ParkingEye v Beavis--reaction from the parties

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Dispute Resolution analysis: With the long-awaited judgment in ParkingEye v Beavis now handed down, what has been the reaction from the key players in the litigation?

Original news

ParkingEye Limited v Beavis [2015] UKSC 67

The issues in ParkingEye were whether an £85 overstay charge in a private car park was an unenforceable penalty and whether it was unfair under the Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083 (now replaced by the Consumer Rights Act 2015 (CRA 2015)).

For further analysis of the decisions in ParkingEye and El Makdessi, see News Analysis: ParkingEye and El Makdessi--Supreme Court clarifies penalty rule.

What are your immediate reactions to the judgment?

Mr Beavis: This needs legislation. It is now time for Parliament to step in and judge. I am disappointed with the outcome, but this is not over. It is now for Parliament to decide and I intend to lobby the government and to lobby Parliament on this.

This is the end of the legal road. Parliament now needs to intervene, set caps and introduce an ombudsman scheme. There are multiple trade associations. There needs to be *one* regulatory body and *one* code.

John de Waal QC (leading counsel for Beavis): I am delighted to have represented Mr Beavis and that he had the courage to pursue this case all the way to the Supreme Court. I, my juniors and Henry Hickman at my instructing solicitors, Harcus Sinclair, have acted pro bono on this appeal.

You need to look at whether the deterrent is justified. Those consumers who challenge parking charges need a route forward. It is for Parliament to amend Schedule 4 of the Protection of Freedoms Act 2012 to limit charges.

This case is not just about car parking charges however but business contracts with all individuals. It will have an impact for charges, for example, imposed by low cost airlines.

Richard Lloyd, executive director at the Consumer's Association: This is a thoroughly disappointing judgment based on a narrow interpretation of the law. It will cause chaos if cowboy parking firms choose to take advantage of the ruling by hitting drivers with even more excessive charges.

Our advice to consumers is to be on your guard and always appeal if you think a parking fine is unfair.

Gough Square Chambers (who provided counsel [Jonathan Kirk QC and Thom Samuels] for ParkingEye): Both appeals concern the common law of penalties. The Supreme Court concluded that the dichotomy between a 'penalty' and 'genuine pre-estimate of loss' was incorrect, and derived from a mis-reading of the decision in *Dunlop* over the last century (*Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79, [1914-15] All ER Rep 739). The correct question is whether the clause is 'extravagant' and 'unconscionable' (which will usually amount to the same thing), in light of any legitimate interest to be protected.

The new test is whether the clause is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation. The innocent party can have no proper interest in simply punishing the defaulter.

Is this the end of the road?

David Bowden: Lord Toulson (dissenting) says (at para [315]) that the issue under the Unfair Contract Terms Directive 93/13/EEC is not 'acte clair' [reasonably clear from doubt]. He struggles to reconcile the result with that of Court of Justice

in *Aziz v Caixa d´Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*: C-415/11 [2013] All ER (EC) 770. Will this case continue to the Court of Justice?

Will there be a Competition and Markets Authority investigation in the car parking market?

Mr Beavis: I hadn't thought of that. It is the end of legal road but I intend to lobby Parliament to change the law.

Interviewed by David Bowden.

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