FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EU/PHC/2023/0004**
Property	**:**	**5 Rixton Park Homes, Moss Side Lane, Rixton, Warrington, WA3 6HH**
Applicant	**:**	**Lisa Charlton**
Representative	**:**	**N/A**
Respondent	**:**	**Mr W Willett**
Representative	**:**	**N/A**
Type of Application	**:**	**Mobile Homes Act 1983 – Section 4**
Tribunal Members	**:**	**Tribunal Judge L. F. McLean** **Tribunal Member S. Wanderer MRICS**
Date of Hearing	**:**	**14th November 2023**
Date of Decision	**:**	**13th December 2023**

DECISION

Decisions of the Tribunal

(1) Pursuant to Section 231A(2) of the Housing Act 2004, the Tribunal directs that in the event that the Respondent ever seeks to recover his costs of electricity consumed in relation to the common parts of the Site from the Applicant, he must follow the steps set out below:-

a. On or as soon as practicable after the first day of January each year, the Respondent must estimate, on an annual basis for the calendar year ahead, the proportion of the total electricity costs for the Site which are attributable to the common parts of the Site in the formula

$$X = 1 - (Y \div Z)$$

Where:-

- **X is the proportion of the total electricity costs for the Site which are attributable to the common parts of the Site**
- **Y is the combined number of units of electricity used by all of the pitches on the Site as measured by adding together the usage readings from all of the electricity meters serving those pitches since 1st January of the previous year**
- **Z is the total number of units of electricity used by the whole Site as measured by the electricity supplier since 1st January of the previous year**

b. On or as soon as practicable after the first day of January each year, the Respondent must also estimate, on an annual basis for the calendar year ahead, the average unit cost per unit of electricity for the Site as determined by the formula

$$A = B \div Z$$

Where:-

- **A is the average unit cost per unit of electricity for the Site**
- **B is the total cost of all electricity charges for the whole Site since 1st January of the previous year**

c. Any demands for payment for the Applicant's use of electricity for the Property shall be by reference to the total number of units used during the relevant period, multiplied by "A" as calculated above

d. Whenever the Respondent receives an interim bill from the electricity supplier for the Site, he may in respect of that interim bill demand payment of the Applicant's proportionate share of the total electricity costs for the Site

which are attributable to the common parts by dividing it equally with all other residents, in the formula

$$C = (D \times X) \div E$$

Where:-

- **C is the amount payable by the Applicant towards communal electricity for the period in question**
- **D is the total cost of all electricity charges for the whole Site for the period in question**
- **E is the total number of pitches on the Site**

e. On or as soon as practicable after the first day of January each year, the Respondent must carry out a reconciliation of the total sums demanded from all of the residents of the Site against the actual costs payable to the electricity supplier. If there is any excess, it must be returned to the residents (including the Applicant) in equal shares according to the number of pitches on the Site by 31st March of the year in question. If there is any deficit, then the Respondent may demand payment from each resident of the Site in equal shares according to the number of pitches on the Site.

(2) Pursuant to Section 231A(2) of the Housing Act 2004, the Tribunal also directs that:-

a. The Respondent must provide to the Applicant whenever reasonably requested (being not more than once every 6 months) copies of any electricity bills received by the Respondent since any previous such request.

b. Within 14 days of making the annual calculations set out at Directions (1)a. to (1)d. above; the Respondent must provide a written copy of those calculations to the Applicant.

c. Within 14 days of making the annual reconciliation set out at Direction (1)e. above; the Respondent must provide a written copy of his reconciliation calculations to the Applicant.

(3) Directions (1) and (2) above shall expire immediately in the event that the Applicant ceases to be the current tenant of 5 Rixton Park Homes, Moss Side Lane, Rixton, Warrington, WA3 6HH.

(4) Under Rule 13(2) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013, the Tribunal orders the Respondent to reimburse to the Applicant within 28 days of the date of this Decision any Tribunal fees she has paid in these proceedings.

The application

1. The Applicant applied to the Tribunal in respect of 5 Rixton Park Homes, Moss Side Lane, Rixton, Warrington, WA3 6HH ("the Property") and as regards a variety of issues affecting the Respondent's obligations for the maintenance and management of the Site and the Property.

