UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES - PITCH FEE REVIEW – consequence of error in statement of relevant RPI increase – whether right to review is lost on anniversary of review date – Mobile Homes Act 1983, Chapter 2, Part 1, Schedule 1 - appeal allowed in part

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

BETWEEN:

SHAW'S TRAILER PARK (HARROGATE)

Appellant

and

MR P SHERWOOD AND OTHERS

Respondents

Re: Shaw's Trailer Park,
Knaresborough Road.
Harrogate
HG2 7NE

Before: Martin Rodger QC, Deputy President
on
20 April 2015

Sitting at: Harrogate Magistrates Court

Mr Paul Kelly of Tozers Solicitors, for the Appellant
Mr P Sherwood, Mr B Thompson and Mr M Spivey in person for the Respondents

The following cases were referred to in this decision:

Shaw's Trailer Park (Harrogate) v Nichol-Hughes [2014] UKUT 0181 (LC))

Telchadder v Wickland Holdings Ltd [2014] UKSC 57

United Scientific Holdings v Burnley Borough Council [1978] AC 904

Introduction

1. This appeal raises two important issues about the review of pitch fees payable by the occupiers of mobile homes on protected sites in England:

(1) If a site owner's notice proposing an increase in the pitch fee specifies the wrong RPI figure as the basis of the proposed increase, is the notice void and of no effect, or is the First-tier Tribunal entitled to determine a new pitch fee using the correct RPI figure?

(2) If the right to an annual review of the pitch fee is not exercised within 12 months of the review date, is the right to that review lost forever, or may either party instigate a late review taking effect after the next annual review date?

2. On 6 October 2014 the First Tier Tribunal ("the FTT") decided that three different notices given on behalf of Shaw's Trailer Park (Harrogate) containing proposals for late reviews of pitch fees at the protected site which they operate at Knaresborough Road, Harrogate, were void. The FTT gave permission to appeal to the Tribunal.

3. I held an oral hearing of the appeal at which the site owners' appeal was presented by Mr Kelly of Tozers Solicitors, and the respondent occupiers were represented by Mr Sherwood, the secretary of their Resident's Association, with assistance from Mr Thompson and Mr Spivey. I am grateful to them all for their assistance.

The relevant facts

4. Shaw's Trailer Park at Knaresborough Road in Harrogate ("the Park") is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act") with space for 135 permanent residential caravans. The Park is owned by the appellant, Shaw's Trailer Park (Harrogate), which is an unlimited company.

5. The respondents are the owners of mobile homes stationed on 15 of the pitches on the Park. A full list of the respondents and their pitches is contained in the appendix to this decision.

6. The respondents occupy their pitches under agreements to which the 1983 Act applies. A pitch fee is payable under each agreement and that pitch fee is subject to review from a common review date of 1 April in each year ("the review date").

7. The pitch fee review to take effect from the 2012 review date was the subject of determination by a residential property tribunal delivered on 9 May 2013 which was followed by an appeal to this Tribunal finally determined on 23 April 2014 (see *Shaw's Trailer Park (Harrogate) v Nichol-Hughes* [2014] UKUT 0181 (LC)).

8. The protracted 2012 review caused a delay in the implementation of the 2013 review and it was not until 25 January 2014 that the appellant's solicitors served a pitch fee review notice on the occupiers giving notice of the proposed 2013 increase. The sample notice which I have seen informed the recipient that the appellant proposed to review the pitch fee from £27.79 to £28.87 per week. The notice was accompanied by a document in the form prescribed by the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013. In the remainder of this decision I will refer to the notice and the accompanying document jointly as "the notice". The notice of the appellant's first proposal was hand-delivered to the residents of the Park on 27 January 2014, although there is a dispute over whether copies were given to Mr Sherwood and Mr Spivey. It was the first of three notices given by the appellant, of which the first and the third are the subject of this appeal.

9. The prescribed notice is a lengthy document which includes extensive notes for the recipient. In the notice given on 27 January 2014 ("the first notice") section 2 stated that the last review date was 1 April 2012, that the current pitch fee was £27.79 per week and that the proposed new pitch fee was £28.87 per week. In section 3 it was explained that the review date is twelve months after the last review date but that "the proposed pitch fee will take effect on 26 February 2014 which is later than the review date".

