LC-2024-000184

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Case No: LC-2024-184, 188, 204 and 205

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT REFS: MAN/00 EQ/ PHC/2022/0011, 0012 and 0014, and 2023/0001

23 September 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – ELECTRICITY CHARGES - liability of occupiers to pay administration charges relating to the collection of payment for utilities – smart meter – third party undertaking administration as agent of the site owner

BETWEEN:

MRS JULIE STANTON
MRS MARGARET BRAZIER
MR STANLEY ASKEW
ANDREW AND SUSAN DIANE MACKINNON

Appellants

-and-

FURY DEVELOPMENTS LIMITED

Respondent

17 Home Farm Park,
Lee Green Lane,
Church Minshull,
Nantwich,
CW5 6ED

Upper Tribunal Judge Elizabeth Cooke

Manchester Civil Justice Centre
18 September 2024

Mr Tim Selley of WBW Solicitors for the appellants
Ms Sophie Ava of Immisol Solicitors for the respondent

The following cases are referred to in this decision:

Britaniacrest Limited [2013] KUT 521 (LC)

Britanniacrest Limited v Bamborough [2016] UKUT 144 (LC)

PR Hardman & Partners v Greenwood [2015] UKUT 587 (LC)

PR Hardman & Partners v Greenwood [2017] EWCA Civ 52

Vyse v Wyldecrest Parks (Management) Ltd [2017] UKUT 24 (LC)

Introduction

1. The four appellants in these conjoined appeals live in mobile homes at Home Farm Park in Nantwich. They are appealing decisions of the First-tier Tribunal about their liability to pay administration charges in connection with the supply of gas and electricity to their homes.

2. The appellants were represented in the appeal by Mr Tim Selley of WBW Solicitors, and the appellant by Ms Sophie Ava of Immisol Solicitors, and I am grateful to them both.

The factual background

3. Mrs Brazier first came to live at Home Farm Park in 1999, Mr Askew in 2011, Ms Stanton in February 2020 and Mr and Mrs Mackinnon in September 2020. They all have written agreements, known as written statements, with the site owner entitling them to live there in their mobile homes. It is not in dispute that this is a protected site regulated by the Mobile Homes Act 1983, and that therefore terms are implied in their agreements by the 1983 Act.

4. The respondent is not the site owner, nor the holder of the licence for the site but I am told that it owns Home Farm Country Park Limited, the site owner and licence holder. No point has been taken about that in the FTT and the respondent has been treated as the site owner throughout; the respondent has not suggested that the appellants brought proceedings against the wrong body, and the appellants have not suggested that the respondent is not entitled to demand charges owed to the site owner.

5. There is, of course, a supply of electricity to the site, and there is gas in the form of liquefied petroleum gas ("LPG") delivered to a tank. Electricity is supplied by Yu Energy and LPG by Northern Energy. Mrs Brazier's and Mr Askew's written statements each require the site owner 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"; Ms Stanton's written statement and Mr and Mrs Mackinnon's contain an obligation upon the site owner to "do everything they reasonably can" to provide and maintain services to the pitch.

6. Each mobile home has a meter recording its consumption of electricity and LPG, and until recently the meters were read by the site manager (employed by the respondent) and an individual bill sent to each occupier who has then paid the respondent in arrears for their consumption.

7. With effect from 1 January 2003 the maximum price at which electricity may be resold has been set by the energy regulator, Ofgem, and is the same price as that paid by the person re-selling it, including any standing charges. There is no such restriction on the price of LPG. However, what the site owner is able to charge is in any event determined by the implied and express terms of its agreements with the occupiers.

8. In July 2022 the residents all received letters from POW Utilities stating that the respondent had engaged it to install pre-payment smart meters for LPG and electricity on each pitch. POW does not itself supply electricity or LPG; the suppliers remain as before. POW provides administration services for site owners including metering arrangements. Since September 2022 the site manager has refused to accept payments, and instead the occupiers have been asked to pay POW Utilities. The consequence of having a smart meter is that the occupiers have to pay their bills online. Not all residents have internet access; Mrs Brazier and Mr Askew have none, and while Ms Stanton does have internet access she does not feel confident about paying online. Residents who have refused to have a smart meter installed were told that they must pay an additional charge of £20 for the monthly manual meter reading (amounting to £240 per year); residents with smart meters are required to pay an additional 41p per day for each utility (almost £300 per year) by way of administration charge to POW Utilities.