Background

2. The Applicant is the current tenant of the Property, under an agreement which is regulated by the Mobile Homes Act 1983 and which commenced on 15th October 2005 ("the Agreement"). The Agreement was originally made between the Respondent and Mr & Mrs E. White. The Agreement is subject to the "Implied Terms" which are implied by virtue of Section 2(1) of (and Part I of Schedule 1 to) the Act. There are also additional Express Terms.

3. The Respondent is the owner of Rixton Park Homes, Moss Side Lane, Rixton, Warrington, WA3 6HH ("the Site").

4. The Application was received at the Tribunal on 7th February 2023. Directions were made on 19th May 2023 by Deputy Regional Judge Bennett following a Video CMC which took place on 16th May 2023.

5. The Applicant was directed to send a bundle of indexed, paginated documents within 21 days, to include a copy of the Application and accompanying documents, any photographic evidence, and any other relevant documents the Applicant wished to rely on.

6. The Respondent was directed to send a bundle of indexed, paginated documents in response within 21 days of receiving the Applicant's bundle, to include a written statement in reply to the issues raised in the Applicant's bundle and copies of all documents (including correspondence) upon which the Respondent sought to rely in evidence. The Applicant was then permitted to submit any further comments that she might wish to make in reply to the Respondent, within 7 days of receiving the Respondent's bundle.

7. The parties were also notified that the matter would be determined at a hearing and that they would be notified whether an inspection of the Property would be necessary. The matter was listed for inspection and final hearing.

Grounds of the application

8. The Applicant's grounds of the application were, in essence:-
    a. that the Applicant had made requests for the Respondent to provide proof of increases in electricity charges for the Site;
    b. that it was unclear how the Respondent was calculating the unit rate for electricity charges which the Applicant was being asked to pay;
    c. that the Respondent had failed to comply with his obligations regarding the maintenance of the Site and of the foul waste/water drainage for the Property, which had led to:-
        i. defective street lighting,

ii. localised flooding of rainwater and sewage, and
iii. foul smells emanating from the internal plumbing;

d. that the Applicant had been verbally abused and intimidated by a person who was engaged by the Respondent to manage the invoicing and payment of individual electricity meter usage at the Property and on the Site, and that the Respondent had also sent threatening messages to the Applicant's husband; and
e. that the Applicant had been unable to use the communal car park at the Site.

Issues

9. The issues which the Tribunal had to decide were:-
    a. Has the Respondent lawfully demanded payment of the electricity charges due under the Agreement from the Applicant?
    b. Has the Respondent provided documents and information to the Applicant relating to electricity charges in accordance with his obligations under or arising out of the Agreement?
    c. Has the Respondent breached his obligations under the Agreement in relation to his own conduct or the conduct of another person towards the Applicant?
    d. Is the Respondent in breach of his obligations under the Agreement in relation the maintenance and/or management of the Site and/or the Property?
    e. In all the circumstances, what order or remedy should the Tribunal grant, if any?
    f. Should the Tribunal make any order regarding the costs of the proceedings, and if so then what?

10. The Respondent had also raised the following issues in response:-
    a. He asserted that the Applicant was in arrears for failing to pay the increased pitch fee;
    b. He asserted that the Applicant had breached her obligations under the Agreement relating to business use and/or permitted occupancy of the Property.

Relevant Law

11. The Application is governed by the Mobile Homes Act 1983 and the Housing Act 2004.

12. The relevant sections of the Mobile Homes Act 1983 read as follows:-

2 Terms of agreements

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

[…]

4 Jurisdiction of a tribunal or the court

(1) In relation to a protected site, a tribunal has jurisdiction—

(a) to determine any question arising under this Act or any agreement to which it applies; and

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

(2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.

(3) In relation to a protected site, the court has jurisdiction—

(a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and

(b) to entertain any proceedings so arising brought under this Act or any such agreement, subject to subsections (4) to (6).

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.

(5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.

(6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).

13. The relevant sections of the Housing Act 2004 read as follows:-

231A Additional Powers of First-tier Tribunal and Upper Tribunal

(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers 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.

Inspection

14. On 13th November 2023, the members of the Tribunal inspected the interior and exterior of the Property and walked around the Site. The Applicant attended the inspection. There was no attendance or representation for the Respondent.

15. The Property consists of a mobile home stationed upon what is presumably a concrete base and surrounded by paving flagstones. The Applicant has also stationed some ornaments and belongings in the gardens at the side and rear of the Property.

