FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/PHC/2022/0003
Property	**:**	Little Trelower Park, Trelowth, St Austell, Cornwall, PL26 7DU.
Applicant	**:**	Colette Spoard (and 30 others as per Schedule attached)
Respondents	**:**	Wyldecrest Parks (West) Limited
Respondents' Representative	**:**	Mr Sunderland
Type of Application	**:**	Section 4 Mobile Homes Act 1983. Application for a determination of any question arising under the Mobile Homes Act 1983
Tribunal Member(s)	**:**	Judge J F Brownhill Mr M J F Donaldson FRICS Mrs T Wong
Date and venue of hearing	**:**	30TH June 2022 Havant. Remote video hearing
Date of Decision	**:**	25th July 2022

DECISION

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1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.

The hearing

2 The Tribunal conducted the hearing on the 30th June 2022 with both parties attending remotely by video. There was an electronic bundle extending to 440 pages before the Tribunal.

3 Mr Sunderland had on Monday 27/06/2022 applied for an adjournment of the hearing. I will not repeat the grounds of that application here, suffice to say that the application was refused on 9th June 2022 by Judge Tildesley OBE. Mr Sunderland did not renew his application before the Tribunal on the 30th June, and so the hearing proceeded.

4 Mrs Spoard attended (by video) and gave evidence during the hearing. Mr Sunderland represented the Respondent and gave oral evidence, again by video, in addition to relying on his statement appearing at [194] in the bundle. During the course of his evidence Mr Sunderland sought further information from his office in order to respond to a number of points raised by the Applicants in the bundle. He contacted his office during the luncheon adjournment and detailed the further information he had received at the start of the afternoon session. Both Mrs Spoard and Mr Sunderland were given the opportunity to ask questions of the other after each had respectively given evidence.

The issues

5 In February 2022 the Applicants applied to the First Tier Tribunal (Property Chamber) under section 4 of the 1983 Act for the determination of a number of questions concerning:

a. Charges for sewage;

b. A £25 charge (referred to as an Administration Charge) levied by the Respondent against some site occupiers; and

c. An application for reimbursement of fees.

The Tribunal heard from the parties on each issue in turn.

Inspection

6 There was no inspection of Little Trelower Park (hereinafter referred to as 'the site') as the Tribunal considered that this was not required in order to fairly and appropriately determine the live issues in the applications. No party requested

that the Tribunal inspect the property when in previous directions the Tribunal's intention in this regard had been explained [99] paragraphs 9 and 10.

The site

7 The site is a mobile home park in Cornwall to which the Mobile Homes Act 1983 (hereinafter referred to as 'the 1983 Act) applies. The Applicant told the Tribunal that the site consisted, at present, of some 45 mobile homes. Mr Sunderland was unclear of the precise number of homes of the site, suggesting at one point there were 56.

8 The site is one of longstanding and before 2015 was owned by B and D Cowell [406]. On the 09/01/2015 ownership of the site was transferred to Wyldecrest Parks (Management) Ltd. Mr Sunderland is a director of that company. On the 01/03/2018, ownership of the site was transferred again to Wyldecrest Parks (West) Ltd – the Respondent to this application. Mr Sunderland is also a director of that company and has taken part in these proceedings as the Respondent's representative.

9 The Tribunal heard from Mr Sunderland that liquid waste (including sewage and waste water) from mobile homes on the site feeds into a sewerage system consisting of a series of tanks situated around the site. There is no water treatment plant on the site, therefore all waste water and sewage from each of the homes feeds into the various tanks.

10 Mr Sunderland suggested at the start of the hearing that the Respondent didn't have a lot of information concerning the tanks on the site, saying that the Respondent did not have a plan of the sewerage system. However, during the course of the hearing Mr Sunderland sought further information from members of his staff and was able to provide some further information to the Tribunal about the sewerage system and the tanks.

11 The Tribunal understand there are a series of tanks on the site, these are each allocated a number which identifies them. The numbering of the tanks is not sequential and in fact correlates rather to the tank's positioning on the site (and proximately to relevant plots/ homes). A number of the tanks are linked to each other and feed into other tanks. Sewage may therefore leave a home on the site and enter one tank, before moving into a different tank. The process by which sewage is moved from one tank to another varies: between some tanks there was a pump (so sewage was pumped from one tank to another) but between other tanks there was no pump and the Tribunal were told the sewage moved by gravity because of the gradient.

12 The tanks are emptied periodically by a contractor instructed by the Respondent. The Tribunal will refer to this third party contractor (a limited company) as Mr B. Mr B was not a party to these proceedings and did not provide any witness statement. The Tribunal were told that Mr B had been the contractor used for sewage removal (i.e. emptying of the tanks) for the site for many years (including when the site was owned by B & D Cowell). The Tribunal were told he knew the site well and knew the tanks. He would regularly attend the site to visually check levels in the tanks and based on that visual check he would either empty the tank or leave it for the time being. The Tribunal were

told by Mr Sunderland that Mr B would only levy a charge if he actually emptied a tank; i.e. he did not charge for merely checking the level in a tank. There was no apparatus allowing for a telemetry check of tank levels and so this was only done by someone opening the tank and looking in to gauge the level in the tank by eye. Based on his manual (visual) check of levels within the tank Mr B would make a decision to empty the tank there and then or leave it.

13 Mr B would then invoice the Respondent based on the number of tanks he had emptied (charging, in 2020 and 2021 on the basis of a flat rate per tank emptied). Mr B also emptied tanks at other local mobile home sites owned by the Respondent and the Tribunal was told that he had a good reputation locally for his work.

The written statement/agreement.

14 The agreements under which the Applicants occupy their pitches on the site are in the form of a written statement of terms as required by the 1983 Act. The agreements include terms implied by virtue of the provisions of the 1983 Act. The Tribunal were told that there were a variety of different forms of written agreements in place, and the form of an occupier's written agreement (the express terms) largely depended on when they moved onto the site and who was the relevant site owner at the time. The Tribunal were told that since the Respondent's (and its immediate predecessors in title) ownership a different form of written agreement for new occupiers was being used. The Tribunal were told that that form of written agreement included express clauses about paying sums due to the Respondent by Direct Debit. However the only written statement before the Tribunal was that appearing at [367] -Mrs Spoard's written agreement.

15 The 1983 Act implies certain terms into the site occupiers written agreements. One such implied term (implied term 29) defines pitch fee as "…the amount which the occupied 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 included amounts due in respect of gas electricity water and sewage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."

16 The express terms of the written agreement which was before the Tribunal, so far as relevant to the issues in this appeal are:

a. [368] that sewage services were not included in the pitch fee; and

b. [368] para 9 "An additional charge will be made for the following matters: electricity on meter, Gas (LPC) on meter, Sewerage charges."

It was therefore clear that the Respondent was entitled to levy sewage charges, in addition to the pitch fee, to all occupiers on the site.

The sewerage/sewage charges

17 The Respondent levied sewage charges quarterly. The Applicants provided a table [259] which it was said showed the position in relation to sewage charges which had been levied by the site owners historically. This appeared to show from August 2015 to November 2020 charges for sewage had been levied at the rate of £56.50 per quarter. In February 2021 the table referred to this charge increasing to £60.22 per quarter. However the table also purports to show charges for 01/02/22 for sewage being levied at £60.22 per quarter, when it was clear that in fact that had not been the case [76]. The February 2022 invoice showed charges of £158.53 being levied. Indeed it was this rise in sewage charges (from £60.22 to £158.53 per quarter) levied in the February 2022 bill which had prompted the application to the Tribunal.

18 The Tribunal accepted the Applicant's other evidence that prior to February 2022 they had, for a number of years been charged £56.60 and then £60.22 per quarter for sewage disposal [12][77][76].

