

# **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 Refs: FTS/HPC/PF/24/2108**

**Various properties, Dundee (“the Property”)**

**The Parties:**

**H & H Properties (UK) Ltd, 71 Blackness Road, Dundee (“the Applicant”)**

**James Gibb, Residential Factors, 27 Chapel Street, Aberdeen (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Liz Williams (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal's Decision of 16 October 2025.

### **Decision**

The Tribunal determines 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 16 October 2025, it proposed to make a PFEO in the following terms: -

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- (1) The Tribunal order the Respondent to pay to the Applicant the sum of £1250 for their time, effort, and inconvenience, and
- (2) The Tribunal order the Respondent to remove the migrated balances from the invoices previously issued to the Applicant.

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 Tribunal received the following submissions from the parties: -

1. The Applicant sent an email to the Tribunal on 29 October 2025. This stated that they had issued settlement proposals to the Respondent following receipt of the Tribunal’s decision. They had proposed that all migrated balances were to be removed from invoices, electricity credits applied by the Respondent were to be reversed where they had been erroneously applied to migrated balances and the compensation awarded by the Tribunal was to be paid. In addition, they stated that the migrated portions of invoices already paid in order to have NOPLs discharged were to be re-credited. They proposed a figure in full and final settlement of all claims. The Applicant also stated that the compensation proposed by the Tribunal is “fair and proportionate” and only covers the costs they have incurred in the securing the discharge of NOPLs to enable properties to be sold. The Applicant further stated that they cannot pay the sums they acknowledge to be due until correct invoices are issued as partial payment is likely to be rejected. They are not prepared to pay without a guarantee that NOPLs will be removed. The Applicants concluded by stating that their settlement proposals had been rejected which the Applicant indicated amounted to “non-compliance with the Tribunal’s decision”.
2. On 30 October 2025, the Respondent’s representative sent an email to the Tribunal. This stated that the Respondent noted that the Tribunal was aware that it cannot determine matters of debt and cannot deprive the Respondent of their right to pursue payment in the Sheriff Court. They proposed certain amendments to the PFEO in case the proposed terms caused confusion. Specifically, they suggested that the second part of the order should be qualified by the words “under reservation of the Respondent’s right to issue separate invoices for the migrated balances and pursue payment of any debt via the Sheriff Court”.
3. On 3 November 2025, the Applicant sent a response to the Respondent’s submission. They stated that the suggestion was out of order, that the decision and proposed PFEO are “crystal clear” and the amendment would suggest that the Tribunal supported the Sheriff Court action. The Applicant also states that the Respondent is only entitled to appeal on a point of law not to alter the terms of the decision

The Tribunal is satisfied that the Respondent 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 OSPs 4 and 6 and Section 6.4 of the 2021 Code of Conduct for Property Factors.

**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.**

The Tribunal notes that the Applicant appears to have misunderstood some aspects of the Tribunal’s decision and proposed PFEO, the purpose of seeking submissions from the parties at this stage and the terms of the Respondent’s submission. They state that the Respondents failure to agree to their settlement proposal is evidence of non-compliance with the decision. However, the Tribunal’s decision only related to whether the Respondent had complied with the obligations imposed on them by the 2011 Act. The Tribunal did not determine what sum is owed by the Applicant to the Respondent. In relation to the migrated balances, the Tribunal did not conclude that these sums are not due, only that the Respondent failed to provide any evidence that they are due or that they are due to the Respondent. As a result, the Tribunal concluded that the migrated balances should be removed from the unpaid invoices. No finding was made in relation to invoices which have already been paid.

Parties are invited to make submissions at this stage because the legislation requires the Tribunal to give parties the opportunity to comment on the proposed PFEO, before a final PFEO is issued. The parties are entitled to propose changes. These proposals are then considered by the Tribunal before the final order is issued. The Respondent has not requested permission to appeal or challenged the terms of the decision.

The Applicant does not appear to take issue with the decision or proposed order. They have not commented on the terms of the proposed PFEO or suggested amendments.

The Tribunal is not persuaded that the order (as currently framed) is confusing, or that the suggested wording should be added. The terms of the proposed order are clear and unambiguous, and the proposed qualification is neither appropriate nor necessary. As already stated in the written decision with statement of reasons, it is for the Sheriff Court to adjudicate on disputes between property factors and homeowners in relation to unpaid common charges. The Tribunal cannot prohibit a property factor from raising court proceedings - they are entitled to do so. In this case, the Respondent provided no evidence that they are legally entitled to pursue sums owed to the previous factor or that the migrated balances are accurate. As a result, the Tribunal concluded that they should be removed from the invoices. Had the Applicant already paid the sums which they accept are due, the Tribunal would also have considered making an order requiring removal of the NOPLs. However, as they accept that money is still owed to the Respondent, the Tribunal is not satisfied that this would be appropriate. However, it is the view of the Tribunal that the Respondent should discharge all NOPLs if they fail to issue fresh invoices for the migrated balances **and** raise court proceedings to recover these balances within a reasonable timescale.

The Tribunal also concludes that some minor amendments to the second part of the order are required, to make it clear that the Applicant is to be issued with invoices which do not contain any migrated balances. In relation to part 1, the Tribunal also

determines that an amendment is required to clarify that the compensation is to be paid, not applied as a credit to an unpaid account.

The Tribunal is therefore satisfied that a PFEO should be issued in the terms originally proposed, subject to minor amendments.

### **Property Factor Enforcement Order**

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Respondent to pay to the Applicant the sum of £1250 for their time, effort, and inconvenience. This is to be paid to the Applicant by cheque or bank transfer and not applied as a credit to an unpaid invoice or outstanding common charge account.
- (2) The Tribunal order the Respondent to remove the migrated balances from the invoices previously issued to the Applicant which are still unpaid and to issue the amended invoices to the Applicant.

All within 28 days of intimation of the PFEO.

**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.**