

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

Case Reference Number: FTS/HPC/PF/17/0090

The Property:

Shepherds Court, Kinneskie Road, Banchory, AB31 5TG (“The Property”)

The Parties:-

Maureen Loy, 5 Shepherds Court, Kinneskie Road, Banchory, AB31 5TG

(“the Homeowner”)

and

Strutt & Parker LLP, St Nicholas House, 68 Station Road, Banchory AB31 5YJ

(“the Factors”)

Tribunal Members:

Adrian Stalker (Chairman) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factors have complied in full with the terms of the Property Factor Enforcement Order ("PFEO") of 9 August 2017, and therefore no further action on the part of the Factors is required.

Reasons for Decision

1. By decision dated 2 June 2017, the Tribunal determined that the Factors had breached their duties in terms of section 17(1)(b) of the Property Factor (Scotland) Act 2011 ("the 2011 Act") in that they had failed to comply with the Code of Conduct for Property Factors as required by section 14(5) of the 2011 Act. It also found that the Factors had failed in their property factor duties in terms of section 17(1)(a) of that Act as described in the said decision.
2. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. It then issued a final PFEO on 9 August 2017.

3. The PFEO required the Factors to "...make a deduction of £400 from their next fee to the Shepherds Court Residents Association in respect of Professional Services..."
4. By letters to the parties dated 5 January 2018, the Tribunal's clerk sought to ascertain from the parties whether the Factors had complied with the PFEO. The responses received from the Homeowner dated 11 January and 12 February maintained that there had not been compliance with the PFEO. However, those responses raised new issues that were distinct from the PFEO. The Factors' email of 19 March attached an account for period 1 April 2017 to 30 September 2017, showing a "Management Fee" charge of £619.75, plus a 5% fee for "Postage, Stationary and Telephone" of £30.98. There is then deducted "Discount from previous period" of £400, bringing out a total of £250.73. This, it was said, confirmed compliance with the PFEO. The Homeowner's response of 29 March 2018 indicated that as far as she was aware, the invoice had not been issued to the Shepherds Court Residents Association.
5. Responding to the Homeowner's email, the Factors' email of 4 April states:

Strutt & Parker wrote to all residents on 7th June 2017, 22nd September 2017 and finally on 16th October 2017 advising of the change of factoring at Shepherd's Court to PMC from 30th September 2017. With the letter of 16th October 2017 we enclosed the residents annual report for the year 01.05.16 to 30.04.17 and budget for the year to 30.04.18 which is what we had agreed with residents and HPCA. It was agreed between PMC and Strutt & Parker that PMC and not Strutt & Parker would produce the annual report for the period 01.05.17 to 30.04.18, which includes the accounts for the period relevant to Ms Loy's query.

6. Further correspondence between the Tribunal and the parties then ensued, in which the Tribunal sought clarification from the Factors as to whether the aforementioned account, showing the discount/deduction of £400, had been issued to the Shepherds Court Residents Association. In particular, the Tribunal's email to the Factors of 19 July stated:

The invoice produced by the Factors seems to be addressed to the Association, care of the Factors, at the Factors' own address. The remittance advice appears to have been issued by "BNPRE Advisory and Property Management UK % Mark Grice - Lewes", from an address in Chelmsford.

7. The Factors' response of 23 July stated:

All invoices and correspondence etc for the Residents Association were sent to the Factors address when we factored the property as there is no other address for them to be sent, that is the point of a factor being appointed.

The only reason for "BNPRE Advisory and Property Management UK" being on the remittance is that at the end of September 2017 Strutt &

Parker merged with BNP Paribas and they became one and the same business at that point which had no material effect on anything to do with the Residents Association as we stopped Factoring work for the Association on 30th September 2017.

8. In terms of Section 23 of the 2011 Act, it is for the Tribunal to decide whether a Property Factor has complied with a PFEO. In the Tribunal's view, the Factors' most recent response confirms, to its satisfaction, that compliance has taken place.

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.

Adrian Stalker

Legal Member and Chair

22 August 2018

Date