



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

Case Reference : **MAN/00EB/PHC/2019/0002**

Property : **Seaview Park Homes, Easington Road,
Hartlepool TS24 9SJ**

Applicant : **Seaview Park Residents Association**

Respondent : **Hill Enterprises**

Type of Application : **Section 4, Mobile Homes Act 1983**

Tribunal Members : **A M Davies, LLB
P E Mountain, FRICS**

Date of Determination : **11 December 2019**

Date of Decision : **8 January 2020**

DECISION

DECISION

1. The gas charges payable by the Respondent to the named residents are as set out in the right hand column in the Schedule to this decision.
2. The Respondent shall within 14 days of issue of this order pay the Applicant the sum of £100 as a reimbursement of the tribunal application fee.

REASONS

BACKGROUND

1. The Respondent is a gas provider to the residents of Seaview Park, Easington Road, Hartlepool, and as such is subject to regulations published from time to time by Ofgem.
2. From as far back as July 2017 the Applicant Residents Association queried the amounts charged by the Respondent for gas. Having received information that supported its view that the Respondent had been overcharging, in December 2018 the Applicant wrote to the Respondent to complain that it had not been consulted about a change of gas supplier, and requested copies of the documents on the basis of which residents had been invoiced for gas during 2017 and 2018.
3. Not having received the requested documentation, the Applicant applied to the Tribunal on 27 February 2019 for a determination as to whether the Respondent had correctly calculated the gas charges due from each resident, and for an order that the Respondent disclose its gas bills on which those charges were based.

THE RESPONDENT'S RESPONSE

4. Meanwhile the Respondent had been checking its calculations, and found that an incorrect formula for calculating gas charges had been in use since 1st January 2012. These errors had resulted in residents being both undercharged and overcharged the price per gas unit at various times. The Respondent calculated the net amount of the repayments due, and paid the resulting sum to each resident by cheque on or about 4 June 2019.

THE APPLICANT'S CASE

5. The Applicant considered that the reimbursed sums had also been calculated incorrectly. At a directions hearing on 11 September 2019 the Applicant advised the Tribunal that the outstanding issue was whether the Ofgem regulation against "back-billing" (at paragraph 21BA.1 of the Licence Conditions applicable to suppliers of gas to domestic customers) applied to the Applicant's reimbursement calculations.

6. At the same hearing, the Applicant indicated that the application was proceeding on behalf of 24 of its members. Subsequently the Applicant provided a list of those members, and they are as set out in the Schedule to this order.

THE RESPONDENT'S CASE

7. In accordance with the tribunal's directions, the Respondent then provided details of all undercharges and overcharges for gas for each of the listed residents from 1 January 2012 to 30 September 2018. The Applicant has not objected to the figures provided, which are taken by the tribunal to be correct.
8. The Respondent argues that, if the rule against back-billing prevents it from charging residents for gas consumed (but not paid for) more than 12 months prior to the last invoice, then the same rule should apply to over-payments. This would mean that where residents have been over-charged for gas, those overcharges should not be repayable by the Respondent, to the extent that they relate to gas consumed more than 12 months prior to the last invoice.

THE LAW

9. Paragraph 21BA.1 of the relevant Licence Conditions reads:
“Subject to paragraph 21BA.2, where the licensee or any Representative issues a Bill to a Domestic Customer or otherwise seeks to recover (including via a Prepayment Meter) Charges for the Supply of Gas from that customer (hereafter a “charge recovery action”), they must only do so in respect of:
 - (a) Units of gas which could reasonably be considered to have been consumed within the 12 months preceding the date the charge recovery action was taken; and*
 - (b) (b) where applicable, amounts in respect of a Standing Charge or any other type of supply charge accrued within the 12 months preceding the date the charge recovery action was taken.”*
10. Paragraph 21BA.2 reads, so far as relevant:
“Paragraph 21BA.1 does not apply in the following circumstances:
 - (a) Where any charge recovery action was taken prior to the date this condition took effect.....”*

The remainder of the paragraph is not relevant to this application. Condition 21BA.1 took effect on 1 May 2018.

