

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Proposal regarding the making of a Property Factor Enforcement Order (“PFEO”) (as reviewed on 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 Homeowner”)

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 even date, following review, under the reference numbers noted above.

1. By decision of even date with this Notice, 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. All references to ‘Homeowners’ should be read as referring to the applicant Homeowner and the twelve other conjoined applicants whom he represented.

4. Therefore, the Tribunal proposes to make the following PFEO:

Within 28 days of the communication of the PFEO to the Factor, 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.

5. Section 19 of the 2011 Act provides as follows:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order."

6. The intimation of the Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written

representations which they wish to make under section 19(2)(b) **in relation to the present proposed PFEO** reach the Tribunal by no later than **14 days** after the date that the Decision and this proposed PFEO is sent to them by the Tribunal. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a final PFEO without seeking further representations from the parties.

Signed: M O'Carroll
Legal Member

Date: 19 December 2018