

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Decision by the Tribunal
In an Application under section 17 of the Property Factors (Scotland) Act 2011
("the 2011 Act")

by

Sandra Dickson, 1 Myre Dale, Bonnyrigg EH19 3NW ("the Applicant")

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD
("the Respondent")

Reference No: FTS/HPC/PF/20/2395

Re: Property at GF2, Chilton, Gracefield Court, Musselburgh EH21 6LL
("the Property")

Tribunal Members:

John McHugh (Chairman) and Mike Links (Ordinary (Surveyor) Member).

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that the Applicant's application for review is wholly without merit and is refused.

The decision is unanimous.

Reasons for Decision

The Decision under Review

On 25 January 2022, the Tribunal issued its decision that the Respondent had failed to carry out its property factor's duties but had not failed in its duties under section 14 of the 2011 Act.

It is this Decision which is the subject of the Applicant's review application.

Basis for Review

On 8 February 2022 the Applicant emailed to the Tribunal her request for review.

We note that much of what is contained in the document appears to be repetition of arguments made in the original application and decided in the Decision.

In addition, the Applicant poses certain questions to the Tribunal.

The matters raised by the Applicant for review may be summarised as follows:

- 1 that the Written Statement of Services apportions maintenance costs in a particular way and so the insurance excesses ought to be treated in the same way.
- 2 that the fact that the Respondent has no involvement with the private areas belonging to owners has been treated as of no significance.
- 3 that the result of the Decision is that the Applicant would have to list all 72 properties when she takes out property insurance for another property.
- 4 that the Decision records that Ms Wilson of the Respondent thinks that change of broker was not the reason for the change of policy as regards excesses.
- 5 the meaning of the section of the Decision regarding the identification of owners responsible for payment of the insurance excess.
- 6 the Tribunal's treatment of the evidence regarding the attendance of contractors during the period of lockdown restrictions

Reasons for Decision

It should be noted firstly that a Review is not an opportunity for parties to present the same arguments as have already been dealt with in the Decision. Nor is it an opportunity for parties to pose questions to the Tribunal about the effect of the Decision upon the parties. It is an opportunity for the parties to highlight an error in the Decision such as the Tribunal having proceeded upon some misunderstanding of fact or having failed to address a material point made by the parties. Rule 39 of the Tribunal Procedure Rules permits the Tribunal to review its Decision “*where it is necessary in the interests of justice to do so.*”

As regards the numbered issues noted above:

1 It is perfectly possible for the excesses to have been shared among owners in the way that the Applicant suggest and would prefer. Nonetheless, they were not and the Applicant has identified no requirement for them to be shared in that way. That being the case, the Applicant’s point has no effect upon the Decision as to whether there has been a breach of the Code or of property factor’s duties.

2 The Respondent’s responsibility for private areas and the terms of the insurance requirements of the Deed of Conditions have been specifically addressed in the Decision.

3 Even if this were true (and the Tribunal does not consider that it is likely to be) it is not a relevant ground for review of the Decision.

4 The Decision is accurate in that it records both parties’ evidence as regards the reason for the change of approach to insurance excesses.

5 The Applicant appears to have misunderstood the section of the Decision referred to. The section does not say that identifying the owner of an individual flat may often be impossible.

It states: “*In any event, the Deed of Conditions says nothing about the treatment of any excesses. They have to be dealt with in some way. Sharing the cost of each excess among all of the 72 owners seems to the Tribunal to be a reasonable approach. It avoids the burden falling solely on one proprietor and also avoids the need on every occasion to identify the single owner or owners who are “responsible” for any claim and who should be liable for the payment of the excess. That task may often be impossible.*”

In other words, identifying the single owner or owners who are responsible for any particular claim may often be impossible. For example, when damage occurs by fire or flood to one or more private flat and to common areas it would, on the Applicant’s preferred approach to excess sharing, be necessary to identify the owner who was

the source of the cause of damage so that they could pay the excess. That may not be possible in such a case.

6 It is open to the Tribunal to weigh up the available evidence and to reach a conclusion on which version it prefers. That is what has happened here.

We have identified no factors justifying setting aside or altering the Decision.

Decision

The application for review is refused.

This Decision is not subject to appeal.

Signed

Date 24 February 2022

JOHN M MCHUGH

Chairing Member