

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23

Chamber Ref: FTS/HPC/PF/17/0346

**2/1, 6 Ratho Drive, Springburn, Glasgow, G21 1NA
("the Property")**

The Parties:-

**Ms Fiona Taylor, 57F Drumbathie Mansions, Drumbathie Road, Airdrie, ML6 6EW
("the Homeowner")**

**James Gibb Property Management Limited, 65 Greendyke Street, Glasgow, G1 5PX
("the Property Factor")**

Tribunal members

**Susanne L M Tanner Q.C. (Legal Member)
Sara Hesp (Ordinary Member)**

Decision

1. The First-tier Tribunal (Housing and Property Chamber) ("the tribunal") unanimously determined that the Property Factor has complied in full with the terms of the Property Factor Enforcement Order ("PFEO") issued on 13 April 2018 and therefore no further action on the part of the Factor is required.

Statement of reasons

2. By decision dated 26 February 2018, the Tribunal determined that the Property Factor had breached its duties in terms of s 17(1)(b) of the Property Factor (Scotland) Act 2011 ("the 2011 Act") in that it had failed to comply with sections 1 and 5.2 of the Code of Conduct for Property Factors as required by s 14(5) of the 2011 Act. It also found that the Property Factor had failed in its property factor duties in terms of s 17(1)(a) of that Act as described in the said decision.

3. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. It issued a final version of the PFEO on 14 April 2018 together with a Decision of the same date, no representations as to the terms of the proposed PFEO having been made by either party.
 4. The PFEO so issued required the Factor to carry out the following within 30 days of the Notice:
 - a. Pay to the Homeowner the sum of £250 in respect of the delay, 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 (said payment to be made directly to the Homeowner and not as a credit to the Homeowner's account with the Property Factor); and provide documentary evidence to the tribunal of said payment.
 - b. Send a written apology to the Homeowner in respect of (i) the delay in answering her enquiries about insurance charges, (ii) the delay in providing a copy of its written statement of services, (iii) the delay in providing details of its in-house complaints procedure and (iv) the delay until 28 August 2016 in refunding the advance insurance charges; and provide a copy of the same to the tribunal.
 5. On 16 April 2018 the Property Factor submitted to the tribunal's administration a copy of an email to the Homeowner dated 4 April 2018, attaching a letter of apology in the terms required by the PFEO, which was also posted to the Homeowner's address. The Property Factor asked the Homeowner whether she would prefer the payment of £250 by cheque or BACS. On 5 April 2018 the Homeowner replied to the Property Factor and confirmed that she would prefer payment by BACS and provided her bank account details. By internal emails of 5 and 6 April 2018 the Property Factor confirmed that BACS payment of £250 had been made to the Homeowner's bank account as requested.
 6. The tribunal's administration wrote to the Homeowner on 20 April 2018 asking her to respond within 7 days to confirm whether she had received payment of the sum of £250. There has been no response from the Homeowner.
 7. In terms of Section 23 of the 2011 Act it is for the tribunal to decide whether a Property Factor has failed to comply with a PFEO. On the basis of the information submitted by the Property Factor and in the absence of any response from the Homeowner to suggest otherwise, the tribunal is satisfied that the PFEO had been complied with in full within the required period.
- ## 8. Appeals
- A homeowner or property factor 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

S Tanner

Susanne L M Tanner QC
Legal Member and Chair

10 May 2018