

## DRAFT SUBMISSION TO NORMAN BAKER

### BRITISH PARKING ASSOCIATION: INDEPENDENT APPEALS SERVICE

#### ISSUE

Apparent discrepancies between the grounds for appeal offered by the Independent Appeals Service (POPLA – Parking on Private Land Appeals) and undertakings given by the British Parking Association (BPA).

#### TIMING

Routine

#### RECOMMENDATION

That you consider the analysis identifying apparent discrepancies between the undertakings given by the BPA to you in correspondence about what the Independent Appeals Service would be able to consider as grounds for an appeal with the grounds actually being offered on the POPLA website, and, if you agree, write to the BPA seeking reassurance and clarification.

#### BACKGROUND/ANALYSIS

The POPLA website offering an independent appeals service against tickets issued by BPA members on private land went live on 1 October, at the same time as the keeper liability provisions in Schedule 4 of the Protection of Freedoms Bill 2012 came into force.

The POPLA website makes statements on the grounds for appeal that appear to be inconsistent with commitments given by the BPA to you as follows:

a. POPLA statement: “the fact that you think the charge is excessive is **not** a valid ground of appeal.”

In your letter of 24 May 2012 you stated:

“As well as ruling on whether or not a parking contravention has taken place, I believe it is important that the appeals service should also be able to rule, on a case-by-case basis, whether a parking company has behaved reasonably. Consideration should be given to the formation and existence of a contract, taking into account relevant consumer protection law, such as in relation to the signage at the car park and the terms and conditions being relied upon. There should also be an assessment as to whether or not the parking charges in question arise from a reasonable pre-estimate of loss or whether they include an element of unenforceable penalty.”

Patrick Troy replied in a letter dated “May 2012”:

“I am pleased to confirm that the service will rule on the law just as the statutory service does under the Traffic Management Act. This law will include contract law, consumer protection law and trespass law as appropriate and of course will also cover the new Protection of Freedoms Act. Therefore signage and levels of charge will be covered by the service as signage is essential to the establishment of a contract between the landowner and the motorist under contract law and unreasonable levels of charge could invalidate the contract under the same law.”

Comment: By refusing to accept appeals on the grounds of the parking charge being excessive POPLA appears to be failing to deliver on a clear commitment made by the BPA.

b. POPLA statement: “The assessor **cannot** allow appeals for other reasons, e.g. mitigating circumstances.”

Your letter of 24 May 2012 to the BPA states:

“I believe it is also important that the appeals service should be able to take action where a parking company has refused to consider what the service considers to be evidence of reasonable mitigating circumstances from an appellant. Your proposal to deal with this is by giving the adjudicator a power to refer the issue to the Chief Executive or Managing Director of the operator concerned is consistent with how the statutory appeals services deal with mitigation in respect of tickets issued by local authorities, and on this basis I am content for the arrangements to operate in the manner you suggest.”

Patrick Troy’s reply states:

“Thank you for your support for my suggestion that the adjudicator should have the power to refer cases of unreasonableness in considering mitigation to the Chief Executive or Managing Director of the Operator concerned (which mimics the statutory process under TMA).”

Comment: The POPLA statement ruling out the consideration of mitigating circumstances gives the impression that the appeals service will disregard any mitigating circumstances which is not the agreement reached between yourself and the BPA that POPLA will be able to refer cases back to the parking operator for review. .

### Summary

The apparent discrepancies between what the BPA agreed the appeals service and what is now actually offered are, we believe, significant, and will weaken the intended controls on reasonable behaviour by parking operators you envisaged.

If you agree a draft letter to the BPA is attached asking them to address these concerns forthwith.

## DRAFT LETTER TO PATRICK TROY

### PARKING ON PRIVATE LAND APPEALS (POPLA): GROUND FOR APPEAL

I am writing to you in regard of the stated grounds for appeal on the newly-launched website of Parking on Private Land Appeals (POPLA).

As you know we exchanged a number of letters on what the eligible grounds for appeal should be and agreed among other things that POPLA would:

- a. be able to consider whether or not a parking charge was based on a genuine pre-estimate of loss, or whether it contained an element of non-enforceable penalty;
- b. be able to refer cases where the adjudicator considered a parking operator had failed to take account of reasonable mitigating circumstances back to the CE or MD of the operator concerned for review, who would then report back to POPLA on any action taken.

My letter of 24 May 2012 and yours dated "May 2012" refer.

Given the above I was surprised and disappointed to see the following statements on the POPLA website:

"the fact that you think the charge is excessive is **not** a valid ground of appeal"

and

"The assessor **cannot** allow appeals for other reasons, e.g. mitigating circumstances"

In the first case the refusal to consider appeals based on excessive charges is clearly inconsistent with what we agreed. In the second case the statement ruling out the consideration of mitigating circumstances gives the impression that the appeals service will disregard any mitigating circumstances.

I believe these inconsistencies seriously undermine the intended safeguards on reasonable behaviour by parking operators that I set as a condition of introducing the provisions in Schedule 4 of the Protection of Freedoms Act. I would therefore be grateful for your confirmation that the grounds for appeal to POPLA will be consistent with our agreement and that the POPLA website will be amended accordingly.

## DRAFT SUBMISSION TO NORMAN BAKER

### BRITISH PARKING ASSOCIATION: INDEPENDENT APPEALS SERVICE

#### ISSUE

1. Apparent discrepancies between the grounds for appeal offered by the Independent Appeals Service (POPLA – Parking on Private Land Appeals) and the new Code of Practice and undertakings given by the British Parking Association (BPA).

#### TIMING

2. Routine

#### RECOMMENDATION

3. That you consider the analysis identifying apparent discrepancies between the undertakings given by the BPA to you in correspondence about what POPLA would be able to consider as grounds for an appeal with the grounds actually being offered on the POPLA website. In addition some advice on keeper liability in the revised BPA Code of Practice is, we believe, misleading. If you are content we recommend you write to the BPA seeking reassurance and clarification. A draft letter is attached.

#### BACKGROUND/ANALYSIS

3. There are issues related (a) to the POPLA website and (b) the revised BPA Code of Practice

##### **a. POPLA website**

4. The POPLA website offering an independent appeals service against tickets issued by BPA members on private land went live on 1 October, at the same time as the keeper liability provisions in Schedule 4 of the Protection of Freedoms Bill 2012 came into force.

5. The website gives, inter alia, 3 grounds for appeal that appear to be inconsistent with commitments given by the BPA to you as follows:

6. POPLA statement 1: “the fact that you think the charge is excessive is **not** a valid ground of appeal.”

7. This is inconsistent with your letter of 24 May 2012 to the BPA in which you stated:

“As well as ruling on whether or not a parking contravention has taken place, I believe it is important that the appeals service should also be able to rule, on a case-by-case basis, whether a parking company has behaved reasonably. Consideration should be given to the formation

and existence of a contract, taking into account relevant consumer protection law, such as in relation to the signage at the car park and the terms and conditions being relied upon. There should also be an assessment as to whether or not the parking charges in question arise from a reasonable pre-estimate of loss or whether they include an element of unenforceable penalty.”

8. Patrick Troy replied in a letter dated “May 2012”:

“I am pleased to confirm that the service will rule on the law just as the statutory service does under the Traffic Management Act. This law will include contract law, consumer protection law and trespass law as appropriate and of course will also cover the new Protection of Freedoms Act. Therefore signage and levels of charge will be covered by the service as signage is essential to the establishment of a contract between the landowner and the motorist under contract law and unreasonable levels of charge could invalidate the contract under the same law.”

9. Comment: By refusing to accept appeals on the grounds of the parking charge being excessive POPLA appears to be failing to deliver on a clear commitment made by the BPA.

