

'Enforcement Summit 12' organized by Landor LINKS Ltd in association with Parking Review magazine, 10 July 2012, London

Edited version of a talk by Martin Cutts, Plain Language Commission

The 70-strong audience included leading people from the parking world, including the chief executive and president of the British Parking Association.

Language and ethics in the private parking industry

I'm going to speak mainly about the private parking industry but please don't switch off if you're from the public parking sector, because the population makes little distinction between the two. So what goes wrong in the private sector can taint the public sector too.

Misleading signs, payment demands and websites

In the private parking industry, there are plenty of unclear and misleading signs, websites and printed documents. Here are some examples from the many I could have chosen. This one is from a sign:

'This site may be monitored by ANPR parking enforcement cameras for the purpose of ensuring compliance with the terms and conditions of the car park by XYZ Parking Ltd.'

This means the cameras will ensure compliance by XYZ with the rules of its own car park. That's the only possible grammatical meaning. The message is baffling and, presumably, untrue. It's the first contractual condition motorists see when they look at the sign. The British Parking Association (BPA) says the sign is perfectly clear and complies with its code of practice. But it's nonsense.

Here's another from the same sign:

'Failure to provide the correct details of the driver and act unreasonably may result in an application to the courts for an order for the registered keeper to disclose the requested information and additional costs will be incurred.'

This text obliges the motorist to act unreasonably in the car park. Which may explain why motorists are often seen leaping naked from car roof to car roof or squirting superglue into ticket machines. They're only doing what they're told, which is to act unreasonably. The BPA says the sign is perfectly clear and complies with its code of practice.

This is from a parking company website:

'The sum of the parking charge is approved by the British Parking Association, the DVLA and the DfT; therefore letters questioning the sum of the charge will not be addressed or responded to.'

This is completely untrue. The DVLA and the DfT have no role in approving this charge. The company tells this story for one reason only – to deliberately mislead the public.



One sign also says this:

'Fines which are not paid within the given period of 28 days will be passed to our debt recovery.'

But these are not fines and that word is banned by the BPA code to which this BPA member has signed up. It's a deliberate attempt to mislead the motorist into paying £150. It's also a criminal offence because it breaches the code – just in case any passing Trading Standards official can be bothered to get stuck in and prosecute.

Here is what a parking charge notice says:

'What if I was not the driver during the alleged offence?

It is the legal responsibility of the vehicle's keeper to nominate who was driving it at the time of the alleged driving offence.'

But no offence has been committed, despite what the headline says.

Moreover, the keeper does not have to say who was driving. And these are not driving offences, which are things like speeding. Again, it's all deliberately misleading, and designed to make the motorist cough up.

There are also barely literate offerings on signs, like this:

'A valid disabled badge must be displayed in the front windscreen of the vehicle with the details clearly visible at all times.'

Bad operators who bring your industry into disrepute

If you've seen my article in Parking Review (May 2012) or read my longer article about private parking on our website, you'll know I'm neither a fan of certain parts of the private parking industry nor of the BPA.

My criticisms today are addressed NOT to the whole industry, but only to its most predatory and bloodsucking companies, so when I use the term 'you' in this talk I'm generally referring to those bad operators – many of them within the BPA. They – and firms like the notorious clampers at Haworth in Yorkshire, ripping off tourists – bring your whole industry into disrepute and create widespread distress and misery.

Nearly two million parking charge notices are issued every year, a huge number, and the charges are up to £150 a shot, so big money's involved. You're doing this on the back of unclear signage, misleading parking charge notices, aggressive and threatening letters, and bogus appeals systems. This all happens under the protection of the BPA's code of practice, which the BPA routinely fails to enforce against its own members, and which it routinely interprets in favour of its members against the interests of motorists. The BPA is not impartial. It is a members' club, despite what it says about being the motorist's friend. I refer in particular to the hypocrisy of the BPA's Masterplan for Parking 2012–13, which claims the BPA is 'putting the customer at the heart of our thinking'. Unbelievable. To paraphrase a notorious wartime propagandist, 'The bigger the lie, the more people believe it.'

One company issued a parking charge notice to me in 2010 because I hadn't



seen the words 'pay and display' on a sign. Those words were only 13mm high (0.5in), five times smaller than you find on local authority signs. In court, they piled in against me with a fancy law firm, specialists in parking tickets, fully expecting to kick my backside. But my backside is not so easily kicked. And they lost, because the judge went to see the signs, twice, and she found they were not clear.

They're bad losers, though. The company's MD said this of the judge:

'The recent decision by Deputy District Judge Lateef, is an embarrassment to the judicial system. Such an off the wall judgment leads one to question if there was indeed an ulterior motive. DJ Lateef is not fit to serve the Civil Courts.'

Did this character, a well-known BPA member, report the judge to the police or appeal the case? Of course not. The judge had faced him down, and so had I. The company is ticketing 3,800 motorists a year for failure to display at that car park alone, at £100 a time. Big money, again.

From your signs and documents, the public thinks you issue fines or penalties, and some of them even think they'll get a criminal record if they don't pay up. As I've already shown, I've found the words 'fine' and 'driving offence' on your signs and documents, contrary to the BPA code. Though the BPA claims it regularly audits signs and documents, it missed these words in relation to one company for about five years at all its sites in the South West until another campaigner and I pointed them out to the DVLA in advance of a meeting we had with senior DVLA officials. A newspaper in Swindon last week published a picture showing the exact same wording on car-park signs there. So it's still going on.

