FIRST - TIER TRIBUNAL
PROPERTY CHAMBER -
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/16UD/PHC/2022/0003**
HMCTS code (audio,video,paper)	**:**	**P:PAPERREMOTE**
Property	**:**	**1 The Caravan, "Heatherbank" Mowbray Road, Allonby, Maryport, Cumbria CA15 6PB**
Applicant	**:**	**Mr P.Frost**
Respondent	**:**	**Mrs J.Stevens**
Respondent's Representative	**:**	**Brockbanks Solicitors**
Type of Application	**:**	**For the determination of an Application under section 4 of the Mobile Homes Act 1983**
Tribunal Members	**:**	**Judge J.M.Going** **W.Reynolds MRICS**
Date of Decision	**:**	**19 December 2022**
Date of these Reasons	**:**	**20 December 2022**

REASONS FOR THE DECISION

The Decision

The Tribunal found that: -
(1) the appeal against the proposed new site rules must be allowed, and
(2) the Agreement between site owner and occupier did not include a provision, whether as a warranty or a specific term, that there would never be any new site rules.

Preliminary

1. By an Application ("the Application") dated 11 April 2022 the Applicant ("Mr Frost ") applied to the First Tier Tribunal Property Chamber-(Residential Property) ("the Tribunal") under Section 4 of the Mobile Homes Act 1983 ("the 1983 Act") for a determination that the Respondent ("Mrs Stevens") proposal to "instigate new site rules… be disallowed" and for a repayment of commission if she was allowed to make new site rules.

2. The Tribunal issued Directions on 13 July 2022.

3. Mr Frost confirmed that, for personal and health reasons, he would not feel able to attend either a face-to-face or a remote-video hearing and asked for a determination based on the papers. After which, Mrs Stevens also confirmed her consent to a paper determination without the need for an oral hearing.

4. The Tribunal inspected Heatherbank Residential Caravan Site ("the Site") on 5 December 2022 with both parties in attendance.

5. The inspection was also relevant to a pitch fee review application dealt with by the Tribunal separately under reference MAN/16UD/PHI/2022/0040.

Background

6. The following matters are evident from the papers or are of public record and have not been disputed unless specifically referred to.

7. The Site is a protected site within the meaning of the 1983 Act. Mrs Stevens is its owner and operator. She holds a site licence issued on 13 October 2011 under the Caravan Sites and Control of Development Act 1960 by Allerdale Borough Council ("the Council") licensing the Site for five units.

8. Mr Frost and his partner, Ms Cowling, have since February 2016 been the occupiers of a mobile home stationed on the Site, known as 1 The Caravan which he or they purchased from a Mr Stephenson.

9. By a formal Notice of Assignment ("the Notice of Assignment") dated 13 February 2016 Mr Frost notified Mrs Stevens (inter alia) that "I purchased the mobile home for £22,000 of which the amount of £2200 is the commission

due to the site owner under the Mobile Homes Act 1983". It is believed that he had paid Mrs Stevens the £2200 by a BACS payment the day before.

10. The parties have subsequently made various applications to the Tribunal.

11. In 2022 Mrs Stevens began a process to introduce a set of new site rules. A formal proposal notice and covering letter both dated 19 February 2022 together with copies of the proposed new rules were said to have been and sent or handed to the occupiers of the five pitches within the Site on that date.

12. On 26 March 2022 Mrs Stevens sent letters to the occupiers with a prescribed form and a record of their responses to the proposal notice, confirming her intention to implement the proposed new rules, without any modification.

13. Mr Frost thereafter made the Application.

14. It is understood that the Council have declined to deposit the proposed new rules pending this Decision.

Inspection

15. The Site is set in rural West Cumbria between Maryport and Allonby, approximately 160 metres from the shore. It is small and compact and has existed for many years. It is accessed from the B5300 coast road by a single-lane track which is gated before it bends around Mrs Stevens' house and garden before entering the Site. There are five residential mobile homes on the Site, aligned parallel to each other and pointing lengthways towards the Solway Firth. Each pitch has a parking space included within it. Immediately outside the Site boundary is a sixth static caravan owned by Mrs Stevens aligned parallel to the five within the Site.

