

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision of the Tribunal in relation to compliance with Property Factor Enforcement Order dated 16 January 2019, following review of 17 December 2018**

**Property Factors (Scotland) Act 2011, Section 19(2)**

**Chamber Ref: FTS/HPC/PF/18/0796-0799 and 0801-0809**

**Properties at 14A-C, 15 A-H Wellington Square and 1A - 1B Cassillis Street, Ayr (“The Properties”)**

**The Parties: -**

**Mr Ronald Baird, residing at 14B Wellington Square, Ayr, KA7 1EN, representing himself and twelve other homeowners residing at the Properties (“the Homeowners”)**

**First Port Property Services (Scotland) Limited, Troon House, 199 St Vincent Street, Glasgow, G2 5QD (“the Factor”)**

**Tribunal Members: -**

**Maurice O’Carroll (Legal Member)  
Mary Lyden (Ordinary Member)**

**This document should be read in conjunction with the decision of the Tribunal dated 19 December 2019, following review, and Property Factor Enforcement Notice, as reviewed, under the reference numbers noted above.**

1. By reviewed decision dated 19 December 2018, the Tribunal determined that the Factor had breached its duties in terms of section 17(1)(b) of the 2011 Act in that it failed to comply with Sections 2.1, 3.1, 3.2, 3.3 and 4.6 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
2. It also found that the Factor had breached its property factor duties in terms of section 17(1)(a) of the 2011 Act as set out in that decision.
3. On 16 January 2019, the Tribunal decided to issue a final PFEO as follows:

Within 28 days of the communication of this PFEO, the Factor must:

- (i) Pay compensation to the Homeowner Mr Baird the sum of £2,900 (two thousand nine hundred pounds) in respect of the time, irritation and inconvenience occasioned by the Factor's failure to comply with its property factor duties and duties under the Code.
- (ii) Pay compensation to each of the remaining twelve Homeowners (with the exception of Mr Baird) in the sum of £300 (three hundred pounds) in respect of the time, irritation and inconvenience occasioned by the Factor's failure to comply with its property factor duties and duties under the Code
- (iii) Provide a full, clear and comprehensive breakdown and explanation of the sums passed to the Homeowners' new factors upon termination of the factoring contract between the parties as required by section 3.1 of the Code.
- (iv) Provide a full, clear, detailed and comprehensive annual statement as required by section 3.3 of the Code, detailing a balance brought forward from the previous year, all actual income, all actual expenditure and a statement of irrecoverable debts for the year running from 19 January 2014 to 18 January 2017.
- (v) Make good from its own funds any shortfall of any monies due to the homeowners' reserve fund which it cannot account for, following compliance with requirements (iii) and (iv) above...

#### Decision and reasons in relation to compliance

4. By letter dated 18 January 2019, the Factor indicated that it considered that it had complied with the PFEO by reference to supporting information. By letter dated 24 January 2019, the Homeowner indicated that he disputed that compliance had been effected by the factor. The factor responded by letter dated 15 February 2019 with further information which was met with a response by the Homeowner dated 19 February 2019.
5. The following matters have been established from the correspondence:
  - Requirements (i) and (ii) of the PFEO have now been complied with.
  - Requirement (iv) is now superfluous in light of the information required by requirement (iii) and does not require separate compliance.
  - The parties are in dispute in relation to whether requirement (iii) has been complied with and therefore whether the factor requires to make up any shortfall due to the homeowners' reserve fund in terms of requirement (v).
  - The Factor contends that there is no shortfall demonstrated by the breakdown of transactions which it has provided and therefore no sums are due.
  - The Homeowner considers that on a proper analysis of the figures produced, a shortfall of £5,542.52 has been established which the Factor requires to make good from its own funds.

6. In his letter of 19 February 2019, the Homeowner commented on five issues related to compliance with requirement (iii) of the PFEO. These related to treatment of Debt in relation to the list of Expenditure, transfers to reserves, Health and Safety Works, Electricity and Weed Control and Chimney removal.
7. In relation to Health and Safety works, the figure of £580 should be deducted from the total shortfall calculated by the Homeowner, if it can be vouched that payment has indeed been made to the homeowners' current factor. Other than that, the Tribunal agrees with the Homeowner's final calculation.
8. In particular, in relation to Electricity and Weed Control, the Tribunal agrees with the Homeowner that since it is accepted by the Factor that the expenditure of £480 and £60.33 were incorrectly listed as Expenditure in the final calculation presented on 18 January 2019, it must follow that the final figures require to be adjusted as a result. The Tribunal did not agree with the Factor's statement that it "in no way affects the overall financial position."
9. The other issues have been dealt with differently by each of the parties. However, the Tribunal prefers the methodology and therefore calculation arrived at by the Homeowner.
10. The Tribunal therefore considers that a **total** amount of **£5,542.52** requires to be made good to the homeowners' reserve fund in order to comply with requirement (v) of the PFEO. If, as the Factor has stated, it has already made payment of the sum of £580, then the final amount payable will be £4,962.52, provided that adequate vouching for the amount paid is produced to the Tribunal.
11. Payment should be made within 28 days of receipt of the present decision.
12. Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a PFEO 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.**

Signed: M O'Carroll  
Legal Member

Date: 8 March 2019