10. POPLA statement 2: “the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are **not** valid grounds of appeal.”

11. Comment: As shown in the extracts above, it was agreed with the BPA that the appeals service would look at the essential elements of establishing a contract and, in particular, whether signage is adequate. Whereas there may indeed be situations where drivers do not see perfectly reasonable signage and will not be successful in their appeal, the above statement on the POPLA website does not make it clear that a motorist can appeal on the grounds that the signage was inadequate. Instead it gives the impression that motorists are unable to challenge misleading or inadequate signage or bay markings.

12. POPLA statement 3: “The assessor **cannot** allow appeals for other reasons, e.g. mitigating circumstances.”

13. Your letter of 24 May 2012 to the BPA states:

“I believe it is also important that the appeals service should be able to take action where a parking company has refused to consider what the service considers to be evidence of reasonable mitigating circumstances from an appellant. Your proposal to deal with this is by giving the adjudicator a power to refer the issue to the Chief Executive or Managing Director of the operator concerned is consistent with how the statutory appeals services deal with mitigation in respect of tickets issued by local authorities, and on this basis I am content for the arrangements to operate in the manner you suggest.”

14. Patrick Troy's reply states:

"Thank you for your support for my suggestion that the adjudicator should have the power to refer cases of unreasonableness in considering mitigation to the Chief Executive or Managing Director of the Operator concerned (which mimics the statutory process under TMA)."

15. Comment: The POPLA statement ruling out the consideration of mitigating circumstances gives the impression that the appeals service will not look at any mitigating circumstances, this is not the agreement reached between yourself and the BPA that POPLA will be able to refer cases back to the parking operator for review. Whereas it was agreed that POPLA itself would not allow appeals on mitigating circumstances, to prevent motorists from making such representations to POPLA will mean that POPLA will never have any cause to refer a case back to the operator as was the clear intention in your letter.

#### **b. BPA Code of Practice**

16. Section 23.3 of the revised BPA Code of Practice advises BPA members what happens where a vehicle keeper provides a driver's name but states "if the driver or hirer refuses to acknowledge their liability, you would be able to pursue the registered keeper."

17. Our legal advice is

18. The current wording in the Code therefore goes too far by implying that BPA members can revert back to the keeper for any difficulties they encounter when pursuing the named driver, and that therefore it should be amended as soon as possible to ensure it does not provide misleading information by failing to distinguish between the two types of liability.

#### Summary

19. The apparent discrepancies between what the BPA agreed with you the appeals service would offer and what is now actually being offered are, we believe, significant, and will weaken the intended controls on reasonable behaviour by parking operators you envisaged. Similarly the revised Code of Practice provides potentially misleading information to BPA members about when they can pursue the vehicle keeper for payment after he (the vehicle keeper) has named a driver.

20. If you are content a draft letter to the BPA is attached asking them to address these concerns forthwith.



## DRAFT LETTER TO PATRICK TROY

### PARKING ON PRIVATE LAND APPEALS (POPLA): GROUND FOR APPEAL

I am writing to you in regard of the stated grounds for appeal on the newly-launched website of Parking on Private Land Appeals (POPLA), and the revised BPA Code of Practice.

With regard to POPLA, as you know we exchanged a number of letters on what the eligible grounds for appeal should be and agreed among other things that POPLA would:

- a. look at evidence of the formation of a contract including the signage involved and whether this was compatible with relevant consumer protection law;
- b. be able to consider whether or not a parking charge was based on a genuine pre-estimate of loss, or whether it contained an element of non-enforceable penalty;
- c. be able to refer cases where the adjudicator considered a parking operator had failed to take account of reasonable mitigating circumstances back to the CE or MD of the operator concerned for review, who would then report back to POPLA on any action taken.

My letter to you of 24 May 2012 and yours to me dated "May 2012" refer.

Given the above I was surprised and disappointed to see the following statements on the POPLA website in relation to the grounds for appeal:

"the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are **not** valid grounds of appeal."

"the fact that you think the charge is excessive is **not** a valid ground of appeal"

and

"The assessor **cannot** allow appeals for other reasons, e.g. mitigating circumstances"

In the first case, the statement ruling out consideration of the driver not seeing the signage or bay markings is misleading and gives the impression that drivers will be unable to challenge signage they believe is not adequate or is perhaps misleading. Specifically, there appears to be no ground that motorists will be able to use to challenge the adequacy of signage (which is, of course, crucial in the establishment of a contract). In the second case, the refusal to consider appeals based on excessive charges is clearly inconsistent with what we agreed. In the third case, the statement ruling out the consideration of mitigating circumstances gives the impression that the appeals service will not look at any mitigating circumstances. Whilst we

agreed that the appeals service itself would not be required to grant appeals on mitigating grounds, we reached a compromise position that the appeals service would refer cases involving mitigating circumstances back to operators for consideration. Explicitly stating that mitigating circumstances should not be raised with the appeals service goes against the spirit of what we agreed.

With regard to the revised BPA Code of Practice, I am aware my officials have exchanged correspondence with you on the specific wording of paragraph 23.3 which advises your members what happens where a vehicle keeper provides a driver's name but states "if the driver or hirer refuses to acknowledge their liability, you would be able to pursue the registered keeper."

Our legal advice is that



The current wording in the Code therefore goes too far by implying that your members can revert to the keeper if they encounter any difficulties when pursuing the named driver, and that therefore it should be amended as soon as possible to ensure it does not provide misleading information by failing to distinguish between the two types of liability.

These issues relating to the revised Code and the grounds for appeal seriously undermine the intended safeguards on reasonable behaviour by parking operators that I set as a condition of agreeing to introduce the provisions in Schedule 4 of the Protection of Freedoms Act. I would therefore be grateful for your confirmation that you will ensure that the Code of Practice and the grounds of appeal to POPLA are amended forthwith to reflect our agreement.

## DRAFT SUBMISSION TO NORMAN BAKER

### BRITISH PARKING ASSOCIATION: INDEPENDENT APPEALS SERVICE

#### ISSUE

Apparent discrepancies between the grounds for appeal offered by the Independent Appeals Service (POPLA – Parking on Private Land Appeals) and the new Code of Practice and undertakings given by the British Parking Association (BPA).

Deleted: BPA

#### TIMING

Routine

#### RECOMMENDATION

That you consider the analysis identifying apparent discrepancies between the undertakings given by the BPA to you in correspondence about what the Independent Appeals Service would be able to consider as grounds for an appeal with the grounds actually being offered on the POPLA website. In addition some information on keeper liability in the revised BPA Code of Practice is, we believe, misleading.

We have informed BPA of our concerns disagree. If you are content we recommend you write to the BPA seeking reassurance and clarification – draft letter attached.

Deleted: –

#### BACKGROUND/ANALYSIS

There are issues related (a) to the POPLA website and (b) the revised BPA Code of Practice

##### a. POPLA website

The POPLA website offering an independent appeals service against tickets issued by BPA members on private land went live on 1 October, at the same time as the keeper liability provisions in Schedule 4 of the Protection of Freedoms Bill 2012 came into force.

The POPLA website makes statements on the grounds for appeal that appear to be inconsistent with commitments given by the BPA to you as follows:

a1. POPLA statement: “the fact that you think the charge is excessive is **not** a valid ground of appeal.”

In your letter of 24 May 2012 you stated:

“As well as ruling on whether or not a parking contravention has taken place, I believe it is important that the appeals service should also be

able to rule, on a case-by-case basis, whether a parking company has behaved reasonably. Consideration should be given to the formation and existence of a contract, taking into account relevant consumer protection law, such as in relation to the signage at the car park and the terms and conditions being relied upon. There should also be an assessment as to whether or not the parking charges in question arise from a reasonable pre-estimate of loss or whether they include an element of unenforceable penalty.”

Patrick Troy replied in a letter dated “May 2012”:

“I am pleased to confirm that the service will rule on the law just as the statutory service does under the Traffic Management Act. This law will include contract law, consumer protection law and trespass law as appropriate and of course will also cover the new Protection of Freedoms Act. Therefore signage and levels of charge will be covered by the service as signage is essential to the establishment of a contract between the landowner and the motorist under contract law and unreasonable levels of charge could invalidate the contract under the same law.”