19 Mr Sunderland explained the Respondent's method for calculating sewage charges. He stated that in February 2022 the Respondent charged an estimate of sewage charges for the coming year. This estimate was based on the actual charges incurred by the Respondent for sewage disposal in the previous year. So the invoices (demands) for sewage charges which gave rise to the application before the Tribunal, and dated February 2022 [76] were based on the actual charges for sewage the Respondent had incurred in the 2021 calendar year. This had resulted in quarterly charges for sewage being levied for 2022 in the sum of £158.53. An increase of £98.31 per quarter from what had historically been charged. Mr Sunderland pointed out that the occupiers were "…not billed for invoices, but the [previous year's] invoices are used as a basis for estimated charges for the year."

20 Mr Sunderland suggested that the site occupiers had been undercharged for sewage charges in previous years and suggested that there hadn't been any change in the frequency of the tanks being emptied.

21 In response to a direct question from the Tribunal Mr Sunderland stated that any balancing of charges required (if for example the costs in a particular year were higher or lower than those covered by the estimated charges) would be taken into account in setting the following year's charges.

22 Mr Sunderland referred [196 para 15] the Tribunal to an Upper Tribunal decision of Wyldecrest Parks (Management) Limited v Santer [2018] UT 0030 in this regard. Mr Sunderland suggested that this method of calculating and levying charges had been approved by the Upper Tribunal. A copy of the Upper Tribunal decision appears in the bundle at [427] and the reference to this method of calculating charges is at [431 para 13 and para 41]. In that case the First Tier Tribunal found that that method of charging for water costs was reasonable. The Upper Tribunal commented at paragraph 41 when considering this system that it had "….the great merit of simplicity and avoided recalculation when new bills were received. This was of benefit to residents on fixed income who would know at the beginning of each year how much they would have to pay…".

23 While the Applicants subsequently sought, in the instant application to query the basis on which sewage charges were calculated [261] this was only raised very belatedly and no alternative method of calculation was proposed by the Applicants.

24 The Tribunal found that the method of calculation of sewage charges used by the Respondent was a reasonable one: it was based on actual charges incurred; it provided site occupiers with a level of certainty for charges for the year in question; and there was a mechanism which provided for adjustment in the event of changing expenses in this regard.

25 The Respondent did not charge any fee for administering the sewage charges.

26 The Respondent produced a copy of OFWAT guidance [318] and at [408] 'Information for household customers' concerning The Water Resale order. However while Mr Sunderland suggested (and the Tribunal accepted) that the Respondent complied with that guidance they were not in fact obliged to do so in relation to sewage charges. At [409] it was specifically stated that the maximum resale price does not apply to cesspits and septic tanks. i.e. it did not apply to the tanks on the site being considered by the Tribunal in this application.

The invoices

27 During the hearing the Tribunal raised with Mr Sunderland a point concerning the validity of the demands made of site occupiers for sewage charges.

28 Schedule 1 Chapter 2 of the 1983 Act provides, at paragraph 27

"(1) Where **the owner** makes **any demand for payment by the occupier** of the pitch fee, or **in respect of services supplied or other charges**, **the demand must contain**—

(a) **the name and address of the owner**; and

(b) if that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.

(2) Subject to sub-paragraph (3) below, **where—**

(a) the occupier receives such a demand, but

(b) it does not contain the information required to be contained in it by virtue of sub-paragraph (1),

the amount demanded shall be treated for all purposes as not being due from the occupier to the owner at any time before the owner gives that information to the occupier in respect of the demand.

(3) The amount demanded shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include receiving from the occupier the pitch fee, payments for services supplied or other charges."

(emphasis added)"

29 The invoices (being demands for payment) issued by the Respondent, and which were included in the bundle appear at:

a. [76] 01/02/22 'invoice' for £158.53 for sewerage charges. The Tribunal found that this was a demand for payment – advising that unless otherwise instructed the amount would be collected by direct debit with the pitch fee. The invoice has a Wyldecrest Parks logo in the top right-hand corner. On the left-hand side of the invoice is the name UK Properties Management Limited, and an address of 857 London Road is given. At the bottom on the lefthand side two further addresses are given, one is a registered address in Scotland, the other is a registered address Lynton House, Tavistock Square, London.

b. Included for the purposes of comparison [77] was an invoice dated 01/02/2021 for £60.22 in respect of sewage charges and at [78] an invoice of 01/11/2021. These invoices also have a Wyldecrest Parks logo in the top right-hand corner. On the left-hand side of the letter is the name Wyldecrest Parks, and the same 857 London Road address is given. At the bottom on the lefthand side two further addresses are given, one is a registered address in Scotland, the second is

    i. at [77] (February 21 invoice) a registered address of 166 College Road, Harrow; and

    ii. at [78] (November 21 invoice) a registered address of Lynton House.

c. At [79] to [88] are a series of letters to occupiers dated 17/02/2022 these letters have differing forms of words but refer to an outstanding balance (which the Tribunal understood to include the sewage charges) and in a number of cases to an additional £25.00 charge being added to the occupier's account. The letters stated "all balances on the account remain payable and if not paid your account will be in arrears which may result in recovery through the courts or termination proceedings" The Wyldecrest logo appears on the letter (top left hand side), and on the top righthand side is the name Wyldecrest Parks (Management) Limited, giving the 857 London Road address. The registered office is listed at the bottom of the letter and refers to Lynton House.

d. A more recent 9th June 2022 invoice appears at [247]. This too includes the Wyldecrest logo and details of the Lynton House registered address, but the name of the entity demanding payment is Wyldecrest Parks. That invoice though appears to have been sent with a covering letter appearing at [246]. That covering letter again includes the Wyldecrest logo, but importantly also includes the name in the top right-hand corner Wyldecrest Parks (West) limited, the registered address of Lynton House also appears.

30 All of those letters and invoices are, the Tribunal finds, demands for payment. There is no formal definition of a demand under the 1983 Act, but using the words ordinary meaning, it is a request for payment. That is what each of the documents referred above do – they request payment of specific sums from the recipient occupiers.

31 Those demands therefore were required to comply with the terms of Schedule 1 Chapter 2 paragraph 27 of the 1983 Act. The Tribunal found that they did not comply to the extent detailed below.

32 The owner at the relevant time of all those demands was "Wyldecrest Parks (West) Limited (indeed they had been the registered owners since 2018). Save for on the covering letter from 9th June 2022 [246], nowhere does that name appear on any of the demands before the Tribunal.

33 Mr Sunderland made a number of submissions to the Tribunal in relation to this point (including after the luncheon adjournment). He stated:

a. UK Properties Management limited was "…a company within the group and they carry out functions within the group."

b. The demands were valid as they referred to Wyldecrest and had the Wyldecrest Logo.

c. That the owner's name was given on the demands as Wyldecrest Parks was named and that was the trading name.

d. That the occupiers knew who they needed to pay the charges to.

e. That the occupiers knew the identity of the site owner as the pitch fee review form was given annually to occupiers and this would specifically list/give the name of the site owner.

f. The registered address had been given correctly on the letters. Mr Sunderland gave oral evidence that Wyldecrest Parks (West) Limited's registered address was in February 2021 166 College Road, and by November 2021 and had changed to Lynton House.

g. Finally, Mr Sunderland, purported during the course of the hearing to give sufficient notice orally of the name of the site owner.

34 The Tribunal raised with Mr Sunderland whether it could be said that in fact the name of the owner had been given sufficiently during the course of these Tribunal proceedings given the amendment to the identity of the Respondent [91] [103] [107] and the subject matter of the proceedings being the invoices in question.

35 Other than for the June 2022 documentation, which the Tribunal address separately below, the Tribunal found that the name of the site owner had not been given on the demands. Therefore in accordance with the provisions of Schedule 1 of the 10983 Act, the sums demanded are not currently due.

