Department for Communities and Local Government

Review of Park Homes Legislation

Call for evidence - Part 1

Summary of responses

November 2017
Department for Communities and Local Government

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Introduction

1. There are around 85,000 park homes on 2,000 sites in England. Park home living is a unique tenure where the resident owns their home, but pays a pitch fee to the owner of the site for the right to station it on their land. The sector offers an attractive choice for some people, often older persons downsizing from conventional family homes. Sadly, not all sites are managed well and there is still evidence that some site owners do not fully comply with their responsibilities or respect the rights of residents.

2. The Mobile Homes Act 2013 made significant changes to the law on park homes and marked the Government's commitment to giving better rights and protection to park homeowners, whilst ensuring that honest professional site owners are not faced with unfair competition from rogue operators.

3. The Government gave a commitment to review park homes law in 2017 and announced a two part review in the form of a call for evidence. Part 1 was concerned with wider practices in the park home sector and called for evidence on fairness of charges, the transparency of site ownership and on experience of harassment.

4. The call for evidence was published on 12 April 2017 and closed on 27 May 2017. A total of 92 submissions were received;

Residents	- 66
Site owners	- 15
Local authorities	- 8
Other	- 3
TOTAL	**- 92**

5. A summary of responses is set out in the sections below. A Government response to the call for evidence (Parts 1 and 2) and next steps will be published next year.

Section 1: Summary of responses - Residents

Q1. What is the impact of variable service charges? Are pitch fees generally lower where variable service charges apply to cover maintenance and/or management?

- Residents explained that they pay a 'pitch fee' for the right to occupy the pitch and for the maintenance of the common areas of the park. Utilities are paid for separately unless specifically included in the pitch fee. This means the occupier pays for the maintenance of the park in their pitch fee and there is no need for a separate service charge in addition to the pitch fee[1].
- Residents were of the view that park owners believe Implied Term 22 gives them the right to claim maintenance and management charges outside of the pitch fee. If so, then park owners are effectively recouping their maintenance costs twice; in the pitch fee and in the service charge.
- The problems with variable fees arise because of the inclusion of the wording "any other charges" in Implied Term 22 and also because the implied term does not make clear that the site owner has a financial duty to pay for his obligations.
- In their view, where extra charges are enforced, pitch fees are not lower but instead, increase by about 20% to 30%.

Q2. Do you have evidence that there are separate charges being levied on sites for the provision of services and/or for payment of administrative, legal or other charges? If so, please give details.

- Residents provided an example of a written agreement with express terms relating to the payment of separate charges for services (**Fig 1**). Residents also explained that parks which use management agencies have in some cases, annual and additional management charges for things such as attending tribunal hearings, sending letters and invoices to residents, park inspections and reading meters.

[1] Lands Chamber decision LRX/14/2013 Britanniacrest Limited and Lands Chamber decision LRX/89/2015 Britanniacrest Limited.

Fig 1 – example of express terms

You undertake with us as follows.

• To pay estimated service charge for each year of the term in equal monthly instalments of the reasonable costs and expenditure including charges, commission, premiums/fees and interest paid or incurred or deemed to be paid or incurred by us in respect of:-

- Providing and undertaking the services and performing our other obligations in this Agreement.
- Employing the necessary people to perform the services and our obligations under this Agreement including but without limiting the generality of the above remuneration, payment of statutory contributions and reasonable health/welfare/redundancy and similar or ancillary payments and providing work clothing.
- The expense of making/repairing/maintaining/rebuilding and cleaning anything such as ways/roads/pavements/sewers/drains/pipes/watercourses/party walls/ part structures/party fences and any other conveniences used for the park in common with any other pitches.
- Administering and managing the park and preparing statements or certificates of and auditing the expenses incurred in performing the Services.
- To pay all reasonable costs/charges and expenses including legal costs and surveyors fees incurred by us in relation to any process or proceedings in respect of termination of this agreement.
- In respect of giving effect to or requiring the performance of any of the provisions of this agreement including legal proceedings.
- If the charges are greater than the estimated charges you will be billed separately for the shortfall to be paid within 28 days.

Q3. What experience is there of administrative and legal charges? What is claimed for under these charges?

- In many cases, these charges are an express term which residents are obliged to pay. Unlike the pitch fee which is governed by the implied terms, there is usually no control over how the charge is increased and many park owners add whatever costs they like onto the charge.

- Where management charges are imposed, they are usually reviewed annually by the management company and increased by as much as 50% each year. They include legal charges which are mostly incurred when there is a dispute with the park owner for example in relation to pitch fee reviews resolved at a Tribunal. Park owners also use solicitors, barristers and expert witnesses in such cases knowing that they can recover those charges from residents even if they lose the case.

