



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

Case Reference : **CAM/12UD/PHC/2020/0001**

Site : **Tingdene Parks Limited, Fenland Village, Osborne Road, Wisbech
Cambridgeshire PE13 3JR**

Park home address : **68 (& ors as below) Fenland Village, Osborne Road, Wisbech,
Cambridgeshire PE13 3JR**

Applicant : **Mr Thomas Richard William Goswell (68) & the occupiers of
Fenland Village Nos 32 (Poland), 33(Riddel), 40 (Snelling), 36
(Perkins), 37 (Corney), 60 (Palmer), 26 (Maclot), 27 (Clarke),
31 (Matthews), 29 (Robinson), 28 (Tyler), 44 (Lovelock), 47
(Ellis), 25 (Wright), 42 (Harris), 39 (Thurkle), 38 (Kaye), 14
(Evans), 23 (Hare), 19 (Quance), 22 (Marriot), 21 (Gray), 24
(Stevens), 34 (Smith), 52 (Wharrier), 11 (Nightingale), 78
(Swift), & Newman (41).**

Respondent : **Tingdene Parks Limited**

Application : **To determine questions arising under the Mobile Homes Act
1983 or agreement to which it applies**

Tribunal Members : **Judge Stephen Reeder**

Hearing : **Paper determination**

Date of application : **25 February 2020**

Date of Decision : **16 November 2020**

DECISION

DECISION

The water charges issue

1. **The Tribunal determines that it is appropriate pursuant to section 231A(4) of the Housing Act 1994 when exercising the jurisdiction under the Mobile Homes Act 1983 to exercise the power to require the Respondent to pay the Applicants' money by way of compensation or damages or otherwise in respect of the excess water charge paid by them for the leak period. The Respondent is therefore ordered to provide each Applicant with a rebate in the sum of £170 per Applicant household against the water charges levied for the period October 2018 to September 2019.**

The perimeter fence issue

2. **The Tribunal determines that it is the Respondent's obligation to maintain the site perimeter or boundary fence where it is not the responsibility of any occupier of a mobile home. An occupier is only responsible for the maintenance of a section of the site boundary fence if it forms a direct and immediate boundary to a pitch such that it can properly be said to be enjoyed with that pitch.**

Fees and costs

3. **The Tribunal makes an order pursuant to Rules 3 and 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 requiring the Respondent to reimburse to Mr Goswell as the lead applicant the whole of the application fee of £100 paid and of any other fee paid to the Tribunal in relation to these proceedings.**

REASONS

The application, parties and dispute.

4. **The lead Applicant, Mr Thomas Richard William Goswell, is the occupier of 68 Fenland Village, Osborne Road, Wisbech, Cambridgeshire PE13 3JR ('the site').**
5. **The application raises two issues for determination by the Tribunal –**

The water charge issue

- (a) **a dispute as to the water charges levied for two periods during which there is said to have been a water leak at the site, and**

The perimeter fence issue

- (b) **liability for the cost of the repair and maintenance of the perimeter fence to the site.**

