



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : **BIR/00GG/PHC/2019/0002/03/04/05/07**

Property : **Nos 6, 12, 14, 16 and 20 Knowle Sands
Caravan Park, Highley Road, Knowle Sands,
Bridgnorth, Shropshire, WV16 5JL**

Applicants : **Mr K Hanks (No 20) (0002)
Mr G Watts (No 6) (0003)
Mr and Mrs Dickens (No 12) (0004)
Mr and Mrs Yale (No 16) (0005)
Mr and Mrs Whitehead (No 14) (0007)**

Representative : **IBB solicitors (0005 only)**

Respondent : **Knowle Sands Caravan Tenants' Association
(except the Applicants)**

Type of Application : **Applications under section 4 (1) (a) of the
Mobile Homes Act 1983 (as amended) for
the Tribunal to determine any question
arising under this Act or any agreement to
which it applies.**

Tribunal Members : **Judge S McClure
A Rawlence MRICS**

Date of Decision : **11 June 2019**

The Background

1. Knowle Sands Caravan Park (“the Park”) is a caravan site licenced under the Caravan Sites and Control of Development Act 1960 for 36 caravans by Shropshire Council.
2. The site owner is Knowle Sands Caravan Tenants Association (“the Association”). The Association is an unincorporated association whose membership is some or all (membership not being a matter in issue in this application) of the owners of the caravans.
3. The Applicants are the owners and occupiers of residential park homes stationed on the site (“the Park Homes”).
4. The Applicants apply to the Tribunal under Section 4 of the Mobile Homes Act 1983 (“the Act”) for:
 - (a) A determination as to whether the pitch fee increases in 2012 and 2015 are valid and enforceable and, if not enforceable, the amount of any refund due.
 - (b) A declaration that the Respondent provide a revised written statement containing an amended paragraph 2(c), and (except for Mr and Mrs Yale) showing a 0.1% transfer fee.
5. The 5 applications were made separately on different dates in February 2019, and later consolidated by the Tribunal.

Inspection

6. Prior to the determination of the matter, the Tribunal briefly inspected the Site, however in the event nothing turns on the physical layout or the amenities of the Site and the Tribunal does not consider there is any need to make any observations on our inspection.

Submissions

7. The Applicants’ submissions are set out in their combined Statement of Case dated 10 April 2019. The Respondent’s submissions are set out in its Statement of Case dated 13 May 2019. Those submissions were made in accordance with the directions of the Tribunal.
8. Neither party requested an oral hearing, nor did the Tribunal find that an oral hearing was necessary. The Tribunal came to its decision on the basis of the written submissions of the parties.

The law

The Mobile Homes Act 1983

Schedule 1

16 The pitch fee can only be changed in accordance with paragraph 17, either—

(a) with the agreement of the occupier, or

(b) if the court, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17 (1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner may apply to the court for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.

Determinations

The pitch fee increases

9. Prior to the written statement of 1 April 2017, the annual fee payable by the membership of the Association and, therefore by the Applicants as members, was referred to as a membership fee. It appears that the first mention of the term pitch fee instead of membership fee, is in the written statement of 1 April 2017.
10. At a tribunal hearing on 20 December 2017 in relation to a previous application to the tribunal, the Respondent stated that the membership fee was always a pitch fee, and it was lack of knowledge of the correct terminology that resulted in the incorrect use of the term membership fee.
11. At a meeting of the Association on 15 September 2012, a proposal from one of the members for an increase in the membership fee from £450 to £500 was approved. The fee was increased to £500 retrospectively from 1 April 2012.
12. At a meeting of the Association on 25 April 2015, a proposal from one of the members for an increase in the membership fee from £500 to £600 was approved. The fee was increased to £600 from, it appears, April 2015.

13. It is accepted by both parties that the fee known as a membership fee in 2012 and 2015 was, in fact, a pitch fee.
14. It is submitted by the Applicants, and accepted by the Respondent, that the Applicants were not served with the statutory notice required by paragraph 17(2) of Schedule 1 to the Act in respect of an increase to the pitch fee.
15. The Respondent submits that the increases in both 2012 and 2015 were agreed at formal meetings of the Association, therefore the Applicants knew the purpose of the increase. This point is not material to the question of whether the statutory notice has been served.
16. The Tribunal finds that the fee payable from, at least, 2012 was a pitch fee. The Tribunal finds that the statutory notice required under paragraph 17(2) of Schedule 1 was not served in respect of the 2012 nor the 2015 increases. The Tribunal finds that the pitch fee increases in 2012 and 2015 are not valid increases due to the lack of compliance with the statutory notice requirements.
17. Neither party asserts there has been any other increase to the pitch fee subsequent to 2012. Accordingly, the Tribunal finds that there has been no valid increase to the pitch fee of £450, therefore the current pitch fee is £450.
18. The Applicants have overpaid their pitch fee and are entitled to a refund of the overpayment from the Respondent. The Tribunal must determine the amount of the refund.
19. The Respondent claims that the maximum period of any refund of overpaid pitch fee is limited to a period of 6 years. The Respondent does not cite the Limitation Act 1980, but it is clear that this is the statutory underpinning to such a limitation claim.
20. The 6 year limitation period runs from the date of the knowledge of the cause of action. The Tribunal finds that the date of knowledge of the cause of action was upon receipt of the 1 April 2017 written statement, in which the term pitch fee was first used. The Tribunal has not been told when the 1 April 2017 written statement was received by the Applicants. However, it is not likely to have been prior to 6 years before the applications to the Tribunal, which were all submitted in February 2019.
21. The Tribunal finds that the date of knowledge in respect of both the 2012 and 2015 increases to be around 1 April 2017, and certainly to be within 6 years of the date of the applications to the Tribunal. This means that the full amount of any refund due from 2012 is payable by the Respondent.
22. The Applicants seek interest on the overpaid sums.
23. Paragraph 17 (12) provides for the Tribunal to order repayment of any overpaid pitch fee. No provision is made for interest on the repayment.

