



**Decision and Statement of Decision of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 50 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/LA/23/4314**

**Re: 82 Old Coach Road, East Kilbride, G74 4AU (“the Property”)**

**Parties:**

**Mr David Kingswell, 33 Greenstone Road, Shaftesbury, Dorset, SP7 8FL (“the Applicant”)**

**Bensons Estate Agents Ltd, 4 Stuart Street, East Kilbride, G74 4NG (“the Respondent”)**

**Tribunal Members:**

**Mr Andrew Upton (Legal Member) and Mrs Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the Letting Agent Enforcement Order (“LAEO”) dated 26 March 2024 and that the Tribunal must notify the Scottish Ministers of that failure in terms of Section 50(2) of the Housing (Scotland) Act 2014.**

**Statement of Reasons**

1. On 26 March 2024, the Tribunal determined that the Respondent had failed to comply with paragraphs 26, 37, 89, 90 and 108 of the Letting Agent Code of Practice. Having done so, the Tribunal issued a Letting Agent Enforcement Order (“the LAEO”) requiring the Respondent to do the following within 28 days:-
  - (a) Produce and implement a policy to regulate its process for receiving, considering and responding to enquiries, including by prescribing the timescales within which enquiries will be dealt with by the Letting Agent;

- (b) Produce and implement a policy to regulate the termination of its Management Agreements, which includes the provision of written confirmation within a set period of time of the terms specified in paragraph 37(a) of the Letting Agent Code of Practice;
  - (c) Produce and implement a policy to regulate the process for receiving intimation of wants of repair, actioning repairs, and managing any instructed repair to completion, including the timescales within which the Respondent will complete each stage of the process;
  - (d) Produce and implement a policy to regulate the process for receiving, considering and responding to complaints, including the timescales within which the Respondent will complete each stage of the complaints process; and
  - (e) Pay to the applicant the amount of £182.40, as compensation for the loss suffered by the applicant as a result of the failure to comply with the Code.
2. The Tribunal has not received any confirmation from the Respondent that the actions required by the LAEO have been completed. The Applicant has advised by email that he has not received any communication from the Respondent with the LAEO was issued, and has not received payment of the sum specified in paragraph (e) of the LAEO.
3. In terms of section 50 of the Housing (Scotland) Act 2014:-
- “50 Failure to comply with enforcement order**
- (1) The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.
  - (2) If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.
  - (3) But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.”
4. The Tribunal has made attempts to communicate with the Respondent to ascertain whether the LAEO has been complied with, but the Respondent has failed to engage. From the evidence available, the Tribunal is satisfied that the Respondent has failed to comply with the LAEO.
5. Accordingly, in terms of section 50(2), the Tribunal must notify the Scottish Ministers of the Respondent’s failure to comply with the LAEO.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

11 June 2024

Andrew Upton

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**Legal Member/Chair**

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**Date**