

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)**

**Chamber Ref: FTS/HPC/PF/17/0252**

**Re:** Flats 101, 205, 302 and 401 Clarence House, 37 Carnoustie Street, Glasgow, G5 8PN

### **The Parties:-**

Mr Paul Wood, Euro House, 423 Hillington Road, Hillington Park, Glasgow, G52 4BL (“the Homeowner”)

Newton Property Management, 87 Port Glasgow Road, Glasgow, G4 0HF (“the Factor”)

### **Tribunal Members**

Ms Helen Forbes (Legal Member)

Mr Andrew Murray (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 26<sup>th</sup> March 2018.

### **Decision**

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it. The decision of the Tribunal is unanimous

### **Reasons for Decision**

In the Tribunal’s decision of 26<sup>th</sup> March 2018, it proposed to make a PFEO as follows:

‘Within 30 days of intimation of the PFEO to the Factor, the Factor must:

- 1) Remove the charge for the legal fees incurred by Nick Swan from the accounts of the Homeowner;

2) Remove all late payment charges that relate to (a) the legal fees incurred by Nick Swan; and (b) the charges for electricity to the common areas from the accounts of the Homeowner;

3) Register with Registers of Scotland a Discharge in relation to all Notices of Potential Liability for Costs that are registered against the Clarence House properties owned by the Homeowner, and provide documentary evidence from the Keeper of the Registers of Scotland to the Tribunal that such Notices have been, or are in the process of being, discharged.'

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 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."*

The intimation of the First-tier 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 First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

The Tribunal indicated that, prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 20<sup>th</sup> April 2018.

On 27<sup>th</sup> April 2018, the Factor made an application for a review of the decision.

On 25<sup>th</sup> May 2018, the Homeowner responded to the Factor's application for a review of the decision.

Further representations in respect of the review were submitted by the Factor on 22<sup>nd</sup> June, and by the Homeowner on 25<sup>th</sup> June 2018.

The Tribunal reviewed its decision. The Tribunal determined not to change its decision of 25<sup>th</sup> March 2018. The Tribunal agreed that it would be appropriate to make a PFEO.

### **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

Within 30 days of intimation of the PFEO to the Factor, the Factor must:

- 1) Remove the charge for the legal fees incurred by Nick Swan from the accounts of the Homeowner;
- 2) Remove all late payment charges that relate to (a) the legal fees incurred by Nick Swan; and (b) the charges for electricity to the common areas from the accounts of the Homeowner;
- 3) Register with Registers of Scotland a Discharge in relation to all Notices of Potential Liability for Costs that are registered against the Clarence House properties owned by the Homeowner, and provide documentary evidence from the Keeper of the Registers of Scotland to the Tribunal that such Notices have been, or are in the process of being, discharged.

**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.**

### **Right of Appeal**

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.

*Helen Forbes*

Legal Member and Chairperson

23<sup>rd</sup> July 2018