16. The Site has minimal on-site amenities, apart from the usual services. It is understood that the drainage is to a septic tank, and that each of the five occupiers maintains their own LPG gas supply with the majority of the cylinders being stored in wooden enclosures.

17. The mobile homes on the Site are all of different designs and began as single units comparable to those often found in holiday parks. Some have been extended and some have cctv cameras. There is a range of storage sheds located within the individual pitches. There is a fire muster point with a fire extinguisher and mobile phone. A notice board on one of Mrs Stevens adjoining outbuildings has copies of the site licence and various certification.

Evidence and submissions

18. The papers presented to the Tribunal included copies of the Application, 2 copies of the Notice of Assignment, one submitted by Mrs Stevens and another submitted by Mr Frost with various handwritten notes written over the same, the proposed new site rules, a letter from Mr Frost to Mrs Stevens dated 6 March 2022 in response to her site rules proposal notice, a record of

the consultation responses, the parties respective statements of case and responses as well as certain photographs, the Council's site licence, correspondence relating to a change in its conditions in 2021, some older site rules, letters from each of the five occupiers as regards the proposed new site rules, a statement of truth from Mrs Stevens dated 27 July 2022 and various correspondence between the parties.

19. Because of the extent of the paperwork, which is on record and which the parties have access to, it would be superfluous and, in the Tribunal's opinion, particularly because of their respective entrenched positions, counter-productive to attempt to set out its full detail in this decision.

20. The Tribunal has highlighted only those issues which it found particularly relevant to, or that help explain, its decision-making.

21. Mr Frost in his statement of case said… "I should firstly like to clarify that I respect the law and do not deny the owner's right, under the applicable legislation, to make application to implement site rules. However, I do object to the owner accepting the commission payment of £2200 paid to her upon the assignment, under the misrepresentation by herself that at no point in the future would any application be made by herself to implement site rules. Should her application for site rule implementation be successful, I would request that the Tribunal directs that the commission paid, or at the very least partially, be refunded by the Respondent to ourselves.
I also object to the Respondent attempting to implement site rules on the basis of harassment, vengeance and racially motivated bigotry in an attempt to make the continuing residency of my partner, myself and Mr Bernard Fern (resident of pitch 4) as difficult as possible, in the hope that we will give up our homes". Having alluded to various specific incidents which were acknowledged to be outside the remit of the Tribunal, Mr Frost then detailed specific individual objections to upwards of 25 separate paragraphs or clauses within the proposed new site rules, stating "it is impossible to conclude that the proposed implementation of the above rules as anything other than harassing, unreasonable, without justification, and yet another attempt to force our removal from the site and we request that they not be allowed".

22. Mrs Stevens' statement in the case in response included a number of submissions being:

- "The Application, as submitted did not challenge any of the New Rules individually but rather challenged the Respondent's right to make site rules at all.
- The proper means for challenging individuals would have been an appeal under regulation 10 of the Mobile Homes (Site Rules) (England) Regulations 2014 ("the 2014 Regulations") against the owner's response following consultation on the New Rules.
- Such an appeal must be lodged within 21 days of the site owner's response to consultation… It is possible that the Application was lodged within 21 days of the Applicant's receipt of the owner's response, although this is not certain,…

- In any event, the Application was not in the form of an appeal under Regulation 10…
- … The Applicant's statement of case now states as follows: "I… do not deny the owners right under the applicable legislation to make application to implement site rules". It would therefore appear that the Applicant does not challenge the Respondent's legal right to make site rules and/or has abandoned that part of the Application.
- Instead, the Applicant's statement of case maintains that if the New Rules come into force the Respondent should be ordered to repay some or all of the commission paid to her by the Applicant when he acquired his mobile home in 2016. The reason is an alleged representation which is claimed to have been made to the Applicant by the Respondent at the time to the effect that there were no existing site rules and that "*at no point in the future would an application be made by herself to implement site rules*". Any such representation is denied… However, as a preliminary issue the Tribunal is invited to consider whether it has jurisdiction to deal with the Application of the terms in which it is now framed.
- … it is submitted that an alleged representation or misrepresentation (or a possible estoppel..) made or alleged to have been made in the course of negotiations…. is not within the Tribunal's jurisdiction since it is not a question arising under the 1983 Act or any agreement to which the 1983 Act applies.
- The remainder of the Applicant's Statement of Case is taken up with comments upon and criticisms of many of the New rules themselves… The Applicant has chosen not to use the procedure laid down in the Regulations: he has not lodged an appeal. Indeed, most of his criticisms of the New Rules appeared in his Statement of Case for the first time, without the Respondent having prior notice of them or the opportunity to consider them in the consultation process…
- In short:
  (1) the Application is not a challenge to the Respondent's right to make site rules but is now framed as a challenge (to) many of the rules themselves…
  (2) To the extent that the Application raises an alleged misrepresentation by the Respondent at the time of the Applicant's purchase of his mobile home, the Tribunal does not have jurisdiction to deal with the matter, since it is properly a matter for the County Court (insofar as there is any substance to the allegation, which is denied)….".

