FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL
PROPERTY)

Case Reference	MAN/00EQ/ PHC/2022/0018
Property	25 Home Farm Park, Lee Green Lane, Nantwich Cheshire CW5 6ED
Applicant	Joyce Burton
Representative	-
Respondent	Fury Developments Ltd
Representative	Ms Ava, Immisol
Type of Application	Determination of any question arising under the Mobile Homes Act 1983 or any agreement to which it applies
Tribunal Members	Judge Rachel Watkin Surveyor Member – Ian James MRICS
Date and Venue of Hearing	22 June 2023 – County Court at Chester
Date of Decision	19 October 2023

DECISION

DECISION

The Tribunal has determined the questions arising under the Mobile Homes Act 1983 or the agreement to which it applies below.

THE PARTIES

1. The Applicant, Ms Joyce Burton (the "Applicant"), is the owner of a mobile home situated at 25 Home Farm Park Lee Green Lane Nantwich Cheshire CW5 6ED.

2. The Respondent, Fury Developments Limited (the "Respondent"), is the proprietor or site owner of Home Farm Park Lee Green Lane Nantwich Cheshire CW560D (the "Park").

THE LAW

The Mobile Homes Act 1983 (as amended)

3. The Mobile Homes Act 1983 (as amended) ("**the 1983 Act**") "*applies to any agreement under which a person ("the occupier") is entitled -*

   a. *to station a mobile home on land forming part of a protected site; and*

   b. *to occupy the mobile home as* his *only or main residence."*

4. Section 2(1) of the 1983 Act provides for the implied terms set out in Schedule 1 of the 1983 Act to be incorporated into any agreement to which the 1983 Act applies, notwithstanding any express terms of the agreement. The implied terms set out in Chapter 2 (the "**Implied Terms**") apply to *"all agreements which relate to a pitch except an agreement which relates to a pitch… on a local authority gypsy and traveller sites or a County Council gypsy and traveller site."*

5. Section 2(2) provides that the Tribunal may, on the application of either party, within 6 months of the date of the agreement (or the date upon which the written agreement was given, if later), order that certain further terms shall be implied into the agreement (subject to exceptions).

6. Section 4(1) provides that:

   "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; …

Relevant Implied Terms

7. The following are the Implied Terms that are relevant to the present matter and are set out in Chapter 2 of Schedule 1.

8. Paragraph 12 of Chapter 2 states:

"The owner may enter the pitch without prior notice between the hours of 9 a.m. And 6 p.m.

a) to deliver written communications, including post any notices, to the occupier; and

b) to read any meter for gas, electricity, water, sewage or other services supplied by the owner."

9. Paragraph 13 states:

"The owner may enter the pitch to carry out essential repair or emergency works on giving as much notice to the occupier (whether in writing or otherwise) as is reasonably practicable in the circumstances and period."

10. Paragraph 14 states:

"Unless the occupier has agreed otherwise, the owner may enter the pitch for a reason other than one specified in paragraph 12 or 13 only if he has given the occupier at least 14 clear days written notice of the date, time and reason for her visit."

11. Paragraph 21 states:

"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;

…

12. Paragraph 22 states:

"The owner shall—

(a) …

(b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of—

(i) any new pitch fee;

(ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and

(iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement;

(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;

(d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site;

(e) consult the occupier about improvements to the protected site in general, and in particular about those which the owner wishes to be taken into account when determining the amount of any new pitch fee; and

(f) consult a qualifying residents' association, if there is one, about all matters which relate to the operation and management of, or improvements to, the protected site and may affect the occupiers either directly or indirectly."

13. Paragraph 24 states:

"For the purposes of paragraph 22(e) above, to "consult" the occupier means—

(a) to give the occupier at least 28 clear days' notice in writing of the proposed improvements which—

(i) describes the proposed improvements and how they will benefit the occupier in the long and short term;

(ii) details how the pitch fee may be affected when it is next reviewed; and

(iii) states when and where the occupier can make representations about the proposed improvements; and

(b) to take into account any representations made by the occupier about the proposed improvements, in accordance with paragraph (a)(iii), before undertaking them."

