FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	MAN/00EQ/ PHC/2022/0003
Property	16 Home Farm Park, Lee Green Lane, Nantwich Cheshire CW5 6ED
Applicant	Charles Christopher Ramwell
Representative	-
Respondent	Fury Developments Ltd
Representative	Ms Ava, Immisol Solicitors
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, Mr Charles Christopher Ramwell (the "**Applicant**"), is the owner of a mobile home situated at 16 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; and

(b) to entertain any proceedings brought under this Act or any such agreement, subject to subsections (2) to (6).”

7. Subsections (2) and (6) are not relevant to the present proceedings.

Relevant Implied Terms

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

9. 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.”

10. 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.”

11. 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 is given the occupier at least 14 clear days written notice of the date, time and reason for his visit.”

12. 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;

…

13. 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."

14. 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

15. 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

16. 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."*

17. 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."*

18. 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 be required to be commenced in more than one forum.

19. 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

20. The Applicant entered into an agreement with the Respondent entitling him to station a mobile home on the Park on 9 February 2019. His occupation is subject to a written statement, a copy of which he has provided ("**the Written Statement**"). The annex to part two of the Written Statement sets out implied terms.

21. The Park is a residential mobile home site for residents aged over 55 years. It is understood that there is only one director common 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 gas.

22. 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 occupiers' 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. Eight of the occupiers have submitted applications to the Tribunal. All of them were different and, therefore, separate judgments have had to be prepared for each.

THE APPLICATION

23. 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

24. 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. The Tribunal viewed the location of the electricity and gas meters.

25. Immediately following the inspection, a hearing took place before the Tribunal at the County Court in Chester. At this hearing, the Applicant represented himself, as did another 7 Applicants bringing similar applications with one person being nominated as spokesperson. 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) of Schedule 1 to the Act

26. 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."

27. The Applicant states said that no consultation of any kind has ever been conducted about the new sub metering arrangements despite multiple requests for an explanation from the Respondent. The Applicant states that he first became aware of the work in a letter dated 1 July 2022 from POW utilities and that he then wrote to the Respondent but received no reply.

28. It is the Applicant's view that this is a breach of the terms of his written statement and the implied terms.

29. Whilst POW Utilities appears to have written to the Applicant as agent for 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.

30. The Tribunal determines that the Respondent's failure to properly consult would amount to a breach.

Question 2.

Did the Respondent breach implied term 14?

31. Paragraph 14 of Schedule 1 of the Act and of the Annex to the Written Statement 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 he has given the occupier at least 14 clear days written notice of the date, time and reason for the visit."

32. Paragraph 12 relates to entry for the purposes of delivering communications or reading meters and paragraph 13 relates to essential repair or emergency work.

33. 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.

34.

35. The Applicant states that he received a letter from the Respondent dated 17 November 2022 a stating:

> *"please take this as your 28 days notice of the installation of your new metre. POW utilities will be fitting the metre on your plot after the 28 days. We will inform you in due course of the actual installation date."*

The Applicant highlights that the letter does not contain a date or time of entry and, therefore, it does not meet the requirements set out in paragraph 14 of the Written Statement. He has received no other communications specifying the dates and times of entry.

36. The Applicant requests that the Respondent and his agent do not enter his plot until proper notification has been received and the required consultation conducted. He complains at his electricity was cut off intermittently for several days when work was carried out to neighbouring pitches. He found this very inconvenient and requests that the Respondent provides him with 2 working days' notice in writing of any disconnection so that he has time to prepare.

37. Thus, on the date of the Application, the work to the sub-meters on the Applicant's pitch had not been carried out.

38. The Tribunal determines that a breach occurred in so far as the Respondent or its agent has now entered the Applicant's pitch without providing the requisite notice.

Question 3.

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

39. 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"*

40. 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.

41. The Applicant contends that his "*right to quiet enjoyment of his home and pitch has been severely disrupted since July 2022 and continues to be disrupted*". He complains that his pitch was entered on different occasions since July 2022 without notification and sometimes in his absence. He states that his gas and electricity supplies were disconnected intermittently.

42. 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 amounts to a breach of the Applicant's quiet enjoyment of his pitch. It is acknowledged that Ms Ava did not dispute this on behalf of the Respondent.

Question 4.

