

Housing and Property Chamber First-tier Tribunal for Scotland



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

Notice of Revocation:

Property Factors (Scotland) Act 2011 Section 21(1)(b)

Chamber Ref: FTS/HPC/PF/17/0241

Property at 4/25 Gillsland Road, Edinburgh EH10 5BW (“the Property”)

The Parties:-

Lorence Fizia and Mrs Kathleen Fizia, 4/25 Gillsland Road, Edinburgh EH10 5BW (“the Applicants”)

Bield Housing & Care, registered under the Industrial and Provident Societies Act 1965, 79 Hopetoun Street, Edinburgh EH7 4QF (“the Respondents”)

The Tribunal comprised:-

Mr David Bartos - Chairperson, Legal member
Ms Carolyn Hirst - Ordinary member

Decision

The Tribunal has decided to revoke the Property Factor Enforcement Order relating to the Property dated 26 April 2018.

The decision of the Tribunal is unanimous.

Reasons

1. In the Tribunal’s decision of 14 February 2018 it proposed to make a property factor enforcement order (“PFEO”) as follows:

“ The Respondents shall within two weeks of the notification of this Order:

(1) provide a copy of Section 2 of the Code of Conduct for Property Factors to

all of their employees whose employment requires or might involve contact with homeowners in the Gillsland Grove development in Edinburgh, drawing their express attention to section 2.1 thereof; and

(2) lodge with the Tribunal a declaration on their notepaper from their Chief Executive and Director of Asset Management signed by them in the following terms:

"Declaration

We confirm that each employee of Bield whose employment requires or might involve contact with homeowners in the Gillsland Grove development in Edinburgh, has been supplied with copies of:
 (a) Section 2 of the Code of Conduct for Property Factors; and
 (b) the Statement of Services at Gillsland Grove, Edinburgh;
 and that their attention has been drawn expressly to section 2.1 of the Code and section C3 of the Statement of Services (on page 18) requiring the taking of minutes of meetings between Bield Housing & Care and homeowners at Gillsland Grove."

2. The Tribunal indicated that prior to making a PFEO it would provide the parties with a period of fourteen days within which to make representations on the terms of the proposed PFEO under section 19(2)(b) of the Act. No such representations were received.
3. Instead by e-mail dated 19 March 2018 and received by the Tribunal on 27 March 2018, the Respondents' Chief Executive Brian Logan indicated that action had been taken to implement what he saw as the "PFEO". This was that the Respondents had supplied each of their employees whose employment might require contact with homeowners in the Gillsland Grove development with copies of:
 - (1) section 2 of the Code of Conduct for Property Factors; and
 - (2) the Statement of Services at Gillsland Grove, Edinburgh.

In his letter, written on the Respondents' notepaper, Mr Logan included a declaration in substantially the same terms as in the proposed PFEO. The sole difference was that Mr Logan's declaration omitted the final words of the declaration in the PFEO, namely that employees attention had been drawn to Section C3 of the Statement of Services "requiring the taking of minutes of meetings between Bield Housing & Care and Homeowners at Gillsland Grove."

4. By e-mail to them dated 5 April 2018 the Applicants were invited to comment on whether there had been compliance with the proposed PFEO. By e-mail to the Tribunal dated 11 April 2018 the Applicants confirmed that they accepted that there had been compliance.
5. While the declaration in the letter dated 19 March omitted the final wording of the proposed declaration quoted above that wording merely reflected the provisions of section C3 of the Statement of Services which requires among other things the taking of minutes of meetings with homeowners and subsequent distribution of them to homeowners within 4 weeks.

6. If Section C3 had been followed the misleading information provided about the meeting of 14 April 2016 (and breach of section 2.1 of the Code of Conduct) could have been avoided.
7. The Tribunal took the view that given that section C3 had been brought to the Respondents' employees' attention, a further declaration containing the missing wording was not necessary. The letter from the Respondents had indicated that employees had been provided already with copies of Section 2 (including Section 2.1) of the Code of Conduct. Further provision was unnecessary.
8. In these circumstances while the Tribunal was obliged by section 19(3) of the 2011 Act to make the accompanying PFEO it exercised its discretion under section 21(1)(b) to revoke that PFEO and bring proceedings to a close.

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.

David Bartos

Legal Member and Chairperson

__26 April 2018_____

Date