Housing Act 2004

14. Section 231A of the Housing Act 2004 provides:

*(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 exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).*

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

(3) When exercising jurisdiction under this Act, the directions which may be given by the Tribunal under its general power include (where appropriate)—

(a) directions requiring a licence to be granted under Part 2 or 3 of this Act;

(b) directions requiring any licence so granted to contain such terms as are specified in the directions;

(c) directions requiring any order made under Part 4 of this Act to contain such terms as are so specified;

(d) directions that any building or part of a building so specified is to be treated as if an HMO declaration had been served in respect of it on such date as is so specified (and such a direction is to be an excluded decision for the purposes of section 11(1) and 13(1) of the Tribunals, Courts and Enforcement Act 2007);

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

(3A) When exercising jurisdiction under the Caravan Sites and Control of Development Act 1960, the directions which may be given by a Tribunal under its general power include (where appropriate) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.

(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 or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;

(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.

Relevant Case Law

15. In **Elleray v Bourne** [2018] UKUT 0003(LC), the Upper Tribunal stated:

"Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a "general power" to "give directions", in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to another. Such "directions" may be given where the FTT

considers it necessary or desirable for securing "the just, expeditious and economical disposal of the proceedings." The use of the word "directions" in this context might give the impression that section 231A (2) is concerned only with procedural matters. It is clear from section 231A (4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services."

16. In **Wyldecrest Parks (Management) Ltd v Santer** (2018) UKUT 0030 (LC), the Upper Tribunal stated:

"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."

17. Therefore, it would appear that the intention is for most mobile homes disputes to be dealt within the Tribunal rather than the Courts because of the Tribunal's greater expertise, accessibility and lower cost. The enhanced powers conferred by section 231A Housing Act 2004 also reduce the risk that proceedings to resolve disputes may need to be commenced in more than one forum.

18. In relation to the question of payment of any compensation or damages under Section 231(A) of the Housing Act 2004, consideration must be given to any judicial guidance provided. In the case of **Milner v Carnival Plc (Trading As Cunard)** [2010] EWCA Civ 389, Lord Justice Ward stated:

"It is trite law that the measure of damages is such compensation as will place the claimants, so far as money can do so, in the same position as they would have been in had the contract been properly performed. The task is to compare and contrast what was promised and what was received, acknowledging that money cannot truly compensate for this deficit. As Lord Morris of Borth-y-Gest observed in Parry v Cleaver [1970] A.C. 1, 22, "But a money award is all that is possible. It is the best that can be done." Doing the best one can is hardly the most enlightening guidance for those who have to perform the task, but I am not sure I can improve upon it."

BACKGROUND

19. The Applicant entered into an agreement with the Respondent entitling her to station a mobile home on the Park on 25 November 2006. Her occupation is subject to a written statement, a copy of which his have provided ("**the Written Statement**").

20. The Park is a residential mobile home site for residents aged over 55 years. It is understood that there is only one director , Mrs Maureen Anne Fury. There is also an employee site manager called Mr Brian Lightfoot who takes his instructions from a man called Mr Ashif Patel. Each of the homes on the Park has outside sub-meters for gas and LPG.

21. On 1 July 2022, the occupiers all received letters from POW Utilities stating that the Respondent had contracted with them for the installation of pre-payment smart sub-meters for both the LPG gas and electricity on each of the occupier's pitches. As a result of events that have taken place in relation to the installation of the new system, a number of the occupiers have been left dissatisfied with the management and 8 of the occupiers have submitted applications to the Tribunal. All of them are different and, therefore, separate judgments have had to be prepared for each.

THE APPLICATION

22. By application filed at the Tribunal, the Applicant has requested that the Tribunal determines a number of questions raising under the Mobile Homes Act 1983 or the agreement to which it applies. This Application was issued at the same time as 7 others similar applications.

INSPECTION AND HEARING

23. The Tribunal carried out an inspection during the morning of 22 June 2023 when it visited the Applicant's pitch, as well as the pitches belonging to other applicants with similar claims. The Tribunal viewed the location of the electricity and gas meters.

