

**Nicola Mullany**  
Independent Scrutiny Board for Parking Appeals on Private Land

14 December 2015

Dear Nicola,

**Cases adjourned until the Supreme Court decision in Parking Eye vs Beavis**

Thank you for your letter dated 7 December 2015 setting out ISPA's concerns about the BPA's decision on how to progress the cases adjourned until after the Supreme Court decision was made last month.

I know you understand that this is a difficult decision for the BPA and our overriding concern is to do the right thing by both appellant and operator. The BPA Board which made this decision did not take the decision lightly and took into account all the concerns in relation to this matter but also recognised that the circumstances were unique and were never likely to be repeated.

I would like to clarify and comment on the three points you have made which may assist ISPA further in understanding how the BPA has arrived at this decision as follows:

1. In the lead adjudicator's annual report he commented that 'once the case was being heard, if the assessor determined that the only live issue touched upon the subject matter of the appeal, and the appellant's case was not likely to be allowed on any other ground, then the assessor adjourned the matter of their own motion pending handing down of the Court of Appeal's decision.' We understood that the lead adjudicator instructed his assessors to examine each and every case and to take a view as to whether the case – where it related to genuine pre-estimate of loss – would have been allowed on any other ground. The conclusion is that it would not have been allowed on those grounds and therefore the only issue to consider was genuine pre-estimate of loss.
2. However, I completely understand that the appellant will not have been advised of why the assessor determined that other issues other than GPEOL did not lead to the appeal being allowed. To resolve this I propose that we instruct the service provider which we are currently appointing to make it clear in their determination that those issues other than GPEOL were considered by the previous assessor as not being sufficient to allow the appeal. As this fact has been stated publically in both the letters that we understand were sent to the appellant and, as stated above quoted in the annual report we believe this is the closest we can get to ensure that appellants are fully informed of the decision being made.

3. I recognise that the decision I communicated to you previously does remove the discretion on the service provider to request additional evidence from both sides. I recognise that such a procedure is not ideal and, as I said above, this decision is not being taken lightly. However, the Supreme Court decision was comprehensively in favour of the operator and it is very difficult to see how the seeking of further evidence with all the consequent costs on both sides would somehow make a difference to the clear and unambiguous decision made by the Supreme Court. Whilst the Board took this decision reluctantly, it did so in the knowledge that the seeking of further evidence cannot materially impact on the rights of either side.

As I say above, the decisions taken here are in respect of a unique situation which I believe will not reoccur. The BPA has gone to extreme lengths to ensure that POPLA is an independent appeals service and I hope you will support the issue that in all other situations the BPA has implemented any recommendations made by ISPA to ensure that POPLA continues to be independent and to be seen as independent. You rightly say that there is a risk of operators 'forum shopping' to find other accredited trade associations that deliver an appeals service without the oversight of a body such as ISPA. This is a real risk and I do not deny that the BPA Board's decision was taken in the full knowledge of that fact too. As we know, the government remains responsible for authorising the establishment of two appeals services and not applying the same standards to both and the outcome of this unfortunate saga is a demonstration of the problem that it has created.

I do hope that the government's long awaited announcement on the future of the private parking sector will address that issue as I know ISPA would also like to see the issue resolved.

I hope the above is at least helpful in clarifying the position of the BPA and whilst I appreciate ISPA will not fully support the decision I hope it will understand the spirit in which it was made.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Troy', with a stylized flourish at the end.

Patrick Troy  
Chief Executive