

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Notice of proposal regarding the making of a Property Factor Enforcement Order: Property Factors (Scotland) Act 2011 Section 19(2)

Chamber Ref: FTS/HPC/PF/17/0223

**3A Jerviston Court, Motherwell, ML1 4BS
("The Property")**

The Parties:-

**Mr William Tweedie, 2 Kilnwell Quadrant, Motherwell, ML1 3JN
("the Applicant")**

**Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire,
G66 1QH
("the Respondent")**

Tribunal Members:

Susanne L M Tanner QC (Legal Member)

John Blackwood (Ordinary Member)

1. This document should be read in conjunction with the decision of the same date of the First-tier Tribunal ("the tribunal") under Section 19(1) of the Property Factors (Scotland) Act 2011 ("the 2011 Act").
2. By decision of even date with this Notice, the Tribunal determined in terms of Section 19(1) of the 2011 Act that the Respondent had failed to carry out the property factor's duties and had failed to comply with the duty under Section 14(5) of the 2011 Act to comply with **sections 2.1, 2.2, 2.4, 4.9 and 6.6 of the Code of Conduct for Property Factors ("the Code")**.
3. 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 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. ...”

4. The First-tier Tribunal (“the tribunal”) proposes to make a property factor enforcement order (“PFEO”) in the following terms:

Within 30 days of intimation of the PFEO the Respondent must:

- a. Register with Registers of Scotland a Discharge of the Notice of Potential Liability for Costs in terms of Section 12 of the Tenements (Scotland) Act 2004 by Apex Property Factor Limited dated 16 December 2016 and registered 19 December 2016 relative to the Property (Title number LAN33107); and provide documentary evidence to the tribunal of its removal from the Title Sheet of the Property by the Keeper of the Register.
 - b. Pay to the Applicant the sum of £678.70 in respect of the cost of professional legal services and outlays relating to the abortive sale of the homeowner’s property as detailed in invoice number 2017122 from Freelands Solicitors Estate Agents dated 12 January 2017; and provide documentary evidence of said payment.
 - c. Pay to the Applicant the sum of £663.60 in respect of the cost of professional legal services and outlays provided to the Applicant homeowner for all work in connection with the dispute with the Respondent Property Factor (as detailed in invoice number 20171171 from Freelands Solicitors Estate Agents dated 16 November 2017); and provide documentary evidence of said payment.
 - d. Pay to the Applicant homeowner the sum of £250 in respect of the time, distress, worry and inconvenience occasioned by the Factor’s failure to carry out its property factor’s duties and to ensure compliance with its duties under the Code; and provide documentary evidence of said payment.
5. The intimation to the parties of the tribunal’s decision in terms of Section 19(1) of the 2011 Act and this proposed PFEO should be taken as notice for the purposes of section 19(2)(a).
 6. Parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) 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 property factor enforcement order without seeking further representations from the parties.

7. Failure to comply with a PFE0 has serious consequences and may constitute an offence.

S Tanner

Susanne L M Tanner QC
Legal Member

14 December 2017