FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00LC/PHC/2020/0005
Property	**:**	Peninsula Crescent, Port Werburgh Park, Vicarage Lane, Hoo Street, Werburgh, Kent ME3 9TW
Applicants	**:**	(1) Mr and Mrs King - 2 (2) Mr and Mrs Dack – 3 (3) Mr and Mrs Poad – 5 (4) Mr and Mrs Daws - 7 (5) Mr and Mrs Tebbutt – 8 (6) Mr and Mrs Martin - 9 (7) Mr and Mrs Alexander – 13 (8) Mr and Mrs Dunkley – 14 (9) Mr and Mrs Johnson - 16 (10) Mr Merry and Mrs Quinn-Merry – 18 (11) Ms Brierly - 19 (12) Mr Moore - 27 (13) Mr and Mrs Gurney - 28
Representative	**:**	Mr I M Dunkley
Respondent	**:**	Residential Marine Limited
Representatives	**:**	Mrs Osler (Counsel) Ms Apps (Solicitor Apps Legal)
Type of Application	**:**	Determination of question under section 4 of the Mobile Homes Act 1983 (the Act)
Tribunal Members	**:**	Judge C A Rai Mr M Woodrow MRICS Chartered Surveyor
Date and venue of Hearing	**:**	15 December 2020 Video Proceedings (CVP)
Date of Decision	**:**	31st March 2021

DECISION

Background

1. Peninsula Crescent is part of an expansive mixed- use site within the Port Werburgh Marina, (the Site). The Respondent described the Site as comprising a wharf, pontoons on which there are 250 – 270 residential and leisure moorings, boats and equipment on a hardstanding, with associated equipment in storage, 70 container units, a site office and Peninsula Crescent. A further 5 park homes are located on the east of the Site.

2. Peninsula Crescent comprises 25 park homes, 18 of which are owner occupied. The other 7 park homes belong to the Respondent. The pitches were developed during 2015/2016 and the first park home in Peninsula Crescent was occupied in 2016. Each home has a metered supply of water and electricity.

3. The Applicants, who are the owners and occupiers of 13 homes within Peninsula Crescent, applied to the Tribunal for the determination of a question arising under section 4 of the Mobile Homes Act 1983 or an agreement to which it applies.

4. The Respondent is the freehold owner of the site. Mr and Mrs Swann are directors of the Respondent company and the managers of the Site and reside within the Marina.

5. The Application was dated 26 June 2020 and raised five questions about:-
    a. The amount of the current supply charges for water,
    b. Possible repayment of overpayments for water and sewerage,
    c. An explanation of the current calculation of electricity charges,
    d. Possible contravention of the Site Licence, and
    e. Alleged interference with the occupiers right to quiet enjoyment.

6. Directions dated 29 July 2020 were issued by Judge D. R Witney. The Tribunal scheduled a hearing for 15 December 2020.

7. The parties submitted information in compliance with the Directions but on the day before the Hearing, the Respondent applied to adjourn the Hearing. The Tribunal rejected that application.

8. This was a remote Hearing not objected to by the parties. The form of remote hearing was a CVP Video Hearing (V). A face to face hearing was not held as it was not practicable. The documents that we were referred to at the Hearing were in six bundles comprising:-
    a. Index to Applicants Document Bundle (3 pages) **Index,**
    b. Applicant Document Bundle (283 pages) **HB,**
    c. Applicant's response to Respondents Case (10 pages) **A1,**
    d. Residential Marine Supplementary Bundle (89 pages) **R1,**
    e. Video evidence **V,** and
    f. Respondent's counsel Skeleton Argument (13 pages) **R2.**

9. Following the Hearing, the parties submitted three more bundles of documents comprising:-
    a. Applicants' submission relating to the electricity charges (57 pages) **A2,**
    b. Respondent's Response to Applicants statement about electricity charges (6 pages) **R3,** and
    c. Final Applicants' submission in respect of electricity charges 26.02.21 (3 pages) **A3.**

The Hearing

10. The Applicants were represented by Mr Dunkley, one of the Applicants. The Respondent was represented by its Counsel, Mrs Osler.

11. At the beginning of the Hearing, Mrs Osler renewed the Respondent's application for an adjournment of the Hearing, (see paragraph 7 above). She said that whilst she was grateful for the swift response from the Tribunal to her previous application and its offer to consider further written representations, she believed that the decision not to adjourn might expose her client to procedural prejudice. She told the Tribunal that Mr Swann, the lead director for the Respondent, was currently too unwell to be able to give her instructions.

