

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision issued under The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/17/0183

Flat 0/1, 802 Pollokshaws Road, Glasgow, G41 2AY ("The Property")

The Parties:-

**Ms Lynn Forsyth, residing at Flat 0/1, 802 Pollokshaws Road, Glasgow, G41 2AY
("the applicant")**

**Macfie & Co, Management Services Ltd, a company incorporated under the Companies Acts and having a place of business at 5 Cathkinview Road, Glasgow G42 9EA
("The property factor")**

Committee Members

Paul Doyle	Legal Member
David Hughes Hallett	Ordinary Member

1. By application dated 8 May 2017, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of her complaint that the property factor has breached the code of conduct imposed by Section 14 of the Property Factors (Scotland) Act 2011 ("The 2011 Act") & that the property factor has failed to comply with the property factor's duties.

2. After considering all of the evidence presented in this application at a hearing on 13 September 2017, the tribunal, determined that the respondent had breached Sections 2.5 and 5.3 of the code of conduct for property factors, but has not failed to comply with the Property Factors Duties

3. On 23 October 2017 the tribunal served notice of intention to make the following property factor enforcement order ("PFEO")

"Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must

"1. Amend their statement of services in relation to comply with section 5.3 of the code of conduct by indicating that written disclosure of any commission, administration fee, rebate or other payment or benefit received for providing insurance cover will promptly be disclosed to home owners in writing.

"2. Intimate a copy of the amended written statement of services to the applicant.

"3. Provide the applicant with details of all commissions, fees, rebates, payments and benefits received for providing buildings insurance cover between May 2015 and December 2016."

4. Section 19 of the 2011 Act contains the following:

"(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

"(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order.

"(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal."

5. By email dated 21 November 2017 the respondent confirmed that their written statement of services has been amended to comply with the proposed PFEO, and that the insurance commission received between 01/05/2015 and 30/11/2015 amounts to £173.74. The respondent provided a copy of their amended statement of services, which contains the amendments required by the proposed PFEO.

6. A copy of the property factors response was sent to the applicant for her comments. No response has been received from the applicant.

7. Having considered the terms of the amended statement of services, the committee is satisfied that the concerns voiced in the proposed Property Factor Enforcement order have been adequately addressed by the respondent, and that no meaningful purpose would be served in serving a property factor enforcement order. There has been a material change in circumstances since the decision of the tribunal intimated 23 October 2017.

8. Having consider matters anew in light of the amended statement of services, the committee finds that at today's date the respondent complies with the code of conduct & the Property Factors Duties, and that a Property Factor Enforcement Order is no longer necessary.

Appeals

9. 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

10. This decision was originally dated 17 January 2018 and issued to the parties on 23 January 2018. It is corrected so that reference is made to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, and so that the Property Factors (Scotland) Act 2011 is clearly referred to. The corrections are made under regulation 36 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The substance of the decision remains the same.

P Doyle

Signed

Date 31 January 2018.