

# Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of applications under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

**Reference number: FTS/HPC/PF/19/1171, 1136, 1153, 1175 and 1257 (“the Applications”)**

**Re: Flatted Properties at Flats 1, 5, 6, 3 and 4, 212, Bath Street, Glasgow, G2 4HW (“the Properties”)**

**The Parties:**

**Stephen Tyler, Gianluca Raucci, Catherine Sutherland, Darren McDaid and Elijah Nazarzadeh, all residing at the Properties (“the Applicants”), Stephen Tyler and Gianluca Raucci being “the Lead Applicants” and**

**James Gibb Property Management Limited having a place of business at 65, Greendyke Street, Glasgow, G1 5PX (“the Respondents”)**

**Tribunal Members**

**Karen Moore (Legal Member)**

**Mary Lyden (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having determined that the Factor had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct (“the Code”) having proposed to make a Property Factor Enforcement Order (PFEO) now makes a PFEO as follows:-

1. No later than 31 December 2019 the Factor shall pay to the said **Gianluca Raucci, Catherine Sutherland and Darren McDaid** the sum of **£500.00** per Property and to the said **Stephen Tyler and Elijah Nazarzadeh** the sum of **£300.00** per Property, to compensate them in respect of the effect of its conduct and in respect of inconvenience caused to them by its failures and confirm to the Tribunal that it has done so;

2. The Factor shall cancel and write off from the Applicants' invoices all sums due by Johar Mirza, the proprietor of the flatted property at Flat 2, 212 Bath Street, Glasgow which it sought to recover from the Applicants and confirm to the Tribunal that it has done so.

## Background

1. By applications received by the First-tier Tribunal for Scotland (Housing and Property Chamber) between 11 April 2019 and 29 May 2019 ("the Applications") the Applicants each applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondents had failed to comply with Section 4 at 4.6 and 4.7 of the Code, save for Elijah Nazarzadeh whose application related only to 4.7 of the Code.
2. Following a Hearing and an adjourned Hearing, the Tribunal found the Respondents had failed to comply with Section 14 of the Act in respect of compliance with Section 4 of the Property Factor Code of Conduct ("the Code") and had failed to comply with the property factor duties in terms of Section 17(5) of the Act. The Tribunal proposed a Property Factor Enforcement Order (PFEO). The Tribunal's Statement of Decision ("the Decision") and proposed PFEO dated 23 October 2019 were intimated to the Parties.
3. None of the Parties made any comment on the proposed PFEO.
4. However, by email received on 15 November 2019, the Respondents applied to the Tribunal in terms of Rule 39 of the Rules to review the Decision in respect of factual aspects of the Decision. The Tribunal had regard to Rule 39 of the Rules and took the view that the application for review did not conform to the Rules and as the Tribunal has no discretion to waive these statutory requirements, the Tribunal had no discretion but to refuse the Respondent's application for review on the basis that it did not conform to the Rules

## Issue for the Tribunal

5. Thereafter, the issue for the Tribunal is, having intimated the proposed PFEO to the Parties and having heard only from the Respondents in respect of its application for review, should the Tribunal proceed with a PFEO?

## Decision of the tribunal and reasons for the decision.

6. Notwithstanding that the Respondents had not commented on the proposed PFEO, the Tribunal had regard to the comments made in its application for review and considered these comments as a comment on the proposed PFEO.
7. The Tribunal noted that the Respondents considered that as the solicitors of two of the Applicants had been advised of the common debt, those two Applicants ought to have been aware of their common liability and ought to have been aware that, at

some point, they would be liable for this debt. Accordingly, the Respondents had not failed those two Applicants and so they should not be compensated in the same way as the Applicants who had not been made aware of the common debt.

8. The Tribunal took these comments into account and agreed with the Respondents that these two applicants should have been aware of the potential common debt and so the effect of the Respondents' actions would have had a lesser bearing on them. Accordingly, the Tribunal amended its proposed PFEO in this regard.

9. The decision is unanimous.

## Appeal

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

Karen Moore

Chairperson

9 December 2019