

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFOE”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/LM/19/3395

Hillpark Brae Development, Edinburgh, EH4 7EF (“the Property”)

The Parties:

Aylmer Millen, 5 Hillpark Brae, Edinburgh, EH4 7AP (“the Homeowner”)

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Property Factor”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Andrew Taylor (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 27 January 2020.

Decision

The Tribunal has decided that it should make a PFOE in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 27 January 2019, it proposed to make a PFOE as follows:

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- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort and inconvenience,
- (2) The Tribunal order the Property Factor to issue a written apology to the Homeowner for their failure to comply with section 2.5 of the Code and carry out their property factor duties, and
- (3) The Tribunal order the Property Factor to provide the Homeowner with information about the re-tendering of the ground maintenance contract, including timescales.

All within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 30 January 2020. On 11 February 2020 the Homeowner submitted written representations to the Tribunal. On 17 February 2020 the Homeowner confirmed that his email of 11 February 2020 was not a request for review of the decision of 27 January 2020 but was his submission regarding the proposed PFEO. The Property Factor did not lodge representations regarding the proposed PFEO.

The Tribunal notes that the Homeowner's submission addresses the complaints contained within his application. Each complaint was considered at the hearing and addressed in the Tribunal's written decision. The Tribunal notes that most of the Homeowner's representations dispute the Tribunal's findings at the hearing and comment that these are potentially challengeable. Only the second and last paragraphs of the submission are directed at the terms of the proposed PFEO. The Homeowner states, "In the face of this blatant disrespect of the Homeowners reasonable expectations the proposed PFEO in its tokenism will be regarded by the Factor as little more than the cost of doing business and the shoddier the business the more affordable any penalties will become" (Paragraph 2). He also states "As advised above there is a whiff of tokenism in this proposed PFEO, with no reference to the training which the Factor so obviously lacks, all of which risks lending encouragement to the Factor's studied indifference to promises made to its clients and its so obvious failure to adhere to any standards either in the Code of Conduct or its own written statement of services" (last paragraph).

The Tribunal notes that the Homeowners objection to the terms of the proposed PFEO appears to be on two grounds – the level of compensation awarded and the failure to include a requirement that the Property Factor undertake training. The Tribunal considered both issues.

The compensation.

In its decision of 27 January 2020, the Tribunal made two determinations regarding the Property Factor. The first was that the property Factor had breached Section 2.5 of the Code. The second was that the Property Factor's failure to re-tender for the

ground maintenance contract in good time for the expiry of the previous contract on 1 August 2019, was a failure to carry out property factor duties. The remainder of the complaints were not upheld. At the hearing the Homeowner advised the Tribunal that he was seeking a “salutary” award of compensation. No evidence was led that either breach has resulted in any significant loss for the Homeowner, although the Tribunal is satisfied that a degree of inconvenience was experienced. The Tribunal is satisfied that the level of compensation proposed adequately reflects the inconvenience experienced by the Homeowner in relation to the breaches which were established.

Training

Although the Homeowner states that training is evidently needed, he does not specify what this training would entail or how it would address the breaches which occurred. He fails to demonstrate what difference training would have made to the Property Factor’s dealings with him. The proposed PFEO would require the Property Factor to issue a letter of apology and to provide the Homeowner with certain information, as well making an award of compensation. The Tribunal is satisfied that these proposed requirements appropriately address the breaches which have been established and is not persuaded that a requirement to carry out training is necessary or appropriate.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Section 2.5 of the Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act in that it failed to re-tender for the ground maintenance contract in good time for the expiry of the previous contract.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort and inconvenience,
- (2) The Tribunal order the Property Factor to issue a written apology to the Homeowner for their failure to comply with section 2.5 of the Code and carry out their property factor duties, and
- (3) The Tribunal order the Property Factor to provide the Homeowner with information about the re-tendering of the ground maintenance contract, including timescales

All within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor aggrieved by a 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.

Josephine Bonnar, Legal Member
2 March 2020