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Mr Malcolm McMillan
Chief Executive
Scottish Law Commission
140 Causewayside
Edinburgh
EH9 1PR

Emailed to: LGCCCommittee@parliament.scot

28 February 2017

Dear Mr McMillan

Review of Contract Law: Penalty Clauses

The British Parking Association (BPA) welcomes your inquiry regarding the proposed Bill to reform contract law on third party rights in Scotland. As the largest professional parking association in Europe we represent around 700 organisations by promoting and influencing the best interests of these members and the parking and traffic management sector throughout the UK and Europe. These organisations are many and varied and include manufacturers, car park operators, local authorities, health authorities, universities and higher education facilities, airports, railway stations, shopping centres, theme parks, construction companies, learning providers and consultants. We have around 130 Parking Scotland members.

For more information about the BPA please see the [endnote](#).

Accessibility continues to underpin economic regeneration, as shown in the BPA's [Master Plan for Parking in Scotland](#); "Proper and effective parking policies and traffic management according to properly defined standards is essential; it contributes to less congested streets and increases access to towns and cities with significant economic benefits to enable a mobile society."

We have undertaken a consultation with our Parking Scotland members and I am pleased to set out below the Association's response.

We believe in raising standards in the parking profession and enabling our members to provide better services for the motorist and to do that we need to work closely with government and key stakeholders.

Contract Law

As the premier trade association for the parking sector, the British Parking Association has a good share of its membership operating under contract law and other similar consumer

protection laws. Our commercial members and those operating on private land will be the most affected by this Bill.

As the industry representative, we are expected by the Scottish Government, members of the public and others to better regulate our members. However, we are unable to live up to people's expectations owing to competition law. For example, there is widespread opinion that we should be regulating the charges imposed by our members. We can't, since it would be anti-competitive.

Where parking on private land relies on trust and /or payment of fees and charges, without specific access controls and the potential for enforcement, and the need to acquire keeper details from the DVLA arises, the BPA has developed an Approved Operator Scheme, (AOS).

The BPA established in 2007 its Approved Operator Scheme to ensure that its members managing parking on private land behaved responsibly and complied with a Code of Practice which was established in consultation with other stakeholders including motorists and consumer representatives.

Our members are audited annually to ensure compliance with the Code of Practice. Instances of non-compliance with the Code of Practice are enforced and monitored through a Scheme of Sanctions and are issued dependent upon the severity of the non-compliance. We have expelled seven members in recent times as a result of serious non-compliance.

We introduced an independent appeals service for parking tickets issued on private land in England and Wales in 2012; The Parking on Private Land Appeals Service (POPLA) is providing motorists in England and Wales with a fair and effective appeals service for parking tickets issued by BPA members. We'd like to do the same in Scotland. Over recent years, seven companies have been expelled for serious breaches of the code. A few airport parking companies are members of the BPA's Scheme.

We believe that Contract Law does not work well for the purposes of managing parking on private land and we would like to see specific legislation, as has been achieved for parking on public land.

Local authorities provide parking on private land e.g. housing estates, leisure centres and so on and these are sometimes managed under contract law. Contract law is also used in the private sector to manage parking in retail centres, out-of-town stores, and a variety of other privately provided public parking. Contract law is also relevant for NHS and healthcare parking provision. The Railways Acts and Railway bylaws have provisions for controlling parking at railway stations, but increasingly contract law is also used in these situations.

Local Authorities 'regulated' parking enforcement

In Scotland, many towns and cities provide decriminalised parking enforcement under the Road Traffic Act 1991. Otherwise, using powers set out in the 1984 Road Traffic Regulation Act, Police and traffic warden services are empowered to undertake enforcement of restricted parking (yellow lines and loading restrictions), and local authorities manage permitted parking.

Increasingly, Scottish local authorities are keen to the Civil Enforcement provisions set out in the Traffic Management Act 2004 and available to local authorities in England and Wales, and

which are fairer to motorists and more proportionate in their scale and scope than the 1991 Act.

