

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Certificate of Compliance with the Property Factor Enforcement Order (PFEO)
dated 12 February 2018**

Chamber Ref: FTS/HPC/PF/17/0216

**13 Burnpark, Catrine, Mauchline, KA5 6ER
("The Property")**

The Parties: -

**Mr Joseph Hall 3 Otter Road, Swaffham, Norfolk, PE37 8JEG
("the Homeowner")**

**Murphy Scoular, 3 Parkhouse Street, Ayr, KA7 2HH
("the Property Factor")**

Tribunal Members:

**Josephine Bonnar (Legal Member)
David Hughes Hallet (Ordinary Member)**

Decision

The Tribunal, having determined that the PFEO dated 12 February 2018 relating to the property has been complied with, certifies that the Property Factor has complied with the PFEO.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal's decision of 12 February 2018, it made a PFEO in the following terms:

- (1) The Tribunal order the Property Factor to prepare a written procedure for debt recovery, to include a procedure for dealing with disputed debts, and issue a copy of same to the Homeowner within 28 days of intimation of the PFEO,
- (2) The Tribunal order the Property Factor to review and revise its complaints procedure to include a procedure for dealing with complaints against

contractors within 28 days of intimation of the PFEO, and

- (3) The Tribunal order the Property Factor to fulfil its property factor duties by calling a meeting of the proprietors of the development of dwellinghouses at Oakburn, Catrine to discuss and vote on the issue of the banking erosion repair. The meeting is to be arranged within 28 days of intimation of the PFEO.

The PFEO was issued to parties on 15 February 2018.

On 9 March 2018 the Property Factor sent a letter to the Tribunal enclosing two documents - a debt recovery procedure and a revised complaint handling procedure. These were forwarded to the Homeowner. The Property Factor advised the Tribunal that a meeting of proprietors had been arranged for 11 April 2018 at 7pm at Catrine Village Hall. On 18 April 2018 the Property Factor advised that the meeting scheduled to take place on 11 April 2018 had not taken place. It was explained that although the Property Factor and a number of proprietors had attended, the caretaker of the hall was not present to allow access. On 24 April 2018 further representations were received from the Property Factor advising that the meeting of proprietors had now been arranged for 23 May 2018, having been further delayed by holidays and the requirement to serve notice in terms of the title deeds. On the 25 May 2018 the Property Factor notified the Tribunal that the meeting had now taken place and provided a copy of the minute of the meeting. This provides a list of attendees and proxies, being 19 in total. It confirms that there was a quorum present and further details that a proposal to obtain estimates and instruct a repair to the banking was rejected by all by one on the attendees.

On 4 June 2018 the Homeowner lodged written representations. He stated that the Property factor had not complied with the PFEO in relation to the meeting which was convened. He further advised that the minute provided did not accurately reflect what took place at the meeting. The Homeowner stated that following the rejection of the motion to instruct the common repair the Property Factor moved on to other business but refused to allow the Homeowner to discuss the issue of arbitration which is identified in the title deeds as the method for resolving disputes. The Homeowner indicated that there was a quorum present and that it was appropriate for arbitration to be discussed. Furthermore, the minute produced by the Property factor does not disclose that he attempted to raise this matter and was prevented from doing so. The Property Factor responded to the Homeowner's representations, disputing the claim that the meeting arranged did not comply with the PFEO and stating that the issue of arbitration was not relevant.

The Tribunal considered the terms of the revised complaints procedure and noted that it now includes a procedure for dealing with complaints against contractors. The Tribunal also considered the terms of the written debt procedure produced by the Property Factor and notes that it includes a procedure for dealing with disputed debts. The Homeowner does not dispute that the Property Factor has complied with parts 1 and 2 of the PFEO.

The Tribunal proceeded to consider the parties representations in relation to part 3 of the PFEO. Both parties confirm that a meeting was called and took place, that a quorum was present and that a vote was taken on the banking repair and rejected. The calling of the meeting was technically late as it was not within 28 days of the PFEO being issued. However, the Tribunal is satisfied that this was the result of circumstances outwith the control of the Property Factor. The Tribunal does not consider the Homeowners representations in relation to the issue of arbitration or the inaccurate minute to be relevant. Although evidence was led by parties about arbitration at the hearing on 16 October 2017, the Tribunal did not find the Property Factor's actions in relation to the matter to amount to a breach of the code of conduct or a failure to carry out property factor duties. Part 3 of the PFEO only requires the Property factor to convene a meeting and to take a vote on the repair, and it is accepted by the Homeowner that this took place. The Tribunal is therefore satisfied that the Homeowners written representations do not establish that the Property Factor has failed to comply with any part of the PFEO.

The Tribunal is therefore satisfied that the Property Factor has now complied with the PFEO and that a certificate of compliance should be issued.

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

19 June 2018