6. The application was accompanied by a handwritten schedule listing 56 additional signatories to the application, all of whom are residents of the site. This is difficult to read but, with apologies to anyone whose name is misspelled, those signatories and their corresponding property numbers at Fenland Village appear to be numbers 32 (Poland), 33 (Riddel), 40 (Snelling), 36 (Perkins), 37 (Corney), 60 (Palmer), 26 (Maclot), 27 (Clarke), 31 (Matthews), 29 (Robinson), 28 (Tyler), 44 (Lovelock), 47 (Ellis), 25 (Wright), 42 (Harris), 39 (Thurkle), 38 (Kaye), 14 (Evans), 23 (Hare), 19 (Quance), 22 (Marriot), 21 (Gray), 24 (Stevens), 34 (Smith), 52 (Wharrier), 11 (Nightingale), 78 (Swift) and Newman (41). The tribunal notes that the title to this schedule is “signatories to the action regarding the dispute.....with regard to the two (2) disputed water charges”.
7. By order dated 21 April 2020 Judge Wayte stated that these signatories would be added as applicants to the dispute in relation to the water charges issue unless an objection was made to that course of action by 15 May 2020. No such objection was notified to the tribunal by that date or at all. Accordingly, those signatories are joined as applicants to the dispute in relation to the water charges dispute.
8. The Respondent, Tingdene Parks Limited is the owner and operator of the site which is a permanent residential mobile home park called Fenland Village and located in Wisbech. There is no dispute that Fenland Village is a protected site a defined by the Mobile Homes Act 1983 as amended.
9. The application was received at the Tribunal office on 25 February 2020. Judge Hawkes made an initial directions order on the application papers on 25 February 2020. On 21 April 2020 Judge Wayte made a further directions order addressing the issue of additional applicants, whether the relevant terms of the written agreements are generic to all applicants, the quantum of the charges which are in dispute, and the filing of photographic evidence of the perimeter fence. The April 2020 directions order reflected the procedural safeguards and restrictions arising due to the Covid-19 pandemic and re-drew the directions for an inspection and hearing.
10. No party has requested an inspection. No inspection has taken place. No party has requested a remote hearing. The application has been determined on the papers in accordance with the April 2020 directions order. The tribunal office contacted the parties seeking confirmation whether any party objected to the application being determined on the documents filed by the applicant, and if so whether and what further documents were to be provided. No party objected to determination on the papers filed by the applicant. No party sought to file further documents.
11. The tribunal has been provided with a substantial documents bundle. This has not been provided with any useful index nor helpful arrangement. Nonetheless, the tribunal has considered each document before it. The bundle comprises almost 300 pages and includes –
 - a. The application dated 20 January 2020.
 - b. A 4 page schedule of signatories to the application.
 - c. The respondent’s statement of case dated March 2020 signed by Mr Jeremy Pearson as a director.
 - d. The Applicants’ written response dated 18 March 2020.
 - e. The formal witness statement of Mr Jeremy Pearson dated 9 April 2020 on behalf of the Respondent.

- f. The witness statement of Mr Poland of 32 Fenland Village (with attached spreadsheet relating to water usage and charges) dated 30 March 2020.
- g. The written statement of Mr Marriot of 22 Fenland Village dated 1 April 2020.
- h. A copy letter from Mr Spencely of 17 Fenland Village to the Respondent dated 1 November 2019.
- i. The letter format statement of Mr Nicholson of 6 Fenland Village dated 3 April 2020, enclosing a copy of a letter sent to the Respondent on 31 October 2019.
- j. The letter format statement of Mr Woodworth of 74 Fenland Village dated 2 April 2020.
- k. The letter format statement of Mrs Lovelock of 44 Fenland Village which is undated.
- l. Written Statement of Terms between the respondent and Mr Goswell dated 3 September 2004.
- m. A letter from the respondent to the residents dated 21 January 2020 stating that it has applied to the water supplies for a leakage allowance and any awarded will be credited to future invoices.
- n. A single page document excerpt titled 'site owners repairing and maintenance liabilities.
- o. A letter from the respondent to the residents dated 9 August 2013 which notifies changes to the Park Rules and appends a copy of the Rules as amended.
- p. A letter from the respondent to Mr Goswell dated 28 January 2020 enclosing a pitch fee review notice and accompanying prescribed form.
- q. Copies of the respondent's water and sewerage charges invoices to the residents dated 1 April 2018 and 1 October 2019.
- r. Copies of the water and sewerage bills from the suppliers for the relevant period.
- s. Party correspondence relating to the water bill issue dated 28 October 2019, November 2019, 4 December 2019, 11 December 2019, 2 January 2020 and 13 January 2020.
- t. A letter from Mr Goswell to the Tribunal dated 14 May 2020 responding to the Directions Order made.
- u. Bar graphs said to summarise the volume of water used and the cost per household between 2015 and 2019.
- v. The Ofwat Water Resale Guidance dated January 2013.
- w. The Water Resale Order 2006.
- x. A Citizens Advice Bureau leaflet discussing water meters (which has not been considered for the purposes of this determination as it is of not of any material evidential value).

