

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of Decision:

**Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 ("the Procedure Rules");
Property Factors (Scotland) Act 2011 ("the 2011 Act")
Tribunals (Scotland) Act 2014, section 43 ("the 2014 Act")**

Chamber Ref: FTS/HPC/PF/18/0796 and 0797-0799 and 0801-0809

**Properties at 14A-C, 15 A-H Wellington Square and 1A - 1B Cassillis Street, Ayr
("The Properties")**

The Parties: -

**Mr Ronald Baird, residing at 14B Wellington Square, Ayr, KA7 1EN,
representing himself and twelve other homeowners residing at the Properties
("the Homeowner")**

**First Port Property Services (Scotland) Limited, Troon House, 199 St Vincent
Street, Glasgow, G2 5QD ("the Factor")**

Tribunal Members: -

**Maurice O'Carroll (Legal Member)
Mary Lyden (Ordinary Member)**

Decision

The Tribunal, having reviewed its decision and proposed Property Factor Enforcement Notice ("PFEO") at the request of both parties has decided to amend its decision and proposed PFEO as set out in the present decision.

This decision will be accompanied by an amended substantive decision on the merits of the 13 conjoined applications and an amended PFEO in the manner and for the reasons set out below.

Background

1. The Tribunal issued a decision in relation to all 13 applications dated 24 September 2018, together with notice of a PFEO of the same date.
2. By letter dated 5 October 2018, Mr Bodden on behalf of the Factor sought review of the decision and by implication, the terms of the proposed PFEO. The reasons for seeking a review were set out in the form of four bullet points.
3. By letter dated 10 October 2018, the Homeowner also requested a review of the Tribunal's decision in the form of 27 numbered paragraphs which contained both narrative and suggested areas said to warrant review.
4. Further correspondence by the parties ensued with each party commenting on the other's suggested grounds for review.
5. By decision dated 15 October 2018, the Tribunal considered that neither request for review was wholly without merit, with the exception of the grounds described in paragraphs 15 and 17 of that decision. It therefore decided to consider whether the decision and proposed PFEO should in fact be reviewed.
6. With the agreement of the parties, the Tribunal held a hearing on the papers without the need for either party to be present or represented. That hearing took place on 17 December 2018 at George House, Edinburgh.
7. The Tribunal, having resumed consideration of the grounds for review presented to it, decided to amend its decision of 24 September and proposed PFEO in the manner set out below and for the reasons stated.

The Tribunal decision

8. Both parties raised the issue of the compensation proposed to be awarded in the proposed PFEO. The Tribunal had proposed an award of £500 per homeowner, being a total of £6500. The Tribunal agreed with the parties that the level of irritation and inconvenience was not the same in respect of each homeowner. Mr Baird as "lead" applicant had suffered irritation and inconvenience to a far greater extent than the remainder of the applicants.
9. The Tribunal noted that in each of the 12 other applications at section 7, the compensation sought in each case was £300. The Tribunal has therefore decided to award each of the 12 applications conjoined with Mr Baird's the sum of £300 (£3,600 in total). It awards the remaining sum of £2,900 to Mr Baird as compensation for irritation and inconvenience suffered by him as a result of the Factor's failure to comply with its duties under the Act.
10. The Homeowner pointed out that section 3.2 of the Code had not been complied with as the funds due to homeowners had not been transferred automatically to the new factors at the point of settlement following the change of property factor on 18 January 2017. The funds were transferred 10

months after the change in factor. If, as the factor contends, the homeowner did not provide details of the new factor to the Factor for a period of three months, the Tribunal considers that this did not excuse the delay which occurred. The Tribunal has therefore decided that the Factor was in fact in breach of section 3.2 of the Code. This decision does not affect the amount of compensation to be awarded.

11. The Homeowner also pointed out that the terms of requirement (iii) of the proposed PFEO would not necessarily lead to the production of a valid final bill. In his view, the period covered ought to go back to 30 April 2009 when the Factor's first provided property management services to the applicants. Whilst the Tribunal can understand the reasoning of the Homeowner, it did not consider it proportionate to impose such a requirement covering such a lengthy period of time. It has therefore decided to amend the proposed PFEO to refer to the date of 19 January 2014, instead of 2016, being three years prior to changeover. This is in order to provide a fuller picture of the intromissions with householder funds during the time that the Factor managed the Property than was originally proposed in the PFEO.
12. Having considered all other submissions and grounds for review, the Tribunal decided to make no further changes to its original decision or proposed PFEO. In particular, it was not persuaded that the owner of the property at 14A Wellington Square was other than that set out in the application at the time in which the Factor was providing property management services to all of the applicants. The title deeds supplied by the Factor showed a change in ownership of that property to Hallyards Handling Ltd on 13 March 2017, which was after the Factor ceased to manage the Property. Moreover, that matter was not raised at the time of the Tribunal's direction of 24 July 2018 or at the substantive hearing held on 6 September 2018 in Ayr.

Signed

Date: 19 December 2018

Maurice O'Carroll
Legal Member and in-house Convenor for the Tribunal