



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

**Case Reference** : **CAM/33UG/PHC/2019/0005**

**Property** : Mile Cross Gypsy/Travellers' Site, Swanton Road,  
Norwich NR2 4NJ

**Applicant** : William Brazil (in person)

**Respondent** : Norfolk County Council

**Representative** : Clive Moys (counsel), instructed by nplaw, Norwich  
[ref : Luke Parker]

**Type of Application** : by a park home occupier for determination of any  
question arising under the Mobile Homes Act 1983  
or agreement to which it applies [MHA 1983, s.4]

**Tribunal** : G K Sinclair

**Hearing date  
and venue** : Friday 18<sup>th</sup> October 2019 at Cambridge County Court

**Date of decision** : 28<sup>th</sup> October 2019

---

**DECISION**

---

© Crown Copyright 2019

- Determination ..... paras 1–3
  - Background ..... paras 4–12
  - Applicable law ..... paras 13–16
  - The hearing ..... paras 17–22
  - Discussion and findings ..... paras 23–27
  - Costs ..... paras 28–30
1. The issues for determination in this application were reduced by striking out at an earlier directions hearing to one only, namely the amount (if any) owed by the

applicant for the supply of water to his pitch by way of resale by Norfolk County Council as operator of the travellers' site at Mile Cross, Norwich. Despite this the applicant again sought to raise or resurrect other issues, including the council's failure (as local authority rather than as site owner or operator) to carry out a risk assessment of this "private supply of water", a refusal to pursue Anglian Water for charging at over its published rate, and also a claim that the respondent had accused him of theft of water charges that he had collected from other pitch occupiers while he was employed by it as on-site manager but later admitted its error, so he was owed roughly £34 000 and that sum should have been applied as a credit to his water account - thus more than cancelling out any sums allegedly owed by him.

2. For the reasons set out below the tribunal determines that :
  - a. The respondent having reconsidered two elements of its water billing, viz its own administration charge of 10% of the total bill rather than £10, and its overcharging for sewerage services, the amount due from the applicant is as claimed in the respondent's spreadsheet and accompanying notes and Anglian Water bills served on 4<sup>th</sup> July 2019, namely £1 007.29. This is £787.57 less than erroneously charged previously. To that extent only, but subject to paragraph 3 below, the applicant has succeeded.
  - b. Whether the water supply within the site is private or not, and regulation 2 of the Private Water Supplies (England) Regulations 2016 confirms that it is not, that is an issue between the applicant and the respondent in the latter's capacity as local authority; it is not a question arising under the Mobile Homes Act or agreement to which it applies, and its determination is therefore outwith this tribunal's jurisdiction.
  - c. The claim for an alleged £34 000 owed by the respondent to the applicant is said to have arisen in the context of an employment relationship, some of it may be out of time under the Limitation Act 1980, it has apparently been raised as an issue and struck out in previous County Court litigation, and again it is outwith the tribunal's jurisdiction.
  - d. Other issues such as the respondent's alleged refusal to challenge Anglian Water for invoicing at a higher rate than that published, and inaccuracy of water meters on site, were not raised as part of the applicant's original case but only in his witness statement filed and served on 27<sup>th</sup> August. It is too late to raise them now, even if this tribunal were to regard them as legitimate issues for determination.
3. Further, the tribunal is satisfied that by refusing an offer by the respondent to waive any outstanding sums in return for withdrawing his application Mr Brazil unreasonably required the respondent to incur additional and unnecessary legal costs. The amounts detailed in the summary costs schedule as the costs of and incidental to this hearing total £3 697.00, which the tribunal allows in full.

### **Background**

4. Mr Brazil has lived at the Mile Cross Gypsy/Travellers' Site in Norwich for many years. He is currently or was engaged in other relevant proceedings, viz
  - a. Before the County Court [E00NR895], in which Norfolk County Council has obtained a possession order in respect of the pitch occupied by him on the site; and
  - b. Before the Upper Tribunal (Lands Chamber), on appeal from the Land

Registration division of the First-tier Tribunal (Property Chamber) [REF/2017/1102], in which his application to be registered with freehold title to the site in place of the current registered proprietor of land held under Title No NK336687, Norwich City Council, was dismissed.

