

42) PARKING - The latest in a series of articles by Iain Gregory of Caithness CAB

Some years ago I set off for a day out with the patriarch of our stateside family, known to all as "Pa". We were heading for upstate New York to visit a military museum and, on arrival, I headed towards the kiosk to pay followed by very vocal reminders that I was not to forget that said venerable elder was "an ex-GI and a senior and disabled" and was therefore entitled to various discounts. The attendant weighed things up and announced that it might be easier if he "just let the old guy in free". A wise decision. On the way home Pa announced he was hungry and, as Ma was not present, he would have some forbidden fast food. Spotting a Burger King he launched his beloved Chevy across 6 lanes of traffic and a number of red lights with much enthusiasm, responding to irate honking by shouting "I'm a goddamned veteran, let me through". We entered the car park, ran over a parking cone, came to a halt across three bays, and nearly hit the attendant who responded with "You just have a nice day now Sir". Americans can be very sensible at times.

Whilst Pa's parking may have left something to be desired at least he didn't encounter the sort of nonsense which many Caithnessians are being confronted with if they make the error of using various privately run car parks in the cities. We have been inundated with complaints from people who have been treated very unjustly by the operators and have been presented with demands for huge sums of money, all appeals to common-sense being duly rejected. As a couple of examples we have had cases where someone has entered the car park, driven around for some time, been unable to find a parking place and has therefore driven off, only to receive a bill for £100 plus shortly afterwards. A disabled person of great age who simply could not move fast enough to the machine to buy the ticket had the same treatment and people who, in poor lighting, accidentally entered say the figure "0" instead of the letter "O" have been likewise pursued. Numerous threatening letters have followed along with demands from "debt collectors" and our irate letters to the firms have been ignored or rejected with a pro-forma refusal. The problem is so bad that there has been a debate in the Scottish Parliament on the subject and I rather think that legislation will follow soon. I have been in touch with the MSP who called for the debate and it is clear that this issue is reaching epidemic proportions throughout Scotland and it needs to be sorted. If you want to find out more about the alleged situation in a certain car park in Inverness just type in "Inverness Courier Parking Campaign" and you will be enlightened.

So where do we stand legally? Well, let's start with parking on a public road. Generally speaking there are clear indications as to how and when you may park – yellow lines and notices on lamp-posts and so on - and if we don't follow the parking restrictions, we might well arrive back at our vehicle to find a "Fixed Penalty Notice" – and please note the words "Fixed Penalty Notice" - stuck on the windscreen, which a police officer or traffic warden has lawfully issued. Whilst this is never exactly welcome, there is a proper process,

enshrined in legislation, which allows us to appeal and indeed to go as far as having our case heard in court in front of a Sheriff, so we can be assured of proper and fair treatment.

When we come to un-regulated private firms the situation is entirely different. If you park on private land, such as at a supermarket car park or in a commercial facility, you will have entered into a contract with the landowner and general contract law applies. If there are clear signs displayed in the car park setting out rules for using same, then these are the terms of the contract and if any of these rules are broken, then the car park owner can take steps to enforce them. Now, if you receive a demand for payment it may well be so worded, or of such an appearance, as to give you the impression that it is a "Fixed Penalty Notice". Please rest assured that it is no such thing. It is a demand for payment – which may or may not be legitimate – from the other party to the contract. It is purely a civil matter and is most certainly not criminal. The car park operator issues the notice on the basis that you have broken the terms of the contract and for a binding contract to have been formed between you and the landowner, the rules about where and when you can park and what charges apply must have been displayed clearly throughout the car park (particularly at the entrances). They must have been clear enough so that no reasonable person could claim that they were not aware of the rules – a sign is misleading if it fails to make it clear what the car parking rules that form the contract between you and the landowner are. If signs are misleading or deceptive, they might break consumer protection regulations, as well as not forming a valid and enforceable term of the contract between you and the landowner.

The first thing to do is appeal to the car parking firm and you can also appeal to any "professional" association to which the operator belongs. This may well not do you the slightest good, but it means you have a paper trail and in the unlikely event that the firm actually has a genuine case and they go to a civil court then they will need to prove it to a Scottish Sheriff before he or she will make an order and you will be able to produce your letters as evidence. And one other point – if you are the registered keeper, you may be sent a ticket but if you didn't park the car at the time the ticket was issued and you don't say who the driver was, there is no law in Scotland that makes you, as the registered keeper, automatically liable for the ticket and you do not have to identify the person who parked the car. And finally, you can of course completely ignore all correspondence from the firm, but there is always the risk that they might take you to court. This is your choice. And if you want any help, CCAB are more than happy to assist.

I recently attended a talk by someone from The Information Commissioner's Office and one of the ladies present asked the very valid question "what right do DVLA have to sell our private data to parking firms?" I noticed the ICO person said firmly that they were "quite entitled to" and equally firmly that "one had to pay such charges". Well, it might be legal for DVLA to sell the data (although it shouldn't be), but "you have to pay" is entirely another matter. I

couldn't be bothered arguing publicly so thought I would simply write about it which I have.

And finally, we have recently had a few inquiries about who has the right to clamp or tow away or destroy your vehicle and, as always, we have very sensible laws in Scotland. Rightly, the Police, DVLA, VOSA or, under strict controls, the local authority, may remove or immobilise a vehicle if it is essential and lawful to do so, but if anyone else tries it on then do not argue – just inform the police.

And now I propose to drive to town, park lawfully, which is easy in Caithness where most things are done sensibly, and will spend another day along with the loyal CCAB staff fighting those who richly deserve it