

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011 (2011 Act), Section 23

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

Property: Plot 60, 244 Myreside Street, Glasgow, G32 6DX (“the Property”)

Parties:

Mr Gary Mckie, Plot 60, 244 Myreside Street, Glasgow, G32 6DX (“the Applicant”)

Newton Property Management Limited, 87 Prot Dundas Road, Glasgow, G4 0HF (“the Respondent”)

Tribunal Members:

Ms Susanne L M Tanner QC (Legal Member)

Mrs Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the tribunal”) decided in terms of Section 23(1) of the 2011 Act that that the Property Factor has complied with the terms of the Property Factor Enforcement Order (“PFEO”) dated 23 June 2025.

The decision of the tribunal was unanimous.

Statement of reasons

1. By decision dated 23 June 2025, the Tribunal made a Property Factor Enforcement Order of the same date. The Decision and PFEO were intimated to parties on 24 June 2025 and are referred to for their terms.
2. The PFEO required the Property Factor to carry out the following within 30 days of intimation of the PFEO:

'Produce and exhibit to the tribunal and to the Applicant a written process and procedure for (i) identifying and (ii) managing, invoicing errors to homeowners.'

3. Section 23 of the 2011 Act provides that: *'(1) It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal; and (3) The First-tier Tribunal may not decide that a property factor has failed to comply with a property factor enforcement order—(a) unless the period within which the order requires any work to be executed has ended, ...'*
4. The period for compliance has ended.
5. On 2 June 2025 (after the proposed PFEO was made and prior to the PFEO being made) the Respondent produced to the tribunal and to the Applicant documents and a list as follows:
 1. *Procedure for identifying errors;*
 2. *Procedure for dealing with errors;*
 3. *Written statement of Services complaints extract; and*
 4. *example of invoice notes.*
6. On 29 July 2025, the tribunal's administration wrote to both parties and invited submissions as to whether the required actions in the PFEO had been carried out. In response, both parties submitted written representations to the tribunal (Applicant – 29 July 2025; Respondent 30 July 2025).
7. The Applicant's submissions dated 29 July 2025 are internally inconsistent. He selected the box stating that he does not agree that the actions required in the PFEO have been completed. However, he also stated: *"The issue with their controls and response to errors appears to be complete"*. Within his response, the Applicant has sought to introduce other concerns stating: *'As per the PFEO dated 24 June ... I sent emails on 18 June and 10 July where Newton stated this PFEO wasn't being complied with and that this issue was never discussed. As per emails 14A, 14B and 16, the tribunal and Newton have engaged on emails where it was stated once this was settled and billing accurate and case close the bill would be settled within 24 hours'*. It is understood from consideration of the previous correspondence referred to that this concern relates to settling outstanding invoices for management fees and setting up a direct debit with a discount with retrospective effect. The issue of invoices and billing mechanisms, including direct debit are not included in the PFEO made by the tribunal. Therefore the submissions on those points have been disregarded by the tribunal in determining whether the PFEO has been complied with. The Applicant also selected the box to seek a variation of the

PFEO. In support of that, he stated: *'I understand the second PFEO, however it appears that Newton don't. I suggest – to aid the Factor, the PFEO is made clearer for them to understand. I say this, as despite me attempting to assist them, they refuse to acknowledge or comply with the PFEO.'*

8. The Respondent's submissions related to compliance with the PFEO are dated 30 July 2025. The Respondent submits that it has complied with the PFEO by the production of written processes on 2 June 2025, as in para. 5, above. The tribunal noted that within its response, the Respondent also made submissions that it produced the documents within 30 days of the proposed PFEO (dated 9 May 2025) and that it had made an enquiry as to why the PFEO was made.
9. The process for proposing a PFEO, inviting written representations from parties and making a PFEO is provided for in the 2011 Act sections 19 and 20. The tribunal has followed that process. The PFEO was made on 23 June 2025. The reasons for making the PFEO are included in the tribunal's decision of the same date. Therefore, the Respondent's submissions about the timescale for production of documents following the proposed PFEO are not relevant to the tribunal's determination relative to compliance with the PFEO dated 23 June 2025 and have been disregarded for that purpose.
10. In terms of Section 23 of the 2011 Act it is for the tribunal to decide whether a Property Factor has failed to comply or complied with a PFEO. On the basis of the documents produced by the Respondent on 2 June 2025 and the relevant submissions by both parties, the tribunal is satisfied that the PFEO has been complied with in full. Documents 1 and 2 in the Respondent's bundle amount to *'a written process and procedure for (i) identifying and (ii) managing, invoicing errors to homeowners'*. Document 3 contains the *'Communications and Complaints Procedure.'* Document 4 is example *'Invoice Notes'* which *'may be issued with invoices from time to time to provide explanatory information on any elements of the invoice that may warrant it.'*
11. As noted above at para. 7, the Applicant apparently accepts that the documents produced by the Respondent satisfy the single order in the PFEO. The tribunal is not persuaded by the Applicant's submission that a variation should be made to the PFEO. The single order in the PFEO has been actioned by the Respondent in the required timescale to the satisfaction of the tribunal and there is no reasonable basis for a variation of the PFEO.
12. The tribunal observes that the Applicant considers that there are unresolved matters between him and the Respondent. These fall outwith the terms of the PFEO, in particular relative to unpaid invoices, billing mechanisms and a retrospective discount for direct debit. The parties may be able to resolve these matters between themselves and/or by using the Respondent's existing

procedures for dealing with complaints by homeowners. Should he wish to do so, the Applicant *‘may apply to the First-tier Tribunal for determination of whether a property factor has failed— (a) to carry out the property factor’s duties, or (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”), taking into account the requirement that: ‘(3) No such application may be made unless— (a)the homeowner has notified the property factor in writing as to why the homeowner considers 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, and (b)the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner’s concern.’* (all in terms of Section 17 of the 2011 Act). Any such application would be a new application.

Appeals

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.

Ms. Susanne L M Tanner QC
Legal Member and Chair

10 September 2025