



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

Case References : **BIR/44UE/PHC/2023/0006**

Property : **2A Oversley Mill Park, Mill Lane
Oversley Green, Alcester, B49 6LL**

Applicant : **Mrs Janet Allcott**

Representative : **Ibraheem Dulmeer (Counsel)**

Respondent : **Mrs Lesa Loveridge**

Representative : **SME Solicitors**

Type of Application : **An application under section 4 (1) (a)
Mobile Homes Act 1983(as amended) (“the
Act”) to determine any question arising
under the Act or an agreement to which it
applies**

Tribunal : **Judge P.J Ellis.
Tribunal Member Mr T. Wyn JonesFRICS**

Date of Hearing : **15 August 2024**

Date of Decision : **17 September 2024**

AMENDED DECISION

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Decision amended pursuant to Rule 50 Tribunal Procedure (First-tier
Tribunal)(Property Chamber)Rules 2013

- A. The written statement properly construed under the Mobile Homes Act 1983 between the Applicant and the Respondent does not allow for administration charges for electricity charges.***
- B. The written statement properly construed under the Mobile Homes Act 1983 between the Applicant and the Respondent does allow for standing charges for electricity.***
- C. The Applicant is due a reimbursement from the Respondent of administration charges paid with reference to (A) above in the sum of £81.04.***
- D. The Applicant is not due a reimbursement from the Respondent of any charges paid with reference to (B) above.***
- E. No arrears are to be paid by the Applicant in relation to (A)***
- F. Arrears accrued by reference to (B) above are payable by the Applicant (see paragraph 35).***
- G. The Respondent has an obligation to provide pitch 2A Oversley Park with an electric meter which may be a sub-meter, the cost to be paid by the Respondent pursuant to Schedule 1 Chapter 2 Paragraph 22(b) Mobile Homes Act 1983, the Applicant having provided her consent to the installation of the meter.***

Introduction and Background

1. This is an application for determination of the Applicant's liability for administration and standing charges associated with a supply of electricity. The application was issued on 2 October 2023. Directions for the hearing were given on 23 October 2023 when the following issues were identified:
 - a. Whether the written statement under the Mobile Homes Act 1983 between the Applicant and the Respondent allows for administration charges for electricity charges.
 - b. Whether the written statement under the Mobile Homes Act 1983 between the Applicant and the Respondent allows for standing charges for electricity charges.
 - c. Is the Applicant due a reimbursement from the Respondent of any charges paid with reference to (i) and (ii) above?

- d. No arrears are to be paid by the Applicant in relation to (i) and (ii) above.
 - e. In the circumstances the Applicant is provided with consent to have an individual electric meter installed, the cost is to be paid by the Respondent.
2. The matter arises because the electricity supply to the Applicant's pitch is separate from the supply to other homes on the Park which has 71 homes on it. The Applicant's pitch was originally used as the site office with its own electricity supply. When use of the site changed to provide a pitch for the Applicant's home the supply arrangements remained the same. The Applicant is unique on the site being the only person with an electricity supply shared with the site owner, the Respondent. The electricity supply also powers the street lighting and the park pumping station.
3. The agreement between the Applicant and the site owner was made on 9 February 2005. At the time the site owner was Mr S.M.T. Essex trading as Essex Park Homes. The agreement is in the statutory prescribed form. In April 2011 the Respondent acquired Oversley Park.
4. It is now common ground that the agreement does not provide expressly for administration or standing charges in addition to the charge for the electricity supplied. The matter arises because the Respondent maintains the Applicant was paying the both charges at the time of acquisition of the site. There was no reason to change the established billing arrangement made by the Applicant and the previous park owner. The Applicant denies there was such an arrangement but admits to paying the additional charges from 2011 until 2014 as appears below.
5. Each side is represented by experienced lawyers who have provided helpful submissions to assist the Tribunal. Mr Ibraheem Dulmeer, of counsel, represents the Applicant, Mr Guy Salter Partner with SME Solicitors represents the Respondent. The Tribunal has determined relevant facts set out in this decision from the parties' respective submissions and statements.