- y. A print-out of a Gov.uk October 2018 press release referring to ‘rogue mobile home site owners’ (which has not been considered for the purposes of this determination as it is not of any evidential material value).
12. The tribunal has also considered photographic evidence filed by Mr Thomas Goswell in accordance with the April 2020 directions order. The photographs are described as showing the rear perimeter fence (providing a boundary between the Fenland Village site and adjacent land which is not part of that site), and a dividing fence (providing a boundary fence between pitches 67 and 68 Fenland Village).

The Law

13. Section 1(1) of the Mobile Homes Act 1983 (as amended) (‘the 1983 Act’) provides that the Act applies to any agreement under which a person (‘the occupier’) is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his only or main residence.
14. Section 1(2),(c),(d) of the 1983 Act requires that before making an agreement the owner of the protected site (‘the owner’) shall give the proposed occupier under the agreement a written statement which sets out the express terms to be contained in the agreement including any site rules, and sets out the terms to be implied by section 2(1) of the Act.
15. Section 2(1) of the 1983 Act provides that in any agreement to which the Act applies there shall be implied the terms set out in Schedule 1 to the Act, and further that this subsection shall have effect notwithstanding any express term of the agreement.
16. Paragraph 21 of Part 2 of Schedule 1 to the 1983 Act addresses the occupier’s obligations.
17. Paragraph 21(b) provides that the occupier shall pay to the owner “all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner”.
18. Paragraph 21(d), (ii) provides that the occupier shall “maintain the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home, in a clean and tidy condition.
19. Paragraph 22 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act addresses the owner’s repairing liabilities.
20. Paragraph 22(c) provides that the owner shall 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.
21. Paragraph 22(d) provides that the owner shall be responsible for maintaining those parts of the protected site including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.
22. Paragraph 32 of Part 2 of Schedule 1 to the 1983 Act provides that “pitch” means the land, forming part of the protected site including and including any garden area, on which the occupier is entitled to station the mobile home under the terms of this agreement.
23. Paragraph 32 of Part 2 of Schedule 1 to the 1983 Act provides that “pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for (a) the right to station the mobile home on the pitch and for use of the common areas of the protected site and their

maintenance, and (b) water and sewerage services, unless the same are specifically excluded from forming part of the pitch fee by the agreement, but the pitch fee does not include amounts due in respect of gas, electricity or other services, unless the agreement expressly provides that the pitch fee included such amounts.

24. Section 4(1) of the 1983 Act provides that in relation to a protected site in England, the tribunal has jurisdiction to (a) determine any question arising under this Act or any agreement to which it applies; and (b) entertain any proceedings brought under this Act or any such agreement, subject to subsections (2) to (6). 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.
25. Section 231A of the Housing Act 2004 ('the 2004 Act') provides additional powers to the tribunal and states that the 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 the Housing Act 2004 has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).
26. Section 231A (2) of the 2004 Act provides that the 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.
27. Section 231A (4) of the 2004 Act provides that 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;
 - (c) 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;
 - (d) 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;
 - (e) 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.
28. The Upper Tribunal considered the scope of the tribunal's jurisdiction in Elleray v Bourne [2018] UKUT 0003 (LC), and held that –

“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.”.

The written statement of terms

29. The written statement of terms provided pursuant to the Mobiles Homes Act 1983 between the respondent and Mr Goswell dated 3 September 2004 contains the following terms which are implied by statute and are set out in Part 3 of the statement (adopting the numbering of the statement) –

- Clause 21(b) provides that the occupier shall pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner.
- Clause 21(d)(ii) provides that the occupier shall maintain the pitch including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home, in a clean and tidy condition.
- Clause 22(c) provides that the owner shall be responsible for..... maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home.
- Clause 22(b)(ii) provides that the owner shall if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of any charges for gas electricity, water, sewerage or other services payable by the occupier to the owner under the agreement.
- Clause 22(d) provides that the owner shall maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on a protected site,
- Clause 29 defines the pitch fee to mean the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for the use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such agreements.

