

## Residential parking cases.

This document is designed to provide as many answers as possible to tackle the problem of being ticketed for some alleged parking contravention in your residential estate.

Some scenarios are different from others depending on the status of the person defending the claim, ie an actual resident or a guest.

What you need to be aware of from this point on is that your lease or title deeds are the overriding documents to show how a parking agreement has been set up.

If you signed a lease that has no mention of a parking regime being in place with notification and acceptance by you of the penalties for a breach of the parking rules then you have a cut and dried right to peaceful enjoyment of the communal parts of the complex. Any deviation from that would need to be in the lease and it cannot be overruled at a later time with a unilateral imposition of parking rules. If you haven't signed for it, you don't own it.

If you do not have any particular assigned parking bay then the parking is one of having rights to peaceful enjoyment within the communal areas. No such mention need to be made in the lease, or title deeds and the absence of a mention is indicative of an implied right.

The only way any imposition of a parking regime can be introduced, if it isn't already an agreed leasehold clause, is if you sign a further contract that allows them to overrule the terms of the lease. In that case there may also be a case for claiming against the landowner as you may have been ill-advised in some way that could invalidate the contract. You would require legal advice on that front.

You can defend an action for a breach of parking conditions on a communal part of the property by the primacy of your own lease or title deeds. However you cannot claim trespass against a Parking Company who is allowed to roam the estate with the landowners permission. They are allowed on the estate with the landowners permission but still cannot enforce a parking charge against you as you still have rights according to the wording of your own lease.

If you have an assigned parking bay, it's yours by right and if anyone tickets you then they have committed an act of trespass. In fact they are using your own allocated bay for their own business purposes without lawful authority to do so. It doesn't matter if they say they have a contract. The parking bay is yours and they have no right to set foot on it. They need permission from you to actually even be on the bay. So a tort of trespass is available to you to make a claim in a county court. I would suggest claiming an exact amount from them as they have tried to charge you for some cooked up contravention. That is because they cannot argue that the charge is too high. They set it themselves. You may care to add on a bit extra and you would also get a costs award for the expenses incurred.

You will find that most parking contracts are made by a managing agent (M.A.) supposedly on behalf of the landowners, and any of a number of usually dodgy parking companies.

The M.A. has no authority to do this as it fetters your own rights made by virtue of the lease or title deeds you hold. The fact is that most M.A.'s also get a cut in commission for the charges that a parking company have paid. Where a landlord is the person who contracted with the parking company the situation is still the same. The lease or title deeds is the prime contract and any unilateral imposition of anything over and above that is unlawful.

If there is no mention of a parking regime you have to work to, or any agreement in the lease of a charge for a breach of parking conditions, then the act of accessing the DVLA Database is unlawful. I will explain that more comprehensively here.

Often a ticket is placed on the windscreen. If it is then you must do nothing at all until you get the Notice to Keeper in the post around 14 days later.

If you just get a Notice to Keeper in the post without first getting a windscreen ticket that would suggest the site is monitored by ANPR, however such instances in a private residential car park are few and far between. There's usually another resident employed by the parking company on a commission basis to windscreen ticket cars.

As long as you do get the Notice to Keeper than you are able to claim for a breach of the Data Protection Act for unlawful use of your personal details. The parking company had no "reasonable cause" to access the DVLA database as you have every right to unfettered parking according to the terms of the lease. They have breached both the KADOE contract of the DVLA and the Data Protection Act.

### **Action to be taken**

If you are a resident and the lease is silent on parking restrictions, there is a claim for a breach of the Data Protection Act that you can make. The amount you can claim is entirely down to you however claims of between £250 to £750 are the norm and are supported in case law. The more you can show to have suffered as a result of the breach, the higher the amount a judge will allow. For instance an elderly lady with little knowledge of everyday things like parking and contracts and who may be distressed at her situation will be looked on with more sympathy and is likely to be awarded a higher claim. It is therefore important to stress the "damage" it had done to mental health, depression etc. A judge may well decrease a claim amount but he will never increase it so it's better to start high and do your best to justify it.

Also, as your rights have been abused, a claim potential exists against the Managing Agent or the Landowner, whoever signed the contract with the parking company. This is called "Tortious interference" where someone acts to interfere with your rights.

The only thing I would caution you on is that if you claim against a landlord and they have some way to terminate your lease or cause aggravation in some way, it may not be a good idea to claim against them. Advice will be given from forums such as on Pepipoo to see if there's a potential problem that could crop up.

The amount of damages you can claim is again dependent on how the judge sees the actual harm the action has caused so it is always best to put some factors down such as the stress

of having to deal with someone who has sought to take payment when none was due, having to appeal and having the appeal rejected etc. Even to the extent of the considerable anxiety in having to defend a court claim or prepare for one.

So, at this stage you have a claim against the parking company for a breach of the Data Protection Act, and another against the company who contracted with the parking company. There's no reason why these shouldn't amount to less than £750 in total but could be a fair bit more on the facts of the case. Of course you also get back the costs of mounting the claim plus interest at a commercial rate.

#### **A guest of a resident.**

You must find out from your friends lease what the terms of the parking are. If they are broadly in line with the above necessities then the resident has an opportunity to make a claim of trespass BUT only if the resident has an allocated bay which you used. The amount of claim for that would be fair at the amount of the alleged parking charge as explained already in the above comments. This is an action you have no control over. It's entirely down to the residence leaseholder.

As a guest though and if you have received a Notice to Keeper through the post, generally within 14 days from the date of the contravention, then you have a claim for a breach of the Data Protection Act as they had no reasonable cause to access the DVLA database. The amount is based on the above criteria already set out.

A guest who has an imposition of a parking charge in a communal area also gives the resident the chance to make a claim against the M.A. (or landowner - whoever was the principal to the contract) for tortious interference.

#### **A Freehold resident.**

Freehold owners of a property have deeds instead of a lease. When a property is part of a managed estate, the common ground is generally still within the possession of the landowner and perhaps managed by a Managing Agent. However common areas such as roads and grassed areas are usually available for the use of all the residents and should be mentioned as such in the deeds of your own home. Once more, if the deeds do not include mention of having to follow parking requirements or the imposition of charges for an alleged contravention of the parking which is shown within the deeds or the "easement" attached to them, then no authority exists for any parking charges at all.

In this situation the landowner or M.A., whoever it is who contracted with the parking company, is committing an act of tortious interference and is liable to a claim for damages.

The effect of a unilateral imposition of a parking regime in the case of freehold properties is potentially very large. Having the easement diluted somewhat so as to allow parking "fines" to be applied, may have a very drastic impact on the property valuation, especially in large cities where parking is always a problem.

An award of damages for that interference is likely to be much higher and it is always worth going for the maximum amount. I would suggest at least £1500.

The Parking company is also committing a breach of the Data Protection Act as it had no reasonable cause to access the keeper's details at the DVLA.

This document will be added to later so keep an eye out for changes to it.

I intend to put a series of template style letter on here for you to use as well as complaints to the DVLA and the ICO.

Whatever you make of this presentation is down to you. Although I cannot make any definitive legal analysis of a situation I use a common-sense approach to how things should work.