10. Section 4 of the first notice contained the following information:

Section 4: Calculation of the proposed new pitch fee

The proposed new pitch fee has been calculated as (A) plus (B) plus (C) minus (D) where:

(A) is the current pitch fee of £27.79

(B) is the Retail Prices Index (RPI) Adjustment £1.08 calculated from a percentage increase/decrease of 3.9%

(C) is the recoverable costs of £……..

(D) is the relevant reductions of £…...

(B) *The RPI adjustment*

In accordance with paragraph 20(A1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983, we have calculated the RPI adjustment as the percentage increase in the Retail Prices Index (RPI) over 12 months by reference to the RPI published for January 2013 which was 3.9%

Note: For further information on the correct RPI figures to use refer to the section on the RPI adjustments in the notes at the end of this form.

Section 4 concluded with a body of text concerning recoverable costs and relevant deductions none of which had been completed because no such costs or deductions were proposed.

11. Section 7 of the prescribed form comprises a very lengthy series of notes occupying more than 5 pages of closely typed text arranged in bullet points beneath headings which try to provide advice and information on every aspect of pitch fee review.

12. The statement in the first part of section 4 of the first notice that the RPI adjustment of £1.08 had been calculated using a percentage increase of 3.9% was arithmetically correct. However, it is now agreed that the RPI increase for the 12 months to the end of January 2013 was 3.3% and that the statement in section 4(B) that the RPI adjustment rate for January 2013 was 3.9% was therefore incorrect. The first issue in the appeal concerns the consequence of that inaccuracy.

13. When the respondents received the first notice Mr Sherwood checked the quoted RPI figure against figures which he receives regularly from the National Association of Park Homes Residents and immediately discovered that it was mistaken. He informed the appellant's solicitors of their error, and they in turn duly served two further review notices on 21 March 2014. The second notice proposed a new pitch fee of £28.71 per week to take effect on 28 February 2014 (a date which had already passed). In section 4 it calculated the proposed increase using the correct January 2013 RPI adjustment of 3.3%.

14. The third notice was also served on 21 March 2014 and also proposed a new pitch fee of £28.71 per week, once again using the January 2013 RPI increase of 3.3%. It stated that the last review date was 1 April 2012 and differed from the second notice only in specifying in section 3 that the proposed pitch fee would take effect on 28 April 2014. It will be noted that although the RPI increase was calculated using the January 2013 RPI figure, the increase itself was proposed to take effect after the 2014 review date (1 April 2014). It was not at that stage proposed to increase the pitch fee using the January 2014 RPI figure. The second issue in the appeal concerns the validity of that proposal.

15. Most of the residents of the Park accepted the revised 3.3% pitch fee proposal but the respondents did not. On 22 May 2014 the appellant therefore applied to the FTT for a determination of the new pitch fees for the respondents' pitches. They were met with the challenge that no valid notice had ever been served. In its decision given on 6 October 2014 the F-tT agreed with the respondents that all three notices were ineffective.

The statutory restrictions on the review of pitch fees

16. The 1983 Act applies to any agreement under which a person is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as their only residence. In the Supreme Court's decision in *Telchadder v Wickland Holdings Ltd* [2014] UKSC 57 Lord Wilson noted that about 85,000 households (a substantial proportion of whose members are elderly) live in mobile homes on about 2000 sites governed by the 1983 Act.

17. One important objective of the 1983 Act is to standardise the terms on which mobile homes are occupied on protected sites. Thus s. 2(1) provides that in any agreement to which the Act applies there shall be implied the applicable terms set out in Part 1 of Schedule 1 to the Act, notwithstanding any express term of the agreement.

18. The 1983 Act has been extensively amended including most recently by the Mobile Homes Act 2013. In its amended form Part 1 of Schedule 1 to the 1983 Act is divided into four Chapters of which Chapter 2 is applicable to pitches in England and Wales except those on local authority or County Council gypsy and traveller sites, and is thus applies to the Park. The implied terms incorporated into agreements include terms concerning pitch fees at paragraphs 16 to 20 and 25A of Chapter 2. In the rest of this decision references to paragraphs are to the paragraphs of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

19. A pitch fee is defined by paragraph 29 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 the use of the common areas of the site and their maintenance.

20. Until 26 July 2013 (the date on which section 11 of the Mobile Homes Act 2013 and the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 ("the 2013 Form Regulations") came into force) the owner of a protected site could obtain an increase in pitch fees without serving a notice in any particular form or providing information to the occupier. Paragraph 17(2) required only that the owner should serve on the occupier a written notice setting out its proposals in respect of the new pitch fees at least 28 clear days before the review date.

