

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 (“PFEO”) Property Factors (Scotland) Act 2011 (“the Act”), Section 19 (2)

Chamber Ref: FTS/HPC/PF/17/0530

Property at Flat 3, 3 Fairyknowe Court, Bothwell, South Lanarkshire, G71 8SZ (“the Property”)

The Parties: -

Dr Brian Lynas and Dr Annette Ferri, Flat 3, 3 Fairyknowe Court, Bothwell, South Lanarkshire, G71 8SZ, represented by James Carmichael, solicitor, James M. Carmichael and co, solicitors (“the homeowners”)

James Gibb Property Management Ltd, trading as James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX (“the factor”)

Tribunal Members: -

Simone Sweeney (Legal Member) Carolyn Hirst (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 has breached duties in terms of Section 17(1)(b) of the 2011 Act in that it has failed to comply with Section 2.5 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 factor, the factor must:

- (i) Pay compensation to the Homeowners in the sum of £500 (Five hundred pounds) in respect of the time, distress and inconvenience occasioned by the factor's failure to comply with their duty under the Code.

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.

S Sweeney

Simone Sweeney, Legal member, 17th May 2018