

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of reasons for decision in terms of the First-tier Tribunal for Scotland, Housing and Property Chamber (“the Tribunal”) (Rules of Procedure) Amendment Regulations 2017 (“the 2017 Regulations”)

Chamber Ref: FTS/HPC/PF/20/0046

Re.: 5/2, 72 Lancefield Quay, Glasgow G3 8JF (“the property”)

The Parties:-

Mr William Shirriffs, 5/2, 72 Lancefield Quay, Glasgow G3 8JF (**“the homeowner”**)

MXM Property Solutions Ltd., Baltic Chambers, Suite 544 -545, 50 Wellington Street, Glasgow, G2 6HJ (**“the property factor”**)

The Tribunal members: Simone Sweeney (legal chairing member) and Elaine Munroe (ordinary housing member)

Decision of the Tribunal Chamber

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the property factor has not complied with the full terms of the Proposed Property Factor Enforcement Order (“proposed PFEO”) of 17th April 2020.
2. The Tribunal determined that it is not necessary to issue a final Property Factor Enforcement Order (“PFEO”).
3. The decision of the Tribunal is unanimous.

Background

4. Reference is made to the decision of the Tribunal of 17th April 2020 in which the Tribunal determined that the property factor failed to comply with sections 2.5 and 7.1

of the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of that Act and the Property Factor's duties in terms of section 17 of the Act.

5. As required by section 19(2) of the Act, the Tribunal issued a notice of a proposed PFEO accompanied with a written decision.
6. The proposed PFEO was in the following terms:-

"Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) *Provide to the homeowner, in writing, a deadline by which the information requested by the homeowner will be available.*
- (ii) *Provide the Tribunal with a copy of that written communication to the homeowner.*
- (iii) *Provide the homeowner with the requested information by the deadline.*
- (iv) *Provide confirmation to the Tribunal that the information has been provided to the homeowner by the deadline.*
- (v) *Pay to the homeowner the sum of £100 compensation in recognition of the time and inconvenience incurred by the homeowner in bringing this application as a result of the property factor's inaction."*

7. The proposed PFEO was issued to parties on 24th April 2020 by email.
8. Parties were invited to submit to the Tribunal any representations they might have to the terms of the PFEO within 14 days.
9. As a result of COVID-19, all Tribunal matters were paused from late March until June 2020.
10. No such representations or communications had been received from either party by June 2020.
11. The Tribunal's administration contacted the homeowner by email on 22nd July 2020 to enquire whether he had received any response from the property factor to implement the terms of the proposed PFEO.
12. By email of 27th July 2020 the homeowner replied, in so far as relevant:-

"I can confirm the following regarding the proposed Property Factor Enforcement (sic) Order:

(i) Provide to the homeowner, in writing, a deadline by which the information requested by the homeowner will be available

Non-compliance: I received no such communication from MXM Property Solutions

(ii) Provide the Tribunal with a copy of that written communication to the homeowner

Assumed non-compliance: As I did not receive this, it could not have been provided to the Tribunal

(iii) Provide the homeowner with the requested information by the deadline

Compliance: The information I requested was circulated to all owners by MXM Property Solutions, as well as provided to our new factoring company. I consider that the information has been provided.

(iv) Provide confirmation to the Tribunal that the information has been provided to the homeowner (sic) by the deadline

Assumed compliance: I, and the other owners, were sent circular e-communications with the information. I assume that MXM Property Solutions have also provided a copy of these communications to the Tribunal.

(v) Pay to the homeowner the sum of £100 compensation in recognition of the time and inconvenience incurred by the homeowner in bringing this application as a result of the property factors' inaction.

Non-compliance. MXM Property Solutions have made no attempt to contact me or make any payment of such sort.

Overall, I would therefore consider the proposed PFEO partially (but not wholly) complied with."

13. As at 30th July 2020 no representations or communications have been received from the property factor.
14. Allowing for any delay by the property factor from the break in business arising from Covid-19, the Tribunal instructed that a letter be issued to the property factor reminding of its obligation to comply with the terms of the proposed PFEO. The letter was intimated to the property factor by email on 10th August 2020.
15. The Tribunal received confirmation on 25th August 2020 that the reminder letter had brought no response from the property factor.
16. In light of the evidence before the Tribunal from the homeowner and the absence of any evidence to the contrary, the Tribunal determines that the property factor has failed to satisfy the full terms of the proposed PFEO.

17. The evidence from the homeowner indicates that the property factor has complied with section (iii) of the proposed PFEO by providing the homeowner with the information he had originally requested.
18. The Tribunal is satisfied that the property factor has failed to comply with sections (i) and (iv) of the proposed PFEO which required the property factor to communicate with the Tribunal.
19. The Tribunal is satisfied that the property factor has failed to comply with section (v) of the proposed PFEO. The property factor has failed to pay £100 to the homeowner in recognition of the time and inconvenience which he experienced.
20. However, the Tribunal note that the homeowner made no request for compensation in his application of 6th January 2020 nor does he insist upon it within his email of 27th July 2020.
21. In his application of 6th January 2020, the homeowner answered the question, "*What would help to resolve the problem(s)?*" with the following:-

"An immediate provision of all documents- including but not limited to full insurance claims history, contracts for Electricity (including usage), Lift Modernisation Programme and other regular service/financial providers for the development."
22. The Tribunal is satisfied that the homeowner has received the information which he had originally requested from the property factor. The Tribunal determines that this satisfies the homeowner's original complaint.
23. In terms of section 19 (3) of the Act, having taken account of any representations from parties under subsection 2 (b), the Tribunal must make a PFEO where the Tribunal is satisfied that the property factor has failed to comply with the section 14 duty or carry out the property factor's duties.
24. The Tribunal determines that the property factor failed to comply with the section 14 duty in its dealings with the homeowner. On the basis of the representations from the homeowner of 27th July 2020, the Tribunal determines that the property factor has failed to satisfy all but section (iii) of the proposed PFEO. However the Tribunal determines that it would not proportionate for a PFEO to be issued. The homeowner

has recovered the information which satisfies his complaint. The homeowner has never sought compensation from the property factor. The remaining sections of the proposed PFEO concerned communication with the Tribunal. The Tribunal has been updated with the present position from the homeowner. Should a PFEO be issued, it would now require to be varied to focus only on the order for compensation of £100. The overriding principle of the Regulations is to deal with proceedings justly. To issue a PFEO for the sum of £100 only would not meet the overriding principle and be disproportionate in the circumstances when the homeowner's original request for information has now been met.

Reason for decision

25. The date for compliance having passed and there being evidence produced to show that the most significant part of the proposed PFEO having now been met by the property factor, the tribunal determines that it is not necessary for a final PFEO to be issued in terms of section 19 (3) of the Act.

Appeals

26. 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 from the First-tier Tribunal. That party must seek permission within 30 days of the date the decision was sent to them.

S. Sweeney, Legal member, 25th August 2020