21. After the coming into force of section 11 of the 2013 Act additional implied terms are now contained in site agreements (whether entered into before or after the commencement of the 2013 Act). The implied terms governing the review of pitch fees are now found in paragraph 16 to 20 and 25A.

22. The basic premise of the statutory implied terms so far the review of pitch fees is concerned is that the pitch fee may only be changed with the agreement of the occupier or by an order of the appropriate judicial body (in England, the FTT) (para 16). The pitch fee "shall be reviewed annually" at the review date which is either the date specified in the agreement as the review date or the anniversary of the commencement of the agreement (paras 17(1), 29). In England the right to a pitch fee review is mutual and the occupier may also apply to the FTT for an order determining the amount of a new pitch fee (para 17(4)).

23. Where a new pitch fee is not agreed, the overarching consideration for the FTT is whether "it considers it reasonable for the pitch fee to be changed" (para 16(b)). The factors to which it will have particular regard in determining the amount of the new pitch fee are set out in para 18(1) which refers to improvements carried out or legislative changes affecting costs, in each case since the last review date (not, it should be noted, since the last review) and changes in amenities or services which have not previously been taken into account.

24. Paragraph 20 introduces a presumption that the pitch fee will vary within a range set by the change in the retail prices index in the twelve months before the review date. In practice, the RPI increase is not treated as a range but as an entitlement, and the increase is usually the most important consideration in any pitch fee review. As applicable to England, para 20 provides as follows:

> "20(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—
>
> (a) the latest index, and
>
> (b) the index published for the month which was 12 months before that to which the latest index relates.
>
> (A2) In sub-paragraph (A1), "the latest index"—
>
> (a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;
>
> (b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2)."

25. The review is initiated by the owner serving a written notice on the occupier "setting out his proposals in respect of the new pitch fee" (para 17(2)). The notice must be accompanied by a document in the form now prescribed by the 2013 Form Regulations (paras 17(2A), 25A(1)). Para 17(6A) stipulates that:

> "A notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A."

One of the things which the document "must" do in order to comply with paragraph 25A is to "specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1)" (para 25A(1)(b)).

26. If the occupier does not agree the proposed new pitch fee the owner may apply to the FTT for an order determining the new fee, and pending that determination the current pitch fee remains payable (para 17(4)). If the owner gives notice of his proposal at least 28 days before the review date the new pitch fee will become payable from the review date and will be back dated to that date if it has not been agreed or determined before it (paras 17(2), 17(4)(c)).

27. If the owner does not give notice at least 28 days before the review date the right to a new pitch fee for that year is not lost. Instead an alternative procedure contained in sub-paragraphs (7) to (10) applies. Paragraph 17(6) confers the right to that alternative procedure as follows:

> "(6) Sub-paragraphs (7) to (10) apply if the owner—
>
> (a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee."

28. The alternative timetable for the review laid down by sub-paras (7) to (10) has the effect that whether the occupier agrees to the proposal, or the owner obtains a determination of a new pitch fee from the FTT, the new pitch fee becomes payable as from 28 days after the service of the owner's notice (paras 17(7), 17(8)(c)). If the proposed new pitch fee is not agreed, the earliest date on which the owner may apply to the FTT for a determination is 56 days after the date of the notice, and the latest is four months after the date on which the owner served the notice (although the terminal date may be extended by the FTT) (paras 17(9), 17(9A)).

The FTT's decision

29. The FTT found that the first notice was invalid for the following reasons given in paragraph 11 of its decision:

> "The Tribunal finds that it is incumbent on the site owner to comply precisely with the requirement of implied term 25(A)(1)(B) that the notice "must… specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1)." If the percentage increase or decrease is not stated correctly, then the notice does not meet the requirements of implied term 25(A) and 17(6A). On this basis the First Notice was of no effect, pursuant to paragraph 17(6A) of the implied terms quoted above. The Tribunal has no jurisdiction to substitute the correct RPI percentage or otherwise to validate an ineffective notice of increase of pitch fee."