5. The decision by Judge Ann McAllister of the Land Registration division dated 25<sup>th</sup> February 2019 noted that he has difficulty in reading and writing, and that he had been assisted by various others, including in particular Mr Stuart Carruthers. As Mr Carruthers was the subject of a civil restraint order dated 26<sup>th</sup> April 2016 Judge Cook in an earlier decision in those same land registration proceedings made an order that neither Mr Carruthers nor his wife (against whom a similar order was made in April 2016) nor any member of his family be permitted to represent Mr Brazil as a McKenzie friend.
6. In this case the sheer volume of paperwork filed with the application confirmed that once again Mr Brazil, who in court addressed the tribunal confidently but without ever looking at a document, was in receipt of considerable assistance.
7. As explained in this tribunal's first set of directions issued on 1<sup>st</sup> May 2019, the applicant listed in his application various questions that he invited the tribunal to answer. They were, in summary :
  - a. An order/declaration identifying that Norfolk County Council should provide information under the Mobile Homes Act 1983 as amended when this is requested
  - b. An order/declaration identifying that it is unlawful for Norfolk County Council to "tap" electricity meters to prevent overcharging
  - c. An order/declaration that the Norfolk County Council should not be able to charge rent for unsafe homes
  - d. An order/declaration that the Norfolk County Council should not be able to overcharge for water.
8. However, he then sought determination of a further series of questions :
  - a. Whether, by reference to the Housing Act 2004, the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006, and the Housing and Planning Act 2016, if gypsy/travellers who have ceased to be nomadic but are technically homeless due to provision of unsafe living accommodation under the Mobile Homes Act 1983 as amended by a Local Authority are to be regarded as nomadic or non-nomadic due to a shortage of alternative accommodation
  - b. Whether he should be entitled to recover all money owed to him prior to the period of alleged termination for rent and water
  - c. Whether, by reference inter alia to the Equality Act 2010, the occupiers are to be treated as trespassers on the land or in adverse possession
  - d. Whether Norfolk County Council through its solicitor has acted in a discriminatory manner towards him, as a result of which he is owed money, and
  - e. Whether the state (City of Norwich Council and Norfolk County Council) can claim that they should not be made liable for their acts of direct discrimination on costs grounds i.e. the cost of putting right their acts would bankrupt the councils.

9. Although not specifically raised in the application form, the written summary submitted by the applicant and a large bundle of documents accompanying it refer to contracts of employment and contracts to provide services. There is also an allegation of procurement fraud by Norfolk County Council staff.
10. By order dated 1<sup>st</sup> May 2019 this tribunal indicated that most of the issues raised had either been dealt with already in other courts or tribunals or were outwith the jurisdiction of this tribunal, and invited the applicant to show cause why much of his application should not be struck out under rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
11. At a hearing on Friday 21<sup>st</sup> June 2019 the tribunal ordered that :
  1. All aspects of the application as identified in paragraphs 10–14 inclusive of the directions order dated 1<sup>st</sup> May 2019 shall be and hereby are struck out under rule 9(2) as being outwith the tribunal's jurisdiction.
  2. The issue relating to electricity, mentioned in paragraph 19 of the above order, has no reasonable prospect of success and is hereby struck out under rule 9(3)(e).
  3. The issue, touched upon at page 4 of the application form (at (c)), at the foot of page 7, and raised explicitly today, about fire safety assessments is struck out under rule 9(3)(d) as being frivolous or vexatious, as any findings will be of no benefit to the applicant, who has already been ordered by the County Court to deliver up vacant possession of the pitch occupied by him.
  4. The only issue remaining for consideration by the tribunal is the respondent's alleged non-compliance with the Water Resale Order 2006 and overcharging for water and sewage charges.
12. Directions for the trial of that single issue were then given.