30. Part 5 of the written statement of terms contains the following express terms which are agreed between the owner and the occupier in addition to the terms implied by statute (adopting the numbering of the Statement) –

- Clause 2(d) provides that the site owner must do everything they reasonably do to provide and keep the services available to the pitch. However, the site owner will not be responsible for any temporary failure or lack of facilities and services if this is caused by something outside their control.
- Clause 3(e)(ii) provides that the occupier must not, without the prior written consent of the site owner (which must not unreasonably be withheld) carry out.....the erection of any fences.
- Clause 3(h) provides that the occupier must comply with the Park Rules.

- Clause 3(m) provides that the occupier must, at his own expense, carry out all works in respect of the mobile home including all fences and outbuildings belonging to or enjoyed with the mobile home, which are required in order to comply with the requirements of any statute, government department, local authority or Court.

Guidance in the prescribed Pitch Fee Review Form

31. A letter from the respondent to Mr Goswell dated 28 January 2020 enclosed the most recent pitch fee review notice and accompanying form. The content of that Pitch Fee Review Form is prescribed by paragraph 25A(1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1993 the Mobile Homes (Pitch Fees)(Prescribed Forms)(England) Regulations SI 2013/1505.
32. That Prescribed Form records that paragraph 22(c) and (d) of the Chapter 2 of Part 1 of Schedule 1 to the 19183 Act sets out the owner's repairing liabilities and provides that the owner shall 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, and further that the owner shall be responsible for maintaining those parts of the protected site including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.
33. That Prescribed Form states in terms that "examples of such repairs and maintenance that fall within paragraph 22 may include repair and maintenance of pipes, conduits, wires, structures, tanks or other equipment provided by the site owner and of the parts of the site that are under the control of the site owner, including access ways, roads, pavements, street furniture and lighting, boundary fences, buildings in common use, drains and any drainage system and any open spaces or facilities in common".

The Park Rules

34. A letter from the respondent to the residents dated 9 August 2013 notifies changes to the Park Rules for Fenland village and appends a copy of the Rules as amended. Rule 2(c) is unamended and provides that "the occupier shall be responsible for the trimming and maintenance of any boundary hedge of the Park which forms a boundary to the Pitch". Rule 2(g) is amended to provide that "hedges are not permitted to be grown on the Park".

The Ofwat Water Resale Guidance

35. The Ofwat Water Resale Guidance dated January 2013 directly addresses (page 24) the issue "There are leaks on the site and I think I'm paying for leaked water. What should I do?". It states "Your reseller is normally responsible for fixing leaks on the site's pipe works. If you think there are leaks, you should discuss this with your reseller. If there is significant leakage on a site, your local water company may ask the reseller to fix any leaks."

Issues, discussion and determinations

The water charges issue

36. The lead applicant Mr Goswell, together with the additional 28 signatories to the application on this issue identified as parties at the head of this Decision, claim that they have been overcharged in relation to water charges in respect of two periods during which there was a water leak at the site. The nature and scope of this issue is set out in the application and subsequent letter dated 14 May 2020 from Mr Goswell.

