

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Decision by the Tribunal
In an Application under section 17 of the Property Factors (Scotland) Act 2011
("the 2011 Act")**

Chamber Ref: HOHP/LM/16/0031

The Parties:-

Aylmer Millen, 5 Hillpark Grove, Edinburgh EH4 7AP ("the Applicant")

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD
("the Respondent")**

**Re: Property at Hillpark Grove, Edinburgh
("the Property")**

Tribunal Members:

John McHugh (Chairman) and Ahsan Khan (Housing Member).

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that the Property Factor Enforcement Order has been complied with.

The decision is unanimous.

Reasons for Decision

A Committee of the Homeowner Housing Panel ("the HOHP") (being the predecessor body to the Tribunal) issued a Property Factor Enforcement Order on 5 September 2016 ("the PFEO").

In terms of section 23(1) of the 2011 Act, the Tribunal is to determine whether the Respondent has complied with the PFEO.

The PFEO

The PFEO was in the following terms:

"Within 60 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Carry out a review of the terms of its Written Statement of Service and its Customer Feedback Information Sheet and identify and correct any inconsistencies between the two, including bringing any changes to the attention of proprietors of properties in the Development.*
- 2 Carry out a review of the terms of its Written Statement of Service and the terms of the Deed of Conditions to ensure that its practices in the management of the Development are consistent with the terms of those documents.*
- 3 Confirm in writing to the office of the Homeowner Housing Panel that steps 1 and 2 above have been carried out."*

The Parties' Representations

We considered the Applicant's representations dated 18 November and 8 December 2016 and the Respondent's representations dated 17 and 19 October and 25 November 2016.

The Respondent believes that it has complied with the PFEO and refers to its new revised Written Statement of Services ("WSS") of which it has provided a copy. It explains that it has reviewed the WSS along with its solicitor to identify and remove inconsistencies. It reports that it has reviewed its practices and prepared separate WSSs for each separate area of the Development. It reports that it has sent copies of the new documentation to all proprietors.

The Applicant is not satisfied that the PFEO has been complied with. He advises that he had not received any notification of the documentation from the Respondent other than that forwarded to him via the office of the HOHP/Tribunal.

He has separately expressed concern at an apparent imposition of increased factoring fees without comparative information having been provided. That causes the Applicant understandable concern but is not connected with the question of compliance with the PFEO.

The Applicant has also expressly refrained from offering comment on the content of the revised documentation produced by the Respondent.

We accept, based on the information supplied, that paragraphs 2 and 3 of the PFEO have been complied with. As regards paragraph 1, the required exercise appears to have been carried out but a question remains around whether the changes to the relevant documents were brought to the attention of proprietors. The Respondent specifically advises in its correspondence of 25 November 2016 that the relevant documentation has been sent to all proprietors.

We accept the Applicant's representation that he did not receive notification direct from the Respondent. There are possible explanations for that including that the documents may have been sent but failed to reach their destination or that the Respondent may have sent the documents to all proprietors apart from the Applicant, relying upon the Tribunal to communicate these to the Applicant. However, we have no information to reach any conclusion that either of these explanations are correct and therefore we place no weight upon them in reaching our decision.

What is certain is that the Applicant does now have the documentation (via the Tribunal). The Respondent advises that the documents were sent to all proprietors and there is no evidence that other proprietors have not received theirs. Accordingly, we consider that there has been compliance with the PFEO in this respect.

Decision

We have decided that the Respondent has complied with the terms of the PFEO.

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 from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed J McHugh

Date..... 19/12/16

JOHN M MCHUGH

Chairing Member