24. Immediately following the inspection, a hearing took place before the Tribunal at the County Court in Chester. At this hearing, the Applicant represented herself, as did another 7 occupiers bringing similar applications. Ms Ava, solicitor, represented the Respondent and Mr Adam

Worthington, director, of POW Utilities ("POW Utilities") was present as a witness on behalf of the Respondent.

THE QUESTIONS

Question 1.

Did the Respondent breach implied term 22(e)?

25. Implied term 22(e) stipulates:

"22. The owner shall –

…

e) consult the occupier about improvements to the protected site in general, and in particular about those which the owner wishes to be taken into account when determining the amount of any new pitch fee."

26. The Applicant contends that the Respondent breached implied term 22(e) by not consulting her about the works to be carried out to the sub-meters. Whilst she accepts that she was contacted by POW Utilities about the works, she indicates was not contacted by the Respondent until after the sub-meters had been installed.

27. Whilst POW Utilities appears to have written to the Applicant as agent for the Respondent and the Applicant accepts that the letter as delivered by the site manager (an employee of the Respondent) the correspondence lacked detail and did not amount to any consultation. At the hearing, Ms Ava, on behalf of the Respondent, accepted that there had been a breach of the implied term at paragraph 22.

28. The Tribunal determines that the Respondent's failure to properly consult amounts to a breach.

Question 2.

Did the Respondent breach implied term 14?

29. Paragraph 14 of Schedule 1 of the Act provides:

"14. Unless the occupier has agreed otherwise, the owner may enter the pitch for a reason other than one specified in paragraph 12

or 13 only if she has given the occupier at least 14 clear days written notice of the date, time and reason for his *visit."*

30. Paragraph 12 relates to entry for the purposes of delivering communications or reading meters and paragraph 13 relates to essential repair or emergency work. Neither party contends that the entry of the pitch for the purposes of installing sub-meters falls within an exception within paragraphs 12 or 13 and the Respondent, through Ms Ava, accepts the breach.

31. The Applicant states that the letter that she received from POW Utilities on 1 July 2022 did not provide a date or time for when the installation would take place nor was it clear that engineers would need to enter onto her pitch. She states that she did not receive any further communication in relation to this matter from the Respondent or POW Utilities prior to the installation of the sub-meters that was carried out by engineers entering onto her pitch.

32. The Tribunal determines that a breach occurred.

Question 3

Did the Respondent breach implied term 11 during planning, installation and ongoing management of the new sub-meters?

33. Paragraph 11 of Schedule 1 of the Act provides:

"*The occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 10, 12, 13 and 14"*

34. Paragraph 10 relates to the re-siting of a mobile home, paragraph 12 relates to entry for the purposes of delivering communications or reading meters, paragraph 13 relates to essential repair or emergency work and paragraph 14 relates to the Respondent's obligation to give notice prior to entering onto a pitch (see above). Neither party contends that paragraphs 10, 12, 13 or 14 apply.

35. Woodfall: Landlord and Tenant refers as follows:

"The covenant in law for quiet enjoyment entitles the tenant to enjoy his lease against the lawful entry, eviction or interruption of any man… "[1]

[1] Woodfall: Landlord and Tenant at 11.267

36. The Applicant contends that her "*right to quiet enjoyment of her home and pitch has been severely disrupted since July 2022 and continues to be disrupted*. The Applicant contends that her "*right to quiet enjoyment of their home and pitch has been severely disrupted since July 2022 and continues to be disrupted*". She complains that her pitch has been entered on occasions since July 2022 without notification, or even a courtesy knock on the door , and sometimes in their absence, her gas and electricity supplies were disconnected intermittently with no notification of the times and dates upon which the Respondent or its agents intended to enter on the pitch. Occasion, she states that she only became aware of a power outage when the electricity stopped working while she was using it and, on another occasion, she was informed around 10 minutes prior by a neighbour. She found this very disruptive.

