

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**DECISION: Property Factors (Scotland) Act 2011 ("the 2011 Act"), Section
19(3)**

Chamber Ref: FTS/HPC/PF/17/0223

**3A Jerviston Court, Motherwell, ML1 4BS
("The Property")**

The Parties:-

**Mr William Tweedie, 2 Kilnwell Quadrant, Motherwell, ML1 3JN
("the Applicant")**

**Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire,
G66 1QH
("the Respondent")**

**Tribunal Members:
Susanne L M Tanner QC (Legal Member)
John Blackwood (Ordinary Member)**

DECISION

1.
 - a. The tribunal made a Property Factor Enforcement Order.
 - b. The decision of the tribunal is unanimous.

STATEMENT OF REASONS

2. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; the First-tier Tribunal for Scotland Housing and the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 as "the 2017 Rules".
3. On 14 December 2017 the tribunal made a decision in terms of Section 19(1) of the 2011 Act that the Respondent had failed to carry out its property factor's duties and had failed to comply with sections 2.1, 2.2, 2.4, 4.9 and 6.6 of the Code.

4. 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 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. ...”

- 5. On 20 December 2018 the tribunal gave notice of the proposed PFEO to the parties and parties were given notice that they should ensure that any written representations which they wished to make under section 19(2)(b) reach the tribunal by no later than 14 days after the date that the decision and the proposed PFEO was sent to them by the tribunal. Parties were advised that if no representations were received within that timescale, then the tribunal would be likely to proceed to make a PFEO without seeking further representations from the parties.
- 6. Neither party made representations within the specified timescale.
- 7. On 3 January 2018 the Respondent submitted email correspondence to the tribunal. The tribunal requested further information from the Respondent as to the nature of its correspondence. On 24 January 2018 the Respondent confirmed that its correspondence of 3 January was a request for review of the tribunal's decision of 14 December 2017 in terms of Rule 39(1) of the 2017 Rules. On 30 January 2018 the tribunal refused the Respondent's application for review for the reasons stated in the Decision of the same date.
- 8. There being no representations to take into account, the tribunal is satisfied that the Respondent has failed to carry out its property factor's duties and to ensure compliance with the Code, therefore the tribunal must make a PFEO in terms of Section 19(3) of the 2011 Act. A PFEO is attached to this Decision and should be read in conjunction with it.

Appeals

- 9. A homeowner or property factor aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

S Tanner

Susanne L M Tanner QC
Legal Member and Chairperson

5 March 2018