

# 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

**Chamber Ref: FTS/HPC/PF/19/0247**

**Property at 3 Neil Gordon Gate, Blantyre, Glasgow G72 0AP (“the property”)**

**The Parties: -**

**Mr Greg Hanley, 11 Pommern Parade, Co. Antrim, Belfast, BT6 9FX (“the homeowner”)**

**Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF (“the property factor”) represented by Messrs Hardy MacPhail solicitors**

**Tribunal Members: -**

Simone Sweeney (Legal Member) Elaine Munroe (Ordinary Member)

**Decision of the Tribunal chamber:-**

1. The Tribunal refuses the request of the homeowner for permission to appeal the decision of the Tribunal of 16<sup>th</sup> October 2019 on all grounds in terms of Rule 38 of the Procedure Rules.
2. The Tribunal refuses the request of the homeowner to, *“re-insert the phrase “and that no further action will be taken in this regard” to Paragraph (ii) of the Proposed Property Factors Enforcement Order.”*
3. The decision of the Tribunal is unanimous.

**Background**

4. Reference is made to previous procedure and to the terms of the decision of the Tribunal of 16<sup>th</sup> October 2019. On that date the Tribunal, determined that the property factor had met the terms of the Proposed Property Factor Enforcement Order (“PFEO”) dated 15<sup>th</sup> May 2019 and as amended on 5<sup>th</sup> September 2019. This decision was made following the homeowner having confirmed that the property factor had complied with the terms of that proposed PFEO. The Tribunal determined that no PFEO would be required, no certificate of compliance would be required and no further action would be required of the property factor.
5. By letter dated 31<sup>st</sup> October 2019 (“the letter”), the homeowner applied to the Tribunal for permission to appeal the decision of 16<sup>th</sup> October 2019. The letter read, “I wish to appeal part of the decision made on a point of law.” Attached to the homeowner’s letter was a letter from the property factor to another homeowner at the development where the homeowner had previously owned the property.
6. The letter read, further,

*“Since your decision was made I have been provided with the attached letter...In this letter Newton state that they have recommenced legal action but acknowledge that their chances of winning this case are “slim.” They then go on to state that the owners should therefore be prepared for the “fresh apportionment of the major debt along with a share of additional court expenses.”...I believe that Newton’s actions in relation to the attempted recovery of the debt have been nothing short of negligent and, in this regard, they have failed to adhere to Section 4.7 of the Code of Conduct for Property Factors.”*
7. The homeowner continued,

*“In this instance it was not that Newton could not recover the unpaid charges from the major debtor rather it was simply through their own negligence that they failed to follow the protocol of the Court and, therefore, the debt was unenforceable....I find it insulting that they can then attempt to re-open this case with the knowledge that, due to their own failures, they are highly likely to lose but still expect all additional costs, as well as the debt they failed to recover from the major debtor,*

*to be recovered by their previous clients. It is my opinion that an unenforceable debt cannot be passed onto third parties.”*

### **Grounds of appeal**

8. The ground of appeal founded upon by the applicant is as follows:-

*“I wish to appeal part of the decision made on a point of law”*

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

### **Reason for decision**

10. The homeowner does not identify any arguable point of law arising from the decision of 16<sup>th</sup> of October 2019 not to issue a PFEO. The homeowner appears to possibly wish to appeal against the terms of the PFEO last amended on 5<sup>th</sup> September 2019 and sent to him on 10<sup>th</sup> September 2019. Such an appeal would have to have been made within 30 days of 10<sup>th</sup> September 2019. The letter seeking leave to appeal was dated 31<sup>st</sup> October 2019. The request for permission to appeal is accordingly out-with the 30 day period.
11. The home owner references issues which may be properly raised by him against any possible future attempt by the property factor to recover money from him, arising from the unrecovered debit of a third party.

### **Appeal**

12. 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.

**Simone Sweeney, Chairing Legal Member of the Tribunal, 6<sup>th</sup> November 2019**