37. The Applicant also refers to the following as potential breaches of her rights a quiet enjoyment:

    a. the fact that she's stopped receiving monthly invoices and require her to have Internet in order to access her account via the POW utility 's web portal - states that she is 85 years of age and is not confident with computers

    b. the fact that his submeters only display a single reading so that she cannot see any differentiation between peak and off peak usage

    c. the system has been transferred online about them ever having asked her if she has access to the Internet or is able to use it confidently

    d. as a result of the above, she is being forced into arrears and has received letters threatening "further action and costs"

    e. she has been informed that a meter reading charge may be imposed which she believes to be unlawful under form of harassment

    f. she has been threatened with having her gas and electricity disconnected as well as being threatened with legal action

38. In light of the previous acceptance by the Respondent of the breaches of paragraphs 11, 14 and 22(e) above, the Tribunal determines that the Respondent's conduct in carrying out works to the Applicant's pitch and the disconnection of power supplies amounts to a breach of the Applicant's quiet enjoyment of her pitch. It is acknowledged that Ms Ava did not dispute this on behalf of the Respondent.

39. The Tribunal does not consider that the matters listed at 38 a to f amount to breaches of the Applicants right to quiet enjoyment. However, those matters may constitute inappropriate behaviour and, in that regard, they are considered further below.

Question 4.

Can the Applicant continue to pay the Respondent for gas and electric bills?

40. The Applicant sets out in her statement that, from 22 September 2022, she has tried to pay the Respondent, via the site manager, for her gas and electricity, but the site manager has refused to accept the payments due to the payments being by cheque payable to the Respondent.

41. On 22 September 2022 and 5 October 2022, the Applicant received a hand delivered note from the site manager informing her that all payments must be made to POW Utilities. On 18 October 2022, a notice was posted on the site office window requesting that all residents pay POW Utilities for their gas and electricity charges.

42. The Applicant states that her Written Statement indicates that the Respondent is the supplier of gas and electricity and that she should pay them for her utilities.

43. Paragraph 21(b) of the First Schedule to the Act also states:

> *"The occupier shall:*
>
> *a) …*
>
> *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"*

44. The Applicant states that she considers it reasonable for her to continue to pay the Respondent for her gas and electricity. She adds that she does not have any business relationship with POW Utilities, and she refers to the letter that she received from POW Utilities on 1 July 2022 in support of this. The letter indicates that the contractual relationship in relation to the provision of gas and electricity is between the Applicant and the Respondent.

45. In response, Ms Ava on behalf of the Respondent confirmed that POW Utilities had been appointed to both maintain and monitor to the meters and to act as the Respondent's agent for the purposes of collecting the sums charged in respect of gas and electricity usage.

46. The Tribunal concludes:

a. the implied term at paragraph 21(b) of Schedule 1 of the Act relates to the occupiers' obligations to pay charges and does not stipulate how the payments are to be made to the Respondent and does not preclude the use by the Respondent of an agent for the collection of the charges.

b. there is no implied term that would prevent a Respondent from using an agent to collect any charges on its behalf.

c. whilst the letter from POW Utilities dated 1 July 2022 states only that it has been appointed to "*install new meters and manage the metering and billing",* it is accepted that, on the facts of this matter, POW Utilities has also been appointed to collect the sums payable.

d. the payment of the charges to the agent of the Respondent, if so requested by the Respondent, amounts to payment to the Respondent. However, it is noted that the Respondent did not request that all payments were to be made to POW Utilities until later.

47. On balance, the Tribunal finds that the Applicant must pay the Respondent the charges in the manner requested by the Respondent. As this is to POW Utilities, the Applicant should pay the charges to POW Utilities. However, the Tribunal also finds that the request for payment to be made to POW Utilities should have been clearly communicated to the Applicant by the Respondent and prior to the date the payments fell due.

48. Furthermore, if the Applicant is unable to make payments online due to an inability to do so which arises from her age, as age is a protected characteristic under the Equality Act 2010, the Tribunal considers it reasonable for the Applicant to be permitted to make payment by leaving a cheque payable to POW Utilities at the site office.

Question 5.

<u>Is</u> the 41 pence per utility per day "administration charge"/ "daily service charge" lawful?

49. The Applicant states that the letter from POW Utilities referred to an administration charge of 41p per day per utility that would be added to the gas and electricity invoices. A number of these invoices were provided to the Tribunal at the hearing.

