



**Statement of Facts and Reasons
for**

**Decision to Serve a Notice of Failure to Comply with the Property Factor
Enforcement Order on the Scottish Ministers, under Section 23 of the
Property Factor (Scotland) Act 2011**

Hohp ref: HOHP/PF/12/0013

Re: Property at 108/8 Great Junction Street, Edinburgh EH6 5LD ("the Property")

The Parties:-

Mr Graeme Brebner, residing at Sorrowlessfield Farm, Earlston, Berwickshire TD4 6AG ("The Applicant")

Annan Property, 229 Portobello High Street, Edinburgh EH11 2AN ("The Respondent")

Statement of Facts and Reasons for Decision

1. On 11 June 2013, the Homeowner Housing Committee issued a Property Factor Enforcement Order dated 10 June 2013.
2. The Property Factor Enforcement Order required the Respondent to pay to the Applicant £450 within 28 days of the communication to the Respondent of the Property Factor Enforcement Order. The communication of the Property Factor Enforcement Order was sent by recorded delivery post to the Respondent on 11 June 2013 and by email on 11 June 2013. A recorded delivery receipt showing delivery on 13 June 2013 was issued by Royal Mail. On enquiry, the Clerk to the Homeowner Housing Panel found that the days of appeal had expired and that the Respondent had not appealed against the Property Factor Enforcement Order (by lodging a summary application) at Edinburgh Sheriff Court.
3. On 16 July 2013, the Applicant contacted the Homeowner Housing Panel to advise that the Respondent had not complied with the Property Factor Enforcement Order and that the Respondent had made no contact whatsoever with the Applicant since the Property Factor Enforcement Order was served on 11 June 2013.

4. On 14 August 2013, the Homeowner Housing Panel wrote to the Respondent asking the Respondent to provide comments on the suggestion by the Applicant that there was a failure to comply with the Property Factor Enforcement Order, or in the alternative to provide reasons for failure to comply. In the absence of a response, on 23rd August 2013, the Homeowner Housing Panel wrote again in identical terms to the Respondent. Both letters were addressed to the Respondent's last known address (Annan Property, c/o Annan Associates, 229 Portobello High Street, Edinburgh, EH11 2AN)
5. The Respondent has not replied to either of the requests for information dated 14 and 23 August 2013 from the Homeowner Housing Panel. Neither of the two letters from the Homeowner Housing Panel dated 14 and 23 August 2013 have been returned. Both said letters were posted to the Respondent by First Class Recorded Delivery Post, addressed to

"Annan Property, c/o Annan Associates, 229 Portobello High Street, Edinburgh, EH11 2AN".

6. In the circumstances, the Committee can only come to the conclusion that the Respondent has chosen to ignore the terms of the Property Factor Enforcement Order dated 10 June 2013 and served on the respondent on 11 June 2013. The Committee, having made enquiries, decides that the respondent has failed to comply with the Property Factor Enforcement Order made by the Committee on 7 May 2013, dated 10 June 2013 and served 11 June 2013. In terms of Section 23(2) of the Property Factor (Scotland) Act 2011, the Committee is obliged to serve notice of that failure on the Scottish Ministers. The Committee therefore gives notice of failure to comply with the Property Factor Enforcement Order and resolves to serve that notice on the Scottish Ministers forthwith.
7. The parties' attention is drawn to the terms of Section 22 of the Act regarding the right to appeal and the time limit for doing so. It provides:

"...(1) an appeal on a point of law only may be made by summary application to the Sheriff against the decision of the President of the Homeowner Housing Panel or Homeowner Housing Committee.

(2) an appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

Paul Doyle

Signed .
Chairperson

Date... 13/9/2013 ..