Comment: By refusing to accept appeals on the grounds of the parking charge being excessive POPLA appears to be failing to deliver on a clear commitment made by the BPA.

a2. POPLA statement: “the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are **not** valid grounds of appeal.”

Comment: As shown in the extracts above, it was agreed with the BPA that the appeals service would look at the essential elements of establishing a contract and, in particular, whether signage is adequate. Whereas there may indeed be situations where drivers do not see perfectly reasonable signage and will not be successful in their appeal, the above statement on the POPLA website does not make it clear that a motorist can appeal on the grounds that the signage was inadequate. Instead it gives the impression that motorists are unable to challenge misleading or inadequate signage or bay markings.

a3. POPLA statement: “The assessor **cannot** allow appeals for other reasons, e.g. mitigating circumstances.”

Your letter of 24 May 2012 to the BPA states:

“I believe it is also important that the appeals service should be able to take action where a parking company has refused to consider what the service considers to be evidence of reasonable mitigating circumstances from an appellant. Your proposal to deal with this is by giving the adjudicator a power to refer the issue to the Chief Executive or Managing Director of the operator concerned is consistent with how

the statutory appeals services deal with mitigation in respect of tickets issued by local authorities, and on this basis I am content for the arrangements to operate in the manner you suggest.”

Patrick Troy’s reply states:

“Thank you for your support for my suggestion that the adjudicator should have the power to refer cases of unreasonableness in considering mitigation to the Chief Executive or Managing Director of the Operator concerned (which mimics the statutory process under TMA).”

Comment: The POPLA statement ruling out the consideration of mitigating circumstances gives the impression that the appeals service will not look at any mitigating circumstances, this is not the agreement reached between yourself and the BPA that POPLA will be able to refer cases back to the parking operator for review. Whereas it was agreed that POPLA itself would not allow appeals on mitigating circumstances, to prevent motorists from making such representations to POPLA will mean that POPLA will never have any cause to refer a case back to the operator as was the clear intention in your letter.

b. BPA Code of Practice

### Summary

The apparent discrepancies between what the BPA agreed the appeals service would offer and what is now actually being offered are, we believe, significant, and will weaken the intended controls on reasonable behaviour by parking operators you envisaged.

If you agree a draft letter to the BPA is attached asking them to address these concerns forthwith.

## DRAFT LETTER TO PATRICK TROY

### PARKING ON PRIVATE LAND APPEALS (POPLA): GROUND FOR APPEAL

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As you know we exchanged a number of letters on what the eligible grounds for appeal should be and agreed among other things that POPLA would:

- a. look at evidence of the formation of a contract including the signage involved and whether this was compatible with relevant consumer protection law;
- b. be able to consider whether or not a parking charge was based on a genuine pre-estimate of loss, or whether it contained an element of non-enforceable penalty;
- c. be able to refer cases where the adjudicator considered a parking operator had failed to take account of reasonable mitigating circumstances back to the CE or MD of the operator concerned for review, who would then report back to POPLA on any action taken.

My letter of 24 May 2012 and yours dated "May 2012" refer.

Given the above I was surprised and disappointed to see the following statements on the POPLA website:

"the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are **not** valid grounds of appeal."

"the fact that you think the charge is excessive is **not** a valid ground of appeal"

and

"The assessor **cannot** allow appeals for other reasons, e.g. mitigating circumstances"

In the first case, the statement ruling out consideration of the driver not seeing the signage or bay markings is misleading and gives the impression that drivers will be unable to challenge signage they believe is not adequate or is perhaps misleading. Specifically, there appears to be no ground that motorists will be able to use to challenge the adequacy of signage (which is, of course, crucial in the establishment of a contract). In the second case, the refusal to consider appeals based on excessive charges is clearly inconsistent with what we agreed. In the third case, the statement ruling out the consideration of mitigating circumstances gives the impression that the appeals service will not look at any mitigating circumstances. Whilst we agreed that the appeals service itself would not be required to grant appeals on mitigating grounds, we reached a compromise position that the appeals service would refer cases involving mitigating circumstances back to

operators for consideration. Explicitly stating that mitigating circumstances should not be raised with the appeals service goes against the spirit of what we agreed.

I believe these inconsistencies seriously undermine the intended safeguards on reasonable behaviour by parking operators that I set as a condition of introducing the provisions in Schedule 4 of the Protection of Freedoms Act. I would therefore be grateful for your confirmation that the grounds for appeal to POPLA will be consistent with our agreement and that the POPLA website will be amended accordingly.

**From:** Anthony Boucher  
**Sent:** 09 October 2012 16:26  
**To:** [REDACTED]  
**Cc:** [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 Patricia Hayes  
**Subject:** FW: POPLA website  
**Importance:** High

Andy,

After our telephone conversation yesterday I thought I should update you on where we are with our concerns about the Independent Appeals Service, and it not operating in the way that was agreed with Norman. We have been discussing with colleagues in DVLA who are also cc'd to this email.

We have a draft submission and letter to BPA prepared just in case, and the email below explains our concerns. I'll let you know how the BPA respond, and based on their response whether ministerial involvement might be needed.

Best wishes,

Tony

**Anthony Boucher**

Traffic Division | Department for Transport |  
 Great Minster House | 33 Horseferry Road  
 London | SW1P 4DR  
 ☎ 020 7944 [REDACTED]

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**From:** Anthony Boucher  
**Sent:** 09 October 2012 15:15  
**To:** Patrick Troy  
**Cc:** [REDACTED] [REDACTED]  
**Subject:** POPLA website  
**Importance:** High

Patrick,

As I explained when we spoke on the telephone there are three areas that I was surprised to see on the POPLA website in relation to the grounds for appeal:

“the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are not valid grounds of appeal.”  
 “the fact that you think the charge is excessive is not a valid ground of appeal” , and  
 “The assessor cannot allow appeals for other reasons, e.g. mitigating circumstances”

These are all areas that were covered in correspondence between you and the minister, and where I believe a different agreement was reached. I fear that at the moment a motorist going to the POPLA website would not have the confidence to appeal if they had concerns about signage, the level of charge or if there were mitigating circumstances.

22/08/2013



Thank you for agreeing to look into this urgently. I'd be grateful if you could let me know what changes will be made so that motorists have no doubt that the first two are grounds for appeal, and that mitigating circumstances can be referred to POPLA who will consider and refer to operators as appropriate. Can you let me know when these changes will be made please? and so that I can brief Ministers later this week.

A further thought, which I didn't cover on the 'phone, but which it would also be helpful for you to consider concerns the Code. Alan and Kelvin have been discussing.

My view is that the current wording in section 23.3 of the Code goes too far by implying that your members can revert to the keeper if they encounter **any** difficulties when pursuing the named driver. I think that reverting to the keeper may be the case where the named driver refuses to acknowledge liability on the basis that he was not the driver (and therefore the BPA member could not be certain who was the driver), but I also think that in all other cases where the named driver denies liability on other grounds (ie he accepts he was the driver, but claims he bought a ticket, did not overstay etc), liability cannot revert back to the keeper. I think the Code needs to be amended to distinguish between these two different types of liability rather than suggesting that in all cases of dispute liability reverts to the keeper.

Best wishes,

Tony

**Anthony Boucher**

Traffic Division | Department for Transport |  
Great Minster House | 33 Horseferry Road  
London | SW1P 4DR

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**From:** Anthony Boucher  
**Sent:** 09 October 2012 15:15  
**To:** Patrick Troy  
**Cc:** [Redacted]  
**Subject:** POPLA website  
**Importance:** High

Patrick,

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“the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are not valid grounds of appeal.”

