

To Patrick Troy
Chief Executive
British Parking Association

8th January 2015

Dear Patrick,

Open Letter on the Operation of the
Independent Scrutiny Board for Parking Appeals on Private Land

The Independent Scrutiny Board (ISPA) have asked me to write to you following your email of 14th November 2014 which was discussed at the December meeting of the board.

In your email you informed us that the Operational Services Board (OSB) of the BPA has not approved the Independent Scrutiny Board's request for an increased budget. From your response we understand this to be primarily for external reasons and not because the OSB felt that the funding request was invalid. Clearly this places the board in a difficult position, as you acknowledge, and without sufficient funding or clear support for its remit from the BPA its viability must be open to question.

In this letter we would wish to

- Confirm our support for the concept of an independent board;
- Summarise what we believe we have achieved with the resources available and what we have not been able to achieve due to resource and remit constraints;
- Recognise the positive intentions of the BPA and the difficult position you now find yourselves in;
- Express our view that the potential for forum shopping is the single biggest threat to an independent service; and
- Confirm that our chair, Nicola Mullany will attend the OSB meeting on 29th January to discuss the direction for the future operation of the board.

Board Concept

Having been in existence for nearly a year the ISPA Board believes that the concept of an independent appeals service and an independent scrutiny board is a valid model for fairly delivering an appeals service for parking tickets on private land. Indeed it is in line with the structures endorsed by the British and Irish Ombudsman Association. The original proposal was for the Board to operate independently of all stakeholders and to have a clear remit to oversee the POPLA operation and to direct change where this was seen to be necessary. Due primarily to resource constraints the remit has been considerably reduced and the de facto position is that the board now has a scrutiny role with no specific powers to direct change where it believes this to be appropriate. The terms of reference for the board have not been fully agreed between the BPA and the

Board itself and there is not yet an agreed Memorandum of Understanding between us. This is because the funding of the board is proving problematic and it has also not been possible to establish a clear definition of the relationship between the Board and POPLA.

Achievements of the board to date and impact of constraints upon it.

At its first meeting on 28th February 2014 the Board recognised that it had insufficient resources to discharge the remit that had been envisaged. It concluded therefore that it should proceed as far as possible within the budget provided through prioritising more urgent activity and taking a narrow interpretation of its role while attempting to establish a proper resource base through discussion with yourselves.

The Board believes that it has acted diligently to fulfil the key principles of its remit and that despite the constraints it has already had an impact in ensuring the independence and the perception of independence of POPLA.

During the first ten months of operation the Board has met on four occasions and among other things has achieved the following:-

- Developed and adopted a process for handling complaints.
- Considered and taken decisions in respect of fourteen core complaints raised through approximately forty separate pieces of correspondence. We believe that the board's approach has helped to significantly reduce the temperature in the debate about POPLA service.
- Reviewed and adopted temporary terms of reference.
- Undertaken discussions with BPA on a Memorandum of Understanding
- Considered its legal structure and set an objective to become a Community Interest Company.
- Developed a working budget within the overall constraints of the amount allocated.
- Agreed financial policies and agreed the Chair's and Director's contracts.
- Defined basic governance structures and established a programme of review and development of board governance using best practice.
- Established a communications plan, a scrutiny board house style and developed a board website
- Established a dialogue with the POPLA Lead Adjudicator and the Service manager to progress issues.
- Held discussions with the Chief Executive of the BPA on a number of matters.
- Reviewed the progress of the POPLA service through its key performance indicators.
- Reviewed arrangements for managing changes of membership between accredited operator schemes.
- Held meetings with some key stakeholders including the Department for Transport.
- Scrutinised the procurement process for the tender to operate the appeals service.
- Established a plan to survey all stakeholders on their perception of POPLA independence.

The resource constraints that exist have meant that the Board has been forced to be more reactive than pro-active. The need to set up the ISPA Board from scratch with no set up resources has meant that development of pro-active plans has been hindered. Some of the areas that we have been unable to address are;-

- Interacting with stakeholders to the extent that we believe to be necessary. The board would have wished to hold a stakeholder meeting to establish a dialogue with stakeholders on issues affecting POPLA independence.
- Develop a pro-active work plan to systematically review the POPLA process and undertake a series of sampling studies to ensure that decisions are consistent, coherent and fair. The board has been able to plan one such activity, which will take place in the first quarter, but this should really be an on going programme.
- Participate fully, as intended, in the process for letting the POPLA contract for the coming period.
- Implement all of the recommendations we have made to POPLA for improvements to its process e.g. publishing its decisions.
- Commission professional advice on matters coming before the board.
- Complete all the set up tasks that should ideally have been in place when the board started work.
 - Fully developing and documenting the board's governance processes
 - Concluding an MOU with the BPA and having clear Terms of Reference, including a precise definition of its relationship with POPLA
 - Establishing the board as a separate legal entity.

Issues for the BPA and the potential problems of “Forum Shopping” by operators

The ISPA Board recognises that the BPA has acted in good faith in establishing POPLA and the Independent Scrutiny Board, as it had been encouraged to do by Government. While the Board has actively pursued a proper resourcing solution to discharge its remit it is aware of the cost pressures facing the BPA particularly since government appears to have endorsed the establishment of a second Approved Operator Scheme that seems to operate with significantly fewer safeguards for the independence of the service. This has led to a potential for ‘forum shopping’ where operators might seek to use an appeals service that provides a favourable outcome at low cost.

The British and Irish Ombudsman Association has clearly stated that such a situation is not best practice. In its guidance on development of appeals and ombudsman schemes it has stated the following;

“If there are ‘competing’ ombudsmen in a particular sector, this can create confusion for the public – who are unsure which business is covered by which ombudsman scheme. And public confidence is less where it is the business that has the choice of which ombudsman scheme to use.

This raises the appearance, and the risk, of businesses attempting to exercise an influence over the ombudsman schemes – by favouring the one that they like best and/or by threatening to undermine one scheme financially by threatening to move to another.

For these reasons, we do not favour the 'competitive' model if it is the business that is able to choose. The 'competitive' model is said to reduce costs, but costs can be adequately controlled by transparency and regulatory scrutiny."

The Board agrees with this view and believes that the potential for "forum shopping" among appeals services in private parking is the single biggest threat to the independence of those services.

We have considered potential alternative funding approaches which could provide a properly resourced and fully independent scrutiny board operating across all approved operator schemes. We believe a viable alternative might be for the board to be funded by a levy on every release of information made by the DVLA to parking operators under the reasonable cause provisions. Depending on the board's ultimate remit, we believe that such a levy could be as little as 2 pence per release where the current fee payable is £2.50. We have raised this idea with the Department for Transport who indicated that this might also be discussed directly with the DVLA.

Summary

The ISPA Board acknowledges the challenges described both here and in your email of 14th November. Board Chair Nicola Mullany will attend the OSB meeting on 29th January to discuss the way forward with you. The ISPA Board believes that the correct approach is to continue to seek a stable regulatory and financial solution that will ensure that the private parking sector is served by credible and robust appeals services that command the confidence of the public, the sector stakeholders and government alike.

Yours sincerely



Nick Randle OBE
Director
Independent Scrutiny Board
For Parking Appeals on Private Land