FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	CHI/29UK/PHC/2022/0013
Property	**:**	18 Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks, Kent, TN14 5JB
Applicant	**:**	Mrs Margaret Amos
Representative	**:**	
Respondent	**:**	Wyldecrest Parks (Management) Ltd
Representative	**:**	Mr David Sunderland
Type of application	**:**	Application for a determination of any question arising under the Mobile Homes Act 1983
Tribunal member(s)	**:**	Mrs J Coupe FRICS Mr P Turner-Powell FRICS Mrs J Herrington
Date Hearing and venue	**:**	3 January 2023 Hybrid video hearing held at Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL
Date of decision	**:**	13 March 2023

DECISION

Summary of the Decision

The Tribunal determines that, under Section 4 of the Mobile Homes Act 1983 water charges are not included in the pitch fee.

REASONS

Background

1. By way of an application dated 19 July 2022 the Applicant sought a determination from the Tribunal for a determination of questions arising under the Mobile Homes Act 1983 ("the Act").

2. The grounds of the application were set out in an appendix to section 5 of the application form and are summarised as follows:

   i. Whether the agreement/written statement between the Applicant and the Respondent provides that water charges are included in the pitch fee?
   ii. To order reimbursement of all water charges paid by the Applicant from June 2017 and to clear all outstanding sums in such regard.
   iii. To order an adjustment of the pitch fee to exclude water charges.
   iv. To award the Applicant compensation pursuant to Section 231A(2) of the Housing Act 2004.

3. On 26 October 2022, the Tribunal issued directions setting out a timetable for the exchange of documentation between the parties and the preparation of a hearing bundle. The hearing was set down for 3 January 2023.

4. A hearing bundle extending to 232 (electronic) pages was submitted by the Applicant. References in this determination to page numbers in the bundle are indicated as [ ].

5. Neither of the parties sought to persuade the Tribunal that an inspection of the property was necessary or appropriate. The Tribunal concluded that the issues could be determined fairly, justly and efficiently on the material available without such an inspection, consistent with the overriding objective of the Tribunal. However, the Property and locality were viewed online by the Tribunal via publicly available digital platforms.

The Agreement

6. The Applicant, Mrs Amos, is the mobile home owner of 18 Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks, Kent, TN14 5JB ("the Property"). The proprietor of the site upon which the Property is situated is Wyldecrest Parks (Management) Ltd ("the Respondent").

7. An Agreement relating to the siting of a mobile home on the pitch 18 Wickens Meadow Park was granted to the Applicant and her late husband Mr R Amos on 1 November 2004. A copy of a Written Statement under Mobile Homes Act 1983, in favour of Mr and Mrs R Amos, was provided within the bundle.

The Law

8. The relevant law is set out in the Mobile Homes Act 1983, parts of which follow:

> **Section 2(1)**
> "In any agreement to which this Act applies there shall be implied the terms set out in Part 1 Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement."

> **Section 4:**
> "(1) In relation to a protected site in England, a Tribunal has jurisdiction –
>
> (a) to determine any question arising under this Act or any agreement to which it applies; and
> (b) to entertain any proceedings brought under this Act or any such agreement,
> Subject to subsections (2) to (6)
>
> (2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose."

The Hearing

9. The hybrid hearing was held at Havant Justice Centre with the Tribunal sitting in Court Room 4 and the parties both joining remotely via video link.

10. The Applicant, Mrs Amos, represented herself, assisted by a written statement of case prepared on her behalf by Mr Ibraheem Dulmeer of Counsel. The Respondent was represented by Mr Sunderland in his capacity as Estates Director for the Respondent.

The Evidence

The Applicant

11. The Applicant moved into the Property with her late husband in 2004 and, until the current dispute, paid all pitch fees inclusive of water and sewerage charges. All charges paid to the previous site owner were recorded, and signed for by the site owner, in a payment record book.

12. The Respondent acquired the site in December 2015 and during the period December 2015 to June 2017 levied no additional water charges.