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

43. The Applicant sets out in the Application that he currently continues to be invoiced by and pays the Respondent for his gas and electricity each month. However, he has been told that once the work on the sub-meter is complete he will then have to commence paying POW Utilities. He considers this to be a breach of his contract terms.

44. The Applicant states that term 21(b) of his Written Statement indicates that the Respondent is the supplier of gas and electricity and that he should pay them for his utilities.

45. 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"*

46. 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.

47. The Tribunal concludes:

a. the implied term at paragraph 21(b) of Schedule 1 of the Act and the Written Statement relates to the occupiers' obligations to pay charges and does not place any duty upon the Respondent. Paragraph 21(b) 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.

48. On balance, the Tribunal find that it is appropriate for the Applicant to pay the Respondent the charges in the manner requested by the Respondent. As this is to POW Utilities, the Applicant must pay POW Utilities. However, the Tribunal also finds that this should have been clearly communicated to the Applicant.

49. If the Applicant is unable to make payments online due to an inability to do so which arises from age, then 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 Park office.

Question 5

Whether the £20/month "meter reading" charge is lawful / Can the Respondent levy the proposed charge for "manual readings" of my meters?

50. As at date of the application, the Applicant stated that he was one of only three properties on the Park that did not yet have the POW technology. He states that the Respondent added a "meter reading charge" of £20 per month to his monthly invoice in September 2022.

51. The Applicant suggests that this charge is unlawful and refers to **Britaniacrest Ltd Broadfields Park (UTLC Case Number: lrx/14/2013)** ***("Britaniacrest")*** in which he 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.

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")*** which was 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 Park owner in meeting liabilities to third parties. However, he 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*". He 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 by a third party 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, it is apparent that 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 carrying out the manual meter reading 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.

59. However, in the Tribunal's experience, the charge imposed is excessive and the Tribunal considers a charge of no more than £10 per month per utility to be appropriate. **Ian – I presume that you jus wanted this adding and didn't want the previous paragraphs in relation to the case law removing??**

Question 6.

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

60. 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.

61. The Applicant states that this charge is new charge linked to the use by the Respondent of POW Utilities's services.

62. The Applicant contends that the Written Statement does not allow for an additional charge to be levied for administration. He refers to the case of **Britaniacrest** and indicates that such a charge would be unlawful. However, **Britaniacrest** relates to charges levied for work carried out by the park owner, whereas the present reference is to a charge for by a third party.

63. 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.

Question 7.

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

64. The Applicant has been advised that he will no longer receive an invoice each month but that this information will be available online and that he will be charged if he requests paper copies of his invoices.

65. The Applicant states that he is not competent or confident online and refers to **Britaniacrest** again as authority to suggest that the Respondent cannot charge for administrative time in providing hardcopy paper invoices. However, as it is understood that the provision of hardcopy paper invoices would be carried out by POW Utilities, it is the costs of the third-party agents that would be relevant and, in accordance with **PR Hardman,** would be allowed as costs that are "*in respect of electricity gas water telephone and other charges"* (term 3(b) of the Written Statement).

66. The Applicant also states that the invoices he currently receives via the site manager do not provide a breakdown for gas and electricity charges are not clear to him.

67. In accordance with paragraph 22 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. It is, therefore, correct that 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 information being provided electronically. In current times, it is not unreasonable for information to be provided electronically and is not unreasonable for the Respondent to recharge the costs incurred by POW Utilities for providing the paper copies on to the residents.

69. However, if it is the case that the Applicant is unable to access the internet by reason of his age, it is reasonable for him to be provide with hard copies of the statement at no charge and in accordance with his previous dealings with the Respondent.

70. Thus the Respondent is obliged to provide documentary evidence in support and explanation of the charges levied provided.

Question 8

Whether the Applicant has been overcharged for electricity since September 2022

71. The Applicant states that the Ofgem regulations stipulate that the maximum sum at which electricity may be charged by the a park owner is the price paid by them

(HTTPS:// www.ofgem.gov.uk/publications/resale-gas-and-electricity-guidance-maximum-resale-price-updated-October-2005). He states that as he was only charged at the peak rate for electricity between 15 November 2021 and 22 September 2022 and he believes he has been overcharged for the period.