12. The Judge confirmed that the Tribunal had noted, and would take account of, Mrs Osler's submissions and endeavour to accommodate her to mitigate for her client's incapacity and the limitations which that imposed upon her ability to present the Respondent's case.

13. Mrs Osler said she considered that the questions relating to all the "economic issues" raised in the Application could be settled by the Respondent. Three of the five issues identified in the Application had already been agreed. Mr Dunkley confirmed this.

14. The Tribunal agreed to a short adjournment of the Hearing to enable Mr Dunkley and Mrs Osler to discuss the outstanding issues and endeavour to reach further agreement. It explained to Mr Dunkley that it had no jurisdiction to make orders regulating the frequency of and the interludes between the Respondent issuing bills for utilities.

15. Subsequently the parties informed the Tribunal that they had reached agreement on all bar one of the economic issues.

16. The Tribunal referred to the fourth question asked by the Applicants and explained that it had no jurisdiction under section 4 of the Act to deal with an application relating to alleged breaches of the Site Licence conditions or issues associated with those conditions. Mr Dunkley conceded that the issue he had raised regarding "business use" of the units related to site rules and should not have been included within the Application and agreed to withdraw that part of the Application.

17. The Tribunal referred to the Respondent's written submissions and said that it has no jurisdiction to consider the alleged breach of the covenant for quiet enjoyment under section 4 of the Act and indicated to the Applicants that it was minded to accept those submissions but it would hear and consider oral submissions from Mr Dunkley before finally determining that issue.

18. Mr Dunkley said that he considered that the Respondent's threat to impose additional administrative charges would be an infringement of the Applicants right to quiet enjoyment of their homes.

19. Whilst he acknowledged that the protected Site does not include the boatyard and the access, he stated that the planning permission for the Site includes the Applicants' use of the access to the Site. Although he accepted that the Respondent both needed and wished to keep the Site secure, and so is entitled to control access to and from the Site, he does not accept that it should be able to charge Applicants for facilitating access to their invitees.

20. He admitted that the only evidence in relation to any restriction of access to visitors related to an alleged incident relating to Mr Dack's son in law. (Mr and Mrs Dack are owners and occupiers of 3 Peninsula Crescent). He suggested that the Site security would still not allow him access to the Site and submitted that this was discriminatory in relation to Mr and Mrs Dack. He also bemoaned that the Respondent controls and has restricted the provision of key fobs and is reluctant to issue additional gate keys to third parties.

21. Mrs Osler did not respond to the Applicants' submissions during the Hearing having stated that she was content to rely upon the Respondent's written submissions and those referred to in her Skeleton Argument which stated that the Tribunal has no jurisdiction under section 4 of the Act to consider the Applicant's arguments.

22. In those written submissions she had said that whilst the Respondent did not dispute that the Applicant was entitled to quite enjoyment, the issues identified by them as breaching that right did not amount to breach of that covenant and that the Tribunal had no jurisdiction to consider such application, whether it had merit or not, under section 4.

23. The only remaining unresolved issue related to the Respondent's calculation of the electricity charges. It was agreed that the parties would continue to try to reach agreement about the appropriate calculation and both confirmed that it might be possible for them to agree without the intervention of the Tribunal.

24. The parties agreed to notify the Tribunal on or before 15 January 2021 if they reached an agreement. If not, they would agree timescales for the exchange of further written representations and thereafter the Tribunal will issue a determination.

25. The Tribunal issued Further Directions on 15 December 2020 which were subsequently amended. Those Directions provided that the Tribunal would issue the Decision within four weeks of it receiving the further submissions.

26. It received the additional documents referred to in paragraph 9 above, which have been considered and taken into account prior to it making this decision.

Post Hearing Submissions

27. The Respondent's calculation of the electricity costs is set out in a table [R1 page 34]. This showed a unit price of 0.1850 pence plus VAT totalling 0.1943 pence. The Applicants stated that this was a revision from the originally estimated unit price of 20 pence per unit. That is the price shown on all the individual electricity accounts for 14 Peninsula Crescent which are in the bundle [HB pages 22 – 44].