9. The FTT has jurisdiction under section 4 of the 1983 Act "to determine any question arising under this Act or any agreement to which it applies", and the appellants each made an application to the FTT to determine a number of questions arising under the new arrangements for gas and electricity. Slightly different questions arose in each application and the FTT made four separate decisions.

10. In each of its decisions the FTT noted that Ms Ava, the respondent's solicitor, confirmed that POW is imposing charges as the agent of the site owner, and she maintained that position in the appeal. I pause to observe that that that must be correct; the appellants have a contractual relationship only with the site owner and have no contractual or other relationship with POW, nor with any utility provider.

11. The FTT found that the site owner was entitled to charge for manual meter reading, albeit at a rate of £10 per visit rather than £20, and to impose the daily administration charge for each utility. The appellants appeal those two findings with permission from this Tribunal. All now have smart meters, but Mrs Brazier's has not yet been activated so she is still being charged for manual meter readings; if I have understood correctly the other appellants have been required to make those payments in the past before installation of the meter.

12. Before examining the FTTs findings we have to look at the law relating to charges for utilities on protected sites.

Charging for utilities on protected sites

13. The regulation of park homes through the Mobile Homes Act 1983 is designed to provide for as straightforward a charging structure as possible. Terms implied by the 1983 Act prevail over any express terms of the written statements between the occupiers and the site owners insofar as they are inconsistent, and as a result many written statements are in a standard form.

14. Paragraph 21 of Schedule 1, Part 1, Chapter 2 ("the Schedule") to the Act says this:

> "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; …"

15. The "pitch fee" is defined by paragraph 29 of the schedule as:

> "...the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts"

16. The level of the pitch fee is controlled by the Schedule and will normally rise only in line with the Consumer Price Index each year (paragraphs 16 to 20 of the Schedule; a number of decisions of the Tribunal have explained the operation of those provisions, for example *Britanniacrest Limited v Bamborough* [2016] UKUT 144 (LC) and *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC)).

17. Written statements between site owners and occupiers usually make express provision for payment of the pitch fee and of charges for utilities: two of the appellants' agreements (Mrs Brazier's and Mr Askew's) contain a clause 3 which requires the occupier:

> "(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 services".

That is a standard form provision used on many mobile homes sites which, as we shall see, has been the subject of decisions in the Tribunal and the Court of Appeal.

18. Ms Stanton's and Mr and Mrs Mackinnon's written statements are quite different from Mrs Brazier's and Mr Askew's. They do not contain clause 3 as set out above and indeed say nothing about utilities. They require payment of a pitch fee, and each agreement in a box headed "additional charges" says "NIL", but Ms Stanton and Mr and Mrs Mackinnon do not dispute that the pitch fee does not include payment for electricity and LPG.

19. There is nothing to prevent written statements relating to mobile homes from making provision for a separate service charge payment by the occupier, analogous to those commonly found in long leases of flats and suchlike; but few written statements do so and none of the agreements in question in this appeal does so. There is therefore no scope for the site owner to make a separate charge for communal services such as the maintenance of estate roads or gardens.

20. The question that arises in this appeal is whether in the absence of any express general service charge provision the implied and express terms in the appellants' agreements allow

the site owner to make any charges for the administration of utilities, as distinct from the actual cost of the gas and electricity itself.

21. The answer to that question is already a matter of settled law. The Tribunal and the Court of Appeal have held that neither the statutory implied terms, nor an express term in the form of clause 3(b) set out above, permit a site owner to charge to the occupiers more than the price it has itself paid for gas (whether LPG or not) and electricity to the utility provider. Those terms do not enable it to make any separate administration charge for its work in reading meters, calculating charges and so on; they are covered by the pitch fee (the level of which is regulated as set out at paragraph 16 above).