“the fact that you think the charge is excessive is not a valid ground of appeal” , and

“The assessor cannot allow appeals for other reasons, e.g. mitigating circumstances”

These are all areas that were covered in correspondence between you and the minister, and where I believe a different agreement was reached. I fear that at the moment a motorist going to the POPLA website would not have the confidence to appeal if they had concerns about signage, the level of charge or if there were mitigating circumstances.

Thank you for agreeing to look into this urgently. I'd be grateful if you could let me know what changes will be made so that motorists have no doubt that the first two are grounds for appeal, and that mitigating circumstances can be referred to POPLA who will consider and refer to operators as appropriate. Can you let me know when these changes will be made please? and so that I can brief Ministers later this week.

A further thought, which I didn't cover on the 'phone, but which it would also be helpful for you to consider concerns the Code. Alan and Kelvin have been discussing.

My view is that the current wording in section 23.3 of the Code goes too far by implying that your members can revert to the keeper if they encounter **any** difficulties when pursuing the named driver. I think that reverting to the keeper may be the case where the named driver refuses to acknowledge liability on the basis that he was not the driver (and therefore the BPA member could not be certain who was the driver), but I also think that in all other cases where the named driver denies liability on other grounds (ie he accepts he was the driver, but claims he bought a ticket, did not overstay etc), liability cannot revert back to the keeper. I think the Code needs to be amended to distinguish between these two different types of liability rather than suggesting that in all cases of dispute liability reverts to the keeper.

Best wishes,

Tony

**Anthony Boucher**

Traffic Division | Department for Transport |  
Great Minster House | 33 Horseferry Road  
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22/08/2013

[REDACTED]

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**From:** Anthony Boucher  
**Sent:** 12 October 2012 15:58  
**To:** 'Patrick Troy'  
**Cc:** [REDACTED]  
**Subject:** RE: POPLA website

Hi Patrick,

Without the additions that I suggested motorists will still not be clear on what grounds they can appeal, so I really do think these changes need to be made.

As I mentioned in the earlier email I was going to give the minister an update this week, but will delay to next week.

Best wishes,

Tony

**Anthony Boucher**

Traffic Division | Department for Transport |  
Great Minster House | 33 Horseferry Road  
London | SW1P 4DR  
☎ 020 7944 [REDACTED]

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**From:** Patrick Troy [mailto:Patrick.T@britishparking.co.uk]  
**Sent:** 12 October 2012 09:54  
**To:** Anthony Boucher  
**Cc:** [REDACTED]  
**Subject:** RE: POPLA website

Thanks Tony.

I have a meeting of the POPLA Management Board soon and will put your thoughts to the Board on any further changes to their website.

There has been some general feedback on the Code from a number of quarters and we plan to report this to the AOS Board next week with a recommendation to refer the detail to a reconstituted meeting of the AOS Standards Advisory Panel (to which DfT will be invited to attend). As you know the Code has been published following DVLA sign off but we believe there will be circumstances where the Code will need to be reviewed and I will ensure your point below is fed into this process.

Patrick

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**From:** Anthony Boucher [mailto:Anthony.Bou@~~xxx~~]  
**Sent:** 11 October 2012 14:37  
**To:** Patrick Troy  
**Cc:** [REDACTED]  
**Subject:** RE: POPLA website

Hi Patrick,

Thanks for acting promptly on this – it is much appreciated. The changes you’ve made to the POPLA website go some way to addressing the danger of giving a misleading impression about the grounds of appeal, but I think that just deleting the misleading references to what are not grounds of appeal is only part of the answer – the website’s customers need to be clear that appeals can be made on the basis of a claim of inadequate signage or that a charge exceeds a genuine pre-estimate of loss.

I think this can be achieved quite easily by amending the end of the first indent to read “.. or that the terms and conditions for parking were not adequately signed.”

Also the second indent could read “that you are being asked to pay the wrong, or an excessive, amount for the parking charge or that the charge has already been paid.”

On the point about paragraph 23.3 in the Code, as written the Code gives the impression that liability can revert back to the keeper in all cases where the driver refuses to accept liability. I think that is wrong, but with a short addition in text it could easily be put right, by adding the words “on the basis that he was not the driver” after the word “liability” in that section.

Many thanks again for your help with this.

Best wishes,

Tony

**Anthony Boucher**

Traffic Division | Department for Transport |  
Great Minster House | 33 Horseferry Road  
London | SW1P 4DR  
☎ 020 7944 [REDACTED]

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**From:** Patrick Troy [<mailto:Patrick.T@britishparking.co.uk>]

**Sent:** 10 October 2012 14:47

**To:** Anthony Boucher

**Cc:** [REDACTED] [REDACTED]

**Subject:** RE: POPLA website

Hi Tony

Further to my note of yesterday I am assured that the changes on the POPLA website will be made later today. The text will read as follows with relevant sections deleted:

The Assessor considers all of the evidence from you and from the operator.

If your appeal is allowed, the operator will cancel the parking charge notice. If your appeal is refused, you need to make payment as soon as possible to avoid the operator taking steps to recover the payment from you.

~~If the facts of your case do not amount to a valid ground then the Assessor cannot allow the appeal. The Assessor has no power to allow an appeal simply because of mitigating circumstances.~~

In the **Grounds of Appeal** section:

The grounds under which you can appeal the parking charge notice are as follows:

- ▼—**The vehicle was not improperly parked:** e.g. that the vehicle was not parked where stated on the parking charge notice; that you believe you were still within the time you paid for; that the voucher was clearly displayed or that the conditions were not properly signed. ~~However, the fact that you did not see the sign; that you bought a voucher but it fell down; that you did not see the bay markings or that you did not realise that you could not park where you did are not valid grounds of appeal~~
- ▼—**The parking charge (ticket) exceed the relevant amount:** e.g. that you are being asked to pay the wrong amount for the parking charge or that the charge has already been paid. ~~However, the fact that you think that the charge is excessive is not a valid ground of appeal.~~
- **The vehicle was stolen:** e.g. that the vehicle was improperly parked after being stolen. However, the fact that someone else was driving your vehicle, for example a family member, friend or colleague, is **not** in itself a valid ground of appeal. The fact that you told the driver that they could only use your vehicle on condition they did not get any parking tickets is **not** a valid ground of appeal.
- **I am not liable for the parking charge:** e.g. that you had sold the vehicle before, or bought it after, the alleged improper parking. However, the fact that you do not think you should have to pay the parking charge or the fact that you had paid to park (even if, for example, the voucher was not clearly displayed) are **not** valid grounds of appeal.

~~The Assessor can only allow an appeal if one of these grounds applies. The Assessor cannot allow appeals for other reasons, e.g. mitigating circumstances.~~

If this means that you have to increase the size of the font of what is left so that it matches the rest and fills the space, then that is fine.

Also, on the **FAQs** page:

## How does the Assessor make their decision?

Having considered the evidence presented by both parties the Assessor has to come to a conclusion about what actually happened (make findings of fact). The Assessor then has to apply the relevant law to these findings of fact. In cases where the Assessor determines that you are liable for the parking charge, he or she must refuse the appeal. ~~The Assessor is~~

~~unable to waive the parking charge because of mitigation.~~

The consensus was (as advised by the Lead Adjudicator) that it would be simpler and more helpful to simply delete references to mitigation. One of the difficulties here is that mitigation means different things to different people and it is safer to let motorists decide for themselves in all cases if they feel their case has not been fairly considered by the operator (as happens with the statutory scheme).

With regard to your final point about para 23.3 of the Code I agree with your interpretation that where the driver refuses to acknowledge liability that liability reverts to the keeper but where, for example, the driver simply refuses to pay, then the driver remains liable. I am not sure that 23.3 can be interpreted any other way but we are establishing a group which will regularly review the Code (its first meeting is likely to be in November) to which DfT, DVLA, OFT, operators and motorist/consumer organisations will be invited to participate and I would expect any refining of words or descriptions to take place there where necessary. You should be aware that there is already significant pressure from operators regarding the signage requirements in the Code for a review and it would be helpful therefore for DfT to be represented at these meetings to ensure we achieve the desired balance.

