

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Certificate of Compliance following upon a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/19/1338**

**Flat 7, 29 Brighthouse Park Cross, Edinburgh EH4 6GW  
("the Property")**

**The Parties:-**

**Dr John Howard, 5132 Aldenbrook Way, Glen Allen, VA23059, USA  
("the Homeowner")**

**James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT  
("the Factor")**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Mike Links (Ordinary Member)**

### **Decision**

The Tribunal has determined that the Factor has complied in full with the terms of the Property Factor Enforcement Order ("PFEO") dated 22 April 2020 therefore no further action is required.

The decision is unanimous.

### **Statement of Reasons**

1. By decision dated 19 February 2020, the Tribunal determined that the Factor had failed to carry out its property factor's duties.
2. The Tribunal issued a Notice of Proposed PFEO together with the decision on 20 February 2020 and invited representations within 14 days of the Notice being received by the parties.
3. By email dated 20 February the Factor advised the Tribunal it was seeking the Homeowners bank details in order to comply with the terms of the proposed PFEO.

4. By emails dated 26 and 28 February and 4 and 30 March 2020 the Homeowner submitted written representations to the Tribunal.
5. The Tribunal considered the Homeowner's written representations and determined not to amend the proposed PFEO.
6. On 22 April 2020 the Tribunal determined to issue a PFEO. Due to the Covid-19 outbreak there was a delay in the PFEO being issued to the parties. The PFEO was issued on 17 June 2020.
7. By email dated 17 June 2020 the Factor advised the Tribunal that payment in terms of the PFEO had been made to the Homeowner by crediting the Homeowner's account.
8. By email dated 19 June 2020 the Homeowner confirmed it was not his intention to appeal the Tribunal's decision and that the Factor had credited his account with £750.00. The Homeowner also advised the Tribunal that the Factor had not exhibited the DKI Consultants report that it had previously undertaken to produce.
9. By letter dated 21 July 2020 the Tribunal requested the parties' views on whether the terms of the PFEO had been met.
10. By email dated 28 July 2020 the Homeowner responded seeking a variation of the PFEO and for the Tribunal to direct the Factor to produce the DKI Consultants report confirming full functionality of the smoke vents
11. By email dated 31 July the Factor responded advising that in its view the terms of the PFEO had been met and it was still its intention to exhibit the DKI Consultants report which had been delayed due to the Covid-19 outbreak.
12. By email dated 3 August 2020 the Homeowner submitted further written representations as to why a variation of the PFEO was required.
13. In light of the parties written representations the Tribunal by email dated 5 August 2020 directed the Factor to provide within ten days a firm date by which the DKI Consultants report would be completed and circulated.
14. By email dated 12 August 2020 the Factor advised the Tribunal that DKI Consultants were unable to provide the necessary report and another company Hulley & Kirkwood had been instructed in their place and that it would revert to the Tribunal with a firm date by 20 August 2020.
15. By email dated 20 August 2020 the Factor advised the Tribunal that Hulley & Kirkwood were unable to assist and another company, The Ventilation Experts had attended at the property for a provisional inspection and that the report would be issued prior to the end of August 2020.

16. By email dated 31 August 2020 the Factor provided the Tribunal with a copy of The Ventilation Experts report and confirmed that the systems in both buildings are operational. The report recommended that minor alterations should be made to the systems to allow full compliance. The Factor advised the contractor who maintains the system had been contacted in this regard and their response was awaited.
17. By email dated 31 August 2020 the Homeowner submitted further written representations in light of The Ventilation Experts report.
18. The Factor by email dated 2 September 2020 responded to the Homeowners written representations.
19. By email dated 3 September 2020 the Homeowner submitted that in terms of his complaint that the automatic smoke vents were inoperable and this had not been resolved by the recent report.
20. By email dated 7 September 2020 the Factor responded by referring the Tribunal to the terms of the PFEO and submitted that it had complied with it and had in addition provided the Tribunal with the requested independent report.
21. The Tribunal has carefully considered the representations made on behalf of both parties. Whilst acknowledging that there may be some minor modifications required to the smoke venting system as recommended by the Ventilation Experts to the Tribunal it appears that the system is operational and that the Factor has matters in hand having contacted the contractors for comment on the report.
22. The Tribunal does not consider it would be appropriate at this stage of the proceedings to amend or vary the PFEO given that the Factor has produced the independent report that it said it would at the hearing albeit that this has been delayed due in some part at least to the Covid-19 outbreak.
23. The Tribunal having considered matters and being satisfied that the proposed PFEO has been complied with by the Factor has determined that no further action is required.

### **Right of Appeal**

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

Graham Harding  
Legal Member and Chairperson

8 September 2020