



**Statement of Decision
to serve on the Scottish Ministers a Notice of Failure to
Comply with a Property Factor Enforcement Order
under Section 23 of the Property Factors (Scotland) Act 2011**

hohp Ref: HOHP/PF/13/0328

Re: 39 Fidra Avenue, Burntisland, Fife KY3 0BE ("the Property")

The Parties:-

Mrs Fiona Webster, 39 Fidra Avenue, Burntisland, Fife KY3 0BE ("the homeowner");
and

Collinswell Land Management Limited, incorporated under the Companies Acts (SC301684) and having a place of business at Collinswell House, Aberdour Road, Burntisland, Fife KY3 0AE ("the property factor")

Committee Members:

George Clark (Chairman) and Carolyn Hirst (Housing Member)

On 4 November 2014, the Homeowner Housing Committee ("the Committee") issued a Property Factor Enforcement Order on the Respondent in respect of the Property.

The Property Factor Enforcement Order contained the following provisions:

Within four weeks of the communication to the Respondent of this Property Factor Enforcement Order, the property factor shall:

- (1) issue to all homeowners within the development a written Statement of Services relative to the development, which fully complies with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors, and confirm to the Homeowner Housing Panel that this has been done;
- (2) provide confirmation in writing to the homeowner that the property factor is holding the homeowner's payment of £140 and those of the other owners in the development in a separate account and confirmation of the number of properties within the development in respect of which the property factor holds such sums;
- (3) issue to the homeowner a personal written apology for the e-mail which was sent to her on 13 February 2014; and
- (4) pay to the homeowner the sum of £100 by way of compensation for the upset caused to the homeowner by the e-mail of 13 February 2014.

The time allowed for compliance with the Order expired and the Homeowner Housing Panel ("HOHP") wrote to the Parties, asking them to confirm by 18 December 2014 whether or not the actions required in the Property Factor Enforcement Order had been completed. The homeowner responded on 8 December 2014, advising that she had had no correspondence at all from the property factor. The property factor's agents, Messrs Gebbie and Wilson, solicitors, replied on 18 December 2014, stating that the written statement of services had been issued to all homeowners, that Collinswell Land Management Limited would no longer be the factors for the development as of January 2015, that the floats would be returned by

them as outgoing factor and that the property factor was writing to the homeowner as of 17 December 2014, issuing an apology and attaching a cheque for £100. On 22 December 2014, the homeowner e-mailed the HOHP, stating that the written Statement of Services had still not been issued and that she had checked with a few residents who had confirmed to her that they had not received it either. She had not received any apology or a cheque. The homeowner e-mailed again on 27 December 2014 to say that she had still not received the letter of apology or the cheque referred to in the property factor's agents' response of 18 December. On 14 January 2015, the property factor sent to the HOHP a copy of a letter to the homeowner dated 12 January 2015, enclosing a cheque for £100 stated to be "by way of apology". On 15 January 2015, the homeowner confirmed by e-mail to the Homeowner Housing Panel that she had received the letter of 12 January and the cheque. She commented that "the apology was not really an apology".

The Committee considered the representations made by both parties. The Committee accepted that the property factor had complied with the Order to the extent that the homeowner had received the cheque for £100 by way of compensation, but decided that a further hearing would be necessary, in order to test the competing statements regarding whether or not the property factor had issued the written Statement of Services to all homeowners within the development and had confirmed in writing the number of properties within the development in respect of which it held float moneys, and to enable the Committee to determine whether the letter sent to the homeowner on 12 January 2015 met the third requirement of the Order to issue "a personal written apology" for the e-mail which was sent to the homeowner on 13 February 2014.

On 9 March 2015, the homeowner sent an e-mail to HOHP to which she attached a copy letter and invoice from the property factor

The Committee held a further hearing at George House, Edinburgh on 8 June 2015. The homeowner was present at the hearing. The property factor was neither present nor represented at the hearing. The issue for the Committee to determine was whether the property factor had complied with the Property Factor Enforcement Order.

At the hearing, the homeowner told the Committee that she had not received a copy of the written statement of services and refuted the statement from the property factor's agents' letter of 18 December 2014, which stated that it had been sent to all homeowners. She also advised that she knew of other owners who had not received it.

The homeowner confirmed that she had received, with a letter dated 21 May 2015 from the property factor, a final statement which referred to a float of £140 and that, in a letter dated 2 March 2015, the property factor had referred to the costs involved in recovering outstanding debts being divided equally amongst 292 house owners, but stated that she did not think that the property factor held float payments from every owner, so the costs of recovering outstanding sums would fall disproportionately on those owners from whom the property factor held float moneys, as they would simply be deducted from the floats held. Her belief was that the property factor would not raise court proceedings against those whose accounts were in debit as a result of there being no float against which to offset the deficit. The homeowner accepted that the operating loss shown in the final accounts had been divided by 292 to produce an additional amount stated to be due by each resident, but could not reconcile this with the amounts shown for factoring fees in the accounts, which showed the period from 2010 to 2014. The Scottish Property Factor Register indicated that the property factor's portfolio size was 242. The homeowner told the Committee that, in her view, there was still no clarity as to the number of properties for which the property factor held floats and that the property factor had not complied with this aspect of the Property Factor Enforcement Order.

The homeowner then referred the Committee to the letter sent to her by the property factor on 12 January 2015. She accepted that she had received with that letter the cheque for £100 in respect of the Committee's award of compensation, but did not consider that merely saying they enclosed a cheque for £100 "by way of an apology" constituted a personal written apology as required by the Property Factor Enforcement Order.

REASONS FOR THE DECISION

The Committee considered the papers before it and the evidence given by the homeowner at the hearing. The Committee accepted that the property factor had paid the compensation of £100 as required by the Property Factor Enforcement Order, but expressed disappointment that the property factor's agents had said in their letter of 18 December 2014 that the cheque was being sent as of 17 December, when it was not actually sent until 12 January 2015.

The Committee also accepted that the Property Factor Enforcement Order had been complied with to the extent that, by recognising it as a float in its final factoring statement, the property factor had confirmed that it was holding the homeowner's payment of £140, but found that it had not confirmed the number of properties in respect of which such sums were held and had not provided confirmation that these sums were held in a separate account. The statement in its letter of 2 March 2015 that bad debts would be divided amongst 292 house owners did not go any way towards complying with the requirement in the Property Factor Enforcement Order to confirm the number of properties in respect of which the property factor held float payments. The Committee determined, therefore, that the property factor had not complied with the Property factor Enforcement Order.

The Committee accepted the evidence given by the homeowner that she had not received a written Statement of Services relative to the development and that she knew other owners who had not received it. The Committee found no reason to doubt the credibility of the homeowner on this matter, notwithstanding that the property factors agents had stated in their letter of 18 December 2014 that the written Statement of Services had been sent to all homeowners. The property factor had not demonstrated to the Committee that the Statement of Services had been sent and the Committee determined, therefore, that the property factor had not complied with the Property Factor Enforcement Order.

The Committee also determined that the wording of the letter from the property factor of 12 January 2015 did not constitute a personal written apology for the e-mail which had been sent to her on 13 February 2014 and that the property factor had, therefore, not complied with the Property Factor Enforcement Order.

Accordingly, the Committee determined that the Respondent has not complied in full with the terms of the Property Factor Enforcement Order and that, in terms of Section 23(2) of the Property Factors (Scotland) Act 2011, the Committee is obliged to serve notice of that fact on the Scottish Ministers.

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..."

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

Signed

George Clark, Chairperson

Date 8 June 2015