FINDING

11. The Tribunal finds
 - (a) that the date “charge recovery action” was taken was 4 June 2019;
 - (b) that the residents were not undercharged for gas between 4 June 2018 and 30 September 2018;
 - (c) that the rule against back-billing prevents the Respondent from charging residents for gas consumed more than 12 months prior to 4 June 2019 and not paid for because it was not invoiced by the Respondent at the time; and
 - (d) that the same rule does not apply to the sums over-charged by the Respondent, which are to be reimbursed to the residents.
12. The Applicant also sought an order for reimbursement of the £100 fee it had paid to the tribunal on making the application. The Respondent objected on the ground that it had started the process of re-calculating the gas charges on becoming aware of the problem with the intention of reimbursing sums due, and had made those reimbursements promptly. It argued that the application was therefore unnecessary.
13. The Tribunal finds that as the Respondent’s calculations breached the rule against back-billing and further sums are due as shown in the attached schedule, the application was justified and it is appropriate that the Residents’ Association receives reimbursement of the fee.

Tribunal Judge Davies
8 January 2020

SCHEDULE

Resident	Add undercharged Jan – May 2012	Add undercharged May 2012 to April 2013	Add undercharged June 2014 to Jan 2015	Add undercharged Jan 2015	Total due	less repaid 4.6.19	Balance	VAT	Repayable to resident £
Mr and Mrs Batiste	3.58	21.39	94.76	6.85	943.55	816.97	126.58	6.33	132.91
Mrs Lowndes	3.32	20.68	100.63	7.26	914.20	782.30	131.90	6.60	138.50
Mr and Mrs Weatherhead	6.09	32.22	160.57	11.58	1654.34	1443.90	210.44	10.52	220.96
Miss J. Hamilton	1.90	12.57	56.71	4.09	543.71	468.44	75.27	3.76	79.03
Miss R. Hamilton	2.19	14.29	67.87	4.90	675.01	585.75	89.26	4.46	93.72
Miss P. Hamilton	1.70	10.19	50.24	3.63	533.41	467.64	65.77	3.29	69.06
Ms Powell	3.57	19.52	60.67	4.38	615.04	526.90	88.14	4.41	92.55
Mr Stephens	3.05	18.45	84.18	6.05	862.06	750.32	111.74	5.59	117.33
Mrs Willis	2.64	16.31	75.22	5.41	729.06	629.48	99.58	4.98	104.56
Mrs Miles	3.38	20.50	88.00	6.34	804.76	686.55	118.21	5.91	124.12
Mrs Shields	3.72	23.55	134.42	9.68	1148.00	976.63	171.37	8.57	179.94
Miss Day	2.37	11.68	53.18	3.86	652.01	580.92	71.09	3.55	74.64
Mrs Hutchinson	-	15.81	95.05	£ 6.85	860.33	742.61	117.72	5.89	123.61
Mr and Mrs McGreary	3.17	20.03	85.65	6.16	792.67	677.66	115.01	5.75	120.76
Mr and Mrs Rosenthal	-	21.72	120.03	8.64	1091.66	941.27	150.39	7.52	157.91
Mr and Mrs Hughes	-	19.99	122.67	8.81	979.76	828.28	151.48	7.57	159.05
Mrs Wilkie	-	-	84.92	6.11	826.46	735.44	91.02	4.55	95.57

Miss Ainslee and Mr Jones	-	21.84	86.68	6.22	973.40	858.66	114.74	5.74	120.48
Mr Claypole & Miss Wild	3.90	24.85	106.36	7.66	1118.83	976.04	142.79	7.14	149.93
Mr and Mrs Forster	3.49	20.94	110.77	8.01	1323.56	1180.35	143.21	7.16	150.37
Mr and Mrs Metcalfe	2.01	12.91	78.74	5.70	721.44	622.07	99.37	4.97	104.34
Mr and Mrs Sanderson	-	-	81.98	5.93	649.18	561.27	87.91	4.40	92.31
Mr and Mrs Rudd	6.60	37.14	147.21	10.60	1747.20	1545.66	201.54	10.08	211.62
Mr and Mrs Stevens	-	0	182.32	13.13	2101.35	1905.90	195.45	9.77	205.22