



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 92(2) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”)

Chamber Ref: FTS/HPC/GL/22/0830

Parties:

Clarkston Developments Ltd, 224 Helen Street, Glasgow, G51 3JG (“the Applicant”)

Glasgow City Council, Private Landlord Registration Unit, 231 George Street, Glasgow, G1 1RX (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the Application and declines to make an order requiring the local authority to enter the Applicant in the register maintained by it under Section 82(1) of the 2004 Act.

1. This was a hearing in connection with an Application in terms of rule 99 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017, (‘the rules’) and s92 of the Antisocial Behaviour etc (Scotland) Act 2004, (‘the Act’). The Application was made on behalf of the Applicant Clarkston Developments Ltd by Mr Richard Thorburn, the company secretary. On 2 March 2022 following a meeting of the Licensing and Regulatory Committee of Glasgow City Council (‘the committee’) the Respondent removed the Applicant from the Register of Landlords held and approved by Glasgow City Council and the Applicant was appealing against that decision. Mr Thorburn attended on behalf of the Applicant. Ms Ikra Bhatti attended on behalf of the Respondent. The Applicant failed to attend or be represented at the first hearing on 28 June 2022. The tribunal adjourned consideration until 26 August

2022 and made the following directions:

The Applicant is required to provide:

- (1) A written explanation for their failure to attend or be represented at the hearing on 28 June 2022 including a medical certificate (if applicable).**
- (2) Any other written evidence they have to substantiate their position.**
- (3) Any legal authorities upon which they intend to rely.**

The Respondent is required to provide:

- (1) A copy of any documentation which accompanied the Applicant's written submission to the Licensing and Regulatory Committee of 1 March 2022.**
- (2) A table setting out the 12 properties owned by the Applicant and the 10 requests made by the Licensing Registration Compliance Officer on 16 November 2021. The table should detail:
 - (a) Whether any of the properties have any certification available in relation to those 10 requests.**
 - (b) If so, when certification was made available.**
 - (c) Any historical documentation relating to any of the 12 properties relating to the 10 requests which predates the landlord registration of 13 September 2021.****
- (3) Any other documentation in support of their position.**
- (4) Any legal authorities upon which they intend to rely.**

The said documentation should be lodged with the Chamber no later than close of business on 28 July 2022.

2. The Applicant's representative Mr Thorburn sent a letter to the tribunal on 28 July 2022 explaining that the hearing date had been overlooked due to an oversight. The Respondent lodged the documents requested, namely a copy of the Applicant's report dated 1 March 2022 to the Licensing and Regulatory Committee together with the supporting documents (namely two gas certificates and one electrical safety certificate); a table setting out the certification sought in relation to the 12 properties, and a further list of authorities. The Respondent also lodged a copy of the Applicant's application for registration dated 3 June 2021.
3. In addition, the tribunal had before it the following copy documents:
 - Application dated 17 March 2022.
 - Letter from Respondent to Applicant dated 16 November 2021.
 - Email from Paul McCarron to Richard Thorburn dated 6 December 2021.

- Email from Respondent to Richard Thorburn dated 12 January 2022, 4 February 2022 and 10 February 2022.
- Memorandum by Housing Intervention and Support Team dated 21 December 2021.
- Report from Richard Thorburn to Respondent dated 1 March 2022.
- Extract minute of the Licensing and Regulatory Committee of 2 March 2022.
- Letter from Respondent to Applicant dated 7 March 2022.
- Letter from Respondent to Applicant dated 11 April 2022.
- Letter from Respondent to Applicant dated 30 May 2022 ('the statement of reasons').
- Respondent's written submissions.