### **Applicable law**

13. The supply of water by way of resale by the site owner/operator is governed by the Water Resale Order 2006, made by the Director General of Water Services pursuant to powers conferred on him by section 150 of the Water Industry Act 1991. Paragraph 6 provides different mechanisms for calculating the cost of water supplied to individual users (in this case the occupier of each pitch), depending on whether the supply to that user is metered [6(1)] or unmetered [6(2)]. Further, paragraph 8 allows for an administration charge on top :
  8. (1) In addition to the sum calculated in accordance with paragraph 6 of this Order, the charges which the Re-seller may recover from the Purchaser may include a fee in respect of the Re-seller's cost of billing and, if the water supply to the Purchaser's dwelling is metered, the cost of maintaining the meter where these costs are not recovered by other arrangement.
  - (2) The fee recoverable under sub-paragraph (1) (and by whatever means levied, charged or sought to be recovered) must not exceed 2.5 pence per day for each Purchaser to whose service sub-paragraph 6(1) applies and 1.5 pence per day for each Purchaser to whom sub-paragraph 6(2) applies.

14. Although Ofwat’s official guidance<sup>1</sup> refers to administration charges of “around £5 each year for those without a meter and £10 for those with a meter” the actual maximum payable for a metered supply is at most £9.15 – in a leap year (or £0.025 x 366).
15. Paragraph 9 is headed “Transparent charging” and sets out the information that the reseller must supply on request by the end customer to show how the charge has been calculated. Failure to provide this information has consequences, as provided for by paragraph 9(3)–(5), in the form of a reduced charge.
16. The applicant also sought to allege in his submissions for this hearing that the respondent local authority, Norfolk County Council, has failed to carry out a risk assessment whether there is a risk of supplying water that would constitute a potential danger to human health, contrary to regulation 6 of the Private Water Supplies (England) Regulations 2016<sup>2</sup>. However, the definition of a “private water supply” appears in the interpretation provisions in regulation 2, viz
 

*“private water supply” or “private supply of water” means a supply of water other than a supply provided directly by a water undertaker or water supply licensee, and which is comprised of all physical assets from the point of abstraction to the point of use, including associated pipes, fittings and tanks;...* *[my emphasis added]*

### **The hearing**

17. At the final hearing on 18<sup>th</sup> October 2019 the applicant represented himself, but Mr Carruthers was again present throughout, issuing hints and corrections from behind. As mentioned in paragraph 1 above, despite the order dated 21<sup>st</sup> June 2019 restricting the focus of the application on the single issue of miscalculation of water charges, Mr Brazil (or those supporting him) insisted on raising other issues. In response to the respondent serving upon him a recalculation of what it said he owed, with explanatory notes and copies of Anglian Water invoices, he responded with a 191 page sheaf of documents – which occupied much of the exhibit to a witness statement by Jo-Anne Yates (for the respondent) dated 29<sup>th</sup> August 2019.
18. Mr Brazil filed his own witness statement under cover of a letter dated 27<sup>th</sup> August, but at the hearing handed in a letter plus lengthy schedule purporting to show payments by him from as long ago as July 2004. These were designed to support his claim that in his role as site manager the respondent had deducted over £34 000 from his wages in respect of water charges, so even on the respondent’s new calculations he was still owed by it a very substantial sum.
19. As this schedule referred to a matter that the tribunal had already declined to hear both it and its supporting letter were put to one side as being irrelevant to the issue for determination (although that did not prevent the applicant from repeatedly trying to raise the issue of his £34 000 – this being an amount that the respondent wholly rejected).
20. Mr Brazil had nothing to say about the corrected figure for administration to which the respondent was entitled under the Water Resale Order, and for the

<sup>1</sup> *A guide to water resale : Information for household customers* (Ofwat, November 2009)

<sup>2</sup> SI 2016/618

reduced figure for sewerage charges – the respondent having applied the correct percentage to reflect the discount actually allowed for that by Anglian Water. He did though keep referring to this as fraud on the part of Norfolk County Council, and an admission by it that its assurance to the County Court that the figures were correct was wrong. He insisted that what he wanted from the tribunal was a “declaration” that he had been overcharged. He was not interested in the debt being waived by the respondent – which is why he continued to pursue his application. He wanted a declaration, which he believed would benefit the other residents including members of his family. They are not parties to this case.

