

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/18/0413

214 Prospecthill Circus, Glasgow, G42 0LF (“The Property”)

The Parties: -

Mrs Linda Higgins, 214 Prospecthill Circus, Glasgow G42 0LF (“the Homeowner”)

Your Place Property Management Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 20 June 2018.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of Part 2 and Part 4 which are amended.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 20 June 2018, it proposed to make a PFEO as follows

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £150 for her time, effort and inconvenience, within 28 days of intimation of the PFEO,
- (2) The Tribunal order the Property Factor to review and revise its written statement of services to provide homeowners with full details of all payments

made by Insurance Companies to the Property Factor, including commission and profit share arrangements, within 28 days of intimation of the PFEO,

- (3) The Tribunal order the Property Factor to review and revise its written statement of services to provide homeowners with information on the procedure for making insurance claims for common repairs, within 28 days of intimation of the PFEO, and
- (4) The Tribunal order the Property Factor to establish a procedure for the proceeds of insurance claims for common repairs to be paid direct to the Property Factor in all cases, within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 26 June 2018. On 10 July 2018 the Property Factor submitted written representations in relation to the proposed PFEO. No written representations have been received from the Homeowner.

The first issue raised by the Property factor relates to part 2 of the proposed PFEO. The Property factor states that "there is no requirement to have the details of payments made by insurance companies to the Property factor, including commission and profit share arrangements, specifically in the written statement of services". In support of this the Property Factor states that the information is already disclosed in writing, that it would be impractical to have to incorporate the information into the written statement as the figures are subject to change and that the Homeowner is now aware of the information through disclosure made in these proceedings. Lastly, the Property factor states that "Esto this is not accepted" the PFEO should only require the Property factor to provide the information to the Homeowner, not necessarily in the written statement of services.

The Tribunal notes that it was satisfied at the hearing that the insurance commission was disclosed in writing by the Property Factor, although not in the written statement. The profit share arrangements were not disclosed. The Tribunal accepts that the details of both commission and profit share are subject to change, However it should be noted that the written statement is the document which sets out the " terms and service delivery standards of the arrangement in place between" the Property Factor and the Homeowner (Section 1, Code of Conduct for Property Factors). This document should therefore advise the Homeowner not only that there is commission paid and a profit share arrangement, but also provide the details of this, or direct the Homeowner to another document which does so. Neither written statement of services produced by the Property Factor does this. The Tribunal is however prepared to amend the terms of part 2 of the PFEO to require the Property Factor either to provide this information in the written statement of services or to identify where this information is to be found. This will still require the PF to review and revise the written statement but provides them with the option of providing the detailed information in a separate document. The Tribunal is not persuaded by the argument from the Property Factor that the Homeowner has now had written

disclosure of the information contained in the Property factor's response to her application to the Tribunal as it should not have been necessary for the Homeowner to make the application in obtain information to which she is entitled by virtue of the Code of Conduct. Furthermore, the information disclosed by the Property Factor is likely to change.

The second issue raised by the Property Factor relates to part 3 of the proposed PFEO. Again, the Property Factor states that the written statement does not require to be revised in the terms proposed because the Homeowner now knows how to go about making an insurance claim and furthermore the insurance booklet and website provide information on the process. The Tribunal is not persuaded by this representation. The Tribunal is satisfied that the Homeowner was not advised in writing prior to her enquiry in April 2017 that all insurance claims had to be submitted by the individual homeowners, including those relating to common repairs. The proposed PFEO does not require the Property factor to incorporate the procedure itself into the written statement, but only to provide the Homeowner with information about the procedure. It should however be clear from either the written statement, or the separate document referred to in same, that the Property Factor does not submit claims for any repair. Currently, that is not the case.

The third issue raised by the Property factor relates to part 4 of the PFEO. The Property Factor states that a procedure which requires insurance claim proceeds to be paid to them interferes with the homeowner's discretion in relation to such matters. The Tribunal is not persuaded by this argument. The title conditions for the property are binding on the homeowner and other homeowners in the block who are subject to the same conditions. They also establish the Property Factor's remit in relation to the property. No evidence was led from either party to suggest that the proprietors have agreed to depart from the title conditions in relation to insurance arrangements. The Tribunal is therefore satisfied that it is appropriate for a procedure to be established so that future insurance claim proceeds will be paid direct to the property Factor and applied to the common repairs. However, the Tribunal is prepared to remove the words "in all cases" and replace same with "where this is required by the title deeds to the property" as direct payments are only mandatory when prescribed by the title conditions.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Sections 5.3 of the Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act in that it does not have a proper procedure in place in relation to insurance claims for common repairs.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £150, for her time, effort and inconvenience, within 28 days of intimation of the PFEO,
- (2) The Tribunal order the Property Factor to review and revise its written statement of services either to provide homeowners with full details of all payments made by insurance companies to the Property Factor, including commission and profit share arrangements or to identify a document which contains this detailed information, and provide a copy of this document to the homeowner, within 28 days of intimation of the PFEO,
- (3) The Tribunal order the Property Factor to review and revise its written statement of services to provide homeowners with information on the procedure for making insurance claims for common repairs, within 28 days of intimation of the PFEO, and
- (4) The Tribunal order the Property Factor to establish a procedure for the proceeds of insurance claims for common repairs to be paid direct to the Property Factor where this is required by the title deeds to the property, within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor aggrieved by a 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.

J Bonnar

Josephine Bonnar,
Legal Member

8 August 2018