

Legal alert

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Change to the law relating to penalties

The recent case of *Parkingeye Limited v Beavis* [2015] UKSC 67, has altered the legal principles relating to penalties. This judgment has implications for practice in many different areas of law.

The law relating to penalties arises in the context of contractual clauses that provide for payment of a fixed sum of money if the contract is breached. The guilty party is obliged to pay a pre-agreed fixed sum (known as "liquidated damages") to the innocent party, to avoid the innocent party having to go to the trouble of proving the precise extent of its loss caused by the breach.

Until now, the courts would analyse the pre-agreed fixed sum to ascertain whether it was a genuine pre-estimate of the innocent party's probable loss. If so, then the fixed sum was enforceable by the innocent party. If, on the other hand, the fixed sum was out of all proportion to the innocent party's probable loss, then the fixed sum was unenforceable (and known as a "penalty").

In *Parkingeye Limited v Beavis* [2015] UKSC 67 the facts were as follows:

Mr Beavis parked his car in April 2013 at the Riverside Retail Park in Chelmsford, under the terms of a contract that was imposed by the signs at the entrance to the car park. The first two hours of parking were free, but motorists staying for longer than two hours would be charged a fixed sum of £85.

Mr Beavis overstayed by nearly an hour and was duly charged £85 for his pains. He took the matter to court, claiming that the fixed sum was a penalty and therefore unenforceable. He claimed that the charge was out of all proportion to any loss suffered by the car park operators, Parkingeye (to whom the landlord of the retail park had outsourced the management of the car park).

The Supreme Court disagreed with Mr Beavis. It held (with one of the seven judges dissenting) that the £85 was not a penalty. Although the £85 was not a genuine pre-estimate of Parkingeye's loss, a fresh approach to the law relating to penalties was required. The correct test should be whether the fixed sum is exorbitant or unconscionable when regard is had to the innocent party's commercial interest in the performance of the contract.

In this particular case, Parkingeye had a legitimate commercial interest in charging overstaying motorists in such fashion. The amount was not exorbitant and was legitimately set at such a level so that Parkingeye could earn an income from managing the car park while, nevertheless, enabling short-stay shoppers to park for free.

This decision is likely to have the effect that liquidated damages will not need to be strictly referable to probable loss and larger sums that would previously have been held to be penalties will now be enforceable.