22. Three decisions have made that clear. In *Britaniacrest Limited* [2013] UKUT 521 (LC) the Tribunal (the Deputy President, Martin Rodger QC) had to decide whether clause 3(b) – which appeared in the written statements in question in identical terms to those of clause 3(b) in Mrs Brazier's and Mr Askew's written statements – allowed the site owner to add an administration fee to what it charged for electricity and gas. Obviously the words "charges in respect of" enable the site owner to argue that such a charge can be made. The Deputy President said:

> "… paragraph 3(b) seems to me to be concerned with the payment of charges levied by a third party, rather than charges levied by the owner of the site. There is an obvious difference in language between paragraphs 3(a) and 3(b), the first of which requires the occupier to "*pay to the owner*", while the second does not identify the person who is to be paid. That contrast does not exclude the possibility that charges within paragraph 3(b) may also have to be paid to the owner, but it is consistent with the sums within paragraph 3(a) being paid for the benefit of the owner, while those in paragraph 3(b) are to discharge liabilities owed to others, even if those liabilities are met in the first instance by the owner before being reimbursed by the occupier. That sort of division is also suggested by the nature and description of the charges themselves.
>
> 58. The first types of charge identified in paragraph 3(b) are general and/or water rates. Where these are charged to individual pitches, the obligation entails that the occupiers will pay the local authority any sums separately assessed for their own pitches. Where the park as a whole is rated only a proportionate part is payable by each occupier, and practicality is likely to dictate that the owner will discharge the liability to the charging authority before seeking reimbursement from occupiers of their proportionate part of the bill. If the owner incurs a cost in making that apportionment and collecting the contributions of individual occupiers, it is not a cost which could be recovered under the first part of paragraph 3(b) which requires payment only of the relevant rates themselves.
>
> 59. No indication is given in the second part of paragraph 3(b), which refers to "*charges in respect of electricity, gas, water, telephone and other services*", that any different approach is contemplated. The expression "*charges in respect of*" seems to me to refer to charges levied by the suppliers of the various services, and not to charges made in connection with those services by the park owner.

> 60. …I also consider that … the RPT was correct in its conclusion, in paragraph 33 of the decision, that the cost to the Park owner of administering the utilities was included in the pitch fee. In the absence of a right for the Park owner to charge a separate fee for the provision of some service which the agreement obliges the owner to provide, the pitch fee payable by the occupier is consideration for the performance of all such obligations of the owner and is in return for all of the benefits received by the occupier under the agreement."

23. The Deputy President went on to reject the idea that a term might be implied into the agreement making provision for such an administration charge. He did not separately consider whether the implied term, at paragraph 21 of the Schedule (paragraph 14 above) gives the site owner any entitlement to impose an administration charge, but adds anything, but it seems to me perfectly clear that it does not.

24. In *PR Hardman & Partners v Greenwood* [2015] UKUT 587 (LC) a similar question arose, and the Tribunal reiterated its decision that the only charge that the owner could pass on to the occupier for electricity or gas was the unit cost charged to the site owner by the external supplier. A slightly different approach was taken for sewerage services; the Tribunal (again the Deputy President) regarded sewerage as one of the "other services" provided by the owner (see the wording of clause 3(b) at paragraph 17 above) and held that the site owner was entitled to charge for the running costs of the sewerage system insofar as they were incurred in reimbursing charges by third party suppliers, including the cost of electricity for the sewerage system.

25. The Court of Appeal in *PR Hardman & Partners v Greenwood* [2017] EWCA Civ 52 upheld the Tribunal's approach to gas and electricity charges. At paragraph 43 Sir Terence Etherton, with whom Davis and Underhill LJJ agreed, said:

> "I consider it is clear that the "charges" mentioned in the second part of [paragraph 3(b)] are charges by third party utility suppliers and the "other services" mentioned are those provided by third parties in respect of third party utility supplies to the pitch. Payment for other third party contractors and for services undertaken [the site owner] themselves is not recoverable under paragraph 3(b) but can be recovered only as part of the site fee."

26. There was no appeal about payments for the sewerage service; but at paragraph 58 Sir Terence Etherton said:

> "For the sake of clarity and certainty for the future, however, it must be pointed out that, consistently with my earlier analysis and conclusion, I consider that that art of the UT's decision was wrong since the provision of the sewerage system is a communal service. In the absence of a respondent's notice, nothing can be done about past charges already paid under paragraph 3(b) for electricity to operate the sewerage system and to reimburse Hardman for payment to third party contractors engaged to empty and service the sewerage system and payment of the licence fee to the Environment agency in respect of the system. In the future however, all such costs and expenses are recoverable only in the pitch fee."

