

Housing and Property Chamber

First-tier Tribunal for Scotland



PROPERTY FACTOR ENFORCEMENT ORDER

**Issued by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under section 17 of the Property Factors (Scotland) Act 2011**

Chamber Ref:FTS/HPC/PF/19/1857

10/150, Second Avenue, Clydebank, G81 3BH; 12/150 Second Avenue, Clydebank, G81 3BH; 12/12 Green Avenue, Clydebank, G81 3AY and 2/2 John Street, Clydebank, G81 1ND ('the Properties')

The Parties:

Simon and Gail Downes, 14 Brandywell Road, Abernethy, Perth, PH2 9GY ('The Homeowner')

West Dunbartonshire Council, 6-14 Bridge Street, Dumbarton, G82 1NT ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Andrew Taylor (Ordinary Member).

NOTICE TO THE PARTIES

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Factor has complied with the property factor's duties in terms of the Property Factors (Scotland) Act 2011 ('the 2011 Act') determined that the Factor had failed to comply with sections 2.1, 2.5, 6.3 and 6.6 of the Code of Conduct all as stated in their decision dated 28th October 2019.

The Tribunal intimated to the parties, in terms of their said decision dated 28th October 2019, that they proposed to make a Property Factor Enforcement Order. The Factor's solicitor Christopher Anderson sent the Tribunal an email dated 6th November 2019 which *inter alia* explained that they were not confident that they would be able to obtain all the tender information required, the compensation awarded was excessive and they requested that the sum awarded be deducted from the sums owed by the Homeowners. The Homeowners sent the Tribunal two emails dated 8th and 9th November 2019. The emails *inter alia* commented on the said email from Christopher Anderson dated 6th November 2019, the amount of compensation provided for in the proposed PFEO and the fact that they do not agree to the request

made by Christopher Anderson that the compensation awarded should be deducted from the sums owed by the Homeowners. They also requested the Tribunal to amend the final PFE0 to ensure that they see the contract that they are supposed to sign. The email from the Homeowners dated 9th November 2019 detailed additional costs they had incurred. The Tribunal considered the terms of the said emails carefully. The Tribunal are not able to consider additional matters that had not been previously been put to the Tribunal. The Tribunal remain satisfied that the Factor had failed to comply with sections 2.1, 2.5, 6.3 and 6.6 of the Code of Conduct and make the following Property Factor Enforcement Order:

'First, the Factor is directed to provide the Homeowners and the Tribunal with details and evidence of the tendering process carried out for the purposes of selecting a contractor to carry out the proposed external insulated render programme in relation to the Homeowners' properties. The Tribunal acknowledges there may be some commercially sensitive information which cannot be divulged and consequently will accept anonymised details by naming the contractors A, B, C etc. The following details are required:

- 1. How many contractors were invited to provide quotations for the external insulated render programme in relation to the Homeowners' Properties?*
- 2. How many quotes were provided?*
- 3. Advise if a price/ quality selection matrix was used and if so what were the weightings and quality criteria.*
- 4. Identify the contractor the external insulated render programme was placed with.*
- 5. A full breakdown of the costs of the external insulated render programme in relation to the Homeowners' Properties.*
- 6. Specific details of the guarantees that the supplier will provide for the completed works and future remedial action.*

Second, The Factor is directed to pay the Homeowners £150 in respect of each of the properties totalling £600 as compensation from their own funds. The said sums to be paid within 28 days of the communication to them of the Property Factor Enforcement Order'

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a Property Factor Enforcement Order commits an offence.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

Jacqui Taylor

Signed
Chairperson

Date 11th December 2019