Preliminary matters

4. The tribunal sought to fully understand the table lodged by the Respondent. The table consisted for a list of the 12 properties running from top to bottom along the right hand side and a list of the 10 matters for which the Respondent required certification or confirmation along the top. The tribunal noted there were 12 items rather than 10. The reference to 'gas 1, gas 2 and gas 3' in the columns running along the top of the table was a reference to the gas certificates for the current year ie 2021 to 2022 and the two preceding years namely 2019 to 2020 and 2020 to 2021. This meant there were in fact 10 matters covered in the table, albeit the gas was split into 3 sections.
5. The tribunal noted that in the column relating to the Legionella Risk Assessment (which corresponded to item 'g' in the statement of reasons, the table indicated that confirmation was provided on 1 March 2022, whereas the statement of reasons stated that this was still outstanding. Ms Bhatti conceded that the confirmation had been provided by the Applicant and to this extent the statement of reasons was erroneous. She also conceded that regarding item 'j' in the table regarding tenancy deposits, it was accepted that no deposits were taken and therefore the statement of reasons was inaccurate where that item was concerned.
6. Ms Bhatti advised that the application for registration made in June 2021 was a renewal and that several of the 12 properties had been registered by the applicant from around 2017 onwards. Ms Bhatti stated that the process for registration has changed and that the council practice is to request information that they may not have requested in the past.
7. The tribunal noted that the statement of reasons stated that the committee:

"In making its decision... also had regards to section 85(2) and, separately, section 85(4) of the 2004 Act, as required taking into consideration sections 85(6) and 85(8) of the 2004 Act.

S85 of the Act provides:

85Section 84: considerations

(1) In deciding for the purposes of section 84(3) or (4) whether the relevant person or, as the case may be, the person is a fit and proper person, the local authority shall have regard (among other things) to any material falling within subsections (2) to (4).

(2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has—

(a) committed any offence involving—

(i) fraud or other dishonesty;

[F1(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));]

(ii) violence; or

(iii) drugs;

[F2(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));]

(b) practised unlawful discrimination **F3**. . . in, or in connection with, the carrying on of any business; or

(c) contravened any provision of—

[F4(zi) any Letting Code issued under section 92A;]

(i) the law relating to housing; or

(ii) landlord and tenant law.

(3) Material falls within this subsection if it relates to any actings of the relevant person or, as the case may be, the person as respects antisocial behaviour affecting a house—

(a) subject to a lease or occupancy arrangement such as is mentioned in section 84(3)(c); and

(b) in relation to which the relevant person was (or is) the landlord under the lease or arrangement or, as the case may be, the person was (or is) acting for the landlord in relation to the lease or arrangement.

[F5(3A) Material falls within this subsection if it relates to any agreement between the relevant person and any person in terms of which that person acts for the relevant person in relation to a lease or occupancy arrangement such as is mentioned in section 84(3)(c).]

(4) Material falls within this subsection if it appears to the authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person.

[F6(4A)A local authority need not, despite subsection (1), have regard to any material falling within subsection (3A) in deciding for the purposes of section 84(4) whether a person specified in an application by virtue of section 83(1)(c) is a fit and proper person to act for a landlord.]

(5) In subsection (3), “actings” includes failure to act.

[FZ(6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c)(i) or (ii)) are (without prejudice to the generality of that provision)—

(a) an offence or disqualification under—

(i) this Part;

(ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);

(b) a repairing standard enforcement order made under section 24(2) of that Act.

(7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—

(a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;

(b) an antisocial behaviour notice within the meaning of Part 7.

(8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)—

(a) complaints and other information which come to the attention of the local authority concerning the relevant person or, as the case may be the person, in relation to the fulfilment of any financial obligation in respect of any house which is included in the application;

(b) concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house which is included in the application;

(c) where section 85A(3)(b) applies, the relevant person fails to provide the certificate within the period the local authority directs.

(9) The Scottish Ministers may by order modify subsection (2).]

The tribunal did not see any other reference in the statement of reasons to matters that may fall within s85(6) or s85(8) and Ms Bhatti stated that the reasons for removal of the registration were contained in s85(2) and s85(4) and the other subsections were mentioned to provide some additional examples of matters that may be taken into account, and they may not necessarily apply in this particular case.

