

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/18/3124

**Flat 0/2, 29 Eriboll Place, Glasgow G22 6PA
 (“the Property”)**

The Parties:-

**Eric Hamilton, Flat 0/2, 29 Eriboll Place, Glasgow G22 6PA
 (“the Applicant”)**

**(1) YourPlace Property Management Limited, (company number SC245072)
 (formerly known as GHA (Management) Limited, Wheatley House, 25 Cochrane
 Street, Glasgow G1 1HL
 (“the First Respondent”)**

**(2) Wheatley Homes Glasgow Limited, (Company number SP2572RS) (formerly
 known as The Glasgow Housing Association Limited), Wheatley House, 25
 Cochrane Street, Glasgow G1 1HL
 (“the Second Respondent”)**

**Tribunal Members:
 Graham Harding (Legal Member)
 Mike Scott (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 5 December 2022.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of Paragraph 2 which should be amended in light of the representations made on behalf of the Second Respondents.

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 5 December 2022, it proposed to make a PFEO as follows:

- (1) The Second Respondent must within 30 days of the date of this order issue a written apology to the Applicant for its failure to provide adequate stair

cleaning services and for its NETS employees intimidating behaviour towards the Applicant.

- (2) The Respondents must take steps to ensure that the stair cleaning services as detailed in Karen Durnian's letter of 17 October 2018 or any subsequent modification of the service is properly carried out each week or month where appropriate with the work subsequently being inspected each week by a Senior Manager outwith the Respondents Environmental Team with written confirmation to be provided to the Applicant and the Tribunal after a period of three months that the service has been carried out to an acceptable standard.
- (3) The Respondents must within 30 days of the date of this order credit the Applicant's account from its own funds the sum of £500.00 by way of recompense for the worry stress and inconvenience incurred as a result of the Respondents breaches of the Code

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 7 December 2022.

By email dated 21 December 2022 the Second Respondent's Solicitor, Mr David Adams submitted the following written representations: -

We refer to the proposed Property Factor Enforcement Order issued in relation to the above and on behalf of the Factor would make the following representations:

It is submitted that the proposed requirements relating to stair cleaning in part 2 of the proposed PFEO are unnecessary in the context of this Application which relates to information concerning stair cleaning carried out on or before November 2018. The Tribunal has made a determination that the Factor was in breach of part 2.1 of the Code in relation to information given relating to the stair cleaning at that time. What the proposed PFEO appears to be addressing is stair cleaning that is yet to be carried out. It is submitted this is outwith the scope of this application and the purpose of a PFEO. The Tribunal has made a proposed order for compensation. In the event that there is any cause for concern by the applicant in relation to future services yet to be carried out then other remedies would be available to the applicant.

Further and in any event, the terms of Part 2 of the proposed PFEO are unclear, in particular whether an inspection is to be carried out each week or each month; whether after every inspection the factor has 3 months to report to the applicant and the tribunal that each inspection has been carried out to an acceptable standard; unclear as to when the obligation ends; or whether the proposed obligation is to carry out stair cleaning, with inspections, and that one report is to be made after three months, covering the previous 3 months with confirmation that it has been carried out to an acceptable standard? (In any event, none of this would address 2.1 of the Code in relation to matters in the past.) It is also submitted that the requirement designating who can or cannot inspect the stair cleaning is unnecessary and amounts to the Tribunal seeking to perform a management role in the business of the Factor.

For all of the above reasons it is submitted that on further consideration part 2 of the proposed PFEO should be deleted, failing which, clarified.

Kind regards

David Adams | Senior Solicitor Wheatley Group | Wheatley House | 25 Cochrane Street | Glasgow | G1 1HL

The Tribunal carefully considered the Second Respondent's submissions and agreed that paragraph 2 of the Proposed PFEO required amendment to provide greater clarity. However the Tribunal did not accept the submission that addressing the issue of stair cleaning was outwith the scope of the application or purpose of the PFEO.

The Applicant's complaint centred on the alleged failure of the Respondents to ensure that stair cleaning was being carried out regularly and to the required standard. The Tribunal found that there was merit in the Applicant's complaint and had concerns about the way in which the Respondents relied upon the in-house Environmental Team to report upon their own standards of service rather than have a member of the Respondents' team inspect and ensure the work was being done properly.

The Tribunal has no intention of interfering in the management of the business of the Second Respondent but it is important that the Second Respondent in carrying out its duties as property factor acts independently and in the interests of the homeowners it represents. It is therefore reasonable for the Tribunal to require a

member of the Second Respondent's team to carry out the inspections required in terms of the PFEO.

The Tribunal having accepted that paragraph 2 requires greater clarity has amended it to make it clearer as to what is expected in terms of weekly and monthly inspections and that a single report at the end of three months is required. The amended paragraph also further clarifies that inspections should be carried out by the Second Respondent's property manager with responsibility for the Applicant's block whom failing another member of the same team.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Second Respondent must within 30 days of the date of this order issue a written apology to the Applicant for its failure to provide adequate stair cleaning services and for its NETS employees intimidating behaviour towards the Applicant.
- (2) The Respondents must take steps to ensure that the stair cleaning services as detailed in paragraph 12 of Karen Durnian's letter to the Applicant dated 17 October 2018 or any subsequent modification of the service is properly carried out each week or month where appropriate with the work subsequently being inspected each week or month by the Respondent's Property Manager or deputy responsible for the block in which the property forms part. Written confirmation is to be provided by the Respondents to the Applicant and the Tribunal after a period of three months that the service has been carried out to an acceptable standard or detailing any issues that have arisen.
- (3) The Respondents must within 30 days of the date of this order credit the Applicant's account from its own funds the sum of £500.00 by way of recompense for the worry stress and inconvenience incurred as a result of the Respondents breaches of the Code.

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 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.

Graham Harding Legal Member and Chair

11 January 2022 Date