The Parties Submissions

6. In view of the Respondent's admission that administration charges should not be raised the arguments focus on the standing charge, alleged arrears or liability to reimburse and the possible installation of a dedicated meter.
7. The Applicant denies that there was an arrangement with the previous owner but admits that at first the additional charges imposed by the Respondent were paid without challenge as she expected a meter for her own supply to be installed (Allcott 2 para 8). The Applicant produced a handwritten note stating "*Till your meter is removed we will read it and send you a bill every quarter*". The note was marked "*To Mrs Allsop 2a*" it was on plain paper unsigned and undated.
8. The Respondent asserts the Applicant must have made the disputed charging arrangement with the previous owner. After acquisition of the site in 2011 she adopted the same billing method that was in place. It is apparent the parties did not discuss the arrangement at that time. The Applicant asserts that she did not make such an arrangement with the previous owner nor did she ever make any payment above the cost of electricity actually supplied (Allcott2 para6). The Applicant contends that the Respondent has not produced any evidence of her making payments of administration charges during the period of previous ownership.
9. In her submission in response to the Respondent's statement of case the Applicant repeats the assertion she has never paid any standing charges (Allcott Response 11 &12).
10. The Applicant denies that arrears of administration charge and standing charge have accrued because there is no liability to make such payments. She ceased making the additional payments in 2014 when she was advised against making them. Moreover, the Applicant maintains that she rarely saw the electricity accounts which the Respondent received enabling her to verify rates of charge. Also bills as presented to her were vague and inaccurate (Allcott 2

11-13). The Applicant by the proceedings gives consent to the installation of a meter dedicated to her pitch at the cost of the Respondent.

11. The Applicant produced a schedule showing the claims for the charges from September 2014 to September 2023. The schedule contains the Respondent's claims alongside the Applicant's calculation of the charges. Until January 2021 the figures are roughly comparable with the Respondent's totals although lower than the Applicant's. From August 2021 until September 2023 the figures differ substantially so that by September 2023 the Applicant's calculation of the total charges wrongly claimed is £731.76 while the Respondents' sum is £1258.11. In September 2023 the Respondent demanded payment of this sum. In response the Applicant denied responsibility for the charges and demanded in any event, copies of the electricity accounts.
12. The Respondent's case is that although the Written Statement is silent on the provision of electricity as the Applicant has paid for standing charge in the electricity account without protest since 2005 there is no reason not to continue paying the standing charge. In any event, if the Applicant had a dedicated sub-meter, she would incur a standing charge which could be higher than the charge levied by the Respondent.
13. The charge made for the electricity is the same as that imposed by the supply company. The Applicant and all mobile homeowners are classed as non-domestic users of electricity. As such the regulatory protection from additional charges by an electricity re-seller is not available. Nevertheless, the Respondent passes on the unit cost of electricity and one half of standing charge without extra cost.
14. The Respondent further admits by Schedule 1 Part 1 paragraph 22(ii)(b) Mobile Homes Act 1983 there is an obligation to provide documentary evidence in support of electricity charges. The Respondent agrees that there was a delay with invoicing the supply because of her illness and a bereavement in the family.

15. As far as the provision of a sub-meter for the Applicant's pitch is concerned, the Respondent contends the cost and disruption to the site of installing a meter is disproportionate to the benefit derived by the Applicant, if any.
16. The electricity running through the meter supplies the site pumping station and street lighting. A new meter would require excavation of trenches with subsequent making good, temporary interruption to supply with a potential risk of inadequate clearance of sewage.
17. The Respondent avers that if the Tribunal finds there is no entitlement to make additional charges, she will comply with its finding so that future charges will be in accordance with the determination. A dedicated sub-meter will give no additional benefit to the Applicant.
18. The Applicant's claim for reimbursement is denied because the matter should have been raised earlier. In any event the Applicant has not made any payment for either standing or administration charges since September 2014 and not paid for electricity since December 2022.

Statutory Framework

19. There is no dispute the relationship between the parties is regulated by the Mobile Homes Act 1983. Relevant provisions are:
 - a. Section 1(1) of the MHA provides that the MHA applies to any agreement under which a person (defined as "the occupier") is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his only or main residence. By virtue of section 5(1) the expression "protected site" has the same meaning as in Part 1 of the Caravan Sites Act 1968.
 - b. Section 1(2) requires the owner of the protected site (defined as "the owner") to give to the proposed occupier a written statement containing various matters, including terms implied by section 2(1).
 - c. Section 2(1) provides that the implied terms are the applicable terms set out in Part 1 of Schedule 1 to the MHA. If the applicable judicial body so orders pursuant to section 2(2), there shall be implied terms concerning the matters mentioned in Part II of Schedule 1.

