UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2013] UKUT 0521 (LC)
UTLC Case Number: LRX/14/2013

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – administration charges - whether written statement permits administration charge for utilities – whether term to be implied – whether dispute over liability sufficiently identified to be open for consideration by RPT – effect of compromise of part of dispute – effect of part of dispute being raised in parallel county court proceedings - Mobile Homes Act 1983

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL FOR THE NORTHERN RENT ASSESSMENT PANEL

BY

BRITANIACREST LIMITED **Appellant**

Re: Broadfields Park
Oxcliffe Road
Heaton with Oxcliffe
Morecambe
Lancashire
LA3 3EH

Before: Martin Rodger QC, Deputy President

Sitting at: 43-45 Bedford Square, London WC1B 3AS
on 23 October 2013

Richard Mullan, counsel, for the Appellant

The following cases are referred to in this decision:

Attorney General of Belize v Belize Telecom Limited [2009] UKPC 10

Decision

Introduction

1. Broadfields Park ("the Park") is a mobile home park at Morecambe in Lancashire. This appeal is from a decision of the Residential Property Tribunal for the Northern Rent Assessment Panel ("the RPT") given on 4 December 2012, and raises the issue of whether, in addition to a pitch fee, the occupiers of mobile home pitches on the Park are liable to pay the appellant, Britaniacrest Ltd, the owner of the Park, separate charges to cover the cost of reading gas, electricity and water meters and carrying out other administrative tasks in connection with the supply of utilities to the pitches.

2. The proceedings began as an application to the RPT by Mr Alan Thorpe, the occupier of a mobile home on one of the pitches at the Park, brought under section 4, Mobile Homes Act 1983 ("the 1983 Act"). Mr Thorpe sought a determination by the RPT of the liability of the occupiers to pay charges in respect of electricity, water and administration levied by the appellant. Mr Thorpe's application to the RPT was supported by the occupiers of another 12 pitches at the Park, all of whom were eventually joined as applicants.

3. In its decision the RPT found:

(a) That electricity charges levied by the appellant at the unit price which it paid to its supplier were payable by the occupiers as demanded.

(b) That administration charges in respect of the provision of utilities were not payable by the occupiers and that sums previously demanded and paid should be credited by the appellant to the occupiers' accounts.

(c) That charges for water supplied to individual pitches should be apportioned equally between the pitches and the equivalent units occupied by the appellant.

4. The appeal, which is brought with the permission of the RPT granted on 20 December 2012, is concerned only with the RPT's second finding.

5. At the hearing of the appeal the appellant was represented by Mr Richard Mullan of counsel. Mr Thorpe had indicated at an early stage that he was content with the decision of the RPT and did not wish to become a respondent to the appeal. Accordingly, neither Mr Thorpe nor any of the other occupiers of pitches on the Park participated in the appeal.

The facts

6. I base my consideration of the appeal on the following facts, which are taken from the decision of the RPT, and from the documents which were before it.

The Park

7. The Park was opened in 2004 by Mr J T Harrison. It provides pitches for 24 mobile homes.

8. The Park receives metered supplies of gas and electricity which are then distributed to the individual pitches, each of which has its own separate sub-meter (although some occupiers have not connected their homes to the gas supply). The Park also receives its own metered supply of water, but the water supply to individual pitches is not separately metered.

9. The Park is a protected site governed by the 1983 Act which confers important rights on the occupiers of such sites. Each pitch is occupied under an agreement to which the 1983 Act applies, recorded in a written statement complying with the owner's obligation under section 1(2) of the 1983 Act.

The written statement

10. The written statement applicable to Mr Thorpe's pitch was supplied to him on 10 September 2008 and identifies the parties to the relevant agreement as Mr Thorpe and his partner Ms Sedge, (who are jointly referred to in the written statement as "the occupier") and J T Harrison (referred to as the "site owner"). Terms implied by the 1983 Act into all such agreements are recited in Part III of the statement. Express terms contained in Part IV of the agreement are described as having been "settled" between the occupier and the site owner in addition to the implied terms. In fact, the statement being a printed form, these were the former site owner's standard terms which were not individually negotiated or settled with Mr Thorpe.

