



Above Ibraheem Dulmeer, will be providing legal advice to *PH&HC* readers each month

Utility charges explained



Ibraheem Dulmeer, a legal advisor from The Leasehold Advisory Service (LEASE), examines a park home owner's rights and a site owner's responsibilities when it comes to calculating utility charges

If there is any confusion surrounding the utility charges on your park, your first port of call should be your written agreement or written statement. You should check whether the agreement refers to a separate charge for utilities. If this is the case it may state that any charge in respect of electricity, gas, water, telephone and other services, should be proportionate to the use by the park home owner; in other words a pro-rata calculation.

In addition to this, you must check whether the agreement expressly provides that the pitch fee includes any utility charges, for example sewerage charges.

If the agreement does not expressly make provision for such a charge, the site owner would not be able to recover any amount towards sewerage charges within the pitch fee.

Express and implied terms

It is imperative to note that however the express terms are drafted, they are subject to implied terms. This means that express terms cannot contravene implied terms. In particular reference to utilities, these are subject to part 1, paragraph 20(b) The Mobile Homes Act 1983:

'The owner must... (b) if requested by the occupier [park home owner], provide (free of charge) documentary evidence in support and explanation of:

- (ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and also:
- (iii) any other charges, costs or expenses

payable by the occupier to the owner under the agreement.'

The limitations for utilities

We will deal with the main utilities provided on park home sites:

Electricity and Gas

There are various laws which impose a limit on the maximum price at which gas and electricity can be re-sold by a site owner. These are regulated by the Office of Gas and Electricity Markets (Ofgem) by virtue of section 37 of the Gas Act 1986 and section 44 of the Electricity Act 1989. Briefly, these laws impose a maximum price at which electricity and gas may be re-sold. It must be the same price as that paid by the person who is re-selling it, including standing charges. The site owner should not profit from the reselling.

Water

The Water Resale Order regulates the amount the site owner can charge the park home resident for water. Ofwat have also provided a useful guide to water re-sale. If the supply is metered, the park home owner is only required to pay for a measured amount consumed plus an amount representing a standing charge paid by the re-seller divided by the number of purchasers supplied.

Where the site owner's supply is not metered, park home residents may only be charged the average bill for water supply by the relevant water authority, as published from time to time by Ofwat. If the site owner does not provide such a justification of the calculation of the water charges within 28 days

of a written request, the park home resident's liability is further reduced to half of the average bill.

Liquid Petroleum Gas

Please note there are no specific statutory provisions regarding the maximum re-sale price of liquid petroleum gas (LPG). However, the calculations by the site owner must be transparent as required by the Mobile Homes Act 1983.

Unfair charges

It is possible to challenge an express term of a written statement to the First-tier Tribunal (Property Chamber) within six months of the date entered into the agreement or date the written statement was received. This is set out in Schedule 1, Part 1, paragraph 4 of The Mobile Homes (Written Statement) (England) Regulations 2006.

Trading standards office

You may contact your local Trading Standards' office regarding the potential argument that the charges are unfair under the Unfair Terms in Consumer Contracts Regulations 1999. A term is unfair if it 'causes a significant imbalance to a consumer's detriment'. You may wish to contact Trading Standards if this is the case.

Conclusion

Whilst there is some regulation on utility charges that are not part of the pitch fee and also rights for home owners to seek more information to explain the calculation of such charges, it would be helpful for the avoidance of disputes if adequate information could always be provided as a matter of course to explain and justify how such charges have been calculated.

The Department of Energy & Climate Change has published an open consultation looking for evidence on park homes in the UK, energy supply and use in park homes and energy efficiency measures in relation to park homes. The consultation closes 30 September 2014. Turn to page 66 to read more on this. Need advice? Want to discuss this article? Contact LEASE on 020 7832 2525 or parkhomes@lease-advice.org