8. The tribunal noted that there seemed to be a disconnect between the Respondent’s conclusion in the statement of reasons of 30 May 2022 that there

were documents outstanding in relation to (a)(b)(d)(f)(g)(h) and (j) and what Mr Thorburn stated in his submission of 1 March 2022. The tribunal noted that item (g) and (j) were no longer applicable for the reasons stated above. The tribunal sought to reconcile the remainder of the table the Respondent had produced and the submission Mr Thorburn had made on behalf of the Applicant. Ms Bhatti stated that Mr Thorburn had made reference in his report of 1 March 2022 to documents being 'issued' however she contended that this was not the same as being 'produced' and until they were produced the Respondent were entitled not to accept that they had been produced.

9. With regard to the table prepared by the Respondent, the tribunal sought to ascertain from Mr Thorburn whether there was any factual dispute regarding the documents and other matters that were outstanding on the 3 March 2022 when the decision was made. Mr Thorburn took issue with items 'd' and 'e' in the table in relation to the fire and smoke detectors and the carbon monoxide detectors. Mr Thorburn made the point that certification was not requested and what was requested in the Respondent's Memorandum of 21 December 2022 was for the Applicant to 'provide confirmation that all properties meet current regulations in respect of fire safety and confirm the level of detection within these properties' and in relation to the carbon monoxide to 'Confirm that Carbon Monoxide (CO) detectors are in place where these are required'. In any event the tribunal noted that item 'e' in relation to carbon monoxide was not on the list of outstanding matters in the statement of reasons and therefore the Respondent appears to have accepted the Applicant's confirmation in respect of the carbon monoxide but not the fire safety. Ms Bhatti conceded that the Respondent appears to have accepted that confirmation was given in relation to carbon monoxide and her table is therefore wrong in relation to item 'e'. However she also submitted that item 'f' is still outstanding as the Respondents not only required confirmation regarding the fire safety but confirmation relating to the level of detection. The Applicant's submission to the committee of 1 March 2022 states in this connection that 'the level of detection satisfied relevant requirements (except in the case of property 1 where the position is unclear and cannot be confirmed due of lack of access).
10. Mr Thorburn did not take issue with the remainder of the table provided by the Respondent with the exception of gas for property 5 as it was the Applicant's position that there was not gas in property 5 and this had been set out in his report to the committee of 1 March 2022. What Mr Thorburn did take issue with was whether any certification was required or whether the Applicant was asked to 'confirm' the position. It was his position that in relation to fire and carbon monoxide, confirmation rather than certification was asked for. Secondly, it was his view that his written report that stated that certain documents had been 'issued' should have been accepted by the Respondent at face value.

Applicant's submissions

11. The decision being challenged by the Applicant is the decision of the 3 March 2022. It was Mr Thorburn's submission that his report dated 1 March 2022 prepared for the meeting on 2 March 2022 contained the information regarding the 12 properties to the best of his knowledge at the time. He made an oral submission to the committee on 2 March 2022 and explained in detail the process that had been made since 2 February 2022. Regarding the fire and smoke, carbon monoxide detectors, it was his contention that the devices were all in place and these matters were covered in his report. It was his submission that he did not require to produce certification. What he was asked for he gave, namely confirmation that all properties meet the current regulations in terms of fire safety and there are carbon monoxide detectors in place where they are required.
12. Mr Thorburn made reference to his report dated 1 March 2022 which set out the documentation the Applicant's had in relation to the 10 matters requested by the Respondents. He conceded that the documentation in respect of the gas and electrical certification, energy efficiency and insurance was on the whole not provided to the Respondent at the meeting. It was his submission that further time should have been afforded to enable the documents to be produced. For example, he set out in his report that a buildings insurance policy covering the properties is in force. It was his submission that further time should have been given after the meeting on 2 March 2022 before a decision was made to remove the Applicant from the register. In his submission the reasonable course was for the Respondent to give a further opportunity to produce the documents. The report he produced should have been taken at face value. The 'all or nothing' approach was excessive. The consequence of revocation across the whole portfolio amounted to a huge financial penalty.
13. In relation to the delay in producing the required documentation, Mr Thorburn submitted that he was unwell in December 2021 and was unable to deal with any of the correspondence until January 2022. Further, there was a change of directorship within the Applicant company, and it was recognised that there was a need for routine maintenance across the portfolio. To enable compliance with all of the matters raised by the Respondent, this involved gas and electrical inspections and the Applicant had had considerable difficulty in arranging inspections due to a backlog in the system. Matters could not have been accelerated more than they had been.
14. Mr Thorburn stressed that the Applicant was in no way challenging the concerns the Respondent had but instead the Applicant, and in particular the new director, wanted to work with them and the report of 1 March 2022 made it clear how seriously they were taking the Respondent's concerns.
15. It was Mr Thorburn's submission that there was a natural hierarchy in the concerns raised by the Respondent and they had to concentrate their efforts to the most pressing matters such as the gas, electricity and smoke detectors as they are of immediate concern for every day use of the properties. It was his submission that the Applicant made a serious effort in very difficult circumstances. The committee were made aware at the meeting on 2 March

