

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Proposal regarding the making of a Property Factor Enforcement Order
Property Factors (Scotland) Act 2011, Section 19(2)**

Chamber Ref: FTS/HPC/PF/17/0274

**Property at 27 Dempsey Court, Queens Lane North, Aberdeen, AB15 4DY
("The Property")**

The Parties: -

Mr David Gordon, residing at the Property ("the Homeowner")

James Gibb Property Management Ltd, trading as James Gibb Residential Factors, 32 Charlotte Square, Edinburgh, EH2 4ET ("the Factor")

Tribunal Members: -

Maurice O'Carroll (Legal Member)

Andrew McFarlane (Ordinary 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 had breached its duties in terms of s 17(1)(b) of the 2011 Act in that it has failed to comply with Sections 1 (preamble), 2.1, 2.4, 2.5, 3.3, 6.1, 6.3, 6.4 and 6.6 of the Code of Conduct for Property Factors as required by s 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 Factor, the Factor must:

- (i) Pay compensation to the Homeowner in the sum of £750 (Seven hundred and fifty pounds) in respect of the time, irritation and inconvenience occasioned by the Factor's failure to comply with its duties under the Code.
- (ii) At its own expense, provide an independent audit of the sinking fund applicable to the development from 1 March 2015 (being the date immediately prior to the acquisition by the Factor of Bruce & Partners) to date. Said audit should provide full financial details of all transactions in relation to the sinking fund: detailing payments made in and

disbursements out of the sinking fund, both in relation to the Property and the development as a whole of which it forms part. The Factor may redact and anonymise the data provided to an appropriate level only in order to ensure that the identities of individual homeowners (with the exception of the Homeowner) are withheld.

The audit should provide appropriate commentary on the various transactions that have taken place between the said dates and a general explanation of the methodology applied in apportioning the funds ingathered. Any shortfall in funds which cannot be explained by disbursements made require to be clearly indicated. The latter requirement is specifically required to be made clear as at the date of the acquisition of Bruce & Partners and thereafter whilst the sinking fund was under the management of the Factor.

- (iii) Provide copies of all relevant work instructions for repairs and maintenance to be carried out to the Property and the development of which it forms part from the date of taking over as factor. Specifically, the Factor is required to provide all written documentation providing evidence of the competitive tendering exercise for each major piece of work required for the development which was in the hands of the Factor at the time of the 2016 AGM and in respect of which it reported to that meeting.
- (iv) Provide a report on the Factor's consideration of sources of funding for the works required to the development, other than homeowner funds. Said report to confirm approaches to the developer, Scotia Developments Limited (insofar as not already provided to the Tribunal), NHBC and the insurers under the buildings policy, and the outcomes of those approaches.
- (v) At the Factor's own expense, instruct an independent building survey of the external works to the development. The survey requires to ascertain the cost of the contractual works carried out in relation to the original works and whether and if so to what extent additional monies have been expended to remedy the original works. Said survey must also ascertain whether those works have now been completed in accordance with the relevant contractual documentation. If the works have not been so completed, the survey report requires to specify the works required to bring them into compliance with the contractual documents and the likely cost of doing so.
- (vi) Provide documentary evidence of compliance with the above Orders to the Tribunal within 7 days of having done so.

3. Section 19 of the 2011 Act provides as follows:

"(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.

Signed: M O'Carroll
 Legal Member

Date January 2018