



## Statement of facts and Reasons

For

### Decision to serve a Notice of failure to Comply with the Property Factor Enforcement Order on the Scottish Ministers, under Section 23 of the Property Factor (Scotland) Act 2011

Hohp ref:HOHP/PF/14/0152

Re:

18 Kirkton Drive, Burntisland, Fife, KY3 0DD ('the Property')

The Parties:

Dafydd McIntosh residing at 18 Kirkton Drive, Burntisland, Fife, KY3 0DD ('the homeowner')

Collinswell Land Management Limited, Collinswell House, Aberdour Road, Burntisland, Fife, KY3 0AE ('the factor')

Committee members:

Jacqui Taylor (Chairperson) and Brenda Higgins (Housing Member)

1. On 27 March 2015, the Homeowner Housing Committee issued a Property Factor Enforcement Order dated 16<sup>th</sup> March 2015.

2. The Property Factor Enforcement Order contained the following provisions:

*'Within 28 days of the communication to the factor of the Property Factor Enforcement Order:*

*(1) The factor is required to issue a letter of apology to all of the residents. The letter must apologise to the homeowner and other residents for providing misleading and inaccurate information in their Information Letter dated September 2014.*

*The letter of apology should also correct the inaccurate statements in the said Information Letter and should:-*

- (i) *Emphasise that they settled the court action as they conceded that their invoice dated 25<sup>th</sup> January 2010 included a previous quarter of factoring charges which they were not entitled to collect amounting to £35.*
  - (ii) *Explain that the Sheriff made no judgement to the effect that they were entitled to recover legal costs.*
  - (iii) *Apologise for specifically naming the homeowner and Mr Crooks.*
  - (iv) *Clarify that they had raised the court action and it was not the homeowner and Mr Crooks who had raised the Court action.*
- (2) *The factor must pay the homeowner £100 for the inconvenience he had suffered from their own funds and at no cost to the owners.'*
3. The factor has failed to comply with the Order.
4. The factor has corresponded seeking to justify their failure but their response is unjustified.
5. The Committee concludes that the factor has indicated that they will not comply with the terms of the Property factor Enforcement Order. Accordingly in terms of Section 23(2) of the Property factor (Scotland) Act 2011, the Committee is obliged to serve notice of that on the Scottish Ministers. The necessary notice will be served on the Scottish Ministers forthwith.
6. In terms of Section 22 of the 2011 Act, any Appeal is on a point of law only and requires to be made by Summary application to the Sheriff. Any Appeal must be made within 21 days beginning with the day on which the Decision appealed against is made.

Signed .....

Date 5 June 2015

Chairperson