S A and V Picken
54 Lenchford Meadow Park
Shrawley
Worcester
WR6 6TB

To: Anouska Musson, Tozers LLP - Solicitor to Park Owner, Mary Bendall

From: Stuart and Valerie Picken

27th November 2022

Reply to 14th November 2022 'Notice of Breach' from Tozers LLP on behalf of Mary Bendall
Also, see Attachments 1 to 5 as an Integral Part of our Response.

Dear Anouska Musson,

In your letter of 14th November 2022 your client is insincere in their requirement for evidence of documentation since clause 4.2 did not apply when we signed our agreement and does not form part of our agreement while we continue to pay council tax at 54 Lenchford Meadow Park.

Your client, client's son, John Bendall, and park consultant Ben Caplan are deliberately, harassing and threatening us for financial gain and our key issue is that even if we do what your client is asking Ben Caplan has told us we will still be evicted.

Your client has already sent us two breach notifications this year one a breach *'capable'* of remedy the second a breach notice *'incapable'* of remedy both of which were sent at the same time in the same email on 14th April 2022. We replied to both of these breach notices on 15th April 2022. However, your client has failed to reply to our letter of 15th April 2022. See attachments 1, 2 and 3.

Ben Caplan told us that the licence agreement is weighted heavily in favour of the park owner who should act with integrity. However, your client's son is not acting with integrity since he is confused and cannot clearly remember what we agreed in September 2009 when we purchased our lodge. We agreed, *'we would be on holiday for eleven months at Lenchford Meadow and then go away on holiday for a month for some winter sun.'* We purchased a holiday lifestyle that John Bendall agreed to and that is legally binding. We explained this to your client and client's son in our letters of 4th December 2020 and 5th December 2020. See attachments 4 and 5.

Your client's strategy is similar to that of many other park owners. Since the industry is very poorly regulated park owners and their representatives can make promises at the point of sale receive 15% commission +vat and after a few years if customers have not moved on when park owners believe they should have park owners and their representatives can conveniently forget what was agreed at the point of sale say that there is nothing in writing and then they can bully, harass and threaten holiday home owners to get them to move on to make another 15% commission +vat on the resale.

Ben Caplan said we are quite right about how things work as a holiday park only survives if people leave. Ben Caplan called this *'churn'* and said *"churn is a good thing."*

This poorly regulated industry is totally bizarre as it is the only industry where business owners and their representatives can pick and choose when and which customers to treat very badly until these targeted customers get so fed up with their treatment they sell up and move on usually at a large loss. Park owners can increase revenue and profitability by this treatment called *'churn'* as when these targeted customers sell up and leave park owners receive another 15% +vat from the resale.

The vast majority of customers do not complain to their local councils or resist the bullying, harassment and threats by park owners since as Ben Caplan said '*licence agreements are weighted heavily in favour of park owners'* and park owners also control the flow of funds of resales. Since many holiday home owners may have their life savings at risk they keep their heads below the parapet for as long as possible but roll over and move on when the bullying, harassment and threats become too much to cope with.

When we purchased our Omar Kingfisher Lodge in September 2009 your client received £14,400, 15% commission +vat. We are fully aware your client is entitled to this commission. However, your client and representatives are <u>not</u> entitled to bully, harass and threaten us to move us off the park in order to obtain more commission by *'churn'* which is what happened to three of four couples who received your similar letter of 17th March 2021 and we are the only couple remaining today.

Your letter is ongoing harassment from your client since your letter of 14th November 2022 is very similar to your letter of 17th March 2021. We responded to that letter on 31st March 2021 stating, *Thank you for your letter of 17 March 2021. Unfortunately, we are both very confused by the whole situation and we sincerely wish to work with your client and client's son to amicably resolve this situation. We wrote to your client and client's son on 4th December 2020 outlining our position. See attached letter. Your client's son's reply to that letter is shown below. We have replied to your client's son's reply with another letter to your client and client's son dated 5th December 2020, see attached. We are still awaiting a reply from your client or client's son to that letter.*

As far as we are aware we are not in breach of the terms of the Park's planning permission, site licence or the terms of our Licence Agreement.

In addition, we have been advised that your client is time barred from taking any action regarding the occupation/use of our holiday lodge since our original agreement with your client's son was in September 2009 and since it was based on simple contract the agreement is covered by the 'Limitation Act 1980, Chapter 58, Time Limits, page 3, section 5, Time Limit for Actions founded on simple contract. An action founded on simple contract shall not be brought after the expiration of six years on which the cause of the action accrued.'

