



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber): Failure to Comply with a Property Factor Enforcement Order

Reference numbers:

FTS/HPC/PF/23/3590

FTS/HPC/PF/24/1449

Re: 1/38 Chapel Lane, Edinburgh, EH6 6ST ("the Property")

The Parties:

Mr. Myko Clelland, 1/38 Chapel Lane, Edinburgh, EH6 6ST

("the Homeowner")

and

James Gibb Property Management Ltd, 4 Atholl Place, Edinburgh, EH3 8HT

("the Property Factor")

Tribunal Members

Nicola Irvine (Chairperson) and Andrew McFarlane (Ordinary (Surveyor) Member)

Decision

The Tribunal determined that the Respondent (Property Factor) has failed to comply with the Property Factor Enforcement Order ("PFEO") dated 29 January 2025.

Background

1. In the Tribunal's decision dated 14 November 2024, it determined that the Property Factor had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with sections 2.7, 6.4, 7.1 and 7.2 of the Property Factor Code of Conduct 2021 ("the 2021 Code") and sections 2.5, 6.1, 7.1 and 7.2 of the Property Factor Code of Conduct 2012 ("2012 Code"). The Tribunal issued a proposed PFEO to parties on 18 November 2024. No representations were made by the parties and on 11 February 2025 a final PFEO was issued to parties dated 29 January 2025, with a 35-day compliance period running from the date of issue of the PFEO. The PFEO was in the following terms:-

The Tribunal hereby makes the following Property Factor Enforcement Order (“PFEO”):

- 1. The Property Factor is ordered to instruct the works to the garage they previously confirmed they would undertake and keep the Homeowner regularly updated on progress or clearly explain why they are not in a position to proceed as they previously confirmed, all with 28 days of intimation of the PFEO.*
- 2. The Property Factor is ordered to pay the Homeowner the sum of £1,000 for his time, effort and inconvenience, within 28 days of intimation of the PFEO.*
- 3. The Property Factor shall provide evidence to the Tribunal of compliance with this order within 35 days of intimation of the PFEO.*

2. On 4 March 2025, the Tribunal received an email from an associate director of the Property Factor, advising *“I am pleased to confirm that payment has been paid to the client. I can also confirm that graffiti removal works are complete. However, unfortunately, we cannot proceed with line painting works, within the garage as the parking spaces are private to each property. Incidentally, we wrote to owners regarding this matter but there was no support.”*

3. On 13 March 2025, the Tribunal received an email from the Homeowner which advised that graffiti had not been removed and he produced photographs in support of that position. The Homeowner also provided a copy letter from the Property Factor dated 17 December 2024 advising that a quote was to be obtained for removal of graffiti. The Homeowner highlighted that there was no request for support in relation to the line painting.

4. On 8 April 2025, the Tribunal received an email from a senior associate director of the Property Factor, who advised that the parking spaces in the garage did not form part of the common property. She also advised that sections of graffiti could not be removed because that would have removed paint from the wall. She advised that the Property Factor was obtaining a cost for the area of wall to be reviewed by a building surveyor.

5. On 6 June 2025, the Tribunal issued a notice of direction to the parties in the following terms:-

The Property Factor is required to provide:

- 1. A note setting out what action has been taken in relation to each of the paragraphs of the Property Factor Enforcement Order*

(“PFEO”).

2. *Documentary evidence demonstrating compliance with the PFEO.*

*The said documentation should be lodged with the Chamber no later than close of business on **30 June 2025**.*

The Homeowner is required to provide:

1. *A written response to the Property Factor’s note, setting out the Homeowner’s position as to whether the Property Factor has complied with the PFEO.*

*The said documentation should be lodged with the Chamber no later than close of business on **28 July 2025**.*

Reason for Direction

The Tribunal issued a PFEO to parties dated 29 January 2025. The Property Factor provided information on 11 March and 15 April 2025, and the Homeowner provided information on 22 March 2025. It is not clear to the Tribunal whether the Property Factor contends that it has complied with the PFEO.

*The Property Factor is therefore directed to provide a written submission addressing each of the paragraphs of the PFEO with evidence to confirm its compliance no later than **30 June 2025**.*

*The Homeowner will be given an opportunity to comment on the Property Factor’s no later than **28 July 2025**.*

Upon receipt of the information required of the parties, the Tribunal should be in a position to determine whether the Property Factor has complied with the PFEO or not.

6. On 9 June 2025, the Tribunal received an email from the Property Factor. It advised that line painting in the car park had not been instructed and there was an explanation to why the work was not instructed. It also advised that a contractor who attended to remove graffiti reported that “it would not be recommended to complete any works as there would be a high risk of further damage”. The Property Factor also advised that following a meeting of owners, the Property Factor was instructed not to have the condition of the garage reviewed by a surveyor. Finally, the Property Factor confirmed that the sum of £1,000 was paid to the Homeowner on 16 December 2024.

7. On 28 July 2025, the Tribunal received an email from the Homeowner. His position was that the PFEO had not been complied with. He commented that the Property Factor had made a false statement to the Tribunal on 4 March 2025 when it reported that the was graffiti had been removed. The Homeowner explained that he considers that the Property Factor should have instructed an external painter to remove flaking paint and repaint the walls. The Homeowner produced excerpts of emails between the Property Factor and the chair of the residents' committee. The Property Factor sent an email on 25 April 2025 in the following terms:-

You will note that I have responded to you independently, as the reason we have said we are looking at this option is to appease a First Tier Tribunal which one of the other members has opened against us. It was more to appease the FTT, and we can go back to them to advise that this is not an option the committee wish to proceed with, but we were asked to contact all owners with an update as part of the findings of that case. I hope this makes sense and happy to discuss on the phone if you think that's easier."