I hope the above resolves the issues you have raised but do let me know if you need anything further.

Best regards.

Patrick

---

**From:** Anthony Boucher [\[mailto:x@xk\]](mailto:x@xk)

**Sent:** 09 October 2012 15:15

**To:** Patrick Troy

**Cc:** [REDACTED]

**Subject:** POPLA website

**Importance:** High

Patrick,

As I explained when we spoke on the telephone there are three areas that I was surprised to see on the POPLA website in relation to the grounds for appeal:

“the fact that you did not see the sign ... that you did not see the bay markings or that you did not realise that you could not park where you did are not valid grounds of appeal.”

“the fact that you think the charge is excessive is not a valid ground of appeal” , and

“The assessor cannot allow appeals for other reasons, e.g. mitigating circumstances”

These are all areas that were covered in correspondence between you and the minister, and where I believe a different agreement was reached. I fear that at the moment a motorist going to the POPLA website would not have the confidence to appeal if they had concerns about signage, the level of charge or if there were mitigating circumstances.

Thank you for agreeing to look into this urgently. I'd be grateful if you could let me know what changes will be made so that motorists have no doubt that the first two are grounds for appeal, and that mitigating circumstances can be referred to POPLA who will consider and refer to operators as appropriate. Can you let me know when these changes will be made please? and so that I can brief Ministers later this week.

A further thought, which I didn't cover on the 'phone, but which it would also be helpful for you to consider concerns the Code. Alan and Kelvin have been discussing.

My view is that the current wording in section 23.3 of the Code goes too far by implying that your members can revert to the keeper if they encounter **any** difficulties when pursuing the named driver. I think that reverting to the keeper may be the case where the named driver refuses to acknowledge liability on the basis that he was not the driver (and therefore the BPA member could not be certain who was the driver), but I also think that in all other cases where the named driver denies liability on other grounds (ie he accepts he was the driver, but claims he bought a ticket, did not overstay etc), liability cannot revert back to the keeper. I think the Code needs to be amended to distinguish between these two different types of liability rather than suggesting that in all cases of dispute liability reverts to the keeper.

Best wishes,

Tony

**Anthony Boucher**

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Great Minster House | 33 Horseferry Road  
London | SW1P 4DR

☎ 020 7944 [REDACTED]

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[REDACTED]

---

**From:** Anthony Boucher  
**Sent:** 16 October 2012 15:51  
**To:** [REDACTED]  
**Subject:** RE: Ministerial correspondence on POPLA

Agreed – thanks Alan.

---

**From:** [REDACTED]  
**Sent:** 16 October 2012 15:50  
**To:** Anthony Boucher  
**Subject:** RE: Ministerial correspondence on POPLA

Tony,

I think we should recommend he writes – Patrick has not responded to your email inviting him to make the changes that we think are necessary and you did inform him you would be briefing Norman early this week. As Patrick has not replied I think we simply advise Norman that he writes to the BPA along the same lines as your last email if he is content.

If you agree I will revise the submission along these lines first thing tomorrow.

[REDACTED]  
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 Great Minster House | 33 Horseferry Road  
 London | SW1P 4DR

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**From:** Anthony Boucher  
**Sent:** 16 October 2012 15:30  
**To:** [REDACTED]  
**Subject:** RE: Ministerial correspondence on POPLA

Thanks [REDACTED]

Patrick or [REDACTED] will no doubt be on the phones to [REDACTED] as soon as they hear about the suspensions. It will be interesting to see whether the operators launch a legal action or not

As operators are being suspended today, I think we should get the sub up to Norman.

Might need to change the recommendation a bit to reflect that we've been having dialogue with BPA on the Code and the POPLA website. In which case is it a "to note" or "to agree to write" if say BPA haven't made the necessary changes by the end of the week?

Tony

---

**From:** [REDACTED]  
**Sent:** 16 October 2012 12:37  
**To:** Anthony Boucher  
**Subject:** Ministerial correspondence on POPLA  
**Importance:** High

Tony,

To note PO have asked to hold this correspondence pending the outcome of discussions with BPA. DVLA have similar outstanding correspondence so we need to resolve this asap. Do you want to have a final go at Patrick or should we alert Norman?

[REDACTED]  
[REDACTED]  
[REDACTED] | Department for Transport |  
Great Minster House | 33 Horseferry Road  
London | SW1P 4DR  
☎ 020 7944 [REDACTED]

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**From:** [REDACTED]@ma [mailto:MSU\_Correspondence@dft.gsi.gov.uk]  
**Sent:** 16 October 2012 12:20  
**To:** [REDACTED]  
**Cc:** [REDACTED] Anthony Boucher  
**Subject:** Ministerial correspondence, ref 56111 from Anne Main MP about the new parking on private land appeals service (POPLA) has been assigned to you for redraft by 18:00 18/10/2012.  
**Importance:** High

Please go to [Chapter](#), to view the details. A note has been added to the case to explain what is required.

1. Please complete the redraft for Norman Baker by 18:00 18/10/2012.

For further advice or assistance contact MSU (4478)

As per note. Ta

**From:** Anthony Boucher  
**Sent:** 18 October 2012 09:22

**To:** [REDACTED] [REDACTED] [REDACTED] [REDACTED] dvla.gsi.gov.uk; [REDACTED]  
 [REDACTED] dvla.gsi.gov.uk; [REDACTED]

**Subject:** RE: Submission to NB: BPA POPLA & Code

Thanks Alan

A suggested change to para 8 to read instead:

8. The BPA responded with a suggestion that they discuss this at a future, undated, board meeting. We challenged this approach, reiterating that the website needs to change now to provide motorists with the right information and for it to match with what was agreed with you. We will continue to push BPA to make the necessary changes, but believe that if they do not make the change by the end of this week it will be appropriate for you to write to them insisting that the POPLA website must make clear to customers that they can appeal on these grounds, and also clarify the right to submit appeals based on mitigating circumstances as follows. On this basis, the attached draft letter would be despatched early next week.

I've got to rush off to an all-day meeting - could you ping Patrick an email to ask for a response to my most recent email I the hope that he'll say "yes, all the changes will be made"....

Best wishes,

Tony

**Anthony Boucher**

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**From:** [REDACTED]  
**Sent:** 17 October 2012 11:39

**To:** Anthony Boucher; [REDACTED] [REDACTED] [REDACTED] dvla.gsi.gov.uk; [REDACTED]  
 [REDACTED] dvla.gsi.gov.uk; [REDACTED]

**Subject:** Submission to NB: BPA POPLA & Code

**Importance:** High

All,

I attach a submission to NB concerning the changes we believe need to be made to the POPLA website and the BPA Code of Practice.

It is quite complicated, and I have therefore not included other amendments (relating to incorrect references to "offences" and the text on early payment discounts etc), on the basis that hopefully we can agree those at official level if/when the BPA agree to make the substantive changes proposed in the submission.

A couple of points: should we refer to the recent decision to suspend access to 3

22/08/2013

operators? This question is linked to the consideration of what action we advise Ministers to take if BPA/POPLA continue to prevaricate or refuse outright to make the changes we require. On the latter is there a view on options, particularly on whether we should go so far as to recommend to Ministers that they could consider a general suspension on ATA member access to DVLA data if the changes aren't made? I don't think advice on this needs to go in this submission but we need to consider the options and what is possible if BPA choose not to co-operate.

I'd like to get this up tomorrow (Thursday), so apologies for the tight deadline, but can I have any comments/amendments by midday tomorrow please.