On 28th April 2021 you replied, *'Dear Sir and Madam, Thank you for your emails of the 31 March and 11 April. We apologise for the delay in responding to you. We are taking our client's instructions and will respond to your emails in full in due course.'*

On 5th July 2021 your colleague Neil Darby wrote to us saying we had not responded to your letter of 17th March 2021 when clearly we had.

On 6th July 2021 we responded to Neil Darby, *'Dear Mr Darby, We are totally perplexed by your letter of 5th July 2021 since you state, page 2, paragraph 6, "To date, you have not provided any response to this request", when clearly we have responded to this request, see our email below, 31st March 2021 to your colleague Anouska Musson and two letters we sent to your client and client's son dated 4th December 2020, and 5th December 2020, both attached, and sent to Anouska Musson on 31st March 2021.*

We find your latest request unreasonable since your client has failed to respond to our letter of 5th December 2020 and we find your delay of over three months in responding to our email of 31st March 2021 also unreasonable.

We have also confirmed that the Limitation Act 1980, Chapter 58, Time Limits, page 3, section 5, is still valid and that your client is time-barred from taking any legal action regarding the occupation/use of our holiday lodge since our original agreement with your client's son was in September 2009. However, since we still wish to work with your client and client's son to amicably resolve this dispute we suggest some form of arbitration as identified in section 16.1.1. of our licence agreement.' We had no response from Neil Darby to this email.

Definition of Harassment - the legal guidance addresses behaviour which is repeated and unwanted by the victim. A prosecution under section 2 or 4 requires proof of harassment. In addition, there must be evidence to prove the conduct was targeted at an individual, was calculated to alarm or cause him/her distress, and was oppressive and unreasonable.

Since Tozers LLP failed to respond to our email of 6th July 2021 your client failed to respond to our letter of 15th April 2022 and since March 2021 there have been six occurrences of deliberately intentionally delayed or deliberately intentionally delayed indefinitely (not passed on at all, returned or disposed of) mail when all this mail was clearly marked and clearly important including; a cancer screening letter, a cancer screening kit, a census letter and three letters from Harriett Baldwin MP it would be reasonable for most people to have a view that your client's and representatives' actions are calculated to alarm or cause distress, are oppressive and unreasonable.

Deliberately intentionally delaying mail is also a criminal offence according to section 84 Postal Services Act 2000 and the occurrences are discussed in more detail overleaf.

Since we wanted to stop the harassment from your client and client's son which was mostly about mail up to that time on 7th December 2020 we told your client's son to update the address for his paperwork to 51 Wellmeadow. This is our daughter's address that we were already using for all the mail that we possibly could.

We have been advised there is no definition in law of *'permanent, main or only residence'* which is used interchangeably in our agreement. In addition, there is no definition of *'permanent, main or only residence'* in section 1 of our agreement Meaning of Expressions used in this Licence Agreement and Interpretation. Therefore, the definition is open to interpretation.

We have been advised the definition of *'primary residence'* is that used by the Census which is *'the residence where you spend most of your time.'* Since 54 Lenchford Meadow Park is where we spend most of our time it is our *'primary residence'* not our *'permanent, main or only residence'*

In our letter of 5th December 2020 we state *'We do not and cannot use our lodge as a permanent residence. As stated in the signed section of the agreement, page 3, paragraph 5, "You are entitled to use the caravan each year from: 7 February to: 6 January." Since we vacate our lodge on the stated dates it is not being used as a permanent residence. At the point of sale John agreed that we could stay here for eleven months as long as we owned another property.*

We accepted your (John Bendall's) *verbal confirmation of our written agreement since our holiday lodge was advertised with 11 months occupancy/use and our licence agreement confirmed we could use our lodge for 11 months, and there is no restriction on the number of days of consecutive use or the total number of days of use in our agreement.'*

By updating the address for your client's son's paperwork we thought we were doing the right thing to stop your client and client's son's harassment. However, having been off the park since 23rd December 2020 due to flooding and our month away when we returned to the park on 7th February 2021 the barrier was locked and we were unable to drive onto the park. We walked in and Stuart got our wheelbarrow and we used it to carry our belongings back to our lodge. Your client's son saw us and asked "What are you doing here? You're breaking Covid rules." We said we weren't we were returning to our primary residence.

On 9th February 2021 the Police visited us at 54 Lenchford Meadow and asked why we were here. We told them it is was our primary residence where we pay council tax. We also told the Police that Housing Minister, Kelly Tolhurst had written to all Park owners telling them that sites should be kept open for primary residence users, vulnerable people, people who could not travel to their normal residencies and key workers. The Police confirmed that what we said was correct and told us that if we did leave Lenchford Meadow Park to go anywhere else then we would be breaking Covid rules.

