

Housing and Property Chamber

First-tier Tribunal for Scotland



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/LM/18/2026
FTS/HPCLM/18/2031
FTS/HPC/LM/18/2032
FTS/HPC/LM/18/2033

3 Chandlers Lane, Dundee DD1 3DH
 (“the Property”)

The Parties:-

Mr Joseph Duffy, 3 Chandlers Lane, Dundee DD1 3DH, Mrs Lynn Hood, 10 Chandlers Lane Dundee DD1 3DH, Mr Tomasz Kamusella, 12 Chandlers Lane Dundee DD1 3DH and Mr Samit Majumdar, 14 Chandlers Lane, Dundee DD1 3DH (represented by Mrs Lynn Hood 10 Chandlers Lane Dundee DD1 3DH) (“the Homeowners”)

SGL Property Limited, Top Floor, India Buildings, 86 Bell Street, Dundee DD1 1HN
 (“the Factor”)

Tribunal Members:
Graham Harding (Legal Member)
Helen Barclay (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 28 December 2018.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of part (1) a).

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 28 December 2018, it proposed to make a PFEO as follows:

- (1) That the Factor provide the Tribunal and the Homeowners within a period of 28 days copies of the following documents:-

- a) Any contract with Vehicle Control Services affecting the Panmure Development and parking spaces there including any showing income or expenditure relating to any such contract.
 - b) All bank statements for the management of the development since the commencement of the contract on 1 April 2016 to date.
 - c) All electricity bills affecting the development from 1 April 2016 to date together with any bills prior to that date if unpaid as at 1 April 2016.
 - d) A copy of the receipted invoices in respect of the cost of repairs to the lighting bollards at the development.
 - e) A copy of the Factors current public indemnity insurance policy.
- (2) That the Factor provides the Homeowners and the Tribunal with a programme of works in compliance with section 6.4 of the Code in respect of the cyclical maintenance provided for in Appendix 2 of the Factor's written statement of services and that within a period of 28 days.
 - (3) That the Factor provides the Homeowners and the Tribunal with a written explanation as to why it believes the number of non-paying owners has risen from 18 in 2017 to 38 in 2018, details of the current number of non-paying owners and confirmation that the Factor's own Debt Recovery Policy contained in Section 5 of Appendix 2 of its written statement of services is being strictly enforced and that within a period of 28 days.
 - (4) If the Homeowners have been charged for electricity consumed by owners in the flatted properties within the development for common lighting internally and therefore common only to the flat owners to re-apportion the cost of electricity charged back to the Homeowners accounts and provide documentary evidence of how this has been calculated to the Homeowners and the Tribunal within a period of 28 days.
 - (5) If the funds paid by the Homeowners to the Factor in respect of their liability for the debt due to the Forth Ports Authority has been applied by the Factor to meet other debt then the Factor must within a period of 28 days pay to each Homeowner namely Mrs Lynn Hood, Mrs Jane Duffy, Mr Tomasz Kamusella and Mr Samit Majumdar the sum of £218.00 from the Factor's own funds.
 - (6) In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, distress, worry and substantial inconvenience caused to the Homeowners pay to each of the above the sum of £300.00 from its own funds and that within a period of 28 days.

The Tribunal indicated that prior to making a property factor enforcement order, 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 3 January 2019.

By email dated 17 January 2019 the Factor sought a review of the Tribunal's decision and submitted a written response to the decision together with a number of documents including a copy of the contract between the Factor and Vehicle Control Services Limited dated 6 April 2016.

The Tribunal considered the Factor's request for a review and refused same by decision dated 29 January 2019.

The Tribunal acknowledged that the Factor had supplied a copy of the contract with Vehicle Control Services Limited as contained in part 1. a) of the proposed PFEO and in the circumstances determined that with regard to that part it was not necessary to issue a PFEO. The Tribunal further determined that with regards to the remainder of the proposed PFEO there was nothing further in the representations made by the Factor that would alter its decision to issue a PFEO in the remaining terms proposed.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) That the Factor provide the Tribunal and the Homeowners within a period of 28 days copies of the following documents:-
 - a) All bank statements for the management of the development since the commencement of the contract on 1 April 2016 to date.
 - b) All electricity bills affecting the development from 1 April 2016 to date together with any bills prior to that date if unpaid as at 1 April 2016.
 - c) A copy of the receipted invoices in respect of the cost of repairs to the lighting bollards at the development.
 - d) A copy of the Factors current public indemnity insurance policy.
- (2) That the Factor provides the Homeowners and the Tribunal with a programme of works in compliance with section 6.4 of the Code in respect of the cyclical maintenance provided for in Appendix 2 of the Factor's written statement of services and that within a period of 28 days.
- (3) That the Factor provides the Homeowners and the Tribunal with a written explanation as to why it believes the number of non-paying owners has risen from 18 in 2017 to 38 in 2018, details of the current number of non-paying owners and confirmation that the Factor's own Debt Recovery

Policy contained in Section 5 of Appendix 2 of its written statement of services is being strictly enforced and that within a period of 28 days.

- (4) If the Homeowners have been charged for electricity consumed by owners in the flatted properties within the development for common lighting internally and therefore common only to the flat owners to re-apportion the cost of electricity charged back to the Homeowners accounts and provide documentary evidence of how this has been calculated to the Homeowners and the Tribunal within a period of 28 days.
- (5) If the funds paid by the Homeowners to the Factor in respect of their liability for the debt due to the Forth Ports Authority has been applied by the Factor to meet other debt then the Factor must within a period of 28 days pay to each Homeowner namely Mrs Lynn Hood, Mrs Jane Duffy, Mr Tomasz Kamusella and Mr Samit Majumdar the sum of £218.00 from the Factor's own funds.
- (6) In respect of its failures of its property factors duties and breaches of the Code and in respect of the trouble, distress, worry and substantial inconvenience caused to the Homeowners pay to each of the above the sum of £300.00 from its own funds and that within a period of 28 days.

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.

_____ Legal Member and Chair

18 February 2019

Date