- Residents were aware that where a park owner decides to impose a charge, they can reject it on the grounds that it is a contractual change and requires

consent by both parties to the contract. However, in reality many occupiers are elderly and vulnerable and do not understand the law sufficiently to object to these charges and simply give in to threats and pay the charge.

Q4. Do you think that the factors to be taken into account in a pitch fee review process should be restrictive?

- Although it seems logical and sensible for the implied terms to make allowance for any significant and unforeseen expense to be considered at a pitch fee review, residents were concerned that unscrupulous park owners will use (or misuse) this decision to make excessive charges against vulnerable people and use threatening and abusive behaviour to force them to pay.
- Some site owners have for example, abused the system for many years which has resulted in high pitch fees in excess of £300 per month in some areas. Residents therefore believe that the factors to be taken into account should be restrictive.
- One possible solution to this problem would be to amend implied term 20(A1) by deleting the words “unless this would be unreasonable having regard to paragraph 18(1)”. Alternatively, term 20(A1) should be amended to make it more restrictive, i.e. to allow only for an unforeseeable expense which is significantly large and is a one-off cost not associated with the usual maintenance and repair of the park.

Q5. Do you have evidence of complex arrangements appertaining to site ownership? What is the impact on residents and on enforcement authorities?

- Residents provided examples of site ownership arrangements (**Fig 2**). In their view, there should only be one licence holder who any leaseholders will be responsible to. The Licencing Authority should also be clearly notified of who the licence holder is and the section of the Written Statement regarding the owner’s interest in the land and when it will end should be removed to protect residents’ security of tenure.
- Furthermore, the implied terms should clarify that the park owner’s name and address for payments should be the same as the address to which notices should be sent and the details on the site licence.

Fig 2 – examples of complex arrangements

1. The land owner, who is the freeholder, leases the land to another Company which they are a Director of. They then claim to have nothing to do with the Leaseholders.

2. Some park owners transfer the ownership of the site to another company or even divide the park into sections and transfer those sections or "plots" to other companies. There could therefore be as many as 3 or 4 different park owners plus another company owning roads. Such parks could have varied pitch fees and other charges demanded by separate companies. Meanwhile, the actual site owner claims to have nothing to do with these Companies as he is only a Director and Adviser.

3. Some park owning companies, trade under a number of titles. In one case the site owner was involved with about 13 companies under one holding company. This caused complications and extra expense for residents during court or tribunal cases and for local authorities when issuing enforcement notices.

4. A more recent tactic is that occupiers are informed of the name and address of the park owner in accordance with implied term 26. The park owner then informs the occupiers that they must pay their pitch fee and utility bills to another company.

5. In other cases occupiers are informed by the park owner that the management and running of the park has been contracted out to another company and that all payments and queries should be addressed to this other company.

6. Our owner has about 20+ companies and seems to create a new one with new directors every time a major problem occurs! This leaves the residents unsure who to contact in the event of a need to complain/enquire about work not done (this is a regular problem as the owner has not complied with the Site Licence in many instances, even though the park is more than 6 years old, the basic things like a final road surface and landscaping, as laid down in the licence, have not been carried out), and eventually lead to a "change in ownership"!

Q6. Do you have evidence of sites where the licence holder is not the same person or organisation who is the owner of the pitch under the Mobile Homes Act agreement?

- See **Fig 2**. An example was also given of a park owner who registered the park as being owned by a company based in Guernsey and was employed by the company as the park manager. Residents and the local authority were asked to write to the Guernsey Office if they had any problems but then received a reply from the park manager who explained that he had been asked to reply on the company's behalf. The company, he also explained, found it very difficult to attend any meetings or deal with licensing matters as they were too far away.

Q7. What is the impact of these complex arrangements on residents and on enforcement authorities?

- Unscrupulous park owners will use any trick they can to avoid complying with licence conditions or notices issued by the local authority. It is therefore imperative that there is a system to assist authorities to obtain the correct information about the suitability of any person or persons that apply for a site licence. The complexity of the ownership of some sites does cause concern to residents as they don't completely understand what is happening.

Q8. Are there circumstances where such arrangements are legitimate?

- There are a number of parks that are managed within the law and make profits without causing any form of heart-ache or fear to residents. These park owners make park home living a pleasure and should be fully supported against the unscrupulous park owners.

Q9. What evidence do you have of "harassment" by an owner of a site or someone acting on their behalf?

- There are many forms of harassment within the industry which are not always reported or challenged by residents for fear of reprisal. When residents contact the local authority for assistance, they are sometimes told that the authority is unable to deal with harassment cases. It is also very difficult to gather evidence as there may not have been any witnesses to the incident.
- It is important to define harassment and identify the associated problems which make it very difficult to deal with, to enable Government to provide the right tools to tackle the issue. Guidance on a process to follow to initiate a prosecution would also be helpful.

