

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)

Chamber Ref: FTS/HPC/PF/17/0216

**13 Burnpark, Catrine, Mauchline, KA5 6ER
 (“The Property”)**

The Parties: -

**Mr Joseph Hall 3 Otter Road, Swaffham, Norfolk, PE37 8JEG
 (“the Homeowner”)**

**Murphy Scoular, 3 Parkhouse Street, Ayr, KA7 2HH
 (“the Property Factor”)**

**Tribunal Members:
 Josephine Bonnar (Legal Member)
 David Hughes Hallet (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 27 October 2017.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of Part 3 which is amended to clarify the time limit for compliance with the order.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 27 October 2017, it proposed to make a PFEO as follows

- (1) The Tribunal order the Property Factor to prepare a written procedure for debt recovery, to include a procedure for dealing with disputed debts, and issue a copy of same to the Homeowner within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to review and revise its complaints procedure to include a procedure for dealing with complaints against contractors within 28 days of intimation of the PFEO, and
- (3) The Tribunal order the Property Factor to fulfil its property factor duties by calling a meeting of the proprietors of the development of dwelling houses at Oakburn, Catrine to discuss and vote on the issue of the banking erosion repair within 28 days of intimation of the PFEO.

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 3 November 2017. On 7 November 2017 the Property Factor made a request for a review of the Tribunal's decision. On 26 January 2018 the Tribunal refused the request for review and this decision was issued to parties on 1 February 2018. The Homeowner lodged representations to the proposed PFEO on 20 November 2017. The Property Factor did not lodge written representations to the proposed PFEO, other than those submitted in connection with the request for review. Following notification of the decision by the Tribunal to refuse the request for review, parties were advised that they had a further 7 days within which to lodge additional written representations in relation to the proposed PFEO. Neither party lodged further written representations.

In his written representations, the Homeowner seeks clarification of part 3 of the proposed order. He asks whether the meeting to be called has to take place within 28 days of notification of the order or whether the 28 day time limit relates to the calling of the meeting by the Property Factor. Secondly, the Homeowner seeks clarification of who is to be invited to the meeting and, in particular, whether the meeting is to be restricted to phase 2 of the development. Lastly, the Homeowner asks for the PFEO to include a requirement that the Property Factor refer the matter to arbitration, if the meeting does not lead to the Property Factor being instructed to carry out the disputed repair.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Sections 1.1a Bc, 4.1, 4.4, 7.1, and 7.2. of the Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act in that it did not convene a meeting of proprietors in order that a vote could be taken in relation to a common repair. The Tribunal notes that the terms of part 3 of the proposed order has caused confusion as to the applicable time limit and determined that this should be rectified. Part 3 of the order is therefore amended to make it clear that the 28 day period applies to the calling of the meeting. The meeting itself does not have to take place within the 28 day period stipulated. The Tribunal notes that the Property factor will have to consider any notice requirements in the title deeds when arranging the meeting. The Tribunal is of the view that it does not require to stipulate who is to be invited. The number of liable proprietors with responsibility for the common ground was not part of the application to or decision by the Tribunal. It is for the Property Factor to determine from the Title deeds, who is liable for the common ground and to ensure that all relevant

homeowners are invited to attend. Lastly, the Tribunal notes that although the issue of arbitration was referred to in the party's evidence, the application did not claim that the Property Factor had failed to refer the matter to arbitration and that this amounted to a breach of the code and/or a failure to carry out property factor duties. Accordingly, the Tribunal did not make any finding with regard to arbitration and it would not be appropriate for the PFEO to include any requirement with regard to same. The Tribunal is satisfied as to the terms of the proposed PFEO and that only a minor amendment in relation to the timescale for compliance is required.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to prepare a written procedure for debt recovery, to include a procedure for dealing with disputed debts, and issue a copy of same to the Homeowner within 28 days of intimation of the PFEO,
- (2) The Tribunal order the Property Factor to review and revise its complaints procedure to include a procedure for dealing with complaints against contractors within 28 days of intimation of the PFEO, and
- (3) The Tribunal order the Property Factor to fulfil its property factor duties by calling a meeting of the proprietors of the development of dwellinghouses at Oakburn, Catrine to discuss and vote on the issue of the banking erosion repair. The meeting is to be arranged within 28 days of intimation of the PFEO

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 a 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.

Josephine Bonnar,
Legal Member

12 February 2018