

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **Property Factor Enforcement Order (“PFEO”) (following review on 17 December 2018)**

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

**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  
of 19 December 2019, following review, 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. Further to the Tribunal’s direction of 24 July 2018, the said decision and the present PFEO apply to all thirteen applications listed above. The respective homeowners are differentiated below.

4. On 19 December 2018, following a review of its decision, the Tribunal also issued a reviewed Proposed PFEO, allowing the parties 14 days to comment thereon. Neither party has made any representations to the Tribunal in relation to the reviewed proposed PFEO.
5. Accordingly, the Tribunal has decided to formally issue the following final PFEO:

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.
- (vi) Provide written and documentary evidence of compliance with the above Orders to the Tribunal within 7 days of having done so.

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: 16 January 2019