

Housing and Property Chamber

First-tier Tribunal for Scotland



**Property Factor Enforcement Order: Property Factors (Scotland) Act 2011,
section 19(2).**

Chamber Ref: PF/ 16/0079

The Property:

11 Bogbeth Road, Kemnay, Aberdeenshire AB51 5RJ

The Parties:-

Mr Andrew Snowie, residing at 11 Bogbeth Road, aforesaid.

("the homeowner")

and

**The Property Management Company (Aberdeen) Limited, Little Square,
Oldmeldrum, Aberdeenshire AB51 0AY**

("the factors")

The Tribunal:

David Preston (Chairman); and Angus Anderson (Surveyor Member).

WHEREAS in its Decision dated 30 January 2017 the tribunal determined that the factors had failed to comply with the Code of Conduct for Property Factors ("the Code"); and it determined to issue a Property Factor Enforcement Order (PFEO):-

The required Notice of Proposed PFEO under section 19(2) of the Act was given to the parties on 9 February 2017 to allow them to make representations.

Responses from the parties were received and considered by the tribunal and having taken account of the response the tribunal has determined to proceed to make this PFEO for the reasons outlined below:

Reasons:

1. By email dated 10 February 2017 the factors noted that they had 14 days from 9 February to make a written representation concerning the determination. They further noted that the date of the determination document was 30th January from which they thought that the time limit for any appeal would be assessed and commented that this provided only 20 days in which to seek permission to lodge an appeal if appropriate.
2. The tribunal had regard to Regulation 2 of the Scottish Tribunal's (Time Limits) Regulations 2016 which provides that the period of 30 days within which an application for permission to appeal may be made commences with the date on

which the decision appealed against was sent to the parties, namely 9 February 2017.

3. A letter from the factors dated 14 February 2017 advised that:
 - a. The factors had established that they were unable to trace any tendering process as having been carried out in respect of the appointment of Proserv (Scotland) Ltd to the grounds maintenance contract;
 - b. The factors were arranging an owners' meeting as provided for in the Notice of Proposed PFEO;
 - c. A letter of apology was being sent to Mr Snowie;
 - d. The factors were arranging to refund Mr Snowie's account with his share of the lighting repair as provided for in the Notice of Proposed PFEO;
 - e. £250 was being paid to Mr Snowie's account.
4. On 23 February 2017 the homeowner responded to the Notice of Proposed PFEO with his representations:
 - a. The homeowner disagreed with the tribunal's finding that he did not have any direct interest in the insurance issue as he was required to pay his share of the premium and in the event that there was an increase in premium that would have an impact on him. He also maintained that if there had been any excess on the claim he would have had to contribute to it.
 - b. The homeowner pointed out that the factors had issued an invitation to an owners' meeting along with a reply slip. The invitation made no mention of the agenda points provided for in the Notice of Proposed PFEO and merely invited items for discussion to be added to the agenda.
 - c. The homeowner referred to the tribunal's requirement for the factors to issue a letter of apology to the homeowner. He maintained that as the factors had made the remarks publicly it would be appropriate for them to be retracted publicly.
 - d. The homeowner sought a refund of the cost of every single repair since he logged his complaint with regard to the lighting repair and did not agree with the level of compensation proposed.
5. The written responses from each of the parties were crossed over to the other on 2 March 2017.
6. By email dated 5 March 2017, the homeowner made further comments in respect of the factors representations:
 - a. The homeowner expressed concern regarding the lack of tendering process on the part of the factors in respect of the grounds maintenance contract;
 - b. The homeowner repeated his concerns regarding the invitation to meeting without mention of the agenda items.
7. By letter dated 6 March 2017 the factors responded to the representations from the homeowner to clarify the procedure concerning the meeting and agenda

items. They explained that their process is to notify the owners of the meeting date and location and to ask for any points which they homeowners wish to raise. They advised that they would send out the full agenda seven days before the meeting date which they advised would incorporate "... our normal items, items raised by homeowners, and, in this case the factoring appointment item..." They advised that the meeting had been arranged for 21 March and that the agenda would be issued on 14 March.

8. The tribunal considered all of the representations made by the parties:

- a. The tribunal noted the position with regard to the tendering process. In view of the factors' undertaking to obtain further quotations the tribunal determined to amend the proposed PFEO as under noted.
- b. The tribunal noted the position of the parties with regard to the proprietors' meeting but noted that the factors had not made reference to the second item of business, namely the consultation process with owners before incurring expenditure;
- c. The tribunal accepted the representations of the homeowner with regard to the letter of apology. As narrated in the Decision dated 30 January 2017, the tribunal was of the view that further publicity regarding the issue would not be of benefit to Mr Snowie. However in the light of his response, the tribunal determined to amend the requirement for a letter of apology and require that such a letter be sent to all proprietors. The factors did not make any representations with regard to the homeowner's views in their letter of response dated 6 March 2017.
- d. The tribunal did not accept the homeowner's representations in respect of the insurance claim. The tribunal is required to deal with the situation presented to it and not speculate as to what might otherwise have been the case in different circumstances. The evidence presented to the tribunal confirmed that there was neither an increase in premium nor an excess on the claim. Accordingly it is not open to the tribunal to amend the proposed PFEO in this regard.
- e. The tribunal did not accept the homeowner's representations in respect of the cost of the recent replacement of the light fitting and considered that its finding was reasonable in all the circumstances of the case.
- f. The tribunal did not accept the homeowner's representations regarding the level of compensation which it considered was adequate in the circumstances of the case.

Accordingly the tribunal hereby makes the PFEO in the following terms:

Property Factor Enforcement Order:

Within one month from the date of service of this PFEO, the factors will:

1. Provide to Mr Snowie details of the tendering process in relation to the ground maintenance contract for the development at Parklands, Kemnay which they advised they would carry out following the tribunal's Decision dated 30 January 2017.

2. Arrange a meeting of owners at Parklands, Kemnay to include discussion of a proposal to change property managers for the development; and the fixing of a level of delegated authority above which the factors will consult with owners before incurring expenditure as items of business to be discussed.
3. Issue a letter of apology to all properties in the development at Parklands, Kemnay to which their letter of 8 December 2015 was sent Mr Snowie retracting the terms of that letter of 8 December 2015 and for their handling of the issue of the proposed change of property manager at that time.
4. Refund to Mr Snowie from their own funds such sum as is equivalent to his share of the cost of replacing the faulty car park light fitting.
5. Pay to Mr Snowie from their own funds the sum of £250 as compensation to him for the strain and anxiety caused to him and for the inconvenience and time occasioned by the application process.

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

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.

D Preston Chairman

17 March 2017