

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

### PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER: Property Factors (Scotland) Act 2011, section 19(2)

Case Reference Number: FTS/HPC/PF/17/0381

#### The Property:

**26 Jenning Gardens, Kilbirnie, North Ayrshire, KA25 7BF**

#### The Parties:-

**Marc Miller, 26 Jenning Gardens, Kilbirnie, North Ayrshire, KA25 7BF**

(“the Homeowner”)

and

**Cunningham Housing Association Ltd**

(“the Factors”)

#### Tribunal Members:

Adrian Stalker (Chairman)

**This document should be read in conjunction with the tribunal’s decision of 7 April 2018**

The tribunal proposes to make a Property Factor Enforcement Order in the following terms:

**In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required, within 8 weeks, to take the following steps and produce confirmation that they have done so for consideration by, and to the satisfaction of, the Tribunal:-**

- 1. To issue to the Homeowner an accurate and comprehensive Statement of Services, in writing, which complies with section 1.1b of the Code of Conduct for Property Factors, making reference where necessary to the relevant provisions within the Deed of Declaration of Conditions (“the Deed of Conditions”), registered on 30 September 2009, by the Factors, as owners of the development of which the property forms part, which Statement of Services describes the Property Factor’s responsibilities and duties, and**

accurately sets out, in particular, any arrangements for funds for specific projects or cyclical maintenance in relation to the prospective costs for renewal or replacement of the CCTV system and Play Area, or any other part of the “Development Common Parts”, confirming the amount, payment and repayment of charges (at change of ownership or termination of service), all in accordance with the detailed terms of section 1 of the Code.

2. To arrange for an interest-bearing account or accounting structure to be put in place, for each group of homeowners paying charges in respect of the prospective costs for renewal or replacement of the CCTV system and Play Area, all in accordance with paragraph 3.6b of the Code.
3. To make arrangements to ensure that the next factoring invoice issued to the Homeowner, and any further invoices in the future, set out the correct proportion, being one fiftieth, expressed as a percentage or fraction, of the management fees and charges for common works and services for which the Homeowner is responsible.
4. To provide to the Homeowner a detailed financial breakdown of the charges made in the Factors’ latest invoice rendered to him, and a description of the activities and works carried out which are charged for, all in accordance with paragraph 3.3 of the Code.
5. To make a payment of £250 to the Homeowner.

Section 19(2) and (3) 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.

The intimation of the tribunal’s decision and this proposed Property Factor Enforcement Order 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 Office by no later than 14 days after the date that the decision and this proposed Property Factor Enforcement Order are intimated to them. If no representations are received within that time, then it is likely that the tribunal will proceed to make a Property Factor Enforcement Order without seeking further representations from the parties.

**Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.**

Adrian Stalker

Signed

Date            7 April 2018

Chairman