37. The Applicants claim that they have been overcharged by the Respondent in respect of the water bills for the periods October 2018 to March 2019, and April 2019 to September 2019.
38. The Applicants' case is that during this period there was a leak to the mains water pipe below the road surface on the site. Their evidence is that the Respondent should have noticed the sudden increase in the October 2018 to March 2019 water charge which then continued for the following period April 2019 to September 2019. They further state that the previous undertaker Anglian Water had notified the Respondent of its concerns about a sudden increase in water supply and had offered to investigate this but that the Respondent had declined that offer. They further state that, in any event, residents complained of that sudden increase. Those evidential assertions are relied upon to argue that the Respondent was on notice that there was a problem. The Applicants' evidence is that despite being on notice of the sudden increase in water charges from the undertaker the Respondent took no action to identify the cause and remedy the leak which was subsequently found to be the cause for 8 months from March 2019.
39. The signed statement of Mr Poland in behalf of the Applicants states in terms that he complained on the sudden increase in charge when he received the March 2019 bill from the Respondent and that he raised it with the park manager and with the Respondent's office. He further states that the park manager confirmed that monthly meter readings (there are a number of references in evidence to an undertaker's water meter located at the entrance to the site) were provided to the Respondent and that the undertaker Affinity provided the Respondent with a monthly invoice of water used. He obtained water bills for the period April 2015 to March 2019 and has extracted the relevant figures in to a spreadsheet to show the substantial and sudden increase in water supplied by the undertaker in the relevant period, and so support the calculation of the excess water charge referable to wasted water caused by the leak.
40. The signed statement of Mr Marriot dated 1 April 2020 also refers to his own discussion with the park manager highlighting the increases who it is said confirmed that he had relayed the concerns to the Respondent. Mr Marriot states that no adequate steps were taken to investigate and remedy the issue until August/September 2019 when "professional engineers" attended, located and remedied a failed joint in the pipework below the service road on the park.
41. A letter from Mr Woodworth dated 2 April 2020 states that he too raised the issue with the park manager but also informed the Respondent by telephoning its office and speaking to a named employee.
42. The Applicants' estimate that the leak resulted in an excess water charge per resident household of approximately £100 for the period October 2018 to March 2019, and approximately £70 for the period April 2019 to September 2019.
43. The Applicants' therefore seek an order to rebate the sum of £170 per Applicant household.
44. The Respondent's statement of case expressly accepts that "there was a water leak on the park but that does not affect the Company's entitlement to make the charges it did in accordance with OFWAT's guidance" and states that the charges were calculated in accordance with that guidance for an unmetered supply be a re-seller. The Respondent contends that the charges are due in the full sum invoiced by the undertaker pursuant to the express terms requiring the Applicants to pay water charges which is said to be consistent with the statutory implied term that "an occupier shall pay to a park owner all sums due under an occupation agreement for water and other services supplied by the owner". The witness statement of Mr Jeremy Pearson for the Respondent adopts this same argument. Mr Person adds that "the company is currently in discussions with Affinity [the undertaker] as to the level of its charges and if the charges are reduced the full reduction will be passed on to residents".

45. This dispute, and the parties' respective positions and arguments, had already been set out in some detail in pre-litigation correspondence which is included in the documents bundle provided to the tribunal and so only summarised for the purposes of this Decision. On 1 April 2019 the Respondent sent the Fenland Village residents an invoice for the period October 2018 – March 2019 charging £229.81, being £8.48 per week. On 28 October 2019 the Respondent wrote to the Fenland Village residents enclosing a bill from the supplier together with an invoice for charges to 1 October 2019. This acknowledged that an increase in the water bills had been noted and that the Respondent "subsequently discovered and rectified a leak". It states that the Respondent calculated the excess charge above the average of previous bills and that, whilst it is entitled to charge the residents the full amount of the supplier bill, on this occasion it proposes to split the excess 50/50 with the residents so that the charge is capped at £7.50 per household per week. An undated reply from Mr Goswell responds to this stating that the residents should not be made liable to pay excess supplier charges caused by the water leak. Mr Goswell then sends further correspondence to the Respondent on 4 December 2019, 11 December 2019 and 2 January 2020 in which he requests a response and also states that an application to this Tribunal may follow unless agreement can be reached. On 13 January 2020 the Respondent provided a substantive response stating that the re-charges are made in accordance with the Water Resale Order 2006 and so the Respondent (as re-seller) can charge the actual charge made by the supplier (as undertaker) providing that this does not exceed the average charge by that supplier to its own domestic customers. It states that as the charge of £426.06 for October 2018 – September 2019 is less than the supplier's (Anglia Water) domestic customer charge for water and sewerage of £509.25, it is not willing to review the charge made to the Fenland Village residents. It further states that it is entitled to levy a 1.5% administration charge under the Resale Order but does not do so.
46. The Tribunal notes that part 3 of the Written Statement of Terms contains an implied term at clause 22 (c) which provides that the Respondent as owner shall be responsible for maintaining any water supply by it to the pitch or to the mobile home, and a further implied term at clause 21(b) which provides that the Applicants as occupiers shall pay to the Respondent as owner all sums due under the agreement in respect of water supplied by it. The tribunal considers that the terms are clear and unambiguous. The tribunal determines that the obligation contracted by the Applicants is to pay for water supplied to the pitch or mobile home. This does not require the Applicants to pay for 'wasted' water resulting from a leak in sub-ground service supply pipework on the Park which is the Respondent's responsibility. Water leaking from that pipe cannot properly be construed to be supplied to the pitch or mobile home.
47. The tribunal notes that part 5 of the Written Statement of Terms contains an express term at clause 2(d) which provides that the site owner must do everything they reasonably can do to provide and keep the services available to the pitch, and further that the site owner will not be responsible for any temporary failure or lack of facilities and services if this is caused by something outside their control. The unchallenged evidence of the Applicants establishes that the Respondent did not adequately respond to the reports of increased water charges and concerns raised about a leak during the relevant period and so did not comply with the clause. Further, this clause does not entitle to the Respondent to charge the Applicants for the 'wasted' water resulting from the leak which was not as a matter of fact supplied to the Applicants.
48. The Respondent seeks to rely on the Water Resale Order 2006 in support of its contention that it is entitled to charge for the leaked water. The position and rights and obligations of the water supplier, the Respondent and the Applicants are clear having regard to section 52(1) of the Water Industry Act 1991, the terms of the Water Resale Order 20006 and the evidence and information before the tribunal. The water undertaker has the statutory duty to supply water to domestic premises and to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to the domestic premises. The Respondent is the water re-seller who provides to the purchaser a supply of piped water which the water undertaker