The response from the chair of the residents' committee was sent on 25 April 2025 in the following terms:-

I do not feel the committee, or residents, would wish to authorise a survey of the basement. Certainly, when we are yet to resolve the outcome of the last survey (roof) that was undertaken, without complete consultation of the residents. Please do not progress down this route without consultation and confirmation of authorisation. It is no surprise that there is potential damp in a basement, it's below ground and below the water course. I do not see this as an issue we would wish to investigate at this time. I would envisage that the graffiti just needs a painter to wire brush the wall to remove the loose paint and then re paint over the graffiti with damp proof paint. Perhaps you would write to the interested parties and offer this as a solution it would allow you to appease the tribunal."

The response from the Property Factor on 30 April 2025 was in the following terms:-

That was my thinking too. Glad we are on the same page."

8. On 5 August 2025, the Tribunal sent an email to the Property Factor advising that the Tribunal would consider whether the PFEO had been complied with. The Property Factor was advised that failure to comply with a PFEO without

reasonable excuse is a criminal offence. The Property Factor was asked for comment in relation to compliance in light of the Homeowner's submissions.

9. On 7 August 2025, the Tribunal received further comments from the Property Factor. The response included the following:-

It was my understanding that our original agreement was to remove the graffiti from the wall in the garage and as advised in our letter to you of 9th June, this was instructed, as agreed, and the contractor advised they would not recommend removal.

As the tribunal will see from the photographs kindly provided by the applicant, the paint is peeling in many areas within the garage.

The recommendations from the chairperson to our Lisa Cockerill, Property Manager, in his emails from April 2025 were as described by the applicant and we do not dispute this. We are in the process of obtaining a cost for this to be removed by a painting contractor. With regards to repainting this area, we will take the guidance of the contractor on this as in our experience painting these areas without any other treatments rarely is successful and results in further peeling of paint quite shortly after, hence our suggestion to have the area reviewed by a surveyor for their recommendations on a permanent solution.

10. On 13 August 2025, the Tribunal sent an email to both parties advising that the time period for submitting responses to the notice of direction had expired and asked whether the parties had any further submissions to make.
11. Neither party applied for a review of the Tribunal's decision in respect of the final PFEO, nor did they apply for permission to appeal the decision.
12. No update, further information, nor representations about compliance have been received from the Property Factor since its email of 7 August 2025. There has been no request for further time to comply with the PFEO.
13. Having noted that the time-limit for compliance with the PFEO has expired, and that no further representations have been received from the Property Factor, the Tribunal determined that the Property Factor has failed to comply with the PFEO.
14. In terms of Section 23(2) of the Property Factors (Scotland) Act 2011, a Notice of Failure to Comply with the PFEO will be served on the Scottish Ministers on expiry of the appeal period. The Property Factor is also reminded that, in terms of Section 24(1) of the 2011 Act, a person who, without reasonable excuse, fails to comply with a PFEO commits a criminal offence.

Reasons

15. The Tribunal was satisfied that the Property Factor had complied with paragraph 2 of the PFEO.
16. Prior to these applications coming before the Tribunal, the Property Factor advised the Homeowner that work to the garage would be instructed. Specifically, the Property Factor advised that contractors would be instructed to remove graffiti and that the outline of car parking spaces would be painted. This is the work referred to in paragraph 1 of the PFEO.
17. The Property Factor provided an explanation as to why the painting work to the outline of car park spaces has not been instructed. Although the Property Factor had not previously told the Homeowner about the status of the car parking spaces, the Tribunal concluded that the Property Factor presented a reasonable excuse for failing to comply with paragraph 1 of the PFEO, but only as far as it related to this work.
18. In relation to the work involved in removing graffiti, the Tribunal concluded that the Property Factor has failed to comply with paragraph 1 as far as it related to this work. The responses provided by the Property Factor in this regard were unsatisfactory. On 4 March 2025, the Tribunal was advised that this work had been completed. The Property Factor later gave explanations as to why the work had not been completed but never explained why the Tribunal had been given erroneous information about compliance with the PFEO.
19. The Homeowner suggested to the Property Factor in December 2022 that the wall should be scrubbed and repainted. The exchange of emails between the Property Factor and the chair of the residents' committee in April 2025, referred to the potential of a painter being instructed to remove flaking paint and repaint the garage. The Property Factor's emails stated that it needed to "appease the Tribunal". The Tribunal found the terms of the Property Factor's email correspondence, even at its best construction, rather unfortunate. The outcome of the email correspondence referred to, was that there appeared to be agreement that a painter should be instructed. Three years have passed since the Homeowner suggested the work required in relation to graffiti and almost six months have passed since that email exchange between the Property Factor and the chair of the residents' committee. There is no information before the Tribunal to suggest that a painter has been instructed. It appears to the Tribunal that the Property Factor has taken a rather lackadaisical approach to its duties, notwithstanding the terms of the PFEO issued by the Tribunal.

Right of Appeal In terms of Section 46 of the Tribunal (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.

Nicola Irvine

Chairperson of the Tribunal

Dated: 3 December 2025