2022 that the Applicants were under serious pressure and it was reasonable for them to allow a further short period of time after 2 March 2022.

16. Mr Thorburn submitted that there is a high threshold before the tribunal can decide the decision of the committee is so unreasonable that no committee could have reached that decision, but he submitted the threshold was met. The committee failed to take in to account the progress that had been made. In his submission there is a distinction between the underlying work to obtain the certification requested and the actual paperwork. Before the decision to revoke the registration could be characterised as reasonable, they would have had to have serious concerns that the information contained in his report was not reliable, which was not the case.

Respondent's submissions

17. Ms Bhatti submitted that the purpose and focus of the landlord registration scheme was one of public safety. The application for registration provides a list of properties and the portfolio has to be taken as a whole. It is not within the Respondent's gift to register some properties and not others. Registration relates to the landlord and not the property. The test is whether the Applicant is a fit and proper person. Ms Bhatti invited the tribunal to refuse the appeal in terms of s89 of the Act on the basis that the Applicant is no longer a fit and proper person. She submitted that the Respondent were entitled to conclude that the Applicant is no longer a fit and proper person to be a registered landlord and the Respondent have no discretion if that is the case. For example, they cannot allow the registration to continue and attach conditions.
18. Ms Bhatti made reference to s85 of the Act which narrates matters to be taken into account in determining whether a landlord is a fit and proper person.
19. Ms Bhatti submitted that the correct test to be applied by the Tribunal in assessing whether the Committee's decision ought to stand is the dicta by Lord Emslie in the Wordie Case (Wordie Property Co Limited v Secretary of State for Scotland 1984 SLT 345 at pages 347-348) as endorsed by sheriff Deutsch in the unreported case of TH v Glasgow City Council from 2017, namely:
- Whether there had been a material error of law going to the root of the question for the Respondent's Committee's determination.
 - Whether the Respondent's Committee had taken into account an irrelevant consideration or has failed to take into account relevant and material consideration which it ought to have taken into account.
 - Whether the Respondent's Committee had no proper basis in fact to support its decision; and
 - Whether the Respondent's Committee's decision is one which no reasonable Committee could have reached.

20. In Ms Bhatti's submission the Applicant had characterised the reasons for appeal in relation to the reasonableness of the decision and whether the decision to remove the Applicant from the register is one which no reasonable committee could have reached in the facts and circumstances of this case.
21. Ms Bhatti made reference to several legal authorities. The case of *Trust Inns Ltd v Glasgow Licencing Board* 2015 S.C. 499 was authority for the proposition that a properly reasoned decision need only address the material or substantive points that arise for determination.
22. Regarding *Noble- v City of Glasgow District Council* 1995 S.L.T. 1315 and the judgement of Lord Mc Cluskey, in which it is noted:

It is not necessary for the licensing authority when giving reasons to write something which resembles a judicial judgment of the kind appropriate to a contested litigation in the sheriff court or the court of session. Nor is it necessary that the letter containing the reasons should canvass each piece of evidence or each assertion and say specifically whether or not it has been accepted or what effect, if any, it has had on the deliberations of the licensing authority. If the letter states that the authority have had regard to evidence and the productions, it is not possible for this court to go behind such a statement unless something else makes it clear that the authority have not had regard to such material.