- d. Section 2A provides that the Secretary of State may, by statutory instrument, make amendments to Parts 1 and 2 of Schedule 1. They have been amended by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Orders of 2006 and 2011
- e. By virtue of section 4(1) and (5) and section 5(1) the First-tier Tribunal has jurisdiction in relation to the matters in issue in these proceedings
- f. Implied terms concerning the pitch fee are set out in paragraphs 16 to 20 of chapter 2 of Part 1 of Schedule 1 (“chapter 2”).
- g. The expression “pitch fee” is defined as follows in paragraph 29 of chapter 2:
- h. *pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts”.*
- i. Paragraph 21 of chapter 2 specifies certain obligations of the occupier. Subparagraphs 21(a) and (b) are relevant to this matter and are as follows: “21 *The occupier shall (a) pay the pitch fee to the owner; (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; ...”*

Discussion and Decision

- 20. On 13 November 2023 Ofgem issued a Discussion Paper on standing charges with a call for input. At paragraph 2.1 the standing charge was described as “*a fixed amount that customers are required to pay as part of their energy bills, which does not vary according to their energy usage*”.
- 21. In this case the parties agree that the Written Statement does not permit additional charges. The Applicant does not contend that an electricity supply is an additional charge but that a standing charge is an additional charge. Mr

Dulmeer relied on *P.R.Hardman v Greenwood* [2017]EWCA Civ 52, 4 WLR 59 to support his proposition that an additional charge such as an administration charge or a standing charge may be payable in connection to electricity charges (recharged by a site owner) only if the written statement allows for this.

22. As far as the standing charges are concerned the issue is whether or not such charges are additional to or part of the electricity account. In *Hardman* a case involving a substantial additional administration charge added to accounts for services including an electricity supply, the factual issue was described by Lord Justice Etherton at paragraphs 14 and 15 as :

“14. The cost of electricity purchased by Hardman varied between 2008 and February 2013 from 9p per unit to 11p per unit. From May 2013 a differential day and night rate was negotiated which varied from 9.3p to 15p per unit at the day rate and from 9.3p to 9.3p per unit for the night rate. Hardman charged the pitch occupiers for electricity at rates varying between 12p per unit and 28p per unit between 2008 and 2014. Hardman regarded the difference between the price they paid and the rate they charged as a “service charge element” intended to recoup the cost of ⁴ electricity supplied to the communal areas, reading meters, standing charges and meter fees as well as an administration fee, the cost of calling out electricians to resolve any problems and the cost of maintaining a computer programme to assist with billing. The elements making up the charges were not identified in the invoices delivered to the occupiers.

15. With effect from 1 January 2003 the maximum price at which electricity may be resold has been set by the energy regulator, Ofgem, and is the same price as that paid by the person re-selling it, including any standing charges. Hardman acknowledged to the FTT that the prices which they had charged to the applicants exceeded what was permissible.”

23. In *Hardman* Lord Justice Etherton referred to the Upper Tribunal of *In re Britaniacrest* [2013] UKUT 0521 (LC), when Martin Rodger KC decided an administration charge could not be made for handling utility accounts. The

facts of the case were described in the Upper Tribunal decision at paragraph 18 as *“The price re-charged by the appellant for electricity was the unit price which it paid to its supplier for the number of units consumed by each occupier, plus an apportioned part of the standing charge which it paid. From May 2009 the appellant added an administration charge for the supply of electricity; this was intended to cover costs incurred by the appellant in reading the electricity meter serving each pitch, calculating the charges due, delivering invoices and dealing with receipts. With the addition of VAT this administration charge rose to £18 per quarter by the time of the RPT’s hearing. No such administration charge had appeared on electricity invoices raised by Mr Harrison in his time as owner of the Park but it was suggested to the RPT by the appellant that a concealed charge of approximately 3p per unit had been included by Mr Harrison in the unit price which he charged.”*

