

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) in terms of section 23 (1) of the Property Factors (Scotland) Act 2011 (“the Act”) issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 (“the regulations”)

Chamber Ref: FTS/HPC/PF/18/1483

Property: Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA (“**the property**”)

The Parties:-

Ms Lesley Cochrane, Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA (“**the homeowner**”)

APEX Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH (“**the property factor**”)

Tribunal Members: -

Simone Sweeney (Legal Member) Carol Jones (Ordinary Surveyor Member)

Decision of the Tribunal Chamber

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines that the property factor has not complied with the terms of the Property Factor Enforcement Order (“PFEO”) of 22nd May 2019.
2. The decision of the Tribunal is unanimous.

Background

3. Reference is made to the decision of the Tribunal of 22nd May 2019 in which the Tribunal determined that the property factor had not complied with the terms of

the Proposed Property Factor Enforcement Order of 30th April 2019 and that a final PFEO should be issued.

4. As required by section 19(3) of the Act, the Tribunal issued a PFEO accompanied with a written decision.

5. The PFEO required that:

“Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) Re-calculate all bills and invoices issued to the homeowner by the property factor on a 1/61st share;*
- (ii) Refund to the homeowner the difference between the sums she has paid on a 1/45th share and the re-calculated figure based on a 1/61st share.*
- (iii) Provide to the homeowner all information regarding the total sum of compensation which the insurance company assessed as being due to be paid in settlement of the claim for the property;*
- (iv) Pay to the homeowner any monies owed to her from the insurance claim.*
- (v) Provide to the homeowner a detailed financial breakdown of all monies paid by her to the property factor since 2012 which are within the property factor’s ring-fenced account;*
- (vi) Pay compensation to the homeowner in the sum of £3000 (Three thousand pounds) in respect of the time and inconvenience occasioned by the property factor’s failure to comply with their duty under the Code and the Act between 2012 and 2018.*
- (vii) Produce evidence to the Tribunal that the property factor has complied with each section of this order.*

6. The PFEO and written decision of 22nd May 2019 were intimated to both parties.

7. The last date for compliance with the PFEO was 21st June 2019.

8. By email of 24th June 2019, the Tribunal’s administration contacted the parties requesting that they each complete a form to indicate their respective views on whether or not the actions required in the PFEO had been completed.

9. A response was received from the homeowner’s representative, Brian Gilmour, by email of 27th June 2019. The email read, “...*Apex have not complied with FTT decision.*” The form was completed by Mr Gilmour and dated 25th June 2019. It read, “*Apex have not made payment, recalculated bills or made contact to organise.*”

10. There was no response received from the property factor.

Reasons for Decision

11. The date for compliance having passed and there being no evidence to show that the actions required by the PFEO have been completed, the Tribunal determines that the terms of the PFEO have not been met.

Appeals

12. 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.

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Simone Sweeney, Legal member, 1st July 2019