



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference:** CHI/19UD/PHC/2019/0002

**Premises:** 90 The Avenue, Oaktree Park, St Leonards,  
Ringwood, Hampshire BH24 2RJ

**Applicant:** Mrs Andree Start

**Representative:** In Person

**Respondent:** Haulfryn Group Ltd

**Representative:** Mr P Kelly of Tozers LLP

**Type of Application:** Mobile Homes Act 1983, Section 4–  
Determination of a Question arising under  
the Act or Agreement to which it applies

**Tribunal Members:** Judge A Cresswell (Chairman)  
Mr R Wilkey FRICS

**Date and venue of Hearing:** 25 June 2019 at St Leonards, Hampshire

**Date of Decision:** 27 June 2019

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**DECISION**

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### **The Application**

1. On 16 February 2019, the Applicant pitch occupier, made an application to the Tribunal for the determination of a question, namely whether the Respondent site owner was in breach of Implied Term 22 in Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983 by reason of a failure to repair the concrete base of her mobile home.

### **Summary Decision**

2. This case arises out of the Applicant pitch occupier's application, made on 16 February 2019, for the determination of a question, namely whether the Respondent site owner was in breach of Implied term 22 in Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983 by reason of a failure to repair the concrete base of her mobile home. The Tribunal has determined that the Respondent is in breach of Implied Term 22 and should now take steps to remedy that breach and pay costs to the Applicant, both as directed and detailed below.

### **Inspection and Description of Property**

3. The Tribunal inspected the property on 25 June 2019 at 1000. Present at that time were the Applicant, Mr Kelly and Mr M A Wharf, a Chartered Engineer, member of the Institute of Civil Engineers and Chartered Member of the Institute of Structural Engineers.
4. The property in question consists of a single park home on a concrete base surrounded by flagstones and shingle.
5. The base showed a fissure adjacent to the home entrance spreading to the other side of the home. The rear (from the roadside) of the base appeared to have sunk beyond the fissure. The brick skirt was also cracked in places and had moved away from the home's plinth towards the rear of the home. Paving slabs were uneven.

### **Directions**

6. Directions were issued on 15 March 2019.
7. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. This determination is made in the light of the documentation submitted in response to those directions, the Inspection and the evidence and submissions made by the parties at the hearing. The Tribunal heard evidence from the Applicant and from Mr Wharf and Mr R Butcher, the Park Manager.
9. The parties confirmed at the end of the hearing that they had been able to say all that they wished to say to the Tribunal.

### **The Law**

10. The law is contained primarily in Mobile Homes Act 1983. Under Section 4, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
11. The relevant law is set out below:  
**Mobile Homes Act 1983**, as amended  
Section 2(1): In any agreement to which this Act applies there shall be implied the terms set out in Part 1 Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.  
Section 4:

- (1) In relation to a protected site *in England*, a tribunal has jurisdiction--

- (a) to determine any question arising under this Act or any agreement to which it applies; and
- (b) to entertain any proceedings brought under this Act or any such agreement, subject to subsections (2) to (6).

(2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.

### **Housing Act 2004**

Section 231A Additional powers of First-tier Tribunal and Upper Tribunal

(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2). <sup>[1]</sup><sub>[SEP]</sub>

(2) A tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them. <sup>[1]</sup><sub>[SEP]</sub>

(3) [Directions under the Housing Act 2004] <sup>[1]</sup><sub>[SEP]</sub>

(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate –

- (a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;
- (b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions; <sup>[1]</sup><sub>[SEP]</sub>
- (c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;
- (d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.”

