

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factors (Scotland) Act 2011, Section 19

Chamber Ref: FTS/HPC/PF/17/0274

**Property at 27 Dempsey Court, Queens Lane North, Aberdeen, AB15 4DY
("The Property")**

The Parties: -

Mr David Gordon, residing at the Property ("the Homeowner")

**James Gibb Property Management Ltd, trading as James Gibb Residential
Factors, 32 Charlotte Square, Edinburgh, EH2 4ET ("the Factor")**

Tribunal Members: -

Maurice O'Carroll (Legal Member)
Andrew McFarlane (Ordinary Member)

Property Factor Enforcement Order

This document should be read in conjunction with the decision of the Tribunal dated 17 January 2018 and associated Notice of Property Factor Enforcement Order under the reference number noted above.

1. By decision dated 17 January 2018, the Tribunal determined that the Factor had breached its duties in terms of s 17(1)(b) of the 2011 Act in that it has failed to comply with Sections 1 (preamble), 2.1, 2.4, 2.5, 3.3, 6.1, 6.3, 6.4 and 6.6 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
2. On the same date, it issued Notice of Proposed Property Factor Enforcement Order ("PFEO"). In terms of section 19(2)(a) of the Act, the Tribunal provided the parties with 14 days to make representations in relation thereto. No representation has been received from either party in relation to the terms of the PFEO.
3. Therefore, the Tribunal formally makes the following PFEO:

Within 28 days of the communication of the PFEO to the Factor, the Factor must:

- (i) Pay compensation to the Homeowner in the sum of £750 (Seven hundred and fifty pounds) in respect of the time, irritation and inconvenience

occasioned by the Factor's failure to comply with its duties under the Code.

- (ii) At its own expense, provide an independent audit of the sinking fund applicable to the development from 1 March 2015 (being the date immediately prior to the acquisition by the Factor of Bruce & Partners) to date. Said audit should provide full financial details of all transactions in relation to the sinking fund: detailing payments made in and disbursements out of the sinking fund, both in relation to the Property and the development as a whole of which it forms part. The Factor may redact and anonymise the data provided to an appropriate level only in order to ensure that the identities of individual homeowners (with the exception of the Homeowner) are withheld.

The audit should provide appropriate commentary on the various transactions that have taken place between the said dates and a general explanation of the methodology applied in apportioning the funds ingathered. Any shortfall in funds which cannot be explained by disbursements made require to be clearly indicated. The latter requirement is specifically required to be made clear as at the date of the acquisition of Bruce & Partners and thereafter whilst the sinking fund was under the management of the Factor.

- (iii) Provide copies of all relevant work instructions for repairs and maintenance to be carried out to the Property and the development of which it forms part from the date of taking over as factor. Specifically, the Factor is required to provide all written documentation providing evidence of the competitive tendering exercise for each major piece of work required for the development which was in the hands of the Factor at the time of the 2016 AGM and in respect of which it reported to that meeting.
- (iv) Provide a report on the Factor's consideration of sources of funding for the works required to the development, other than homeowner funds. Said report to confirm approaches to the developer, Scotia Developments Limited (insofar as not already provided to the Tribunal), NHBC and the insurers under the buildings policy, and the outcomes of those approaches.
- (v) At the Factor's own expense, instruct an independent building survey of the external works to the development. The survey requires to ascertain the cost of the contractual works carried out in relation to the original works and whether and if so to what extent additional monies have been expended to remedy the original works. Said survey must also ascertain whether those works have now been completed in accordance with the relevant contractual documentation. If the works have not been so completed, the survey report requires to specify the works required to bring them into compliance with the contractual documents and the likely cost of doing so.

- (vi) Provide documentary evidence of compliance with the above Orders to the Tribunal within 7 days of having done so.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

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.

Signed: M O'Carroll
Legal Member

Date 20 March 2018