Regards

[REDACTED]

[REDACTED]

[REDACTED] Division | Department for Transport |  
Great Minster House | 33 Horseferry Road  
London | SW1P 4DR

☎ 020 7944 [REDACTED]

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**From:** Anthony Boucher  
**Sent:** 23 October 2012 15:35  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: Parking on Private Land  
**Attachments:** Letter to Norman Baker MP 231012.docx

Rob, Simon

I thought you would want to see this – Patrick talks about the recent suspension of 6 BPA members from having access to DVLA data, and suggests that in future rather than an operator being suspended the motorist could instead complain to POPLA who could in turn ask BPA to sanction their members through their AOS.

Best wishes,

Tony

**Anthony Boucher**

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 Great Minster House | 33 Horseferry Road  
 London | SW1P 4DR  
 ☎ 020 7944 [REDACTED]

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**From:** [REDACTED] [mailto:victor@xk]  
**Sent:** 23 October 2012 14:28  
**To:** Anthony Boucher  
**Subject:** Parking on Private Land

Dear Mr Boucher

Please see attached letter from Patrick Troy to Norman Baker, MP, which is being sent out today.

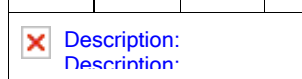
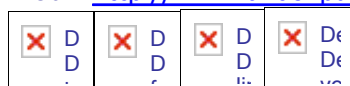
Regards,

**PA to the Chief Executive & Directors  
 British Parking Association**

Tel: **01444 447304**

Fax: **01444 454105**

Web: <http://www.britishparking.co.uk/Terms>



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[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 14 August 2013 13:24  
**To:** Anthony Boucher  
**Subject:** FW: Submission: Appeals for parking on private land  
**Attachments:** 121025 - Submission POPLA website.doc

[REDACTED]  
 Traffic Division | Department for Transport |  
 Great Minster House | 33 Horseferry Road  
 London | SW1P 4DR

☎ 020 7944 [REDACTED]

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**From:** Anthony Boucher  
**Sent:** 25 October 2012 12:37  
**To:** Norman Baker\_MP  
**Cc:** DFTSpecialAdvisers; Philip Rutnam; Simon Burns\_MP; Stephen Hammond\_MP; TransportSecretary; Steve Gooding; Patricia Hayes; [REDACTED]  
**Subject:** Submission: Appeals for parking on private land

I attach a submission which begins:

#### Issue

1. Motorists are not being given clear guidance about the grounds on which they can appeal if they receive a parking ticket when they park on private land. Officials have had some success in pushing the British Parking Association (BPA) to make the necessary changes, but the BPA are prevaricating on some aspects, and a letter from you may be needed. There is also a problem with the revised BPA Code of Practice which gives potentially misleading advice to their members about keeper liability.

#### Timing

2. Routine

#### Recommendation

3. That you consider the discrepancies between the undertakings given to you by the BPA about what would be considered as grounds for an appeal, with those actually being offered on the website, and also the advice given to BPA members on keeper liability in the revised BPA Code of Practice. We recommend you write to the BPA asking them to rectify these discrepancies.

Best wishes

Tony

Anthony Boucher  
 Deputy Director, Traffic Division  
 Ext [REDACTED]

22/08/2013

To: Norman Baker

From: Anthony Boucher  
Traffic

Location: 3/26 GMH

Tel: 0207944 [REDACTED]

Date: 25 October 2012

Copies: List at end

## **BRITISH PARKING ASSOCIATION: INDEPENDENT APPEALS SERVICE AND CODE OF PRACTICE**

### Issue

1. Motorists are not being given clear guidance about the grounds on which they can appeal if they receive a parking ticket when they park on private land. Officials have had some success in pushing the British Parking Association (BPA) to make the necessary changes, but the BPA are prevaricating on some aspects, and a letter from you may be needed. There is also a problem with the revised BPA Code of Practice which gives potentially misleading advice to their members about keeper liability.

### Timing

2. Routine

### Recommendation

3. That you consider the discrepancies between the undertakings given to you by the BPA about what would be considered as grounds for an appeal, with those actually being offered on the website, and also the advice given to BPA members on keeper liability in the revised BPA Code of Practice. We recommend you write to the BPA asking them to rectify these discrepancies.

### Background/Analysis

4. Relevant extracts from the correspondence between you and the BPA are attached at Annex A.


### Appeals website

5. The Parking On Private Land Appeals website (POPLA) went live on 1 October 2012, at the same time as the keeper liability provisions in Schedule 4 of the Protection of Freedoms Bill 2012 came into force. From the outset it gave misleading information that appeals based on either the charge being excessive or that the customer had not seen the signs were not grounds for appeal.
6. We informed the BPA that this was inconsistent with the agreement in your letter of 24 May 2012 to the BPA, and the reply from Patrick Troy (see Annex A). They responded quickly to say that this was an innocent mistake and agreed to delete the incorrect statements. However, we also made clear that this was not enough as the appeals service should actively make clear that appeals are permitted on the grounds that the customer believes a charge is excessive, or that he believes the signage was inadequate.
7. We also pointed out that the website does not make clear that the adjudicator can consider mitigating circumstances, and refer cases back to the operator where he thinks fit, which was also a function of the appeals service that you agreed with the BPA (see Annex A).



8. The BPA responded suggesting that they would discuss these issues at a board meeting, and that meeting was held earlier this week. They have agreed to change the wording so that it is now clear to motorists that they can appeal where there are inadequate signs. This is a step forward, but they are unwilling to make changes to the website so that motorists know that they can appeal if they believe the charge was excessive or disproportionate. Their reasoning is that motorists might see any charge as excessive and as a result the appeals service would be flooded with appeals.
9. Parking on-street is covered by legislation that prescribes the level of penalty for a contravention of law. Parking on private land is different as it is covered by contract law or the law of trespass. A standard model for parking operators is to put up clear terms and conditions in a car park on the basis that anyone who parks accepts those terms and conditions (either expressly or by implication) and then enters into a contract with the parking operator. Breach of the terms and conditions (such as not paying for parking) would incur a charge for breach of contract. However, contract law provides that charges for breach of contract must be based on a genuine pre-estimate of the loss the parking operator suffers as a result of the breach. Pre-estimating an operator's loss for a particular event can become quite complicated but the key feature is that there must be a genuine assessment of the loss to the operator for the motorist breaching the contract, so there is no "standard" figure to apply (and in many cases the loss may in fact be a negligible amount). The law of trespass is similar in that the remedy is damages for actual loss suffered.
10. The BPA have placed a recommended cap on charges by their members in their latest code of practice of £100 and it is clear to us from recent correspondence that they see anything under this figure as being a reasonable amount for their members to charge motorists when they do not comply with the conditions for parking on private land. The adjudicator at POPLA, applying contract law to appeals, could determine in any one case that an operator has not genuinely calculated a pre-estimate of his losses and decide that the actual figure which can be recovered is much lower. We believe it is for this reason that the BPA is unwilling to change the website to inform motorists that they may appeal against excessive charges.

### **Revised BPA Code of Practice**

11. The revised BPA Code of Practice advises BPA members what happens where a vehicle keeper provides a driver's name but states "if the driver or hirer refuses to acknowledge their liability, you would be able to pursue the registered keeper."
12. Our legal advice is that 

13. The current wording in the Code therefore goes too far by implying that BPA members can revert back to the keeper for any difficulties they encounter when pursuing the named driver, and that therefore it should be amended as soon as possible to ensure it does not provide misleading information. Our discussions with the BPA on this have reached an impasse.

### **Presentation and Handling**

14. Parking is an emotive issue and there was significant media interest when changes to the law came into force on October 1. There are many active forums and websites that advise motorists what to do when they receive a ticket, and our expectation is that these sites will be telling motorists about parking on private land, and advising that they appeal on excessive charges. Subsequent media coverage may follow, criticising the Government for setting up an appeals service that doesn't provide motorists with adequate information.

15. We will prepare reactive lines with press office outlining our position if media enquiries are made.

### **Summary**

16. The differences between what the BPA agreed with you and what is now actually being offered by the appeals service significantly weakens the intended controls on reasonable behaviour by parking operators that you envisaged. The revised Code of Practice also provides potentially misleading information to BPA members.