50. The Applicant states that this charge is new charge linked to the use by the Respondent of POW Utilities' services. The Applicant suggests that this charge is unlawful and refers to **Britaniacrest Ltd Broadfields Park (UTLC Case Number: lrx/14/2013) *("Britaniacrest")*** in which she states that the Upper Tribunal ruled that a monthly administration fee charged in addition to the cost of electricity was unlawful. In that case, the administration charge was intended to cover time and costs incurred by the park owner in administering the residents' accounts. The Upper Tribunal read the express terms of the written statements and found that, unless there was an express term allowing such a separate administration charge, these costs were deemed to be included within the pitch fee and could not be included as an additional charge.

51. The Applicant contends that the Written Statement does not allow for an additional charge to be levied for administration.

52. Ms Ava on behalf of the Respondent avers that the charges are lawful as they are not charges for the administration work of the Respondent but are the charges of an agent appointed by the Respondent. She refers to the case of **PR Hardman and partners v Greenwood (2015) UKUT 0587 (*"PR Hardman")*** a decision of the Upper Tribunal, subsequently upheld by the Court of Appeal. Within this decision the wording of the written statement was construed.

53. Paragraph 3 of that written statement reads as follows:

> *"(a) to pay to the owner an annual pitch fee of [blank] subject to review…*
>
> *(b) to pay and discharge all general and/ or water rates which may from time to time be assessed charged or payable in respect of the mobile home or the pitch (and/ or a proportionate part thereof where the same are assessed in respect of the residential part of the park)*

and charges and respect of electricity gas water telephone and other services"

54. The Upper Tribunal held that the starting point for considering the submissions was the express terms of the written statement as supplemented by the statutory implied terms. It was noted that neither of the sources of obligation include anything which looked like a service charge as might appear within a long lease, acknowledging that if there had been an intention to impose an obligation on the occupier to pay a separate service charge for services provided by the park owner then it could have been included. Furthermore, if a form of service charge had been intended, one would expect it to have been made clear. The Upper Tribunal held that there was nothing of that sort in the common form of written statement or in the statutory implied terms.

55. The Deputy President went on to confirm adherence to the express term in ***Britaniacrest*** which was that paragraph 3(b) of (Part IV) of the written statement did not impose a general service charge on the occupiers but is concerned solely with the reimbursement of specific outgoings incurred by the site owner in meeting liabilities to third parties. However, she notes that paragraph 3(b) begins with the charges for general and water rates and continues to state, "*and charges in respect of electricity gas water telephone and other services*". She found that the reference to "*other services"* must amount to services which are analogous to the other types of service already listed and added that the common characteristic of the list of services is that each service is generally supplied and quantified by a third party.

56. The Upper Tribunal further stipulated that the language of paragraphs 21 and 22 of the Implied Terms did not further the matter but, in fact, supports the view taken as it *"reflects the understanding of the draftsman that the parties are free to provide expressly for separate charges to be payable in addition to the pitch fee*"

57. Therefore, in determining this matter, the Tribunal must turn to the Written Statement which includes the following provisions:

"3. THE Occupier undertakes with the freehold owner as follows: -

(a) to pay to the owner an annual pitch fee of…

(b) to pay and discharge all general and/ or water rates which may from time to time be assessed charged or payable in

respect of the mobile home or the pitch (and/ or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of electricity gas water telephone and other charges"

58. Thus, the wording of the Written Statement is in similar terms to the written statement in **PR Hardman**. For that reason, the Tribunal finds that the Respondent is entitled to recover fees incurred by third parties on its behalf in relation to (or in respect of) "*electricity gas water telephone and other services*". As the charges by POW Utilities for acting in relation to the provision of electricity and gas are charges by a third party in respect of services, the Tribunal finds that the Respondent is entitled to recover the sums charged by POW Utilities from the Applicant.

Question 6

Whether the "meter reading" charge is lawful

59. The Applicant indicates that the Respondent applies an additional charge for reading the Applicants meters. She states that she considers the charge to be unlawful and excessive. She states that the Respondent has indicated that the charge for each utility is £20 per manual reading to cover the cost of taking the reading and manually entering the payment and raising a manual invoice and delivering the invoice. She states that she has refused to pay this charge. As a result, she has been advised that that she may be taken to the small claims court for the charge to be recovered from her.

