

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)
In an Application under section 17 of the Property Factors (Scotland) Act 2011

Re: Longford Crofts, West Calder EH55 8FD (“the Property”)

The Parties:-

Karim Sowaidan, 8 Longford Crofts; Ruth Close, 6 Longford Crofts; Roddy Fuller, 5 Longford Crofts EH55 8FD; and Robert Dalziel, 4 Longford Crofts EH55 8FD (“the Applicants”)

Longford Property Management, Longford Farm, West Calder, West Lothian EH55 8NS (“the Respondent”)

Chamber Ref: FTS/HPC/LM/19/3717, 20/0283, 20/0334 and 22/2063

Tribunal Members:

John McHugh (Chairman) and Robert Buchan (Ordinary (Surveyor) Member).

DECISION

The terms of the Property Factor Enforcement order will not be varied.

Our decision is unanimous.

REASONS FOR DECISION

On 1 November 2022 we made the following Property Factor Enforcement Order (“PFEO”):

“Within 35 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Pay to each of the Applicants the sum of £400, such payment to be by way of a cheque made payable to the Applicant or bank transfer as opposed to a credit to their factoring accounts.*

- 2 Confirm in writing to the office of the Tribunal that step 1 above has been carried out.”*

In our Decision of 15 September 2022, we had indicated that we proposed to make a PFEO. We indicated that, prior to making an Order, we would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act. The Applicants made no comments. The Respondent made comments by email of 29 September 2022.

We understand that there is no dispute among the parties that the Respondent has complied with the PFEO.

On 19 December 2022, Mr Fuller submitted a request that the PFEO be varied. He requested that the PFEO should contain an order requiring the Respondent to refund its charges relating to the road preparation and stones.

On 7 December 2022, Mr Bisset on behalf of the remaining three Applicants also sought a variation of the PFEO to the effect that all owners who had paid the Respondent’s bill for these same elements should have their payments refunded (that category of paying owner included both Mr Fuller and Mr Bisset). Mr Bisset’s submissions explained that the three Applicants he represented had not paid for those elements of the Respondent’s charges and had received recalculated bills removing the charges. Explanations have been offered as to why each of the remaining individuals who have not received any recalculated bill or refund: (a) chose to pay the Respondent’s charges; and (b) did not take part in, or began but withdrew from, the current proceedings.

The Respondent opposed any variation of the PFEO.

Our Decision had stated the following:

“We propose to make a property factor enforcement order (“PFEO”). The terms of the proposed PFEO are set out in the attached document. The Tribunal considers that a payment should be made by the Respondent to the Applicants in view of the breaches of the property factor’s duties and of the Code which have caused stress and inconvenience to the Applicants. In considering the level of the payment, the

Tribunal took into account that the Applicants had no complaint about the quality of work undertaken".

The Decision of the Tribunal was deliberately framed in this way ie we arrived at a figure which we considered reflected the upset caused rather than ordering a specific refund of the road costs.

Having carefully considered the matter, we have resolved not to vary the PFEO.

Section 21 of the 2011 Act provides that the Tribunal may vary a PFEO when it considers it "reasonable" to do so. This affords the Tribunal a wide discretion. However, in this case, the Tribunal considers that it would be unreasonable to vary the PFEO to attempt to address the apparently differing outcomes sustained by different Applicants (or non-Applicants). The difference in the financial positions results from any or all of: (a) the various parties' decision not to proceed with an Application to the Tribunal; (b) their decision to make payment of certain of the Respondent's charges; and (c) the Respondent's recalculation of unpaid invoices. The Tribunal has made an Order which provides a reasonable level of award to each affected party who has chosen to proceed with an application and we see no reason to vary the PFEO.

APPEALS

In terms of section 46 of the Tribunals (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.

Signed

Date 24 April 2023

JOHN M MCHUGH

Chairperson