



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

Decision and Certificate of Compliance with Property Factors Enforcement Order (PFEO) under Section 20 of the Property Factors (Scotland) Act 2011 (Act)

Chamber Ref: FTS/HPC/LM/22/3876 and FTS/HPC/PF/23/0003

The Parties: -

Alan Slater, 67 Eastwoodmains Road, Glasgow, G76 7HQ (“the Homeowner”)

Trinity Factoring Services Ltd, 209-211 Bruntsfield Place, Edinburgh, EH10 4DH (“the Property Factor”)

The Tribunal: -

Melanie Barbour (Legal Member)

John Blackwood (Ordinary Member)

Decision

The First-Tier Tribunal for Scotland (Housing and Property Chamber) (Tribunal) has determined that the Property Factor has complied with the Property Factor Enforcement Order (PFEO) dated 6 August 2024.

Background

1. In the Tribunal’s decision of 15 April 2024 together with the review decision of 6 August 2024, the First-tier Tribunal advised that it made the following Property Factor Enforcement Order (“PFEO”)

Within a period of two months from the date of the PFEO the Factor must:

- 1 *From their own funds pay the homeowner the sum of £1,000.00 as compensation.*
- 2 *Draw up statements of account for the years 2015/2016 until and including 2019/2020. The accounts should be issued to the*

Homeowner within a period of 2 months from the date of the Order being made.

- 3 *The Property Factor shall issue to all owners in the Development the link to the Tribunal's Decision together with the name of the application "Application under the Property Factors (Scotland) Act 2011 by Alan Slater, 67 Eastwood mains Road, Glasgow, G76 7HQ against Trinity Factoring Services Ltd, 209-211 Bruntsfield Place, Edinburgh, EH10 4DH" and the PFEO prior to the next Residents' Association taking place for the Development.*

2. By email of 21 October 2024, the Property Factor wrote that it had completed the PFEO advising that:-

"Completed Parts 1 and 2; and Part 3 will be completed before the next owners' meeting. The committee have advised that it will likely take place in April next year. We circulated the link to the chair of the proprietors' association on the second of September ahead of their committee meeting on the ninth."

3. By email of 14 October 2024, the Homeowner attached a set of accounts from the Factor for the years 2015-16 and wrote that:-

"Here are one set of accounts Trinity have sent me; the rest are the same. It is clear that the apportionment is still being done across all the blocks i.e. 1/66ths for common parts charges instead of each block being charged for its own charges as per the tribunal's decision.

I would also like to note that Trinity have not sent out the link to the decision papers on your website and we have already had one residents meeting, which I attended. The only two regular types of meetings are the committee meetings which are 3 to 4 a year and the AGM which is annual. Residents can attend all the meetings. I felt that the tribunal had more or less made it clear that Trinity should have sent out the link fairly sharply but I have a feeling that they have decided to hold onto the sending out the link till the next AGM which will not be till 2025. I do not think that is on the spirit of the decision from the tribunal.

I note that they have not charged the Lauriston Street block for the common area charges either which I also sure is also not aligned with tribunals decision which said that the 12 Lauriston Street block should be liable for their share.

As a matter of fact, apart from paying me a sum of money I am not sure what else they have correctly done to comply with the tribunal outcomes."

4. The Property Factor was asked for its comments on the email of the Homeowner and on 18 December 2024 they advised that:-

“... the PFEO dated 6 August 2024 states:-

(2) Draw up statements of account for the years 2015/2016 until and including 2019/2020. The accounts should be issued to the Homeowner within a period of 2 months from the date of the Order being made.

Statements were issued to the Applicant within the period stated. The costs for the common parts follow what has been done since 2020. The Tribunal would be well served by reviewing a previous determination by the First Tier Tribunal FTS/HPC/PF/22/0955 Slater v Trinity Factors.”