60. The question is whether this further charge would be unlawful due to it being an administration charge. The Applicant again refers to **Britaniacrest** and indicates that such a charge would be unlawful. However, as stated above, the case to which is referred relates to charges levied for work carried out by the park owner, whereas the present reference is to a charge for a third party to conduct meter readings.

61. Whilst the Tribunal notes that the Written Statement does not provide for the levying of a charge for administrative work by the Respondent, as the case of **PR Hardman** would also apply to this matter, the Tribunal concludes that the Respondent may pass on charges incurred by a third party on their behalf. However, this may not apply in circumstances where the practice of only providing information via an online portal is

potentially discriminatory (s.19 Equality Act 2010) towards the Applicant because of his age.

62. The Tribunal, therefore, concludes that if the practice of charging for manual readings is only necessary due to the Applicant's inability to access the online system which arises due to her age, it is not appropriate for a charge to be levied. In the circumstances, it appears that this is the case. Furthermore, at the hearing, Mr Worthington of POW Utilities confirmed that POW Utilities will provide written statements of account on paper where they are requested to do so and, it is therefore hoped, this will mean that the Applicant's account will not need to be paused and the manual readings will not be necessary.

63. In so far as the charge was payable, the Tribunal considers it to be excessive in any event and considers a charge of no more than £10 per month for each utility to be reasonable.

Question 7.

Is the Respondent obliged to provide a transparent itemised invoice/ bill for gas and electricity?

64. The Applicant states that she has not received an invoice/bill from the site manager for gas and electricity charges since September 2022 but that she has been forced to access her usage and charges via the online POW Utilities web portal.

65. The Applicant states *"I am 85 and I do not have Internet access at home and I'm not competent or very confident with computers. As such, I cannot access the web portal and the online account that I'm being forced to have with the agent."* She finds this extremely stressful and disempowering.

66. The Applicant states that she does not consider it reasonable to be expected to pay an invoice/ bill if it is not precise and transparent about the charges. She cannot assess whether the charges are lawful as she has received no invoices.

67. In accordance with paragraph 22 of Schedule 1 of the Act,

"The owner shall –

a) ..

b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of-

i. any new pitch fee;

ii. any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and

iii. *any other charges, costs or expenses payable by the occupier to the owner under the agreement*;"

68. The Respondent is obliged to provide a transparent itemised invoice/bill for gas and electricity charges when requested to do so by the Applicant. However, there is no prohibition against the Respondent providing the information electronically and, in the current digital times, it is not unreasonable for information to be provided electronically.

69. However, in circumstances where an occupier informs the Respondent of difficulties accessing the information via any particular medium, by reason of a characteristic that would be protected under the Equality Act 2010, such as age, it is appropriate for the information it to be provided to the occupier in a form that is accessible to her.

70. Therefore, whilst the Respondent is not in breach of the implied term at paragraph 22 of the Act by providing the information online, if it is the case that the Applicant is not able to access the information for reasons relating to her age or other protected characteristic, the Tribunal concludes that the information should be provided in a more accessible manner and without additional cost and, in this case, it would appear that the Applicant does struggle by virtue of her age.

Question 8

Is the Respondent:

a) obliged to provide the Applicant with evidence that the sub-meters are of an approved type under national/EU legislation;

b) obliged to provide the Applicant with evidence that the new sub-meters are working within legal accuracy boundaries; and

c) obliged any to agree any dispensation of the requirements for legal certification with the Applicant in writing?

71. The Applicant states that the Government's Office for Product Safety and Standards stipulates:

> *"any gas or electricity meter used for the purpose of billing, whether by a licensed energy supplier or a landlord, must be of an approved design"* (https://www.gov.uk/guidance/gas-and-electricity-meter-regulations); and
>
> *"The meter owner is obliged to use an approved meter and keep the metrology of the meter accurate" (HTTPS://www.gov.uk/guidance/electricity-meter-certification)*

72. The Applicant further contends that the letter from POW Utilities dated 1 July 2022 suggests that the sub-meters and technology will comply with the EU Measuring Instruments Directive. The Applicant states that she has not received any evidence of this and requests that the Respondent is ordered to provide her with such evidence.