Fig 3- Examples of cases of harassment

- Some site owners constantly enter residents' pitches without any notification of their intent.
- Some make claims that a home is detrimental to the site and force residents to agree to have a survey done. If the survey shows some form of repair is required, residents are intimidated and offered a small sum of money to leave the park, which some reluctantly accept.
- Some park owners visit new occupants a few days after they move in and increase their pitch fee.
- Many residents are told not to belong to a Residents' Association because their agreement is with the park owner and the association cannot represent them.
- One of the main causes are letters from owners/wardens or agents that threaten people giving them 28 days to rectify a minor problem with their home or face eviction.

Q10. What are the challenges for local authorities seeking to prosecute harassment cases and how could they be addressed?

- The challenges for local authorities seeking to prosecute are controlled by the nature and type of harassment, what evidence is available and whether there were any witnesses. For example, there have been numerous reports by occupiers of park owners who enter the pitch without permission contrary to implied terms 12 to 15. In some cases when the park owner discovers a home is for sale, he enters the pitch in the occupier's absence or sends a surveyor to the home without the occupier's knowledge and consent.
- The problem with most of these cases is that the occupier believes nothing can be done without witnesses. Similarly, the authorities can do little when there are no witnesses. Where an occupier considers tribunal action against a park owner, the owner, and sometimes his solicitor, writes to the occupier stating that legal action would cost considerable amounts in legal fees for which the occupier could be liable. The object of such a letter is clearly to frighten and harass the occupier.

Section 2: Summary of responses - Site owners

Fairness of charges Q1, Q2, Q3, Q4

- Most site owners were of the view that agreements currently in use by the vast majority of residential parks do not contain service, administrative or management charges. Where they do exist they are often historic, commenced over many years and the charges have been applied on a year by year basis meaning they go up or down depending on the costs incurred.

- There are also many different payment arrangements on residential parks covering for example the provision of a garden waste facility, garage hire, an on-site social club and designated parking bays. These services are provided outside the Mobile Homes Act Agreement and are optional to homeowners. It would however be to the detriment of the residents and the park owners who choose to operate a more characterful, personal park if the effect of any changes was to bring these services and the charges associated with them within either the implied or express terms.

- It should be noted that the legislation does not prohibit a separate variable service charge. Providing there is a specific Express Term in place within the Agreement to cover it, such a term would in fact serve to increase transparency in the agreement, will be clear and visible to the home owner in advance and not subject to any automatic annual increase by RPI, which would be the case if they were bound up in the pitch fee. Alternatively, variable service charges should be permitted but only under the Implied Terms (by changing paragraph 21 (b)) to ensure that the charges are subject to proper oversight.

- It is also important that the law continues to recognise that the need for maintenance or management services on a park will vary from year to year. Homeowners should not be forced to pay more than they should where little work has been necessary. Equally, parks must be allowed to recover a fair charge in order to meet their obligations. They should also not suffer disproportionate penalties for minor mistakes in their paperwork as the risk of challenges may discourage many from making improvements and other investment in parks.

- In relation to pitch fee reviews, the existing provisions in the Act are adequate and effective and most site owners would not wish to see a prescriptive list of matters which could be taken into account. Whilst restricting the pitch fee review to particular factors might bring certainty, it also risks injustice to parks

and homeowners and cannot keep pace over time. It could also lead to unfair decisions being reached by the First-Tier Tribunal which, depending on the case, could be to the detriment of either the park operator or the residents.

- A number of other site owners, who have variable service charges in their agreements, explained that they reached agreement with the Office of Fair Trading in 2015, that variable service charges could be demanded if an agreement included the following form of words.

  "The mobile home occupier would covenant:

  "… to pay the Estimated Service Charge for each year of the Term in equal monthly instalments, of the reasonable costs and expenditure, including charges, commissions, premiums, fees and interest, paid or incurred, or deemed to be paid or incurred, by Us."

  "If in any year of the Term the amount of the Actual Service Charge incurred by Us is more than the Estimated Service Charge paid by You, We will bill You for the shortfall, and You will pay Us the shortfall within 28 days of the date of the bill."

- This form of wording in their view, ensures that service charges are payable on a "break even" basis and not as a source of profit. Any dispute about the quantum of costs (which must be reasonable) can also be determined by the First-Tier Tribunal. There is nothing objectionable to this arrangement as there is no profit element and only "costs" actually incurred are passed on to occupiers.

- Furthermore, any assumption that the pitch fee should (or even must) be the park owners only source of income and that all maintenance and other costs must be met from this fee is not the law. As explained by the Upper Tribunal (Re Britaniacrest Ltd [2013] UKUT 521 (LC)), the pitch fee will include the costs of maintaining the park unless the Mobile Home agreement provides otherwise.

