

# 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: HPC/PF/23/3768**

**Flat 7, 4 McEwan Square, Edinburgh, EH3 8EL (“the Property”)**

**Howard Carter, Flat 7, 4 McEwan Square, Edinburgh, EH3 8EL (“The Applicant”)**

**Wheatley Homes East, Wheatley House, 25 Cochrane Street, Glasgow (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 27 October 2024.

### **Decision**

The Tribunal has decided that it should make a PFEO in amended terms.

The decision of the Tribunal is unanimous.

### **Reasons for decision**

In the Tribunal’s decision of 27 October 2024 , they proposed to make a PFEO in the following terms:-

- (1) The Tribunal order the Respondent to repay to the Applicant 50% of the management fees paid by him for the period 1 January 2021 to 31 December 2023 or cancel the management fees for any part of this period that have not already been paid ,and
- (2) The Tribunal order the Respondent to pay to the Applicant the sum of £1000 for his time, effort, and inconvenience,

All within 28 days of intimation of the PFEO.

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

The Respondent did not lodge any submissions. On 7 November 2024, the Applicant sent an email to the Tribunal which said that he accepted the decision but that the Respondent should be ordered to make the payment by cheque or bank transfer and not just credit the service account.

The Tribunal is satisfied that the proposed amendment is appropriate. The purpose of the order is to compensate the Applicant. This is a separate matter from the day-to-day invoicing by the Respondent. The Tribunal also notes that the Applicant may still wish to challenge some of the charges which have been applied to his account and should not be prevented from so doing by the Tribunal's order.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with OSP 11 and Section 3.2 of the 2021 Code of Conduct for Property Factors. It has also failed to carry out its property factors duties to a reasonable standard in terms of Section 17(5) of the Act.

**Section 19(3) of the 2011 Act states that if the Tribunal is satisfied that the Property Factor has failed to carry out its duties and/or comply with its section 14 duty, the Tribunal "must" make a PFEO.**

### **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Respondent to repay to the Applicant 50% of the management fees paid by him for the period 1 January 2021 to 31 December 2023 or cancel the management fees for any part of this period that have not already been paid , and
- (2) The Tribunal order the Respondent to pay to the Applicant the sum of £1000 for his time, effort, and inconvenience,

All within 28 days of intimation of the PFEO.

**The said sums must be paid by cheque or bank transfer and not applied as a credit to the Applicant's factoring account.**

**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 a 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.**

Josephine Bonnar, Legal Member

24 November 2024