23. Regarding *Wordie Property Case* at page 347 and 348:

*A decision of the Secretary of State acting within his statutory remit is ultra vires if he has improperly exercised his discretion confided to him. In particular it will be ultra vires if it is based on a material error of law going to the root of the question for determination. It will be ultra vires too, if the Secretary of State has taken into account irrelevant considerations or has failed to take account of relevant and material considerations which ought to have been taken in to account. Similarly it will fall to be quashed on that ground if, where it is one for which a factual basis is required, there is no proper basis in fact to support it. It will also require to be quashed if it, or any condition imposed in relation to a grant of planning permission, is so unreasonable that no reasonable Secretary of State could have reached or imposed it. These propositions, and others which are not of relevance for the purpose of these appeals, are, it appears to me, amply vouched by many decided cases including *Associated Provincial Picture House v. Wednesbury Corporation*.*

24. It was Ms Bhatti's submission that these authorities were support for the proposition that the court and by extension the tribunal will not interfere with a decision unless it is so unreasonable that no reasonable committee could have decided it. She submitted that the committee of the Respondent's had grounds

to come to the conclusion that they reached. They were entitled to make the decision they made given that safety of the public and the safety of tenants is key and failure to timeously respond to a request for documentation is relevant. Evidence that a property being let by a landlord meets the repairing standard should be readily available as a matter of course, and indeed Mr Thorburn appeared to accept that was the case. Checks should be carried out by a landlord at the start and end of a tenancy and a local authority is entitled to be satisfied that the repairing standard is met.

25. It was Ms Bhatti's submission that the Applicant made an application for registration on 3 June 2021. That registration form, a copy of which had been lodged with the Tribunal, detailed the 12 properties and a list of 10 questions required to be answered in relation to these properties. There was a section of the registration form headed 'obligations' and the Applicant had answered as follows:

Obligations

Repairing and tolerable standard Yes

Gas certificate obligations Yes

Electrical documents Yes

Electrical appliance test Yes

Fire, smoke and heat detection Yes

Carbon monoxide detection Yes

Public water supply Yes

Energy performance Yes

Legionella assessment Yes

Rental property insurance Yes

Common repairs Yes

Tenancy deposit Not applicable

26. It was Ms Bhatti's submission that given the Applicant has answered 'yes' to each of the obligations, the certification should be available. Further, she submitted that this was a re-registration application, the historical documents for most of the properties should have been available. Mr Thorburn was not disputing that there remained several items outstanding at the meeting on 2 March 2022. All of the properties except two were tenanted. The Respondent at the meeting on 2 March 2022 took into account the steps the Applicant had taken to perform its duties. The committee was aware that progress was being made at the meeting on 2 March 2022 however progress being made and the required documentation being produced were two different matters. The meeting on 2 February 2022 was adjourned to give the Applicant time to comply. Matters had been outstanding since the original letter was sent on 16 November 2021. The Applicant had been given sufficient time from 16 November 2021 to 2 March 2022 to provide the requested information and they had failed to do so. The Applicant had failed to satisfy the committee that the properties met the repairing standard, which in turn was a failure in terms of s85(2)(c) of the Act, namely a contravention of the law relating to landlord and

tenant regarding the repairing and tolerable standard. In Ms Bhatti's submission this was a matter that the committee were entitled to take into account. The weight that they gave to the failure was a matter for the committee.

27. Ms Bhatti submitted that it was clear from the statement of reasons that the committee took Mr Thorburn's submissions and his report of 1 March 2022 into account in reaching its decision. How the committee balanced the material before them is a matter for them. The decision they reached was within the band of reasonableness and it cannot therefore be so unreasonable that no committee could have reached that decision. She submitted that there is a hierarchy of importance in the matters raised. The deposit scheme for example is important in its own right but with regarding to safety, gas and electricity are significant and have consequences for the safety of tenants.

