

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

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

**Chamber Ref: FTS/HPC/LM/17/0086**

**5 Hillpark Grove, Edinburgh, EH4 7AP  
Registered in the Land Register of Scotland under Title Number MID61536  
 (“The House”)**

### **The Parties:-**

**Mr Aylmer Millen, residing at the House  
 (“the homeowner”)**

**Charles White Limited  
65 Haymarket Terrace, Edinburgh, EH12 5HD  
 (“the property factor”)**

### **Tribunal Members:**

**Martin J. McAllister (Legal Member)  
Elizabeth Dickson (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 2<sup>nd</sup> June 2017.

### **Decision**

The Tribunal has decided that it should make a property factor enforcement order (PFEKO) in the terms originally proposed by it.

The decision of the Tribunal is unanimous

### **Reasons for Decision**

In the Tribunal’s decision of 2<sup>nd</sup> June 2017, it proposed to make a PFEKO as follows:

1. The property factor will make a payment of £200 to the homeowner by way of compensation for breaches of the Code of Conduct for Property Factors and breach of the property factor’s duties; such payment will be made within twenty eight days of service of the property factor enforcement order.
2. The property factor is to provide an undertaking to the tribunal that it will, in future, ensure that any insurance it places in relation to the common parts of the development is in accordance with the terms of the title obligations in respect of the house at 5 Hillpark Grove, Edinburgh, EH4 7AP and is within the authority granted by all the proprietors of the development. The undertaking is to be provided within twenty eight days of service of the property factor enforcement order.

The Tribunal indicated that prior to making a property factor enforcement order, 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 8<sup>th</sup> June 2017.

The property factor made no representations.

The homeowner wrote to the Tribunal on 15<sup>th</sup> June 2017 requesting that the Tribunal review its Decision. The Tribunal determined not to exercise its discretion to do so and this was intimated to parties.

The Tribunal considered it reasonable for it to consider the homeowner's letter of 15<sup>th</sup> June as constituting his representations in response to the proposed PFEO.

The homeowner stated his concerns that, in his view, the Tribunal had concentrated on the future actings of the property factor rather than addressing its acting in the past and he stated that he considered that the Tribunal should impose a remedy for the property factor's "earlier insurance transgressions or any retrospective need to put these right."

The homeowner conceded that the PFEO would constrain certain actings of the property factor in the future but he considered that it would be appropriate for the PFEO to include a provision for the property factor requiring to obtain retrospective authority for its past actings and that it should also constrain the property factor to ensure that the written statement of services reflects the terms of the development's title.

The homeowner made no representations with regard to the level of compensation proposed.

The Tribunal considered matters and did not consider it practical for the property factor to effectively undo what it had done in relation to the insurance cover. Insurance is renewed on an annual basis and the proposed property factor enforcement order ensures that such cover in the future complies with the authority which the property factor has. It saw no merit in the property factor seeking retrospective authority from proprietors.

The proposed PFEO states that the property factor has to ensure that insurance it places in relation to the common parts of the development is in accordance with the terms of the proprietors' title obligations. Any written statement of services has to reflect the title position or the authority of proprietors and it is for the property factor to ensure that this is the case. The Tribunal did not consider that it required to make a specific provision in the PFEO which relates to the written statement of services.

The Tribunal confirmed its Decision made on 2<sup>nd</sup> June 2017 in terms of Section 19(1) (a) of the Act

## **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

1. The property factor will make a payment of £200 to the homeowner by way of compensation for breaches of the Code of Conduct for Property Factors and breach of the property factor's duties; such payment will be made within twenty eight days of service of the property factor enforcement order.
2. The property factor is to provide an undertaking to the Tribunal that it will, in future, ensure that any insurance it places in relation to the common parts of the development is in accordance with the terms of the title obligations in respect of the house at 5 Hillpark Grove, Edinburgh, EH4 7AP and is within the authority granted by all the proprietors of the development. The undertaking is to be provided within twenty eight days of service of the property factor enforcement order.

**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 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.

M McAllister

Martin J. McAllister, Legal Member and Chair

4<sup>th</sup> August 2017