28. The Applicants submitted that they do not understand the calculation and that that the electricity charges invoiced to them should calculated on the average unit rate for each billing period plus the appropriate share of a proportion of the standing charge and the capacity charge. They submitted that they are exempt from paying any of the Climate Change Levy (CCL) because their supply is domestic. They also submitted that they are entitled to benefit from the discount received by the Respondent because that discount reduces the amount that the Respondent pays its supplier. The Respondent is not entitled to charge them more than it pays because of the Ofgem Guidance for resellers of gas and electricity updated 14 October 2005 (Ofgem Guidance) [A2 pages 4 – 14]. A reseller of electricity cannot make a profit.

29. The Applicants submitted that the Ofgem Guidance prevents the Respondent recharging the any CCL because as a domestic consumer they pay the reduced rate of VAT and they are exempt from payment of the levy. The Applicants referred to paragraph 2.8 of the Excise Notice and which they submitted stated that CCL can only be charged to customers who pay the full rate of VAT [A2 page 24].

30. The Respondents disagreed. They stated that the Ofgem Guidance does not make it clear that the CCL may only be charged to customers who pay the full rate VAT. Furthermore, the Excise Notice to which the Applicants refer, makes it more unclear not less.

31. The Applicants should pay a share of the CCL because it has been applied to all the invoiced charges and is paid by the Respondent to its supplier. The Respondents submitted that if the appropriate share of the CCL which it pays is not passed on to the Applicants, it will be financially disadvantaged.

32. The Respondent submitted that the paragraph 2.8 actually applies to direct supplies to customers, not to supplies through intermediary or resellers and that paragraph 2.11 is more relevant in that it refers to an intermediary and the example of a landlord and tenant stating that if an intermediary wants to be excluded from the main rate of CCL, an appropriate declaration must be made [A2 page 24].

33. Both parties agreed that the correct VAT rate applicable to the Applicants' supply is 5%.

34. The Respondent disagreed that the Applicants should only pay the average of the three rates for all their electricity. The Respondent submitted that the bill illustrates that more than three quarters of the electricity consumed during the billing period has been used during the day. It says that Mr Swann contacted Ofgem for further guidance to assess how the correct price could be more accurately calculated but that no guidance is available. It is not possible to provide certainty in pricing the electricity when there is no individual record as to when electricity has been used.

35. The Ofgem Guidance acknowledges that electricity is sold for a variety of prices and states that a reseller should use reasonable endeavours to estimate the applicable unit price and must give the purchaser information about how the price is calculated if this is requested. The Respondent also referred the Tribunal to the fact that there is significant case law interpreting the meaning of the phrase "reasonable endeavours" used in the Ofgem Guidance.

36. It submits that it has used reasonable endeavours to calculate the price per unit and applied a small discount to reflect some night use. It also submits that the charges for day-time electricity are three times more than for night-time use. It suggested that most of the electricity used by the Applicants will have been used during the day [R3 page 4].

The Law

37. Section 4(1) of the Act states that the court shall have jurisdiction to determine any question arising under this Act or any agreement to which it applies, and to entertain any proceedings brought under this Act or any such Agreement. The Tribunal has jurisdiction to determine this subject to subsections (2) to (6). The Tribunal therefore has jurisdiction to determine an appropriate method of calculating the electricity charges.

38. Section 231A of the Housing Act 2004 confers a general power on the Tribunal when exercising jurisdiction under the Act to give such directions as the Tribunal considers necessary for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them. These include directions regarding the payment of money by one party to the proceedings to another by way of compensation damages or otherwise.

Decision and Reasons

Breach of the covenant for quiet enjoyment

39. The Tribunal determines that it does not have jurisdiction to consider a breach of the covenant for quiet enjoyment under section 4 of the Act. It accepts the Respondent's submissions that the evidence on which the Applicants have relied to demonstrate breach of this covenant do not assist it in establishing a breach of that covenant.

40. The Tribunal have not decided whether the Applicant's evidence is sufficient to demonstrate if the Respondent have either discriminated between occupiers regarding the provision of key fobs or excluded persons related to Mr and Mrs Dack from gaining access to the Site. It is unnecessary to do so as the Tribunal has no jurisdiction to deal with a breach of the covenant as part of Section 4 Application.

