

Housing and Property Chamber

First-tier Tribunal for Scotland



**First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")**

Decision: Property Factors (Scotland) Act 2011 ("the 2011 Act"), Section 19(3)

Chamber Ref: FTS/HPC/LM/23/4475

Tribunal Members:

Ms Susanne L M Tanner QC (Legal Member)

Mrs Helen Barclay (Ordinary Member)

DECISION

1. The tribunal decided to make a Property Factor Enforcement Order ("PFEO")
2. The decision of the tribunal is unanimous.

STATEMENT OF REASONS

1. On 3 May 2025, the tribunal made a decision in terms of Section 19(1) of the 2011 Act that the Respondent had failed to ensure compliance with section 3.2 of the Code of Conduct, as required by section 14(5) of the 2011 Act (the section 14 duty), in that the Respondent's processes for identifying and correcting erroneous invoicing to homeowners are not clear and transparent. A proposed Property Factor Enforcement Order ("PFEO") of the same date was issued to parties.
2. 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 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. ...”

3. On 9 May 2025, the tribunal’s original decision and proposed PFEO were issued to both parties. Parties were given notice that they should ensure that any written representations which they wished to make under section 19(2)(b) reached the tribunal by no later than 14 days after the date that the decision and the proposed PFEO was sent to them by the tribunal. Parties were advised that if no representations were received within that timescale, then the tribunal would be likely to proceed to make a PFEO without seeking further representations from the parties.
4. Neither party submitted any written representations in response to the proposed PFEO in terms of Section 19(2)(b) within the 14 day period.
5. On 2 June 2025, the Respondent submitted documentation in relation to the proposed PFEO, namely:
 - 5.1. Procedure for Identifying Errors;
 - 5.2. Procedure for dealing with errors;
 - 5.3. Written statement of Services complaints extract; and
 - 5.4. Example of invoice Notes.
6. The Applicant submitted late written representations on 16 June 2025, which were outwith the 14 day period for making representations on the terms of the proposed PFEO. Amongst other things, the Applicant stated that he wished to seek a remedy of compensation for the Respondent’s actions in relation to payment arrangements which post-date the tribunal’s decision of 3 May 2025, as follows:

‘Many thanks for sending this over and reassuring to see progress has been made.

Since this, I’ve actively engaged with Newton to setup the direct debit and close the previous balances on my account.

This was discuss within the CMD whereby I said I would not require compensation, as per comms with Newton [email & telephone] going back to the original issue, I wanted to setup a DD and achieving the ongoing discount.

Unfortunately, Newton have moved the goalposts and are not going to apply this going back. This despite me attempting amicable offline settlement and delays to hearings due to other factors.

Therefore, I am seeking the case remains open to discuss this and to;

1. Seek compensation for this delay distress and issue
2. Have the billing corrected with the discount which would have been applied had Newton

3. a. corrected billing timely
4. b. Had accurate billing in place.'

7. On 17 June 2025, the Respondent objected to the late written representations by the Applicant and invited the tribunal to make the PFEO in the proposed terms, stating as follows:

'We refer to the homeowner's e-mail of 16th June 2025. To recap,

1. *Newton have responded and sought to comply with the Proposed PFEO.*
2. *The matters raised in the homeowner's e-mail of 16th June 2025 and contrary to the homeowners assertion, were not part to the application and were not discussed at any CMD.*
3. *Any matters of further representation in terms of the proposed PFEO of the 9th May 2025 are now time barred.*

To conclude , subject to the Tribunals confirmation of same, further to our submission of the 2nd of June 2025 , Newton have complied with the proposed PFEO, and we are now seeking the Tribunal to conclude matters. If the homeowner wishes to raise further complaints against our office, these will need to be submitted as per our complaints procedure and failing satisfactory conclusion be remitted to the FTT.'

8. On 18 June 2025, the Applicant submitted further late representations which again related to payment arrangements for service charges which post-date the tribunal's decision of 3 May 2025, as follows;

'As per emails #14A, #14B & #16, the tribunal and Newton have engaged on emails where it was stated once this was settled and billing accurate and case closed the bill would be settled within 24 hours.

In the event that Newton are not willing to engage, and as I have/will be charged the non-DD for their errors [despite attempting numerous times] i wish to appeal the outcome and request compensation and recompense.

It is worth noting that I have had to chase Newton since the decision was made, and in all instances met with resistance.

It should also be noted that Jack Moran [Newton] referred my ticket reference number [2080] to Catherine Flanagan on January 28th, which has yet to be responded. Thay email on the subject of the DD Discount was sent again to Newton on 4th December 2024.

It is therefore evident that despite the case, Newton have had the opportunity to help support me in setting this up and billing being accurate.'

9. As the tribunal is satisfied that the Respondent had failed to ensure compliance with section 3.2 of the Code of Conduct, as required by section 14(5) of the 2011 Act, the tribunal must make a PFEO in terms of Section 19(3) of the 2011 Act.
10. Neither party submitted representations on the proposed PFEO within 14 days of it being issued. The documentation lodged by the Respondent on 2 June 2025 is said to comply with the terms of the proposed PFEO (in relation to which a separate decision will be made in due course by the tribunal). The Applicant now seeks compensation for reasons related to a concern about payment arrangements / a direct debit discount which post-date the tribunal's decision dated 3 May 2025. The tribunal is satisfied that the PFEO should be made in the same terms as the proposed PFEO.
11. A PFEO is attached to this Decision and should be read in conjunction with it.

Appeals

- 12. 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.**

S Tanner

Ms. Susanne L M Tanner KC
Legal Member and Chair

23 June 2025