has supplied, directly or indirectly to the re-seller. The Respondent is the consumer who is liable to pay charges to the water undertaker in respect of the supply pursuant to section 93(1) of the 1991 Act and can enforce the domestic supply duty pursuant to section 54(1) of the 1991 Act. There is no suggestion that any provision has been made to the contrary by an agreement to which the undertaker is a party. The Applicants are the purchaser as they occupy a dwelling supplied with water and buy that water from the Respondent as re-seller in accordance with the Written Statement of Terms provided pursuant to the Mobiles Homes Act 1983. The tribunal notes that this position is confirmed by the decision of Morgan J in *Moss v Royal Borough of Kingston upon Thames and Moss [2019] EWHC 3261 (Ch)*. It follows that the Applicants have no legal relationship with the undertaker relevant to this dispute. The Respondent as consumer is liable to pay the undertaker's charges for the supply of water and can enforce the supply duty against the undertaker. If the cause of the water leak and resulting 'wasted' water which is not supplied to the Applicant as occupiers is the undertaker's failure to maintain its main or the connection between the undertaker's water main and the service pipe by which that supply is provided to the domestic premises, the remedy against the undertaker lies solely with the Respondent which is consumer and re-seller.

49. The Tribunal determines that it is appropriate pursuant to section 231A(4) of the 1994 Act when exercising the jurisdiction under the 1983 Act to exercise the power to require the Respondent to pay the applicant's money by way of compensation or damages or otherwise in respect of the excess water charge paid by them for the leak period.
50. The Applicants' estimate that the leak resulted in an excess water charge per resident household of approximately £100 for the period October 2018 to March 2019, and approximately £70 for the period April 2019 to September 2019. This appears to be supported by the figures submitted by them and is not disputed by the Respondent. The Respondent is therefore ordered to provide each Applicant with a rebate in the sum of £170 per Applicant household against the water charges levied for the period October 2018 to September 2019.

The perimeter fence issue.

51. Mr Thomas Richard William Goswell is the sole Applicant on this issue. In the application he states that "some residents have been advised that it is their responsibility for repairs to the perimeter fence and associated costs". He argues that the Respondent is responsible for the costs of repair and maintenance to the perimeter fence of the site.
52. The Respondent argues that both the express and statutory implied terms require a resident "to keep his pitch and all fences and his garden in a clean and tide condition" and that "these provisions are consistent with one another, and.....clearly include any perimeter fence or hedge". It further relies upon paragraph 2(c) of the Park Rules in support of this argument. The Respondent further states that "in any particular case, who would be responsible for any work required on a perimeter fence or hedge would depend on the nature of the work needed and its cause.
53. The Tribunal is mindful that section 4(1) of the Mobile Homes Act 1983 Act provides that in relation to a protected site in England, it has jurisdiction to (a) determine any question arising under this Act or any agreement to which it applies. The written statement of terms provided pursuant to the Mobiles Homes Act 1983 between the respondent and Mr Goswell dated 3 September 2004 is an agreement to which the Act applies. The Tribunal may determine disputed interpretations of that agreement.
54. The agreement contains the following terms which are relevant to this issue –

