

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Certificate of Compliance following upon a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/LM/22/3463 and FTS/HPC/LM/22/3860

**PENTLAND View Estate Straiton, EH20 9NE
("the Development")**

The Parties:-

**Mr Peter McCarter, 24 Burnbank, Straiton, Loanhead, Midlothian EH20 9NE
("the Homeowner")**

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

Tribunal Members:

**Graham Harding (Legal Member)
Ahsan Khan (Ordinary Member)**

Decision

The Tribunal has determined that the Factor has complied in full with the terms of the proposed Property Factor Enforcement Order ("PFEO") issued on 14 November 2018 therefore no further action is required.

The decision is unanimous.

Statement of Reasons

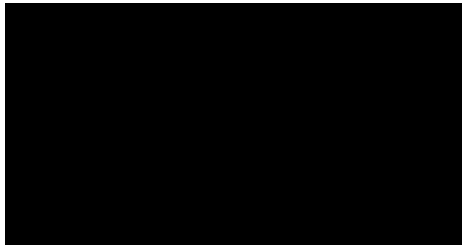
1. By decision issued on 17 February 2023, the Tribunal determined that the Factor had failed to comply with its duties under Section 14 (5) of the Property Factors (Scotland) Act 2011.
2. The Tribunal issued a Notice of Proposed PFEO together with the decision on and invited representations within 14 days of the Notice being received by the parties.
3. By email dated 10 May 2023 the Factor advised the Tribunal that it had complied with the terms of the proposed PFEO.

4. By email dated 11 May 2023 the Homeowner advised the Tribunal that he did not accept that the Factor had fully complied with the terms of the proposed PFE0. He complained that the apology received had been inadequate and that the Factor was still referring in documents to being a member of the Property Managers Association Scotland. The Homeowner also complained that the Factor had not complied with the proposed PFE0 as it had not published the Tribunal's decision in its newsletter and had deliberately misread the Tribunal's decision and was now charging a "paper fee".
5. By email dated 19 May 2023 the Homeowner submitted further written representations to the Tribunal.
6. By email dated 22 May 2023 the Factor submitted further written representations to the Tribunal.
7. By email dated 13 July 2023 the Homeowner submitted further written representations to the Tribunal indicating that he still did not consider that the Factor had fully complied with the terms of the PFE0.
8. Following further correspondence from the Tribunal the Factor by email dated 13 August 2023 submitted further written representations to the Tribunal.
9. The Tribunal has fully considered the concerns raised by the Homeowner and whilst it understands what might be described as the frustration felt by the Homeowner at the way in which the Factor has sought to implement the terms of the proposed PFE0 it has concluded that the proposed order has been fully obtempered. The Homeowner has acknowledged that the Factor has complied with parts 1 and 3 of the proposed order. The Tribunal has accepted that the terms of the written apologies sent to the Homeowner by the Factor complies with the wording of the proposed PFE0. The Tribunal is also satisfied from the latest documentary evidence produced by the Factor that they have removed the references to being members of the Property Managers Association Scotland from all documents available to owners. The Tribunal is therefore satisfied that the Factor has complied with parts 2 and 4 of the proposed PFE0. With regards to part 2 it seems that the unintended consequence of the Tribunal's decision was that the Factor decided to implement the reduction in charges if owners sign up to the portal albeit the new arrangement has been delayed for a year. In this way the Factor has complied with part 2 of the proposed order. The Tribunal is also now satisfied that the proposed wording to be included in the November newsletter to homeowners provides sufficient information to satisfy the terms of the proposed PFE0 by providing more detail and a link to the decision in compliance with part 5.

10. The Tribunal having considered matters and being satisfied that the proposed PFEO has been complied with by the Factor has determined that no further action is required.

Right of Appeal

11. In terms of Section 46 of the Tribunals (Scotland) Act 2014, 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 within 30 days of the date the decision was sent to them.



Legal Member and Chairperson

26 September 2023