11. By paragraph 3(a) of Part IV of the written statement the occupier undertook to pay an annual pitch fee of £1,560 subject to review. By paragraph 3(b) (which appears next to the marginal note: "*To pay outgoings*") the occupier agreed:

> "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".

12. The appellant's obligations as owner of the Park are recorded in paragraph 4 of Part IV of the statement and include at paragraph 4(c) the following undertaking:

> "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 owner's control."

13. Paragraph 7(a) of Part IV of the statement contained provisions for the review of the pitch fee on 15 March each year.

14. By section 2(1) of the 1983 Act certain terms, set out in Schedule 1 to the Act (as amended by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006), are implied into agreements for the occupation of pitches on protected sites. Those terms include the following, by paragraphs 21 and 22 of Schedule 1:

"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, sewage or other services supplied by the owner

…"

"22. 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, sewage 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, sewage or other services supplied by the owner to the pitch or to the mobile home …"

15. The terms implied by Schedule 1 to the 1983 Act also include, at paragraphs 16 to 20, provisions relating to the review of the pitch fee payable under an agreement for the occupation of a pitch on a protected site. By paragraph 29 of Schedule 1 (as amended) the following definition of "pitch fee" is provided:

""Pitch fee" means 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 sewage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."

16. On 28 November 2008 the Park was acquired from Mr Harrison by the appellant. By virtue of section 3(1) of the 1983 Act, the appellant then became bound by the terms of the agreements entered into by Mr Harrison with Mr Thorpe and the other occupiers.

The disputed charges

17. While the Park was in the ownership of Mr Harrison, he charged occupiers for electricity supplied to their pitches at the rate of 11p per kilowatt hour. On the change of ownership in November 2008 the contract negotiated by Mr Harrison for the supply of electricity terminated. The appellant was obliged to enter into new supply arrangements, but it found that it could only do so at a significantly higher cost. The appellant was reluctant to enter into a long term supply arrangement at the prices then available and the price which it paid for electricity fluctuated from around 21p per kilowatt hour in 2009, to around 19p in 2010, before falling significantly towards the end of that year to around 9p, a level at which it remained at the time of the hearing before the RPT in December 2012.

18. The price re-charged by the appellant for electricity was the unit price which it paid to its supplier for the number of units consumed by each occupier, plus an apportioned part of the standing charge which it paid. From May 2009 the appellant added an administration charge for the supply of electricity; this was intended to cover costs incurred by the appellant in reading the electricity meter serving each pitch, calculating the charges due, delivering invoices and dealing with receipts. With the addition of VAT this administration charge rose to £18 per quarter by the time of the RPT's hearing. No such administration charge had appeared on electricity invoices raised by Mr Harrison in his time as owner of the Park but it was suggested to the RPT by the appellant that a concealed charge of approximately 3p per unit had been included by Mr Harrison in the unit price which he charged.

19. Administration charges at the same level of £15 per quarter plus VAT were also added by the appellant to each of the quarterly bills for the supply of water and gas to the pitches. By the time the application came before the RPT the appellant had been advised that its entitlement to make an administration charge for the supply of water was restricted by paragraph 8 of the Water Resale Order 2006 ("the 2006 Order"). The most which the appellant was entitled to recover from each occupier in connection with the supply of water was £5.48 a year, rather than the £60 a year plus VAT which it had formerly charged.

20. Neither Mr Thorpe nor the other occupiers who joined in his application paid the administration charges or the increased utilities charges following the appellant's acquisition of the Park. The appearance of the disputed charges as arrears on their quarterly bills was said by Mr Thorpe to have created difficulties for some of the occupiers who wished to dispose of their mobile homes, and eventually precipitated his application to the RPT to clarify what ought to be paid.