17. If you are content a draft letter to the BPA to address these concerns is attached at Annex B.

Anthony Boucher  
Traffic Division

copy

Secretary of State	Patricia Hayes	
Simon Burns MP		
Stephen Hammond MP		
Philip Rutnam		
Steve Gooding		
Special Advisers		

## ANNEX A

### **Correspondence on appeals based on excessive charges & inadequate signs**

Your letter of 24 May 2012 to the BPA:

“As well as ruling on whether or not a parking contravention has taken place, I believe it is important that the appeals service should also be able to rule, on a case-by-case basis, whether a parking company has behaved reasonably. Consideration should be given to the formation and existence of a contract, taking into account relevant consumer protection law, such as in relation to the signage at the car park and the terms and conditions being relied upon. There should also be an assessment as to whether or not the parking charges in question arise from a reasonable pre-estimate of loss or whether they include an element of unenforceable penalty.”

Patrick Troy’s (Chief Executive of the BPA) reply dated “May 2012”:

“I am pleased to confirm that the service will rule on the law just as the statutory service does under the Traffic Management Act. This law will include contract law, consumer protection law and trespass law as appropriate and of course will also cover the new Protection of Freedoms Act. Therefore signage and levels of charge will be covered by the service as signage is essential to the establishment of a contract between the landowner and the motorist under contract law and unreasonable levels of charge could invalidate the contract under the same law.”

### **Correspondence on mitigating circumstances**

Your letter of 24 May 2012 to the BPA:

“I believe it is also important that the appeals service should be able to take action where a parking company has refused to consider what the service considers to be evidence of reasonable mitigating circumstances from an appellant. Your proposal to deal with this is by giving the adjudicator a power to refer the issue to the Chief Executive or Managing Director of the operator concerned is consistent with how the statutory appeals services deal with mitigation in respect of tickets issued by local authorities, and on this basis I am content for the arrangements to operate in the manner you suggest.”

Patrick Troy’s reply:

“Thank you for your support for my suggestion that the adjudicator should have the power to refer cases of unreasonableness in considering mitigation to the Chief Executive or Managing Director of the Operator concerned (which mimics the statutory process under TMA).”

ANNEX B: DRAFT LETTER TO PATRICK TROY, CHIEF EXECUTIVE OF THE  
BRITISH PARKING ASSOCIATION

**PARKING ON PRIVATE LAND APPEALS (POPLA) GROUNDS FOR APPEAL,  
AND THE REVISED BPA CODE OF PRACTICE**

I am writing to you about the stated grounds for appeal on the newly-launched website of the Parking on Private Land Appeals (POPLA) service, and the advice given to your members on keeper liability in the revised BPA Code of Practice.

As you know we exchanged a number of letters on what the eligible grounds for appeal should be in the run-up to 1 October, and agreed among other things that POPLA would be able to:

- look at evidence of the formation of a contract including the signage involved and whether this was compatible with relevant contract and consumer protection law;
- consider whether or not a parking charge was based on a genuine pre-estimate of loss, or whether it contained an element of non-enforceable penalty;
- refer cases where the adjudicator considered a parking operator had failed to take account of reasonable mitigating circumstances back to the CE or MD of the operator concerned for review, who would then report back to POPLA on any action taken.

My letter to you dated 24 May 2012 and yours to me dated “May 2012” refer.

Given the above I was disappointed to see that the POPLA website fails to give customers clear information on the grounds for appeal, or that the appeals service could, on a case-by-case basis, refer cases involving mitigating circumstances back to operators for consideration.

My officials have exchanged correspondence with you on these matters, and advised on how these omissions can be rectified on the website. It is good that the website will now provide correct information about appeals on signage, but I consider other changes are essential if the BPA is to deliver on the commitments given to me as a condition of commencing Schedule 4 of the Protection of Freedoms Act 2012. I would therefore be grateful for your confirmation by return that these changes will be made.


With regard to the revised BPA Code of Practice, my officials have also exchanged correspondence with you on the specific wording of paragraph 23.3 which advises your members what happens where a vehicle keeper provides a driver's name but states “if the driver or hirer refuses to acknowledge their liability, you would be able to pursue the registered keeper.” This wording goes too far by implying that your members can revert to the keeper if they encounter any difficulties in establishing liability when pursuing the named driver. It should therefore be amended as soon as possible to make clear that BPA members may only revert back to the vehicle keeper where the named driver asserts that he was not the driver.

I believe failure to act on these issues would seriously undermine the intended safeguards on reasonable behaviour by parking operators that I clearly set as a

condition of agreeing to introduce the provisions in Schedule 4 of the Protection of Freedoms Act. I would therefore be grateful for your confirmation that you will ensure that the Code of Practice and the grounds of appeal to POPLA are amended forthwith to reflect that agreement.




---

**From:** Anthony Boucher  
**Sent:** 10 December 2012 09:21  
**To:**   
**Subject:** FW: IAS File note -3  
**Attachments:** Archived

Best wishes,

Tony

**Anthony Boucher**

Traffic Division | Department for Transport |  
Great Minster House | 33 Horseferry Road  
London | SW1P 4DR  
☎ 020 7944 

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**From:** Patrick Troy [mailto:Patrick.T@britishparking.co.uk]  
**Sent:** 26 October 2012 14:58  
**To:** Anthony Boucher  
**Subject:** IAS File note -3

Tony

I mentioned that we were working on some proposals to move POPLA into independence and I attach a file note which sets out our current thinking around this. You will see there is further work to be done and that we need to move this though our governance structures carrying London Councils with us as we do so.

The purpose of sending this to you now is to ask you to indicate whether this approach is generally the way government would support us going. I'm not looking for any sign off at this stage – we will submit that formally at the appropriate time – but a general indication would be helpful.

I am happy to meet to talk this through if that would be more helpful. I am on leave for most of November so we could sensibly meet in December if that would help.

Patrick

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Department  
for Transport

Patrick Troy  
Chief Executive, British Parking Association  
Stuart House  
41-43 Perrymount Road  
Haywards Heath  
West Sussex  
RH16 3BN

From the Parliamentary  
Under Secretary of State  
**Norman Baker MP**

Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Tel: 020 7944 2566  
Fax: 020 7944 4309  
E-Mail: [norman.baker@dft.gsi.gov.uk](mailto:norman.baker@dft.gsi.gov.uk)

Web site: [www.dft.gov.uk](http://www.dft.gov.uk)

30 October 2012

Dear Patrick

**PARKING ON PRIVATE LAND APPEALS (POPLA) GROUNDS FOR  
APPEAL, AND THE REVISED BPA CODE OF PRACTICE**

I am writing to you about the stated grounds for appeal on the newly-launched website of the Parking on Private Land Appeals (POPLA) service, and the advice given to your members on keeper liability in the revised BPA Code of Practice.

As you know we exchanged a number of letters on what the eligible grounds for appeal should be in the run-up to 1 October, and agreed among other things that POPLA would be able to:

- look at evidence of the formation of a contract including the signage involved and whether this was compatible with relevant contract and consumer protection law;
- consider whether or not a parking charge was based on a genuine pre-estimate of loss, or whether it contained an element of non-enforceable penalty;
- refer cases where the adjudicator considered a parking operator had failed to take account of reasonable mitigating circumstances back to the CE or MD of the operator concerned for review, who would then report back to POPLA on any action taken.

My letter to you dated 24 May 2012 and yours to me dated "May 2012" refer.

Given the above I was disappointed to see that the POPLA website fails to give customers clear information on the grounds for appeal, or that the

appeals service could, on a case-by-case basis, refer cases involving mitigating circumstances back to operators for consideration.

