

# Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/LM/1812026  
FTS/HPCLM/18/2031  
FTS/HPC/LM/18/2032  
FTSIHPCILM11812033

3 Chandlers Lane, Dundee DDI 3DH ("the Property")

The Parties:-

Mr Joseph Duffy, 3 Chandlers Lane, Dundee DDI 3DH, Mrs Lynn Hood, 10 Chandlers Lane Dundee DDI 3DH, Mr Tomasz Kamusella, 12 Chandlers Lane Dundee DDI 3DH and Mr Samit Majumdar, 14 Chandlers Lane, Dundee DDI 3DH (represented by Mrs Lynn Hood 10 Chandlers Lane Dundee DDI 3DH) ("the Homeowners")

SGL Property Limited, Top Floor, India Buildings, 86 Bell Street, Dundee DDI IHN ("the Factor")

Tribunal Members:  
Jacqui Taylor (Legal Member)  
Helen Barclay (Ordinary Member)

## **DECISION**

**The Factor has failed to fully comply with the Property Factor Enforcement Order dated 18<sup>th</sup> February 2019 ('The PFEO'). The decision is unanimous**

### 1. Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as 'the Rules'

The Tribunal issued the PFEO in the following terms:-

- (1) *That the Factor provide the Tribunal and the Homeowners within a period of 28 days copies of the following documents:-*
  - a) *All bank statements for the management of the development since the commencement of the contract on 1 April 2016 to date.*
  - b) *All electricity bills affecting the development from 1 April 2016 to date together with any bills prior to that date if unpaid as at 1 April 2016.*
  - c) *A copy of the receipted invoices in respect of the cost of repairs to the lighting bollards at the development.*
  - d) *A copy of the Factors current public indemnity insurance policy.*
- (2) *That the Factor provides the Homeowners and the Tribunal with a programme of works in compliance with section 6.4 of the Code in respect of the cyclical maintenance provided for in Appendix 2 of the Factor's written statement of services and that within a period of 28 days.*
- (3) *That the Factor provides the Homeowners and the Tribunal with a written explanation as to why it believes the number of non-paying owners has risen from 18 in 2017 to 38 in 2018, details of the current number of non-paying owners and confirmation that the Factor's own Debt Recovery Policy contained in Section 5 of Appendix 2 of its written statement of services is being strictly enforced and that within a period of 28 days.*
- (4) *If the Homeowners have been charged for electricity consumed by owners in the flatted properties within the development for common lighting internally and therefore common only to the flat owners to re-apportion the cost of electricity charged back to the Homeowners accounts and provide documentary evidence of how this has been calculated to the Homeowners and the Tribunal within a period of 28 days.*
- (5) *If the funds paid by the Homeowners to the Factor in respect of their liability for the debt due to the Forth Ports Authority has been applied by the Factor to meet other debt then the Factor must within a period of 28 days pay to each Homeowner namely Mrs Lynn Hood, Mrs Jane Duffy, Mr Tomasz Kamusella and Mr Samit Majumdar the sum of £218.00 from the Factor's own funds.*
- (6) *In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, distress, worry and substantial inconvenience caused to the Homeowners pay to each of the above the sum of £300.00 from its own funds and that within a period of 28 days.*

2. An oral hearing took place to determine if the Factor had complied with the PFEO on 5<sup>th</sup> August 2019 at The Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB.

One of the Applicants, Mr Tomasz Kamusella, attended the hearing. Lynn Hood in her capacity of both applicant and Applicants' representative also attended the hearing. She was accompanied by her supporter Wilma Melville.

The Respondent was represented by Sean Lewis, Director of SGL Property Limited and Ami Lewis, Senior Property Manager of SGL Property Limited.

In relation to the requirements of the PFEO the parties advised as follows:

**(1) (a) All bank statements for the management of the development since the commencement of the contract on 1 April 2016 to date.**

The parties confirmed that the required bank statements had been provided.

**(b) All electricity bills affecting the development from 1 April 2016 to date together with any bills prior to that date if unpaid as at 1 April 2016.**

*The parties acknowledged that copy electricity accounts for the period from 2016 to 22<sup>nd</sup> September 2018 had been provided. The parties also acknowledged that no copies had been provided for the period after 22<sup>nd</sup> September 2018.*

**(c) A copy of the receipted invoices in respect of the cost of repairs to the lighting bollards at the development.**

The parties confirmed that copies of the receipted invoices in respect of the cost of the repairs to the lighting bollards had been provided.

**(d) A copy of the Factor's current public indemnity insurance policy.**

Ami Lewis explained that she had provided a copy of the Factor's Professional Indemnity Policy with Aqueous Underwriting, policy number 4976132. The policy covered the period 29<sup>th</sup> March 2019 to 28<sup>th</sup> March 2020.