16. On the date of the inspection, the weather was cold and windy and there had been substantial rainfall during the week beforehand, although it was not raining on the day in question.

17. The Tribunal Members noted the following additional matters:-

    a. The electricity meter for the Property was a single rate meter;

b. There were no drains at the edge of the road which runs through the Site, so rainwater runs off directly onto the adjacent frontages;
c. The main car park was largely empty, and no agricultural vehicles or machinery were parked on it;
d. There were three street lamps situated along the road which runs through the Site, with some pitches also having their own lamps (and the Respondent later stated at the hearing that there are other street lamps in other locations on the Site);
e. There were some puddles on sections of the road which runs through the Site, but there was no flooding on the road or in any of the pitches.

Hearing

18. The final hearing of this matter took place on the day after the inspection, at the Manchester Tribunal Hearing Centre, Piccadilly Exchange, 2 Piccadilly Plaza, Mosley Street, Manchester M1 4AH. The Applicant appeared in person and was joined by her husband Mr Charlton. The Respondent also appeared in person.

Applicant

19. The Applicant gave oral evidence to supplement her written submissions.

20. In relation to the electricity, the Applicant stated that she had never received a proper statement of how the charges were calculated. Initially, she paid the charges when they were demanded, although she was not told what the unit rate was by the Respondent. Then the charges increased three or four times in a row during the period when utility charges across the UK were increasing exponentially. She wrote to the Respondent to question how the charges were arrived at. She was eventually provided with a copy of the British Gas electricity bill for the Site which the Respondent had received in around July 2022, with some manuscript notes and calculations on it. A later bill from August 2022 has also been sent to her, again with manuscript notes and calculations on it. The Applicant said she could not understand the Respondent's calculations. She pointed out that the statements sent to the Respondent by British Gas showed different unit rates for daytime and overnight usage.

21. The Applicant also referred to an administration charge which the Respondent had historically levied for a service in the form of having the residents' electricity meters read and their bills calculated for them. She said that around four years ago, she asked to read her own meter and the Respondent agreed to this. She later found out that the Respondent was still charging her for this service even though it wasn't being used. Eventually she stopped paying it. Her position was that she should not have to pay it, because it was not set out anywhere in the Agreement and she was not informed about the charge before she took over the remaining term of the Agreement from the previous resident.

22. The Applicant explained that the person who had been reading the meters for the Respondent lived in the pitch next door to her and she said that he had

been intimidating her and made her poorly as a result. She complained that the Respondent had done nothing to stop this.

23. In relation to street lighting, the Applicant conceded that the lamp immediately outside the Property was currently working although she said it had been broken for several months previously and was only repaired when she contacted the Council who in turn contacted the Respondent.

24. The Applicant referred the Tribunal to her written evidence showing images of text message exchanges with the Respondent in which he said he would cut off their electricity if they did not pay him in full.

25. The Applicant accepted that the situation with the communal car park had improved recently and there were no longer any tractors or wood chippers. However, she said that vans still park on it and sometimes there are badly damaged vehicles being parked on it too.

26. In relation to drainage, the Applicant also accepted that the Respondent had since installed a new pump although she said that lots of deep puddles were still forming, and occasional flooding where rainwater was running off the Site road and onto the driveways of the pitches. She could not say if sewage was still surfacing. She said she was still getting smells from her kitchen sink despite her husband trying to fix it. She said she felt there was a connection between these issues, although she could not say more than that as the smells were intermittent and there was no pattern to them.

Respondent

27. The Respondent also gave oral evidence to supplement his written submissions.

28. He explained the history of the electricity supply to the Site and his methodology in calculating the charges for electricity usage. The current contract for electricity supply began in June 2022 and was fixed for a term of two or three years – the Respondent admitted he could not remember which. The contract was sourced through a broker. He receives a monthly statement of charges which he pays. His starting point is to take the total bill whenever it is received, and to divide the total cost by the total number of units used, irrespective of whether the units were at the daytime or night-time rate, to work out an average cost per unit for the combined usage of the pitches and the communal areas. Separately, he arranges for each resident to be provided with an individual bill, which is the number of units each pitch has used (according to their latest meter reading) multiplied by the average unit rate. These individual bills are written on the back of a plain envelope and given to each resident accordingly. They are sent on the first day of the month or thereabouts, irrespective of when he actually receives a bill from British Gas. When such bills for the whole Site are provided, he updates his calculations of the average unit rate. Traditionally, residents would put a cheque inside the envelope and return it to the Applicant's neighbour, although more recently many residents have started paying through online banking.