13. In May 2017, the Respondent wrote to the Applicant advising that monthly water charges would be issued, following which, in June 2017, such charges were introduced.

14. Considering her Agreement to be inclusive of water, the Applicant cancelled her direct debit and withheld payment.

15. On 1 September 2017, the Respondent served an arrears notice on the Applicant. Following a conversation with Mr Sunderland, in which the Applicant explained her understanding that her pitch fee included water, the Respondent requested a copy of her written Agreement having failed to have been provided with one by the previous site owner. The Applicant was unable, at such time, to locate the Agreement and instead, by way of evidence, provided Mr Sunderland with her payment record book which listed all payments made to and signed for by the previous site owner.

16. In December 2017 and in the absence of her written agreement the Applicant reinstated her direct debit and paid the additional water charges levied. The arrears remained outstanding.

17. Having received two arrears notices relating to the period June – December 2017, the Applicant, in November 2018, paid all outstanding arrears.

18. In April 2020, the Applicant located her written Agreement and provided a copy to the Respondent, following which the Applicant cancelled her direct debit again and ceased paying water charges.

19. On 11 March 2022, the Applicant received correspondence from the Respondent notifying her that her account was £656.72 in arrears due to her failure to pay water charges for the period April 2020 – March 2022.

20. The Applicant continued to aver that such sums were not due. In support of her position the Applicant relied upon Part IV of the Express Terms of the Agreement where, at Clause 3(b), the occupier undertakes with the owner to pay outgoings as follows:

> *"To pay and discharge ~~all general and/or water rates~~ and community charge which may from time to time be assessed charged or payable in respect of the mobile home…"*

21. The Applicant stated that the striking through of *"all general and/or water rates"* substantiated her opinion that she is not liable to pay any water charges by way of an additional sum to her pitch fee.

22. In support of this position, the Applicant referred to the decision in *Bovis Lend Lease Ltd v Cofely Engineering Services* [2009] EWHC 1120 whereby it was held that when construing contracts, deletions and amendments to standard form terms within a legally binding agreement or contract are legitimate and will affect interpretation.

23. In regard to the Implied Terms of the agreement pursuant to Chapter 2 of Part 1 of Schedule 1 to the Act, the Applicant drew attention to paragraph 21, whereby the occupier is obliged to (a) pay the pitch fee to the owner,

and (b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner". It was the Applicant's position that no such sums in relation to water are due 'under the agreement'.

24. The Applicant also relied on paragraph 29 of the Implied Terms entitled "Interpretation" and concluded that the pitch fee does not include any amounts due in respect of water, unless the agreement expressly provides so.

25. The Applicant reiterated that since purchasing the Property and entering into the Agreement in 2004 the pitch fee always included water usage. The payment book confirmed that the only additional charges levied related to gas and electricity and that there was no reference within the payment book of an additional fee for water. The Applicant relied on the payment book as evidence that the parties, albeit the previous site owner, never contemplated levying any additional charge for water usage. In support, the Applicant referred to the decision in *John Sayer* [2014] UKUT 0283 (LC) within which the Deputy President stated:

> *"… the original contractual bargain be implemented …" … "no variation of the agreement would be required to achieve that result, since it is what the parties originally agreed".*

26. The Applicant contended that the striking through of the words 'water rates' and the interpretation of the Implied Terms clearly proved that it was never the intention of the parties to the Agreement that the Applicant should be charged any additional sum for water usage and that the previous site owner correctly interpreted and applied the agreement and the Implied Terms. Accordingly, the Respondent has no vehicle by which to levy an additional charge for water.

27. The Applicant also referred to a previous First-tier Tribunal decision between the Respondent and other residents on the same site: CHI/29UK/PHI/2022/0042 & others. The Applicant was not a party to those proceedings. At paragraph 64 of that decision, the Tribunal refer to an earlier Tribunal decision handed down in 2019, whereupon the Tribunal found, in that instance, that the pitch fee included water charges for nine homes on the same site and where, in the 2022 Tribunal decision, Mr Sunderland didn't dispute such findings.