Later on the 9th February 2021 we had an encounter with your client's son who gave us five days until Sunday 14th February 2021 to *"get off the park."* On Friday 12th February we informed your client's son by email that we will not be able to vacate our lodge on Sunday since our legal adviser has confirmed what the Police said on Tuesday 9th February that we will be in breach of Covid regulations if we leave Lenchford Meadow and go and stay anywhere else.

Your client's son knew we were still paying council tax at 54 Lenchford Meadow because we told him when we arrived on 7th February 2021 and the conversation was witnessed by Andy a permanent resident on the park. Although your client's son knew Lenchford Meadow was our primary residence he still called the Police and gave us five days notice to get off the park.

In addition, while walking back to our lodge on the park Valerie encountered your client who was abusive towards Valerie on the afternoon of 12th February 2021 Mary Elsie Bendall shouted at Valerie, *"What are you doing here! The police have told you to go!"* Valerie replied, *"No they haven't, the police said that if we went anywhere else we would be breaking Covid rules."* Your client shouted at Valerie, ***"You're a liar!"*** Valerie replied, *"I'm not a liar, the only liar around here is your son."* Valerie walked away and is still waiting for an apology.

On 30th March 2022 Ben Caplan threatened us by stating *"since Licence Agreements are weighted in favour of the park owner if we go to court you will be evicted."*

The Protection from Harassment Act 1997 c.40 Part 1. Section 1. A person must not pursue a course of conduct (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other. (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

Sub-section (3); If any person with intent to cause the residential occupier of any premises - (a) to give up the occupation of the premises or any part thereof; or (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof; does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

Actions that can constitute harassment;

- pressuring occupiers to leave where the legal process for possession has not been followed
- tampering with mail

In our letter to your client and client's son of 5th December 2020 we were being reasonable when we advised your client and client's son that we had updated the address for all the mail that we

possibly could and that *any mail that we did receive at Lenchford Meadow Park was important and should be passed on to us.* However, your client's son is now being totally unreasonable because since 18th November 2022 the few letters that do get posted to us your client's son now hands back to the post person and deceives the post person by stating *"not this address".* In addition, Royal Mail have been refused their reasonable request for access by your client's son to post mail through our front door at 54 Lenchford Meadow Park.

Perversely, because your client's son is being totally unreasonable and handing post back to the post person we have not received your letter of 14th November 2022 by recorded delivery. We are still being reasonable by responding to your emailed version. However, by not passing on your posted version your client's son would have created a very difficult situation if your email had gone straight into our junk folder.

One letter handed back to the post person on 18th November 2022 was a 'Private and Confidential' signed for letter. This special delivery 'signed for letter' was delivered to the Lenchford Meadow Park site office at 10:59 Thursday 14th April 2022 and *'Bendall'* identified as the recipient. This letter was deliberately and intentionally delayed by the recipient for over seven months and is a criminal offence by the recipient according to section 84 of the Postal Services Act 2000. We have the receipt for when the letter was delivered with a named recipient and we have documentary evidence from Royal Mail when the letter was returned.

Your client's son's conduct since September 2009 formed a contract of mail delivery between ourselves since mail was delivered through our front door here at 54 Lenchford Meadow Park. Although your client's son did not personally deliver mail your client's son agreed we could have mail delivered. Permission for mail delivery was also implied for about eight years since our neighbour delivered mail to us and others on the park which was given to him by your client's son.

This situation changed in March 2017 when our neighbour moved off site and your client changed the park rules. We were advised not to accept your client's changes to the park rules of March 2017 since the updates were unilateral and not agreed. We have also informed your client of this.

Although your client updated the park rules relating to mail delivery in March 2017 your client's son ignored this update and continued to distribute mail to us and others and continues to distribute mail to others today thereby continuing with implied permission for mail delivery. In addition, on numerous occasions between March 2017 and August 2020 your client's son stated to us*, "I don't have a problem with your mail."*

We have confirmed with Royal Mail that under the Post Office universal service obligation your client's son is obligated to ensure that ***'all mail delivery arrangements are similar for all residents in a multi-occupier situation'.*** In summary, your client's son is not allowed to victimise us, pick and choose whom he passes mail onto and when he passes on that mail your client and

client's son are not allowed to hinder or harass which they have done on numerous occasions in the past when we have collected mail. Your client's son has persistently breached his obligation under the Post Office universal service obligation.

