

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision by the Tribunal
In an Application under section 17 of the Property Factors (Scotland) Act 2011
("the 2011 Act")**

Chamber Ref: HOHP/LM/16/0031

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 Hillpark Grove, Edinburgh
("the Property")**

Tribunal Members:

John McHugh (Chairman) and Ahsan Khan (Ordinary Member).

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that its decision of 19 December 2016 (to the effect that there has been compliance with the Property Factor Enforcement Order dated 5 September 2016) shall be set aside. The Tribunal hereby re-decides the matter and determines that the Property Factor Enforcement Order has not been complied with.

(Handwritten signature of John McHugh)
The decision is unanimous.

Reasons for Decision

The Decision under Review

A Committee of the Homeowner Housing Panel ("the HOHP") (being the predecessor body to the Tribunal) issued a Property Factor Enforcement Order on 5 September 2016 ("the PFEO").

In terms of section 23(1) of the 2011 Act, the Tribunal was required to determine whether the Respondent had complied with the PFEO.

The PFEO was in the following terms:

"Within 60 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 *Carry out a review of the terms of its Written Statement of Service and its Customer Feedback Information Sheet and identify and correct any inconsistencies between the two, including bringing any changes to the attention of proprietors of properties in the Development.*
- 2 *Carry out a review of the terms of its Written Statement of Service and the terms of the Deed of Conditions to ensure that its practices in the management of the Development are consistent with the terms of those documents.*
- 3 *Confirm in writing to the office of the Homeowner Housing Panel that steps 1 and 2 above have been carried out."*

We considered the Applicant's representations dated 18 November and 8 December 2016 and the Respondent's representations dated 17 and 19 October and 24 November 2016 and determined in our Decision of 19 December 2016 that there had been compliance with the PFEO.

The Applicant complains that that Decision was incorrect and should be reviewed.

Basis for Review

The Applicant is of the view that the Respondent has not complied with the PFEO and that the Tribunal's Decision to the effect that there has been compliance with the PFEO is wrong in fact. The Applicant has sought review by the Tribunal of its Decision under Rule 5 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016.

The Applicant's concern is that the PFEO required changes to the Written Statement of Services ("WSOS") and Customer Feedback Information Sheet to be brought to the attention of all proprietors of properties on the Development. He believes that this has not happened, or at least has not happened within the 60 day period specified in the PFEO.

The Tribunal has reviewed the parties' correspondence on the question of compliance with the PFEO and notes that within the 60 day period, the Respondent wrote a first email of 17 October 2016 confirming having reviewed and changed the WSOS. On 19 October 2016, and still within the 60 day period, it wrote again advising that the altered WSOS would be sent to all owners within seven days (which would also be within the 60 day period).

After the 60 day period had ended, and in response to the Tribunal's standard letter to the parties enquiring whether the PFEO had been complied with, on 24 November 2016 the Respondent completed the standard form ticking "Yes" to the question whether it was agreed that the PFEO had been complied with. The Respondent wrote a further email to the Tribunal stating that the revised WSOS has been sent to the owners (but not specifying when). A second email on the same day attached a copy of a letter dated 24 November 2016 to the Applicant enclosing the WSOS. It was not clear whether that was in response to him asking for it separately or was intended to be one example copy of a general letter to owners in compliance with the PFEO (if the latter it would appear to be beyond the 60 day limit).

There has been further correspondence among the parties copied to us which seems to show the Respondent suggesting that the first communication of the altered WSOS was on 24 November 2016.

The factual position was unclear and so the Respondent's representations were sought to assist us in our decision on the present matter and in compliance with Rule 5(5). On 3 February 2017 we issued a Direction in the following terms:

"(1) directs the Respondent to confirm to the Tribunal the date upon which the Respondent complied with Paragraph 1 of the Property Factor Enforcement Order of 5 September 2016 and, in particular, to specify by which means and when it brought any changes to the documentation referred to in Paragraph 1 to the attention of proprietors of properties on the Development.

(2) in respect that the Tribunal is considering setting its decision aside or re-deciding the matter, directs the Respondent to submit to the Tribunal any representations which it may wish to make on the matter."

On 23 February 2017, the Respondent's Karen Jenkins responded to the Direction by email. In that email she confirmed that the revised Written Statements of Services had only been issued to proprietors "on the 24th November 2016, slightly later than anticipated due to the necessity to have our solicitor review and confirm the information enclosed."

There therefore appears to be no doubt that the PFEO was not complied with in respect that the changes to the WSOS were not brought to proprietors' attention within the required timescale.

It is particularly disappointing that the Respondent did not acknowledge its delay at the time and request a variation of the PFEO to extend the time for compliance.

Decision

We have decided that our decision of 19 December 2016 (to the effect that there had been compliance with the Property Factor Enforcement Order) shall be set aside. We re-decide the matter and determine that the Property Factor Enforcement Order has not been complied with.

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
Signed

Date 23 May 2017

JOHN M MCHUGH
Chairing Member