### **Implied terms – Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983**

#### **Owner's obligations**

**22.** The owner shall—

<sup>[1]</sup><sub>[SEP]</sub>(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;

12. In **Elleray v Bourne**[2018]UKUT0003(LC), the Upper Tribunal advised: *“Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a “general power” to “give directions”, in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to*

*another. Such “directions” may be given where the FTT considers it necessary or desirable for securing “the just, expeditious and economical disposal of the proceeding.” The use of the word “directions” in this context might give the impression that section 231A(2) is concerned only with procedural matters. It is clear from section 231A(4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services.”*

13. In **Away Resorts Limited v Morgan** (2018) UKUT 0123 (LC), the Upper Tribunal said this: *“The power to grant additional remedies is exactly what section 231A, Housing Act 2004 provides.”*

### **The Agreed Background**

14. The Tribunal has been supplied with a copy of the earlier Decision of the Tribunal, dated 1 November 2017 (“the earlier Decision”). The Tribunal takes that Decision as its starting point and does not repeat its helpful detail, as it would be otiose to do so, but adopts it.
15. The Applicant bought her home on the Park in January 2007. She first brought cracking of the brick skirting to the attention of the Respondent via Mr Butcher in August 2015. In January 2016, she reported to him a hairline crack to the concrete base. No remedial works were suggested or carried out at that time, but there was a visit to the property by Mr Butcher and a Darren Brunt from the Respondent’s headquarters in February 2016.
16. In April 2016, the property was inspected by Mr Wharf, who also dug a test hole, which he inspected on 1 June 2016. He reported by email to Mr Butcher on 1 June 2016. Despite requests by her and others, this email was not shared with the Applicant until she saw the bundle for the hearing.
17. The Applicant instructed Mr D Broadhead, a chartered surveyor, to examine the property. His report of 11 May 2016 posited subsidence and tree roots as a possible cause and recommended a geotechnical survey.
18. Mr Butcher asked Tozers to write to the Applicant and they did so on 30 June 2016.
19. That letter contained the detail of the proposed remedial work, detailed in the earlier Decision (None of which detail was included in the email of 1 June 2016 referred to above, despite evidence to the Tribunal hearing that the email was the entire substance of Mr Wharf’s report). The letter gave notice of a visit to the property by the Respondent on 4 August 2016 to carry out measurements. It stated that it was not believed that the base needed to be replaced.
20. The Applicant responded to Tozers and shared the report of Mr Broadhead in her letter of 3 August 2016. She told the Tribunal that she wanted a temporary delay to repairs until it was possible to get to the core of the problem. Tozers’ response of 17 August 2016 assumed that the Applicant was going to arrange for Mr Broadhead to carry out further investigations.
21. Hearing no further from Tozers or the Respondent directly, the Applicant involved her own insurance company. There followed much communication and reporting and the rather unbelievable scenario of Respondent and Applicant sharing the same loss adjustor, the individual concerned apparently not being aware that he visited the same property for both parties. All of that is, however, a side show which, whilst interesting, does not explain the Respondent’s attention to its own duty, the Respondent not making further contact with the Applicant until the run up to the earlier Tribunal hearing in October 2017.

22. The home's rain waste ran through downpipes to the land adjacent to the base. The Applicant had butts fitted to her 4 downpipes in May 2017 to prevent wash away adjacent to the base.
23. After the earlier hearing, Tozers wrote to the Applicant informing her of the intention of the Respondent to move forward with the repairs.
24. In June 2018, there was further movement of the base, there now being a fissure or "snap" of the concrete with the rear portion sinking below the front portion. The Appellant's brother-in-law made Mr Butcher aware of this on 14 June 2018.
25. After further to-ing and fro-ing with her insurance company, the Applicant again instructed Mr Broadhead, who surveyed the property again on 1 March 2019. Mr Broadhead has criticised the failure of the Respondent to appreciate that a full replacement of the base was required.

