

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23**

Chamber Ref: FTS/HPC/LM/19/1850

**Common Ground, Belvedere Village, Parkhead, Glasgow, G31 4QD**  
("The Property")

### The Parties:-

**Mr Lewis Cole, 65 Springbank Gardens, Parkhead, Glasgow, G31 4QD**  
("the Applicant")

**SG Property Management Limited, 272 Bath Street, Glasgow, G2 4JR**  
("the Respondent")

### Tribunal Members:

**Ms Susanne L M Tanner QC (Legal Member)**  
**Ms Mary Lyden (Ordinary Member)**

### Decision

The First-tier Tribunal (Housing and Property Chamber) ("the tribunal") unanimously determined that the Property Factor has complied with the terms of the Property Factor Enforcement Order ("PFEKO") dated 18 February 2020, albeit not within the time period specified therein, and therefore no further action on the part of the Property Factor is required.

### Statement of reasons

1. By decision dated 18 February 2020, the Tribunal made a Property Factor Enforcement Order of the same date. The Decision and PFEKO were intimated to parties.

2. The PFEO so issued required the Property Factor to carry out the following within 30 days of the Notice:
  - a. *Produce and exhibit to the tribunal and to the Applicant:*
    - i. *a Written Statement of Services (“WSS”) for the Development which complies with Section 1.1aA of the Code of Conduct and is in accordance with the Deed of Conditions for the Development. In particular the WSS should set out:*  
*a statement of the basis of any authority the Respondent has to act on behalf of all the homeowners in the group; and*  
*b. where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which the property factor may act without further consultation.*
    - ii. *A written procedure to consult with homeowners in the Development to seek their written approval before providing work or services which will incur charges or fees in addition to those in the core service, unless the Respondent can show an agreed level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies); in accordance with Section 2.4 of the Code of Conduct and the Deed of Conditions for the Development.*
  - b. *Convene a meeting with the Proprietors (or their proxies) in the Development to take place within 30 days of the date of the PFEO, with an agenda which includes measures to put in place an active Owners’ Association in accordance with the Deed of Conditions for the Development; and proposals for possible additional measures to prevent rogue parking in other areas of Common Ground in the Development.*
  - c. *Write to all Proprietors in the Development and provide a copy of the letter to the tribunal and the Applicant, to notify the Proprietors:*
    - i. *that the First-tier Tribunal has decided (as conceded by the Respondent) that the Respondent has failed to comply with the Code of Conduct Section 1.1aA to include in its Written Statement of Services for the Development the basis of its authority to act; and where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which the property factor may act without further consultation;*

- ii. *that the First-tier Tribunal has decided (as conceded by the Respondent) that the Respondent has failed to comply with the Code of Conduct, Section 2.4, and failed to comply with property factors' duties, in that it failed to consult with the Proprietors on the Development prior to instruction of the rock works as a preventative measure for parking on some grassed areas in the Development (particularly by non-residents on football match days) and incurred consequent financial liability to the Proprietors;*
      - iii. *that the First-tier Tribunal has ordered the Respondent to revise its Written Statement of Services to ensure that it complies with the Code of Conduct, in particular Section 1.1aA in relation to the basis of its authority to act and where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which the property factor may act without further consultation;*
      - iv. *that the First-tier Tribunal has ordered the property factor to produce a written procedure to consult with the Proprietors in the Development to seek their written approval before providing work or services which will incur charges or fees in addition to those in the core service; and*
      - v. *that the Respondent will convene a meeting with the Proprietors (or proxies) in the Development with an agenda which includes proposals for measures to put in place an active Owners' Association, in accordance with the Deed of Conditions; and proposals for possible additional measures to prevent rogue parking in other areas of Common Ground in the Development.”*
  - 3. After the PFEO was issued, the Respondent corresponded with the tribunal about the difficulties in convening a meeting of proprietors within 30 days of the PFEO given the restrictions imposed in relation to the Covid-19 pandemic and proposed that the matter be dealt with via correspondence with the proprietors. The tribunal agreed to vary the PFEO to remove that requirement in order (b) to “*Convene a meeting with the Proprietors (or their proxies) in the Development to take place within 30 days of the date of the PFEO*”.
  - 4. On 14 and 17 November 2020, the Respondent submitted a copy of a revised Written Statement of Services and a copy of a letter sent to proprietors in the Development within which the Property is situated; and submitted a signed declaration that the Respondent had complied with the PFEO.
  - 5. On 17 November 2020, the Applicant stated he was more than happy to confirm that the Respondent has, in his opinion, fully complied with what was asked of them; the Respondent has addressed all of the concerns he had when this was

initially raised; he is more than happy to draw a line under this to move forward with a much better working relationship between the residents and the Respondent; and submitted a signed declaration that the Respondent has complied with the PFEO.

6. In terms of Section 23 of the 2011 Act it is for the tribunal to decide whether a Property Factor has complied or failed to comply with a PFEO. On the basis of the information submitted by both parties, the tribunal is satisfied that the PFEO had been complied with in full, albeit outwith the required period.
7. The tribunal observes that the revised Written Statement of Services which has been provided to the proprietors at the development contains out of date information in Section 8 about the former Homeowner Housing Panel, which no longer exists. That name, address and contact details should be replaced by: "First-tier Tribunal for Scotland (Housing and Property Chamber)", the details of which are available on the Chamber's website at [www.housingandpropertychamber.scot/contact-us](http://www.housingandpropertychamber.scot/contact-us), where a link to the appropriate forms to be provided to homeowners can also be found. While this matter was not specifically within the tribunal's consideration in relation to the present matter, it is recommended that the Written Statement of Services is revised by the Respondent in this respect and re-issued to proprietors with an appropriate explanation.

## 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**

Ms. Susanne L M Tanner QC  
Legal Member and Chair

4 December 2020