- It would be undesirable for the pitch fee to be the only source of funds as it is often relatively low, with increases heavily regulated and in many cases, would be insufficient to fund any major item of maintenance. A variable service charge is far preferable as it ensures that occupiers pay for what they actually receive.

- There is also nothing objectionable in a mobile home agreement giving a site owner/manager a right to recover legal and other professional costs associated with the enforcement of obligations under the agreement. Such contractual rights are commonly found in almost all residential property relationships such as a residential mortgage, assured shorthold tenancies and long leases. They are commonplace and unobjectionable because there is no

reason why a landlord/mortgage company should be out of pocket if it reasonably and properly takes steps to deal with a breach of the underlying agreement.

- The site owners were not aware of any circumstances in which a contractual right of this nature has been prohibited. Rather, the approach of Parliament and the courts has been to provide protection against any *unreasonable* exercise of such powers. This approach is consistent with the mobile home agreements the site owners have adopted which obliged the mobile home occupier to pay:

  "…all reasonable costs charges expenses (including legal costs and surveyors' fees) incurred by Us in… in respect of giving effect to or requiring the performance of any of the provisions of this agreement (including legal proceedings)… This obligation is subject to your rights under CPR Rule 48.3."3

- They explain further that the Upper Tribunal in the case (Upper Tribunal (*Silk Tree Properties Ltd and others v Grant and others* [2015] ULUT 686 (LC)), held that this clause was apt to cover the costs incurred in enforcing the rights of the site owner and that this was not an unqualified right as the recoverable costs were those which were reasonably incurred and reasonable in amount. In their view, it is hard to see what is objectionable about either the *in principle* right to recover costs or the controls on quantum.

- The implied terms have always made clear that limiting any change in the pitch fee by reference to RPI was only a presumption. The decisions in a number of tribunal cases had demonstrated how and when the presumption might be displaced. The First Tier Tribunal (and Upper Tribunal on appeal) should have sufficient flexibility to allow for unforeseen factors to be taken into account.

Transparency of ownership- <u>Q5, Q6, Q7, Q8</u>

- Most site owners had not received any evidence of "complex arrangements" relating to park ownership or enquiries or complaints from park home owners on this point. They did not however support any arrangement which may be put in place to defeat homeowner rights or local authority enforcement.

- The 1983 Act correctly envisages that there are circumstances in which the park 'owner' is not the freehold owner of the land. Three circumstances in which this could occur are:

  - Where it is a family business

  - Where park owners seek the support of professional management companies and

- when local authorities and pension schemes lease parks to professional management companies

- Though homeowners must be protected from any abuse, concerns were expressed that a change in the legislation might defeat these legitimate circumstances in which the creation of a lease or licence ensures continuity at the park. If legislation is to be changed, Implied Term 2(1) could be amended to read:

  " The right shall be binding on the owner and on any future owner, for as long as they may own the protected site".

- In any case, no homeowner should be in any doubt about the identity of their park owner. Implied Term 25 already gives a homeowner the right to be told the owner's name and address in writing when any demand for payment is made or notice served.

- In relation to a site licence holder being different to the land (park) owner, it is an offence under section 1 of the Caravan Sites and Control of Development Act 1960 for anyone to operate a park home site without a licence. Furthermore, a new licencing regime was put in place by the Mobile Homes Act 2013, to tackle changes of ownership and changes of licence holder. Enforcement authorities need to be proactive in addressing any person who claims to 'own' a pitch in respect of which there is no site licence in their name. Ultimately, any question of the legality of such arrangements would be a matter for the courts to determine on a case by case basis.

- A number of site owners who had 'complex arrangements' explained that they operated structures where various companies have the same director and shareholder but operate as separate entities and at arm's length. There is a freehold title for the whole park and in some cases there is also a head lease of some (or all) of the park. There are then under leases of individual mobile home plots and in some cases the communal land. Finally, there are occupational mobile home agreements for the individual plots.

- Part of the reason for establishing this (relatively complex) arrangement is to facilitate possible sales to mobile home residents. For example, under the arrangements described above, it would be possible to:

  (a) sell the freehold of the development to the residents (or more likely, a company they establish for these purposes), but leave management in the hands of a third party (likely the head leaseholder of the whole site, as that is who is likely to have the site licence), thus enabling residents to become

their own ultimate landlord, but have the site continue to be professionally managed;

(b) sell the under leasehold titles of the individual plots to the current occupiers of that plot, thus giving them much greater control over the land on which their mobile homes are stationed, but ensuring that an independent third party continues to exercise a degree of control and can act as a "buffer" between the competing interests of different occupiers.

