

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factors (Scotland) Act 2011 section 19

Chamber Ref: FTS/HPC/PF/19/4014

**Property at 15 Rosebank Tower, Cambuslang, South Lanarkshire G72 7HE
("the Property")**

The Parties:-

**Gerald Boyd, 19 Tanzieknowe Road, Cambuslang, South Lanarkshire G72 8RD
("the Applicant")**

**South Lanarkshire Council, Property Services, Pollock Avenue, Hamilton,
South Lanarkshire ML3 9SZ ("the Respondents")**

Tribunal Members:-

**Maurice O'Carroll (Legal Member)
Elizabeth Dickson (Ordinary Member)**

Property Factor Enforcement Order ("PFEO")

This Order should be read in conjunction with the decision of the Tribunal and proposed PFEO dated 5 April 2020 under the above reference

1. By decision dated 5 April 2020, the Tribunal determined that the Factor had breached its duties in terms of s 17(5) of the 2011 Act as detailed in the said decision.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the Factor has failed to carry out the property factor duties, the Tribunal must make a Property Factor Enforcement Order. Before making an Order, to comply with section 19(2) of the Act, the Tribunal must give notice of the proposed Order to the factor and must allow the parties an opportunity to give representations to the Tribunal in relation to the Notice of proposed PFEO.
3. Notice of the proposed PFEO was duly sent to the parties on 5 April 2020. Due to circumstances relating to the Covid-19 pandemic, the parties were allowed until 12 May 2020 to make representations in response to the proposed PFEO.

4. On 11 May 2020, the Respondents suggested two alterations to the terms of the proposed PFEO: one of these was by reference to what constituted “core services” in terms of the decision; the second of these was to provide an extended date for compliance in light of the Covid-19 pandemic.
5. By email dated 12 May 2020, the Applicant stated that while he did not wish there to be any changes to the terms of the proposed PFEO, he observed that the term “core services” applies to all parties covered by the Deed of Conditions applicable to the Property and not only the private proprietors. Secondly, he observed that while the Respondents had been in breach of their property factor duties since 2011, he did not object to an extended period of time for compliance.
6. Having considered these representations, the Tribunal has reached the following conclusions: Firstly, in its decision, the Tribunal agreed with the Applicant’s submission in relation to the Common Charges which required to be divided among all parties covered by clause 1(6)(c) of the Deed of Conditions: see paragraphs 26 and 27 of the decision. It is not therefore minded to alter the wording of the PFEO as suggested by the Respondent. To do so would alter the basis of the Tribunal’s decision underlying the terms of the PFEO.
7. Secondly, while the Tribunal accepts that difficulties may arise as a result of the present Covid-19 epidemic, it considers that the initial time provided to obtemper the PFEO (being 31 March 2021) is sufficient. Further, at the time of lodging its representations on the terms of the proposed PFEO, the Respondents also sought leave to appeal against the Tribunal’s original decision. Leave to Appeal has been granted and the relevant decision will be provided under separate cover. The Respondents note at paragraph 12 of its submissions that the normal rule is that the obligation to obtemper the Tribunal’s Order will be suspended until such time as the appeal is finally disposed of or withdrawn. The Tribunal agrees with that observation. The normal rule will therefore operate to address the concern raised by the Respondent in relation to the second point.

Therefore, the First-tier Tribunal makes the following PFEO.

- (1) The Respondents shall by no later than 31 March 2021 issue to the Applicant or any successor as proprietor of the Property a statement of quarterly common charges with said statement including notification that the proportion of the quarterly management fee for the core services provided by the Respondents ending in the quarter in question payable by the proprietor of the Property is one seventy-second of the management fee for Rosebank Tower, Cambuslang;
- (2) At the time of compliance with part (1) of this Order, the Respondents shall lodge a copy of any documentation provided to the proprietor in compliance with part (1), with the Tribunal.

Appeals

8. 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 within 30 days of the date the decision was sent to them.

Failure to comply with a PFEO has serious consequences and may constitute an offence.

M O'Carroll

Legal Member and Chair

Date: 13 May 2020