21. By the time the dispute reached the RPT, parallel proceedings had also been commenced in the local county court concerning the charges levied by the appellant for the supply of gas and a threat which it was said to have made to disconnect the gas supply in the event that the charges were not paid. Some of the occupiers responded to that threat by seeking an injunction to restrain the appellant from carrying it out. The significance of those proceedings was that it was agreed by the parties before the RPT that it should not concern itself with the issues relating to the supply of gas which were to be dealt with by the county court.

The application

22. In his application to the RPT issued on 27 June 2012 Mr Thorpe stated that his challenge related to electricity, administration and water charges. He described the electricity charges as having been "*arbitrarily imposed without justification and validation*".

23. Evidence was adduced in response to Mr Thorpe's statement in the form of a witness statement by Mr Richard Hill, a director of the appellant. In it he acknowledged, on the basis of recent advice, that the administration charge of £15 per quarter for water exceeded the maximum permissible under the 2006 Order. At the hearing Mr Mullan, who appeared for the appellant, gave an undertaking that any sums paid in excess of the regulatory maximum would be reimbursed.

24. Mr Thorpe responded to Mr Hill's witness statement in a further statement of his own, in which he said: "*There was never an agreement for administration charges which were concocted and imposed arbitrarily*".

The RPT's decision

25. In paragraph 11 of its decision the RPT identified the issues for consideration as:

a. The cost payable for electricity consumed by the occupiers;

b. The administration charge of £15 per quarter plus VAT per pitch for electricity;

c. The apportionment of the single metered water bill.

26. The RPT ruled in the appellant's favour on the first issue, finding at paragraph 26 of its decision "*that the price [of electricity] obtained and passed on was that reasonably available*".

27. Following the reduction in the administration charge for water to the rate permitted by the 2006 Order, the RPT recorded at paragraph 27 of its decision that the occupiers

now considered that charge to be reasonable and no longer wished to pursue that application in that regard.

28. In paragraphs 30 and 31 of its decision the RPT recorded its finding that a similar administration charge of £15 per quarter was charged by the appellant in respect of the supply of gas to those occupiers who made use of it. The RPT recorded that it had been informed of the county court proceedings concerning the supply of gas and that it had been asked not to deal with those issues.

29. The RPT stated its conclusion on the service charge for administration at paragraphs 32 and 33 of its decision which, so far as they are now material, was as follows:

> "32. It is not clear whether the £15 per quarter service charge for piped gas is also the subject of County Court proceedings. The Tribunal makes no specific determination in respect of this save that it is necessary for us to reach a conclusion about the payability of service charges for the similar functions in respect of electricity. Similarly, though not put in issue, the service charge for water follows from the same obligation within the site agreement….
>
> 33. Mr Mullan submitted … that the relevant obligation within the agreement implies that a service charge is payable as it forms part of the cost of supply. He also considers this has become an implied term of the agreement by practice. We do not agree, we find from the [occupiers] evidence that they did not have the intention or knowledge of a service charge when they paid the previous site owner for electricity. They have now realised the position and begun action. We do not find any term of the home owner's agreements allows this service charge. The express terms specifically mention electricity, water and gas but do not include mention of a service or administration charge. We conclude that it was envisaged that the site owner would arrange a supply and in the absence of any express service charge or authority to make that charge we conclude this was part and parcel of the site owner's obligations inclusive in the pitch fee. We are reinforced in this view by our finding that the office functions detailed on behalf of the Respondent are steps that are easily incorporated in the site owner's administrative routine and cannot be separated in two separate heads of charge; we do not consider they add materially to the overhead costing."

The grounds of appeal

30. In its grounds of appeal the appellant took four separate points, which were amplified by Mr Mullan in his oral submissions.