73. The Applicants state that the sub-meters on their pitch do not show different readings for peak and off-peak usage despite the letter from POW Utilities' indicating to the contrary. She contends that POW Utilities are not fitting sub-meters that are able to differentiate between peak and off-peak rates but only single rate display sub-meters.

74. Whilst the Applicant also indicates that the Office for Product Safety and Standards makes clear that the sub-meters do not need to be certified, she states that the guidance indicates that *"a written agreement must be in place between the two parties to dispense with the requirement for certification*". *HTTPS://www.gov.uk/guidance/electricity-meter-certification)*. She adds that no such written agreement exists between her and the Respondent and that the Respondent should be ordered to commenced discussions with her with a view to reaching such agreement if the certification cannot be provided.

75. Thus, the question for the Tribunal is simply whether the Respondent has an obligation to provide the Applicant with evidence that the sub-meters are of an approved type, are working within legal accuracy boundaries or, alternatively, whether the Respondent must reach an agreement with the Applicant for dispensation of the requirement.

76. They Tribunal considers that, unless the meters bear the appropriate stamp confirming that they are of an approved design, the Respondent

must provide the Applicant with documentary evidence confirming that the meter is approved.

Question 9

Is the Respondent obliged to compensate the Applicant for the breach of rights and the time, disruption, fear, and distress caused by the manner in which the planning and installation of the new sub-metering arrangements and complaints about this were handled, the Respondent's repeated failures to respond to requests, and to reimburse the Applicant for the fees for bringing this action?

77. The Applicant complains that the installation of the new meters and management of the ongoing payments for gas and electricity have caused her significant upset, distress and disruption. She states that she has spent considerable time attempting to resolve these issues with the Respondent.

78. Furthermore, the Applicant indicates that she respects the Respondent's rights to appoint an agent for the installation and management of the sub-meters together with the billing but that the process should have been handled differently and the rights of the occupiers respected.

79. The Applicant also complains of the following as potential breaches of her rights:

a. the Respondent's refusal to provide her with invoices in a medium that is accessible to her given that she is 85 years of age and is not confident with computers.

b. the Respondent has threatened her with legal action and/or the disconnection of services arising from arrears when they have not provided her with accessible invoices or a means of payment that is useable by her.

c. she has been threatened with additional meter reading charges due to her inability to use the internet. She considers this to amount to harassment.

80. The Applicant requests compensation. Whilst she does not specify a sum which she believes she should be awarded. She requests that the Respondent refunds her the fees associated with bringing this action as she has tried on multiple occasions previously to resolve these issues. She considers it unfortunate that her efforts have been ignored, leaving her

with no option but to apply to the Tribunal for resolution. Again, however, she does not provide details of any sum claimed.

81. Pursuant to Section 231A of the Housing Act 2004, the Tribunal is able to make an order for the payment of compensation by one party to another by way of compensation, damages or otherwise.

82. Given the acceptance by the Respondent of a number of the matters complained of by the Applicant, and as such matters were not accepted prior to the hearing, the Tribunal agrees that the conduct of the Respondent has been less than satisfactory and has led to the Applicant becoming unhappy with the manner in which she has been treated. However, the Tribunal is not aware of any actual financial loss having been suffered for which damages are claimable and the Applicant does not otherwise quantify any claim for damages/compensation. Any claim for costs should be correctly claimed pursuant to the provisions of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and is considered below.

ORDERS

83. The Applicant requests that specific orders be made. For the reasons set out above, the Tribunal responds as follows:

Order Request 1

That the Respondent must accept payment for gas and electricity bills made out to the Respondent.

Where the Respondent has contracted with an agent for that agent to collect payments for gas and electricity bills, it is appropriate for the Applicant to make those payments to the agent as requested by the Respondent. However, if the Applicant is unable to make payment online due to age, it is appropriate for the Respondent's agent to accept payment by cheque.