- Clause 21(d)(ii) provides that the occupier shall maintain the pitch including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home, in a clean and tidy condition.
 - Clause 22(d) provides that the owner shall maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on a protected site,
 - Clause 3(h) provides that the occupier must comply with the Park Rules.
 - Clause 3(m) provides that the occupier must, at his own expense, carry out all works in respect of the mobile home including all fences and outbuildings belonging to or enjoyed with the mobile home, which are required in order to comply with the requirements of any statute, government department, local authority or Court.
55. The documents bundle includes a letter dated 9 August 2013 from the Respondent to the Fenland Village residents attaching new Park Rules which it has determined to adopt. Paragraph 2(c) provides that “the occupier shall be responsible for the trimming and maintenance of any boundary hedge of the Park which forms a boundary of the Pitch”.
56. A letter from the respondent to Mr Goswell dated 28 January 2020 enclosed the most recent pitch fee review notice and accompanying form. The content of that Pitch Fee Review Form is prescribed by paragraph 25A(1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1093 the Mobile Homes (Pitch Fees)(Prescribed Forms)(England) Regulations SI 2013/1505. That Prescribed Form records that paragraph 22(c) and (d) of the Chapter 2 of Part 1 of Schedule 1 to the 19183 Act sets out the owner’s repairing liabilities and provides that the owner shall 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, and further that the owner shall be responsible for maintaining those parts of the protected site including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site. That Prescribed Form states in terms that “examples of such repairs and maintenance that fall within paragraph 22 may include repair and maintenance of pipes, conduits, wires, structures, tanks or other equipment provided by the site owner and of the parts of the site that are under the control of the site owner, including access ways, roads, pavements, street furniture and lighting, boundary fences, buildings in common use, drains and any drainage system and any open spaces or facilities in common”.
57. The Tribunal considers that the written agreement, read within the context of the statutory scheme and with the Park Rules, is clear and unambiguous as it relates to fences. The occupier’s responsibility is to the maintain all fences “belonging to or enjoyed with” the pitch and the mobile home. The Park Rules impose a similar obligation in relation to any hedge which “form a boundary to the pitch”. The owner’s obligation is to maintain “site boundary fences.....which are not the responsibility of any occupier of a mobile home”. No site boundary fence will belong to any occupier. Any section of a site boundary hedge which forms a direct connected boundary to a pitch may arguably be enjoyed with that pitch. Any section which does not cannot properly be said to enjoyed with that pitch. The photographic examples filed with the court do not show any section of site boundary hedge which forms a direct connected boundary to and can properly be said to be enjoyed with the pitch. The Tribunal has not been provided with details of the relationship between the site boundary fence and all pitches on the Park and so makes no wider determination beyond that which relates solely to the pitch and boundary fence seen in the photographs filed in evidence.

Fees and costs

58. Having regard to the determinations made the Tribunal considers that it is just and equitable to make an order pursuant to Rules 3 and 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 requiring the Respondent to reimburse to Mr Goswell as the lead applicant the whole of the application fee of £100 paid and of any other fee paid to the Tribunal in relation to these proceedings.
59. Having regard to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules, and mindful of the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)* no order for costs is made. No party may seek to recover the costs of these proceedings against another party.

Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

16 November 2020

RIGHTS OF APPEAL

- a. Pursuant to Rule 36(2) of the Tribunal Procedure (First-tier tribunal)(Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.
- b. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
- c. The application for permission to appeal must arrive at that regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.
- d. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- e. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.
- f. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber) and any such right will be notified in the permission decision of the First-tier Tribunal.