It also set out a detailed response to each of Mr Frost's specific individual objections or comments relating to the proposed new rules, emphasising that the rules would not penalise past conduct and submitting that they are necessary and reasonable.

The Law

23. Section 4 of the 1983 Act states: –
"(1) In relation to a protected site…. a tribunal has jurisdiction-

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

24. The powers of the Tribunal are enhanced by provisions introduced into the Housing Act 2004 by the Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014.

25. Section 231A of the Housing Act 2004 now provides under the heading "Additional powers of the First-tier tribunal and Upper Tribunal"

(1) the First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exerciseable by them in exercising that jurisdiction, the general power mentioned in subsection (2)

(2) a tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing just, expeditious and economical disposal of the proceedings or any issue in connection with them..

(3) ..

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

(a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

(b) directions requiring the arrears of pitch fees for the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(c) ....

26. The Mobile Homes Act 2013 introduced a statutory procedure for the making of sites rules for the first time with effect from 26 May 2013. This is found in section 2C of the 1983 Act (which was inserted by section 9(1) of the 2013 Act) and in the 2014 Regulations made under powers conferred by section 2C(11). In the case of a protected site in England, section 2C(1) gives site rules the status of express terms of each agreement relating to a pitch on the site to which the Act applies.

27. For this purpose "site rules" are defined by section 2C(2), as follows: "The "site rules" for a protected site are rules made by the owner in accordance with such procedure as may be prescribed which relate to— (a) the management and conduct of the site, or (b) such other matters as may be prescribed."

28. The power referred to in section 2C(2)(b) of the 1983 Act to prescribe "matters" other than those relating to the management and conduct of the site which may be the subject of site rules has been exercised by regulation 4 of the 2014 Regulations. Rather than identifying specific subjects about which rules

may be made the drafter of regulation 4 has described the characteristics of permissible rules, as follows: "4.— Matters prescribed for the purposes of section 2C(2)(b) of the 1983 Act (1) The matters prescribed for the purposes of section 2C(2)(b) are the matters set out in paragraph (2). (2) A site rule must be necessary— (a) to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or (b) to promote and maintain community cohesion on the site."

29. The new procedure for making, varying or deleting site rules began by sweeping away old rules. By section 2C(3) of the 1983 Act any rules made by a site owner before the commencement of the section on 26 May 2013 "which relate to a matter mentioned in subsection (2)" ceased to have effect on 4 February 2015.

30. An entirely new procedure was then provided by regulations 7 to 9. In summary the new procedure requires a proposal to be notified to every occupier or qualifying residents association at a site to enable them to make representations within a limited time (regulations 7 and 8). A duty is then imposed on the site owner to take any representations received into account and to publish a response to the consultation notifying consultees whether they have decided to implement the proposal or not (regulation 9).

31. Certain prescribed matters may not be the subject of site rules (regulation 5); these include matters relating to the sale or gift of a mobile home and other detailed matters found in Schedule 5 to the 2014 Regulations. One such prohibited matter is any modification to the procedure for changing site rules laid down by regulations 7 to 13 (Schedule 5, paragraph 2(n)).

