FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	MAN/00EQ/PHC/2022/0012
Property	53 Home Farm Park, Lee Green Lane, Nantwich Cheshire CW5 6ED
Applicants	Andrew and Susan Diane Mackinnon
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 – Civil Justice Centre, 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 Applicants, Mr and Mrs Andrew and Susan Diane Mackinnon (the "**Applicants**") are the owners of a mobile home situated at 53 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 CW5 6ED (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 their 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 has given the occupier at least 14 clear days written notice of the date, time and reason for their 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 5 and economical disposal of the proceeding." 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. Therefore, it would appear that the intention is for most mobile homes disputes to be dealt within the Tribunal rather than the Courts because of the Tribunal's greater expertise, accessibility and lower cost. The enhanced powers conferred by section 231A Housing Act 2004 also reduce the risk that proceedings to resolve disputes may 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 Applicants entered into an agreement with the Respondent entitling them to station a mobile home on the Park on 12 September 2020. Their occupation is subject to a written statement, a copy of which they have provided, ("**the Written Statement**"). The annex to part two of the Written Statement sets out implied terms. The Written Statement largely reflects the contents of Schedule 1 of the Act.

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

22. On 1 July 2022, the residents all received letters from POW Utilities stating that the Respondent had contracted with them for the installation of pre-payment smart sub-meters for both the LPG gas and electricity on each of the occupier's pitches. As a result of events that have taken place in relation to the installation of the new system, several the residents have been left dissatisfied with the management and 7 of them have submitted applications to the Tribunal. All of them are different and, therefore, separate judgments have had to be prepared for each.

THE APPLICATION

23. By application filed at the Tribunal on 12 December 2022 the Applicants have 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 other similar applications.

INSPECTION AND HEARING

24. The Tribunal carried out an inspection during the morning of 21 June 2023 when it visited the Applicants' pitch, as well as the pitches belonging to other applicants with similar claims. The Tribunal viewed the location of the electricity and gas meters.

25. Immediately following the inspection, a hearing took place before the Tribunal. At this hearing, the Applicants represented themselves, as did the other applicants. 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 the Written Statement?

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 Applicants contend that the Respondent breached implied term 22(e) by not consulting them about the works to be carried out to the sub-meters. Whilst they accept that they were contacted by POW Utilities about the works, they were not contacted by the Respondent until after the sub-meters had been installed. POW Utilities began the work on 11 July 2022.

28. Whilst POW Utilities appears to have written to the Applicants 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 of Schedule 1 of the Act and, therefore, term 22 within the Written Statement.

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

Question 2.

Did the Respondent breach implied term 14 of the Applicants' Written Statement?

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

31. Paragraph 14 of 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 they have given the occupier at least 14 clear days written notice of the date, time and reason for his 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. The Tribunal determines that a breach occurred.

Question 2.

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

35. 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"*

36. 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.

37. The Applicants contend that their "*right to quiet enjoyment of their home and pitch has been severely disrupted since July 2022 and continues to be disrupted*". They complain that their pitch has been entered on occasions since July 2022 without notification and sometimes in their absence. They state that their gas and electricity supplies were disconnected intermittently with no notification of the times and dates upon which the Respondent or its agents intended to enter on the pitch and despite being advised that they were not to enter. On one occasion their electricity was disconnected for a whole day.

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

Question 4.

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

39. The Applicants set out that, from 22 September 2022, the site manager has refused to accept the payments for gas and electricity.

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

41. The Applicants state that term 21(b) of the Written Statement indicates that the Respondent is the supplier of gas and electricity and that they should pay them for their utilities.

42. 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"*

43. The Applicants state that in the time that they have resided on the Park, they have always paid the Respondent for their electricity charges and they feel that it is reasonable for this to continue. They add that they do not have any business relationship with POW Utilities, and they refer to the letter that they received from POW Utilities on 1 July 2022 in support of this. The letter indicates that the contractual relationship in relation to the provision of gas and electricity is between the Applicants and the Respondent.