When people ring up one major company to pay their parking charge notices, the recorded message uses the words 'penalty charge notice' several times. Of course, it's a clear breach of the BPA code. How does the BPA miss that, year after year?

Lack of integrity at the BPA

The rising tide of parking charge notices – now running at two million a year – makes a mockery of the BPA's motto 'Raising standards, driving issues'. If standards were rising, there'd be fewer notices, not more, especially at a time of weak economic activity.

If the BPA has really been helping drivers to comply with its members' rules, its efforts have clearly been a complete failure. But if the BPA has been acting in a far more sinister way – eg, helping member firms to ensure that drivers break the rules so they incur hefty charges – then its efforts have succeeded brilliantly.

I asked the BPA which of these outcomes was correct. The BPA thought for several days, requested more time to answer, and then after ten days refused to comment.



I try to be fair but I've reluctantly formed the opinion that the BPA lacks the standards of integrity normally required of a Government-accredited trade association. My main evidence for this is what the BPA told the Government as it campaigned successfully to change the law on registered keeper liability. The BPA said 2–5% of its members' tickets were ending up in court, a huge number that in real figures is 36,000 to 90,000 a year, and that this would fall considerably, freeing up the courts' time, if registered keeper liability came in. The Government printed these figures twice as part of its evidence-base in the official impact assessment on the new law, swallowing the BPA argument whole. MPs were convinced, and the law was changed.

But the BPA figures were false, and it's hard to imagine that the BPA – which claims to be the 'recognized authority' on parking (BPA Masterplan 2012–13) – did not know they were false. The answer to a Freedom of Information request has shown that in 2011 only 845 cases from BPA private members were registered in the court system, and only 49 of them went before a judge for a final hearing. Not 90,000, not 36,000, but 49.

A BPA spokesperson has tried to justify the phoney figures, saying:

'I think the BPA's data was based on anecdotal conversations with the industry and it's certainly true that these were, a best estimate based on what operators are telling us.'

It all amounts to the fact that the BPA has conned the Government and it has conned MPs into changing the law.

The BPA would have got away with it unseen if a retired police officer, Nev Metson, hadn't scrutinized the figures. Metson has been behind most of the media stories about private parking over the last two years since his daughter was ticketed unfairly. Scam a lot of people and, sooner or later, you'll scam people who know a scam when they see one and are prepared to fight it.

In the light of the BPA's apparent misleading of the Government, I have written to the Transport Secretary asking her to review the Government's collaboration with the BPA and to withdraw its accredited trade association status. If the BPA deliberately misled Parliament, it should be severely punished. If prosecution is not possible, there should be other sanctions.

Public authorities should also reconsider their links with the BPA – they hold nearly half the membership of the BPA Council, after all. I'd also like to ask what they have done to curb the excesses of the private parking sector.

The future – better signs but an ethical purpose too

One answer is better, clearer signs and documents. After all, no driver is going to stand in the rain and scrutinize 750 words of tiny, legalistic nonsensical text, as they have to do at some companies' car parks. And your PCNs and letters should clearly set out, in government-approved wording, the consumer's rights, just as happens on a consumer credit agreement.

Here is one possible form of words:

'Government warning. This parking payment demand is not an official fine or penalty, and you are not legally obliged to pay. You can appeal against it to the body that has issued it. If the appeal fails, you can appeal to the Private Parking Ombudsman. You can also contest the demand in court. You may wish to get help from a solicitor or Citizens Advice.'

That's all negotiable text, of course.

But this is all about so much more than plain language and good typography in signs and documents.

Because your industry needs to go straight. It needs to have the ethical purpose of reducing the vast number of contraventions that it's been promoting by creating a system not of car parks but of money traps. It needs to reduce its current terror. You – and I mean the dodgy companies and the BPA itself – can go straight only by withdrawing from the drug of phoney fines you've been mainlining for years.

Hanging around car parks finding ever more ingenious ways of punishing motorists is really not a decent way to make a living. You need to design compliance into all your car parks by, for example, using entry and exit barriers and signs on the tarmac at entrances. You need to outlaw all deals between operators and landowners that give the operators the lion's share of the penalty income, because all that does is incentivise operators to 'rape and pillage' (as one BPA member called it) their car parks.

Currently the landowner is faced with the choice between employing Company A, which designs-in compliance and raises income mainly through the ticket box; and Company B, which creates a parking environment and a set of terms and conditions that will comply with the BPA's code but allow it to pillage for penalty income. Invariably, the landowner will choose the option that brings it the most money – and that's pillage. This squeezes out companies with decent intentions.

So it's all about purpose. If you're intent on shafting motorists because the code of practice lets you do so, then that's what you'll do. But I want to see a country where predatory companies are outlawed and consumer rights are strongly enforced. I've no objection to companies making a profit, provided it's based on giving a decent, ethical service to the landowner and the motorist. The primary source of income should no longer be phoney fines based on dodgy signs and misleading documents but money from the ticket box.

Unless you do this, the supposedly independent appeals service being piloted by the BPA will be swamped as soon as it opens its doors, and the misery the bad operators create – which is their main output – will continue across the country.

Finally...

I should like to see ownership of the code of practice taken away from the BPA, which has shown itself incapable of handling it fairly. It would be better if the DVLA owned the code and subcontracted its implementation to trade associations that possessed the necessary integrity. That would give some degree of public accountability.

So my message to the private parking industry is this: no more squalid deals, no more chicanery, no more ripping off the public. It's time you found some moral and ethical values and went straight. And for once, no further research is needed.

[ends]