

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23

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)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factors have complied in full with the terms of the Property Factor Enforcement Order ("PFEO") issued on 16 January 2018, and therefore no further action on the part of the Factors is required.

Reasons for Decision

1. By decision dated 8 September 2017, the Tribunal determined that the Factors had breached their duties in terms of section 17(1)(b) of the Property Factor (Scotland) Act 2011 ("the 2011 Act") in that they had failed to comply with the Code of Conduct for Property Factors as required by section 14(5) of the 2011 Act. It also found that the Factors had failed in their property factor duties in terms of section 17(1)(a) of that Act as described in the said decision.
2. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. It then issued a final PFEO on 16 January 2018.

3. The PFEO stated:

“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.”

4. As at the date of the PFEO, copies of all supporting invoices for bills rendered by the Factors to the Homeowner, from 1 January 2012, had already been provided by the Factors, under cover of their letter to the Homeowner of 29 September 2017. The effect of the PFEO was to require the Factors also to produce the supporting invoices for bills rendered by the Factors to the Homeowner, from 1 January 2009 to 2012.
5. Under cover of their letter to the Homeowner of 23 February 2018, a copy of which was provided to the Tribunal, the Factors sent 156 pages of invoices to the Homeowner, in respect of bills rendered between 1 January 2009 and October 2012.
6. The Homeowner responded by the email to the Tribunal dated 28 March 2018. The only point raised in this email is that the Factors had failed to provide invoices for buildings insurance.
7. The Factors' response to the Tribunal of 3 May (a copy of which was sent to the Homeowner) contained the following statement:

We note that the Applicant has written to the First Tier Tribunal advising that we have "failed to disclose invoices for the buildings insurance, they market in an invoice every quarter but still cannot prove what they pay the company we are insured with."

We would advise that there are no singular invoices specific to the client's insurance premium, rather the client's insurance forms part of a block insurance policy, the costs of which are apportioned as set out in the Title Deeds.

This notwithstanding, we have through our Brokers, AON, contacted the Insurer Allianz seeking confirmation of the sums insured and the client's individual premiums due. In this respect, please find enclosed the correspondence received from the insurance company setting out the policy details for the last five years.

Additionally, the correspondence also confirms that all premiums in respect of the development have been paid to Allianz Insurers Plc.

Unfortunately we are unable to obtain the requested insurance information prior May 2013 as the building was previously insured through a different Broker/Insurer. Given the time period, we no longer hold current contact details for the previous Insurer.

Attached to the Factors' letter of 3 May was a copy letter from Allianz Insurance plc, confirming the premiums paid to it, in respect of 10 Lochranza Court, Carfin, from May 2013 to May 2017.

8. No further response was received from the Homeowner, following the letter of 3 May.
9. In terms of Section 23 of the 2011 Act it is for the Tribunal to decide whether a Property Factor has failed to comply with a PFEO. On the basis of the information submitted by the Property Factor and in the absence of any further response from the Homeowner to suggest otherwise, the Tribunal is satisfied, in the foregoing circumstances, that the PFEO has now been complied with in full.

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

20 June 2018

Date