

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Decision in terms of Section 23(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/20/0399**

**1 Cleveden Drive, Kirklee, Glasgow, G12 0SB (“the House”)**

### **The Parties:-**

**Mr David Kincaid, 1 Cleveden Drive, Kirklee, Glasgow, G12 0SB (“the Homeowner”)**

**Apex, 46 Eastside, Kirkintilloch, East Dunbartonshire G66 1QH (“the Property Factor”)**

### **Tribunal Members**

**Ms Helen Forbes (Legal Member)**

**Mr Ahsan Khan (Ordinary Member)**

### **Decision**

The Tribunal hereby determines that:

- (i) The Property Factor Enforcement Order (“PFEKO”) dated 23<sup>rd</sup> December 2020 has not been complied with;
- (ii) A Notice of Failure to comply is to be served on the Scottish Ministers in terms of section 23(2) of the Act; and
- (iii) The Property Factor’s failure to comply is to be reported to the police for prosecution of the Property Factor in terms of section 24 of the Act.

The decision of the Tribunal is unanimous

### **Reasons for Decision**

1. By decision dated 16<sup>th</sup> November 2020, the First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor had failed to comply with the Section 14 duty in terms of the Property Factors

(Scotland) Act 2011 ("the Act") in respect of compliance with paragraphs 2.5, 3.1 and 3.2 of the Property Factor Code of Conduct ("the Code") as required by section 14(5) of the Act.

2. The Tribunal made a PFEO dated 23<sup>rd</sup> December 2020 that the Property Factor must:
  - (i) Refund to the Homeowner within 21 days of intimation to them of the PFEO the sum of £189.91 from their own funds, which sum constitutes the float of £120 paid by the Homeowner and the remaining balance of £69.91 on the Homeowner's account; and
  - (ii) Pay to the Homeowner within 21 days of intimation to them of the PFEO the sum of £100 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor's failure to comply with the Code of Conduct for Property Factors.
3. By email dated 2<sup>nd</sup> March 2021, the Homeowner informed the Tribunal that no action had been taken by the Property Factor to comply with the PFEO.
4. No representations were received from the Property Factor.
5. Accordingly, the Tribunal finds that the Property Factor has failed to comply with the PFEO and that there is no reasonable excuse for the failure.

### **Right of Appeal**

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

Legal Member and Chairperson

3<sup>rd</sup> March 2021