31. The first ground is that the RPT had been wrong to consider whether there was any liability to pay administration charges for electricity because that issue had not been raised by Mr Thorpe in his application. Mr Thorpe's complaint, Mr Mullan submitted, was concerned only with the quantum of the charge for administration and not with the principle of liability to pay an administration charge at all.

32. Secondly, Mr Mullan submitted that the RPT was wrong to consider the issue of liability to pay the administration charge for gas when it had been told that the dispute over gas charges was to be dealt with separately in the county court; he also suggested that the RPT ought not to have made a determination which included the administration charge relating to water when it was told that, following the Appellant's undertaking to reduce the water charge to £5.48 a year and to reimburse sums paid in excess of that regulatory maximum, the occupiers were content to withdraw their application and pay that revised charge.

33. The third ground of appeal is that the RPT ought to have found either that there was an express term of the agreement that administration charges were payable in respect of gas, electricity and water or that a term ought to have been implied obliging the occupiers to pay a sum reflecting not only the actual costs of the landlord of electricity supplied to the Park from time to time, but reflecting also the reasonable cost to the landlord "*of the labour and expertise of administering and maintaining the said utility provision.*"

34. Finally the appellant argues that the RPT was wrong to reach a conclusion which was inconsistent with the decision of a different residential property tribunal in a case concerning a mobile home park in Cornwall also owned by the appellant, where the tribunal had concluded that it was reasonable for the appellant to make a charge for the service of administering the supply of various utilities.

Issue 1: Was the administration charge for electricity an issue in the proceedings?

35. Mr Mullan submitted that the RPT was wrong even to consider the issue of liability for the administration charges because that issue had not been raised in Mr Thorpe's application. Instead, he submitted, the only question for the RPT concerned the quantum, of the administration charge, not the principle of whether such a charge was payable at all.

36. I am satisfied there is nothing in this ground of appeal, for two reasons.

37. First, it was quite clear from the application itself and from Mr Thorpe's witness statement in response to that of Mr Hill (see paragraphs 23 and 25 above) that the occupiers' case was that there was no agreement for the payment of administration charges at all, and that these had been levied "arbitrarily" and "totally without justification or validation". It is hard to imagine a clearer challenge to the principle of the payability of administration charges.

38. Secondly, and even assuming that Mr Thorpe's statement of case was in some respects ambiguous (which I do not think it was), the issue of liability turned on an issue of construction of the written statement governing the occupation of the pitches. That issue concerned the very terms on which the appellant relied to justify the charges. The RPT was entitled to expect that counsel for the appellant would come prepared to

explain the basis of the claim, and as the decision shows, that expectation was fully justified. There was therefore nothing inappropriate or unfair in the RPT considering whether the charging provision was wide enough to permit the charge at all, rather than confining itself to considering the quantum of the charge (even if a challenge to the principle of liability was not articulated in the application with the clarity to be expected of a professional pleader).

39. All that fairness required in this case was that the appellant's counsel be given a proper opportunity to deal with the suggestion that nothing was payable, whether that suggestion was made by the occupiers or by the RPT itself. There is no doubt that that happened in this case. It is clear from the decision that Mr Mullan deployed substantially the same submissions on the effect of the written statement before the RPT as he did before me.

Issue 2: Was the RPT wrong to consider the administration charges for gas and water?

40. Mr Mullan's second point was that the RPT decided two issues which had been specifically withdrawn from it by agreement between the parties. Both the appellant and Mr Thorpe had asked the RPT not to deal with the issues concerning gas which were before the county court. Moreover, as the RPT recorded in paragraph 27 of its decision, Mr Thorpe had specifically confirmed that the applicants no longer wished to continue their application relating to the administration charge for water following the appellant's undertaking to charge no more than the permitted rate of 1½ pence per day or £5.48 per annum.

41. There is no doubt that the RPT did make a determination dealing with the occupiers' liability to pay both the administration charges for gas and water, as well as the charge for electricity. In concluding its decision the RPT said this, at paragraph 43:

> "An administration service charge in respect of the provision of the utilities specified within the agreement is not payable and such sums already paid for the period since the acquisition of the site by the [appellant] should be credited to each [occupier] within 30 days of this order."