29. Based on the above process, the Respondent stated that the average unit price had worked out at 42.2 pence per unit over several bills.

30. The Respondent said that if the current dispute with the Applicant could be resolved, then he would like to have a smart meter installed. He said that the current meter for the Site had been in place since he acquired the Site in 2004.

31. It was confirmed that since the dispute arose between the parties, the Applicant had been taking her own readings and working out what she believed she should pay based on a unit rate of 36 pence, and making online banking transfers accordingly. The Respondent had not asked the Applicant for confirmation of the meter readings for some time and had not been provided with any since 2nd February 2023.

32. The Respondent stated that his overall approach was to charge the residents no more than he had been charged himself. he said that he carried out reconciliation exercises every so often and that sometimes he had over-recovered up to around 43 pence across the whole Site. He said that he often ended up under-charging the residents. As an example of this, he said that the most recent bill for the Site had been £5047.49 but he had only recovered £4809 from the residents.

33. The Respondent was invited to consider the manuscript notes and calculations he had written on the photocopied bills, and whether he could present this information in any clearer fashion. He said he could not think of any, but that he was open to suggestions.

34. The Respondent said that he had stopped levying the administration charge for reading the meter.

35. In relation to allegations of intimidating behaviour by the Applicant's neighbour, the Respondent took the view that this was a private matter between them. He had told the neighbour to "steer clear" of the Applicant and her family, but the neighbour was no longer taking the Applicant's meter readings so he was not responsible for the neighbour's behaviour towards them.

36. The Respondent said that he did not think he had received the Applicant's letter reporting the broken street lamp outside the Property.

37. In respect of the sewage drainage, the Respondent confirmed that all sewage from the Site fed into a septic tank, which discharges into a soakaway system when activated by a float. The septic tank is still the original system although the pump which operates the discharge mechanism has been replaced. He accepted that the pump can block up and that he had had it cleared on two or three occasions. The pump was replaced about a year ago and again the week before the hearing, at a cost of £150 on each occasion. The septic tank itself is completely emptied three times each year.

38. The Respondent stated that there is a surface rainwater drainage system, with drains near to pitch numbers 15 and 19, and which drains into a neighbouring

field. He said that there had been no blockages during the last year, but admitted that a grid across one of the pipes needs to be cleared every so often.

39. The Respondent was unable to say much about the internal drainage at the Property except that he did not know what might be causing any smells, and that none of the other residents had made similar complaints.

40. The Respondent referred to the issues which he was unhappy about with the Applicant. He said that she was not paying the increased pitch fee. He also complained that her adult son had been living at the Property full time, in contravention of the age restrictions. Lastly, he complained that the Applicant's husband was using the Property for business purposes by storing his work tools, parking his work van on the communal car park, and advertising the Property as being the contact address for his trade.

41. On the issue of the pitch fee, the Applicant's position was that she did not have to pay it because she had not expressly agreed to do so, and as such the increase was not legally enforceable.

42. The Applicant said that her son had only stayed for four months when he returned from overseas, and that other residents were doing the same anyway.

43. The Applicant's husband said that his trade advert referring to the Property had since been taken down.

Determination

Has the Respondent lawfully demanded payment of the electricity charges due under the Agreement from the Applicant?

44. Implied Term 21(b) provides that:-

The occupier shall—

[…]

(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;

45. Under Express Term 2(b) of the Agreement, the Applicant is obliged as follows:-

To pay outgoings	*(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 services*

46. Separately, the Respondent is subject to the restrictions of Section 44 of the Electricity Act 1989, which provides as follows:-

44 Maximum prices for reselling electricity.

(1) The Authority may from time to time direct that the maximum prices at which electricity supplied by authorised suppliers may be resold—

(a) shall be such as may be specified in the direction; or

(b) shall be calculated by such method and by reference to such matters as may be so specified;

and shall publish directions under this section in such manner as in its opinion will secure adequate publicity for them.

(2) A direction under this section may—

(a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and

(b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.

(3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.

(4) If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale—

(a) the amount of the excess; and

(b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the person to whom the electricity was resold.

