

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Section 19 Property Factors (Scotland) Act 2011 as amended by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Committees) Regulations 2016.

Notice of proposal to make a Property Factor Enforcement Order made under Section 19(2)(a) of the Property Factors (Scotland) Act 2011 as amended (“the 2011 Act”) following upon a Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) in an application under Section 17(1) of the 2011 Act

Chamber Ref: HOHP/LM/16/0162

11 East Barns Street, Clydebank, G81 1DA (“The House”)

The Parties:-

**Mrs Ann McCormack,
11 East Barns Street, Clydebank, G81 1DA
 (“the homeowner”)**

**West Dunbartonshire Council,
Aurora House,
3 Aurora Avenue, Queens Quay,
Clydebank,
G81 1BF
 (“the property factor”)**

This document should be read in conjunction with the tribunal’s Decision under Section 19(1) (a) of the 2011 Act of the same date.
The tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”):

The property factor is to pay the sum of £100 to the homeowner. The property factor is to make such a payment within fourteen days of service upon it of the property factor enforcement order.

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 them.

(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 committee must make a property factor enforcement order..."

Intimation of the tribunal's Decision and this notice of proposal to make a PFEO to the parties should be taken as notice for the purposes of section 19(2) (a) of the 2011 Act and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2) (b) of the Act reach the tribunal's office by no later than twenty one days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the tribunal is likely to proceed to make a property factor enforcement order ("PFEO") 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.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

M McAllister

Martin J. McAllister, solicitor,
legal member of the First-tier Tribunal for Scotland.

20th March 2017

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Property Factors (Scotland) Act 2011 as amended by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Committees) Regulations 2016 (the 2011 Act): Section 19(1) (a)

Chamber Ref: HOHP/LM/16/0162

11 East Barns Street, Clydebank, G81 1DA (“The House”)

The Parties:-

**Mrs Ann McCormack,
11 East Barns Street, Clydebank, G81 1DA
 (“the homeowner”)**

**West Dunbartonshire Council,
Aurora House,
3 Aurora Avenue, Queens Quay,
Clydebank,
G81 1BF
 (“the property factor”)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) considered matters and proposed that a property factor enforcement order should be made in the following terms:

The property factor is to pay compensation of £100 to the homeowner within twenty eight days of service of the property factor enforcement order.

Members of the tribunal:

Martin J. McAllister, legal member and Ahsan Khan, ordinary member.

Background:

The application is dated 28th November 2016. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) assumed responsibility for it on 1st December 2016. The homeowner is alleging that the property factor did not comply with section 2.5 of the Code of Conduct for Property Factors.

On 19th December, a legal member of the tribunal, acting under delegated powers, referred the matter to the tribunal to determine.

Neither party made written representations and the homeowner indicated that she did not want to attend the Hearing of the tribunal.

A Hearing was held on 28th February 2017 at Wellington House, Glasgow. Neither the homeowner nor the property factor were present.

The Hearing:

The tribunal had before it the application which included copies of the correspondence between the homeowner and the property factor.

It was noted that the matter arose out of the removal of trees at the boundary of property owned by the homeowner and that owned by West Dunbartonshire Council. The application was about a possible breach of Section 2.5 of the Code. In these circumstances the tribunal did not need to consider the question of tree removal. The applicant's concerns surround the property factor's alleged failings in responding to her.

The facts are straightforward and have not been disputed by the property factor.

The homeowner is proprietor of an end terraced house at 11 East Barns Street, Clydebank, registered in the Land Register of Scotland under Title Number DMB71200. On 11th and 12th August 2016 a group of trees and were removed by West Dunbartonshire Council. The homeowner describes the trees as being on the boundary of her property and 9 East Barns Street which is owned by West Dunbartonshire Council.

The homeowner was not happy with the work being done and the manner in which it had been carried out and wrote to West Dunbartonshire Council on 21ST August 2016. A copy of the letter was before the tribunal together with a copy of the Council's reply dated 24th August 2016. This letter stated that the homeowner's enquiry had been forwarded to another department of the Council for a response. The homeowner wrote again on 27th September 2016 indicating that she still awaited a reply. This letter also made reference to the Council's written statement of services under the Property Factors (Scotland) Act 2011. The Council sent a response dated 17th October 2016 indicating that the Council aimed to respond within five working days and that, if a response could not be sent within that period, the homeowner would be contacted to explain why and what the next procedure would be. On 24th October, the property factor wrote and gave reasons why the trees were removed and it indicated that it would have been better if the homeowner had been treated more courteously with regard to the matter. The letter offered apologies and invited the homeowner to contact the Council's Customer Relations department if she wanted to discuss matters further. On 3rd November 2016 the homeowner wrote to the homeowner housing panel and on 21st November 2016 the homeowner sent a pro forma to the property factor detailing her concerns and referring to the property factor's written statement of services.

Discussion

The members of the tribunal considered if they required to consider whether or not the Council was acting as a property factor or as an owner of the adjoining property. It came to the view that it did not have to consider this. The letter of the homeowner dated 27th September 2016 made reference to the Property Factors (Scotland) Act 2011, the pro forma which she had sent on 21st November 2011 made reference to the same Act and the application was intimated to West Dunbartonshire Council by the tribunal. The tribunal considered that, in the absence of representation from the Council, it was entitled to accept that the Council was acting as a property factor.

Section 2.5 of the Code states:

“You must respond to enquiries and complaints made by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).”

The property factor's written statement of services contains provisions regarding response to enquiries and complaints. It states that Stage 1 of the process allows five working days for resolution of the complaint unless there are exceptional circumstances and that Stage 2 of the process is for those complaints that have not been resolved at Stage 1 and those that are complex and require a detailed investigation. The written statement of services states that a full response to the complaint will be provided as soon as possible and within twenty working days. In the particular circumstances of the application, the property factor had responded to the homeowner's letter of 21st August 2016 in a letter of 24th August 2016 which stated that the matter would be referred to another department in the Council. The homeowner wrote to the property factor on 27th September and, in response the Council replied on 17th October 2016 making reference to the Council's aim to respond within 5 working days. The property factor then wrote on 24th October 2016 offering an explanation for removal of the trees and acknowledging that the matter could have been dealt with in a different way and that it considered that the homeowner should have been given prior warning of the work as a matter of courtesy.

The tribunal considered the property factor's responses to the complaint of the homeowner. It had responded timeously to the letter of 21st August 2016 by responding on 24th August but the homeowner then had to write again on 27th September when she had received no response. The letter of 17th October, in its terms, appeared to treat the homeowner's letter of 27th September 2016 as the first intimation of the complaint with the letter of 24th October providing the property factor's explanation of the removal of the trees. The homeowner's letter of complaint was dated 21st August 2016. The matter was not complex and it took the property factor until 24th October 2016 to provide a substantive response. In all the circumstances the tribunal determined that the property factor had not complied with Section 2.5 of the Code and that it proposed that it should make a property factor

enforcement order requiring the property factor to pay compensation to the homeowner in the sum of £100. In terms of Section 19 (2) of the 2011 Act the tribunal is obliged to give notice of the proposed property factor enforcement order to the property factor and allow parties to make representations to it.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

M McAllister

Martin J. McAllister, Legal member
20th March 2017