44. In response, Ms Ava on behalf of the Respondent confirmed that POW Utilities had been appointed to both maintain and monitor 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.

45. The Tribunal has given detailed consideration to this matter and concludes:

a. the implied term at paragraph 21(b) of Schedule 1 of the Act relates to the occupiers' obligations to pay charges and does not 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.

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

Question 5.

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

47. The Applicants state 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.

48. The Applicants state that this charge is a new charge linked to the use by the Respondent of POW Utilities' services. The Applicants suggest that this charge is unlawful and refer to **Britaniacrest Ltd Broadfields Park (UTLC Case Number: lrx/14/2013)** ***("Britaniacrest")*** in which they state 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.

49. The Applicants contend that the Written Statement does not allow for an additional charge to be levied for administration.

50. 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. They refer 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.

51. 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"

52. 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.

53. The Deputy President went on to confirm adherence to the express term in ***Britaniacrest*** which was that paragraph 3(b) of (Part IV) of the written statement did not impose a general service charge on the occupiers but is concerned solely with the reimbursement of specific outgoings incurred by the site owner in meeting liabilities to third parties. However, they note 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*". They 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.

54. 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*"

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

"21. The occupier shall—

(a) pay the pitch fee to the owner;

(b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;

…"

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

charges by a third party in respect of services, the Tribunal finds that the Respondent is entitled to recover the sums charged by POW Utilities from the Applicant.

Question 6.

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

57. The Applicants state that they have not received an invoice/bill from the site manager for gas and electricity charges since September 2022 but that they have been forced to access their usage and charges via the online POW Utilities web portal.

58. The Applicants state that they find the portal confusing and the charges often inaccurate. The Applicants also refer to inconsistencies between the advertised rates and those charged and state that the letter of 1 July 2022 indicates that they would be charged an administration charge for accessing their statement any other way than online.

59. In accordance with paragraph 22 of the Written Statement:

"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*;"

60. 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 Respondent providing the information electronically and, in current times, it is not unreasonable for information to be provided electronically.

61. Whilst the Tribunal does not consider the Respondent to be in breach of the implied term for providing information in this manner, the information must be transparent and itemized providing the Applicants with sufficient information to enable them to understand the basis for the charges.

Question 7

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?

62. The Applicants state that they have requested documentary evidence in support and explanation of charges for gas and electricity from the Respondent. They state that these requests have been ignored and no such evidence or explanation has been provided.

63. The Applicants indicate that the Respondents previous provider of electricity went into administration in Autumn 2021. Thereafter Yu Energy was appointed from 15 November 2021 but, again, they state, they were not provided with a copy of bills from this supplier despite asking. They state that they have not received any evidence in relation to electricity charges since receiving a bill from AM Power on 12 January 2021. They request 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.

64. The Applicants 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*;"

65. At the hearing, Ms Ava on behalf of the Respondent indicated that the information was provided by POW Utilities via the online system and Mr Worthington confirmed that he would be able to provide the information on paper if requested.

66. The Tribunal confirms that in accordance with the implied term at paragraph 22 of schedule 1 of the Act, the Respondent only has an obligation to provide documentary evidence in support and an explanation of charges for gas and electricity which are payable by the Applicants, but the implied term does not cover charges that are not payable by the Applicants, or which relate to the rest of the Park. It is for the Applicants to consider the accuracy of the sums charged to them by reference to usage and rates applied in relation to their pitch.

67. The Respondent is entitled to recover sums paid to third party suppliers but not any form of surcharge on top. Therefore, it is appropriate for the Applicants to be provided

with evidence of the rates that have been charged to the Respondent for all gas and electricity usage in relation to their pitch for the period following 12 January 2021.

Question 8

Is the Respondent:

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

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

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

68. The Applicants state that the Government's Office for Product Safety and Standards stipulates:

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

69. The Applicants further contend 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 Applicants state that they have not received any evidence of this and requests that the Respondent is ordered to provide them with such evidence.

