

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision of the Tribunal: Compliance with a Property Factor Enforcement Order dated 16 January 2019, following review of 17 December 2018

Property Factors (Scotland) Act 2011, Section 19(2)

Chamber Ref: FTS/HPC/PF/18/0796-0799 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 Homeowners")

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)

The Tribunal having received a response to its Decision on Compliance dated 8 March 2019 has determined that the Property Factor Enforcement Order ("PFEO") has been complied with.

1. By reviewed decision dated 19 December 2018, the Tribunal determined that the Factor had breached its duties in terms of section 17(1)(b) of the 2011 Act in that it failed to comply with Sections 2.1, 3.1, 3.2, 3.3 and 4.6 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
2. It also found that the Factor had breached its property factor duties in terms of section 17(1)(a) of the 2011 Act as set out in that decision.
3. On 16 January 2019, the Tribunal decided to issue a final PFEO following review as follows:

Within 28 days of the communication of this PFEO, the Factor must:

- (i) Pay compensation to the Homeowner Mr Baird the sum of £2,900 (two thousand nine hundred pounds) in respect of the time, irritation and

inconvenience occasioned by the Factor's failure to comply with its property factor duties and duties under the Code.

- (ii) Pay compensation to each of the remaining twelve Homeowners (with the exception of Mr Baird) in the sum of £300 (three hundred pounds) in respect of the time, irritation and inconvenience occasioned by the Factor's failure to comply with its property factor duties and duties under the Code
- (iii) Provide a full, clear and comprehensive breakdown and explanation of the sums passed to the Homeowners' new factors upon termination of the factoring contract between the parties as required by section 3.1 of the Code.
- (iv) Provide a full, clear, detailed and comprehensive annual statement as required by section 3.3 of the Code, detailing a balance brought forward from the previous year, all actual income, all actual expenditure and a statement of irrecoverable debts for the year running from 19 January 2014 to 18 January 2017.
- (v) Make good from its own funds any shortfall of any monies due to the homeowners' reserve fund which it cannot account for, following compliance with requirements (iii) and (iv) above...

Decision and reasons in relation to compliance

- 4. By letter dated 18 January 2019, the Factor indicated that it considered that it had complied with the PFEO by reference to supporting information. By letter dated 24 January 2019, the Homeowner indicated that he disputed that compliance had been effected by the factor. The Factor responded by letter dated 15 February 2019 with further information which was met with a response by the Homeowner dated 19 February 2019.
- 5. The following matters were established from that correspondence:
 - Requirements (i) and (ii) of the PFEO had been complied with.
 - Requirement (iv) was superfluous in light of the information required by requirement (iii) and did not require separate compliance.
 - The parties were in dispute in relation to whether requirement (iii) has been complied with and therefore whether the factor required to make up any shortfall due to the homeowners' reserve fund in terms of requirement (v).
- 6. The Tribunal reconsidered the extent of compliance with the PFEO in a decision dated 8 March 2019. It considered that the financial breakdown provided in relation to requirement (iii) was sufficiently clear for its purposes in light of the correspondence referred to above. It therefore considered the extent to which any shortfall in funds required to be made up pursuant to requirement (v).

7. The Tribunal decided that a total amount of £5,542.52 required to be made good to the homeowners' reserve fund in order to comply with requirement (v) of the PFEO. It therefore issued a decision requiring that sum to be paid to the new factors managing the development.
8. By letter dated 12 April 2019, the Factor confirmed that a payment had been made to the new factors in the sum of £4,962.52. A payment had previously been made for £580. The total amount made over therefore was £5,542.52 as required by the Tribunal decision on compliance dated 8 March 2019.
9. On the same date, the Homeowner confirmed that the sum of £5,542.52 had been paid.

Decision

10. Therefore, the Tribunal finds that the PFEO had now been complied with in full and issues the present Certificate of Compliance.

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.

Signed: M O'Carroll
Legal Member

Date: 16 April 2019