72. In order to consider whether he has been overcharged, the Respondent must provide the Applicant with documentary evidence of the charges that he pays for electricity to the pitches. It is hoped that once this information has been provided that the Applicant will be able to establish whether she has been overcharged. In the event that he feels he has been overcharged, he should liaise with the POW Utilities as the Respondent's agent to seek to agree an appropriate reduction.

Question 9

Is the Respondent obliged to provide the Applicant, free of charge, with documentary evidence in support and explanation of all charges for gas and electricity on the Park

73. The Applicant states that he has requested documentary evidence in support and explanation of charges for gas and electricity from the Respondent. He states that these requests have been ignored and no such evidence or explanation has been provided.

74. The Applicant indicates that the Respondents previous provider of electricity went into administration in Autumn 2021. Thereafter Yu Energy was appointed from 15 November 2021 but, again, he states, he was not provided with a copy of bills from this supplier despite asking. He states that he has not received any evidence in relation to electricity charges since receiving a bill from AM Power on 12 January 2021. He requests that the Respondent is ordered to provide documentary evidence in support and explanation of charges for electricity from 12 January 2021 together with documentary evidence in support and explanation of charges for gas from the same date.

75. The Applicant refers to paragraph 22 of the Act,

"The owner shall –

c) ..

d) 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*;"

76. At the hearing, Ms Ava, on behalf of the Respondent indicated that the information was provided by POW Utilities via the online system. At the hearing Mr. Whittington of POW Utilities indicated that he would be prepared to provide the documentary evidence on paper if requested.

77. The Tribunal confirms that in accordance with the implied term at paragraph 22 of schedule 1 of the Act, the Respondent does have an obligation to provide documentary evidence in support and an explanation of charges for gas and electricity which are payable by the Applicant. The implied term does not cover charges that are not payable by the Applicant.

78. There is, therefore, no obligation upon the Respondent to provide evidence of any charges costs or expenses that are not payable by the Applicant pursuant to the implied term. It is for the Applicant to consider the accuracy of the sums charged to him by reference to usage and rates applied in relation to his pitch.

79. However, in light of the judgment in **PR Hardman**, a site owner is entitled to recover sums paid to third party suppliers but not to any form of surcharge on top. Therefore, if the Applicant has been charged more than the Respondent is charged, he may be entitled to reimbursement.

80. In the circumstances**,** it is appropriate for the Applicant to be provided with evidence of the rates that have been charged to the Respondent for all gas and electricity usage on the pitch.

Question 10

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?

81. The Applicant states that the Government 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)

82. 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 he has not received any evidence of this and requests that the Respondent is ordered to provide him with such evidence. .

83. The Applicants state that the sub-meters on their pitch display only a single reading and do not show different readings for peak and off-peak usage despite the letter from POW Utilities' indicating to the contrary. They contend 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.

84. 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, he 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)*. He adds that no such written agreement exists between him and the Respondent and that the Respondent should be ordered to commenced discussions with him with a view to reaching such agreement if the certification cannot be provided.

85. 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.

86. The 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 and, if unable to do so, the Respondent must seek to agree a dispensation with the Applicant.

Question 11

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

87. The Applicant complains that the installation of the new meters and management of the ongoing payments for gas and electricity have caused him significant upset stress and

disruption. He states that he has spent considerable time attempting to resolve these issues with the Respondent.

88. Furthermore, the Applicant indicates that he respects the Respondents 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 residents respected. The Applicant contends that he should still receive invoices from the Respondent and that he should be able to make payments to the Respondent in accordance with his Written Statement and the implied terms.

89. The Applicant requests evidence of what he is being charged for gas and electricity and for his concerns to be dealt with quickly and reasonably. He complains that his letters to the Respondent in July 2022 -were ignored until 17 November 2022 - after work on his pitch had been carried out without his consent.

90. The Applicant states that he has found "the whole affair" to be upsetting and disempowering and has caused him substantial worry, time and disruption. He states he has wanted to resolve the issues amicably and has tried for over six months to do so. He says he has lost faith in the Respondent. He requests compensation to make up for this. Whilst he does not specify a sum which he believes he should be awarded by way of compensation; he requests that the Respondent refunds him the fees associated with bringing in this action as he has tried on multiple occasions previously to resolve these issues. He considers it unfortunate that his efforts have been ignored leaving him with no option but to apply to the Tribunal for resolution. Again, however, he does not provide details of any sum claimed.