28. In further support of her position, the Applicant submitted a copy of the written Agreement in regard to Plot 6 at Wickens Meadow Park, also referred to in the 2022 decision of the Tribunal. The Applicant pointed to the striking out of the word *"water"* in that Agreement and the Tribunal's determination, in that instance, that the written agreement deliberately excluded any obligation for the occupier to pay the owner a water charge.

29. In conclusion, Mrs Amos stated that she is a retired pensioner of vulnerable age with a limited income and that this matter is causing stress and inconvenience which has adversely affected her health. Mrs Amos further asserted that finding in the Respondent's favour would cause her undue financial hardship.

The Respondent

30. In contrast with the Applicant, the Respondent stated that the sums due for water are a separate charge and are not included in the pitch fee.

31. Turning to paragraph 3(b) of the Express Terms of the written Agreement and upon which the Applicant relied, the Respondent stated that the Applicant had erred by restricting her quotation of that paragraph to:
"To pay and discharge ~~all general and/or water rates~~ and community charge which may from time to time be assessed charged or payable in respect of the mobile home…" when the paragraph continues *"… and charges in respect of electricity, gas,* ***water,*** *telephone and other services and V.A.T… under the terms of or in connection with this agreement"* (Respondent's emphasis on water).

32. It is common ground between the parties that the words "general and/or water rates" have been struck out in the Applicant's Agreement. However, the Respondent contended that such wording refers to 'rates', now known as Business rates, as opposed to 'community charge' which is not struck out and is now known as Council Tax.

33. The Respondent stated that the second part of paragraph 3(b), that part omitted by the Applicant, deals with charges in respect of inter alia water and electricity in connection with this individual Agreement. In this paragraph, the word 'water' remains intact, as opposed to the deliberate striking through of 'water rates'.

34. The Respondent therefore considered it clear that, when reading the paragraph in its entirety, the Applicant is liable for charges for water supplied under the Agreement and that the word 'included' does not appear in the Agreement in relation to water being included in the pitch fee.

35. In support of this position, the Respondent referred to the supply of electricity which is listed in the same section of the paragraph and for which the Applicant has never disputed paying a separate charge.

36. Further, although the Applicant relied on paragraph 3(b), the Respondent pointed out that this was an Express Term of the Agreement. Under the Act, the Respondent stated that where a conflict between an Express Term and an Implied Term arises, it is the Implied Term which prevails.

37. Turning to the Implied Terms at paragraphs 21(a) and (b) the Respondent stated that the payment of the pitch fee is separated from the payment for items including water. The Respondent also relied on paragraph 29 of the Implied Terms which read *"pitch fee … but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;"*.

38. The Respondent's position was that the Agreement does not expressly state that water is included in the pitch fee and, if it is considered that there is a conflict, which he contends there is not, the Implied Terms

apply, which support the Respondent's position.

39. The Respondent next turned to a number of statements made by the Applicant which he considered erroneous.

40. Following the 2019 Tribunal decision, the Respondent made a reduction in the level of pitch fee in relation to the nine owners concerned and proceeded to charge for their water separately. In response to judicial questioning, Mr Sunderland clarified that there are currently forty homes on the site and that thirty one, including the Applicant, pay a pitch fee plus a separate charge for water. The remaining nine, the subject of the 2019 Tribunal determination, still pay a charge for water but not by way of an additional charge.

41. In response to the Agreement for Plot 6 as submitted by the Applicant, the Respondent drew the Tribunal's attention to the fact that the word 'water' had been struck through in more than one place, that being at both the beginning and end of the paragraph. Further, that no witness statement had been provided by the owner of Plot 6 and therefore little weight should be attributed to the evidence.

