

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision of the of the First-tier Tribunal for Scotland Housing and Property Chamber  
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

**Andrew and Catherine MacPhail, Flat 2/1, 1 Wallace Street, Dumbarton G82 1HH  
("the Applicants")**

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

**Chamber Ref: FTS/HPC/PF/17/0232**

**Re: Flat 2/1, 1 Wallace Street, Dumbarton G82 1HH  
("the Property")**

### **Tribunal Members:**

John McHugh (Chairman) and Andrew MacFarlane (Ordinary (Surveyor) Member).

### **Decision**

**The Tribunal hereby determines that the Property Factor Enforcement Order has not been complied with.**

The decision is unanimous.

### **Reasons for Decision**

The Tribunal issued a Property Factor Enforcement Order ("PFEО") on 19 March 2018.

In terms of section 23(1) of the 2011 Act, the Tribunal is to determine whether the Respondent has complied with the PFEО.

The Tribunal gave consideration to the extent to which the PFEО had been complied with.

The Tribunal gave consideration to the Applicants' response of 28 April 2018 which confirmed that it had received no contact from the Respondent since the making of the PFEО and, in particular, had received no payment from the Respondent.

The Tribunal notes that there has been no response to the Tribunal's letter to the Respondent requesting the Respondent's representations on the question of its compliance with the PFEO. There has been no contact from the Respondent on the matter at all.

There is no evidence of any attempt at compliance. The Tribunal accepts the position is as stated by the Applicants.

The Committee accordingly hereby finds that the PFEO has not been complied with.

### **Effect of Decision**

Notice of the failure to comply will be sent to the Scottish Ministers in accordance with section 23(2) of the 2011 Act.

We had noted in our decision of 30 December 2017 as follows: "The Respondent's repeated failings in this matter are very significant and concerning." The Respondent's failure to comply with the terms of the PFEO further aggravates the situation. No doubt the Scottish Ministers will give careful consideration to the Respondent's conduct in this case when considering the Respondent's ongoing registration as a property factor.

### **Appeals**

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.

**Signed**

**Date 11 May 2018**

**JOHN M MCHUGH**

**Chairperson**