

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Certificate of Compliance following upon a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/20/1783

**3/2 32/34 Bank Street Glasgow G12 8ND
("the Property")**

The Parties:-

**Mr Stephen Fenelon, 5 Bath Square, Ardrossan KA22 8DP
("the Homeowner")**

**J. B. & G. Forsyth Property Management Services, 213 West George Street, Glasgow G2 2LW
("the Factor")**

Tribunal Members:

**Graham Harding (Legal Member)
Angus Anderson (Ordinary Member)**

Decision

The Tribunal has determined that the Factor has complied in full with the terms of the Property Factor Enforcement Order ("PFEO") dated 5 April 2021 therefore no further action is required.

The decision is unanimous.

Statement of Reasons

1. By its decision of 18 February 2021, the Tribunal determined that the Factor had breached Sections 5.8 of the Code of Conduct for Property Factors ("the Code") and had failed to carry out its property factor's duties.
2. The Tribunal issued a Notice of Proposed PFEO together with the decision on 18 February 2021 and invited representations within 14 days of the Notice being received by the parties.
3. The Tribunal considered representations made by both parties and issued an amended PFEO on 5 April 2021.

4. By letter dated 11 March 2021 the Factor confirmed it had adopted a policy of instructing three-yearly revaluations of the block for insurance purposes; the block had been insured as a whole in the joint names of the proprietors; the factor undertook to obtain majority consent of the owners prior to the block insurance renewal date and advise owners in the event of a majority of owners deciding to change insurers.
5. By emails dated 8 and 15 March 2021 the Homeowner complained to the Tribunal that the Factor had written to owners in terms that did not comply with the proposed PFEO and commented on the Factor's revaluation policy, the survey report obtained by the Factor, the insurance of the block in the joint names of the owners and the Factors proposals as regards the renewal of the block insurance.
6. By email dated 7 May the Homeowner complained to the Tribunal that the Factor was not complying with the terms of the PFEO as individual owners were not named on the block policy and the title deeds specified that the insurance shall be in the joint names of the proprietors. The Homeowner also queried why the block had been valued by the surveyors at less than a similar smaller building in a non-conservation area. The Homeowner also commented on ongoing maintenance and communication issues unrelated to the PFEO.
7. The Homeowner submitted further comment to the Tribunal by email dated 13 May 2021 regarding additional insurance premium charged to the Homeowner following the increase in the valuation of the block.
8. By email dated 17 May 2021 the Factor provided the Tribunal with a copy of the surveyors' report providing a valuation of the block for insurance purposes and confirmed a copy had been sent to all owners.
9. By email dated 11 June the Homeowner advised the Tribunal that he did not accept that the Factor had complied with the requirements of the PFEO for the reasons previously stated and submitted a formal objection.
10. By email dated 21 June 2021 the Tribunal requested that the Factor provide further comment on the Homeowners observations that the block insurance policy did not comply with either the terms of the PFEO or the title deeds and asked the Factor to provide information from the insurers as to whether they would normally expect individual owners to be named on the policy.
11. By email dated 1 July 2021 the Factor provided comments from its insurance brokers, Neilson Laurence & Neil advising that in 30 years of arranging block home insurance policies they had never seen individual owners being named on the policies and indicated that to do so would add

a significant administrative burden and cost that would be likely to increase premiums.

12. The Tribunal has carefully considered the submissions of both parties. The Tribunal is satisfied that the Factor has adopted a policy of revaluing the block every three years and has advised the owners of the policy. The Tribunal is also satisfied that there was no need to consult with owners to agree such a policy. It is not clear however if the Factor has advised owners that the frequency of revaluations can be altered if a majority of owners are in agreement and therefore if the Factor has not already done so it should convey this information to owners immediately.
13. The Tribunal is satisfied that the Factor instructed surveyors to provide a rebuilding cost of the development and has provided the Homeowner and the Tribunal with a copy of the surveyor's report. Although the Homeowner may wish to take issue with the surveyor's valuation that is not a matter for the Tribunal at this time. The Tribunal is satisfied that the Factor has complied with the terms of this part of the PFEO.
14. The Homeowner is clearly concerned that individual owners are not named on the block policy. However, although the title deeds refer to the policy being held in the joint names of the owners that does not in the Tribunal's view necessitate each owner being named individually on the policy. The Tribunal noted the comments from Neilson, Laurence and Neil that in 30 years of arranging block policies they had never seen individual owners being named on block policies. The Tribunal is aware that Insurance policies are held to be taken out in what is known in legal terms as *uberrimae fidei* (meaning in the utmost good faith) as a result if a declaration on a policy proposal is incorrect there is a risk that the insurers may void the policy in the event of a claim. The Tribunal could anticipate a difficulty if every individual owner was named on the policy but an owner sold his property to a new owner and a claim was submitted before intimation of the change of ownership was made to the insurers. This problem is avoided if the block is insured in the way in which the Factor has dealt with this matter. The Tribunal does not accept the Homeowner's submission that the payment of commission would affect the Insurance broker's position in this regard. The broker will receive commission irrespective of how the insured are designed in the policy. The Tribunal has noted that the Homeowner could obtain insurance cover at a lower cost from other insurers. That is by no means an uncommon complaint by homeowners. As was discussed at the Hearing, factors in general supplement their income from commission from insurances. If they did not their factoring fees would simply be increased. That is not something that the Tribunal can take into account in its current deliberations. The Tribunal is satisfied that in effect the terms of the title deeds have been implemented by the Factor by insuring the property in the way it has.
15. The Tribunal has noted the Homeowner's concerns with regards to the timing of quotes for the renewal of the block insurance policy. However, the Tribunal is satisfied that the Factor has given its undertaking to obtain

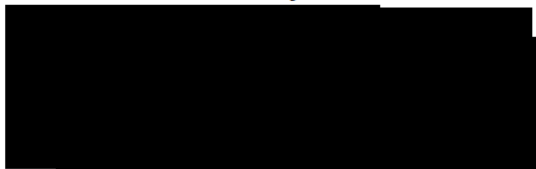
quotes in advance of the renewal date and submit them to the owners in an attempt to obtain majority consent. That is sufficient to comply with the terms of the PFEO.

16. It is apparent to the Tribunal that the Homeowner remains dissatisfied with the Factor. If a majority of likeminded owners agree then it would be open to them to remove the Factor from office. In the absence of such a majority the Homeowner must try to work with the Factor to resolve any issues and he can of course ultimately make an application to the Housing and Property Chamber if he is unable to obtain a resolution. However, with regards to the Homeowner's current application the Tribunal's role is now limited to deciding whether it should continue or vary the PFEO or determine that the Factor has complied with its terms.

17. The Tribunal having considered matters and being satisfied that the PFEO has been complied with by the Factor has determined that no further action is required.

Right of Appeal

18. In terms of Section 46 of the Tribunals (Scotland) Act 2014, a party 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 within 30 days of the date the decision was sent to them.



Graham Harding
Legal Member and Chairperson

3 August 2021