30. The FTT's reasons for finding the third review form to be invalid were stated in paragraph 10 of its decision, as follows:

> "The Tribunal agrees with the respondents that a notice of pitch fee review takes effect as a review in the year in which the effective date for pitch fee increase falls (as described in the guidance notes to the prescribed notice) and must therefore refer to the RPI percentage increase or decrease that is relevant to such a review. Implied term 29 defines "review date" as a date "on which the pitch fee will be reviewed in each year"; i.e. it is a date of review whether or not the pitch fee is actually increase or decreased on that date. The last review date is therefore the only effective one, and once a full year has passed without an increase or decrease, then despite the wording of implied terms 17(6)(b) no late notice of increase can take effect."

Issue 1: the first notice

31. The first notice proposed an increase in the pitch fee which was based on an incorrect RPI figure (i.e. one which was not in accordance with paragraph 20(A1)). The first issue is whether the FTT was right to find that, as a result of this error, the first notice was of no effect.

32. In its recent decision in *Natt v Osman* [2014] EWCA Civ 1520, which concerned the validity of a notice under s. 13 of the Leasehold Reform, Housing and Urban Development Act 1993, the Court of Appeal considered the modern approach to the consequences of non-compliance with the process or procedure laid down by a statute for the exercise or acquisition of some right in relation to property conferred by that statute. The Chancellor, with whom Lord Justice Patten and Lady Justice Gloster agreed, emphasised that the proper approach in such cases (in contrast to cases involving challenges to the decisions of public bodies, or compliance with procedural rules in litigation) is not to ask whether there had been substantial compliance or to consider the particular circumstances of the recipient of the notice or the degree of prejudice which may or may not have been caused by the non-compliance. On the contrary (at [31]):

> "The Court of Appeal cases show a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute. In none of them has the court adopted the approach of "substantial compliance" as in the first category of cases. The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the Court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid."

33. This stricter approach has the great advantage of certainty in relation to property rights. It seems to me to be applicable to the procedures, statutory in origin, for initiating a review of pitch fees under agreements to which the 1983 Act applies. Perhaps more importantly, paragraph 17(6A) of Chapter 2 of Part 1 of Schedule 1 to the Act is explicit in prescribing that a notice which proposes an increase in the pitch fee "is of no effect unless it is accompanied by a document which complies with paragraph 25A". That express statement of the consequences of non-compliance removes any doubt, and leaves no room for considerations of whether any prejudice has been suffered as a result of the non-compliance. The only relevant question is therefore whether the first review form complied with paragraph 25A.

34. Paragraph 25A(1)(b) requires that the notice must "specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1)" and it is agreed that the notice failed to do so. The percentage increase in RPI which was specified was not calculated in the required manner. Mr Kelly submitted on behalf of the appellant that the first notice was nevertheless compliant with paragraph 20(A1) because it would have been obvious to any reasonable recipient of the notice who considered its contents that the information contained in it was incorrect, and that the document should be construed as the recipient would have understood it to have been intended. He did not suggest that the recipient of the notice should be assumed to have the correct RPI figures immediately in mind but rather that they would readily be able to ascertain the appropriate RPI increase, as Mr Sherwood had done, because the prescribed form identified precisely how the that was to be done. Mr Kelly argued that this approach was in accordance with the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749. That decision concerned the proper construction of contractual notices containing an obvious error; if notwithstanding a defect in its form, a reasonable recipient of such a notice would have been left in no doubt what it was intended to achieve, the notice would be valid.

35. I cannot accept Mr Kelly's argument, which in my judgment finds no support in *Mannai*. The error in the first notice was not obvious, and indeed the figure was quite close to being accurate. The sort of research which Mr Kelly postulated is exactly the sort of research which the recipient of the notice would assume the giver of the notice had already carried out. The recipient was entitled to assume that the information contained in the form was accurate, except where it was obvious that an error has been made. In this case it was not obvious that there had been an error, nor what the correct figure ought to have been.

36. On this aspect of the appeal I am quite sure that the FTT was correct in finding that the first attempt to initiate the pitch fee review was of no effect. Although the notice and accompanying document were only a proposal, and could not give rise to a new pitch fee unless and until the proposal was agreed, the failure to calculate the RPI adjustment using the method prescribed in para 25A was fatal.

Issue 2: the third notice

37. No reliance is now placed on the second notice. The sole remaining issue concerns the third notice which, it will be remembered, adopted the January 2013 figure for the increase in RPI but used it to calculate a new pitch fee which it proposed should take effect from 28 April 2014, which was a date after the 2014 review date. The question is whether that was permissible, or whether, as the FTT decided, the right to a review based on the 2013 RPI increase expired on the 2014 review date.

