

Housing and Property Chamber

First-tier Tribunal for Scotland



PROPERTY FACTOR ENFORCEMENT ORDER

**Issued by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under section 17 of the Property Factors (Scotland) Act 2011**

Chamber Ref:FTS/HPC/PF/24/2426 and FTS/HPC/PF/24/2428

16 Barony Court, Cambusbarron, Stirling, FK7 9NG ('the Property')

Melanie Fridlington residing at 16 Barony Court, Cambusbarron, Stirling, FK7 9NG ('the Homeowner and Applicant')

Ross and Liddell Limited, 6 Clifton Terrace, Edinburgh, EH12 5DR ('the Factor and Respondent')

Tribunal members:

Jacqui Taylor (Chairperson) and Nick Allan (Ordinary Member).

NOTICE TO THE PARTIES

1. The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for Property Factors, in terms of the Property Factors (Scotland) Act 2011 ('the 2011 Act') determined that the Factor had failed to comply with OSP 6 and sections 5.6 and 6.4 of the 2021 Code of Conduct, all as stated in their decision dated 20th May 2025.

2. The Tribunal intimated to the parties, in terms of their said decision dated 20th May 2025, that they proposed to make a Property Factor Enforcement Order('PFEO') (1) requiring the Property Factor to pay the Homeowner the sum of £150 and (2) also requiring the Factor to send the Homeowner and the Tribunal copies of all correspondence they sent to the insurers regarding the insurance claim in respect of the crack together with the insurers' responses. The parties were given notice that they should ensure that any written representations they wish to make under section 19(2)(b) of the Act reach the Housing and Property Chamber's office by no later than 14 days after the date that the Decision and the notice of the proposed PFEO was intimated to them.

3. The Homeowner sent the Tribunal an email dated 6th June 2025. She stated that paragraph 13 of the Tribunal's decision was incorrect in relation to the Factor mitigating the loss as the Resident at Number 8 Barony Court had offered to pay the outstanding amount on behalf of another resident but the Factor stated that this would be too complicated and the Factor would pay the share. She also stated that the award of £150 was far too low as it does not even cover the rise in the cost of the works from last year.

4. The Property Factor's Representative sent the Tribunal an email dated 17th June 2025. They provided a copy of the undated letter they sent to the Homeowner sending the Homeowner a cheque dated 11th June 2025 in the sum of £150.

5. The Homeowner sent the Tribunal a further email dated 27th June 2025 which states that the Factor has not complied with clause two of the Proposed PFEO.

6. The Property Factor's Representative sent the Tribunal an email dated 2nd July 2025. He advised that the Factor's position is that there was no insurance claim made. That being the case it was not considered that any relevant information could be lodged in response to the second proposed PFEO. The Factor had no direct communication with the insurers. The loss adjusters did not approve the claim under the terms of the policy. In support of the decision to find that there was no peril covered by insurance he provided a copy of the Factor's internal email communication dated 21st September 2022, the Factor's email to the loss adjusters dated 22nd September 2022 and the response from the loss adjusters on the same date. The accompanying report was also provided.

7. The Homeowner sent the Tribunal an email dated 2nd July 2025 which states that she does not understand why the Factors did not attempt to claim on the insurance. She questions why it was assumed it was an uninsured peril and stated that it was surely up to the insurance company to decide whether or not they would pay out. They were not given the opportunity.

8. The Tribunal have considered the parties representations in relation to the proposed PFEO.

8.1 The sum of £150 has been awarded due to the delay between the Factor receiving the tender documents (August 2023) and sending the owners the report and requesting payment (3rd October 2023). The Tribunal consider the sum of £150 to be reasonable.

8.2 They accept that as the Factor did not make an insurance claim on behalf of the owners there is no requirement for clause Two of the Proposed PFEO. Failure to lodge the insurance claim did not form part of the Homeowner's application and any such complaint by the Homeowner would have to be made under a fresh application.

9. Section 19(3) of the Property Factors (Scotland) Act 2011 requires the Tribunal to make a PFEO where they have determined that the Factor has failed to carry out Property Factor duties or comply with the Code of Conduct.

10. Consequently, the Tribunal make the following Property Factor Enforcement Order:

'The Factor must pay the homeowner £150 for the inconvenience she had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order'

Failure to comply with a PFEO may have serious consequences and constitute an offence.

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

Chairperson Date: 14th August 2025