

# 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 (“the Act”) Section 19(3)**

**Chamber Ref: FTS/HPC/PF/17/0530**

**Property at Flat 3, 3 Fairyknowe Court, Bothwell, South Lanarkshire, G71 8SZ (“the Property”)**

**The Parties: -**

**Dr Brian Lynas and Dr Annette Ferri, Flat 3, 3 Fairyknowe Court, Bothwell, South Lanarkshire, G71 8SZ, represented by James Carmichael, solicitor, James M. Carmichael and co, solicitors (“the homeowners”)**

**James Gibb Property Management Ltd, trading as James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX (“the factor”)**

**Tribunal Members: -**

Simone Sweeney (Legal Member) Carolyn Hirst (Ordinary Member)

**This document should be read in conjunction with the decision of the Tribunal of 17<sup>th</sup> May 2018 under the reference number noted above.**

### **Decision**

1. The Tribunal makes a Property Factor Enforcement Order (“PFEO”) in terms of its decision and proposed notice of 17<sup>th</sup> May 2018.
  
2. The decision of the Tribunal is unanimous.

## **Reasons for decision**

3. By decision of 17<sup>th</sup> May 2018 with this Notice, the Tribunal determined that the factor breached duties in terms of Section 17(1)(b) of the 2011 Act ("the Act") in that it failed to comply with Section 2.5 of the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of that Act. The Tribunal proposed to make a PFEO in the following terms:

*"Within 28 days of the communication of the PFEO to the factor, the factor must:*

- (i) *Pay compensation to the Homeowners in the sum of £500 (Five hundred pounds) in respect of the time, distress and inconvenience occasioned by the factor's failure to comply with their duty under the Code."*
4. The decision and the proposed PFEO were intimated to parties on or about 18<sup>th</sup> May 2018. No representations on the proposed order under section 19(2)(b) of the Act were received from the parties. The Tribunal remains satisfied that the factor has failed to comply with Section 2.5 of the Code.
5. Therefore, in terms of section 19 (3) of the Act, the Tribunal is required to make a PFEO and does so in the following terms:

## **Property Factor Enforcement Order**

**Within 28 days of the communication of the PFEO to the factor, the factor must:**

- (i) Pay compensation to the homeowners in the sum of £500 (Five hundred pounds) in respect of the time, distress and inconvenience occasioned by the factor's failure to comply with their duty under the Code.**

Under section 24 (1) of the Act, a person who, without reasonable excuse, fails to comply with a PFEO may have serious consequences and may constitute a criminal 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.

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Simone Sweeney, Legal chairing member, 23rd July 2018.