38. Mr Kelly submitted that the statutory implied terms did not exclude the possibility of more than one review taking effect in a single year. On the contrary paragraph 17(1) clearly establishes a principle of annual reviews and paragraphs 17(6) to (10) specifically permits late reviews. To the extent that the notes to the prescribed form of review notice (on which the FTT relied) suggested otherwise, they are incorrect and cannot modify or supplant the clear statutory scheme.

39. Mr Sherwood said that nobody objected to paying a proper increase, but that the effect of the three notices which had been served was total confusion. He invited me to accept the conclusion of the FTT that the third notice was also of no effect.

40. The scheme described in paragraph 17 provides for annual pitch fee reviews and lays down a procedure for commencing the review. The pitch fee "shall be reviewed annually at the review date" (para 17(1)) and the owner "shall serve on the occupier a written notice" at least 28 clear days before the review date (para 17(2)). If this is done the new pitch fee which is agreed or determined by the FTT will take effect from the review date (para 17(3) and 17(4)(c)). The imperative use of "shall" does not, however, mean that if a notice is not given 28 days before the review date the right to the review is lost. All that is lost is the right to a review taking effect from the review date, because paragraph 17(6) gives access to the alternative timetable in sub-paragraphs (7) to (10) which provide for a late review.

41. If the owner does not serve a pitch fee review notice "by the time by which it was required to be served" (i.e. at least 28 days before the review date, as required by paragraph 17(2)) but does so "at any time thereafter" (as permitted by paragraph 17(6)(b)) then sub-paragraphs 17(7) to (10) apply. A late review notice given under paragraph 17(6)(b) serves the same purpose and takes the same form as an "in-time" review notice under paragraph 17(2): it sets out the owner's proposals in respect of the new pitch fee and must be accompanied by a document which complies with paragraph 25A. Its effect mirrors the effect of an in-time notice with the sole exception that any new pitch fee which is agreed or determined by the FTT following a late review notice will take effect not from the review date but from the 28th day after the date of service of the late review notice (paras 17(7) and 17(8)(c)). There is a slight difference in the figures used to calculate the relevant RPI increase although unless an in-time notice is served long before the review date the difference is likely to be insignificant.

42. The critical words for the purpose of considering whether there is any time limit for serving a late review notice are those of paragraph 17(6)(b): "at any time thereafter". Those words appear to indicate quite clearly that there is no terminal date after which a late review notice may no longer be served; such a notice may be served "at any time" after the time referred to in paragraph 17(2) which is 28 clear days before the review date.

43. The absence of any terminal date for the service of a late review notice is in contrast to paragraph 17(9) which creates a clear window within which an application to the FTT under sub-paragraph (8) must be made for the determination of a new pitch fee after a late review notice has been given; such an application may be made "at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice." The creation of this window is relevant to the issue in this case only because it makes it less likely that there is some unspoken but implicit requirement that a late review notice must be served within a similar restricted window.

44. The practical operation of sub-paragraphs 17(7) and 17(8) are also inconsistent with there being a requirement that a review notice for a particular year must be served to take effect before the next review date. If there was such a requirement it would not be possible to serve a late review notice in the last 28 days before a review date, since any new pitch fee agreed or determined following such a notice would become payable on or after the next review date. That is what occurred in this case but if that timing is intended to be prohibited, as the FTT found, there is no hint of that additional restriction in sub-paragraphs 17(6), (7) or (8).

45. The language and structure of paragraph 17 therefore seem to me to be firmly against the FTT's conclusion that a late review notice may not be served to take effect at any time after the next review date. I bear in mind also that the general rule in rent review, settled since the decision of the House of Lords in *United Scientific Holdings v Burnley Borough Council* [1978] AC 904, is that time is not of the essence of the right to a review and that some positive indication either in the language or the structure of a rent review scheme is required before the right to a review will be lost by a delay in its commencement.

46. Why was the FTT driven to reach its contrary conclusion? It gave two reasons in paragraph 10 of the decision. The first referred to the guidance notes to the prescribed form, which I will consider shortly. The second relied on the definition of "review date" in paragraph 29 as "the date on which the pitch fee will be reviewed *in each year*". As to that second reason the pitch fee is only reviewed "on" the review date in each year if an in-time review notice is given under paragraph 17(2) and the owner's proposal is agreed before the review date; in any other case the new pitch fee will not be known on the review date; the reference to a review "on" that date, means a review "as from" that date (as paragraph 17(4)(c) spells out). Nor is there any expectation that the process of pitch fee review will necessarily be completed in the year to which the review relates (as this case illustrates). It does not seem to me to follow from the definition of the review date that that the most recent review date to have passed is the only date from which a late review can take effect. It would also be surprising if such a fundamental feature of a review scheme was introduced in such an opaque way, through a definition.