36 The Tribunal rejected the submission that the inclusion of a logo cures this defect. The logo does not give the correct name of the site owner. The inclusion of the word Wyldecrest does not amount to giving the name of the owner. Nor does the reference to Wyldecrest Parks, whether as trading name or other, cure the defect. The site owner has a specific defined meaning under the Act. Section 5 defines owner "…. in relation to a protected site, means the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or

would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site". The correct legal entity needed to be named.

37 As Mr Sunderland himself pointed out earlier in these proceedings [91] Wyldecrest Parks (West) Limited and Wyldecrest Parks (Management) Limited are two distinct and separate legal entities.

38 Nor did the Tribunal find that Mr Sunderland's oral statement during the course of the proceedings was sufficient to cure the defect. He was not, in the course of his evidence to the Tribunal able to demand from all 31 applicants (only 1 of whom was before the Tribunal and taking part in the hearing) payment in accordance with those invoices and letters on that basis that he had now orally given the owners name.

39 Nor, on reflection was the Tribunal of the view that the inclusion of the correct site owner's name on other documents in the bundle and on the face of the application was sufficient to cure the defect either.

40 The Tribunal further rejected Mr Sunderland's submission that the occupiers knew who the site owner was in any event, including because details had been given in annual pitch fee review documentation. The Tribunal had not seen a copy of any pitch fee review documentation (and Mr Sunderland did not seek to produce any such documentation), but noted that the Applicants had, when making their initial application to the Tribunal named the site owner (and Respondent to the application concerning these demands) as Wyldecrest Parks (Management) Limited – the entity who had written to them [79].

41 The Tribunal accepted Mr Sunderland's evidence that the owner's registered address (being an address in England and Wales) had in fact been given on the demands.

42 However, what was required was that both the owner's name AND an address in England or Wales was given on the demands.

43 The Tribunal therefore found that the provisions of paragraph 27 of Chapter 2 of Schedule 1 to the 1983 Act had not been complied with in relation to the February 2022 invoices or letters.

44 In relation to the June 2022 invoice [247] the Tribunal found that while the demand itself did not include the site owner's name merely referring to Wyldecrest Parks generically on its face, the covering letter [246] did correctly name the site owner Wyldecrest Parks (West) Limited. Those documents were, the Tribunal understood sent together. Taken together the Tribunal found that the reasonable recipient would have understood that the invoice came from the site owner Wyldecrest Parks (West) Limited- i.e. it was a demand made by the named site owner; see House of Lords decision in Mannai Investments Limited v Eagle Star Assurance House of Lords [1997] UKHL 19. The Tribunal found that the key difference with the June 2022 invoice was that the correct owner was identified and named in the covering letter and as the invoice was attached to or sent with that letter it was clear the invoice was from the owner and the owner was expressly and correctly named. That could not be said to be the case

with the other invoices/letters where other specific incorrect entities were specifically named.

45 The Tribunal therefore found that the 09/06/2022 invoice did comply with the provisions of paragraph 27 of Chapter 2 of Schedule 1 to the 1983 Act.

46 As Mr Sunderland acknowledged during the course of the hearing, if the Tribunal found that the provisions of paragraph 27 had not been complied with for certain invoices, this had the effect that the relevant charges detailed therein would not be currently due. However this defect could in fact be easily remedied by the Respondent issuing new invoices providing the correct details. Mr Sunderland suggested a finding by the Tribunal that the sums weren't due for this reason would result in a waste of the parties and the Tribunal's resources, with the parties merely ending up before the Tribunal again in a few months' time, once revised demands had been sent, ready to argue the same points they were all prepared to argue today.

47 Mr Sunderland's pragmatic approach whilst understandable is not however a reason to ignore or turn a blind eye to the defect in the demands which had been identified.

48 However, taking into account the reality of the situation the Tribunal proceeded in any event, to consider the substance of the dispute between the parties. The Tribunal considered that this was in accordance with the overriding objective and was both proportionate and avoided undue delay whilst providing proper consideration of the issues. This approach had the advantage that in the event that the Tribunal was wrong concerning its decision on the validity of the demands, a decision on the sewage and other charges had in fact been made in any event. It also meant that the parties were aware of the Tribunal's views concerning the sewage and other charges in any event which would be relevant as and when the defect on the face of the demands was rectified.

The amount of the sewage charges demanded.

49 The Applicants had brought the application to the Tribunal as historically they had been paying £60.22 per quarter [12][77] in 2021 and before that £56.60 per quarter for sewage charges. There was then a significant increase in these charges, seemingly without any advance explanation as to why this had occurred being offered by the Respondent. As noted above the sewerage charges increased from £60.22 per quarter to £158.53 per quarter. Mr Sunderland told the Tribunal that he believed the figure for sewage charges had just been replicated year on year for a period with the result that the residents had been undercharged. If that was correct, it wasn't then clear to the Tribunal at what stage the Respondent stated that they had started to implement the charging system that Mr Sunderland now said was being operated (and is described at paragraph 19 above). Was it started for the first time with the February 2022 bills?

50 Having received the 1st February 2022 invoices (seemingly before 01/02/2022) :

a. Mrs Spoard wrote to the accounts department email address given on the face of the invoices [43] on the 31/01/2022 querying the increased sewerage costs. The accounts department replied the same day advising "We have charged you based on the supplier bills received." And attaching a calculation.

b. On the 01/02/2022 [42] Ms Spoard wrote again pointing out some instances of double billing evident from the invoices. She received no reply to that letter.

c. She chased this again on the 03/02/22 pointing out she had not had a response to her email of 01/02/2022 [41]. She received a reply on 03/02/2022 which did not address the points Mrs Spoard had made but merely asserted that she had billed in accordance with OFWAT Regulations and the charges met with the Maximum Resale price provision [41].

d. The Applicants wrote to the Accounts department of UK Properties Management Limited (the entity named at the top of the sewage invoices) to say they were not going to pay all of the increased sewage costs as they considered them to be "…a consequence of the frequency of removals of waste in turn the result of your decision not to upgrade the system." [72]. And went onto state that the sums claims were unreasonable and there was no obligation to pay "…unreasonable sums that stem from your own refusals to provide the necessary infrastructure which would not have incurred these full costs."

51 The Respondent's account's department response to Mrs Spoard's emails, in which she understandably queried a sudden and seemingly unexplained increase in sewage charges, the Tribunal, found were unhelpful. There was no attempt to explain the reason for the increase in charges and there was no attempt to engage with Mrs Spoard's point that there appeared to be double billing – the latter being a point ultimately conceded for the first time during the hearing by Mr Sunderland.

52 In addition to the 01/02/2022 sewage invoices, on the 17/06/2022 the Respondent sent further invoices for £351.09 to the Applicants [246][247] stating that there had been an underbilling of sewage charges in 2021. It was stated that the Respondent had discovered that a number of sewage invoices from 2020 (February to September 2020) had been "….incorrectly costed to our maintenance account rather than to the resident account…" as a result of home working during the covid-19 pandemic. This meant that these bills were omitted from the Respondent's calculations when calculating the charges levied for sewage during 2021.

53 The Applicants stated that in their letter [264] that at the time of writing (17.00 on 22/06/2022) not all residents had received that letter and the June 2022 invoice. This point was not pursued by the Applicants during the hearing and so the Tribunal make no further reference to that point. However the Tribunal did raise at the outset of the hearing whether the June 2022 charges were before the Tribunal in the current application – they had not been referred to in the

original application (as they had not been levied at that time) but the points raised by the Applicants in relation to those charges were the same as those raised in relation to the February 2022 invoices. The Applicants submitted that the June 2022 invoices be included for consideration by the Tribunal, and the Respondent whilst pointing out this was a new point not included in the original application then stated that it was a matter for the Tribunal whether the June 2022 invoices were to also be considered but it was indicated that the Respondent didn't object.

