

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)**

**Chamber Ref: FTS/HPC/PF/19/3547**

**5/5 72 Lancefield Quay, Glasgow G3 8JF  
 (“the Property”)**

**The Parties:-**

**Mr Calum Mortimer, 5/5 72 Lancefield Quay, Glasgow G3 8JF  
 (“the Homeowner”)**

**MXM Property Solutions Ltd, Unit 13, 42 Dalsetter Avenue, Glasgow G15 8TE  
 (“the Factor”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Ahsan Khan (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 8 March 2020..

### **Decision**

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

### **Reasons for Decision**

In the Tribunal’s decision of 8 March 2020, it proposed to make a PFEO as follows:

- (1) That by 31 March 2020 the Factor issue the Homeowner with an invoice in respect of all sums due by him in respect of common maintenance charges for the property to 29 February 2020.
- (2) That in future the Factor issue quarterly invoices for any maintenance charges due by the Homeowner not previously invoiced.
- (3) That in future any monthly invoice issued by the Factor to the Homeowner includes any outstanding sums due in respect of common service charges and common maintenance charges or any other charges due together with any credits.
- (4) That within a period of two months the Factor provides the Tribunal with a written statement as to how it intends to comply in the future with the terms of

- Clause 5.5 of the Constitutive Deed of Community Burdens affecting the Property or evidence that the said deed has been varied.
- (5) In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, worry and substantial inconvenience caused to the Homeowner pay him the sum of £200.00 from its own funds and that within a period of 28 days

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 11 March 2020.

By letter received on 17 March 2020 the Homeowner provided written representations to the Tribunal suggesting amendments to the proposed PFEO. Due to the ill health of the legal chairman of the Tribunal and the subsequent suspension of much of the Housing and Property Chamber business the Homeowner's representations were not addressed by the Tribunal. Following a request to the parties from the Tribunal the Homeowner submitted further written representations by email dated 25 June 2020.

The Tribunal was advised that the Factor's services had been terminated by the owners of the development with effect from 30 April 2020. The Tribunal gave consideration as to whether the proposed PFEO should be amended in light of the information provided by the Homeowner and concluded that it should not.

Having considered matters the Tribunal now confirms its original decision to issue a PFEO in the same terms.

### **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

- (1) That by 31 March 2020 the Factor issue the Homeowner with an invoice in respect of all sums due by him in respect of common maintenance charges for the property to 29 February 2020.
- (2) That in future the Factor issue quarterly invoices for any maintenance charges due by the Homeowner not previously invoiced.
- (3) That in future any monthly invoice issued by the Factor to the Homeowner includes any outstanding sums due in respect of common service charges and common maintenance charges or any other charges due together with any credits.
- (4) That within a period of two months the Factor provides the Tribunal with a written statement as to how it intends to comply in the future with the terms of Clause 5.5 of the Constitutive Deed of Community Burdens affecting the Property or evidence that the said deed has been varied.
- (5) In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, worry and substantial inconvenience caused to the Homeowner pay him the sum of £200.00 from its own funds and that within a period of 28 days.

**Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.**

## **Appeals**

**A homeowner or property factor 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.**

Graham Harding    Legal Member and Chair

7 July 2020    Date