47. As to the guidance notes which the 2013 Form Regulations require to be included in a review notice, it is quite true, as the FTT noted, that they indicate that a review may only take place in the period before the next review date. Under the heading "review and late reviews" the notes contain the following unequivocal advice:

- "If the site owner misses the review date a proposed change to the pitch fee can be made to take effect at a later time. Providing a minimum notice period of 28 days is given a late review can be proposed to take effect at any time after the review date and before the next review date.

- The "next review date" is the date 12 months from the review date. This applies whether or not the current review is late. It means, for example, if the review date is 1 April 2014, but the review is late and does not take effect until 1 July, the next review date will be on 1 April 2015, rather than 12 months from the effective date of the current review.

- As reviews are conducted annually, if the site owner does not propose a change in the pitch fee on the review date or before the next review date (in the case of a late review) the review is deemed to have been conducted for the year in question. This means, for example, that if a review date was 1 April 2014, but the site owner did not initiate a review before 1 April 2015, any charges (including RIP) attributable to the 2014 review cannot be included in the 2015 review."

48. The notes are prefaced by a statement that "*these notes are for guidance only and do not purport to provide a definitive statement of the law.* They are an informed commentary and can be taken to represent the view of the government department responsible for the 2013 Forms Regulations (the Department for Communities and Local Government) as to the effect of paragraph 17. It is my task to construe the 1983 Act, rather than the notes to the prescribed form, but it is nonetheless discomforting that the notes interpret paragraph 17 in a manner which is quite contrary to the conclusion I have reached. I have reconsidered my conclusion in the light of the notes, but I can find nothing in the statutory language which supports the guidance given by the notes that a later review can only take effect before the next review date or that if a review notice is not served before the next review date the review is "deemed to have been conducted for the year in question". The language seems to me to be clearly to the opposite effect.

49. I appreciate that the possibility that a number of pitch fee reviews may take place in a single year may be an unattractive one, but the possibility of a large increase taking account of RPI changes over more than one year is ameliorated by the fact that any such increase will not be capable of taking effect retrospectively. Any increase will take effect only from the date which is 28 days after the service of the late-review notice and any arrears will be calculated from that date and no earlier. If a review had already taken place in one year it would not, I think, be possible for an owner to seek to activate a review from any previous year in which it had not been implemented. I also appreciate that the prescribed form of notice is not well adapted to a proposal for a single increase taking into account more than one annual RPI increase since the last review and that further issues may arise as a result.

50. I am nonetheless satisfied that the notes to the prescribed form are an unreliable guide to the effect of paragraph 17, and that the FTT reached the wrong conclusion on the effect of the third notice and I set that part of its decision aside. In my judgment the third notice validly initiated the 2013 review. Having regard to the presumption in paragraph 20(A1) that a pitch fee will increase annually by RPI and to the absence of any other issue between the parties on the amount of the increase, I substitute a determination under paragraph 16 that the amount of the new pitch fee is the amount stated in the third notice served on each of the respondents (£28.71 in the example shown to me) which will take effect on 28 April 2014, the date stated in the notice.

Martin Rodger QC
Deputy President

21 May 2015

Appendix

The respondents

Respondent's name	**Pitch**
Mr P Sherwood	14 Sixth Avenue, Shaws Trailer Park, Harrogate, HG2 7PP
Mr Crouch	11 Sixth Avenue
Mr & Mrs M Spivey	20 Fourth Avenue
Ms Walker	2A Third Avenue

Mr Thompson	19 Second Avenue
Mr & Mrs M Stubbs	5 First Avenue
Mr & Mrs K Bell	8 Third Avenue
Mr Eaton	3 Sixth Avenue
Mr I Fraser	5 Fourth Avenue
Mr D Fraser	7 Fourth Avenue
Mr & Mrs P Stothard	14 Fourth Avenue
Mrs L Tye	3 Third Avenue
Mrs E Thompson	7 Second Avenue
Mr L Williams	15 Fourth Avenue
Mr B Thompson	37 Main Avenue