54 While on one view it would seem to be a waste of all parties, and the Tribunal's, resources to exclude consideration of the reasonableness of the amounts claimed under the June 2022 invoices and require the Applicant to issue fresh proceedings in relation to them and that issue alone at a later date if they were challenged, the Tribunal was conscious of the fact that neither the Tribunal nor the Applicants had seen the 2020 invoices from Mr B which it was said lay behind these new charges. If there was evidence of errors on the face of any of those invoices, that may well be an issue relevant to the reasonableness of those charges.

55 The Tribunal considered on reflection that it was not appropriate to include consideration of the *amount* of charges covered by the June 2022 invoices within the instant application. The Tribunal would though consider the issue about whether the June 2022 demands were validly made under the terms of Schedule 2 Chapter 2 paragraph 27 of the 1983 Act. The Tribunal allowed Mr Sunderland the opportunity to seek clarification from his office over the luncheon adjournment in order to ensure that the Respondent was not prejudiced in this regard. Doubtless if requested by the Applicants the Respondent would provide copies of Mr B's 2020 invoices (as indeed it is required to do and had done in the past). If incidents of double invoicing were identified in 2020, the Tribunal hoped that the Respondent would address these in a timely manner, but if not the Tribunal's approach to the June 2022 invoice in this regard left a further application to the Tribunal open as a possibility (to consider the amount of those June 2022 invoices).

56 The Tribunal has commented above on the Respondent's calculation system (using the previous year's actuals to arrive at an estimated figure for the coming year). Mr Sunderland explained that any balancing required in relation those payments would be taken into account when setting the next year's quarterly bills. So for example, Mr B's invoices for sewage from 2021 had been used to set the sewage charge levied in 2022. Mr Sunderland explained that the error identified in Mr B's billing in 2021 (see below) would result in a credit being given by Mr B and that this would be reflected in the 2022 invoices from Mr B and would therefore fall to be taken into account when setting sewage charges for 2023. No administration charges were added on to the sewage charges levied they were based and calculated solely on the basis of the actual invoices for the third-party costs (of Mr B) for the previous year.

57 However the system was not being used in this way in relation to the recently discovered 2020 invoices. The additional sums were being charged separately and were additionally demanded by the Respondent in June 2022. The Tribunal presumed this was because they were not being used to arrive at the 2023

estimated charges (presumably because they hadn't formed part of the actual charges in 2022 and so fell outside the ambit of the Respondent's system).

58 There was, so far as the Tribunal could see, no difficulties under the Limitation Act 1980 in the Respondent claiming these charges which were said to be due from the Applicants. The charges would, under the Respondent's system have been levied via the 2021 quarterly charges (2020 actuals forming the basis for 2021 estimated charges).

59 While Mr Sunderland explained to the Tribunal in his oral evidence the Respondent's system for arriving at the quarterly amounts billed and the balancing system the explanation of how any balancing would work had not been provided prior to the hearing. While Mr Sunderland's witness statement [196 paragraphs 15 to 18], refers to using the previous year's bills to "…charge quarterly in the year", there is no reference there to balancing payments, nor to the quarterly charges being 'estimates' which was how Mr Sunderland described the system in his oral evidence to the Tribunal.

60 The Respondent was required under the terms implied by the 1983 Act to provide free of charge documentary evidence in support of and an explanation of any changes – including sewage charges. Mr Sunderland asserts that the Respondent did that [96-17] (see above reference to email exchanges between Mrs Spoard and the accounts department. The Tribunal agreed that the Respondent had provided a limited explanation to Mrs Spoard of the basis for the charges (they were based on the previous year's invoices), and that this was sufficient to comply with the Respondent's obligations under the 1983 Act. However, the Tribunal found that there had been no reference to the estimated charges or any balancing calculations nor had there been any explanation from the Respondent for the very considerable increase in sewage charges.

61 In answer to specific questions from the Tribunal Mr Sunderland accepted that the sewage charges demanded from residents needed to be fair and reasonable. He expanded on this submitting that the Tribunal could have confidence that the sewage charges were reasonable as the Respondent followed the OFWATT guidance (even though strictly speaking it did not apply to sewage charges on the site in question).

62 For the avoidance of doubt, the Tribunal found it was an implied term of the occupier's written agreements that the additional charges for sewerage which could be levied had to be reasonable. In reaching this conclusion the Tribunal took into account the Court of Appeal's decision in RP Hardman and Partners v Greenwood [2017] EWCA Civ 52 and Arnold v Britton [2015] UKSC 36 and Britanniacrest Limited v Bamborough [2016] UKUT 144 where the Upper Tribunal (Judge Rodger QC) held that an express provision in an agreement, to which the 1983 Act applied, for an additional charge for administration of gas, electricity, water and sewage was limited to a reasonable charge on normal principles of the interpretation of contracts." Such a test of reasonableness of charges as an implied term is, in the Tribunal's view "so obvious it goes without saying", and in particular given the context of such a term and the overall statutory regulation of such agreements.

63 The onus is on the Applicant to show that the charges levied are unreasonable [see para 48 of Hardman (ante)

64 A number of points were made by the Applicants in support of their argument that the sewage charges were not reasonable. Before setting them out in detail however it is worth remarking that just because there has been a significant increase in charges does not mean that the increased charges are unreasonable per se.

65 Mr Sunderland sought to argue that there had been no significant increase in sewerage costs from 2020 or 2021. He pointed to the recently discovered invoices from 2020, and remarked that he considered the occupiers had seemingly been undercharged in previous years.

66 What was clear though was that the Applicants had been faced with very much more significant bills for sewage costs in February 2022 and there had been no real attempt to explain that increase to the Applicants at the time nor indeed since, despite their requests. Indeed even up to the day of the hearing the Respondent had not engaged with the detail of the points raised by the Applicants as to their concerns about frequency with which some of the tanks on the site were being emptied. Mr Sunderland's witness statement in the bundle does not mention these points, yet it was clear from the Applicant's case [12] that this was the level of detail they were querying. Mr Sunderland also stated early on during his evidence that "…no-one is questioning the integrity of the company emptying it [the tanks]." But that was in fact precisely the effect of one of the points raised by the Applicants [154][263- para 2].

67 The Applicants pointed to the fact that Mr B's invoices covered his work at various local sites owned by the Respondent, and different rates of charging were evident within the disclosed invoices from Mr B:

a. £180 per load [17] at the site

b. £140 [20] at the site

c. £200 at a different site [17]

d. £180 again [17] at the site

e. £140 [23] at a different site

f. £180 per load [23] at a different site

g. £180 *per empty* [25] at the site.

h. More recently Mr B's charges had increased to £200 per 2,000 gallon empties [258][263- 7]

68 The Applicants had obtained their own quote for waste collection [250] in June 2022 for £269 for *up to* 2000 gallons and 1 hour on site. It is notable that this is significantly more expensive than even the increased rate being charged by Mr B.

69 When Mr Sunderland was asked about the difference in prices charged at different sites he referred to different tanks having differing capacities and so this might explain the differential between prices of different site. He suggested there was no difference in the terminology of 'per load' and 'per empty' it was merely a different turn of phrase but there was no different basis of billing.

70 The Tribunal found, on the basis of the evidence before them, that the charge of £180 per load or per empty was reasonable at the time. There was no evidence before the Tribunal which suggested that it would have been possible to secure the tanks on the site being emptied for a lower cost. Further the Tribunal accepted Mr Sunderland's evidence that in addition to cost there were other facts that needed to be considered when choosing a contractor, including their reliability and availability. The Tribunal accepted that Mr B knew the site and the tanks on the site very well, having been emptying the tanks there since before 2015 (indeed Mr Sunderland suggested he had been doing it for 10-15 years before 2015).