Calculation of the electricity charges

41. The electricity supply to the Site is provided by British Gas. That supply is primarily commercial. There are 18 owner occupied park homes within Peninsula Crescent and the Applicants comprise 14 of those owners. All homes within Peninsula Crescent have mains electricity which is resupplied by the Respondent and individual consumption is metered and invoiced every month. The Respondent has hitherto issued owner occupiers with regular bills in arrears based on its calculation of the unit charge. The dispute between the parties relates to the method of calculation, the amount of that calculation and the constituent elements of other charges which make up the bills.

42. It is agreed that the Respondent is a reseller of electricity and is subject to Ofgem Regulations and the Ofgem decision of January 2002. Both parties agree that the Respondent, as a reseller of domestic electricity, is not permitted to make a profit from that resale.

43. The only evidence disclosed in the bundles relating to the invoiced cost of electricity is in a single electricity bill from British Gas, addressed to the Respondent dated 3 October 2019. That bill is for the period 1 – 30 September 2019. [HB pages 19 – 21]. It shows the number of units of electricity consumed during the billing period, the cost per unit, additional charges (capacity charge), standing charges and the climate change levy as well as recording the discount applied because the Respondent pays its invoices by direct debit. VAT at 20% has been added to the total charge.

44. The Applicants submitted that:-
    a. the charge for the Climate Change Levy (CCL) cannot be passed to them.
    b. VAT is chargeable on its proportion of the charges at 5%,
    c. an allowance should be made to take account of the lower weekend and night charge rates, and

d. the benefit of the discount should be passed on to the Applicants.

45. The electricity bill shows three different charging rates for electricity. Commercial supplies are generally sold on the assumption that the bulk of the electricity is used during the day. The bill reflects this and shows a weekday charge of 17.44 pence per unit from 0700 until 2400 Monday to Friday, a weekend charge of 13.17 pence per unit between 0700 and 2400 hours on Saturday and Sunday and a night charge of 11.55 pence per unit between 0000 to 0700.

46. The Applicants' individual meters do not record the times electricity is used so cannot accurately measure the actual cost of the electricity used by them.

47. All the calculations and submissions by the parties relate to the invoice dated 3 October 2019 [HB page 19 – 21] which records the unit charges for electricity during the billing period to which it relates.

48. Using the information contained in that invoice, the Respondent has calculated that it should charge the Applicants 0.1850 pence per unit of metred electricity consumed [R1 page 34] plus VAT. It has calculated an initial unit rate of 0.1744 pence per unit to which it has added 0.0144 pence per unit for the Capacity Charge Standing charge and CCL. The sum of these rates amounts to the charge of 0.1850 pence per unit. The Respondent has not explained how it calculated the initial rate of 0.1744 pence per unit.

49. The Applicants submitted that the only way for the Respondent to calculate the unit rate is by dividing the total charge for the units of electricity consumed, which in September 2019, was £2,163.03, by the number of units used , 14,238.70 which results in a unit price of 0.1510 pence. That is effectively an average charge per unit for the billing period.

50. The Applicants' calculation takes no account of the fact that, based on the single bill disclosed, 77% of the electricity was consumed between the hours of 0700 – 2400 at the higher charging rates of 17.44 pence and 13.17 pence per unit. These are weekday and weekend rates not "daytime" rates.

51. The Ofgem Guidance acknowledges that the consumers of "resold" electricity will generally pay in arrears and provides that it is appropriate for resellers to estimate electricity charges and make retrospective adjustments once actual costs are identified. These adjustments can be made as infrequently as annually. It also identifies that it will not always be possible for operators of a mixed- use site to accurately calculate the cost of electricity resold to domestic consumers.

52. The Tribunal accepts that the calculation of the electricity recharge will be difficult for a mixed- use site such as this Site. It also finds that it is reasonable to assume that much of the night and weekend use of electricity may be consumed by occupiers of the moorings.

53. The Applicants have submitted that the Respondent cannot pass on the CCL charge, notwithstanding that the electricity invoice show that this cost has been incurred. The Applicant relies upon Excise Notice CCL1/3 Climate Change Levy (the "Excise Notice") – reliefs and special treatments for taxable commodities [A2 page 24] as authority for its contention that the CCL cannot be charged to it because the Applicants are domestic consumers.

