

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006, Section 19

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the 2016 Regulations")

Chamber Ref: HOHP/PF/16/0102

**11 Braehead Road, Kildrum, Cumbernauld, G67 2BG**  
("The Property")

### The Parties:-

**Mr Iain Cornwallis, Broom House, Albert Street, Dunblane, Perthshire, FK15 9DA**  
("the Homeowner")

**Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF**  
("the Factor")

### Tribunal Chamber Members

Maurice O'Carroll (Legal Member)  
Ann MacDonald (Ordinary Member)

### Decision of the Chamber

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factor has complied in full with the terms of the Proposed Property Factor Enforcement Order ("PFEQ") issued on 30 January 2017 and therefore: (1) it is unnecessary for the Tribunal to issue a final PFEQ in this case; and (2) no further action on the part of the Factor is required.

### Background

1. By decision dated 30 January 2017, the Tribunal found that the Factor had breached its duty to comply with the Code of Conduct for Property Factors in respect that it failed to adhere to the terms of sections 1.1a A and 2.2 thereof. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEQ. 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. Representations were timeously received from the Homeowner on 11 February and from the Factor on 13 February 2017.

2. The proposed PFEO required the Factor to carry out the following within 28 days of the Notice:
  - (i) Issue a revised Written Statement of Services to the Homeowner in reasonably legible font which accurately sets out the Factor's authority to act as factor for the Property.
  - (ii) Pay compensation to the Homeowner in the sum of one hundred pounds (£100) in recognition of the time and inconvenience caused by the Factor's failure to comply with its duties under the Code of Conduct for Property Factors. At the Factor's discretion, said sum in compensation may be offset against any outstanding debts properly and lawfully due to the Factor by the Homeowner; and
  - (iii) Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.
3. The Homeowner's representations were taken into consideration. They did not address the terms of the proposed PFEO. They queried the evidence relating to the Factor's authority to act. This was not the question before the Tribunal in terms of the application as adjusted – see paragraphs 6 and 14 of the decision. For the sake of completeness, the Tribunal considered that the necessary authority to act had been made out on the basis of the evidence before it, but it was not necessary for it to do so in order to make a determination of the alleged Code breaches before it in terms of the application. The substantive issue before it was whether the Factor had stated its authority to act within the Written Statement of Services provided to the Homeowner. It found that it had not done so and proposed a PFEO accordingly.
4. The representations from the Factor consisted of correspondence with the Homeowner, whereby a revised Written Statement of Service was provided to him which set out the Factor's authority to act in a legible format in compliance with requirement (i) of the Proposed PFEO. The Factor further produced evidence demonstrating that the sum of £100 had been credited to the Homeowner's common charge account in compliance with requirement (ii) of the Proposed PFEO. The Tribunal elected to waive the requirement that proof be provided by means of recorded delivery post as it deemed the copy correspondence to be sufficient.

### **Decision**

5. The Tribunal therefore finds that the terms of the Proposed PFEO have been complied with. Accordingly, it is unnecessary for it to issue a final PFEO. As there will be no PFEO, no Certificate of Compliance therewith is appropriate. No further action on the part of the Factor is required.

## **Appeals**

- 6. 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.**

Signed:      M O'Carroll  
Chairman

Date 21 February 2017