71 The Applicants also pointed to and queried the frequency with which some tanks were emptied and the significant disparity between the frequency with which some tanks were emptied compared to others: tanks 16 and 19 in particular were emptied far more frequently that other tanks on the site. The Applicants also referred to the change in frequency of these tanks being emptied. At [11] the Applicants, pointing to tank 19 being emptied 38 times and tank 16 33 times, yet others were emptied far less frequently.

72 In his oral evidence Mr Sunderland explained that Mr B attended the site regularly to the carry out a manual check of the tanks. Some tanks he would need to check more than every week as they filled up more quickly. Having checked the tank, if it didn't need emptying then Mr B would not empty it. He did not charge for checking the tank if it was not then emptied.

73 Mr Sunderland, having clarified the position with his office explained to the Tribunal in his oral evidence that tanks 16 and 19 "…are the two main tanks, 16 and 19 are the final tanks which others feed into. Tanks 12 and 14 feed in tank 16 and at the other end of the site other tanks feed into tank 19." The Tribunal accepted that that was why those two tanks were emptied far more frequently than any of the other tanks. The Tribunal also found that sometimes other tanks needed to be emptied, a number of examples of this were given by Mr Sunderland in his oral evidence, including if there was a blockage or a pump failure which meant a tank couldn't empty into the final tank. This would result in a tank needing to be emptied when it wouldn't otherwise usually require it. Or a tank may need to be emptied when maintenance work was being carried out, or if there had been a complaint (for example about a smell) then the tank would be emptied and monitored to see if that was the cause of the issue.

74 At various points in the bundle the Applicants have suggested that the frequency of these end tanks being emptied suggested that the system was inadequate or in a state of disrepair, at one point it was asserted that the applicants were aware that tank 19 was "…leaking out sewerage on a regular basis.." [12]. However no further details of this alleged disrepair were given. It was not explained how it was allegedly known that tank 19 was leaking or when these leaks were said to

have occurred etc. The evidence before the Tribunal did not, on the balance of probabilities support a finding that the tanks were in a state of disrepair.

75 The Tribunal also accepted Mr Sunderland's evidence that in terms of disrepair there was not very much which could go wrong with a tank: if there was a blockage or pump failure that meant a tank couldn't discharge into an end tank there would be more 'empties' of the tank in question, but a corresponding decrease in the volume of material going into the final tank which in turn would mean that was emptied less often. If there was a leak or a crack in a tank that would result in material leaking out of the tank and wouldn't logically require more emptying. There was insufficient evidence before the Tribunal supporting any assertion of disrepair.

76 The Tribunal also considered the Applicants' suggestion [55], that the Respondent was required to 'upgrade' the sewage collection or tank system. The obligation on the Respondent as site owner was to keep the sewerage system and tanks in repair [295 – para 22(c)][383] "The owner's obligations. The owner shall… (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;". The obligation is to maintain the sewerage services, not to improve. An obligation to maintain is analogous with a duty to 'repair'.

77 The evidence before the Tribunal did not suggest that there was disrepair in the sewerage services such that reasonably required the provision of any new more modern or improved system. The evidence before the Tribunal was that on occasion matters of disrepair arose (as one might expect with any system) and they were addressed at the time by the Respondent. The evidence before the Tribunal did not suggest that the repairs/ maintenance work being affected by the Respondent didn't remedy the individual issues as they arose. The Tribunal did not consider there was, based on the evidence before them, any obligation on the Respondents at the period of time being considered by the Tribunal to upgrade or improve the sewerage system on the site. The Tribunal considered that where there is a covenant to repair or maintain a system, there is no requirement that this involves ensuring that the system should require as little maintenance as a new system.

78 The Tribunal turned next to consider the other points raised by the Applicants, including different frequencies of tanks being emptied: The Tribunal considered that there would be occasions when tanks might need emptying, even if they were correctly discharging into the final tanks, for example in order to ensure that more solid material wasn't just collecting at and sitting at the bottom of the tank. Mr Sunderland's evidence was that there were tanks of different sizes on the site and these would need to be emptied at different frequencies. The Tribunal also accepted Mr Sunderland's oral evidence that the amount of material discharging into the tanks (and therefore frequency of emptying needed) would depend on the varying activities of those on the site. He suggested that it may have been the case over the Covid-19 national lockdowns in 2020 and 2021 that residents were at home more than usual and so there was more volume discharged into the tanks than had previously usually been the case. Mr Sunderland also explained the site (in common with other sites

Wyldecrest owned and managed nationally) experienced far more blockages in sewerage tanks during the Covid-9 pandemic than they had previously. The Tribunal accepted Mr Sunderland's evidence in this regard.

79 The Applicants also suggested that Mr B was not in fact attending and emptying the tanks on the days or as frequently as he was billing for. As Mr Sunderland pointed out this was a serious allegation and amounted to a suggestion of Mr B fabricating charges. The Tribunal have decided in this statement of reasons for its decision to refer to company in question by the initial and abbreviation only of Mr B: this is because of the serious nature of the allegation of wrongdoing and the fact that Mr B was not a party to these proceedings and had not been called to give evidence before the Tribunal by any party. He had not, been provided with an opportunity within these proceedings to defend himself against such allegations.

80 The Applicants suggested that having spoken to residents on the site they could not recall seeing Mr B attend on the days alleged. While accepting that occupiers may have a view or general recollection of the frequency of Mr DB's attendance, the Tribunal did not place a great deal of weight on such a generalised statement. No particulars or dates were given nor other evidence produced suggesting that Mr B hadn't attended on the days alleged to empty tanks. While a resident's generalised perception might be that they hadn't seen Mr B on site as often as his invoices suggested he attended there could be lots of reasons why this might be the case: fading memories, residents living near the tanks in question being out when they were emptied. Occupiers would not be, certainly in 2020 or 2021 before there was any concern about frequency his attendance being raised, have been specifically monitoring or recording his attendance.

81 Mrs Spoard suggested in her oral evidence that she knew that the tank opposite her own home had not been emptied as often as was suggested by Mr B's invoices because she could smell when it had been emptied and also because it was right opposite her home, she saw when this occurred. However she pointed to no specific dates when she could confirm that Mr B had billed for an empty of the tank opposite her home and she could specifically say he had not attended. The Applicants didn't provide specified detailed evidence of individual dates when it was said Mr B had invoiced for emptying a tank on the site but a specific resident could attest to being present the whole of that day and not seeing him.

82 As against that evidence, was other generalised oral evidence from Mr Sunderland in which he suggested that once this application had been made to the Tribunal he asked his maintenance manager to monitor Mr B's attendance at the site over the period of a number of months in early 2022. Mr Sunderland said his manager reported back to him that he had done this and there was no cause for concern: Mr B had attended when he claimed to have done. The Tribunal noted that there was no direct evidence from the Respondent's maintenance manager to this effect nor had any logs or documentary evidence been produced supporting the assertion that such observation or monitoring had been carried out.

83 Mrs Spoard indicated that she didn't feel that there had been any monitoring of Mr B done. However, other than parties' assertions to this effect there was no

additional evidence or specific detailed evidence produced by either party supporting their position.

84 Mr Sunderland stated that as a result of these proceedings he had spoken directly to Mr B and "…asked him directly if he [had] charged for emptying a tank when he didn't. He denies that." Mr Sunderland suggested that there was no proper basis on which to impugn the integrity and reputation of Mr B; it would not, Mr Sunderland suggested be in Mr B"s interest to act as alleged by the Applicants, it would damage his reputation locally and as Mr B carried out a lot of work for the Respondent on other local parks he would be jeopardising his work with the Respondent too.

