

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision under Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) ("the Procedure Rules") in relation to a request for permission to appeal under section 46(3)(a) of the Tribunals (Scotland) Act 2014

In connection with

Chamber Ref: FTS/HPC/PF/21/0033

88 South Victoria Dock Road, City Quay, Dundee DD1 3BQ
("the Property")

The Parties:-

Mr Andrew Brews, 10 Fern Place, Leuchars, Fife KY16 0ET
("the Homeowner")

Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW
(represented by their agent Anderson Strathern LLP, Solicitors, 50 George Square, Glasgow G2 1EH
("the Factor")

Tribunal Members:
Graham Harding (Legal Member)
Elizabeth Dickson (Ordinary Member)

1. DECISION

The Tribunal refuses permission to appeal on all grounds in terms of Rule 38 of the Procedure Rules. The decision of the Tribunal was unanimous.

2. BACKGROUND

- i. On 3 April 2021, the Tribunal made a determination under Section 19 of the Property Factors (Scotland) Act 2011 ("the Act") and produced a statement of decision ('the decision').

- ii. By letter dated 9 April 2021, the Homeowner applied to the Tribunal for permission to appeal the decision. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 provides that the application for permission to appeal must be received within 30 days of the date the decision was sent to the Applicant. The application is timeous.
- iii. Rule 37(2) of the Procedure Rules provides that the written application to the Tribunal for permission to appeal must:
 - (a) identify the decision of the First-tier Tribunal to which it relates;
 - (b) identify the alleged point or points of law on which the person making the application wishes to appeal; and
 - (c) state the result the person making the application is seeking.

The letter identifies the Tribunal decision to which it relates and states that a number of questions are unanswered. The email then sets out in numbered paragraphs the issues the Homeowner has with the decision. The email does not clearly set out in these paragraphs the points of law the Homeowner seeks to found upon but nevertheless the Tribunal has determined whether to give permission in respect of each numbered paragraph.

3. GROUNDS OF APPEAL AND REASONS FOR DECISION

The grounds of appeal founded upon by the Homeowner are as follows:-

- i. The date of the change to R and Ls submission. 1 day prior to tribunal is this within time period required.

The Factor's original written submission was lodged on 5 March 2021. An amended version referring to the correct sections of the Code was sent to the Tribunal on 18 March 2021 but was not received by the Tribunal until after the hearing. The Tribunal relied on the original written submissions other than as a preliminary matter receiving confirmation from the Factor's representative at the commencement of the hearing that she accepted that the references in the written submissions to Sections 2.1 and 2.2 of the Code were incorrect. It would have been open to the Factor to seek leave to have the late written representations received although late but as they were substantively in the same form as the original written representations other than correcting the references to the Sections of the Code no such permission was sought. In arriving at its decision, the Tribunal relied on the content of the original written representations with the exception of the references to the wrong sections of the Code.

Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that:-

- (1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

The Tribunal did not consider that there was any prejudice to the Homeowner as it was obvious that the Factor's representative in her written representations was making reference to Sections 2.1 and 2.2 of the new Code not yet in force. Indeed, this had been pointed out by the Homeowner in advance of the hearing. The Tribunal had a duty to deal with matters as informally and with as much flexibility as was appropriate in the circumstances and to avoid delay.

The ground of appeal raises no point of law. Leave to appeal is refused.

- ii. My receiving of information pertinent to the above did not happen until after the tribunal.

As indicated above the Tribunal did not rely upon the amended written representations submitted by the Factor's representative in arriving at its decision.

The ground of appeal raises no point of law. Leave to appeal is refused.

- iii. Paragraph 31 has been disproved and evidence was submitted to prove Mr Baird had lied. One lie proves his dishonesty and should of left you in no doubt about his personal code of conduct.

The evidence before the Tribunal at the hearing was what the Tribunal required to make its decision on. The Tribunal could not consider unsolicited emails received from third parties post the hearing in reaching a determination. In any event the evidence from Mr Baird for the Factor was not contradicted in the email received from the third party which referred to an email exchange and not to conversation at meetings.

The ground of appeal raises no point of law. Leave to appeal is refused.

- iv. Not named on the letter is not relevant in this case, R and L stated we (the committee) were a single entity and must be treated as one. Named or not named the letter and its contents applied to all.

