



**Decision of the Homeowner Housing Committee  
In an Application under section 17 of the Property Factors (Scotland) Act 2011  
by**

**Linda Clink, 30 Oak Loan, Dundee DD5 3UQ ("the Applicant")**

**Greenbelt Group Ltd, McCafferty House, 99 Firhill Road, Glasgow G20 7BE  
("the Respondent")**

**Reference No: HOHP/PF/14/0035/0036/0037**

**Re: Land at Ballumbie Castle Estate, Dundee DD5.  
("the Property")**

**Committee Members:**

John McHugh (Chairman); David Hughes Hallett and Colin Campbell (Housing Members).

**DECISION**

The Committee has decided to issue a Property Factor Enforcement Order ("PFEO"). The terms of the PFEO are stated below and have been altered to reflect events since the issue of the draft PFEO to the parties for comment.

The decision is unanimous.

**REASONS FOR DECISION**

We have given consideration to the correspondence received from the parties since the issue on 13 May 2015 of our Decision and Proposed PFEO. In particular, we have considered the Applicant's letter of 27 May and the Respondent's emails of 19 and 29 May 2015.

The Applicant has invited us to consider making alterations to our Decision which she considers to be appropriate to correct perceived errors or to provide additional clarification.

We will make no changes to our Decision as we consider that we enjoy no power to review our own Decision. Further, we do not consider that we have the power to issue clarification regarding the terms of our Decision.

There remains a question between the parties as to whether a PFEO should be issued. The Respondent advises that, in response to the proposed PFEO, it has paid over the sum of £600 to the Applicant which was to have been required had the PFEO been issued. It regards the issue of a PFEO as now being superfluous.

The Applicant disagrees and indicates that a PFEO should still be issued. She accepts that she has received the Respondent's cheque. She raises the theoretical concern that the cheque might not clear although, given the passage of time, that is no longer an issue. She raises the apparently mandatory language of section 19(3) of the Act.

We consider the terms of s19(3) to be mandatory ie that we are required to issue a PFEO in the current circumstances. We note the apparent contradictory wording of s19(1)(b) which is difficult to reconcile with s19(3). However, s19(3) provides mandatory instruction to the Committee in the current circumstances.

In reaching our decision we have not relied solely upon the mandatory nature of s19(3) but have also had regard to the effect on the parties if we were to decide that we had the discretion not to issue a PFEO and then to decide not to issue one. We have also considered the importance not only of doing justice between the parties but also of justice being seen to have been done.

It seems to us that it is appropriate to issue a PFEO. Decisions of Committees and PFEOs are made publicly available. The fact of the issue of a PFEO is a matter which is of some public interest. The publication of a PFEO clearly signals to the parties and to outside observers, including those involved in the regulation of factors, the result of the case. Although there may be circumstances in which it may be appropriate for a Committee not to issue a PFEO, we consider that it would be unfortunate if a practice were to develop whereby factors who are the subject of adverse Decisions routinely avoid the publishing of PFEOs against their name by complying with draft PFEOs before they are ever issued in their final form. (We should say that we understand the particular reasons advanced by the Respondent for its course of action in this case.)

Having decided that we will issue a PFEO, we now turn to its terms. These have been simplified to remove the reporting requirement since it is known that payment has been made. The PFEO now contains only the bare minimum of the substantive order which enables both the parties and any third party observer to be aware of the outcome.

It would be normal after the issue of a PFEO for the Committee to make a finding as regards compliance or otherwise with the PFEO. The Committee proposes to make a finding of compliance with the PFEO if and when the period for appeal has expired without any relevant appeal having been made.

### **PROPERTY FACTOR ENFORCEMENT ORDER**

The Committee hereby makes the following Property Factor Enforcement Order (“PFEO”):

The Respondent must make a payment to the Applicant of £600.

**Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.**

### **APPEALS**

The parties’ attention is drawn to the terms of section 22 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 a 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...”

**JOHN M MCHUGH**

**CHAIRMAN**

**DATE: 16 June 2015**



## Property Factor Enforcement Order

Following Upon a  
Decision of the Homeowner Housing Committee  
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by

Linda Clink, 30 Oak Loan, Dundee DD5 3UQ ("the Applicant")

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Re: Land at Ballumbie Castle Estate, Dundee DD5.  
("the Property")

### Committee Members:

John McHugh (Chairman); David Hughes Hallett and Colin Campbell (Housing Members).

This document should be read in conjunction with the Committee's Decision of the same date and its Decision of 13 May 2015.

The Committee makes the following Property Factor Enforcement Order ("PFEO"):

Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must make a payment to the Applicant of £600.

**Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.**

JOHN M MCHUGH

CHAIRMAN

Date: 16 June 2015