

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Certificate of Compliance with the Property Factor Enforcement Order
("PFEO") dated 2 March 2020**

Chamber Ref: HPC/LM/19/3395

Hillpark Brae Development, Edinburgh, EH4 7AP (" the Property")

The Parties:

Aylmer Millen, 5 Hillpark Brae, Edinburgh, EH4 7AP ("the Homeowner")

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD
("the Property Factor")**

Tribunal Members:

**Josephine Bonnar (Legal Member)
Andrew Taylor (Ordinary Member)**

DECISION

The Tribunal, having determined that the PFEO dated 2 March 2020 relating to the property has been complied with, certifies that the Property Factor has complied with the PFEO.

The decision of the Tribunal is unanimous

Background

1. On 2 March 2020, the Tribunal issued a PFEO in the following terms: -
 - i. The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience,
 - ii. The Tribunal order the Property Factor to issue a written apology to the Homeowner for their failure to comply with Section 2.5 of the Code and carry out their property factor duties, and

- iii. The Tribunal order the Property Factor to provide the Homeowner with information about the re-tendering of the ground maintenance contract, including timescales

All within 28 days of intimation of the PFEO

2. The PFEO was issued to the parties. On 17 March 2020, the Homeowner applied for review of the Tribunal's decision. On 11 May 2020, the Tribunal refused the application for review and a decision with statement of reasons to this effect was issued to the parties.
3. On 12 May 2020, the Tribunal wrote to the parties requesting confirmation of compliance with the PFEO. The Homeowner responded by email on 12 May 2020, stating that the Property Factor had not complied with any part of the order. The Property Factor did not respond. On 23 June 2020, a further email was issued to the Property Factor requesting confirmation of compliance with the PFEO.
4. On 10 July 2020, the Property Factor sent an email to the Tribunal stating that they had complied with the PFEO. They provided a copy of a cheque for £100 dated 9 July 2020, payable to the Homeowner. They also provided a copy of a letter of apology, dated 10 July 2020, addressed to the Homeowner. Lastly, they provided a copy of an invitation to tender for the garden maintenance contract. The invitation comprised a specification of the contract, which included plans and photographs. A copy of the Property Factor's email and documents were sent to the Homeowner. On 14 July 2020, the Homeowner notified the Tribunal that the Property Factor had not complied with the PFEO because the garden tender documents only appeared to relate to part of the development – flats at 46/48 Hillpark Grove. Furthermore, the PFEO had required compliance within 28 days of the PFEO and that this had been "grossly exceeded".
5. On 7 September 2020, the Tribunal wrote to the Property Factor asking for their comments and an explanation for the garden tender documentation being restricted to the flats at 46/48 Hillpark Grove, as it did not appear to meet the requirements of the PFEO. No response or explanation was provided.
6. On 23 October 2020, the Tribunal issued a decision that the Property Factor had failed to comply with the PFEO.
7. On 9 November 2020, the Property Factor sent an email to the Tribunal which stated that the tender documents previously submitted, and sent to the Homeowner, related to another part of the development. This was an error. The Property Factor attached a copy of replacement tender documents which had now been issued. These comprised a document entitled "Hillpark Brae Communal Landscape Maintenance specification November 2020" and included photographs and plans. On 25 November 2020, the Homeowner sent an email to the Tribunal which stated that the Respondent had failed to

comply with the PFEO in relation to timescales and the tendering information which was to be supplied. He said that “the tender documents and timescales ...have since been superseded as the documentation referred to was issued in error to only two of the four tendering contractors and the documentation itself still conflates the separate flatted properties with the communal property....The Respondent has now re-issued the documentation with additional definition and with amended timescales (see attached copy letter dated 19 November 2020 from the Respondent) but with the tendering documentation still deficient in its lack of reference to Terms and Conditions of contract.” A copy letter from the Property Factor was submitted with the email. The letter is addressed to the Homeowner and states that the tender documentation had only been issued to two of the four contractors. This had now been rectified. As a result, the date for a response had been extended to 7 December 2020 and the residents meeting was postponed to 19 January 2021. The Property Factor apologised for this situation.” The Property Factor was asked to provide a response to the Homeowners submission. On 8 December 2020, the Property Factor sent an email to the Tribunal which stated that, “I can confirm an extension to the tender return date was given to all four contractors due to an administration error which resulted in the tender documents only being issued to two of the four contractors.”

Reasons for Decision

8. The Property Factor was required to comply with the terms of the PFEO within 28 days of the order being issued, by 2 April 2020. As a result of the application for review submitted by the Homeowner, the Tribunal did not contact parties regarding compliance until 12 May 2020. No response was received from the Property Factor to the letter issued by email on 12 May 2020. On 23 June 2020, a further letter was issued. The Property Factor did not respond until 10 July 2020. Documentation was submitted with that response which related to the tender for a garden maintenance contract. However, as the Homeowner pointed out, the documentation did not relate to the common property which was the subject of the application and the PFEO. The Property Factor failed to provide an explanation for this, and the Tribunal proceeded to issue a decision that the Property Factor had failed to comply with the Order.
9. The Tribunal notes that the Property Factor has now submitted garden maintenance documentation which appears to relate to the whole development, including the property which is the subject of the application and Order. The Homeowner disputes that there has been compliance because the documentation relates to the whole development, including areas unrelated to the application and order. Furthermore, he points out that this has been re-issued to the contractors because two of them did not receive it. The Homeowner also takes issue with the time taken for compliance with the PFEO. The Homeowner does not dispute that a letter of apology and cheque for £100 were issued to him.

10. The Tribunal notes that the Property Factor's compliance with the order is extremely late, particularly in relation to the garden maintenance documentation. This is certainly unsatisfactory. However, the Property Factor may have assumed that they did not require to comply while the Homeowner's application for review of the decision was being considered by the Tribunal. The decision on this application was not issued until 11 May 2020. The Tribunal is also aware that of the impact of the COVID 19 Government restrictions on many businesses. In the circumstances, the Tribunal is of the view that the additional time taken to comply should be excused.
11. In terms of the failure to comply decision issued on 23 October 2020, the Tribunal determined that the Property Factor had complied with parts I and ii of the Order. Part iii of the PFEO requires the provision of "information about the re-tendering of the ground maintenance contract, including timescales." The Tribunal is satisfied that the documents submitted by the Property Factor and sent to the Homeowner do comply with the part iii of the Order, although they may not contain all the information which the Homeowner expected. Notwithstanding the lengthy delay, the Tribunal concludes that the Property Factor has now complied with all parts of the order.

Decision

12. The Tribunal therefore determines that the Property Factor has now complied with the PFEO and that a certificate of compliance should be issued.

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.

16 December 2020