42. It is necessary to consider this ground of appeal in two parts, as there were different reasons for the parties' agreement to the withdrawal of different aspects of the application.

43. As far as the administration charge for gas is concerned, I was told by Mr Mullan that no copy of the county court proceedings was available to the RPT and neither he nor they (nor I assume Mr Thorpe) was sure whether those proceedings included any claim relating to the administration charge for gas. It is not even clear who were the parties to the county court proceedings and whether they included all of the applicants before the RPT. The RPT recorded in paragraph 31 of its decision what it had been told, namely

that the county court proceedings concerned an injunction and "*the price for gas charged by the [appellant]*". In those circumstances it was understandable that it was uncertain whether the administration charge for gas was also in issue in those proceedings. I share that uncertainty as no copy of the county court proceedings was available at the hearing of the appeal.

44. The course which the RPT took in relation to gas was, as appears from paragraph 32 of the decision, not to make any "*specific determination*" relating to gas alone, but to recognise that since the term of the written statement under which the administration charges were claimed was the same in each case, its conclusion on the general question of construction of that term would be determinative of the occupiers' liability under the written statement to pay administration charges for all three services.

45. In the case of the gas charges I am satisfied that it was legitimate for the RPT to make the determination it did. The issue was raised by the application and was still live between the parties by the time of the hearing. It had to be determined either by the RPT or by the county court. The mere fact that the same issue might have been raised in parallel proceedings in the county court did not deprive the RPT of jurisdiction to deal with it. In addition, nobody was sure whether the issue had in fact been raised in the county court proceedings. Given that uncertainty it was not inappropriate for the RPT to decide the issue. Furthermore, having come to the conclusion that the provision relied on by the appellant did not justify *any* of the administration charges, it would have been artificial for the RPT to have restricted itself to a finding dealing with the charge for electricity alone.

46. The position would have been different if the parties had specifically agreed that the RPT should not consider the administration charge for gas, but they did not do so. The limit of their agreement seems to have been that the RPT should not deal with issues which were already before the county court. Since nobody knew whether those included the administration charge for gas, the RPT was entitled to express itself in the way it did in relation to gas in paragraphs 32 and 43 (see paragraphs 30 and 42 above).

47. In contrast, the parties did reach a specific agreement concerning water charges. The RPT was told that the occupiers agreed that the reduced charge now claimed by the appellant was reasonable and specifically that they no longer wished to continue their application with regard to water. In those circumstances it was not open to the RPT to conclude, as it did in paragraph 43 of its decision, that no administration charge was payable for *any* of the utilities. The issue of administration charges for water had been compromised and was no longer a dispute before the RPT.

48. I therefore agree with the appellants that, in relation to the administration charge for water, the RPT was wrong to make any determination at all, including the order for repayment. The appeal will therefore be allowed on that issue.

Issue 3: Does the written statement contain an express term that administration charges are payable in respect of gas, electricity and water?

49. Mr Mullan devoted most of his argument to the third issue raised by his grounds of appeal, namely whether it was an express term of the agreement between the parties, recorded in the written statement, that the occupiers of the pitches should pay an administration charge for the supply of each of the three utilities.

50. The express term Mr Mullan relied on was the occupier's undertaking in paragraph 3(b) of Part IV of the written statement:

> "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*".

51. Mr Mullan (rightly in my view) acknowledged that the words "*To pay outgoings*", which appear in a marginal note next to paragraph 3(b), cannot be used as an aid to interpretation, because paragraph 9 of Part IV of the written statement specifically prohibits the use of such marginal notes for that purpose.