Harassment - <u>Q9, Q10</u>

- For most site owners, harassment is generally difficult to determine and very subjective. Any widening of the scope of criminal liability by diluting the current offences or introducing new ones must be supported by evidence that any challenges for local authorities are caused by specific defects in the current offences and not by a lack of will or resources of the investigating officers.

- Also, what one person regards as 'annoying actions' would not be considered the same by another. It must also be remembered that there are instances where a <u>park owner</u> could suffer 'harassment' by residents.

- Examples of park management activity that have been incorrectly described as harassment include:

  - walking on park roads, writing letters, having a family on-site,
  - failing to enforce site rules against other homeowners in the way sought by complainants,
  - seeking to enforce site rules and/or site licence conditions against a homeowner,
  - seeking to enforce the park owner's legal rights,
  - failing to dismiss park staff in the way sought by complainants

- Other site owners explained that in their experience harassment issues arose for a number of reasons. Firstly, very few mobile home occupiers are aware of the complex (and relatively unusual) laws governing mobile home occupation. Very little professional assistance is also sought during sales and often cheap conveyancing lawyers, rather than mobile home specialists are used. This often gives rise to disappointment on the part of mobile home occupiers when, for example, they discover that there are planning or other restrictions which prevent them from doing something they wish to do.

- Enforcement action taken by site owners is then often *perceived* as harassment, whereas it is, in reality, nothing more than the enforcement of pre-existing duties.

- Secondly, disputes are often between residents, particularly those who own their own mobile home and those who rent. The former for example may be keener to spend money on aesthetic works to the communal grounds and the latter not able to afford such costs.

- A third reason is local authorities' delay in issuing site licences for various parks and their inadequate decision making processes when dealing with applications. In one example, it had taken nearly six years to deal with applications for site licences for various mobile home parks and when finally issued, the licences contained a number of flaws and were subsequently withdrawn.

Section 3: Summary of responses - Local authorities

Q1. What is the impact of variable service charges? Are pitch fees generally lower where variable service charges apply to cover maintenance and/or management?

- Some local authorities had no experience of variable charges in their area but had concerns about them in principle as they completely undermine the basis of a pitch fee. Other authorities were aware of site owners who had variable service charges in in their agreements and were concerned that they existed despite purchasers taking legal advice at the time of moving on to a site.

- The impact of these variable charges on residents is that they can be subject to unforeseen charges, demands for additional unplanned costs and threats of legal action. In one example, works carried out on a drainage system were not part of the pitch fee review and were not consulted on with residents beforehand. All costs including fees were then billed separately to residents. The costs incurred by a resident who challenged the costs at a Tribunal led to the resident losing their pitch. Other residents felt it better to pay up without challenge as the consequences were perceived to be too high.

- There was some evidence that residents who had variable service charges in their agreement paid about £1,000 more per year in pitch fees.

Q2. Do you have evidence that there are separate charges being levied on sites for the provision of services and/or for payment of administrative, legal or other charges? If so, please give details.

- Some authorities had no direct experience of separate charges being levied for provision of services/and or for payment of admin/legal charges, but had referred several residents to Trading Standards officers where practices were thought to be ‘challenging’.

- An example was separate servicing and repairing charges for operation and maintenance of a sewerage treatment plant shared with adjacent houses. Other examples showed a wide variety of additional charges being levied outside of the pitch fee without prior consultation with residents. They included;

  - the cost of moving and re-siting a notice board
  - issuing and collection of service charges,

- site visits, dealing with emails, calls and enquiries from residents,
- dealing with maintenance issues and contractor payments
- maintaining bank accounts

- One authority had received complaints about a £2.50 charge for processing cheques even though there were no other free payment options for residents and the site owner did not accept standing orders or bank transfers. Residents also found direct debits unacceptable because they had limited control over the level of payments taken and were concerned that it could create a risk of an automatic quasi-acceptance of every annual pitch fee increase even if the resident did not expressly agree to the increase. The onus would then be on the resident to monitor payments and write to the company to request that they do not take payments for the increased amount.

Q3. What experience is there of administrative and legal charges? What is claimed for under these charges?

- Whilst most authorities had no direct experience of residents paying legal or administrative charges, some residents had expressed concern about unfair charges and the council had referred those residents to the Citizens' Advice Bureau and Trading Standards. One council was however aware of charges being levied for payments made by cheque.

Q4. Do you think that the factors to be taken into account in a pitch fee review process should be restrictive?

- Most authorities were of the view that matters to be taken into account in a pitch fee review should be restrictive to protect residents from having to incur large increases. If all fees and services that can be charged for are clearly defined and included only in the pitch fee process, or are dealt with in a similar prescribed way, there would be clarity all round and better protection for all concerned.