27. The position following that decision is therefore that the paragraph 3(b), and the implied term at paragraph 21 of the Schedule, require the occupier to reimburse the site owner for the actual costs to the site owner of gas and electricity as charged by the utility provider itself, and do not require payment of any form of administration charge to the site owner nor the reimbursement of any payment to any third party other than the utility provider.

The FTT's decisions

28. As I noted above, the FTT gave four separate decisions because each application was slightly different, and not all the written statements are the same.

29. Mrs Brazier and Mr Askew's written statements each contain clause 3(b). The FTT therefore turned to the Tribunal's decisions in *Britaniacrest* and in *PR Hardman*, although it did not mention the Court of Appeal's decision in *PR Hardman*. It said in its decision for Mrs Brazier:

> "61. The Deputy President [in *PR Hardman*] went on to confirm adherence to the express term in *Britaniacrest* which was that paragraph 3(b) … 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, 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 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."

30. The FTT noted that paragraph 3(b) in Mrs Brazier's written statement is in "similar terms" (in fact they are identical) and concluded in both decisions:

> "64. 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 for manual meter reading are charges by a third party in respect of services, the Tribunal finds that the Respondent is entitled to recover sums charged by POW Utilities from the Applicant."

31. For the same reason ("the case of PR Hardman would also apply to this matter") the FTT decided at paragraph 69 that the 41p daily administration charge was payable.

32. As to Mr Askew, the FTT considered first the 41p daily administration charge; it reproduced at its paragraphs 57 the words of its paragraph 61 in Mrs Brazier's decision, and reached the same conclusion at its paragraph 60 for Mr Askew. It then looked at the manual meter reading charges, and concluded that they too were payable for the same reason. Thus the wording of the Brazier decision in relation to the meter reading charge has been re-used in the Askew decision for the 41p daily charge, and the Brazier wording for the 41p daily charge has been reproduced in the context of the meter reading charge.

But that does not matter; in each case the FTT took the view that the decision in *PR Hardman* settled the point in the site owner's favour.

33. Ms Stanton's and Mr and Mrs Mackinnon's agreements do not contain clause 3(b). The FTT approached the two payments in the same way, reproducing the same discussion of the Upper Tribunal's decision in *PR Hardman* (again with no mention of the Court of Appeal). It referred to the statutory implied term in paragraph 21 of the Schedule (paragraph 14 above), although it referred to it as a provision in the written statement in each case, and reached the same conclusion about the meter reading and the 41p daily charge in Ms Stanton's case and about the 41p charge only in the Mackinnons' case (I think because they had a smart meter fitted at an early stage).

The appeals

34. Two points are common to all four appeals.

35. First, Ms Ava explained the reasons why the respondent has engaged POW, pursuant to its duties to use best endeavours, or to "do everything it reasonably can" to provide services (see paragraph 5 above). A previous agent had put the site into arrears by failing to pay the utility providers, and the respondent in appointing POW was taking what it regarded as the best option for the occupiers. Moreover, it did not believe that it was in the interests of the occupiers to go back to pre-payment meters, which was what it proposed to do if the appeal was successful. None of that is relevant to the outcome of the appeal, which is simply about the occupiers' liability to make these two forms of payment to POW as agent for the respondent.

36. Second, it will be clear from what I have said above that the FTT has misunderstood what the Tribunal and the Court of Appeal said in *PR Hardman*. Clause 3(b), and the implied term at paragraph 21 of the Schedule to the statute, entitle the site owner only to recover from the occupier the unit cost of gas and electricity that it pays itself to the utility provider. No other charge is authorised; all administration costs are subsumed in the pitch fee in the absence of an express provision for a service charge. As noted above, POW is not a utility provider and it is clear from *Britaniacrest* and from *PR Hardman* that the site owner is not entitled to pass on POW's charges to the occupiers.

37. The respondents' argument, which the FTT accepted, was that as a third party it is charging the site provider for the administration of the gas and electricity, that the site owner is entitled on the authority of *PR Hardman* to recoup those charges from the occupiers, and that the respondent is then recovering those charges from the occupiers on the site owner's behalf. There is some dispute of fact, I think, as to whether POW really is charging the respondent for its administration and for the meter readings, and I am not sure that the FTT resolved that; but even if the position is as the respondent puts it, the FTT in accepting its argument misunderstood the decision of the Tribunal in *PR Hardman* and ignored that of the Court of Appeal. The site owner is not entitled to charge the occupiers for the administration of charges for gas and electricity, whether it does it itself or has it done by a third party. The FTT's misunderstanding of the authorities leads to the position that while the site owner cannot charge for his own administration he can create a liability to a

third party for that administration and then charge the occupiers just because a third party is involved, which is obviously wrong.