My officials have exchanged correspondence with you on these matters, and advised on how these omissions can be rectified on the website. It is good that the website will now provide correct information about appeals on signage, but I consider other changes are essential if the BPA is to deliver on the commitments given to me as a condition of commencing Schedule 4 of the Protection of Freedoms Act 2012. I would therefore be grateful for your confirmation by return that these changes will be made.

With regard to the revised BPA Code of Practice, my officials have also exchanged correspondence with you on the specific wording of paragraph 23.3 which advises your members what happens where a vehicle keeper provides a driver's name but states "if the driver or hirer refuses to acknowledge their liability, you would be able to pursue the registered keeper." This wording goes too far by implying that your members can revert to the keeper if they encounter any difficulties in establishing liability when pursuing the named driver. It should therefore be amended as soon as possible to make clear that BPA members may only revert back to the vehicle keeper where the named driver asserts that he was not the driver.

I believe failure to act on these issues would seriously undermine the intended safeguards on reasonable behaviour by parking operators that I clearly set as a condition of agreeing to introduce the provisions in Schedule 4 of the Protection of Freedoms Act. I would therefore be grateful for your confirmation that you will ensure that the Code of Practice and the grounds of appeal to POPLA are amended forthwith to reflect that agreement.

Yours sincerely



**NORMAN BAKER**



[REDACTED]

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**From:** [REDACTED]  
**Sent:** 14 August 2013 13:25  
**To:** Anthony Boucher  
**Subject:** FW: Submission: Appeals for parking on private land  
**Attachments:** 121030 POPLA Concerns NB\_PT.pdf

[REDACTED]  
 Traffic Division | Department for Transport |  
 Great Minster House | 33 Horseferry Road  
 London | SW1P 4DR  
 ☎ 020 7944 [REDACTED]

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**From:** [REDACTED]  
**Sent:** 30 October 2012 11:53  
**To:** Anthony Boucher; [REDACTED]  
**Cc:** Steve Gooding; Patricia Hayes; [REDACTED]  
 [REDACTED]  
 \_Submissions  
**Subject:** RE: Submission: Appeals for parking on private land

Tony,

Thanks for the submission. The Minister has signed the letter and this will be sent today. A PDF version is attached.

It would be helpful to have a note at some point about the options available to the Minister should the BPA fail to act.

Best,

Andy

Andrew Holmes | Assistant Private Secretary to Norman Baker MP | Parliamentary Under Secretary of State | Department for Transport |  
 Zone 5/17 | Great Minster House | 33 Horseferry Road | London | SW1P 4DR | Tel: 0207 944 [REDACTED] | Fax: 0207 944 4309 | Email:  
[andy.holmes@dft.gsi.gov.uk](mailto:andy.holmes@dft.gsi.gov.uk)  
 Please consider the environment before printing this email

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**From:** Anthony Boucher  
**Sent:** 25 October 2012 12:37  
**To:** Norman Baker\_MP  
**Cc:** DFTSpecialAdvisers; Philip Rutnam; Simon Burns\_MP; Stephen Hammond\_MP; TransportSecretary; Steve Gooding; Patricia Hayes; [REDACTED]  
 [REDACTED]  
**Subject:** Submission: Appeals for parking on private land

I attach a submission which begins:

#### Issue

1. Motorists are not being given clear guidance about the grounds on which they can appeal if they receive a parking ticket when they park on private land. Officials have had some success in pushing the British Parking Association (BPA) to make the necessary changes, but the BPA are prevaricating on some aspects, and a letter from you may be needed. There is also a problem with the revised BPA Code of Practice which gives

potentially misleading advice to their members about keeper liability.

Timing

2. Routine

Recommendation

3. That you consider the discrepancies between the undertakings given to you by the BPA about what would be considered as grounds for an appeal, with those actually being offered on the website, and also the advice given to BPA members on keeper liability in the revised BPA Code of Practice. We recommend you write to the BPA asking them to rectify these discrepancies.

Best wishes

Tony

Anthony Boucher  
Deputy Director, Traffic Division  
Ext [REDACTED]



Patrick Troy

Norman Baker MP  
Parliamentary Under-Secretary for the  
Department for Transport  
Great Minster House  
76 Marsham Street  
London SW1 4DR

1<sup>st</sup> November 2012

Dear Minister

**Parking on Private Land Appeals (POPLA)  
Grounds for Appeal and the Revised BPA Code of Practice**

Thank you for your letter dated 30<sup>th</sup> October 2012.

Let me say immediately that I completely support the agreements we made regarding POPLA and Schedule 4, and the BPA has absolutely no intention of doing anything other than complying with those agreements. Therefore, you will understand I am naturally concerned that you feel the BPA is in any way reneging on those agreements. We are not.

POPLA will deal with all the issues referred to in your letter in respect of signage, charges and mitigation. POPLA and, perhaps more importantly, the Lead Adjudicator, is very clear on that. The website sets out the grounds for appeal, but it will always be for the Adjudicator to decide whether, for example, consumer protection and contract law has been properly applied, including whether signage is adequate to create a contract between landowner and motorist, and whether the charge for the contravention is proportionate (as if it is not then the contract may be deemed to have not been made or might have been unreasonable). As your own officials have constantly reminded me, it is a fact that Schedule 4 has not changed the underlying principles of contract or consumer law and therefore the lawful process by which landowners can legitimately manage their land. Schedule 4 only provides a route to recover unpaid charges from the registered keeper in defined circumstances. This will always be the case (unless and until, that is, Government decides to regulate the sector).

I am disappointed therefore, that you feel the POPLA website is not clear on the circumstances in which motorists can appeal. I agree that some wording was potentially ambiguous when the website was first established, and POPLA agreed to change this, but, as the website sits now, I believe it fully meets the requirements set out in our exchange of letters earlier this year. Additionally, outside of POPLA, I believe we could not have done more in achieving a reduction in the maximum charge recommended in our Code of Practice from £150 to £100, a move only agreed once the OFT and your own officials had fully considered the implications. Competition law prevents the BPA from controlling or regulating these kinds of charges.

I do accept the website does not make reference to mitigation. I will speak to POPLA to see if we can make clear the position on mitigation, but I hope you will understand that POPLA will need to be very careful about raising motorists' expectations that every type of mitigation

will result in a reference by the Adjudicator to the operator, with a resultant positive outcome. This does not seem to me to be in the wider interests of the motorist, but you may rest assured that the Adjudicator is fully aware of your requirements in this regard.

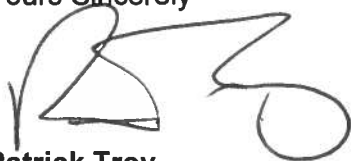
With reference to our Code of Practice, you will understand my concern at your comments when I explain that we had no less than six all-day meetings at which both DVLA and your officials were present, where the Code was discussed and written. DVLA signed off the Code, which is now with our members and, of course, in the public domain. Having said that, I really do not believe we are very far apart on this issue. The Code sets out circumstances where the driver "refuses to acknowledge liability" and you set out in your letter circumstances where the driver "asserts that he was not the driver". It might be that we are disagreeing over the interpretation of the word "liability", so, although our legal advice fully supports our wording as being compliant with the Act, I will agree to do two things to assist:

- (a) I will write to our members to ensure they understand that they should only interpret this clause in the Code to mean that they can only revert to the keeper where the driver says he was not the driver at the time.
- (b) I will refer the matter to the group we have established (to which your officials and DVLA are invited) to review the Code so that, if appropriate, the wording is changed to eliminate any ambiguity.

I do want to ensure POPLA and our new Code deliver the highest standards that we both want to see. I hope you will agree that actions speak louder than words and that the achievement of these two major changes – even though there may be some wrinkles to iron out – is evidence of our sincerity in this regard.

Finally, may I remind you of the contents of my letter dated 23 October which is in some ways directly related to this issue and I would be most grateful to receive your views on the issues raised there in relation to the wider sector.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Patrick Troy', with a stylized flourish at the end.

**Patrick Troy**  
**Chief Executive**