



**Decision on Homeowner's Application: Property Factors (Scotland) Act 2011  
Section 19(1)(a)**

**The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulations")**

**Chamber Ref: FTS/HPC/PF/20/1607**

**The Property: Flat 8, 112 Hillpark Grove, Edinburgh, EH4 7EF ("the Property")**

**The Parties:-**

**Mr Michael Sturgeon, residing Flat 8, 112 Hillpark Grove, Edinburgh, EH4 7EF ("the Applicant"); and**

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HG ("the Respondent")**

**Tribunal Members:**

**Mr G. McWilliams (Legal Member)**

**Mr A. Khan (Ordinary Member)**

**Decision**

**The Respondent has failed to comply with its duties under Section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act") in that it did not comply with Sections 2.5 and 7.1 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code").**

**This decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") is unanimous.**

**The Tribunal considered matters and have determined that, in relation to the Application before it, the Respondent has not complied with the Code. The**

**Tribunal propose to make a Property Factor Enforcement Order (“PFEO”) in the following terms:**

**The Respondent is to make a compensation payment to the Applicant, in the sum of £200.00, within 14 days of the date of issue of the PFEO.**

### **Introduction**

1. The Respondent as a registered Property Factor has a duty to comply with the Code, under Section 14(5) of the Act. The Respondent is the Factor for the development, within which the Property is situated. The Applicant submitted an Application to the Tribunal by lodging documents between 27<sup>th</sup> July 2020 and 15<sup>th</sup> September 2020. The Applicant complained that the Respondent had acted in breach of the Code and had failed to comply with their Property Factor's duties.

### **The Hearing**

2. A Hearing was held remotely by tele-conference on 26<sup>th</sup> November 2020. The Applicant attended. The Respondent was represented by their Managing Director, Mr D. Hutton, and Associate Director Ms M. Griffiths. At the commencement of the Hearing the Applicant confirmed that his complaint was that Sections 2.5 and 7.1 of the Code had been breached by the Respondent in respect of their failure to communicate timeously with him, in respect of matters he raised originally in an email sent on 19<sup>th</sup> April 2020 and also in respect of their failure to follow their stated complaints procedure. The Respondent's Ms Griffiths and Mr Hutton candidly confirmed at the outset of the Hearing that they had not adhered to the terms of those Sections of the Code over a period of several months from April 2020. Later in the Hearing the Applicant confirmed that he had also stated in his Application Form that the Property Factor had failed to comply with their Property Factor's duties as he had omitted to do so in a previous Tribunal Application and he wished to make sure that he had covered all available points.
3. The Respondent had lodged a written submission in advance of the Hearing. After conceding breaches of the Code, the Respondent's Ms Griffiths and Mr Hutton explained that they had changed personnel for the development, within which the Property is situated, and that Ms Griffiths was now dealing with all matters concerning liaison with homeowners in that development. They explained that an internal disciplinary procedure was being followed in relation to previous failures in communication with homeowners at that development. Ms Griffiths and Mr Hutton also confirmed that they had revised and simplified their complaints procedure. They also stated their intention that there would be no further difficulties, and no other breaches of the Code, in their dealings with the Applicant and his fellow homeowners at the development.
4. It was clear from the submissions made by the parties during the Hearing that the Applicant's principal concern was that he and other homeowners had

previously, successfully, established at Tribunal that the Respondent had not demonstrated good communication with homeowners, and they had proven breaches of the Code. The Applicant candidly stated that he was sceptical regarding the Respondent's Mr Hutton and Ms Griffith's statements that they had revised their procedures and that there would be no further, similar problems in communication with homeowners at the development. To his credit, the Applicant was not focused on financial compensation as a result of the Respondent's breaches of the Code. The Applicant repeatedly stated his frustration that there had been repetition of such breaches, notwithstanding the issuing of PFEO's by previous Tribunals.