32. Consultees who are dissatisfied with an owner's decision notified to them under regulation 9 following consultation have the right to appeal to the Tribunal under regulation 10 on grounds specified in regulation 10(2). There are three possible grounds of appeal, namely that: (a) a site rule makes provision in relation to any of the prescribed matters in Schedule 5; (b) the owner has not complied with a procedural requirement imposed by regulations 7 to 9; (c) the owner's decision was unreasonable having regard, in particular to — (i) the proposal or the representations received in response to the consultation; (ii) the size, layout, character, services or amenities of the site; or (iii) the terms of any planning permission or conditions of the site licence.

33. The Tribunal's powers when determining an appeal under regulation 10 are specified in regulation 11. It may (a) confirm the owner's decision, (b) quash or modify it, (c) substitute its own decision, or (d) order the owner to comply with the procedure in regulations 7 to 9 within a specified time.

The Tribunal's Discussion, Reasons and Determination

34. The Tribunal began by considering the jurisdictional issues raised by Mrs Stevens in respect of each of the Application's two limbs.

The jurisdictional question as to whether that part of Application relating to Mr Frost and Ms Cowling's objection to the new Site Rules was duly made and in time?

35. The Tribunal found that it was.

36. The Tribunal agreed with the Mrs Stevens' submission that objections to proposed new site rules must follow the procedures set out in the 2014 Regulations, but not that it was necessary for Mr Frost and Ms Cowling to have made a separate application on a separate form, after having clearly signalled their objection to the proposed new site rules in the Application.

37. The Tribunal has prepared various forms to assist applicants in its various jurisdictions. In this instance there is a form reference PH3 designed specifically for an application under section 4, which is that which was used, and a separate form reference PH15 designed specifically for an application under regulation 10. The two forms are almost identical but for a single section. They are not forms prescribed by statute, and each complies with the requirements which are set out in rule 7 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

38. It is noted that Mr Frost in the Application made specific reference to having used "form PH3 as advised by LEASE to cover both issues in question, I hope this is correct?". The Tribunal did not thereafter ask Mr Frost to make a second application or complete a different form being content the Application had been duly made.

39. The Tribunal also carefully considered whether the Application had been made within the time limits specified in the 2014 Regulations. Regulation 10 confirms that a consultee may appeal to the Tribunal "within 21 days of receipt of the consultation response document". In this case, it is not entirely clear exactly when Mrs Stevens' consultation response document, which was dated 26 March 2022, had been given or posted to Mr Frost and Ms Cowling nor when the Application, which was dated 11 April 2022, was received at the Tribunal's office. The Tribunal in considering all of the evidence had regard not just to the dates of the documents, but also to the provisions of regulation 3 relating to the service of documents, the timing of the Easter bank holidays and that there was a postal delivery on Easter Saturday, 16 April 2022. The Tribunal concluded, on the balance of probabilities, that the Application was made in time, and that it should therefore proceed on that basis.

The jurisdictional question as to whether the Tribunal has the authority to determine whether the making of new Site rules should entitle Mr Frost and Ms Cowling to the repayment of some part of their original commission payment?

40. Mrs Stevens has submitted that such questions are outside the Tribunal's jurisdiction. The Tribunal does not agree.

41. Mrs Stevens has construed Mr Frost's statement that she agreed that there would never be any new site rules, which she denies, as being an

allegation of a representation made in the course of negotiations. She has submitted that the appropriate venue for any misrepresentation claim should be the County Court, and that the Tribunal does not have authority to deal with what might be otherwise described as an alleged collateral agreement.

42. The Tribunal believes that Mr Frost's assertion is that it was an integral part of the agreement between occupier and site owner that there would be no new site rules in the future. Framed in this way, it is clear that the Tribunal does have jurisdiction. And even if the alleged agreement was seen as being collateral rather than integral it would still fall squarely within the Tribunal's remit. Section 4 of the 1983 Act confirms that the Tribunal has jurisdiction to determine *any* question arising under any agreement to which the Act applies. It has also been given the power under Section 231A of the Housing Act 2004, where appropriate, to require payment by way of compensation, damages or otherwise.

43. As the Upper Tribunal stated at paragraph 38 in *Wyldecrest Parks (Management) Limited v Santer [2018] UKUT 0030*,
"The language of section 4 of the 1983 act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. It should therefore be taken that (with the exception of disputes over termination) the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT."