24. In a Discussion Paper calling for input inviting views on standing charges. published by Ofgem on 16 November 2023 at paragraph 2.1 standing charges were described as *“a fixed amount that customers are required to pay as part of their energy bills, which does not vary according to their energy usage.”*
25. The Tribunal consider that both Lord Justice Etherton and Martin Rodger KC were deciding the respective cases on the basis that standing charges are part of the electricity account. They are not a separate item of charge added by the Respondent but an integral part of the cost of the supply of electricity. The Respondent is obliged to provide evidence of the electricity charges raised by the supplier in order to justify the claim passed on to the Applicant for her consumption but a properly apportioned standing charge is payable.
26. On this site the electricity running through the meter according to the Respondent also provides power to street lighting and the pumping station. The Tribunal notes the per curiam remark of Lord Justice Etherton in *Greenwood at paragraph 58 “The provision of the sewerage system is a communal service. The costs and expenses of electricity to operate the system, reimbursement of payment to third party contractors to empty and*

service the sewerage system and payment of the licence fee to the Environment Agency in respect of the system are therefore recoverable only in the pitch fee” . Whether the apportionment is accurate is not a matter for this Tribunal but may be a matter for future proceedings.

27. In Mr Salter’s submission on behalf of the Respondent he accepts that the Written Statement does not provide for payment of electricity charges by the Applicant. However, as the Mobile Homes Act applies to any agreement under which a person (defined as “the occupier”) is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his only or main residence” the Tribunal has determined this case on the basis that Paragraph 21 (b) of chapter 2 applies.

28. The Applicant has asked the Tribunal to direct the Respondent to install a sub-meter for her pitch. *Section 4(1) Courts Tribunals and Enforcement Act 2007 empowers the Tribunal to (a) 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*

29. Chapter 2 Paragraph 22(b) imposes an obligation on the park owner to “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”.

30. It is understandable that the Applicant should require her own meter having regard to the mistrust and hostility between the parties. Providing a sub-meter will hand responsibility for the electricity charges to the pitch owner. The Applicant’s contention she had an expectation of the installation of a sub-meter was not challenged.

31. The Respondent contends that installation of a meter will involve disruption and inconvenience to other pitch owners because the work will involve suspension of electrical supply to the pumping station and street lighting.

32. The parties have not adduced evidence to explain what work is required or how long it will take to make the installation of a meter. The papers included photographs of the existing meter. It appears to the Tribunal using its own experience that a new meter could be installed on the pitch with the electricity supply split between the Applicant in the new meter and the other users in the existing meter without causing significant disruption.

33. The Tribunal determines the issues set out at paragraph 1 and in the Directions as follows:

- a. The written statement under the Mobile Homes Act 1983 between the Applicant and the Respondent does not allow for administration charges for electricity charges.
- b. The written statement under the Mobile Homes Act 1983 between the Applicant and the Respondent does not allow for standing charges for electricity charges.
- c. The Applicant is due a reimbursement from the Respondent of administration charges paid with reference to (a) above.
- d. The Applicant is not due a reimbursement from the Respondent of any charges paid with reference to (b) above.
- e. No arrears are to be paid by the Applicant in relation to (a)
- f. Arrears accrued by reference to (b) above are payable by the Applicant.
- g. The Respondent has an obligation to provide pitch 2A Oversley Park with an electric meter which may be sub-meter, the cost is to be paid by the Respondent pursuant to Schedule 1 Chapter 2 Paragraph 22(b) Mobile Homes Act 1983, the Applicant having provided her consent to the installation of the meter.

34. The Applicant has not paid administration or standing charges since 2014. Additionally, the Applicant has not paid for electricity since 2022. According to schedules of sums paid or claimed by 2014 the Applicant had paid £81.04 administration charges. That sum should be deducted from the arrears of

electricity and standing charges. The Tribunal has not reviewed the respective calculations of alleged arrears.

35. The Respondent has admitted to failing to provide proper information in support of her claims. The schedules of charges referred to standing charges and administration charges but not the actual electricity charges. To calculate the sum due to the Respondent the alleged sum due should omit the administration charges then deduct the charge wrongly claimed but mistakenly paid by the Applicant. The electricity accounts should be apportioned to identify the Applicant's consumption and consequently the sum payable by the Applicant for electricity and standing charge.

Appeal

36. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge P.J Ellis