5. The parties acknowledged that the principal difficulty between them, and also for other homeowners, had been deficiencies in the Respondent's communications. They acknowledged that the communication issues had led to mistrust on the part of the Applicant and his fellow homeowners regarding the Respondent's commitment to serving their requirements. However, to their credit, the parties candidly agreed that since Ms Griffiths began her new role in respect of the development, in August/September 2020, there had been positive communications between the parties. In particular, the parties confirmed that Ms Griffiths had met Mr Sturgeon, and a contractor, on site in relation to a separate matter some three weeks prior to the Hearing. They further confirmed that the Applicant's concern in that instance was resolved there and then through direct communication.
6. At the conclusion of the Hearing Ms Griffiths and Mr Hutton confirmed that they would use their best endeavours to ensure that positive communication with the Applicant and other homeowners continued.

**The Tribunal make the following Findings in Fact and Law:**

7. The Applicant is the owner of the Property.
8. The Respondent performs the role of Property Factor at the development in which the Property is situated.
9. The Respondent did not respond to enquiries and complaints received by e-mail from the Applicant, originally on 19<sup>th</sup> April 2020, for a period of several months. This was accepted by the Respondent.
10. The Respondent has a written complaints resolution procedure but, given their communication failures referred to immediately above, they did not follow this in respect of the Applicant's enquiries and complaints. This was also accepted by the Respondent.
11. The Respondent has breached Sections 2.5 and 7.1 of the Code.
12. The Respondent's communication and complaints procedure failures constituted breaches of the Code but not of their Property Factor's duties.

**13.** It is appropriate to compensate the Applicant for the inconvenience, stress and frustration which he has suffered as a result of the Respondent's breaches of the Code by the grant of a PFEO.

### **Reasons for Decision**

- 14.** The Tribunal considered all of the evidence in reaching their findings.
- 15.** Section 2.5 of the Code states that a Property Factor must respond to enquiries and complaints by letter or e-mail within prompt timescales. The Respondent accepted their breach of the Code in this regard in relation to the Applicant's enquiries and complaints, originating in his e-mail sent to them on 19<sup>th</sup> April 2020. Accordingly the Tribunal finds that the Respondent did not respond to the Applicant's enquiries and complaints within prompt timescales, in breach of the Code.
- 16.** Section 7.1 of the Code states that a Property Factor must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which they are to follow. Again, the Respondent confirmed their acceptance of a breach of the Code in this regard, in respect of the handling of the Applicant's complaint following failures in communication. Accordingly the Tribunal finds that the Respondent did not follow their written complaints resolution procedure, in breach of the Code.
- 17.** In respect of Property Factor's duties, the Applicant's application regarding a breach of Property Factor's duties was made in order not to "miss anything". The Tribunal finds that the Applicant's complaints have already been addressed, accepted by the Respondent and proven to be breaches of the Code rather than failures to comply with duties.
- 18.** Having considered and weighed all of the evidence, the Tribunal finds that a proposed PFEO in an amount of £200.00 is proportionate to compensate the Applicant for the inconvenience, stress and frustration which he has suffered as a result of the Respondent's breaches of the Code.

### **Observation**

- 19.** The Tribunal notes that the Respondent has been a party in a number of previous Tribunal proceedings in respect of similar complaints from both the Applicant and other homeowners in the development, in which the Property is situated, and in other developments. The Tribunal acknowledges that the Respondent is managing some 11,000 properties. To the credit of the parties they acknowledged that there has been a positive resumption of communication since Ms Griffiths recently began her new role in liaising with the homeowners at the development in which the property is situated. The Tribunal expects that the parties' positive communication will continue and that there will be no recurrence of the communication and other difficulties that have

occurred in the past and given rise to various Tribunal applications. If there is a recurrence, and the Respondent is again found to be in breach of the Code and/or Property Factor's duties, the Tribunal expects, and wishes to give notice, that subsequent Tribunals will likely deal with any such breaches very strictly.

### **Proposed Property Factor Enforcement Order**

- 20.** The Tribunal proposes to make a PFEO. The terms of the proposed PFEO are set out in the attached Section 19(2)(a) Notice.

### **Appeal**

- 21.** 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.

**Legal Member**

**1<sup>st</sup> December 2020**