- One authority did not believe that restricting the opportunity for pitch fees to be altered by the Tribunal is sensible, citing that there are cases where the threat of going to a tribunal enables residents to achieve redress. Residents who own and those who rent their homes receive different treatment with the rented sector being more lucrative to the site owner. Removing an opportunity to seek redress could work against those neglected (owners as opposed to renters) and leave them without a legitimate way to raise a valid objection.

Q5. Do you have evidence of complex arrangements appertaining to site ownership? What is the impact on residents and on enforcement authorities?

- Examples were provided of complex company structures being used, often successfully, to try to frustrate and prevent legitimate enforcement of site licence conditions. In one example, a number of associated sites have freeholds assigned to a company with a lease contracted to a different company (possibly with similar Directors). The leaseholder then sub-leases the site to other companies who in turn deal with residents.

- The impact on residents from these complex arrangements is that their ability to ensure they get definitive answers to issues is curtailed. Site owners are usually non contactable leading to an increase in calls from residents to the local authority. As the local authority is also unable to establish who is responsible, it in turn is unable to take enforcement action leading to further deterioration of the site. Residents often give up trying either for a 'quiet life' or because they fear reprisals through punitive legal costs. Short lease terms also affect security of tenure under Mobile Homes Act agreements, as a leaseholder is unable to enter into an agreement with a term longer than the term of their lease.

Fig 4 – Examples of complex company structures

- When the local authority is initiating enforcement action for non compliance with site licence conditions, the company named on the licence then informs the council that the ownership has transferred or management arrangements have changed. In the time it takes to clarify who is legally responsible, unauthorised development of the site continues without the local authority being able to intervene.

- After years of successful legal action involving the first tier and upper tier tribunal, an old licence was surrendered and a new one applied for by a second company before non-compliance had been addressed and tribunal judgements complied with

- The site owner (freeholder) granted a lease to a management company and then applied for a transfer of the licence to the management company. The lease agreement was very basic and raised concerns over its legitimacy and length but on advice, the council granted the transfer. The leaseholder later informed the council that if they continued to take enforcement action they would surrender the lease. The management company also suggested that the freeholder, not them, was responsible for works contained in a compliance notice.

- A site owner applied for the 14 pitches on one small site to be licensed separately. The council (having taken legal advice) reluctantly issued 14 separate licences, plus an extra one for the communal land. These were to 4 separate companies all based at one address and the directors were different members of one family. Enforcement would have been tricky, but the owner decided the arrangement was not working for him and sold the whole site to one person.

- The land is owned by company A but operated by company B which appears to hold a short lease of the land. Rent is paid to a third company. Company A and B have no common directors though all three companies appear to be closely connected via other common directorships and interests.

- Complex structures also impact on local authorities' ability to correctly identify an individual or company owner's relationship with the management of the site. In one case a transfer application had 912 pages because of the separate companies' and holdings involved.

- To assist local authorities with their enforcement duties in such cases, it was suggested that;

  - To avoid site owners simply switching companies to avoid formal action, there should be legislation which prevents them from surrendering/transferring their licence or applying to amend site licence conditions after enforcement notices are issued or whilst under investigation for non-compliance.

  - Legislation should require leases to be a minimum of either 7 or 10 years. The lease would then be required to be registered with the Land Registry and local authorities would be able to access this reference document, should the applicant be reluctant to supply it. This would make it more difficult for site owners to hide behind management companies and prevent any question of the status of guidance.

  - Lease agreements should also be required to contain certain prescribed information, such as what happens should the lessee surrender the lease.

Q6. Do you have evidence of sites where the licence holder is not the same person or organisation who is the owner of the pitch under the Mobile Homes Act agreement?

- Some local authorities had evidence of the site owner not being the same person or organisation as the owner of pitches on the site and believe this practice is for tax avoidance purposes.

- Further examples were given of leases which seemed to have been drafted for convenience, were often for 6 years, had no date of signature and appeared to have been signed retrospectively. In some cases, there was no reference to the Mobile Homes agreement and the licence holder did not seem to have an income stream. This way, the lease could be surrendered just as easily as it was created, which would leave residents vulnerable.

Q7. What is the impact of these complex arrangements on residents and on enforcement authorities?

- Complex arrangements have resource implications for local authorities and make change of ownership more difficult to process. These complex arrangements make it difficult to identify those responsible for site issues when

it comes to enforcement. A licence holder can avoid responsibility by claiming to have only certain rights and limited relationships (or no relationship at all!) with their sites' residents. The managing agents of those sites act as a mouthpiece for others but don't hold the level of responsibility for enforcement action to be taken against them.

- In one example, it had taken more than four years of enforcement to try and resolve issues. Though individuals behind the scenes had remained the same throughout, several companies had been involved and co-operation had been minimal or non-existent. The licence holder was still challenging licence condition on the grounds that they had no relationship with the residents (due to the multi-tiered structure they have set up) and could not therefore comply with the conditions.

