

The SECRET INSIDER'S NEWSLETTER

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CAN'T PAY, SHAN'T PAY! The Dundee Parking Wars



by Ronnie Conway
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My daughter lives and works as a nurse in Dundee. Even if I did not know her location already, I could work it out from the occasional parking fine notices I get as registered keeper of the car she drives.

"Nobody in Dundee pays these," she airily informed me, "You can ignore these in Scotland".

That is certainly what Dundonian Carly Mackie thought. She routinely parked her Mini on a spot in front of her family's garage in a major new residential development at the Waterfront, Dundee. The area comprises a number of different housing developments with a common parking area. Parking permits were available free of charge for residents and factors were appointed to

supervise the parking facilities. Ms. Mackie lived there with her parents from time to time, but crucially was not a proprietor. The parking management scheme entitled only proprietors to park free of charge. Parking fine notices were served on all non-permit vehicles. The charge was £100 reduced to £60 if paid up within 14 days. Ms. Mackie was a long-standing parking refusenik, and racked up fines totaling £24,500. Vehicle Control Services Limited, the parking management company, finally took her to court, and they won.

The sheriff was keen to scotch the "online myth" that parking fines in Scotland were unenforceable. He found that clear notices had been in place. Ms. Mackie had effectively entered into a contract with the factors whereby she knew that

she was parking without permission and that would attract a fine. The amounts involved were not unreasonable.

On Friday 13th October the Daily Mail reported that Carly Mackie had been declared bankrupt.

IT'S A DUNDEE THING...

Indigo Services Limited run the Dundee Ninewells Hospital car park. In September 2017 they took 3 nurses to court for fines relating mainly to overstaying at the car park. Nurse Julie Lindsay, a breast cancer specialist nurse, was held liable to pay £2,040 plus costs along with 2 other colleagues. After the written judgement was issued, Indigo Parks indicated that they now intended to pursue dozens of other nurses. At the time of writing the nurses' union

is seeking an urgent meeting with NHS management.

THE POSITION IN ENGLAND

Contrast this with "Driver's Legal Victory Is One in The Eye for Rogue Private Firms", the Guardian, 15th September 2017. Nicholas Bowen, Q.C., took an overnight nap in a motorway services car park. He exceeded the 2-hour limit and a parking notice fine of £85 was imposed. Bowen defended the small claim, stating that the parking notices were in a different part of the car park, and that the firm had no right to charge consumers for use of a virtually empty car park. He was successful, but on closer examination, there is a good deal less to this than at first glance.

Parking Eye forgot to turn up at the County Court so the judgement against them is in absence with none of the arguments decided.

So, what exactly is the position regarding parking fines or notices in Scotland and are there any practical steps you can take to minimise your risk?

PARKING ON PUBLIC LAND

Typical areas are designated local authority car parks or public roads which have been adopted by the local authority. Tickets can be issued by a local authority parking attendant, a traffic warden or a police officer. These are fines. In terms of the Road Traffic Act 1991, they are payable instantly. If you don't pay, sheriff officers can serve a payment charge on you without going to court to constitute the debt. If there are extenuating circumstances eg. medical or other emergency, it is always worthwhile contacting the local authority direct and they may be sympathetic to a sob story. Otherwise, the advice is to pay up. And yes Dear Reader, I have received one and I have paid up.

PRIVATE ROADS

Some residential areas have private roads which have not yet been adopted by the local authority. The residents are responsible for the maintenance and upkeep of the roads (and will be liable to persons who may be injured as a result of their condition). They are entitled to impose reasonable restrictions including parking, but in practical terms, you are not going to get a ticket from a private resident, although you may get a ticking off. In major developments, what the residents or factors may do is to engage a private parking company to manage the

area and to enforce restrictions. That is what happened in the Carly Mackie case.

MANAGED PARKING AREAS

This is now a multi-million-pound business. Parking Eye has a turnover of over £25 million. We are talking about areas which are on private land e.g. supermarkets or NHS facilities where a parking management firm has been put in charge, and where they intend to make a profit. Automated number plate recognition as you leave the parking areas means that the company can track your car and then check with the DVLA for the registered keeper. The legal theory is that when you enter a pay Car Park you also enter into an agreement that you will pay for the privilege. The management company are entitled to issue a demand for payment for breach of contract. This is an invoice. It is not a fine and the general rules of contract apply so e.g. signage must be prominent and clear but you are dealing with a well organised corporation and business model, and generally, the signage will be clear.

If you park without paying or if you overstay, you will get a Parking Charge Notice inviting you to pay a charge, usually of around £60.00 rising to £120.00 if you don't pay within 28 days.

The Supreme Court in the case of *Beavis -v- Parking Eye* has held that a charge of £85 for parking is not unreasonable so there is unlikely to be a legal challenge available down the route of excessive charges or contract penalties.

But you can't have a contract with a car, only with a person, and it is the driver and not the registered keeper who will be in breach.

Where you have not been the driver, the Parking Charge Notice invites you to identify the driver. This is not an invitation which you are required to accept, and there is no legal requirement that you do so.

If (like me) you are in that situation there is a useful handout issued by the Aberdeen Trading Standards authority at <https://www.aberdeenshire.gov.uk/media/2610/parkingchargesleafletforwebsite.pdf>

THE ROAD AND THE MILES TO DUNDEE

I have received a Penalty Charge Notice. I was not the driver at the material time and will be declining the "invitation" to identify him or her. I await a small-claims summons with interest. I'll let you know.

ABOUT THE AUTHOR

Ronnie Conway, Solicitor Advocate and Fellow of the Association of Personal Injury Lawyers (APIL), is the author of *The Secret Insider's Guide to Insuring Your Car*. He has specialised exclusively in accident and injury work for over 27 years.

This is his fourth book having written two academic textbooks for other lawyers, and one advice book dispelling myths about the "compensation culture".

He has given evidence on a number of occasions to the Scottish Parliament on issues relating to the law of damages and acted in several leading and high-profile cases including fatal accident inquiries. More recently, he acted for the family of Stephenie Tait in the George Square Bin Lorry Fatal Accident Inquiry.

In his book, *The Secret Insider's Guide to Insuring Your Car*, the sections on insurance let you know what cover you need and give you the insider's edge on how to get the best deal. Whilst in the unfortunate event should you have an accident, the book will help to navigate your way through the legal system with grace, aplomb, and as little stress as possible.

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