

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)**

Chamber Ref: FTS/HPC/PF/17/0090

**The Property:**

**Shepherds Court, Kinneskie Road, Banchory, AB31 5TG (“The Property”)**

**The Parties:-**

**Maureen Loy, 5 Shepherds Court, Kinneskie Road, Banchory, AB31 5TG**

**(“the homeowner”)**

and

**Strutt & Parker LLP, St Nicholas House, 68 Station Road, Banchory AB31 5YJ**

**(“the factors”)**

**Tribunal Members:**

Adrian Stalker (Chairman) and Helen Barclay (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 2 June 2017.

**Decision**

The Tribunal has decided that it should make a PFEO in the terms originally proposed subject to the following amendment: delete the words “£200 from each of their next two fees” and substitute therefor, “£400 from their next fee”.

The decision of the Tribunal is unanimous.

**Reasons for Decision**

In the Tribunal’s decision of 2 June 2017, it proposed to make a PFEO as follows:

Considering that the factors have failed, in the years 2013, 2014, 2015 and 2016, to provide proprietors at Shepherds Court, Kinneskie Road, Banchory, with:

(a) a detailed financial breakdown of charges they have made and a description of the activities and works carried out which they have charged for, under paragraph 3.3 of the Code of Conduct; and  
 (b) a full statement of account of their intromissions validly vouched, under clause (TWENTY FIFTH) of the Deed of Conditions applicable to Shepherds Court;  
 the factors shall make a deduction of £200 from each of their next two fees to the Shepherds Court Residents Association (which fees are invoiced six monthly) in respect of Professional Services, being "Management Consultancy services", "Factoring/Accountancy" or similar.

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 5 June 2017. By email dated 16 June the factors responded. They queried certain aspects of the decision, but also stated: "Strutt & Parker are willing to accept the panel's decision and will not be appealing".

The homeowner responded by email dated 19 June. She advised the Tribunal that by letter dated 17 June, the factors had advised her, and other homeowners at Shepherds Court, that they will cease providing a factoring service for Shepherds Court from 30 September 2017.

In light of the fact that the factors will terminate the service on that date, the Tribunal decided to amend the proposed PFEO, which required the factors to make deductions of £200 from their management fee, in each of their next two invoices. As it seems likely that there will only be one further invoice, that has been changed to a single deduction of £400, from the next invoice.

Apart from that change, the Tribunal did not consider it appropriate to make any other amendment to the PFEO, in light of the factors' decision to terminate their service. In particular, and contrary to the suggestion made by the homeowner, it did not consider it appropriate to make an award of compensation to her. The Tribunal has determined that a deduction from the management fee due by all homeowners at Shepherds Court is an appropriate disposal, given the nature of factors' failures, as described in the proposed PFEO. Also, and again contrary to the suggestion made by the homeowner, it did not consider it appropriate to make an award of expenses against the factors, as there was nothing in their conduct of the proceedings which merited such an award being made.

### **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

**Considering that the factors have failed, in the years 2013, 2014, 2015 and 2016, to provide proprietors at Shepherds Court, Kinneskie Road, Banchory, with:**

- (a) a detailed financial breakdown of charges they have made and a description of the activities and works carried out which they have charged for, under paragraph 3.3 of the Code of Conduct; and
  - (b) a full statement of account of their intromissions validly vouched, under clause (TWENTY FIFTH) of the Deed of Conditions applicable to Shepherds Court;
- the factors shall make a deduction of £400 from their next fee to the Shepherds Court Residents Association in respect of Professional Services, being "Management Consultancy services", "Factoring/Accountancy" or similar.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

### 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.

**A Stalker**

Legal Member and Chair

11/8/17

Date