42. In regard to the "Sayer" case relied upon by the Applicant, the Respondent considered this an entirely different set of circumstances and therefore not comparable.

43. The Respondent accepted that the Applicant did not pay, nor was ever charged separately, for water prior to 2017/2018 but argued that this should not imply that the Applicant would never pay such charges in future. The reasons for the previous site owner deciding not to levy for water are unknown and could be as simple as they were "too lazy to do so".

44. The Respondent clarified that the reason the Respondent had not raised charges for water prior to 2017/18 was due to the water supplier not raising invoices for such period. The Respondent suggested this was a possible reason as to why the previous owner had not levied water charges however, in the absence of a witness statement from the previous owner, this was speculation.

45. In 2017 and having received an invoice from the water supplier, the Respondent billed the Applicant for water usage in line with her Agreement. The Applicant, by her admission, was unable to provide a copy of the Agreement at such time and later paid the charges from 2017 to 2020. Having latterly received a copy of the Agreement, the Respondent remained of the opinion that it supported the Respondent's position that water is a separate charge.

46. The Respondent considers that they have acted properly and reasonably throughout this matter and subsequent proceedings and that the Respondent has correctly interpreted both the Agreement and the Act. The Respondent therefore considers the Applicant's allegation of unreasonable behavior on their part unfounded and, further, stated that no grounds for costs or compensation had been made out.

Discussion and Decision

47. The particulars of the Agreement before the Tribunal in this matter state the parties to be Mr and Mrs R Amos, and A. P. Wickens. The Agreement commenced on 1 November 2004. [27]

48. The Respondent's obligations relevant to this application are found in Part IV Express Terms of the Agreement where, at paragraph 3(b) the occupier undertakes with the owner:

> *"To pay and discharge ~~all general and/or water rates~~ and community charge which may from time to time be assessed charged or payable in respect of the mobile home or the pitch or the occupants of the same (…) and charges in respect of electricity, gas, water, telephone and other services and V.A.T. (or any tax of a similar nature which may be substituted for it or levied in addition to it) chargeable in respect of any payment made by the occupier under any of the terms of or in connection with this agreement or in respect of any payment made by the owner where the occupier agrees in this agreement to reimburse the owner for such payment".*

49. In contrast to the Agreement submitted in evidence by the Applicant in relation to Plot 6, the Tribunal finds it significant that only the first reference to water in paragraph 3(b) has been struck out. The Tribunal prefers the submissions of the Respondent, that the striking out of the first reference to water was a deliberate action and that, accordingly, leaving the second reference to water intact should also be considered a deliberate action. When the paragraph is read in its entirety, the Tribunal prefers the interpretation of the Respondent.

50. The Tribunal also find that the Applicant raised no objection to paying a separate charge for electricity, the obligation for which is contained in the same sentence as that for water.

51. The Applicant's obligations are further contained in paragraph 21 of Chapter 2 of Part 1 of Schedule 1 of the Implied Terms of the Act, whereby the occupier shall pay the pitch fee to the owner and, at paragraph 21(b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner.

52. The Tribunal finds that the Applicant is obliged to pay for water usage as a separate charge under paragraph 3(b) of the Express Terms of the Agreement and under paragraph 21(b) of the Implied Terms of the Act.

53. The Tribunal does not find the payment records kept by the Applicant and signed as accurate by the previous site owner, to provide compelling evidence that the site owner waived any entitlement to levy future water charges.

54. The Tribunal agrees with the Respondent that upon finding that the Applicant is obliged to pay for water usage as a separate charge, that the second and third question posed by the Applicant fall away.

55. Accordingly, the Tribunal refuse to order the reimbursement of all water charges paid by the Applicant since June 2017 or to order an adjustment of the pitch fee to exclude water charges.

56. The Tribunal also find that the case for an award of compensation pursuant to section 231A(2) of the Housing Act 2004 is not made out by the Applicant. The Tribunal finds no behavior on the part of the Respondent which could warrant such an award proven.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.