

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

By

Chamber Ref: FTS/HPC/PF/18/0043

The Parties:-

Aylmer Millen, 5 Hillpark Grove, Edinburgh EH4 7AP (“the Applicant”)

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

**Re: Property at 5 Hillpark Grove, Edinburgh
 (“the Property”)**

Tribunal Members:

John McHugh (Chairman) and Andrew Murray (Ordinary (Surveyor) Member).

DECISION

The Tribunal decides to issue a Property Factor Enforcement Order. Having considered the representations received from the parties on the terms of the Proposed Property Factor Enforcement Order the Tribunal has decided to issue the Property Factor Enforcement Order in amended form.

The decision is unanimous.

REASONS FOR DECISION

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act” and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”.

In our decision of 21 May 2018 we found that the Respondent had breached its property factors duties and its duties arising under the Code. We provided the parties with a copy of a proposed Property Factor Enforcement Order (“PFEO”) for their comment. The proposed PFEO provided as follows:

“Within 40 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Pay to the Applicant the sum of £300, such payment to be by way of a cheque made payable to the Applicant as opposed to a credit to his account.*
- 2 Confirm in writing to the office of the Tribunal that step 1 above has been carried out.”*

An email dated 11 June 2018 was received from the Respondent which explained that there had been an omission from the Written Statement of Services in that it had excluded information regarding the basis for charging a 10% management fee in relation to Project Management. The omission existed only in the version which had been sent to the Applicant. No other representations relevant to the terms of the PFEO were received from the Respondent.

The Applicant had made representations on the terms of the PFEO in a document described as a review request but which was received during the period provided to parties for comment upon the terms of the Proposed PFEO. We have therefore taken those representations into account here.

The Applicant states that the Respondent should be ordered to produce information regarding the 10% management fee and the tendering documents. The former has been addressed by the Respondent's email of 11 June but the latter has not. We think it reasonable to require the Respondent to produce the tendering documents since we consider that the Applicant is entitled to see them and the Respondent had already offered them for (cursory) general inspection at a previous owners' meeting. We have added a new paragraph to the final PFEO to reflect this.

The Applicant further states that an order should be made requiring the Respondent to meet the cost of replacement trees. We do not consider that such an order would be reasonable standing our findings that the Respondent's failures are not necessarily the cause of the trees' failure.

The Applicant wishes the Respondent to be ordered to draw the terms of the Code to the specific attention of its employees and for its directors to confirm that it has done so. We do not consider such an order appropriate. We consider that it is for the Respondent to decide how to deal with the management and education of its staff.

In terms of section 19(3) of the 2011 Act we hereby issue the following PFEO:

"Within 40 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Pay to the Applicant the sum of £300, such payment to be by way of a cheque made payable to the Applicant as opposed to a credit to his account.*
- 2 Make available for inspection by the Applicant any records relating to the tendering of works relating to the storm drains serving the Development.*

- 3 Confirm in writing to the office of the Tribunal that step 1 above has been carried out."*

APPEALS

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 to appeal within 30 days of the date the decision was sent to them.

J McHugh

JOHN M MCHUGH

CHAIRMAN

DATE: 27 June 2018