52. Mr Mullan made three points on this aspect of the case.

53. First, that paragraph 3(b) does not limit the sums chargeable in respect of utilities to the unit price charged by the utility companies. In the case of charges for electricity and gas there was nothing in paragraph 3(b) to prevent the inclusion of a reasonable supplement or surcharge to cover the cost of administration in the price re-charged by the site owner to the occupiers for the utilities supplied to them. In the case of water such a supplement was now restricted following the introduction of the 2006 Order.

54. Secondly, that paragraph 3(b) comprehends that there will be administrative tasks associated with the provision of utilities, and that the costs incurred in undertaking those tasks will be part of the charges.

55. Thirdly, that the RPT had been mistaken to think that the cost of undertaking the necessary administrative tasks was included in the pitch fee. If there was any separate work or cost involved in the provision of the utilities services that could not be treated as part of the price paid for the pitch itself. Mr Mullan relied on the definition of "pitch fee" in paragraph 29 of the Schedule 1 to the 1983 Act which provides expressly that the pitch fee "*does not include amounts due in respect of gas, electricity, water ad sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts*".

56. Skilfully though these submissions were made, I do not accept them.

57. As a matter of immediate impression, even without regard to the marginal note, 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 I 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 therefore disagree with Mr Mullan's first and second arguments. I also consider that (subject to the possibility of there being a relevant implied term, to which I will come next) 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.

61. There is no restriction on the rights conferred on the occupier which may be taken to be included in the pitch fee. In this case, for example, in addition to the right to occupy the pitch the occupier receives in return for the pitch fee the benefit of obligations by the owner to keep the common parts of the Park in a good state of repair, to provide and maintain the facilities and services available to the pitch from time to time (which include the utilities themselves and the conduits and meters through which they are supplied), and to insure the common parts. Each of these is an example of a service

which can only be provided at a cost to the owner, yet for which there is no separate entitlement to charge; each must therefore be taken to be included in the pitch fee. The same is true, in my judgment, of the service provided by the owner in reading meters and calculating and administering bills for each of the utilities.

62. I do not think that the definition of "pitch fee" in paragraph 29 of Schedule 1 to the 1983 Act alters this analysis. The purpose of the definition, and the exclusion from it of "*amounts due in respect of gas, electricity, water and sewerage or other services*", is to make it clear what charges are governed by the restrictive provision for reviewing the pitch fee in paragraphs 16 to 20. If separate amounts are payable "*in respect of*" the various utilities, those amounts are not subject to the annual indexation by reference to RPI which is the normal limit of permitted increases in pitch fees. The definition does not require that the administration necessary to deliver the utilities cannot be covered by the pitch fee, nor does it make the imposition of an administration charge permissible.

63. I am therefore satisfied that the express terms of the written statement do not entitle the appellant to require payment of administration charges in respect of any of the utilities which are in dispute.

Issue 4: Can a term be implied requiring payment of an administration charge?

64. Mr Mullan's next point was that a further term ought to be implied into the agreement between the parties to ensure that the administration of services was not provided free of charge by the site owner. He submitted that "the man on the bus" would expect nothing less.

65. The modern law on the implication of terms in contracts was authoritatively discussed by the Privy Council in *Attorney General of Belize v Belize Telecom Ltd* [2009] 1WLR 1988. The relevant jurisprudence is reviewed in detail in Lewison, *The Interpretation of Contracts*, (5th Edition, 2011) at chapter 6. A further useful treatment, focussing on the implication of terms relating to service charges in leases, can be found in Rosenthal, *Commercial and Residential Service Charges* (2013) pp. 36-53.

66. The implication of terms into a contract is part of the interpretative process of understanding the presumed intention of the parties when they entered into the contract. The ordinary rules of contractual interpretation apply. As Lord Hoffman explained in the *Belize* case:

> "The court has no power to improve upon the instrument which it is called upon the construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. In every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background would reasonably be understood to mean."

67. In paragraph 17 of his advice Lord Hoffman returned to this fundamental point:

> "But the implication of the term is not an addition to the instrument. It only spells out what the instrument means."