21. Amongst the documents produced by Mr Brazil were adjusted (i.e. reduced) bills for other residents, which Mr Moyes referred to as confirmation that the errors identified were being corrected for all concerned, not just for Mr Brazil.
22. However, Mr Brazil was able to draw the tribunal’s attention to an Anglian Water Wholesale Charges Schedule for the year 2018-19 [at Yates page 79]. Under the Streamline Green tariff for non-household measured water charges the fixed charge is listed as £7.00 and the volumetric charge per m<sup>3</sup> as 135.42p. Compare this with the Anglian Water bill to the respondent dated 4<sup>th</sup> July 2019 (the latest available, produced by those instructing Mr Moyes at the hearing), which charges on the basis of a volumetric charge of £1.4159 per m<sup>3</sup>. Rounded up, this is 7 pence more per cubic metre than the published tariff. He accused Norfolk County Council of failing to recover moneys overcharged by Anglian Water and due to residents. There was no denying that the respondent had passed on what it had been charged. The accusation was that it showed no interest in pursuing Anglian Water, as it passed on the entire cost to residents and so was not directly out of pocket.

### **Discussion and findings**

23. Further to the second set of directions issued after the hearing on 21<sup>st</sup> June 2019 the respondent had rightly concentrated on correcting its miscalculations in the bills rendered and applied a reduced administration charge. The net result was a saving for Mr Brazil of over £700. To that extent his application had merit, but he then wasted his opportunity – and spurned an offer to waive the entire debt – by unnecessarily raising a number of issues which the tribunal suspects owe rather more to his supporters than to matters thought of by himself.
24. The billing by Anglian Water at a volumetric charge some 7 pence per m<sup>3</sup> higher than in its published list of charges is a point worth taking up by the respondent, but as it is merely passing on to pitch occupiers what it has itself been billed the best that occupiers can hope for is an eventual rebate when this issue is resolved. As the point appears to have merit the tribunal trusts that the council will query this apparent overcharging with the relevant department at Anglian Water.
25. However, this allegation, and another that the water meters on site record usage inaccurately, were not raised as part of the applicant’s original case – only in his witness statement filed and served on 27<sup>th</sup> August 2019. It is too late now to raise them, even if legitimate issues for determination.
26. Whether the water supply within the site is private or not, and regulation 2 of the Private Water Supplies (England) Regulations 2016 confirms that it is not, that is an issue between the applicant and the respondent in the latter’s capacity as

local authority; it is not a question arising under the Mobile Homes Act or agreement to which it applies, and its determination is therefore outwith this tribunal's jurisdiction.

27. On the sole issue for determination, therefore, the tribunal is satisfied that the applicant is indebted to the respondent for unpaid water charges for the period 2015 to date in the sum of £1 007.29. Whether the respondent chooses to waive that debt is a matter for it to decide.

**Costs**

28. By letter dated 28<sup>th</sup> August 2019 the respondent wrote to the applicant, advising him that it had taken the decision to write off his outstanding balance and urging him to withdraw what was left of his application so that further costs could be avoided. Should he fail to do so then a costs application would follow, on the grounds that he was thereby guilty of unreasonable conduct, under rule 13(1)(b).
29. The tribunal is satisfied that in the above circumstances the applicant, against whom a possession order has been made (but apparently not yet enforced), had nothing financially to gain by continuing to insist on proceeding to a hearing of his application for determination of the amount owed by him for unpaid water charges in the financial years 21015/16 to 2018/19.
30. Pursuant to rule 13(1)(b) the tribunal agrees with Mr Moyes' submission that the continued pursuit of the application to a hearing was unreasonable and resulted only in an unnecessary increase in the respondent council's legal costs. Mr Brazil wanted the council to pay his costs instead, without offering any reason why, but had nothing to say about the hourly rate charged (which is a modest in-house rate of £90 per hour instead of the hourly rate for solicitors in private practice in this region which would ordinarily be recoverable)<sup>3</sup>. While the tribunal initially queried the fee for attendance of Mr Moyes' instructing solicitor – which would not ordinarily be recoverable in a Fast Track case in the County Court – it is prepared to accept that he has an in-depth knowledge of the (so far) three cases involving Mr Brazil and this site and, were any offers to be made or considered, had authority to bind the council. In the circumstances the tribunal is prepared to allow the respondent's costs in the amount sought.

Dated 28<sup>th</sup> October 2019

Graham Sinclair  
First-tier Tribunal Judge

<sup>3</sup> See *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122 (LC), following *Re Eastwood (deceased)* [1975] Ch 112 (CA)