85 Without specified detailed evidence suggesting otherwise the Tribunal found, on the balance of probabilities, that Mr B had attended the site and emptied the tanks in accordance with his invoicing. Nor were the Tribunal satisfied on the basis of the evidence before them that there was any disrepair to the tanks which resulted in sustained increased emptying. The Tribunal accepted Mr Sunderland's evidence that on occasion a broken pump or a blocked pipe meant tanks which otherwise would not need emptying were emptied, but these were isolated incidents and once the disrepair was rectified the emptying did not persist or continue. The Tribunal points to its findings below in this regard.

86 At [263] Mrs Spoard and the other Applicants raised various points about recent invoicing during the first few months of 2022 (January to April). These invoices had not been used to calculate the February 2022 sewage charges but would be used as part of the calculation of the 2023 charges and the Applicants also relied on them in support of their broader points about frequency. During the course of the hearing Mr Sunderland spoke to those managing the site on behalf of the Respondent about these specific matters and referred to the following in his oral evidence:

a. Tank 34b [263- 3]. Ms Spoard pointed out that there was no previous billing for this tank in the whole of 2021, yet it was emptied in January 2022.
    i. Mr Sunderland explained that tank 34b pumped into tank 19. In January the mechanical pump (used to move material from tank 34b into tank 19) failed and needed to be replaced. This necessitated the emptying of tank 34b. When the pump was functioning normally this meant that there was no need to empty tank 34b separately.
    ii. The Tribunal accepted, on the balance of probabilities Mr Sunderland's evidence and explanation of this.

b. Tank 39 [263-4]. Ms Spoard pointed out that there was no previous billing for this tank in the whole of 2021, yet it was emptied in twice in February 2022.
    i. Mr Sunderland stated that tank 39 fed into another tank (tank 40) and there was a blockage between the two. There was no pump between these two tanks and material moved from one to the other by reason of their respective gradients.

ii. Tank 39 was emptied twice as when the tank levels were checked it was clear that the tank was full and needed to be emptied. It then quickly became full again and so it was clear that there was a blockage preventing tank 39 emptying into the next tank. Tank 39 therefore needed emptying a second time so that the blockage could be cleared.
iii. The Tribunal accepted, on the balance of probabilities Mr Sunderland's evidence and explanation of this.

c. Tank 54 [263-6]. Mrs Spoard pointed out that there was no previous billing for this tank in the whole of 2021, yet it was emptied twice in March 2022.
   i. Mr Sunderland stated that the Respondent had received a complaint from a resident of a sewage smell and as part of the investigations into this the nearby tank (tank 54) was emptied as a precaution. Mr Sunderland explained that the tank was emptied twice as having been emptied the first time the smell was said to have returned and so the tank was emptied for a second time. At this point a "…localised issue.." was identified which was not referable to the tanks.
   ii. The Tribunal accepted, on the balance of probabilities Mr Sunderland's evidence and explanation of this.

87 In her closing submissions Mrs Spoard queried why if the pump had been fixed in early 2022 the tank was now only emptied once a month (compared to a more frequent emptying rate in 2021). The Tribunal agreed that this seemed odd, but as stated above they accepted the Respondent's evidence that the tanks were emptied when this was noted by Mr B as being required. There could be a number of reasons why tank wasn't filling as quickly in 2022 (there was no national lockdown in place; there was reference by Mr Sunderland to other tank(s) having been installed on the site – though specific details of this were not provided). However on the balance of probabilities the Tribunal accepted that the tanks were being emptied as required. This point did not cause the Tribunal to reach a different conclusion given the totality of the rest of the evidence before it.

88 At [42] in the bundle, the Applicant had raised (by email) a specific issue involving what appeared to be duplicate invoicing by Mr B during 2021. When the Tribunal asked Mr Sunderland about the matters raised by Mrs Spoard he was unable, initially, to assist the Tribunal. And he did not know if the issues she raised (about double billing) had been resolved. After the luncheon adjournment Mr Sunderland stated he had spoken to the Respondent's accounts department and they had checked the issue with Mr B. It was now accepted by the Respondent that there had been errors as identified by Mrs Spoard, and that a £900 credit invoice (5 x £180 = £900) would be raised in 2022 and applied to the charges made by Mr B later in 2022. This would therefore be reflected in the charges levied by the Respondents to the site occupiers in their 2023 fees.

89 The Tribunal noted Mr Sunderland could not explain why this issue had not been resolved by his accounts department when it was first raised by Mrs Spoard in February 2022, nor indeed given that the Tribunal proceedings were pending at any time before the actual hearing. The Tribunal notes once more that the Respondent's witness statement within the bundle failed to engage with the detail of Mrs Spoard's and the Applicants' queries.

90 The Tribunal also raised with Mr Sunderland, queries about how reliable Mr B's billing and invoicing was given the errors identified above, and specifically that these had not been picked up on by the Respondent's own account department. He stated that while he accepted there had been errors, these were limited saying "….everyone makes mistakes…it should have been picked up by our department and it wasn't…. but given all the work Mr B has done and they've only found two errors."

91 The Tribunal was concerned by the fact that Respondent had not picked up on Mr B's invoicing errors, and also that once this had been pointed out to them by Mrs Spoard still nothing was done to investigate or even acknowledge this. However the Tribunal were still satisfied, on the balance of probabilities, given the evidence before them that the sewage invoices were reasonable and had been subject to the credit of £900 been appropriately incurred. The fact that errors had been made didn't automatically cast into doubt all of the invoices from Mr B, nor did it, in the Tribunal's view justify a finding that the emptying had not been otherwise carried out as billed.

92 Therefore, and for the reasons detailed above the Tribunal found that the amounts claimed in the sewerage invoices dated 01/02/2022 were reasonable.

93 However, the sums demanded in the 01/02/2022 invoices were not, at the date of the hearing, due and owing because the relevant provisions of the 1983 Act had not been complied with concerning the site owner's name appearing on such demands. Once that error had been rectified by the Respondent and new, correctly formatted demands were sent to the occupiers the Tribunal considered the sums claimed would be due.

Administration Charges.

94 The Applicants also raised in their application a £25 fee which some, but not all, of the site occupiers had been charged. The Applicants queried whether this could be properly demanded under the terms of their written agreements [13]. Copy letters, demanding a £25 charge were sent to some occupiers (see [79] onwards). There were however seemingly a variety of letters sent to occupiers, not by the Respondent, but by the Respondent's predecessors in title (Wyldecrest Parks (Management) Ltd):

a. One example appears at page [80] and in which it was stated "As it is a term of your 1983 agreement that payment is made by direct debit a £25.00 charge will be added to your account for each month for payment received by any other means".

    i. No copy of a '1983 Act agreement' with such an express term had been included within the bundle before the Tribunal. The only copy of written statement (i.e. a 1983 Act agreement) did not include any express provision requiring payment by direct debit.

    ii. However the Applicants agreed that some residents did in fact have written agreements with such express terms [13]. The Applicants agreed that some 3 site occupiers had an express term "…informing them that there is a penalty/admin charge for failing to pay by Direct Debit."

        1. What wasn't clear to the Tribunal was whether the express term in those agreements specifically specified that £25 was payable, or whether it was rather stated that a charge for the administration of not paying by direct debit would be payable.

