

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



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

**Decision: Failure to comply with Property Factor Enforcement Order (“PFEO”):  
Property Factors (Scotland) Act 2011 Sections 23 and 24 (“the 2011 Act”)**

**Chamber Ref: FTS/HPC/PF/19/3547**

**5/5 72 Lancefield Quay, Glasgow G3 8JF  
 (“the Property”)**

**The Parties:-**

**Mr Calum Mortimer, 5/5 72 Lancefield Quay, Glasgow G3 8JF  
 (“the Homeowner”)**

**MXM Property Solutions Ltd, Unit 13, 42 Dalsetter Avenue, Glasgow G15 8TE  
 (“the Factor”)**

**Tribunal Members:  
Graham Harding (Legal Member)  
Ahsan Khan (Ordinary Member)**

### **Decision**

**The Tribunal determined:**

- 1. The Factor has failed to comply with the PFEO dated 7 July 2020;**
- 2. To serve a Notice of Failure to Comply on the Scottish Ministers in terms of section 23(2) of the 2011 Act;**
- 3. To report the Factor’s failure to the police for prosecution in terms of section 24 of the 2011 Act.**

**The decision of the Tribunal is unanimous.**

### **Reasons for Decision**

- 4. In the Tribunal’s decision of 8 March 2020, it determined that the Factor had failed to carry out its property factor’s duties and was in breach of Section 3 of the Code of Conduct for Property Factors.**
- 5. On 7 July 2020 the Tribunal issued a PFEO which required the Factor:**
  - (1) That by 31 March 2020 the Factor issue the Homeowner with an invoice in respect of all sums due by him in respect of common maintenance charges for the property to 29 February 2020.**

- (2) That in future the Factor issue quarterly invoices for any maintenance charges due by the Homeowner not previously invoiced.
  - (3) That in future any monthly invoice issued by the Factor to the Homeowner includes any outstanding sums due in respect of common service charges and common maintenance charges or any other charges due together with any credits.
  - (4) That within a period of two months the Factor provides the Tribunal with a written statement as to how it intends to comply in the future with the terms of Clause 5.5 of the Constitutive Deed of Community Burdens affecting the Property or evidence that the said deed has been varied.
  - (5) In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, worry and substantial inconvenience caused to the Homeowner pay him the sum of £200.00 from its own funds and that within a period of 28 days.
6. By emails dated 5 August and 3 September 2020 the Homeowner advised that the Factor had not completed the actions required by the PFEO.
  7. No information or representations about compliance have been received from the Factor and no excuse for the failure has been presented.
  8. The Tribunal accordingly determines that the Factor has failed to comply with the PFEO and that there is no reasonable excuse for the failure.

## **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

22 October 2020      Date



