

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
(“the Tribunal”)

Application for Leave to Appeal: Statement of Decision

Rules 37 and 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedure Rules”);
Property Factors (Scotland) Act 2011 (“the 2011 Act”)
Tribunals (Scotland) Act 2014, section 46 (“the 2014 Act”)

Chamber Ref: FTS/HPC/PF/19/4014

Property at 15 Rosebank Tower, Cambuslang, South Lanarkshire, G72 7HE
(“The Property”)

The Parties:-

Mr Gerald Boyd, 19 Tanzielknowe Road, Cambuslang, Lanarkshire, G72 8RD
(“the Homeowner”)

and

South Lanarkshire Council, Property Services, Pollock Avenue, Hamilton, Lanarkshire, ML3 9SZ (“the Factor”)

The Tribunal comprised:-

Maurice O’Carroll - Legal Member and in-house Convenor
Elizabeth Dickson – Ordinary Member

Decision

The Tribunal grants the Factor’s application for Permission to Appeal against the terms of the final Property Factor Enforcement Order.

Background

1. By decision dated 5 April 2020, the First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) found that the Factor had breached its duties as a factor in terms of section 17(5) of the 2011 Act. On the same date it issued to

the parties a proposed Property Factor Enforcement Order (“PFEO”) and invited representations from the parties.

2. By emails dated 11 and 12 May 2020, the Tribunal received representations from the Homeowner and the Respondent respectively. The Tribunal considered those responses and issued a final PFEO dated 13 May 2020 on 14 May 2020. The final PFEO was in the same terms as the proposed PFEO for the reasons explained in the Tribunal’s order. On the same day, the Tribunal granted to the Factor Leave to Appeal (“LTA”) against the original Tribunal decision of 5 April 2020.
3. By email dated 22 May 2020, the Factor submitted a further application for LTA against the terms of the final PFEO. As explained in the application, LTA against the Tribunal decision of 13 May 2020 is necessary because it raises grounds separate from and in addition to the original LTA application. It also addresses a separate decision of the Tribunal. The Tribunal notes that the second application for LTA was made timeously.

Grounds of appeal

4. The Factor submitted grounds for appeal in respect of the LTA application against the terms of the final PFEO, including an explanation as to why further permission to appeal was necessary.
5. The grounds of appeal dated 22 May 2020 are two-fold and relate to (1) the definition of “core services” mentioned in the final PFEO and (2) the longstop date for compliance.
6. If the Tribunal’s original decision of 5 April 2020 is quashed, it follows that the PFEO which followed it will also fall to be quashed. However, if the original decision is not quashed, for the reasons stated by the Factor, it seeks to have the term “core services” clarified as set out in the proposed grounds of appeal. In addition, if the original decision of the Tribunal is not quashed, the Factor seeks the substitution of a longer compliance date of 31 March 2022, again, for the reasons set out in the proposed grounds of appeal.

The Tribunal decision on the application for LTA

7. Rule 37 of the Procedure rules governs applications for LTA to the Upper Tribunal. The application must state the decision to which it relates, the result which the person making the application is seeking and the alleged points of law.
8. The relevant decision has been correctly identified as has the result sought, namely quashing or, alternatively, variation of the final PFEO dated 13 May 2020 issued on 14 May 2020.
9. The Tribunal considers that each of the general heads of appeal raises a point of law. Moreover, without making any comment on the substantive merits, the Tribunal considers that each of the points of law raised is arguable in terms of section 46(4) of the 2014 Act.

10. The Tribunal therefore grants the application for LTA against the Tribunal decision of 13 May 2020 setting out the terms of the final PFEO. It does so under each of the heads of appeal now raised by the Factor in terms of rule 38(1) of the Procedure rules.
11. This decision will be promulgated to the parties immediately as required by rule 38(2).

Signed

Date: 25 May 2020

**Maurice O'Carroll
Legal Member**