54. The Applicants have also relied upon the Ofgem Guidance to support its submissions. The Guidance states that the examples in its guidance are shown as being VAT inclusive and that it is Ofgem's understanding that no matter what the rate of VAT paid by the reseller, he or she may only include the lower rate (currently 5%) in the recharge. The Tribunal has noted that element of the Guidance. Ofgem state:- "We also understand that the liability to pay CCL is influenced by the VAT position. Even if the reseller has to pay CCL, he cannot pass it on to purchasers who only pay lower rate VAT." However, that statement is followed by a concession from Ofgem that the Guidance is **not definitive** (Tribunal's emphasis), because it then refers to the VAT National Advice Service.

55. The Tribunal has therefore accepted there is no definitive guidance that the CCL cannot be passed on to the Applicants. It has been provided with a single electricity bill and monthly invoices in respect of the metered electricity units used by the occupier of one of the 18 owner occupied units. The average monthly number of units used by 14 Peninsula Crescent over the period of the 12 months between 14 April 2019 and 11 April 2020 for which copy invoices have been disclosed in the bundles [HB pages 22 – 35], is equivalent to 0.03% of the units consumed in September 2019. The additional cost added to the unit charge is 0.0144 per unit which based on the average consumption of 369 units a month (the total units invoiced to 14 Peninsula Crescent between 14 April 2019 and 11 April 2020, divided by 13), (13 invoices) is £1.71 per month.

56. The Tribunal determines that it is not reasonable for Respondent to recharge electricity to the Applicants using the average unit rate for each billing period. Averaging the rate does not take account of the mixed use of the Site. Furthermore, if the Applicants are correct, the rate would have to be recalculated in every billing period making it impossible to charge a consistent rate for electricity which cannot be reasonable. The electricity bill disclosed [HB page 19 – 21] shows that 51% of the electricity is consumed charged at the weekday rates, 29% is charged at the night rates and 20% is charged at weekend rates. However, no evidence has been provided by either party to demonstrate whether the split between the three rates itemised on that bill is typical of the split between the charging rates on other monthly bills.

57. The Tribunal finds that the Respondent should explain how it has calculated both the rate per unit of electricity and any allowance made either for a night rate or weekend rate, illustrated with such evidence as it may have, of consumption on other parts of the Site. For example, it knows the number of metred units consumed each month by the Applicants, all of whom have metred supplies. Using that information

and averaging out the consumption, it may be possible to identify the cause of fluctuations reflected in the monthly units consumed. Rather than apply a discount for night rates. it might choose to discount the rate to reflect weekday and weekend use.

58. The Ofgem Guidance states that the maximum price at which electricity may be resold is the same price as that paid by the person reselling it. It also suggests that the methodology on which resale prices are calculated must be soundly based and transparent. In addition, a landlord must provide information to the tenant as to how the resale price has been calculated which should include information as to how the landlord has forecast the total purchase price and how the landlord has forecast tenants' consumption. In this case the Respondent is not charging in advance and the Applicants' consumption is metered. The Respondent is, however, effectively forecasting that the majority of electricity consumed at the weekend and night rates is likely to have been consumed by other occupiers of the Site. It therefore must be transparent in explaining how it has calculated the rate charged and how it has calculated and applied the discounted rate for night use [A2 page 34].

59. If it has evidence that electricity usage is disproportionately consumed on other parts of the Site at weekends this should be disclosed. It will not be possible for the Respondent to produce a perfectly accurate calculation.

60. If the Applicants want more transparency and to pay the accurate amount for the electricity they consume, they can achieve this by paying for the installation of an individually metered electricity supply. The Ofgem Guidance states "….the reseller must use reasonable endeavours to make an estimate of the applicable unit price and must give the purchaser information about the price(s) upon which this calculation is based, if asked to do so." [A3 page 3]. This is what the Respondent needs to demonstrate.

61. The Tribunal determines that it is permissible for the Respondent to recharge a share of the CCL. The Ofgem Guidance is not definitive and the Applicants' reference to paragraph 2.8 of the Excise Notice is both out of context and misleading. That notice relates to CCL reliefs and special treatments for taxable commodities [A2 page 16]. The heading explains that it also refers to the procedures that must be followed in order to claim the reliefs. It states that the notice is for energy consumers in the business and public sectors that may be liable to the main rates of CCL and for owners of generators and operators of combined heat and power stations who are deemed to make a taxable self-supply that may be liable to the carbon price floor rates of CCL. It was clearly not intended to relate to the Applicants who purchase electricity from the Respondent as a reseller.