Reasons

28. It was conceded by Ms Bhatti that the Applicant had in fact provided confirmation in relation to the legionella and tenancy deposits and therefore matters 'g' and 'j' were referred to in the statement of reasons in error. She also conceded that contrary to what she had stated in her table, in their statement of reasons the committee had accepted the position regarding carbon monoxide detectors. With the exception of the fire and smoke detection, there was a broad agreement between the parties as to the outstanding matters that the Applicant had failed to produce at the meeting on 2 March 2022. There was also an agreement as to the time line of events from the registration application of June 2021 to the decision of 3 March 2022. In addition it was a matter of agreement between the parties as to the grounds upon which the tribunal may decide to set aside the decision to remove the Applicant from the register namely on the Wordie Property/ Wednesbury grounds. It was also agreed that the Applicant was characterising his case on the basis that the decision was so unreasonable that no reasonable committee could have reached it.

29. Where the parties were at odds was whether the committee should have given the Applicant more time to comply with their request. The tribunal considered the statement of reasons and the submissions made. The documentation and assurances sought by the council had been outstanding since November 2021. Indeed, when the application for re-registration was made in June 2021 the Applicant had answered 'yes' to the questions regarding many of the matters raised by the Respondents' in their letter of 16 November 2021, including the repairing and tolerable standard, gas, electricity and insurance. As at 3 March 2022, some three to four months later, the majority of the documents for gas, electricity were not produced and no documentation regarding insurance was produced. Regarding gas, for the six properties that had gas, two certificates were exhibited. For electricity, one certificate was produced. In his report dated

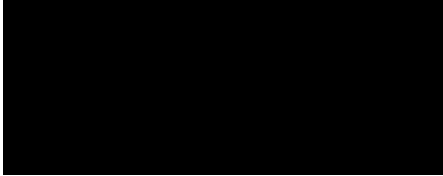
1 March 2022 Mr Thorburn had stated that there was a buildings insurance policy in force for the properties, but this was not produced. He stated that he certification in relation to gas for the four remaining gas certification was 'issued' but not produced to the committee. He made no mention of the historical certificates for 2019-2020 and 2020-2021 and nothing was produced. Regarding the electrical installation condition report, he stated in his report dated 1 March 2022 that the certificates for the remaining 11 properties were either 'issued' or 'awaited' (with the exception of one property where access could not be gained) but only one certificate was produced.

30. Mr Thorburn and Ms Bhatti both made the point that there is a hierarchy where the documents are concerned. The gas and electricity safety inspections are clearly the most important matters. Both relate directly to the repairing standard and the tolerable standard. Further, Mr Thorburn was not able to give any reason to the tribunal as to why the historical information regarding the gas certification for the properties was not available.
31. Taking the reasoning in *Noble v City of Glasgow Council* above, the tribunal heard nothing from Mr Thorburn to entitle it to conclude that the committee did not take his report and submissions on 2 March 2022 into account in reaching its decision. The committee referred to both the report and his submissions in their statement of reasons. They also made reference to Mr Thorburn's submission that the outstanding documentation would be "up to date in days".
32. The tribunal considered Mr Thorburn's submission that the committee should have given the Application more time to comply with what he conceded was a reasonable request for information. The matter had already been continued from 2 February 2022 for this purpose. Tribunal did not consider it to be unreasonable for the committee to make a final decision on 2 March 2022 rather than deferring the matter again.
33. The tribunal was not satisfied that the decision reached by the committee was unreasonable given the gas, electricity and insurance certification was outstanding at the meeting of 2 March 2022 and had been since November 2021. It was clear from the Memorandum of 21 December 2021 prepared by the Housing Intervention and Support team and sent to Mr Thorburn on 12 January 2022 that members of the committee on 2 February 2022 were being asked to consider whether the Applicant is a fit and proper person to remain on the register of private landlords in Glasgow. These matters relate to the safety of rented properties and the committee are entitled to conclude that a persistent failure to produce this documentation means that the Applicant is not a fit and proper person to be on the landlord register. The tribunal accordingly refused the application.

Right of Appeal

In terms of Section 92(5) of the 2004 Act, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland. The appeal must be made within the period of 21 days beginning with the day on which the decision appealed against was made.

Section 92(6) of the 2004 Act provides that the decision of the Upper Tribunal on an appeal is final.



Lesley Anne Ward

26 August 2022

Legal Member

Date