- Some authorities were of the view that the use of complex company structures could be addressed by changing the site licensing regime to prevent an application for a new licence where one already exists. They suggested that companies should be required to obtain consent to apply to transfer site licenses and must provide a compulsory written statement of particulars such as non–compliance and ongoing enforcement by the local authority. Comprehensive details setting out what must accompany an application must be specified in regulations, including the right of a local authority to terminate an application if information is not provided.

- For residents, this means that they have little knowledge of whom and how to pay their pitch fees and are left feeling like `cash cows'. They pay but receive no defined benefits but are not able to raise these objections due to the restrictions of costs of legal action. There is also potential for confusion for residents, as to who is responsible for the management of the site. They may also have problems contacting and locating the company named on their mobile homes agreement. An initial contact point (usually an agent) is provided but if a resident is unsatisfied with their responses it is unclear who to approach. Such structures serve only to put unnecessary hurdles in the way of legitimate queries and challenges by residents.

Q8. Are there circumstances where such arrangements are legitimate?

- Local authorities do not believe there are any legitimate reasons for use of complex company structures. These structures are a mechanism for tax avoidance and other direct liabilities for the sites owned. All sites should be incorporated as a `limited' entity registered with a transparent ownership structure which would allow for the 'corporate' responsibility referred to in the Mobile Homes Act 2013.

Q9. What evidence do you have of "harassment" by an owner of a site or someone acting on their behalf?

- There was anecdotal evidence of harassment/bullying but authorities believe that there were more harassment cases than they were directly aware of. This was because some residents were fearful of repercussions while others had a different perception of what constitutes harassment.

Fig 5 - Examples of harassment

- vexatious possession proceedings being taken against residents who do not co-operate with site owners.
- Site owner seeking possession of a pitch because the occupiers had put up a boundary fence without explicit written permission.
- conversations that residents do not feel provide the correct level of courtesy.
- where a site owner knocks on a resident's door to ask them to remove their car blocking a one way street. The resident may believe this to be harassment since under the implied terms, the site owner/manager is only allowed to enter the plot to read a meter or deliver a letter/notice.
- behaving in an aggressive manner on site, being racist, sending threatening text messages and emails.
- not addressing issues on the park, continually requesting that residents move pitch or agree to having their park home turned around.
- removing water meters as the site owner "couldn't waste his valuable time reading them and calculating how much everyone owed".
- removal of on-site parking and requirement that residents build parking space on own pitch.
- visiting and pressurising individual QRA committee members to resign from the association.
- naming and shaming a resident who refused to pay excess charges.
- pressurising individuals to sell up and live "rent free" (with no Mobile Homes Act rights).
- swearing at residents and threatening those who complain to the Council.
- Owners provide 'advice' to the elderly or vulnerable for a 'quiet life' that steers them away from pursuing their rights or lawful remedies.
- Reducing the size of a pitch to provide access to a new home.

Q10. What are the challenges for local authorities seeking to prosecute harassment cases and how could they be addressed?

- Some authorities had not yet prosecuted for harassment under the Mobile Homes Act 2013. Operationally they try to use discretion and proportionality to address such issues rather than inappropriate escalation where misunderstanding occurs -for example over site rules.

- In some cases, the Council had taken the view that there wasn't strong enough evidence as many cases had no witnesses, the residents were likely to be intimidated, or the behaviour did not actually meet the narrow definitions of harassment under the Mobile Homes Acts. The actions could also be more about bullying rather than harassment as defined, thus preventing the authority from pursuing a legal case.

- The definitions under S.3 of the 1968 Act are too complex and have too many layers to tick the box for a case to go ahead. The evidence currently needs to be provided to the criminal standard of proof of beyond reasonable doubt, which due to the nature of harassment cases can be very challenging. Where alleged harassment had been investigated, gathering evidence and establishing whether the act(s) fell within the definition of harassment in the legislation, had been difficult and time consuming.

- The myriad layers of the harassment test could be refined – aiming for a definition that covers the existing range of options, but in a more open and testable way, would allow for a more holistic approach on a case by case basis. If the test were one of demonstrating that a resident had suffered financial and / or material loss, or loss of peace and enjoyment, or harm to health (common tests in other legislative arenas), through the act, sufferance or default of one of the above parties, it would help stop the more common 'bullying' tactics employed by rogue site owners in the first place and make the use of evidence of the cumulative impact of poor practices much more practicable.

- Clear and unambiguous guidance or booklets on what the Government believes constitutes harassment and on investigation procedures would be helpful. More readily available civil remedies, which can be instigated by residents directly, particularly where acts are more likely to be interference with quiet enjoyment, would also be welcome.