Communication with the Public

We also believe in better communication with the public to ensure they understand parking regulations, why car parking often has to be charged for, how to appeal against parking tickets and also how to park considerately and sensibly. It is important to encourage consistency and parity between public and private parking operations to try and minimise confusion for motorists. The BPA has produced A Guide to Parking in conjunction with the consumer association Which? In 2014 we launched our [Know Your Parking Rights](#) information service and website at the House of Commons in London, which attended by and endorsed by Penny Mourdant, then High Streets Minister and then Transport Minister, Robert Goodwill.

On private land the parking operators commonly use what is called a Parking Charge Notice to advise motorists who do not comply with the advertised terms and conditions for parking. There needs to be a significant difference between for example an all-day parking fee and the discounted parking charge if it is to encourage compliance and be an effective 'deterrent'. (The UK Supreme Court in *Beavis v Parking Eye* acknowledged the need for an appropriate deterrent factor in these kinds of consumer contracts).

We set out in our [Code of Practice for parking on private land](#) that a parking charge "must be proportionate and commercially justifiable and we would not expect this amount to be more than £100". If the charge is more than this, operators must be able to justify the amount in advance.

The UK Supreme Court decision in 2016 did help to clarify the law around parking charges when managing parking on private land, but we believe there now needs to be a broader review of the private parking sector. It is time that media and motorists accept that parking needs to be managed and rather than berate us, they should support our call for all governments to better regulate parking on private land to reassure the public and to ensure that all parking control is fair, reasonable and properly managed for the benefit of everyone. Interestingly, everyone including Mr Beavis, the AA, the RAC Foundation, Citizens Advice Scotland and many more all support our call for a single standard setting body, with a Code of Practice and an Independent Appeals Service.

Better regulation of private parking

We are actively engaged in conversation with Citizens Advice Scotland and the Scottish Government about how to deliver POPLA to motorists in Scotland in a fair and equitable way. Presently we believe this involves the introduction of keeper liability of a kind seen in the Protection of Freedoms Act in England and Wales. This would ensure regulation and management of parking is effective, with registered keepers being held accountable for the actions of drivers who are using their vehicles when that is necessary.

I enclose a proposal for developing better regulation for the private parking sector in Scotland through a [single standard setting body](#). I also enclose our [Master Plan for Parking in Scotland](#) which is self-explanatory.

Conclusion

I hope that this will help to illustrate the myriad of interacting pieces of legislation created over many years, certainly some of which originated in the 1960s. We believe there is much confusion and misunderstanding about the way parking is managed on public roads as well as private land and the way in which the law works.

A review of the law where it seeks to control and regulate the management of parking is long overdue to bring about clarity and purpose. We ask the Scottish Law Commission to consider this and the BPA would be only too pleased to contribute to facilitate debate and conversation.

More consistency and parity between public and private parking operations should be encouraged to minimise confusion amongst motorists.

The BPA and Parking Scotland members are always eager to work with the Scottish Law Commission to develop car parking policy and the Association and members are at your disposal to assist with any further information, advice or support in relation to this very important area of public policy.

We hope you will find these comments of interest and look forward to working with the Scottish Law Commission to deliver a legislative framework and better regulation for the management of parking in Scotland.

Please do not hesitate to contact my colleague Kathryn Shipman by emailing consultations@britishparking.co.uk or calling 01444 447 317 if you require any further information.

Yours sincerely



Kelvin Reynolds
Director of Policy and Public Affairs

Endnote

About the British Parking Association:

The British Parking Association (BPA) is the largest professional association in Europe, representing around 700 members in the parking and traffic management profession. Our members include manufacturers, learning providers, consultants, local authorities, car park operators, including those managing parking on private land such as retail parks, healthcare facilities, universities and railway stations. We have 144 members managing parking on private land and 250 local authority members. We provide our members with knowledge and a range of benefits and resources that assist them in their day to day work.

As the recognised authority within the parking profession, we represent, promote and influence the best interests of the parking and traffic management profession throughout the UK and Europe. We also manage initiatives for the sector including the Safer Parking Scheme (on behalf of the Association of Chief Police Officers), the Approved Operator Scheme (for those managing parking on private, unregulated land) and our stakeholder engagement group, the Parking Forum.

We place the consumer at the heart of our thinking and as the recognised authority in parking we actively represent and promote the sector by advancing knowledge, raising standards and professionalism, and using our influence to deliver excellence for the benefit of all.

For more information regarding us here at the BPA, please click [here](#).