91. 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.

92. The Tribunal agrees that the conduct of the Respondent has been less than satisfactory and has led to the Applicant becoming less than satisfied and unhappy with the manner in which he has been treated and confirms that the Applicant's account should be credited for any charges over and above £10 per utility per month in relation to meter reading. However, the Tribunal is not aware of any actual financial loss having been suffered for which damages or compensation may otherwise be claimable and the Applicant does not otherwise quantify any claim for damages/compensation. Any claim for costs should be considered in accordance with The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 and is considered further below.

ORDERS

93. 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 cease all works in relation to installing the new sub-meters on the Appliant's pitch until the consultation has been carried out.

In the event that the works have not yet been completed and the consultation has not taken place, in view of the obligation of the Respondent to consult (as set out in implied term 22 of Schedule 1 of the Act), it is appropriate for the works to cease until the consultation has been completed.

Order Request 2

That neither the Respondent nor its agent should enter the Applicants pitch other than as provided for within implied terms 12 and 13 of schedule one to the Act

This is a request for compliance with the implied terms. The Tribunal confirms that the Respondent should not enter the pitch save for in compliance with implied terms 12 and 13.

Order Request 3

The Respondent must provide 48 hours' notice in writing of any scheduled power outages that will affect the Applicant's pitch.

The Second Schedule to the Applicant's Written Statement Electricity Supply Agreement and Written Statement Calor Gas Supply Agreement stipulate that the owner is to provide notice in writing (except in an emergency) of any scheduled power cuts.

The Tribunal confirms that it is appropriate for reasonable notice (at least 2 days) of any power outage to be given to the Applicant.

Order Request 4

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 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 5

Remove the outstanding debt balance accrued as a result of manual meter charges from the Applicant's account.

The Tribunal considers that the manual meter charge in respect of the fees of a third party for conducting manual meter readings is payable, provided that it is reasonable.

Based on the experience of the Tribunal, the fee of £20 per utility per month is excessive and the more appropriate rate is £10 per utility per month. Therefore, these charges should be reduced, and any sum charged previously should be credited.

If the charge in respect of manual readings online applies due to the Applicant being unable to access the online systems by reason of his age, and not due to the fact that the Applicant has not been transferred onto the new system for other reasons, those charges are not appropriate and should be withdrawn if charged.

Order Request 6

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

The Respondent is permitted to recharge the fees charged by its agent in relation to the provision of services.

Order Request 7

That the Respondent must provide an explanation for how they intend to calculate any refund for an electricity overcharge

The Tribunal is only aware of an overcharge in relation to the cost of meter readings. These should be calculated by the Respondent and credited to the Applicant's account.

Order Request 8

The Respondent must provide documentary evidence in support of and explanation for all charges for gas and electric from January 2021 to date.

The Respondent should provide documentary evidence in support of and an explanation for all charges for gas and electricity from January 2021 onwards for the Applicant's pitch but not for the whole of the Park. It may either produce this evidence itself or instruct its agent to do so on its behalf.

Order Request 9

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 must provide the requisite legal certification evidence that the sub meters installed are of an approved meter type and, if they are unable to do so, to commence negotiations with the Applicant.

Order Request 10

Pay the Applicant any fees and/ or compensation

In accordance with the decision of the Tribunal at paragraph 61, under question 5. The Tribunal determines that the Respondent should credit the Applicant for any charges over and above £10 per month per utility for manual meter readings and reduce future costs.

The Applicant does not otherwise quantify his claim for compensation for the upset, disempowerment and substantial worry, time and disruption that he considers that he has had endure. He quantifies this only as a refund of the fees that he has incurred as a result of these proceedings but he does not state how much those fees and it would seem that such a claim should properly be considered 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 the 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 the circumstances in any event. In relation to the Applicant's claim for costs, this is considered further below.

COSTS

94. The Applicant suggests that he should be repaid his costs due to the inconvenience that he has suffered, he does not claim costs in the ordinary way and does not provide any evidence to show that any costs have been incurred by him.

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

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

97. In any event, it is not considered that either party has acted "unreasonably in bringing, defending or conducting proceedings" which is the 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