The Tribunal fully considered the argument put forward by the Homeowner at the hearing and for the reasons given in the decision at paragraph 48 concluded that his assertions in this regard were incorrect.

The ground of appeal raises no point of law. Leave to appeal is refused.

- v. The question around the requirement to furnish R and L with information on the committee, is it a yes or no that we need to prove our legitimacy. Your point 49 suggests a degree of “ not normal “ but makes no reference to whether that makes it self elected or invalid.

The Homeowner queries the requirement to furnish the Factor with information. However, the requirement at the hearing was for the Homeowner to provide the Tribunal with sufficient evidence to prove his case. In this instance it was open to the Homeowner to satisfy the Tribunal that the Factor was providing false information by stating that the committee was self-elected. The Homeowner provided no substantive evidence to contradict that assertion either to the Factor previously or to the Tribunal in written or oral submissions.

The ground of appeal raises no point of law. Leave to appeal is refused.

- vi. Point 50, the Tribunal concluded there was just sufficient evidence on the balance of probabilities to accept that the use of the word was justified. There is nothing to support this view, what probabilities are we talking about. A clearer understanding of how the decision was made regarding the balance of probabilities and evidence must be looked at again. Probabilities between 2 parties are the complainant has nothing to lose or gain from making the complaint, the respondent has the role of factor to potentially lose and perhaps an enforcement order applied, I therefore do not understand how you concluded the balance of probabilities fell on the side of the factor. I dispute that finding and not enough information has been given.

The Tribunal is bound to determine the evidence on the balance of probabilities and accepted on the evidence before it that it was more likely than not that the use of the word “self-elected” was justified. Given that the

Homeowner did not provide any substantive evidence to disprove the Factor's claim and given the limited evidence available from the Minute of the meeting of 27 November 2019 and the Constitution of the Owners' Association the Tribunal was entitled to reach the conclusion it did.

The ground of appeal raises no point of law. Leave to appeal is refused.

vii. Point 51.

Having regard to all the oral submissions made by or on behalf of both parties and after careful consideration of the written documentation the Tribunal was satisfied that the Letter of 6 October could not be said to contain false or misleading information either about him as an individual member of the Committee or in general. It therefore does not find that the Factor is in breach of this section of the Code.

The above is your finding, yet point 42 states , The letter specifically attributed misleading and disingenuous information to the named member of the Committee.

This seems to be a contradiction, if factors can send out misleading and disingenuous information and the tribunal finds no breach of the code of conduct then I see no point in having a factors COC or a tribunal that you can go to for an unbiased assessment of the complaint. I believe I have a right to appeal on that point alone. You have said yourself the letter contained “ misleading and disingenuous information” how then can you rule this has not breached the COC 2.1 yet state The letter specifically attributed misleading and disingenuous information to the named member of the Committee.

it simply cant be both and needs to be defined as one or the other.

The Homeowner has misunderstood the Finding in Fact at Paragraph 42 of the Decision. The Tribunal found that the Factor had in that letter attributed misleading and disingenuous information to a named member of the Committee. The Tribunal was not saying that the Factor was communicating misleading or disingenuous information but rather in the letter the Factor was saying that the named member of the committee was communicating such information. There was therefore no contradiction between the finding in Paragraph 42 and the reasons given in Paragraph 51.

The ground of appeal raises no point of law. Leave to appeal is refused.

viii. As we in the committee are classed as one, I could attend the appeal for myself or I can attend the appeal on behalf of Mr Bill Newcombe, you have stated as did R and Ls lawyer that I have no real case as I was not named but he was and your findings certainly mention that.

The Homeowner appears to be suggesting that the application was made not by him as an individual but on behalf of the Owners' Association or on behalf of Mr Bill Newcombe. This is clearly not the case. The application was made by the Homeowner himself.

The ground of appeal raises no point of law. Leave to appeal is refused.

- ix.** If the request is turned down I will suggest Mr Newcombe applies to the HPC to have R and L defend their allegations against him. Your findings clearly show he has been slandered by R and L.

This is not a relevant ground of appeal.

The ground of appeal raises no point of law. Leave to appeal is refused.

APPEAL PROVISIONS

4. A party aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

[REDACTED]

[REDACTED]

[REDACTED] g Legal Member of the Tribunal
Dated: 19 April 2021