

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Proposal regarding the making of a Property Factor Enforcement Order:
Property Factors (Scotland) Act 2011 Section 19(2)**

Chamber Reference: FTS/HPC/PF/20/2432 & FTS/HPC/PF/21/0476

Property address: 27 Dempsey Court, Queens Lane North, Aberdeen, AB1 54DY ("the House")

The Parties

Mr David Gordon, 27 Dempsey Court, Queens Lane North, Aberdeen, AB1 54DY ("the Homeowner")

James Gibb, 2 Thistle Street, Aberdeen, AB10 1XZ ("the Property Factor")

This document should be read in conjunction with the First-tier Tribunal's Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order ("PFE0"):

"Within 28 days of intimation to them of the PFE0, the Property Factor is required to:

1. Pay to the Homeowner the sum of £1000 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Property Factor's failure to comply with the Code of Conduct for Property Factors and for failing to carry out their property factor duties;
2. Provide documentation to the Homeowner in relation to the electrical testing tendering process, excluding any commercially sensitive information.
3. Provide to the Homeowner the missing utility bills in relation to the communal services, or, in their absence, refund from their own account charges set against the Homeowner for the missing periods. Provide an explanation of the basis for the allocation of these charges made to the Homeowner
4. Confirm to the Homeowner the amount of commission (in cash terms) received by the Property Factor in respect of the property insurance for this development, for each of the past five years.
5. Provide documentation to the Homeowner in relation to the insurance selection process, in particular the alternative quotes available, the excesses applicable

thereto, any special terms and the levels of broker commission, (excluding any commercially sensitive information).

6. At the Property Factor's own cost, rectify the damage to the paintwork caused by the flooding of the lift shaft.

Section 19 of the 2011 Act provides as follows:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

- (a) give notice of the proposal to the property factor, and*
- (b) allow the parties an opportunity to make representations to it.*

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order."

The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

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.