

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: HPC/PF/23/3962

Flat 5, 4 McEwan Square, Edinburgh, EH3 8EL (“the Property”)

Bill Welsh, Helen Welsh, Flat 5, 4 McEwan Square, Edinburgh, EH3 8EL (“The Applicants”)

Wheatley Homes East, Wheatley House, 25 Cochrane Steet, Glasgow (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 27 October 2024.

Decision

The Tribunal has decided that it should make a PFEO in amended terms.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 27 October 2024 , they proposed to make a PFEO in the following terms:-

- (1) The Tribunal order the Respondent to repay to the Applicants 50% of the management fees paid by them for the period 1 January 2021 to 31 December 2023 or cancel the management fees for any part of this period that have not already been paid ,and
- (2) The Tribunal order the Respondent to pay to the Applicants the sum of £1000 for their time, effort, and inconvenience,

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 Respondent did not lodge any submissions.

On 7 November 2024, the Applicant in the related application under Chamber reference PF/23/3768 (Mr Carter) sent an email to the Tribunal which said that he accepted the Tribunal's decision on his application but that the Respondent should be ordered to make the payment by cheque or bank transfer and not just credit the service account.

The Applicants made a request for review of the decision of the Tribunal. The Tribunal noted that the request included a number of matters which appeared to relate to the proposed PFEO as well as the decision. The Tribunal decided that it would be appropriate to make a decision on the review request and also consider the comments in relation to the terms of the order. These are summarised as follows:-

- 1. The role of Mrs Welsh at the Tribunal.** Mrs Welsh stated that she was not only participating on her own behalf but was representing other owners in the development. These owners were aware of the application and the refund of management fees outlined in the proposed PFEO should apply to all owners and everyone should receive an apology.
- 2. Electricity charges - request for a review of historic charges levied on owners.** Within the written decision there are references to charges being higher than they should have been. There is a factual error – the charges increased 7-fold not 4-fold. As the Respondent should have secured a better rate in 2021, they should be ordered to reduce the electricity charges for 2021 and 2022 to no more than £50 per quarter per owner. This should apply to all owners.
- 3. Setting aside historic repair charges.** During the hearing Mrs Welsh asked if all owners would have the relevant sums refunded. The Respondent's representative said that this would happen, but it has not yet happened.

The Tribunal is satisfied that the amendment proposed by the Applicant in case reference 3768 is appropriate and should be applied to both orders. The purpose of the order is to compensate the Applicant. This is a separate matter from the day-to-day invoicing by the Respondent. The Tribunal also notes that the Applicants may still wish to challenge some of the charges which have been applied to their account and should not be prevented from so doing by the Tribunal's order.

For the reasons outlined in the review decision, the Applicant's suggestion that the Tribunal order the Respondent to refund 50% of the management fee to other homeowners is misconceived. The Tribunal considered applications from two homeowners. If others in the development wish to make applications to the Tribunal, they are free to do so. The Respondent's failure to comply with sections of the Code may also have affected other homeowners, but this has not been established and as yet, no complaints have been made. For the same reasons, there are no grounds to require an apology to be made to the whole development. However, the Applicant is certainly entitled to an apology and the Tribunal is satisfied that the order should include an order to that affect.

The Applicant also asks the Tribunal to order the Respondent to cap the Applicant's share of the electricity charges to £50 per quarter. For the reasons outlined in the review decision, the Tribunal is not persuaded that this is appropriate. The homeowners are liable for the electricity charges. They benefited from the electricity supply. The Tribunal also notes that the Applicants do not appear to have asked the Respondent about the electricity and why their invoices did not include these. The Respondent has already absorbed the costs prior to 2020, and a better rate has been secured for the future.

The Applicant's point about the historic repair charges is valid. It was confirmed that these have been removed from Mr Carter's account and that this would be replicated in the Applicant's account. If this has not yet been carried out the Tribunal is satisfied that they should order the Respondent to remove from the account, the charges which were removed from Mr Carter's account.

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 Sections 2.1, 2.6, 2.7 and 3.1 of the 2021 Code of Conduct for Property Factors.

Section 19(3) of the 2011 Act states that if the Tribunal is satisfied that the Property Factor has failed to carry out its duties and/or comply with its section 14 duty, the Tribunal “must” make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Respondent to repay to the Applicants 50% of the management fees paid by them for the period 1 January 2021 to 31 December 2023 or cancel the management fees for any part of this period that have not already been paid ,
- (2) The Tribunal order the Respondent to pay to the Applicants the sum of £1000 for their time, effort, and inconvenience,

(3) The Tribunal order the Respondent to issue a letter of apology to the Applicants and to remove from their factoring account the historic repair charges which were removed from the factoring account of Mr Howard Carter.

All within 28 days of intimation of the PFEO.

The sums specified must be paid by cheque or bank transfer and not applied as a credit to the Applicant's factoring account.

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

24 November 2024