### **Consideration and Determination**

26. The Tribunal has recorded above the agreed background.
27. Where there was disagreement between the parties, the Tribunal has accepted the version of events put forward by the Applicant. She was clearly an honest witness, the only person who has actually lived the whole experience, and she had good records and an obvious grasp of relevant detail. By contrast, we found the evidence of Mr Butcher more vague and lacking in specific detail and he was clearly wrong about the detail of Mr Wharf's report all being recorded in Mr Wharf's email to him of 1 June 2016.
28. The Applicant agreed that she had wanted an initial pause until full investigations had been carried out. She agreed also that she still would wish the base to be replaced rather than the repairs suggested by Mr Wharf.
29. Mr Wharf agreed that cost was an element in the decision to repair rather than replace.
30. Mr Butcher conceded that "*it* (i.e. the Respondent) *could have been done better*" and the Tribunal agrees with him. There were here long periods where the Respondent has not explained an active approach to performing its duty to repair. The fact that the repair is still outstanding over 3 years after its requirement became known to the Respondent is, the Tribunal believes, of itself very supportive of a conclusion that the Respondent is in breach of its duty. Whilst some of the delay can be explained by the Applicant's wish for fuller investigation and her preference for replacement, there remain long periods when the Respondent appears not to have been engaging directly with the Applicant to seek a resolution and instances of a failure to engage with her communications. The Applicant's experience and the damage have got worse not better.
31. Whether or not the law requires a site owner to have knowledge of the lack of repair before its duty to make a repair to the base arises, this Respondent had notice of cracking to the brick skirt from August 2015 and of the base from at least January 2016. The general approach to repairing covenants, even where notice is required, is that repairs should be made within a reasonable time of their becoming known to the party obligated to effect the repair. (see **Edwards v Kumarasamy** (2016) UKSC 40 and **Calabar Properties Ltd v Sticher** [1984] 1 W.L.R. 287).
32. Taking account of all of the available evidence recorded here and in the earlier Decision, the Tribunal finds that there is a breach of Implied Term 22 for the reasons given above.
33. The Tribunal has been mindful of its powers under Section 231A(2) Housing Act 2004.

34. The Respondent quite properly, via Mr Kelly, conceded that it must pay the costs incurred by the Applicant in twice engaging Mr Broadhead, the increase in her insurance premium resulting from the lack of repair and the costs of this application, and the Tribunal, therefore, orders the Respondent to pay to her the sum of £1,174.04, being the sum of that expenditure.
35. All of that being said, the Tribunal agrees with the Respondent that it has a duty to repair the base and that where that duty can be complied with by repair rather than replacement, that is an appropriate compliance with its duty.
36. Mr Wharf has 25 years experience as managing director of his company. His qualifications are detailed above. The Tribunal heard evidence from him, but only read documents prepared by Mr Broadhead. The expertise of Mr Wharf is more relevant to the task required. The Tribunal accepted Mr Wharf's evidence that a repair can remedy the defect and was assured by the acceptance of the Respondent that it has a continuing duty to repair, which can be again tested at this Tribunal in the event of a further breach.
37. Accordingly, the Tribunal directs the Respondent to commence the works recommended by Mr Wharf in his report of 23 April 2019 and in the undated method statement of G Dudman and Sons subject to the latter being at Mr Wharf's direction within 28 days of this Decision's date. The Respondent also agreed that the slabs around the pitch would be re-laid and that any remaining crack in the base would be cosmetically covered and the Tribunal directs that it does so.
38. The Tribunal accepts that there are practicalities for the Applicant associated with such major works, being that she is not in the best of health, she works nearby, there would be machinery and mess and she could not park at the home whilst work was undertaken; there is no suitable temporary alternative accommodation at Oaktree Park, said Mr Butcher; a hotel stay would deprive the Applicant of access to her belongings. The Respondent agreed to meet the reasonable costs of accommodating the Applicant in rental accommodation during the currency of the works to repair the base and the Tribunal so directs.
39. The Applicant has had to put up with a great deal during the last 3 years or so and the Tribunal agrees that she has been let down by the Respondent and her insurance company. It also notes that she suffered a fall on the uneven slabs. It is the sincere hope of this Tribunal that the Respondent now engages in the repairs directed and treats the Applicant in the sympathetic way that she deserves, given the matter's history.

A Cresswell (Judge)

## APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.