014 there were 25 complaints about car parking and clamping. The majority of these complaints concerned two companies. Complainants also noted that communication by the companies was poor, often with standard letters being sent in response which did not address the detailed queries that had been raised.
18. Trading Standards Officers have visited sites in Middlesbrough controlled by the private operators referred to above and noted that the fee charged is £100. At other private sites in the town, fees of £60 and £70 are charged. This suggests that genuine pre-estimate of losses may be less than £100. Some commentators have alleged that where a maximum fee is suggested this may become the norm, without a genuine estimate. POPLA has placed an anonymised ruling on its website indicating what it would regard as acceptable costs.
19. Officers also noted that the signage at sites controlled by the two operators is adequate, but one operator gives a 0844 or 0845 contact number. These are generally regarded as a premium rate number when rung from a mobile.
20. The Public Protection Operations manager has written to one of the operators - who has responded to say that the charge is a genuine pre-estimate of loss and it is coincidental that this it is the same sum as the BPA threshold ('maximum') figure. The 0844 number is about to be changed. A similar letter will be sent to the second operator, asking for its reasoning in arriving at a charge of £100.
21. The Trading Standards team is aware of a complaint sent to POPLA in connection with a parking charge levied at a private site in Middlesbrough in April 2014. This case is due for adjudication in early July. The complainant has specifically raised the issue of genuine pre-estimate of loss and therefore Trading Standards will await the ruling in this case.

AREAS FOR DISCUSSION/ACTION

22. Private parking sites operated in Middlesbrough are controlled by companies who are members of the BPA but they appear to be breaching the BPA Code of Practice. Where drivers are shown to have breached the parking conditions some companies appear to be charging the 'maximum' penalty charge without proper regard to the principle of a genuine pre-estimate of loss. Some of the items listed in the response letter from one of the companies should not be included in the calculation.

23. The Public Protection Operations Manager proposes to write to the BPA raising these issues and seek intervention. If the BPA response proves inadequate or if further complaints are received, consideration will be given to serving a legal notice on the company requiring them to justify the costs charged.
24. If resolution is not achieved or the role of the BPA is shown to be ineffective, it may be considered appropriate for the Overview and Scrutiny Board to make recommendations to the Council's Executive on how the issue can best be taken forward.

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