



**Notice of Variation of a Property Factor Enforcement Order under Section 21(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”) following upon a Decision of the Homeowner Housing Committee in an application under Section 17(1) of the Act**

**hohp Ref: HOHP PF/14/0148**

**The Property: 34 Bell Street, Wishaw ML2 7NU**

**The Parties: –**

**Miss Claire McKenna, residing at 9 Burnpark Avenue, Uddingston, G71 7RY (“the homeowner”)**

**and**

**Miller Property Management Ltd, registered under the Companies Acts and having its Registered office at 29 Brandon Street, Hamilton, South Lanarkshire, ML3 6DA (“the factors”)**

**Committee Members:**

David Preston (Chairman); and Andrew Taylor (Surveyor Member).

On 9 December 2015, within the time limit specified in the Property Factor Enforcement Order (PFEO) dated 10 November 2015, representations were received by email from the factors regarding the implementation of the PFEO. On the same date an email was received from the homeowner. A further email dated 17 December 2015 was subsequently received from the homeowner.

**Factor’s Representations**

1. The factors submitted a revised Written Statement of Services and advised that their website provider had been instructed to post this version to the website as required by paragraphs 1 and 2 of the PFEO.
2. The factors submitted a copy of their letter to the homeowner dated 4 December 2015 which provided information regarding the insurance policy as required by paragraph 3 of the PFEO.

3. With regard to paragraph 4 of the PFEO the letter dated 4 December 2015 stated that the factor's Written Statement of Services made no mention of administering or providing tendering documentation to suppliers/contractors for potential repair-work. They stated that therefore the provision of such documentation was "not applicable" in terms of the wording of section 6.6 of the Code of Conduct. The factors further maintained that the original contractors and utility suppliers had been appointed by the developers and that these had not changed for ongoing regular services provided at the development.
4. The letter of 4 December 2015 indicated that cheque for £75 had been issued to the homeowner in accordance with paragraph 4 of the PFEO.

### **Tenants Representations**

5. The homeowner's email of 9 December 2015 confirmed that she had received the cheque in implementation of paragraph 4 of the PFEO.
6. The homeowner said that she had not received a revised Written Statement of Services and was unable to find same on the factor's website.
7. The homeowner acknowledged that she had received information from the factors regarding the insurance policies but maintained that it did not include information about: previous insurance policies from 2012 – 2015; the claims made; the total premium cost year; or why the factor was receiving 11.5% commission. She said that she was still unaware of the insurance costs, charges, claims made and excesses over the years.
8. The homeowner complained that the factors had not provided her with full details of contractors in respect of maintenance and services and that the papers received did not answer any of her previous concerns and queries and did not provide evidence or proof.
9. With her email of 17 December 2015, the homeowner provided copies of the paperwork received by her from the factors. She complained that the insurance documentation provided did not provide her with the information she required regarding insurance, claims, charges, policy cost.

### **Decision and Reasons**

10. The Committee was satisfied that the factor had implemented paragraphs 1 and 2 of PFEO. The factors had made revisions to its Written Statement of Services and had

made arrangements for the revised version to be posted on its website. The Committee makes no comment on the extent to which the full Statement of Services complies with the requirements of the Code of Conduct. It was a matter for factors to determine whether their Statement of Services complies with the Code of Conduct.

11. The Committee was satisfied that the factors had complied with paragraph 3 of the PFEO. The factors had provided details of the insurance policies and the other information required in terms of paragraph 3. The Committee did not agree with the homeowner's position that it was reasonable or necessary for historical information regarding insurance, which was now irrelevant, to be provided.
12. Any arrangements between factors and insurers or their brokers with regard to rates of commission and the basis upon which that is agreed or calculated is a matter for them. The Code of Conduct requires factors to disclose "...any commission, administration fee, rebate or other payment or benefit received..". There is no requirement for information regarding the reason for any level of commission to be provided to homeowners. Having provided full details of the insurance policies, it is a matter for homeowners to determine the extent of cover and suitability of the policy in force, on advice of the factors. During the course of the hearing the factors advised that the insurers had changed from Ecclesiastical to Liverpool Victoria because of the different excess charges applied.
13. The Committee was not satisfied that the factors had complied with paragraph 4 of the PFEO. Section 6.3 of the Code of Conduct requires that factors must be able to show how and why they appointed contractors, including cases where they decided not to carry out a competitive tendering exercise or use in-house staff. In terms of section 6.6, if a tendering process had been carried out, documentation relating to that process (excluding any commercially sensitive information) should be available for inspection. If no tendering process had been carried out, section 6.6 would be inapplicable but reasons for the appointment of the contractor would still require to be provided under section 6.3. It is not therefore a matter for the Written Statement of Services to determine whether section 6.6 applies.
14. In any event, during the course of the hearing the Committee was advised of work having been carried out in the car park to delineate parking spaces. The basis of the appointment of contractors to carry out this work including any tendering process has not been provided to the homeowner.

15. The factors indicated that they had changed insurers to allow the owners to benefit from a lower level of policy excess but no details or information have been provided as to the basis upon which Liverpool Victoria were appointed or the procedure adopted to make that appointment.

16. Whilst it may well be the case that the original contractors and utility suppliers were appointed by the developers, the Committee does not accept that the terms upon which they continue to provide services remain as at the date of their appointment in or about 2008. Indeed the homeowner refers on the fourth page of the detail of her complaint to various charges imposed for stairwell cleaning. In terms of the Code of Conduct it is necessary for the factors to demonstrate the basis upon which the contractors were appointed, or re-appointed by them.

Accordingly the Committee VARIES the PFEO as follows:

Within a period of one month from the date of issue of this Notice of Variation, the factors to

1. Provide to the homeowner at their own expense and not at the expense of the homeowner: full details of the basis on which they appointed or re-appointed all contractors employed by them to carry out any work or to provide cleaning, maintenance or insurance services at the property, including, if applicable paper or electronic copies of documentation relating to any tendering processes (excluding any commercially sensitive information).

**APPEALS:**

*The parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the decision of the President of the Homeowner Housing Panel or Homeowner Housing Committee.*

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

10-Jan-16

X

CHAIRMAN

Signed by: DAVID MICHAEL PRESTON

