

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

Chamber Ref: FTS/HPC/PF/18/1483

Property: Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA (“the property”)

The Parties:-

Ms Lesley Cochrane, Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA (“the homeowner”)

APEX Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH (“the property factor”)

Tribunal Members: -

Simone Sweeney (Legal Member) Carol Jones (Ordinary Surveyor Member)

This document should be read in conjunction with the decision of the Tribunal of even date under the reference number noted above.

1. By decision of even date with this Notice, the Tribunal determined that the factor has breached duties in terms of Section 17(1)(b) of the 2011 Act in that it has failed to comply with the Property Factor’s duties and sections 1.1 a (f), 2.2, 2.4, 2.5, 3.3, 3.4, 5.5, 6.1, 6.3, 6.4, 6.6, 6.9, 7.1 and 7.2 of the Code of Conduct for Property Factors (“the Code”) as required by section 14(5) of that Act.

2. Therefore, the Tribunal proposes to make the following PFEO:

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

- (i) Re-calculate all bills and invoices issued to the homeowner by the property factor on a 1/61st share;
- (ii) Refund to the homeowner the difference between the sums she has paid on a 1/45th share and the re-calculated figure based on a 1/61st share.
- (iii) Provide to the homeowner all information regarding the total sum of compensation which the insurance company assessed as being due to be paid in settlement of the claim for the property;
- (iv) Pay to the homeowner any monies owed to her from the insurance claim.
- (v) Provide to the homeowner a detailed financial breakdown of all monies paid by her to the property factor since 2012 which are within the property factor's ring-fenced account;
- (vi) Pay compensation to the homeowner in the sum of £3000 (Three thousand pounds) in respect of the time and inconvenience occasioned by the property factor's failure to comply with their duty under the Code and the Act between 2012 and 2018.
- (vii) Produce evidence to the Tribunal that the property factor has complied with each section of this order.

3. Section 19 of the 2011 Act provides:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

- (a) give notice of the proposal to the property factor, and*
- (b) allow the parties an opportunity to make representations to it.*

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order."

4. The intimation of the Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the Tribunal by no later than **14 days** after the date that the Decision and this proposed PFEO is sent to them by the Tribunal. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a final PFEO without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and may constitute a criminal offence.

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Simone Sweeney, Legal member, 22nd May 2019.