On 8th November 2022, we received a call from our GP's surgery asking if we had moved address as the surgery had received notification that a NHS Cancer Screening letter for Valerie Picken was returned with *'addressee gone* away' written on it. This is mendacious and a deliberate indefinite delay of a cancer screening letter and is harassment by your client's son.

Most normal people are aware that any delay in cancer diagnosis could be critical. Therefore, misinforming the NHS by writing *'addressee gone away'* and returning the envelope to the NHS is a most repugnant form of harassment and is a criminal offence under section 84 of the Postal Services Act 2000.

At around lunchtime on Tuesday 8th November Valerie went to the site office and asked your client's son why he had misinformed the NHS about her cancer screening letter. John Bendall said, *"nothing was collected."* Valerie replied, *"I cannot collect something when you have not informed me I have something to collect."* Valerie asked, *"do you want me to knock on your door every day and ask if we have any mail?"* John Bendall replied, *"I'd rather you didn't."*

On 25th September 2022 Stuart was in the site office collecting bin bags and noticed letters addressed to us on the site office desk. Your client's son then reluctantly passed on three letters from Harriett Baldwin MP dated 1st July, 24th August and 13th September 2022. Each letter was clearly marked with the Portcullis House insignia and 'House of Commons' written across it.

Harriett Baldwin's letter of 13th September states, *'I note you have not received my letter responses. If this is the case, then I would advise you to contact the Royal Mail and raise this with them. If you believe your post has been stolen then you should report this to the police.'*

These letters from our MP were deliberately and intentionally delayed one by 12 weeks and another by 4 weeks. We have informed Harriett Baldwin that we have contacted Royal Mail and we have been in contact with the police as deliberately delaying mail without good reason is a criminal offence under section 84 of the Postal Services Act 2000.

On 31st August 2021 we received written confirmation a bowel cancer screening kit was sent to Valerie Picken and Valerie confirmed by telephone with the Cancer Screening Department the kit was sent on 30th July 2021. This cancer screening kit was deliberately and intentionally delayed indefinitely since it has not been passed onto Valerie. This is harassment and a criminal offence under section 84 of the Postal Services Act 2000. On 9th September 2021 we wrote to your colleagues, Neil Darby, Paul Kelly and Melanie Burton regarding your client's son's totally abhorrent totally unacceptable and totally unreasonable behaviour but did not get a response.

In March 2021 our Census Letter was deliberately and intentionally delayed by about 4 weeks by your client's son. This Census Letter was only passed onto us following a series of email exchanges between your client's son yourself and Melanie Burton and a telephone conversation between Stuart and Melanie Burton. We thanked Melanie Burton for her intervention as your client's son subsequently informed us he had our census letter which we then collected. We assume Melanie Burton correctly advised your client's son it is a criminal offence under section 84 of the Postal Services Act 2000 to deliberately delay mail without reasonable excuse. Therefore, it is wholly unreasonable for our mail to continue to be deliberately intentionally delayed and for the post person, the NHS, our MP and anyone sending us mail to by deceived by mail being returned.

Protection from Eviction Act 1977 (c. 43) Part I Unlawful Eviction and Harassment Section 1 - Unlawful eviction and harassment of occupier. Definition of Occupier - A person who is living in a property as a result of his contractual rights ***(we still have six years remaining on our licence agreement),*** his statutory rights, his rights under a rule of law, or because other people are restricted by law from removing him ***(The 1980 Limitation Act applies to our 2009 agreement).*** It is an offence to force a residential occupier to leave the property without complying with the proper procedure.

Although your client's breach notices of 14th April 2022 were invalid and your client failed to comply with the proper procedure we took your client's letters very seriously and on 15th April 2022 we did communicate directly with your client. However, as you wrote in an email to us on 26th February 2021 '*in the meanwhile, we would ask that you please direct any communications to us, rather than to our client or our client's son, Mr John Bendall. You may use this email address for that purpose.'* We clarified this request with your client's son that it related to *'any communications'* which your client's son confirmed it did. Therefore, we will ensure any future communication is via yourself.

Malvern Hills District Council have confirmed in writing to your client that your client's site licence is not at risk if we continue to pay council tax at 54 Lenchford Meadow Park. Therefore, since your client's site licence is not at risk we are not in breach of the terms of the park's planning permission either. Our letters of 5th December 2020 and 15th April 2022 detail why we are not in breach of the terms of our Licence Agreement. Hence, we are not in breach of the terms of the park's planning permission, site licence or the terms of our Licence Agreement.