47. Ofgem has published a Maximum Resale Price Direction ("MRPD") for gas and electricity, which accordingly is binding on any person who seeks to recoup electricity costs from another person to whom such electricity is provided. As such, the MRPD is binding on the Respondent whenever he bills the Applicant and the other residents of the Site for their usage.

48. The most pertinent provisions of the MRPD are paragraphs 5 and 6:-

Unmetered or estimated supplies

5. Where metering equipment is not available which permits resale of gas or electricity at a price defined according to paragraph 3 (including where the total monetary amount which will be charged for supply of gas and/or electricity to a person is set in advance of consumption of that gas or electricity), the maximum resale price shall be estimated with the objective that each person to whom gas or electricity is being resold by a particular reseller will pay a fair proportion of the overall costs incurred by the reseller in procuring gas or electricity for resale, including any standing charge, but excluding a fair proportion of the costs representing electricity or gas

consumed in relation to common parts. The maximum resale price will therefore be estimated by reference to such data regarding

> *a) the quantities of gas or electricity supplied by the authorised supplier to the reseller, and*
>
> *b) the price or prices paid for that gas or electricity*

as may be reasonably available to the reseller. The reseller shall use reasonable endeavours when estimating the maximum resale price to ensure that the person to whom gas or electricity is resold is not over-charged.

6. Where the maximum resale price is being estimated according to paragraph 5, the methodology for estimation shall be such that, over the course of a defined period (not greater than one year), the reseller will not recover through resale of gas or electricity a sum greater than the cost he has incurred in purchasing the gas or electricity for resale, both as regards each person to whom he is reselling gas or electricity, and as regards all of the persons to whom he is reselling gas or electricity. At the end of the defined period the reseller will check whether, as regards each person to whom he is reselling gas or electricity, the sum recovered exceeds the cost incurred by more than a sum equal to £5 multiplied by the defined period (in weeks) divided by 52. If it does, then the reseller shall use reasonable endeavours to repay the excess.

49. It appears that the Respondent has not been over-charging the Applicant or the other residents. In order to work out the average unit cost, the Respondent has been basing his calculations on the average cost of all the electricity supplied to the Site. He is then only billing each resident for their own personal usage for their pitch. In effect, he has not been apportioning any of the costs for communal electricity usage – for example, the street lamps, car park lighting and waste treatment system – and he has been largely bearing these costs from his own pocket.

50. The only sense in which the Respondent's current practice might be slightly unfair in individual cases is that there is no differentiation between daytime and night-time usage, so the proportion of the costs borne by someone who used most of their electricity at night when it is cheaper would be slightly skewed compared to a resident who stayed at home all day and who typically consumed a higher proportion of the more expensive daytime electricity usage. However, unless and until dual-rate meters or smart meters are installed across the Site, there is no feasible way for the Respondent to distinguish between the different day/night usage costs for individual residents.

51. For so long as the Respondent continues his current practice of calculating the charges based on an average of Site-wide usage, there is nothing more that the Tribunal can direct to improve the fairness of the charges themselves.

52. If the Respondent ever changes his methodology and seeks to recover his costs of the common parts, he must follow the steps set out below in order to comply with the approach contained in the MRPD:-

a. On or as soon as practicable after the first day of January each year, the Respondent must estimate, on an annual basis for the calendar year ahead, the proportion of the total electricity costs for the Site which are attributable to the common parts of the Site in the formula

$$X = 1 - (Y \div Z)$$

Where:-

- X is the proportion of the total electricity costs for the Site which are attributable to the common parts of the Site
- Y is the combined number of units of electricity used by all of the pitches on the Site as measured by adding together the usage readings from all of the electricity meters serving those pitches since 1st January of the previous year
- Z is the total number of units of electricity used by the whole Site as measured by the electricity supplier since 1st January of the previous year

b. On or as soon as practicable after the first day of January each year, the Respondent must also estimate, on an annual basis for the calendar year ahead, the average unit cost per unit of electricity for the Site as determined by the formula

$$A = B \div Z$$

Where:-

- A is the average unit cost per unit of electricity for the Site
- B is the total cost of all electricity charges for the whole Site since 1st January of the previous year

c. Any demands for payment for the Applicant's use of electricity for the Property shall be by reference to the total number of units used during the relevant period, multiplied by "A" as calculated above

d. Whenever the Respondent receives an interim bill from the electricity supplier for the Site, he may in respect of that interim bill demand payment of the Applicant's proportionate share of the total electricity costs for the Site which are attributable to the common parts by dividing it equally with all other residents, in the formula

$$C = (D \times X) \div E$$

Where:-

- C is the amount payable by the Applicant towards communal electricity for the period in question