- Consideration should also be given to the creation of a 'corporate harassment' offence (in the same way as corporate manslaughter exists under Health and Safety duties). If, from the preceding evidence, the decision is to make the licence-holder the person or body corporate with the responsibility to ensure licence conditions are met then that person, or Directors of the body corporate, could be made responsible for actions carried out by their employees, contractors, agents, etc.

Section 4: Other responses

Q2. Do you have evidence that there are separate charges being levied on sites for the provision of services and/or payment of administrative legal or other charges? If so, please give details

- Of particular ongoing concern is the issue of charges for Liquid Petroleum Gas ("LPG"). The resale of Gas, Electricity and Water is regulated but there is no such statutory control on LPG. In some agreements it is a condition that LPG is bought from the site owner and this clearly presents an opportunity for overcharging.
- For example, *Mrs X reported that her charges for LPG were twice what she had expected, over £500 for a 9 month period. The charges were not broken down by units so she had no idea how the site owners arrived at the sum billed.*
- A solution could be to regulate the maximum resale price of LPG as it is for other fuels.

Q4. Do you think that the factors to be taken into account in a pitch fee review process should be restrictive?

- Two Upper Tribunal cases have clarified that the starting point for a pitch fee review should be the presumption that it only increases/decreases by RPI. However, other weighty factors affecting management costs can be considered if it would be unreasonable not to do so.
- The respondents consider that there is scope for costs to be interpreted too widely and would like the factors to be restricted to those specified in the Implied Terms.

Q5. Do you have evidence of complex arrangements appertaining to site ownership? What is the impact on residents and on enforcement authorities?

- Ownership structures are being created to confuse residents and limit accountability.
- For example, a site owner had told residents that he was not covered by the provisions of any mobile homes legislation as he didn't own the site. Instead, it was a leasehold site owned by other companies, though he appeared to have full control of the companies and employees running the site.
- This issue could be resolved if the licence holder had to be the owner of the land on which the site was located rather than another individual or company.

Alternatively, liability under the mobile homes legislation could be extended to all connected parties where the site owner and licence holder were different.

Q9. What evidence do you have of "harassment" by an owner of a site or someone acting on their behalf?

- The respondents dealt with 123 specific enquires, alleging site-owner harassment in 2016-17 out of 2,243 enquiries (5%). Many of these enquiries came via residents associations acting on behalf of several individuals, so it is arguable that greater numbers of park home owners feel harassed.
- The regular reporting of serious harassment of residents by some site owners is of great concern given the age profile and geographic isolation of these communities.
- Such harassment includes unauthorised visits to pitches, intimidation, threats of physical violence and threats of financial repercussions if action is taken against a site owner.
- In several cases, the police have had to be called due to the actions of a site owner attending their pitch. Concern has been expressed that Local Authorities are powerless to act against site owners or are reluctant to exercise their powers. This harassment and victimisation of old and vulnerable residents' needs to be stopped if the rights contained in the legislation are to be protected.

Fig 6 - Examples of alleged harassment

- Mr A was preparing for bed, when he had a knock on the door from the site owner and a burly man, demanding entry to his home. He refused because he was in his pyjamas and could meet them at the office when he'd got dressed. The site owner was aggressive and insistent, saying they wanted to inspect his curtains and that the decking needed tidying. Mr A felt very intimidated and visibly shaken and no longer feels safe in his home.
- Mr B reported that two members of his Qualifying Residents Association ("QRA") were threatened by the site owner that if they did not pay their (disputed) electricity bills she would cut them off, remove their homes and put them on the side of the road.
- Mr C alleged that members of the QRA had been accused by the site owner of criminal damage for painting some (reportedly dirty) electricity meters white and that all members of the QRA would be liable for costs. He wrote to Mr C asking him to say if he was a member of the QRA and if he was, he would be charged a contribution towards the costs. The Local Authority had been made aware of the situation but reportedly had not taken any action against the site owner.
- Mrs D is chair of a residents association and claims to have been harassed by the site owner as a result of her position. They have around 35-40% of residents signed up, but the site owner is refusing to communicate with the association. The site owner had also reportedly been speaking to potential members to dissuade them from joining and preventing the 50% threshold for recognition being reached.

- Harassment occurs because of the weakness of evidence and consequential reluctance of local authorities to prosecute. We are aware of only one prosecution of a site owner for harassment in Leisure Parks Real Estate v Medina Park (see http://parkhomes.lease-advice.org/protection-against-harassment-under-the-mobile-homes-act/)

- The prospects of successful prosecution and a heighten deterrent to acts of harassment, could be improved by:

  - the police cascading guidance to local authorities and residents on the evidence required to make for a successful prosecution for harassment; and

  - Clear timelines on the duration of investigations. Currently, harassment complaints can run for many months without resolution. Respondents were of the view that local authorities could do much more to protect park home residents from site owners by using their existing powers but may lack the resources needed to do.