44. The Tribunal has little doubt therefore that if Mr Frost had chosen to take his claim to the County Court it would have then decided to remit the matter to the Tribunal as the most appropriate venue for such proceedings.

45. Having satisfied itself that it did have jurisdiction to consider both limbs of the Application, the Tribunal then went on to consider each in turn.

The appeal against the implementation of the new site rules

46. The 2014 Regulations prescribe the procedure for making, varying or deleting site rules, and the Tribunal began by considering whether it had been complied with.

47. Regulation 8 sets out various detailed requirements that the proposal notice must comply with, including that it must
"(e) specify –
(i) the date on which the notice shall be deemed served on each consultee, in accordance with regulation 3 ("the first consultation day")
(ii) the date by which any representations made in response to the proposal must be received by the owner ("the last consultation day") which must be at least 28 days after the first consultation day;
....
(g) be in the appropriate form set out in Schedule 1 or in a form substantially to the like effect."

48. For reasons which were not evident, the bundles supplied to the Tribunal did not contain a copy of Mrs Stevens' proposal notice.

49. Mrs Stevens' original bundle did however include a copy of the subsequent consultation response document as referred to in regulation 9 and where she stated "The consultation started by sending consultees/residents of Heatherbank Caravan Site a proposal notice on 19 February 2022. The first consultation day was 19 February 2022 and the last consultation day was 18 March 2022…..". The letter that Mrs Stevens sent out enclosing the consultation response document also stated that "the last consultation day has passed on 18/03/2022".

50. 2022 is not a leap year, and clearly both the consultation response document and the covering letter point to the prior proposal notice not having included the mandatory minimum response period set by regulation 8, being "*at least* 28 days *after* the first consultation day".

51. If the proposal notice was delivered by hand before 4.30 pm on 19 February 2022, the earliest possible date that could be set for the last consultation day would have been 19 March 2022. If it was delivered by hand at or after 4:30 pm or posted on 19 February 2022, the earliest dates for the last consultation day would have been 20 or 21 March.

52. The requirements for the proposal notice as set out in Regulation 8(2) are mandatory, being preceded by the word "must", and the Tribunal concluded that a failure to comply with those requirements would inevitably provide a valid ground for the appeal against the new site rules. Having determined as much, the Tribunal decided however that it should delay its final determination until it had given the parties an opportunity to submit copies of the proposal notice.

53. The Tribunal issued further directions on 12 December 2022 requesting that the parties provide copies thereof. Mr Frost replied stating that he recalled seeing the proposal notice but had not retained a copy, whilst Mrs Stevens' representatives supplied copies of a covering letter dated 19 February 2022 and the proposal notice. Both the letter and the notice erroneously specified the date by which any responses must be received as being 18 March 2022.

54. Following the submission of copies of proposal notice it was clear that Mrs Stevens had not allowed for the necessary minimum response period, and that the proposal notice was thereby invalid.

55. Consequently, the Tribunal decided that Mr Frost's appeal must be allowed, and Mrs Stevens' decision to implement the new site rules be quashed.

56. Because of this, it was unnecessary and would have been otiose to further consider the detail of the individual site rules, and the Tribunal did not do so.

57. This is not a bar on the process beginning again. However, this observation, which is simply a confirmation of the continuing availability of the prescribed procedure, should not be construed further or otherwise.

58. Nothing in this decision should be taken as an indication of the outcome of any possible future review. As has been stated, the Tribunal has not found it necessary or appropriate to consider or make any decision on any of the individual new rules proposed by Mrs Stevens.

The question relating to the agreement between Mrs Stevens and Mr Frost

59. Mr Frost and Mrs Stevens have given different descriptions of their conversations at or around the time of Mr Frost's purchase and fundamentally disagree on the interpretation and significance of the same.