70. 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. The 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.

71. Whilst the Applicants also indicate that the Office for Product Safety and Standards makes clear that the sub-meters do not need to be certified, they state 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)*. They add that no such written agreement exists between them and the Respondent and that the Respondent should be ordered to commence discussions with them with a view to reaching such agreement if the certification cannot be provided.

72. Thus, the question for the Tribunal is simply whether the Respondent has an obligation to provide the Applicants 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 Applicants for dispensation of the requirement.

73. The Tribunal considers that, unless the meters bear the appropriate stamp confirming that they are of an approved design, the Respondent must provide the Applicants with documentary evidence confirming that the meter is approved.

Question 9

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

74. The Applicants complain that the installation of the new meters and management of the ongoing payments for gas and electricity have caused them significant upset, distress and disruption. They state that their attempts to resolve matters amicably have failed.

75. The Applicants accept that the Respondent is entitled to subcontract to POW Utilities but that it should not be as disruptive as it has been. They ask for their rights to be respected and to be allowed to live out a quiet retirement and to be able to understand what they are being charged, to have evidence of it, to be able to check invoices against the sub-meters and to receive replies to correspondence.

76. They request compensation to make up for the significant upset and loss of faith suffered to make up for this.

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

78. The Tribunal agrees that the conduct of the Respondent has been less than satisfactory and has led to the Applicants becoming less than satisfied and unhappy with the manner in which they have been treated, the Tribunal is not aware of any actual financial loss having been suffered for which damages are claimable and the Applicants do not otherwise quantify any claim for damages/compensation. The question of costs is considered below, pursuant to The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013

ORDERS

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

Order Request 1

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 Applicants to make those payments as requested by the Respondent.

Order Request 2

The Respondent must provide the Applicants with monthly invoices in arrears for gas and electricity that provide:

i. **the tariff rates being applied for gas and electric at peak and off-peak times**
ii. **units of gas and electric used per month at peak and off-peak times and the total cost of each of these for the invoice.; and**
iii. **itemised costs for all additional gas and electric charges being levied (including but not limited to an explanation for the 82 pence per day "utility charge" or "daily service charge" currently being charged**

It is appropriate that the Respondent or its agent provides the Applicants with invoices in arrears for their gas and electricity charges which include the information sought. However, the Tribunal does not order that these invoices must be provided on paper, unless the Applicants inform the Respondent that they are unable to access the information on the internet due to any protected characteristic.

Order Request 3

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

As set out above, the Respondent is permitted to recharge reasonable fees charged by its agent in relation to the provision of services. The Tribunal does not consider the amount of 41 pence per day per utility to be unreasonable.

Order Request 4

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 Applicants' pitch but not for the whole of the Park, in so far as it has not previously been provided. It may either produce this evidence itself or instruct its agent to do so on its behalf.

Order Requests 5 and 6

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

Order Request 7

The Respondent to pay the Applicants any fees and/ or compensation

The Applicants do not presently quantify their claim for compensation for the upset and distress caused to them.

Whilst the Tribunal does accept that some inconvenience has been suffered by the Applicants, the Tribunal does not consider any such inconvenience to be significant and, in view of the lack of detail in respect of any amount claimed, the Tribunal is unable to make any award.

Order Request 8

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

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

Data Protection Concern

80. Finally, the Applicants raises a concern that the Respondent has inappropriately provided their personal details to its agent. The Applicants do not accept that this is reasonable or necessary as, they state, that the agent is able to read meters and issue gas and electricity invoices without them being aware of their personal details.

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

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

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

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

84. The Tribunal does not accept that there has been any breach of UK GDPR as a result of the Respondent having been provided with the Applicants' names and address.

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

COSTS

86. Whilst the Applicants do suggest that they should be repaid their costs due to the inconvenience that they have suffered, they do not claim costs in the ordinary way and do not provide any evidence to show that any costs have been incurred by them.

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

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

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

APPEAL

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

Judge R Watkin

Tribunal Member Ian James MRICS