

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/PF/20/2159

**Kingsmeadows, Peebles EH45 9HR
 (“the Property”)**

The Parties:-

**Mr Michael Marshall and Dr Catriona Mackay, The Lodge House, Kingsmeadows,
 Peebles EH45 9HR
 (“the Homeowner”)**

**James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT
 (“the Factor”)**

**Tribunal Members:
 Graham Harding (Legal Member)
 Elaine Munroe (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 16 May 2021.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it but with the addition of the additional wording proposed by the Homeowner in his written representations to the Tribunal dated 27 May 2021

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 16 May 2021, it proposed to make a PFEO as follows:

- (1) The Factor must within 28 days issue to the Homeowner and all other members of Kingsmeadows Owners Association a Written Statement of Services setting out the terms and service delivery standards in place between you.
- (2) As soon as possible and allowing for any Covid-19 restrictions call an Annual General Meeting of the Kingsmeadows Owners Association and present to it an annual budget in terms of Rule 18 of the Development Management Scheme.
- (3) The Factor must within 28 days pay the Homeowner from its own funds the sum of £2500.00.

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 18 May 2021.

The Tribunal received written representations from the Factor by email on 24 May 2021 querying what the impact of items 1 and 2 of the proposed PFEO would be if the Factor terminated its management of the development.

The Tribunal received written representations from the Homeowner by email dated 27 May 2021 asking the Tribunal to amend the proposed PFEO as follows:

1. The Factor must within 28 days issue to the Homeowner and all other members of Kingsmeadow Owners Association a Written Statement of Services setting out the terms and service delivery standards in place between you, **all in accordance with the Development Management Scheme set out in Part 2 of the Schedule to the Deed of Conditions by Granton Homes Limited registered on 29 January 2016;**

2. As soon as possible and allowing for any Covid-19 restrictions call an Annual General Meeting of the Kingsmeadow Owners Association and present to it an annual budget **for approval by Kingsmeadow Owners Association** in terms of Rule 18 **and Rule 19** of the Development Management Scheme;

The Homeowner also asked the Tribunal to review its decision. This issue is dealt with in a separate decision.

The Tribunal having considered the written representations of the parties determined to amend the PFEO to incorporate the Homeowners proposed amendments as it was felt they added clarity to the order.

With regards to the Factors query the Tribunal concluded that as long as the Factor remained in office items 1 and 2 should not be amended or varied further. If the Factor resigned from office prior to the deadline imposed by the PFEO then it would be open to the Tribunal to consider varying or revoking the order if it considered it reasonable to do so or if it considered that the order was no longer necessary. The Tribunal has no power to prevent the Factor from resigning from office should it wish to do so.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Factor must within 28 days issue to the Homeowner and all other members of Kingsmeadow Owners Association a Written Statement of Services setting out the terms and service delivery standards in place between you, all in accordance with the Development Management Scheme set out in Part 2 of the Schedule to the Deed of Conditions by Granton Homes Limited registered on 29 January 2016;
- (2) As soon as possible and allowing for any Covid-19 restrictions call an Annual General Meeting of the Kingsmeadow Owners Association and present to it an annual budget for approval by Kingsmeadow Owners Association in terms of Rule 18 and Rule 19 of the Development Management Scheme;

- (3) The Factor must within 28 days pay the Homeowner from its own funds the sum of £2500.00.

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.

Graham Harding

Legal Member and Chair

12 June 2021

Date