

Housing and Property Chamber

First-tier Tribunal for Scotland



Notice of Proposed Property Factor Enforcement Order (“PFEO”)

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

Property Factors (Scotland) Act 2011, Sections 17 and 19

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, as amended (“the 2017 Regulations”)

Chamber Ref: FTS/HPC/PF/20/1396

47/6 Bavelaw Road, Balerno, Edinburgh, EH14 7AA (“the Property”)

The Parties: -

Mr and Mrs Graeme and Alison Banks, residing at 14 Big Sand, Gairloch, IV21 2DD (“the Homeowners”)

RMG Scotland Ltd, Unit 6, 95 Morrison Street, Glasgow, G5 8BE (“the Factor”)

Tribunal Chamber Members

Maurice O’Carroll (Legal Member)

Andrew Taylor (Surveyor Member)

This Notice should be read in conjunction with the decision of the Tribunal of even date under the same reference number noted above.

1. By decision of even date with this Notice, the Tribunal determined that the Factor had breached its duties in terms of s 14(5) of the 2011 Act in that it had failed to comply with sections 2.5, 4.1, 4.3, 4.8, 4.9, 6.1, 7.1, 7.2 and 7.4 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the Factor has failed to carry out the property factor duties, the Tribunal must make a Property Factor Enforcement Order. Before making an Order, to comply with s 19(2) of the Act, the Tribunal before proposing an Order must give notice of the proposal to the factor and must allow the parties an opportunity to give representations to the Tribunal **in relation to this Notice and the proposed Order only.**
3. The intimation of this Notice of Property Factor Enforcement Order to the parties should be taken as notice for the purposes of section 19(2)(a) and the parties are hereby given notice that they should ensure that any written

representations which they wish to make under s 19(2)(b) must reach the First-tier Tribunal for Scotland (Housing and Property Chamber) by no later than **14 days** after the date the decision and this Notice is intimated to them.

4. If no representations are received within that timescale, then the Tribunal will proceed to make a PFEO in the following terms without seeking further representations from the parties.
5. 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) Provide a written statement to the Homeowners setting out:
 - (i) its internal controls and systems that are in place to ensure that records of homeowner enquiries and complaints are recorded, retained, communicated to and accessible to other members of its staff to ensure that knowledge of such enquiries and complaints are not lost in the event of members of staff leaving the employment of the Factor; and
 - (ii) its internal systems that are in place to ensure that homeowner notifications of necessary repairs and services requested are dealt with expeditiously in compliance sections 2.5 and 6.1 of the Code.
- (ii) Provide a written statement to the Homeowners setting out all sums due and owing in respect of their non-payment of factoring invoices from August 2018 to the date of compliance with this Order (allowing payment within 14 days) under deduction of the following amounts which are to be waived by the Factor:
 - (i) Any administrative charges (known as 'referral fees') or penalties (including interest charges) whatsoever, applied to the Homeowners' account in respect of its debt recovery procedure, whether previously stated by the Factor to be at Stage 1, 2 or 3 thereof; and
 - (ii) The quarterly management fees for factoring services for the said period in recognition of the Factor's poor standards of service during that time.
- (iii) Pay compensation to the Homeowner in the sum of £250 (Two Hundred and Fifty Pounds) in respect of the time and inconvenience to the Homeowner occasioned by the Factor's failure to comply with its factor duties under the Code. Said compensation may be deducted from the statement of account of amounts due and owing by the Homeowners referred to in the previous paragraph at the option of the Factor.
- (iv) Provide documentary evidence of compliance to the Tribunal with the above Order within 7 days of having done so.

Failure to comply with a PFEO has serious consequences and may constitute a criminal offence.

Appeals

7. 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 within 30 days of the date the decision was sent to them.

Signed: M O'Carroll
Chairman

Date: 29 October 2020