Order Request 2

That the Respondent must provide the Applicant with monthly invoices in arrears for gas and electricity that provide:

i. **the tariff rates being applied for gas and electric at peak and off-peak times**

ii. **units of gas and electric used per month at peak and off-peak times and the total cost of each of these for the invoice.; and**

iii. **itemised costs for all additional gas and electric charges being levied (including but not limited to an explanation for the 82 pence per day "utility charge" or "daily service charge" currently being charged**

In light of the Applicants difficulties in accessing POW Utilities' online system, it is appropriate that the Respondent or its agent provides the Applicant with invoices in arrears for her gas and electricity charges which include the information sought.

Order Request 3

The Respondent must withdraw the 41p per utility per day "administration charge", the proposed charge for 'manual reading' and threats of Court action.

As set out above, the Respondent is permitted to recharge the fees charged by its agent in relation to the provision of services.

Order Requests 4 and 5

Provide evidence that the sub-meters installed are of an approved meter type under national and or EU legislation and are working within legal accuracy boundaries. Alternatively, to commence negotiations regarding an agreed dispensation of the requirement for legal certification of the new sub-meters

Unless the sub-meters bear a stamp confirming that they are of an approved design, the Respondent should provide the Applicant with evidence that the sub-meters installed are of an approved meter type pursuant to national and/or EU legislation and are working within legal accuracy boundaries. Alternatively the Respondent must contact with the Applicant with a view to reaching an agreement, in writing, for the dispensation of the legal certification of the sub-meters.

Order Request 6

Pay the Applicant any fees and/or compensation.

In so far as the Applicant has made any payments for the meter reading charges, the Tribunal determines that these should be repaid to the Applicant by way of compensation. However, it is understood from the Applicant that no such charges have been paid and, therefore, for the reasons stated above, no compensation is payable.

Furthermore, the Applicant does not otherwise quantify her claim for compensation for distress. She does so only by requesting a refund of fees incurred within the proceedings but does not state how much they would be. In any event, such a claim should properly be brought as a claim for costs.

On balance, whilst the Tribunal does accept that some inconvenience has been suffered by the Applicant, the Tribunal is not able to further quantify any appropriate sum due to the lack of detail in respect of the sum claimed. For the avoidance of doubt, the Tribunal does not consider that any significant compensation is likely to be allowed in any event.

Order Request 7

The Respondent is to inform POW Utilities not to contact the Applicant.

The Respondent is permitted to appoint an agent for the purposes of dealing with the recovery of electricity and gas charges from the occupiers of the Park. For the agent to act on behalf of the Respondent it is reasonable and appropriate for the agent to contact the Applicant.

Data Protection Concern

84. Finally, the Applicant raises a concern that the Respondent has inappropriately provided his personal details to its agent. The Applicant does not accept that this is reasonable or necessary. She states that the agent is able to read meters and issue gas and electricity invoices without being aware of her personal details.

85. The Tribunal accepts that the Respondent is a data controller under GDPR and that individuals must actively consent to a business processing and passing on their personal detail data unless that business has a lawful reason for processing their data.

86. Article 6(1)(f) of the United Kingdom General Data Protection Regulation (UK GDPR) states:

> *"Processing shall be lawful only if and to the extent that at least one of the following applies:*
>
> *…*
>
> *(e) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is child."*

87. As POW Utilities has been appointed as the Respondent's agent, not just in relation to preparing invoices but for issuing invoices to the Applicant and the collection of payments from her, the Tribunal considers that it is necessary for the Applicant's name and address to be provided to the agent for that purpose.

88. The Tribunal does not accept that there has been any breach of UK GDPR as a result of the Respondent having been provided with the Applicant's name and address.

89. Whilst some issues were raised at the hearing in relation to date breaches by POW Utilities, these are not part of the Application and, therefore, have not been considered further.

COSTS

90. Whilst the Applicant does suggest that she should be repaid his costs due to the inconvenience that she has suffered, she does not claim costs in the ordinary way and does not provide any evidence to show that any costs have been incurred by him.

91. No claim for costs has been made by the Respondent.

92. In the circumstances, it is not considered that either party has made any valid claim for costs.

93. In any event, it is not considered that either party has acted "unreasonably in bringing, defending or conducting proceedings" which is the appropriate test set for any claim for costs under rule 13(1)(b)(ii) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.

APPEAL

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

Tribunal Member Ian James MRICS