



**Decision of the Homeowner Housing Committee  
under section 21 of the Property Factors  
(Scotland) Act 2011**

**PROPERTY FACTOR ENFORCEMENT ORDER**

**Hohp ref:HOHP/PF/15/0035**

**Re:**

**9 Kirkton Drive, Burntisland, Fife, KY3 0DD ('the Property')**

**The Parties:**

**Steven Murray residing at 9 Kirkton Drive, Burntisland, Fife, KY3 0DD ('the homeowner')**

**Collinswell Land Management Limited, Collinswell House, Aberdour Road,  
Burntisland, Fife, KY3 0AE('the factor')**

**NOTICE TO THE PARTIES**

The Homeowners Housing Committee ('the Committee'), having determined to vary the Property Factor Enforcement Order dated 14<sup>th</sup> September 2015, in terms of their decision dated 19<sup>th</sup> September 2016 hereby vary the PFEO as follows:

Sections 1, 2(ii) and 3 of the PFEO are delete.

The varied PFEO is in the following terms:

*'Within 28 days of the communication to the factor of the Property Factor Enforcement Order:*

*2. The factor is required to provide a full and vouched accounting for the period they were factors including: (i) an explanation of how the quarterly advance payments were spent and (iii) including any carry forward and (iv) the status of the deposit.'*

Note: to avoid confusion, the original section numbering of the original PFEO has been retained.

## **Appeals**

The parties' attention is drawn to the terms of section 21 of the 2011 Act regarding their right to appeal and the time limit for doing so.

It provides:

(1) An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or homeowner housing committee.

(2) An appeal under subsection (1) must be made within a period of 21 days beginning with the day on which the decision appealed against is made.

Signed ....

.....Date 19<sup>th</sup> September 2016

Chairperson



**Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

Hohp ref:HOHP/PF/15/0035

**Re:**

**9 Kirkton Drive, Burntisland, Fife, KY3 0DD ('the Property')**

**The Parties:**

**Steven Murray residing at 9 Kirkton Drive, Burntisland, Fife, KY3 0DD ('the homeowner')**

**Collinswell Land Management Limited, Collinswell House, Aberdour Road, Burntisland, Fife, KY3 0AE('the factor')**

1. On 15<sup>th</sup> September 2015, the Homeowner Housing Committee issued a Property Factor Enforcement Order dated 14<sup>th</sup> September 2015.

2. The Property Factor Enforcement Order contained the following provisions:

*'Within 28 days of the communication to the factor of the Property Factor Enforcement Order:*

*1. The factor is required to issue a letter of apology to the homeowner. The letter must apologise to the homeowner for releasing inaccurate account information in a public forum.*

*2. The factor is required to provide a full and vouched accounting for the period they were factors including: (i) an explanation of how the quarterly advance payments were spent (ii) correcting the wrongly deducted charge of £35 (iii) including any carry forward and (iv) the status of the deposit.*

*3. The factor must pay the homeowner £200 for the inconvenience he had suffered from their own funds and at no cost to the owners. The said sum to be paid within 28 days of the communication to the factor of the Property Factor Enforcement Order.'*

3. The Homeowner:-

3.1 Acknowledged by email dated 10<sup>th</sup> March 2016 that he had received payment of £200 from Colin Scott of Geoghegans, Chartered Accountants, 6

St Colme Street, Edinburgh, EH3 6AD, the liquidator of Collinswell Land Management Limited.

3.2 Acknowledged by email dated 30<sup>th</sup> May 2016 that he had received payment of the sum of £35 from the said Colin Scott, the liquidator of Collinswell Land Management Limited.

3.3 Acknowledged by email of 8<sup>th</sup> July 2016 that he had received an apology from the said Colin Scott, the liquidator of Collinswell Land Management Limited.

Accordingly the Committee were satisfied that the Factor has complied with sections 1, 2(ii) and 3 of the PFEO and determined to vary the terms of the PFEO such that the said sections 1, 2(ii) and 3 of the PFEO are delete, all in terms of section 21(1) of the Act.

4. In connection with sections 2(i), 2(iii) and 2(iv) of the PFEO the said Colin Scott, the liquidator of Collinswell Land Management Limited, sent an email to the Homeowner dated 18<sup>th</sup> July 2016 advising him that it was his understanding that the Factor had informed the Homeowner of the following deductions from his float:

Share of loss £47.72

Bad Debt £43.01

Admin Cost £10.00

He explained that if he adjudicated the claim at £39.27 and if the Homeowner disagreed he would have the option of lodging an appeal with the Sheriff of Kirkcaldy within 14 days. He did not provide a full and vouched accounting.

5. The Homeowner replied to Colin Scott, the said liquidator of Collinswell Land Management Limited, by email dated 25<sup>th</sup> July 2016 intimating that he was due a full refund of £140.

6. As the Factor had failed to comply with 2(i), 2(iii) and 2(iv) of the PFEO the Committee considered whether to serve notice of the failure to comply on the Scottish Ministers.

The Committee are mindful of the obligation on the Directors and other officers of the company to fulfil their statutory duties during the liquidation. It is understood by the Committee that the liquidation is ongoing and that no final order has been made.

The Committee ascertained that the Factor was removed from the Register of Property Factors on 7<sup>th</sup> March 2016.

Consequently the Committee took the view that the Factor could no longer be said to be a property factor within the terms of the Act and further that the Committee no longer had jurisdiction as section 14(5) of the Act states that 'a registered property factor' must ensure compliance with the code of conduct. The Factor in light of its

deregulation was no longer a registered property factor. As a direct consequence the PFEO, which only contains a direction regarding compliance with the Code, cannot remain enforceable and accordingly it was not appropriate for them to serve notice of the failure to comply on the Scottish Ministers

The Committee considered what should occur with the PFEO. In terms of section 21(1) of the Act the Committee which made a PFEO may at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the action required by the order is no longer necessary, revoke it. The Committee has discretion as to what it wished to do with the PFEO. The Committee did not consider it appropriate to fully revoke the varied RSEO. Compliance had not been fully achieved. A failure to comply with a PFEO was a relevant consideration in the event that the Factor, or its Directors or Office bearers ever sought to reregister as a factor again. If this eventuality were to occur it would be better that there remained a public record of the fact that the Factor had not provided all of the information requested. Accordingly the Committee determined that the varied PFEO would be left in place. Accordingly whilst the Committee accepted that there was no continuing obligation on the Factor to comply with the PFEO, as the Factor was no longer a registered property factor, they determined that the PFEO would remain in place.

7. In terms of Section 22 of the 2011 Act, any Appeal is on a point of law only and requires to be made by Summary application to the Sheriff. Any Appeal must be made within 21 days beginning with the day on which the Decision appealed against is made.

Signed .....  ..... Date 19<sup>th</sup> September 2016

Chairperson