

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 23(1)**

Chamber Ref: HPC/PF/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)**

DECISION

**The Tribunal determined that the Property Factor has failed to comply with the
Property Factor Enforcement Order ("PFEFO") dated 2 March 2020**

The decision of the Tribunal is unanimous

Background

1. On 2 March 2020, the Tribunal issued a PFEFO in the following terms: -
 - (i) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience,
 - (ii) 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

- (iii) 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

2. The PFEO was issued to the parties. On 17 March 2020, the Homeowner submitted an application for review of the Tribunal's decision. On 11 May 2020, the Tribunal refused the application for review and a decision with statement of reasons to this effect was issued to the parties.
3. On 12 May 2020, the Tribunal wrote to the parties requesting confirmation of compliance with the PFEO. The Homeowner responded by email on 12 May 2020 stating that the Property Factor had not complied with any part of the order. The Property Factor did not respond. On 23 June 2020, a further email was issued to the Property Factor requesting confirmation of compliance with the PFEO. No response was received.
4. On 10 July 2020, the Property Factor sent an email to the Tribunal stating that they had complied with the PFEO. They provided a copy of a cheque for £100 dated 9 July 2020, payable to the Homeowner. They also provided a copy of a letter of apology, dated 10 July 2020, addressed to the Homeowner. Lastly, they provided a copy of an invitation to tender for the garden maintenance contract. The invitation is undated. It comprises a specification of the contract, which includes plans and photographs. A copy of the Property Factor's email and documents were sent to the Homeowner. On 14 July 2020, the Homeowner notified the Tribunal that the Property Factor had not complied with the PFEO because the garden tender documents only related to part of the development, the flats at 46/48 Hillpark Grove. Furthermore, the PFEO had required compliance within 28 days of the PFEO and that this had been "grossly exceeded".
5. On 7 September 2020, the Tribunal wrote to the Property Factor asking for their comments and an explanation for the garden tender documentation being restricted to the flats at 46/48 Hillpark Grove, as it did not appear to meet the requirements of the PFEO. No response or explanation has been received.

Reasons for Decision

6. The Property Factor was required to comply with the terms of the PFEO within 28 days of the order being issued, by 2 April 2020. As a result of the application for review submitted by the Homeowner, the Tribunal did not contact parties regarding compliance until 12 May 2020. No response was received to letters issued to the Property Factor by email on 12 May and 23 June 2020. On 10 July 2020, the Property Factor submitted evidence that it

has complied with parts (i) and (ii) of the PFEO. The Property Factor also submitted documentation to evidence compliance with part (iii) of the PFEO. The Homeowner does not dispute that there has been compliance with parts (i) and (ii), although the cheque and letter of apology were sent well beyond the date specified in the order. He states that the documentation provided does not establish compliance with part (iii) of the PFEO.

7. The Tribunal considered the documentation submitted by the Property Factor. The first page is an undated and unaddressed letter, which begins "Dear Jason" and states that the recipient is invited to tender for the garden maintenance contract for 46 and 48 Hillpark Brae. There are various appendices attached to the letter including Appendix A1 which is described as "site location within wider development" and Appendix C, the garden maintenance specification which is headed "46 & 48 Hillpark Grove Garden Tender Specification 2020". The Tribunal notes that the Homeowner resides at 5 Hillpark Brae and that his application relates to the "Hillpark Brae Development". It therefore appears that the documentation provided does not establish compliance with Part (iii) of the PFEO, as it only relates to part of the development, namely the flats at 46 and 48 Hillpark Grove. The Property Factor has been asked to provide an explanation for this and has failed to do so. In the absence of a satisfactory explanation, and on the basis of the documentation provided, the Tribunal is satisfied that the Property Factor has failed to comply with part (iii) of the PFEO.

Decision

8. The Tribunal determines that the Property Factor has failed to comply with the PFEO dated 2 March 2020.

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.

Josephine Bonnar
Legal Member and Chair
23 October 2020