

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Case Reference Number: FTS/HPC/PF/16/0175

The Property:

10 Lochranza Court, Carfin, Motherwell ML1 4FJ (“The Property”)

The Parties:-

David Bissett, 10 Lochranza Court, Carfin, Motherwell ML1 4FJ

(“the Homeowner”)

and

Hacking and Paterson, 1 Newton Terrace, Charing Cross, Glasgow, G3 7PL

(“the Factors”)

Tribunal Members:

Adrian Stalker (Chairman) and Andrew Taylor (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision and Proposed Property Factor Enforcement Order, both of 8 September 2017.

Decision

The Tribunal has decided that it should make a PFEO in the terms previously proposed, under deletion of: “, in terms of section 3.3 of the Code, “ from point 1, and further under deletion of points 2 and 3, being: “2. To provide to the Homeowner a statement of services in terms of section 1 of the Code of Conduct for Property Factors; 3. To make a payment of £400 to the Homeowner.”

The decision of the Tribunal is unanimous.

Reasons for Decision

In the Tribunal's decision of 8 September 2017, it proposed to make a PFEO as follows:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required:

1. To produce, in terms of section 3.3 of the Code, all supporting invoices for bills rendered by the Factors to the Homeowner, from 1 January 2009 to date, at no charge.
2. To provide to the Homeowner a statement of services in terms of section 1 of the Code of Conduct for Property Factors.
3. To make a payment of £400 to the Homeowner.

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 20 September 2017. The Factors responded by letter dated 16 October. That letter set out reasons why the factors believed that there was no requirement for a PFEO to be issued in terms of section 19(3) of the 2011 Act, as regards any of the three points in the proposed PFEO dated 8 September.

Point 1: Production of supporting invoices for bills, from 1 January 2009

In essence, the point made by the Factors in their letter of 16 October is that the Tribunal does not have jurisdiction to issue a PFEO requiring production of invoices issued before the date when the Act came into force, being 1 October 2012.

The Tribunal accepts that this point has some force, insofar as the proposed order required production in terms of section 3.3 of the Code of Conduct. That is because the Tribunal considers that the supplying of "supporting documentation and invoices...for inspection" is ancillary to the principal obligation under that section, which is to provide "a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for". As that principal obligation only came into force on 1 October 2012, the Tribunal accepts that it could not order the Factors to produce invoices under section 3.3, except insofar as they related to a detailed financial breakdown provided under that section, which would be after the Act came into force.

However, that is not an end to the matter. Reference is made to paragraphs 28 to 32 of the Tribunal's decision. The Tribunal found that the Homeowner had made a request for supporting invoices under section 3.3 of the Code. The Factors responded, by letter of 28 April 2016, as follows:

...copies of your common charges invoices can be provided from 2009 to the current date.

As this request is outwith our Terms of Service and Delivery Standards, we would require an administration fee of £25.00 plus VAT in order to provide copies of the requested invoices.

Thus, the Factors did not refuse to provide invoices in respect of their bills before the 2011 Act came into force. They indicated that the invoices going back to 2009 could be provided. The Tribunal found (at para 32) that Mr Bissett reasonably understood the Factors' letter to mean that they would provide supporting invoices, subject to two conditions: they were only available from 2009, and he was to pay an administration fee of £25 plus VAT. He duly paid that fee, but then the Factors refused to provide the invoices.

In the Tribunal's view, the Factors came under a duty to provide the supporting invoices from 2009 onwards, because they offered to produce them on condition of payment of a fee, and Mr Bissett accepted that offer, and made payment of the fee. That agreement was made in 2016. The Tribunal considers that, in the circumstances of this case, the production of the invoices became a duty for the Factors under section 14(5) of the Act.

For the foregoing reasons, the Tribunal has decided to make a PFEO requiring point 1 in the proposed order of 8 September to be carried out, but under deletion of the reference to section 3.3 of the Code.

The Tribunal notes that the Factors' letter of 16 October 2017 maintained that all invoices after 1 October 2012 had been produced. However, the Homeowner's response of 16 November disputed that point. Further invoices were then provided by the Factors under cover of their letter to the Homeowner of 1 December 2017. Given the terms of the PFEO now made, it will be a matter for parties to decide what further action to take, if they consider that the Order has, or has not, been complied with.

Points 2 (statement of services) and 3 (payment of £400)

The Factors' letter of 16 October maintains that both of these requirements have been met. That letter was provided to the Homeowner. His response of 16 November accepts that the payment of £400 has been received. It also appears to accept that the statement of services has been provided, saying "... they were forced by yourselves to provide information in regards to statement of services". At any rate, the Homeowner does not deny that the statement of services has been sent to him. In the circumstances, the Tribunal has accepted that it is not necessary to make a PFEO in respect of points 2 and 3 of the proposed Order.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required to produce all supporting invoices for bills rendered by the Factors to the Homeowner, from 1 January 2009 to date, at no charge, within 28 days of the date of intimation of this Order to them.

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.

A Stalker

Legal Member and Chair

16 January 2018

Date