        2. However as the Applicants were not challenging the payment of such a £25 charge in relation to those three occupiers with relevant express terms [13] this was not a live issue before the Tribunal on this application. There was therefore no need to consider if this was recoverable as liquidated damages or irrecoverable as a penalty.

b. Another letter appears at [79] and in that version it was stated "As your direct debit for this month has been returned by the bank as unpaid 'instruction cancelled' a £25.00 charge has been added to your account".. In the next paragraph it was stated that "Sewerage charges have been calculated in accordance with Ofwat regulations. The charges are billed under the terms of your contract or agreement."

    i. The Tribunal considered that the intended implication of that wording was that the £25 charge was also being billed under the terms of the contract or agreement. The letter was at best ambiguous as to the basis of the £25 charge; the sewage charges are indeed billed under the terms of the 1983 Act agreement/contract (see above). The £25 was also referred to in the letter as a 'charge' and would, the Tribunal concluded, to the reasonable reader therefore also be seen as being claimed under that description (i.e. a charge under the agreement). At no point in that letter was any other legal basis for £25 fee/charge given.

c. Some occupiers were sent a letter (see an example at [82]) in which no £25 fee was demanded but it was noted that their direct debit had been cancelled.

95 All the letters additionally stated that 'should we need to write to you again a £5.00 charge will be added to your account and for any subsequent letters additional charges as per the enclosed will apply."

96 Mr Sunderland gave evidence to the Tribunal about these charges, the effect of his evidence was as follows:

a. Some occupiers had an express term in their agreement that fees were to be paid by direct debit, and therefore the cancelling of their direct debit was a breach of the terms of their agreement. Mr Sunderland referred to this as a contractual charge.
b. Other occupiers did not have an express contractual term requiring payment by direct debt. However Mr Sunderland argued that in these cases the £25 fee being demanded was akin to a damages claim [197 para 26] "….if the Respondent suffers a loss as a result of the actions of an occupier, they would be entitled to pursue damages for that loss…". Mr Sunderland stated that if the Respondent sought to recover sums through a direct debit, but that unbeknownst to them the direct debit had been cancelled, this resulted in the Respondent being charged a fee by their bank (Mr Sunderland was unable to give the Tribunal a figure for this fee). Mr Sunderland explained that additional administrative tasks then needed to be carried out by the Respondent's staff in order to secure payment from an occupier, including identifying that account and the amount due and checking to see if payment had been made by other means and writing letters chasing payment etc. Mr Sunderland gave evidence that the Respondent had, "…years ago been involved with the DTI …" and as part of a project with that government department the Respondent's accounts department had put together a costs schedule setting out the detail of the costs they incurred for various administrative actions. Mr Sunderland said that was where the £2.50 charge for dealing with a cheque came from. The £25 charge for a returned/ failed direct debit also originated from this schedule which he explained to the Tribunal had not been revised since it was first drafted. The £25 was in this second situation, Mr Sunderland sought, to argue a claim for damages and anticipated costs incurred by the Respondent. No copy of this schedule or the date of its production was given to the Tribunal.

c. The third situation referred to those occupiers who had been sent a letter referring to the cancellation of their direct debit but not charging them a fee; Mr Sunderland initially suggested he didn't know why these people would not have been charged a fee. Then he stated that this might be because they had notified the Respondent in advance that they had cancelled their direct debit and so the Respondent hadn't tried to collect sums using the direct debit and therefore had not been charged a fee by their bank in relation to those occupiers.

97 The Tribunal reminded itself that the application before it was one under section 4 of the 1983 Act – i.e. to determine any question arising under the Act or any agreement to which it applies; and to entertain any proceedings brought under the Act or any such agreement.

98 The Tribunal found:

a. There appeared to be three 'class' or type of occupier:
    i. Those with express terms in their agreement which required payments of charges by direct debit (type i)
    ii. Those whose 1983 agreement or contract was silent on the method by which they were required to pay charges. Of these there were then two types of occupier:
        1. Those occupiers who had notified the Respondent, in advance, that they had cancelled their direct debit. These occupiers had not been sent a demand for £25 charge (type ii)
        2. The others had faced a demand for £25. The Respondent argued that this was in effect a claim for damages, as the Respondent had suffered a loss as a result of the occupiers' actions. Mr Sunderland's evidence was that the £25 was not, in this situation, being claimed under the terms of the 1983 agreement (type iii).

99 In relation to those occupiers (who were not specifically identified) who had an express term within their 1983 agreement /contract providing that they were obliged to pay by direct debit (type (i) occupier), the cancelling of a direct debit (and failure to put in place a new direct debit) would appear to be a breach of the terms of that agreement. Without having seen a copy of such an agreement, the Tribunal were unable to say whether there was a specific charge/ amount identified for such a breach. However on the basis that the Applicants had indicated (including confirming this orally at the hearing) that they were not seeking to challenge the £25 charge in relation to those type (i) occupiers the Tribunal need say no more specifically about this, but noted:

a. The demand appears to have been made not by the Respondent but the Respondent's predecessor in title. It is not clear how they would have standing to make such a demand;

b. The provisions of the 1983 Act (Schedule 1 Chapter 2 paragraph 27) would apply to any such demand for payment (being made under the terms of the 1983 Act) and as detailed above, such provisions had not been complied with.

100 In relation to those type (iii) class of occupiers who had not received a demand for an additional £25, the issue did not arise.

101 In relation to those remaining occupiers (type (ii) class of occupiers) who had received a demand for £25, and in relation to which Mr Sunderland now sought to argue liability arose as a damages claim, the Tribunal found:

a. In order to found a claim for damages, the Respondent would need to establish a cause of action. There was no alleged breach of contract nor any

tortious liability explained by Mr Sunderland in his evidence which applied to the situation of this type of occupier;

i. No reference had been made by Mr Sunderland to any relevant imposition of a legal duty of care or other legal or statutory duty which was said to have been breached. The Tribunal considered the example of damage caused by a driver of a vehicle to be unhelpful.

b. The cost of administrative action required by the Respondent's staff, or the cost of charges incurred from a third party (the Respondent's bank) did not, without more, give rise to a corresponding liability being imposed on site occupiers;

c. Mr Sunderland sought to argue that none of the occupiers had sought to raise any challenge with him about the £25 charge. It is difficult to understand how Mr Sunderland could maintain such a position given the clear detail of this part of the Applicants' dispute before the Tribunal. The application clearly sets out the dispute of these charges in relation to those without relevant express contractual terms of their agreements [13].

d. The Tribunal therefore found that, in terms of the application before it there was no liability under the terms of their 1983 Agreement/contract for such type (ii) occupiers to pay the £25 demanded.

e. The Respondent should therefore reimburse, pursuant to section 230 (5A) of the Housing Act 2004 the £25 fee paid by the type (ii) occupiers identified above. While the Tribunal noted that Mr Sunderland stated he didn't know which of the occupiers had relevant express terms (concerning payment by direct debit) in their written statements, it was clear that his office/staff did know as they had apparently sent different letters to the different types of occupiers.

f. The Tribunal also specifically record that while Mr Sunderland now sought to characterise the £25 charge to these type (ii) occupiers as a non-contractual claim for damages that was not explained in the letter sent to occupiers demanding such a sum. Indeed the Tribunal considered read as a whole the implication of such letters was that such a £25 was being levied under the 1983 agreements.

g. For the avoidance of doubt Mr Sunderland specifically stated on a number of occasions during his evidence that the Respondent did **not** levy any administration charge on occupiers in respect of dealing with the sewerage charges. He therefore did not seek to characterise the £25 charge in that way. His argument was that the £25 charge related to the cancellation of the Direct Debit, and was therefore not specifically related to the sewage charges at all – as Mr Sunderland expressly told the Tribunal all charges were paid by the Direct Debit (including the pitch fee).

102 In relation to the Applicant's request [13] for a determination of whether the additional other charge (of £5 per letter) referred to by the Respondents in their letters at [79] onwards could be charged under the terms of the occupier's 1983 Agreements, the Tribunal found:

a. No specific express or implied contractual term had been pointed to by the Respondent in support of their ability to levy such a charge;
b. No other relevant legal basis for levying such charges had been given. No other contractual provisions or other duty or other tortious basis for the charges had been given or relied on;
c. In the circumstances therefore the Tribunal found that the site occupiers were not required or liable under the terms of their 1983 Act agreements/contracts to pay such sums.