68. In my judgment it is impossible to accept that the written statement containing the terms agreed between the parties has the effect of requiring the occupiers to make a further payment to the site owner to reimburse costs incurred in relation to the provision of utilities.

69. I have already concluded, in construing the express terms of the agreement, that the charges referred to in paragraph 3(b) are charges levied by the suppliers of the various services, and not charges made in connection with those services by the Park owner. It is to be inferred that, in making express provision for one type of payment relating to utilities, the parties dealt comprehensively with their respective entitlements and liabilities and did not intend there to be any further payment which they simply omitted to mention.

70. It cannot be suggested that the agreement cannot sensibly be implemented unless a further payment is made to the owner to cover administrative costs. In the absence of any express provision for a service charge to cover repairs or insurance of common parts or the conduits through which the services are provided, the parties must be taken to have agreed a pitch fee at the commencement of the arrangement which took those matters into account as part of the benefits received by the occupier and the costs and risks assumed by the owner. In exactly the same way, in the absence of a service charge covering the cost of reading meters and administering the utilities, the parties must be taken to have taken those matters into account when agreeing the pitch fee.

71. Much greater practical difficulty stands in the way of implementing an additional charge for administration. There is no mechanism in the written statement for ascertaining the amount of such a charge. Mr Mullan was inclined to suggest that the charge should be whatever figure the site owner wished it to be, subject to a restriction that it must not exceed a reasonable sum. Such an approach would very different from the regime of statutory control of pitch fees (which are tied to the retail price index). I think it unlikely that the occupiers of a protected site, who tend to be people of limited means, would willingly submit to being charged a sum for services selected by the site owner without any transparent process of accounting or opportunity for challenge.

72. I am therefore satisfied that the appellant has no right under the written statement to levy an additional charge for administering the supply of gas and electricity. By way of compromise of their dispute, the parties who were represented at the RPT have agreed that a charge can be collected for administering the arrangements in connection with the supply of water, limited to the maximum sum permitted by the 2006 Regulations. But absent that compromise, no such charge is payable.

Issue 5: Should the RPT have followed the earlier decision of a different RPT on the same issue?

73. Mr Mullan's final ground of appeal is now largely academic, as I am satisfied that the decision of the RPT was substantially correct. Nonetheless, Mr Mullan suggested that the RPT should have given greater respect to a decision made by a different residential property tribunal in April 2012 on which he had relied in this case. He acknowledged that a residential property tribunal is not bound by a decision made by an earlier tribunal, but suggested that consistency and certainty required that an earlier decision be followed unless there was good reason to depart from it. If an earlier decision was not to be followed, the RPT ought to have provided an explanation sufficient to explain to the parties why that was so.

74. The earlier case on which Mr Mullan relied concerned a park home site at St Austell in Cornwall also run by Mr Hill, where a residential property tribunal had allowed the administration charge of £15 per quarter to be added to the electricity bill. The applicant in that case had suggested that an administration charge was included in the pitch fee, apparently by express agreement, but she was unable to produce any document confirming her recollection which the tribunal therefore did not accept. It seems to have assumed that such an administration charge was permissible because there was a cost to the park owner in reading meters and calculating bills and because the sum charged was not unreasonable.

75. I agree with Mr Mullan that consistency is a virtue which ought to be practiced by first-tier tribunals where appropriate, but consistency is not an obligation. In reaching its own decision a tribunal should give weight to a well reasoned decision of a previous tribunal on the same statutory or contractual provision, but it is not bound to follow the earlier decision and, if it disagrees with it, the tribunal is under a duty conscientiously to decide the case in accordance with its own view of the law.

76. I am satisfied that Mr Mullan's final point does not provide any basis for disturbing the decision of the RPT in this case.

Disposal

77. The appeal is therefore allowed in so far as it relates to the administration charge for the supply of water, but otherwise is dismissed.

Martin Rodger QC
Deputy President

29 October 2013