24. Accordingly, the Tribunal does not allow interest on the refund.
25. The amount of the refund is £50 for each of 2012, 2013 and 2014, and £150 for each of 2015, 2016, 2017 and 2018, being a total sum of £750 payable to each Applicant by the Respondent.
26. The written statement is now inaccurate, in that it cites an incorrect figure of £600 for the pitch fee. The Respondent is directed to provide the Applicants with a revised written statement to include the correct pitch fee of £450 within 14 days of the date of the issue of this decision.
27. The Tribunal notes that the Applicants are in the unusual position of also being the Respondent, in that each Applicant is a member of the Respondent Association. This is not material to the determination of this matter.

The amended paragraph

28. The parties agree that paragraph 2(c) of the written statement is to be amended, and the parties have agreed the wording, as set out in emails between the parties on 12 February 2018 and included in the bundle at pages 130-134, and notified to the Tribunal on the same date with that email set out in the bundle at page 134.
29. The Applicants apply for a declaration that they be provided with revised written statements, to include the amended paragraph 2(c). The Respondent agrees with such provision, but states it believes the revised statements have already been provided. The Applicants say not.
30. In view of the fact that the Respondent has to provide a revised written statement in any event in respect of the pitch fee, it is not necessary for the Tribunal to determine whether or not the amended written statement has been provided. The Respondent is directed to provide the Applicants with a revised written statement to include the agreed amended paragraph 2(c) within 14 days of the date of the issue of this decision.

The 0.1% transfer fee

31. All of the Applicants except for Mr and Mrs Yale apply for an express term to be added to their written statement pursuant to section 2(3) of the Act, to specify the rate of commission payable to the owner following a sale of a mobile home to be 0.1% of the sale price.
32. They submit that this figure was agreed at the AGM of the Association held on 14 April 2018.
33. The Respondent contends that the Act does not provide for the addition of an express term, only for the varying or deletion of an express term.

34. The Tribunal accepts the submission of the Respondent, and finds that the Tribunal does not have the jurisdiction to add an express term to the written statement under the provisions of the Act.

Tomlin Order and Mr Hanks

35. By way of a letter to the Tribunal dated 14 May 2019, the Respondent claimed that Mr Hanks was prevented from pursuing an application to the Tribunal pursuant to a Tomlin order between the Respondent and Mr Hanks.
36. Mr Hanks responded by way of letters to the Tribunal dated 16 and 19 May 2019.
37. The fact of the Tomlin order is not confidential, and so can be referred to in this decision. The terms of the Tomlin order are confidential, and will not be referred to in this decision and will be referred to in a confidential appendix, to be issued to the Respondent and to Mr Hanks. The confidential appendix is not to be issued to the other Applicants, nor is it to be published.
38. The decision of the Tribunal is that the Tomlin Order does not prevent Mr Hanks from making his current application to the Tribunal.

Rule 13 costs application

39. The Respondent submitted that the Applicants' case is vexatious, frivolous and/or without merit and should be dismissed. The Respondent seeks a costs order under rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.
40. The test in rule 13 is whether a person has acted unreasonably in bringing, defending or continuing proceedings. The Applicants have succeeded on their substantive issue of the pitch fee. It would be unusual in a case in which the Applicant was successful on their substantive point to be found to have acted unreasonably. There is no evidence before the Tribunal, and no submissions from the Respondent save for those set out in the paragraph above, upon which the Tribunal could find the Applicants have acted unreasonably. The Tribunal does not find the Applicants have acted unreasonably.
41. No rule 13 costs order is made.

Decision

42. The pitch fee increases of 2012 and 2015 are invalid, and the Applicants are due a refund of £750 each, to be paid within 14 days of the issue of this decision.
43. The Respondent must provide the Applicants with a revised written statement to include the correct pitch fee and the agreed amended wording of paragraph 2(c) within 14 days of the issue of this decision,

44. The application for an express term setting out a commission of 0.1% on sale of a mobile home is not granted.
45. The Respondent's application for a rule 13 costs order is not granted.

In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 11 June 2019