Since licence agreements are weighted heavily in favour of the park owner and the park owner controls the flow of funds of resales most holiday home owners roll over and move on rather than have the worry, hassle and stress of defending their position.

However, please assure your client we will robustly and rigorously defend our position since we have done nothing wrong and we are using our lodge in the same manner that was agreed with your client's son in September 2009. It is your client's son who is confused and cannot remember

what we agreed when we purchased our lodge who will also be required to defend his position in court if that is the route your client decides to take.

It appears your client, client's son and Ben Caplan have convinced themselves that our licence agreement of 2009 is the same as more recent licence agreements with a Frequently Asked Questions section that better explains the holiday use requirement.

As we stated in our letter to your client in our letter of 5th December 2020, *'We believe our situation to be an historical one and appreciate that you would not have sold us 54 Lenchford Meadow if we were looking at purchasing our lifestyle today. Conversely, we would not have agreed to purchase 54 Lenchford Meadow if your client's son had not agreed for us to use the lodge for eleven months while knowing that 30 Rannoch Close was being rented.'*

Your client, client's son and Ben Caplan are trying to change the history of what we agreed with your client's son in September 2009 and are trying to apply what is being agreed with customers today to our historical situation. Since Lenchford Meadow has 68 pitches and your client's son has dealt with nearly all sales for at least 13 years it would be reasonable for your client's son to get confused and not clearly remember details agreed at each sale that also form part of each legally binding agreement.

In our letter to your client and client's son of 4th December 2020 we said, *'When we purchased our lodge with £80,000 cash on 30th September 2009 we were absolutely clear to John* (Bendall) *that we were both very lucky to retire early and that we would be on holiday for eleven months of the year and then go on holiday again for a month in January for some winter sunshine. John was perfectly happy with this situation providing we could provide an address of another property that we own which we said we could as we owned 30 Rannoch Close and would be renting it out. Since we would no longer be permanently living at Rannoch Close John advised we need to pay council tax on our lodge, 54 Lenchford Meadow.*

The legally binding Licence Agreement was signed by all of us on the above interpretation of usage of the lodge otherwise we would not have spent £80,000 of our hard earned cash.'

Since your client's son is/was a landlord in his own right he knew before signing our agreement it is the tenant that pays council tax on the property being rented not the property owner and the property owner cannot provide evidence of paying council tax at that property while it is being rented. Therefore, as 30 Rannoch Close was agreed as our address for your client's son's paperwork and your client's son knew it was being rented clause 4.2 of our agreement did not apply and while we continue to pay council tax at 54 Lenchford Meadow providing evidence we pay council tax anywhere else other than 54 Lenchford Meadow is not part of our agreement.

We still own 30 Rannoch Close and the tenants still pay the council tax. In addition, your client's son did not say that renting the property of the address provided for his paperwork was an issue before we signed our agreement or that it could become an issue in the future. Your client's son agreed to our holiday lifestyle when we purchased our lodge.

In our letter to your client of 15th April which your client has failed to respond to we state, *'This interpretation of the licence agreement was substantiated by your request* (John Bendall) *for us to pay MHDC council tax, and by us, confirming we would. In addition, by us paying council tax, and continuing to do so attest to both parties common interpretation of the licence agreement at the point of purchase. Therefore, we are not in breach of our licence agreement.'*

In addition, we have been advised that your client is still time barred from taking any action regarding the occupation/use of our holiday lodge.

We are a legacy issue and it doesn't matter how hard your client and her representatives try, they **cannot change history** and they **cannot change the truth.**

We believe there are three possible outcomes to the situation;

1. Your client and her representatives accept that we are a legacy issue and your client and all of her representatives stop harassing and threatening us.

2. Your client makes a reasonable offer for our recently refurbished and decked Omar Kingfisher Lodge with plantation shutters throughout, additional insulation, automatic electric heating, as well as gas central heating and a log burner, new Grohe thermostatically controlled showers in en-suite and main bathroom and when any reasonable offer is agreed and has cleared in our account we vacate 54 Lenchford Meadow Park.

3. Take us to court and let a judge decide on the balance of probabilities who has integrity and who is telling the truth.

It is for your client to decide and if your client is aware of any other possible outcomes we are only too willing to listen. As we stated in our letter of 5th December 2020 and our letter of 15th April 2022 we very much want to work with your client to amicably resolve the situation. Please let us know what your client would prefer to do.

Yours sincerely,

Stuart A. Picken Valerie Picken

Stuart and Valerie Picken