60. In his letter to Mrs Stevens dated 6 March 2022 Mr Frost stated "The assignment of our home took place on 13 February 2016 as detailed in the Schedule 4 Assignment Form documentation. A copy of which you were given on the same date.
On 14 February you were given an independently witnessed copy of the Schedule 5 Notice of Assignment Form.... In previous communications, you have not at any time denied receiving both of the above documents and have at no point contested any of the details within those documents
... both documents confirm that NO site rules are in place at the site of Heatherbank and furthermore that you have given an assurance, to ourselves, that no attempt, or application would be made to implement any site rules in the future. These documents confirm the detailed and lengthy discussion between ourselves, days prior to the Assignment, in which we made you completely aware that we would not consider purchasing a home on a site with restrictive site rules... The documentation, which you clearly accepted as correct and binding, formed the basis upon which we completed the Assignment and upon which you were paid the commission of £2200, is undeniably a contract between both parties and should you now wish attempt to break this contract by imposing site rules, we will pursue every possible means within the law to recover the commission paid to yourself".

61. The Tribunal has not had sight of any Schedule 4 notice. It has had sight of two copies of the Schedule 5 Notice of Assignment both of which appear to have been signed by Mr Frost. The first supplied by Mrs Stevens is presumably how it was originally submitted. It is dated 13 February 2016, the date Mr Frost acknowledges (in his letter of 6 March 2022) that the assignment took place. The second supplied by Mr Frost appears to be a duplicate of the first (albeit with a number of mostly minor differences) and also has various notes handwritten over it in capitals. It is dated 14February 2016. Those notes on the first page state "No written statement/agreement is in use by the owner or has ever been issued to the assignor by the owner. See notes below. The owner has confirmed that the assignee tenancy and residence is governed by the Mobile Homes Act 1983 as amended 2013. The site owner also confirms no site rules". On page 3 the notes continue "No site rules in place and as

previously stated in section 1, owner has given assurance no application will be made to implement any in the future". The final notes reads
"The schedule given by hand and witnessed
Witnessed by M Burns" and with a signature following.

62. Mrs Stevens emphasised that the sale of 1 The Caravan was not something she arranged and was organised by its previous owner, Mr Stephenson. In her statement of truth she said that "I had very little to do with the sale but I recall my first meeting with the Applicant… I invited him into my home, and I do recall he asked if there were any site rules. My reply was I had not written rules but I referred him to the Mobile Homes Act 2013, the Site Licensing rules and the written statement. I assumed that the outgoing resident had passed on the existing written statement… I do not recall stating or promising never to implement site rules, I could see no reason why I would make such a statement or promise to the Applicant…"

63. It is well established that in civil matters the burden of proof lies with the party asserting an allegation of fact, in this instance Mr Frost, and that the standard required of him is that he prove that allegation on the balance of probabilities.

64. In other words, it falls upon Mr Frost to demonstrate that his allegation that it was expressly and mutually agreed that there would never be any new site rules is more likely than not. The Tribunal would need to be satisfied, on the evidence, that a new enforceable infinitely far-reaching express term or warranty had been agreed and committed to. The Tribunal is not satisfied that this was the case.

65. The Tribunal accepts that there were conversations between the parties prior to or at the time of the purchase and has little doubt that these will have flagged up that hitherto there had been a minimum of formality. Nevertheless, it is self-evident that there were already some explicit terms to the Agreement between the site owner and occupier, including for example, that the amount of commission payment due on a transfer of ownership was 10%. It was also clear that the site was licensed, and consequently that all parties would, where relevant, be subject to the conditions imposed under that licence.

66. The Tribunal does not find it either plausible or credible that Mrs Stevens would have seen any purpose in those conversations to commit to never making any new site rules, and finds, it was much more likely than not, that she did not do so.

67. The Tribunal accepts that Mr Frost, subsequent to completing the purchase from Mr Stephenson and the payment of the commission to Mrs Stevens, wrote down notes on a further copy of the Notice of Assignment which he says was then delivered to Mrs Stevens, but not that those notes in themselves constituted an agreement, or indeed that they constituted conclusive evidence that a warranty or agreement had been reached in the terms as stated. An agreement requires consensus between the parties. There is no evidence that Mrs Stevens thereafter affirmed what was stated in Mr Frost's notes and Mr Frost's notes are not contemporaneous with the date of

the assignment. He alleges that her silence, if that's what it was, must be regarded as an affirmation. The Tribunal finds that silence of itself is not and cannot be sufficient as an affirmation.

68. Having found that the agreement between site owner and occupier did not contain either a warranty or a specific term there would never be any new site rules, it follows that any implementation of new site rules will not be a just cause for any repayment of any part of the commission payment made in 2016.