- D is the total cost of all electricity charges for the whole Site for the period in question
- E is the total number of pitches on the Site

e. On or as soon as practicable after the first day of January each year, the Respondent must carry out a reconciliation of the total sums demanded from all of the residents of the Site against the actual costs payable to the electricity supplier. If there is any excess, it must be returned to the residents (including the Applicant) in equal shares according to the number of pitches on the Site by 31st March of the year in question. If there is any deficit, then the Respondent may demand payment from each resident of the Site in equal shares according to the number of pitches on the Site.

53. As the Respondent has ceased to demand payment of administration charges for reading the electricity meter at the Property, the Tribunal does not need to make any direction in that regard.

Has the Respondent provided documents and information to the Applicant relating to electricity charges in accordance with his obligations under or arising out of the Agreement?

54. Implied Term 22(b)(i) provides that:-

The owner shall—

[…]

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

[…]

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

55. The Tribunal agrees with the Applicant's view that the Respondent's manuscript notes and calculations were not obvious in their meaning on a first inspection. It took some clarification before the Respondent's methodology even started to become clear.

56. The Tribunal considers that the Respondent should be directed to supply clarification information in the future in the following way:-

a. The Respondent must provide to the Applicant whenever reasonably requested (being not more than once every 6 months) copies of any electricity bills received by the Respondent since any previous such request.

b. Within 14 days of making the annual calculations set out at paragraphs 52a to 52d of this Decision; the Respondent must provide a written copy of those calculations to the Applicant.

c. Within 14 days of making the annual reconciliation set out at paragraph 52e of this Decision; the Respondent must provide a written copy of his reconciliation calculations to the Applicant.

Has the Respondent breached his obligations under the Agreement in relation to his own conduct or the conduct of another person towards the Applicant?

57. Implied Term 11 provides that:-

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.

58. Express Term 4(e) of the Agreement provides:-

Quiet enjoyment	*(e) That the occupier duly paying the pitch fee and observing and performing the undertakings herein contained and on the part of the occupier to be observed and performed shall and may peaceably and quietly occupy and enjoy the pitch during the continuance of the agreement.*

59. Given that the Applicant's neighbour is no longer retained by the Respondent to read their electricity meter, the neighbour's conduct is a private matter between them which does not involve the Respondent. He has in any event told the neighbour not to engage in such behaviour. The Respondent is not obliged to the Applicant to enforce any terms of the neighbour's own contract with him. In any case, any harassment or intimidation of the type described, although the Applicant undoubtedly would have found that distressing, is not severe enough to amount to breaching the covenant of quiet enjoyment. "Quiet enjoyment" in a legal sense is an old technical term meaning the ability to utilise the land set out in the agreement – it is a misnomer to think that it entitles the occupier to "peace and quiet" or to derive pleasure from living there. See *Beedles v Guinness Northern Counties Limited* [2011] EWCA Civ 442 per Moses LJ at paragraph 12, citing *Jenkins v Jackson* [1888] 40 Ch D 71 and *Kenny v Preen* [1963] 1 QB 499.

Is the Respondent in breach of his obligations under the Agreement in relation the maintenance and/or management of the Site and/or the Property?

60. Implied terms 22(c) and 22(d) provide that:-

22 The owner shall—

(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;

61. Express Terms 4(a) and 4(c) of the Agreement oblige the Respondent:-

To maintain park	*(a) To keep and maintain those parts of the park which are not the responsibility of the occupier hereunder or of other occupiers of other pitches on the park in a good state of repair and condition*
[…]	
To maintain services and facilities	*(c) At all times during the currency of the agreement to use his best endeavours to provide and maintain the facilities and services available to the pitch at the date hereof or such further services as may from time to time be provided to keep the same in proper working order PROVIDED ALWAYS that the owner shall not be liable for any temporary failure or lack of such facilities and services if attributable to any breakdown or to any cause whatsoever outside the owners control*

62. At the time of the hearing, the street lighting which serves the Property was functioning.

63. The Respondent is not required under the terms of the Agreement to ensure that agricultural or other unsuitable vehicles are not stationed on the car park at the Site. The only contractual obligation is to keep it in a "clean and tidy" condition. Issues regarding the general standards of site management are generally dealt with as part of any pitch fee review.

