



**Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications & Decisions) (Scotland) Regulations 2012**

Ref: HOHP/PF/15/0089

Re: 11 Overdale Gardens, Flat 2/2, Glasgow, G42 9QG ("the Property")

Parties: Mrs Angela Wilson, residing at 11 Overdale Gardens, Flat 2/2, Glasgow, G42 9QG ("the Homeowner")

Hacking & Paterson Management Services, 1 Newton Terrace, Charing Cross, Glasgow, G3 7PL ("the Factor")

**Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011 ('the Act')**

**Committee members:**

Ewan K Miller (Chairperson and Legal Member); Mr David Hughes-Hallett (Housing Member).

**Decision**

1. The Committee was of the view that a Property & Factor Enforcement Order (PFEKO) in the terms originally proposed by the Committee would be granted.
2. The Committee's decision was unanimous.

**This document should be read in conjunction with the Committee's decision of 20 January 2016.**

**Reasons for Decision**

In the Committee's Decision of 20 January 2016, it was indicated that the Committee proposed to make a PFEKO. The Decision provided the parties with a period of 14 days within which to make representations under Section 19(2)(b) of the Act.

Following intimation of the Committee's decision the Homeowner responded with various comments. The Committee was of the view that it appeared that the Homeowner was suggesting that the amount of undisclosed commission from the date of the Factor's registration to the date of disclosure may amount to more than

£250. The Committee was of the view that if this was the case then it would impact on their decision as to the amount of any award against the Factor.

Clarification was sought from both parties by the Committee as to the date of notification to the Homeowner of the fact that commission was being charged. The Factor intimated that they were of the view that intimation of commission had occurred on 22 October 2012 when their terms and conditions/delivery standards had been sent to the Homeowner. The Committee was of the view that this was not the case as it did not give a specific percentage or exact figure. The Factors did, however, produce a letter of 22 July 2013 which set out the commission received by them.

The Homeowner replied advising that she had received notification in March 2014.

The Committee was minded to take the view that the Factor's letter in July 2013 was the relevant date of intimation. However, even if the Homeowner's contention that March 2014 was the date of intimation then the level of award proposed by the Committee was still greater than the commission that had been paid up to March 2014. On that basis, the Committee was satisfied that the sum of £250 was sufficient to recompense the Homeowner to the value of the undisclosed commissions for the relevant period with the balance being for the inconvenience caused by having to go through the application process to the Panel.

Both the parties raised a number of questions and queries regarding the original Decision, however it is not appropriate for a Committee to become involved in discussions or further explanations regarding the terms of previous Decisions. An appeal is the appropriate method if a party is unhappy with a Decision. Neither party had exercised this option.

The Committee would, however, address one query raised by the Factor in relation to the basis on which the Committee had sought further information regarding the date of intimation. The Committee would highlight that in terms of 11(1)(b) of the Homeowner Housing Panel (Application & Decisions) (Scotland) Regulations 2012 the Committee may require any party to give such documentations or information as they may reasonably require. The Committee requested the information on that basis.

### **Property Factor Enforcement Order**

The Committee therefore makes the following PFEO:-

"Within 28 days of the service of the PFEO on the Factor, the Factor must make payment of the sum of £250 to the Homeowner."

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

**Appeals**

*The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their 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 a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee. (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made ... "*

Chairperson Signature ..

Date.....*14/4/16*....