

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Certificate of Compliance:

Property Factors (Scotland) Act 2011 Section 23

Case Reference Number: HOHP/PF/16/0009

Re : Property at Flat 18, 15 Simpson Loan, Edinburgh EH3 9GE (“the Property”)

The Parties:-

Mr Jason Watson, Flat 18, 15 Simpson Loan, Edinburgh EH3 9GB (“the Applicant”)

Quartermile Estates Limited, Estate Office, 9 Simpson Loan, Edinburgh EH3 9GQ (“the Respondents”)

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Ms Carolyn Hirst	- Ordinary member

Decision

The Tribunal certifies that the Property Factor Enforcement Order in respect of the Property dated 1 September 2016 as varied by its decision dated 6 October 2017 has been complied with.

The decision of the Tribunal is unanimous

Reasons

1. By its decision dated 30 January 2017 the Tribunal decided that the Respondents had failed to comply with the Property Factor Enforcement Order ("PFEO") dated 1 September 2016. By its decision dated 6 October 2017 and issued to the parties on or about 23 October 2017 the Tribunal varied the PFEO by omitting parts (4), (5), and (6) thereof. There has been no appeal against the PFEO or the decision of 30 January 2017 or the decision of 23 October 2017.
2. By letter to the Tribunal dated 31 October 2017 the Respondents applied for a certificate of compliance. The letter was received accompanied by a budget for the building (Q11) of which the Property forms part. The budget was for the year 2017 which the letter stated had been issued to all homeowners in the building on 31 March 2017. The budget included in schedule 2 a section dealing with a budgeted insurance charge. It stated that it was an estimate only and that the Respondents were awaiting revaluation visits which would affect the premium payable.
3. The budget also included in schedule 1 a section dealing with "Mechanical and Electrical Maintenance". It included an explanatory note which stated that the budgeted figure did not include any "part replacements" or "reactive repairs" such as emergency light replacements.
4. By letter dated 13 December 2017 from the Tribunal the Applicant was referred to the Respondents' application and invited to comment on whether he agreed or disagreed that the outstanding part of the PFEO had been satisfactorily completed or whether a variation or revocation of the PFEO was appropriate. By written response dated 14 December 2017 the Applicant stated that he did not agree that there had been satisfactory completion and did not wish the Tribunal to consider a variation or revocation of the PFEO. He referred to an e-mail to the Tribunal dated 24 July 2017 which he had submitted in connection with the Respondent's previous application to vary the PFEO to nil, which it had granted in part in its decision of 6 October 2017. He did not address the budget which the Respondents had attached to their most recent application. He did not

suggest that it had not been issued to him. Nor did his e-mail of 24 July 2017 suggest this. Despite it being offered neither he nor the Respondents wished a hearing on the 31 October application.

5. In these circumstances the Tribunal accepted the Respondents' statement in their application that a budget in the terms lodged on or about 31 October 2017 had been sent to the Applicant and other homeowners in the building on 31 March 2017.
6. With regard to part (1) of the PFEO, the Tribunal found that the explanatory note in the budget for the insurance with its explanatory note as to impending revaluation, made it implicit that the quotation was subject to a future quotation. Part (1) was complied with satisfactorily. With regard to part (2) of the PFEO, the Tribunal found that the explanatory note in the budget for "Mechanical and Electrical Maintenance" amounted to satisfactory compliance. Part (3) and indeed the other outstanding parts of the PFEO had been complied with albeit late. For these reasons the Tribunal was satisfied that the PFEO had been complied with. Accordingly it made the decision stated above.
7. The Tribunal must however record its disappointment that it has taken so long for the Respondents to achieve compliance since the notification of the budget in March 2017. In particular the earlier application made in April and June 2017 which was made without any attempt to lodge the budget sought in the PFEO and already in existence, has been shown to have involved a waste of Tribunal expense. That is to be deprecated. There is the possibility of a party being found liable for expenses of the other party caused through unreasonable behaviour, although no award has been sought in this case.

Appeals

8. **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.**

D Bartos

Legal Member and Chairperson

12 January 2018 Date