Reasons for the Decision

5. This application is related to the apportionment of common charges with the Lauriston Street block. The applicant submitted that since 2020 he was satisfied that the Property Factor had been apportioning the common charges appropriately. His complaint related to the proper apportionment of the common charges with Lauriston Street prior to 2020. He asked that the Factor be ordered to produce earlier accounts on the same basis of apportionment which had been used since 2020. The PFEO ordered that this take place at Part 2.
6. As noted the applicant had sought a review of this tribunal’s decision. In the review he questioned the tribunal’s assessment of the meaning of “blocks of flats” in paragraph 74 of its decision. He stated that *“This has been the subject of debate before and in my mind never satisfactorily answered”*. This tribunal considered the matter further in the review and provided its assessment of the meaning of “blocks of flats” at High Riggs as set out in the review decision. The tribunal had not however been advised that this particular question had in fact previously been considered and determined by an earlier tribunal. While this tribunal considered that it appeared to it, that “block of flats” should be charged per individual “block of flats”, it observed two points : (1) that there were parts of the title deeds which lacked clarity on that point; and (2) if the title deeds were a matter of dispute then jurisdiction for such matters ultimately lies with the sheriff court or the Lands Tribunal of Scotland.
7. The previous Tribunal decision reference FTS/HPC/PF/22/0955, now referred to by the Property Factor, had not been brought to the attention of the Tribunal by either party, earlier. From reading that decision it is clear that the question

of the meaning of “Blocks of flats” relating to the High Riggs development was considered then. It appears that that application was made by the applicant’s late wife, with the applicant presenting the application for her. That Tribunal took the view that “Block of Flats” meant the whole of the High Riggs development and common charges for High Riggs were therefore to be divided on a 1/66th basis. That application appears to have been very much focused on this question. They explain their reasoning in detail in their decision. The applicant had considered that the meaning of “blocks of flats” was per individual block in the High Riggs development. That Tribunal considered the matter, did not agree with the applicant’s interpretation and determined that in effect there was one “block of flats” which referred to the whole of High Riggs development. This was what the Property Factor considered was the correct position. If the applicant in the earlier decision was not satisfied with that decision, then they had a right of appeal at that time. Accordingly, the question of apportionment of common charges in the High Riggs development was considered and determined in that application. Apportionment was on a 1/66th basis.

8. We note that the Property Factor’s apportionment of the common charges was 1/66th for the whole block of flats at High Riggs and not separate blocks of flats within the High Riggs development. We note that this apportionment is in line with the decision in the Tribunal decision reference FTS/HPC/PF/22/0955.
9. This current application was to consider the issue of the apportionment of the common charges with High Riggs and Lauriston Street. The Homeowner’s application was that since 2020 the common charges had been apportioned appropriately with Lauriston Street. What was ordered in the PFEO was that the Property Factor issue accounts in the same terms as accounts from 2020. The question before this Tribunal was not the correct apportionment of accounts for the High Riggs development and further, that question had already determined in the earlier decision. This tribunal accepts the earlier tribunal’s determination as to what is the proper apportionment of common charges for High Riggs. It appears that this was 1/66th and this is the apportionment which the Property Factor has been using.
10. As the Property Factor has confirmed that they have issued accounts for the period ordered in the PFEO in the same apportionment as the accounts from 2020 then we find that the Property Factor has complied with the terms of Part 2 of the PFEO.
11. In respect of Part 3 of the PFEO we are satisfied with the Property Factor’s submission on this point and that they will have further complied with its terms when the link to the decision is provided to residents prior to the next Residents’

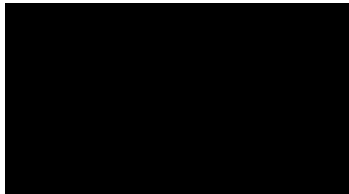
Association taking place for the Development. There is nothing in the PFEO which is more definitive in terms of when the link is to be issued and therefore, we are not prepared to find that the Property Factor has failed to comply with this part of the Order.

Decision

12. The First-Tier Tribunal for Scotland (Housing and Property Chamber) (Tribunal) has determined that the Property Factor has complied with the Property Factor Enforcement Order (PFEO) dated 6 August 2024.

Melanie Barbour

Legal Member and Chair



Date

6 January 2025