

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Decision: Property Factors (Scotland) Act 2011 Section 19**

**Chamber Ref: FTS/HPC/PF/17/0122**

**57 Eglinton Street, Coatbridge, ML5 3JF ("The Property")**

**The Parties:** -

**Mr Marc Roe and Mrs Natalie Roe, 57 Eglinton Street, Coatbridge, ML5 3JF ("the Homeowner")**

**W.M. Cumming Turner & Watt, 40 Carlton Place, Glasgow G5 9TS ("the Property Factor")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Carol Jones (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal's Decision of 25 August 2017.

### **Decision**

The Tribunal decides not to issue a Property Factor Enforcement Order (PFEO).

The decision of the Tribunal is unanimous.

### **Reasons for decision**

In the Tribunal's decision of 25 August 2017 it found that the Property Factor had breached sections 2.5, 6.1 and 7.2 of the Code of Conduct for Property Factors and proposed to make a PFEO as follows

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £350 as compensation for her time, effort and inconvenience within 28 days of intimation of the Property Factor Enforcement Order.
- (2) The Tribunal order the Property Factor to instruct and pay for the repair to the damaged chimney at the property insofar as the cost of same is not covered by the block insurance policy for the property within 56 days of intimation of

the Property Factor Enforcement Order.

- (3) The Tribunal order the Property Factor to review and revise its statement of services so that it comprises a more detailed complaints procedure including timescales for dealing with complaints within 56 days of intimation of the Property Factor Enforcement Order.

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 12 September 2017. On 21 September 2017 the Homeowner made a request for a review. Following sundry procedure, the Tribunal issued a decision dated 21 November 2017, refusing the request for review. On 8 December the Property Factor notified the Tribunal that it had carried out the chimney repair and sent a cheque to the Homeowner for the compensation detailed in the proposed PFEO. It also advised that the statement of services was being revised and would be issued to all homeowners once it had been reviewed by a legal advisor. On 22 January 2018 the Property factor sent to the Tribunal evidence of the repair and the payment. It also submitted a copy of its revised complaints procedure. On the same date the Homeowner confirmed that the payment had been received and the chimney repair completed. They had not received the revised statement of services. On 23 January 2018 the Property factor confirmed that the new complaints procedure had now been sent to the Homeowner. On 25 January 2018 the Property Factor lodged with the Tribunal a copy of its revised statement of services incorporating the new complaints procedure.

The Tribunal indicated in its decision on the Homeowner's application for review that it would take account of the Homeowners representations in relation to the level of compensation when considering whether, and on what terms, to issue a PFEO. The Homeowner stated that the level of compensation was "a tad lenient" and did not properly reflect what the homeowner had to endure for an 18-month period. The Tribunal considered the matter and concluded that the level of compensation proposed is appropriate, when taken together with the other parts of the proposed PFEO. No new information is provided by the Homeowner to justify an increased figure. The level of compensation is a matter for the Tribunal's discretion and all of the evidence presented by the Homeowner at the hearing was taken into account. The Tribunal therefore decides that no increase in the proposed compensation should be ordered. The Tribunal is also satisfied that the Property Factor has implemented the proposed PFEO in its entirety. Accordingly, the Tribunal does not require to issue a PFEO.

## Appeals

A homeowner or property factor aggrieved by a 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.**

J Bonnar

**J**osephine Bonnar,  
Legal Member

12 February 2018