62. Section 2 of the Excise Notice refers to supplies for domestic use and for the non-business use of charities. Paragraph 2.8 simply states and where a customer has mixed use and the domestic use or charity use is 60% of the total use, the whole supply is not subject to the main rate of CCL. It is quite clearly not applicable to the Site. The Respondent referred to paragraph 2.11 but that simply clarifies that where supplies are made through an intermediary, the relief is dependent upon the use of the supply, not the status of the intermediary. The Excise Notice indicates that, in some circumstances where electricity is supplied to a mixed- use site, a reseller may be entitled to certify that the full rate of CCL should not apply to the proportion of the electricity which is resold to domestic consumers. To claim the relief, the consumer (Respondent) would have to complete two forms and retain the liability to make up any disallowed relief. It concludes that the "ideal solution" is a dedicated supply.

63. The overriding objective of the Rules (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is to enable the Tribunal to deal with cases fairly and justly. Dealing with a case fairly and justly includes dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties and the Tribunal (Rule 3).

64. If the Applicants wish to avoid paying a share of the CCL, they have the option of obtaining individual supplies for electricity although it is acknowledged that they would have to pay any costs associated with obtaining that supply.

65. The electricity bill shows that the Respondent receives a discount from its supplier for paying for the electricity by direct debit. The discount on the September invoice was £152.71 equivalent to 7.06% of the consumption charge.

66. The Applicants submitted that the Respondent must pass on the discount it receives because it cannot resell the electricity for more than it pays for it. The Respondent does not agree. It submitted that the recharge for electricity is based on the charges from its supplier. It only receives the discount because the costs of the electricity are recovered by the supplier directly from its bank account as soon as the supplier calculates the sum due. The Applicants pay their invoice monthly in arrears so the Respondent has neither invoiced the Applicants nor received any payment from them at the time it pays for the electricity.

67. The Tribunal have concluded that the supplier has only applied a discount to the Respondent's electricity bill because the Respondent pays for its electricity by direct debit. That discount does not change the unit cost of the electricity. That unit costs stated in the electricity bill is not disputed by the Respondent.

68. The Respondent has no legal obligation to pass on the benefit of the discount received from its supplier to the Applicants. The discount the Respondent receives from its supplier is a discount for prompt payment. If it paid its invoices following receipt of the bill it would not receive the discount, but the price of the unit costs of its electricity would remain

unchanged. It would be inequitable for the Applicants, who pay for the electricity in arrears, to benefit from the discount received by the Respondent. Therefore, the Tribunal determines that the Respondent is not obliged to pass on the benefit of the discount it received when calculating the unit cost of electricity.

Generally

69. In their further submission the Applicants stated that the method they used to calculate the average charging rate for electricity was in accordance with the Ofgem Guidance and not "a matter for negotiation" [A2 page 3]. They continued, "unless the Respondent is prepared to agree to these figures, we will require the matter to be referred to the Tribunal for arbitration". The Further Direction issued following the Hearing provided that the Tribunal would determine the matter if it could not be agreed. Mr Dunkley sent an email dated 8 January 2021 to the Respondent's representative which repeated that they would not negotiate the price per unit ending:- "Please note we also reserve the right to refer this matter to the County Court on an individual basis if necessary" [R3 page 7].

70. The Respondent was unimpressed with the threat contained in that email and suggested that implementation might well amount to an abuse of process [R3 page 2].

71. The Applicants applied to the Tribunal for a determination under section 4 of the Act. It may well be considered an abuse of process by the County Court should the Applicants later seek to apply to the County Court. Both parties agreed to the Tribunal Directions dated 20 January 2021 that they would try to reach agreement about the cost of the electricity and to the Tribunal determining how the charge would be calculated if they could not agree.

72. The threat enunciated by the Applicants was both unnecessary and unhelpful within the context of the proceedings at that stage. The Tribunal have recorded this to assist the County Court should the Applicants later make an application to it. Although the Applicants subsequently apologised for any infringement of the legal process in their Final Submission [A3 page 1], their comments demonstrated their failure to understand that following the Application, the Respondent has engaged with them and was continuing to do so. It was entirely inappropriate for the Applicants to give the Respondent an ultimatum based only on their own interpretation of the Ofgem Guidance.

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.