Lynn Hood explained that she had actually been looking for a copy of the Factor's public liability policy. Sean Lewis explained that the public liability cover is part of the common insurance policy and this is provided to all of the Homeowners, including the Applicants. The Common Insurance Policy is with Liverpool Victoria. The policy number is PTY00172049.

**(2) That the Factor provides the Homeowners and the Tribunal with a programme of works in compliance with section 6.4 of the Code in respect of the cyclical maintenance provided for in Appendix 2 of the Factor's written statement of services and that within a period of 28 days.**

Ami Lewis explained that she had provided a table showing which services are provided to each particular type of property within the development. Mrs Taylor advised that section 6.4 of the Code of Conduct states that if the core service agreed with homeowners includes *inter alia* a planned programme of cyclical maintenance

then you must prepare a programme of works. Ami Lewis confirmed that the Factor provides cyclical maintenance and she acknowledged that the table provided does not include a programme of works.

**(3) That the Factor provides the Homeowners and the Tribunal with a written explanation as to why it believes the number of non-paying owners has risen from 18 in 2017 to 38 in 2018, details of the current number of non-paying owners and confirmation that the Factor's own Debt Recovery Policy contained in Section 5 of Appendix 2 of its written statement of services is being strictly enforced and that within a period of 28 days.**

Ami Lewis confirmed that she had sent the Tribunal Administration a letter which they received on 22<sup>nd</sup> March 2019. Her explanation as to why she believes that the number of non-paying owners has risen is set out in paragraph numbered 3 of that letter, which states:

*'The number of non-paying owners has increased since SGL's appointment in 2016 due to certain Owners encouraging other owners not to pay their Factoring fees. There are also a small number of owners who have made zero contributions towards their factoring fees since SGL's appointment in 2016. These have now been passed to Muir Miles Laverty Solicitors, Dundee to chase outstanding balances. Letters have been sent to large scale debtors and smaller amounts have been chased on a local basis- ie telephone calls or end of year balance charges. Information regarding bad debt has been provided to Homeowners in generic purposes for Data Protection; data has been provided to the Chamber in full in generic format.'*

Ami Lewis also explained that she had also provided a table which contained generic details of the non payers.

Tomasz Kamusella explained that he did not agree with the explanation provided. In his view there is not a culture of non paying. There is a culture of taking money and not providing services.

Ami Lewis provided the Tribunal with a copy of Section 5 of their Code of Conduct which states details the Factor's bad debt policy. She acknowledged that no evidence had been provided to the Tribunal demonstrating that the Factor has complied with the debt recovery procedures contained in their written statement of services.

**(4) If the Homeowners have been charged for electricity consumed by owners in the flatted properties within the development for common lighting internally and therefore common only to the flat owners to re-apportion the cost of electricity charged back to the Homeowners accounts and provide documentary evidence of how this has been calculated to the Homeowners and the Tribunal within a period of 28 days.**

Ami Lewis advised the Tribunal that the Homeowners have not been charged for electricity consumed by owners in the flatted properties within the development for common lighting internally. She explained in detail how the electricity charges are apportioned. Both Lynn Hood and Tomasz Kamusella accepted the explanation given.

**(5) If the funds paid by the Homeowners to the Factor in respect of their liability for the debt due to the Forth Ports Authority has been applied by the Factor to meet other debt then the Factor must within a period of 28 days pay to each Homeowner namely Mrs Lynn Hood, Mrs Jane Duffy, Mr Tomasz Kamusella and Mr Samit Majumdar the sum of £218.00 from the Factor's own funds.**

*The parties confirmed that the required payment of £218 had been made.*

**(6) In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, distress, worry and substantial inconvenience caused to the Homeowners pay to each of the above the sum of £300.00 from its own funds and that within a period of 28 days.**

*The parties confirmed that the required payment of £300 had been made.*

## **Decision**

### **The Tribunal's Decision is as follows:**

Paragraphs (1) a, 1(c), 1(d), (4), (5) and (6) **have been complied with** as the required information has been provided and the required payment of £518 to each of the applicants has been made.

The following paragraphs **have not been complied with** for the following reasons:

Paragraph 1(b): No electricity accounts were provided for the period after 22<sup>nd</sup> September 2018.

Paragraph 2: The Factor has not provided a programme of works as required by section 6.4 of the Code of Conduct.

Paragraph 3: The Factor has not provided evidence that they have complied with the debt recovery procedures contained in their written statement of services.

**In terms of Section 23(2) of the Property Factor (Scotland) Act 2011 as the Tribunal have determined that the Factor has not fully complied with the terms of the Property factor Enforcement Order they are obliged to serve notice of the Factor's failure to comply with the PFEO on the Scottish Ministers. The necessary notice will be served on the Scottish Ministers forthwith.**

## **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.

J Taylor

Legal Member and Chair

12<sup>th</sup> August 2019