Reimbursement of fees

103 Rule 13 (2) of the Tribunal's Procedural Rules provides that the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. As Mr Sunderland submitted, the Tribunal may make such an order if it considers it just to do so. The Applicants made a claim for the reimbursement of fees from the Respondent.

104 Mr Sunderland on behalf of the Respondent resisted such an application. He argued:

a. That the Applicant chose to make an application to the Tribunal without contacting him first.

    i. When it was put to him by the Tribunal that Mrs Spoard had written to the Respondent's accounts department in February 2022 and had received no response in relation to the double invoicing query he replied saying "she wrote to the accounts department, everyone knows who I am and everyone knows I deal with legal matters".

    ii. And that regardless of what his accounts department might have said he was of the view that it would have been unlikely whatever response he or the Respondent had given they could have resolved matters and they would have still ended up at a Tribunal.

b. The application was made on [7] 24/02/2022 yet it wasn't until weeks later that Mr Sunderland said he received a copy of the application form. He told the Tribunal that although the Tribunal had given directions on 13/04/2022 he didn't receive a copy of the application at that time and that he had had to make three requests to see a copy of the application.

c. That he was a reasonable person but "…I haven't' received any co-operation…. We've done all that was needed."

d. In relation to the hearing fee the Respondent had not requested an oral hearing and they would have been content with a paper determination. The charges for sewage were legitimately being

demanded and aside from an assertion that Mr B had not been doing what he said he had been doing there was no substantive legal challenge to them.

e. The Applicants had not referred to any law or any case law and had in effect just complained they were not happy with the charges.

105 The Applicants in support of their application pointed to Mrs Spoard's attempts to seek an explanation for the very significant increase in sewage fees which had been demanded in February 2022 compared to previous years. Mrs Spoard referred to the lack of a response to her and others' letters at [46] from 05/02/2022 in which they explained their view that the sewage charges demanded were unreasonable and also stated "should you be willing to consider compromise to avoid the need for a Tribunal application, I would be pleased to receive your proposals for consideration at your earlier opportunity." There had been no reply to those letters. They had been sent to the Accounts department of UK Properties Management Limited – the entity which had sent the invoices [76]. Mrs Spoard explained she was not a lawyer or legally trained and had not therefore referred to any specific matters of law. She said she and the Applicants had not wanted to come to the Tribunal but there had been no attempt to engage with them or explain the situation. The Tribunal found that it was just and appropriate for the Respondent to reimburse the Applicants for all fees paid (i.e. both the application and hearing fees).

106 In reaching this conclusion the Tribunal found and took into account the following:

a. The sewage fees charged to occupiers had increased very significantly under the February 2022 invoices;

b. Despite Mrs Spoard seeking an explanation for this increase, there had been no real attempt to explain why such an increase had occurred. She had contacted those identified on the face of the invoice seeking an explanation and had been provided with copy invoices and told that she had been billed in accordance with guidance.

c. There had been no acknowledgement that there was, from the occupiers' point of a view, a very significant increase in sewage charges nor any attempt to explain why such an increase had occurred.

d. Mrs Spoard had pointed out clear evidence of duplicate invoicing by Mr B on the documentation disclosed. She had received no response to her emails.

e. Indeed the Respondent had not engaged, at all with the detail of the Applicants' queries until asked questions by the Tribunal during the hearing, and even then some of the explanations provided had required Mr Sunderland to speak to his office over the luncheon adjournment. This was despite the detailed issues having been raised on the face of the application.

f. The Respondent's witness statement filed in these proceedings did not seek to engage in the detail of queries raised by the Applicants. There

was no attempt before the hearing to explain the detail of the sewerage system at the site (or why some tanks were emptied more than others) or the basis on which Mr B attended and checked tanks. Nor was there any reference to the Respondents local maintenance manager having monitored Mr B's attendance. That evidence was only given orally by Mr Sunderland during the hearing.

g. The Applicants had written seeking clarification to those who had apparently sent the invoices yet there was no response to Mrs Spoard's email of 01/02/2022 [42] nor the Applicants' letters of 05/02/2022 [46].

h. The Respondent's response to the proceedings had not been constructive and they had not attempted to address the substance and detail of the Applicants' complaints before the hearing. Indeed despite the issue of double charging/invoicing on 5 occasions having been raised by the Applicants in February Mr Sunderland had not investigated this before the hearing. Yet once it was pointed out to him in the hearing it appeared the issue was agreed by the Respondent and resolved over the luncheon adjournment. With the Respondent agreeing there had been 5 occasions when visits had been double charged and so a £900 credit would be given by Mr B.

i. An explanation of the position re the interlinking of sewerage tanks and the basis on which they were emptied was only forthcoming as a result of Mr Sunderland's oral hearing during the hearing.

j. The Respondent had made various applications for Directions rather than engaging with the substantive issues before the Tribunal as detailed within the application. The real substance of the Applicants' argument was not that sewerage charges were not payable but rather that in light of the unexplained significant increase in sewerage charges the charges were not reasonable.

Conclusions

107 The Tribunal therefore makes the following findings.

a. In relation to the February 2022 invoice for sewage charges:
    i. These were not currently due and owing because of defects on the face of the demands.
    ii. However once such defects had been remedied by the Respondents, the Tribunal considered on, the balance of probabilities and given the evidence before them, that those charges were reasonable and that the Applicants were required under the terms of their written agreements to pay such sums.

b. The £900 credit for double invoicing from Mr B in 2021 would be reflected in the amounts charged to the Respondent in 2022 by Mr B and the credit would therefore be reflected in the 2023 sewerage charges demanded from the site occupiers.

c. In relation to the sewage charges invoiced to occupiers in June 2022 (in respect of sewage charges for 2021), these had been demanded in accordance with the provisions of the 1983 Act. Neither the Tribunal nor the Applicants had, to the Tribunal's knowledge been provided with the copy invoices from Mr B from 2020 which had been 'recently identified' by the Respondent and which formed the basis for such charges. The Tribunal did not wish to prejudice any application the Applicants may seek to make in relation to the amount of those charges, once they had had sight of the relevant invoices, and so the Tribunal decided on reflection to say no more about the actual amounts of these additional sewerage charges levied in June 2022.

d. In relation to the £25 charge for non-payment of charges/fees by direct debit, the Tribunal considered that

    i. In relation to those type (ii) occupiers whose 1983 agreements did not include an express term requiring payment of fees by direct debit, such sum was not payable.
    ii. The Applicants had clearly registered with the Respondent their unhappiness with that charge by virtue of these proceedings;
    iii. Any such sum which had been paid by type (ii) occupiers should therefore be reimbursed by the Respondent to each of those Applicants (type ii occupiers) pursuant to section 230(5A) of the Housing Act 2004. The Tribunal were not able to list the precise applicants these provision applied to as:
        1. It was not clear to the Tribunal on the basis of the current evidence which of the Applicants were class (ii) occupiers; and
        2. It was not clear to the Tribunal on the basis of the current evidence which of the class (ii) occupiers had actually paid the £25 fee.
    iv. But the Tribunal considered these occupiers were capable of identification by the Respondent given its accounting system and its apparent ability (given it had decided who to send the different types of letters to) to identify class (ii) occupiers from class (i) occupiers.

e. That it was just and appropriate for the Respondent to reimburse the Applicants for the fees paid (application and hearing fees) pursuant to Rule 13(2) of the Tribunal Rules and pursuant to Section 230(5A) of the Housing Act 2004.

RIGHTS OF 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 by email to rpsouthern@justice.gov.uk .

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.

25th July 2022 Tribunal Judge Brownhill