

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) in respect of Section 19 of the Property Factors (Scotland) Act 2011 (“the Act”)

The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the regulations”)

Chamber Ref: FTS/HPC/PF/20/1742

Property: Braemar Gardens A9, 1 Robertson Street, Greenock, PA16 8JE (“the property”)

The Parties: -

Mr Lorna Lutz, Braemar Gardens A9, 1 Robertson Street, Greenock, PA16 8JE (“the homeowner”)

McTavish & Company, Accountants and Property Agents, 18 Nicolson Street, Greenock, PA15 1JU (“the property factor”)

Tribunal Members: - Simone Sweeney (Legal Member) Andrew McFarlane (Surveyor Member)

Decision of the Tribunal Chamber

Having determined that the property factor had failed to comply with the section 14 duty of the Act and the property factor’s duties in terms of section 17 of the Act; having given notice to the parties of the proposed property factor enforcement order (“proposed PFEO”) and; having taken account of representations made under section 19 (2) (b) of the Act, the Tribunal is not satisfied that it is necessary to issue a property factor enforcement order (“PFEO”) and makes no further order. The decision of the Tribunal is unanimous.

Background

1. Reference is made to previous procedure, in particular the Tribunal's written decision of 21st December 2020 and the proposed PFEO accompanying that decision.
2. Within that decision the Tribunal determined that the property factor had failed to comply with section 6.5 of the Code of Conduct for Property Factors ("the Code") as required by section 14 of that Act and the property factor's duties in terms of section 17 of the Act.
3. Having reached that determination the Tribunal decided to make a PFEO in terms of section 19 (1) (b). As required by section 19 (2) (a) of the Act, the Tribunal gave parties notice of the proposed PFEO.
4. The proposed PFEO provided the following:

"Within 14 days from the date of issue of this order, for the property factor to:-

- *Issue a letter to the homeowner providing an undertaking to produce to homeowners details of the system by which the property factors ensure that all those appointed by them to undertake a contract or provide materials or labour for a job at the development have public liability insurance."*

5. In terms of section 19 (2) (b) of the Act, the Tribunal allowed parties an opportunity to make representations.
6. By email of 7th January 2021 the homeowner responded to the Tribunal with representations. Attached to the email was a copy letter which the homeowner had received from the property factor. Insofar as is relevant, the email provided:

"Please find attached letter from Mr mctavish (sic) in response to the proposed PFEO issued on 22/12/2020. It seems Mr mctavish (sic) has just copied and pasted the statement made by the tribunal into a letter and sent me it. I was expecting to receive a copy of Mr mctavish's new system and when he intended to inform all owners of its existence."

7. The letter attached to the email was dated, 5th January 2021. Insofar as is relevant, the letter provided:

“We undertake to produce to homeowners, details of the system by which we as property factors ensure that all those appointed by us, to undertake contract or provide materials or labour for a job at the development, have public liability insurance.”

8. The property factor did not make any representations to the Tribunal.

Reasons for decision

9. The property factor’s letter of 5th January 2021 provided an undertaking to the homeowner as required by the proposed PFEO. That undertaking was to produce details of the system by which those appointed by the property factor to undertake a contract or provide materials or labour for any job at the development have public liability insurance, as required by the proposed PFEO.
10. The homeowner indicated in her email that she had expected the property factor to produce details of his system within the letter of 5th January 2021. The Tribunal appreciate why the homeowner may have had such an expectation and consider that it would have been a courteous act by a professional property factor in these circumstances.
11. However the Tribunal recognises that the proposed PFEO required the property factor to provide an *undertaking*, only. There was no requirement on the property factor to produce details of the system within 14 days from the date of issue of the PFEO.
12. The Tribunal is satisfied that the property factor has provided an undertaking to the homeowner. In so doing, the Tribunal determines that the property factor has met the terms of the proposed order.
13. Section 19 (3) of the Act requires the Tribunal to take account of any representations from parties made under section 19 (2) of the Act.

14. Having taken account of the representations from the homeowner and the attached letter from the property factor of 5th January 2021, the Tribunal does not consider a PFEO necessary.
15. The practical effect of making a PFEO would be that the property factor would likely issue a letter to the homeowner in similar terms to his letter of 5th January 2021. That letter already satisfies the terms of the Tribunal's proposed order.
16. In all the circumstances the Tribunal is also mindful of the overriding objective at regulation 2 of the 2017 Regulations. This provides:

“The overriding objective

“2.—(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;

(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;

(d) using the special expertise of the panel and the committees effectively; and

(e) avoiding delay, so far as compatible with the proper consideration of the issues.”

17. The practical effect of the Tribunal making a PFEO at this time would be for the property factor to duplicate the action already taken by the letter of 5th January 2021. The action required by the Tribunal's proposed order has now been executed by the property factor. By issuing a PFEO at this juncture, the Tribunal would not be meeting the requirements of the overriding objective at regulation 2

(ie. avoiding delay or dealing with proceedings in a manner which is proportionate to the complexity of the issues).

18. Accordingly, the Tribunal determines that there is no need to make a PFEO. The Tribunal makes no further order in this application.

Appeals

19. 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.

Legal chairing member, at Glasgow, 3rd February 2021