64. Although it was accepted that some of the lighting in the car park is currently broken, the Applicant had not notified the Respondent of this until the hearing itself.

65. The Tribunal finds that there is insufficient evidence of there being any continuing issues with the surface water or sewage drainage to indicate that the Respondent is in breach of these obligations.

66. In relation to the internal drainage of the Property, and the smells said to be coming from the sink, the Tribunal finds that there is insufficient evidence of there being any breach of the Respondent's repairing obligations. The Applicant has not provided any detailed or conclusive evidence beyond her anecdotal experiences. It is to be expected that an occupier would at first attempt an initial self-help repair such as trying to unclog a pipe, but the Tribunal was not provided with details of what works had been undertaken or

of what any inspections had discovered. Nor was there any evidence from an expert in the field such as a plumber.

Matters raised by the Respondent

67. The Tribunal notes that although the Respondent says he raised certain of his own issues with Deputy Regional Judge Bennett at the previous hearing, he has not paid his own fee to the Tribunal in relation to a cross-application. As such, the Tribunal does not consider it appropriate to make a formal determination of such issues. However, the Tribunal will set out its preliminary understanding of the position in order to offer some insight to the parties as to the likely outcome of such an application if it had been made.

68. In relation to whether the Applicants are obliged to pay the higher pitch fees when they have not expressly agreed to do so, it is suggested that the Respondent should read the following extract from the explanatory notes which accompany the standard pitch fee review form:-

The effect of the pitch fee review notice & making an application to the Tribunal

- *If the occupier accepts the new pitch fee they can let the site owner know or simply pay the proposed amount from the effective date.*

- *The occupier is not obliged to accept the proposal or pay the proposed amount. Failure to pay the new pitch fee will not result in the occupier being in arrears.*

- *If the occupier does not accept the proposed pitch fee they can let the site owner know, but the occupier does not have to do so. Provided the current pitch fee continues to be paid that is the maximum amount payable unless the tribunal decides a different figure.*

- *If there is no agreement as to the new pitch fee the site owner or the occupier may make an application to a tribunal for it to make a determination.*

69. The notes also go on to explain the time limits for making such an application.

70. In relation to the Applicant's adult son living at the Property in contravention of the age restrictions for the Site, it appears that if this happened then it was for only a few months and appears not to be the case at present.

71. As regards the Applicant's husband using the Property for business purposes by storing his work tools, parking his work van on the communal car park, and advertising the Property as being the contact address for his trade, it appears that of these issues potentially storing his work tools at the Property might be a technical breach of clause 18 of the Park Rules. However, if it is then it would seem to be of no real detriment to the Respondent or the amenity of the Site.

In all the circumstances, what order or remedy should the Tribunal grant, if any?

72. In summary, the Tribunal considers it appropriate to give directions to the Respondent regarding the provision of information regarding the electricity costs and also to give provisional directions as to the calculation of the electricity unit charge, as described earlier in this Decision.

Should the Tribunal make any order regarding the costs of the proceedings, and if so then what?

73. Under Rule 13(2) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013, the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by HM Courts and Tribunal Service.

74. The Tribunal considers that the Applicant attempted to avoid the need for this litigation by corresponding with the Respondent beforehand in an effort to resolve the dispute by agreement. It seems that she was met with largely truculent and hostile responses from the Respondent in return. The Respondent's engagement with the Tribunal process was also somewhat perfunctory, and it seems that some of the issues complained about were only properly resolved after the proceedings began.

75. The Applicant expressed a concern that even if the current dispute is resolved, she may have to commence proceedings again in future to secure the Respondent's co-operation. The Tribunal hopes that this would not be necessary now that the Tribunal has been able to set out its independent view of the matters. However, the Tribunal considers it appropriate to order that the Respondent reimburse the fees she has paid to the Tribunal in relation to the application and any hearing fees, and that this might also encourage the Respondent to engage constructively in resolving such matters in future before they reach this stage.

Name: **Date: 13th December 2023**
Tribunal Judge L. F. McLean
Tribunal Member S. Wanderer MRICS

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).