

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)**

**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)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 18 February 2021.

### **Decision**

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of paragraph 2 which has been amended.

The decision of the Tribunal is unanimous

### **Reasons for Decision**

In the Tribunal’s decision of 18 February 2021, it proposed to make a PFEO as follows:

- (1) Within a period of one month the Factor must produce a policy on the frequency with which property revaluations will be undertaken for the purposes of buildings insurance and inform the Homeowner and all other owners in the Development and also advise them that the frequency will be adjusted if instructed by the appropriate majority of homeowners in the Development. The Factor must at the same time provide the Tribunal with a copy of said policy.
- (2) The Factor will within a period of one month arrange for a reputable firm of surveyors to provide a re-building cost of the development for building insurance purposes and if the Development is under-insured arrange for the insurers to amend the policy accordingly. The cost of any such valuation must be met by the Factor from its own funds.
- (3) Within one month the Factor will provide the Tribunal with a written undertaking that prior to the renewal of the Development building insurance the Factor will

arrange for the buildings to be insured as a whole in the joint names of the owners and confirm that the premium will be divided equally between the owners in accordance with the terms of the Deed of Conditions burdening the Development.

- (4) Within one month the Factor will provide the Tribunal with a written undertaking that prior to the renewal of the building insurance the Factor will attempt to obtain majority consent for the appointment of the insurers at renewal. The Factor must allow sufficient time for alternative quotes to be obtained in the event of majority consent not being obtained.
- (5) Within one month the Factor will provide the Tribunal with a written undertaking that on any future renewal beyond the next renewal the Factor will attempt to obtain majority consent of the owners if a change of insurer is proposed. The Factor must allow sufficient time for alternative quotes to be obtained in the event of majority consent not being forthcoming.

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 22 February 2021.

By emails dated 8, 12 and 15 March the Homeowner made representations to the Tribunal in respect of the proposed PFEO and the action taken to date by the Factor. In particular the Homeowner submitted that the Factor had initiated a policy of undertaking three yearly revaluations of the building for the purposes of building insurance without consultation with owners and had not complied with the wording of the proposed PFEO.

The Homeowner was also concerned that although the Factor had arranged for a survey of the property to be carried out it had not provided a copy of the report nor confirmed if the valuation included VAT.

The Homeowner also queried whether if the building was now insured in the joint names of all the proprietors, and if he was named on the policy or not.

The Homeowner raised further concerns regarding the Factor's proposals for obtaining quotes in advance of the renewal date of the buildings insurance and the procedure for obtaining consent of the majority of owners. The Homeowner suggested that the Tribunal should cancel the existing insurance policy and create a requirement for the renewal of the insurance with the positive consent of the majority of owners.

The Factor provided the Tribunal with its comments on the proposed PFEO in a letter dated 11 March 2021 but did not comment on the Homeowner's written representations.

The Tribunal considered the representations made by both parties and concluded that it should proceed to issue a PFEO in amended terms.

The Tribunal was not convinced that the Factor had fully complied with paragraph (1) of the Proposed PFEO as no mention was made of adjusting the frequency if so advised by the majority of homeowners.

The Tribunal also considered that there was merit in the Homeowner and indeed other owners being provided with a copy of the surveyors' report and therefore determined to amend paragraph (2) accordingly.

The Tribunal considered that whilst the Homeowner may have concerns as regards the insurance renewal, the wording of paragraphs 3, 4 and 5 of the proposed PFEO did not require any further amendment and was sufficiently specific in its terms. It is for the Factor to satisfy compliance with the order in due course. The Tribunal does not have the authority to undertake the actions proposed by the Homeowner. These are matters for the owners and the Factor to determine in accordance with the Deed of Conditions.

## **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

- (1) Within a period of one month the Factor must produce a policy on the frequency with which property revaluations will be undertaken for the purposes of buildings insurance and inform the Homeowner and all other owners in the Development and also advise them that the frequency will be adjusted if instructed by the appropriate majority of homeowners in the Development. The Factor must at the same time provide the Tribunal with a copy of said policy.
- (2) The Factor will within a period of one month arrange for a reputable firm of surveyors to provide a re-building cost of the development for building insurance purposes and provide the Homeowner and the Tribunal with a copy of the report. If the Development is under-insured arrange for the insurers to amend the policy accordingly. The cost of any such valuation must be met by the Factor from its own funds.
- (3) Within one month the Factor will provide the Tribunal with a written undertaking that prior to the renewal of the Development building insurance the Factor will arrange for the buildings to be insured as a whole in the joint names of the owners and confirm that the premium will be divided equally between the owners in accordance with the terms of the Deed of Conditions burdening the Development.
- (4) Within one month the Factor will provide the Tribunal with a written undertaking that prior to the renewal of the building insurance the Factor will attempt to obtain majority consent for the appointment of the insurers at renewal. The Factor must allow sufficient time for alternative quotes to be obtained in the event of majority consent not being obtained.
- (5) Within one month the Factor will provide the Tribunal with a written undertaking that on any future renewal beyond the next renewal the Factor will attempt to obtain majority consent of the owners if a change of insurer is proposed. The Factor must allow sufficient time for alternative quotes to be obtained in the event of majority consent not being forthcoming.

**Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.**

## **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.**



Graham Harding

Legal Member and Chair

5 April 2021

Date