38. That disposes of all four appeals; Ms Ava made some further points which I discuss below but which do not assist the respondent.

Further points made for the respondent

39. Ms Ava accepted that there was nothing to distinguish these appeals from the Court of Appeal's decision in *PR Harman*, and that therefore she could not rely upon clause 3(b) or the statutory implied term at paragraph 21 to create the liability to pay POW 's charges. However, she referred to two further provisions which appear in Mrs Brazier' agreement and in no other.

40. One is in a schedule "Electricity Supply Agreement", of which paragraph provides:

> "Provided that the electric installation and appliances in the Occupier's Mobile Home, comply with the requirements of Merseyside and North Wales Electricity Board (hereinafter called "the Board") the owner agrees to use his best endeavours to provide a supply of electricity available to the Occupier at all times, at a meter placed in the meter compartment of the Occupier's shed or elsewhere under cover on the pitch".

41. Ms Ava argued, first, that "the Board" is now Ofgem, and, second, that therefore Ofgem's 'Alternative Homes Energy Guidance' is incorporated as a set of implied terms in the written agreement.

42. I do not accept either proposition. Ofgem is a regulator, not an electricity supplier, and I can see no reason why it should be slotted into the agreement in place of a supplier that no longer exists. And there is no necessity for the terms of Ofgem's guidance to become implied terms of the written agreement; Ms Ava suggested that it is necessary because this is in effect government guidance, but that flies in the face of principle in terms of the reasons why a term can be implied in a contract.

43. But in any event, the Guidance does not assist the respondent. Ms Ava referred to the following passage from the Guidance:

> "<u>Rules Site Owners must follow</u>
>
> You can be charged an extra fee for things like meter readings and invoicing on top of your energy costs. People living in park homes can only be charged that fee if it is included as an agreement, also known as an express term, in their written agreement."

44. As discussed above, it is not so included. The Ofgem Guidance takes things no further.

45. Second, Ms Ava referred to a further schedule that appears in Mrs Brazier's agreement only, headed "Calor Gas Supply Agreement". She contended that the terms of that Schedule apply to the supply if LPG, and stated that if the appeal succeeds then the respondent will charge for LPG in accordance with the terms of that schedule. The schedule sets out a calculation which enables the site owner to charge for the price of the calor gas, plus 37.5%, plus tank rental. She produced a calculation on the basis of current costs which would require the owners to pay 52.6p per unit per day, including the cost of the LPG.

46. I make no comment on whether the schedule relating to Calor Gas can be applied to LPG, nor on the correctness or otherwise of Ms Ava's calculation. She did not seek to use the terms of that schedule to justify POW's charges and they seem to me to be irrelevant to the outcome of the appeal.

47. Finally in relation to Ms Stanton and to Mr and Mrs Mackinnon Ms Ava referred to the park rules, which she said were relevant in the absence of anything in the written statements about utilities. Rule 48 says this:

> "It is your responsibility to pay and discharge all general and/or water rates which may be assessed charged or payable in respect of the home or the pitch and pay additional charges in respect of electricity, gas water and telephone and other sources, to the overall benefit of the park determine by the Park Owner."

48. Those words echo the terms both of clause 3(b) and of the implied term in paragraph 21. They cannot impose any further obligation than do those terms. They are susceptible to exactly the same analysis as was applied to clause 3(b) in *Britaniacrest* (see paragraph 22 above). Very clear words would be needed for the park rules to impose a contractual service charge, whether generally or solely in respect of the collection of payment for utilities; if clause 3(b) and the implied term at paragraph 21 do not achieve this, then neither does rule 48.

Conclusion

49. All four appeals succeed. If any of the appellants have made payments in respect of manual meter readings, or have paid the 41p daily charge at any stage, those payments will have to be reimbursed by the respondent (whether or not they were paid to POW, since POW acted only as its agent).

Upper Tribunal Judge Elizabeth Cooke
23 September 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the

Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.