

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

In an Application under section 17 of the Property Factors (Scotland) Act 2011

By

Stephen John Day, Corrie Lodge, Corrie, Lockerbie DG11 2NG (“the Applicant”)

Charles White Ltd, 14 New Mart Road, Edinburgh EH14 1RL (“the Respondent”)

Re: Property at Flat 2, 1 Hillpark Rise, Edinburgh (“the Property”)

Tribunal Ref: FTS/HPC/PF/23/1936 &1937

Tribunal Members:

John McHugh (Chairman) and Andrew Taylor (Ordinary (Surveyor) Member).

Background

On 17 June 2025, the Tribunal issued its Decision and a Proposed PFEO. The Proposed PFEO was in the following terms:

“Within 31 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Credit to the Applicant’s factoring account the sum of £3033.78.*
- 2 Confirm in writing to the office of the Tribunal that step 1 above has been carried out.”*

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 the 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..."

The parties have made representations on the terms of the Proposed PFEO.

Hearing

A Hearing took place at George House on 28 January 2026. The Applicant attended and the Respondent was represented by its Robyn Rae. Mr Taylor joined by telephone (he was substituted for the previous ordinary member at very short notice because of illness).

The Respondent was concerned that it should not, as a result of the PFEO which is to be made, pay to the Applicant sums which he had not himself had to pay. It was also concerned about the risk of double recovery by the Applicant. The sums charged for debt recovery were originally applied to the Applicant's account only. When he did not pay, those amounts were applied to all nine flats in the block ie the eight in the ownership of third parties and the one belonging to the Applicant. The Respondent had adopted that approach as it considered it was obliged by the relevant title deeds to do so.

The Respondent stopped factoring the grounds of the Development in March 2024. The Account number ending in 001 relates to that contract. The Respondent was concerned that it would be impossible, if ordered to do so by the Tribunal, for it to refund the 156 owners affected by the groundworks contract given it no longer has any relationship with them. There is a new factor for grounds maintenance, Myreside Management.

There was a discussion around the approach which might be followed whereby any sum relating to account 001 might be refunded to the new factor on the basis that it would then be distributed by the current factor to the current owners. That is an imperfect solution (not least of all because the ownership of some properties may have changed) but the parties agreed that it would represent the most reasonable approach. Both parties recognise that it would be inappropriate to pay funds to the Applicant to refund him for charges he had not paid and that it would be equally inappropriate for the other owners to have to meet the cost of those debt recovery charges which the Tribunal had found to be inappropriate.

At the hearing, the parties were agreed in principle in relation to the Account ending 214 that the amount to be credited to the Applicant's account should be £392.78. They were agreed in principle in relation to Account 001 that the amount to be repaid to the other owners via the new factors would be £2355.65. The agreement in

principle was subject to further investigations by both parties. It was agreed that within seven days Ms Rae would send to the Applicant copies of invoices 1833767 in the sum of £452.13 and 19398086 in the sum of £526.76 and any information required in relation to their make up in order that the Applicant can satisfy himself.

Ms Rae was also to check and provide a copy of invoice 1776745 in the sum of £1470 and to satisfy herself that its content relates to legal and debt recovery charges which are appropriate to be included in the new arrangement. It was agreed that both parties would revert on the outstanding points within 14 days of the hearing.

Post-Hearing Submissions

After the hearing, written representations were received from both parties.

The Respondent's representation of 4 February highlighted that in relation to the account ending 214, an amount pre-dating 21 May 2021 (being the date identified by the Tribunal as the date upon which the Respondent knew of the Applicant's inability to pay because of the Proceeds of Crime Order) had been included in the PFEO. That amount was £32.78 with the effect that the Respondent considered the appropriate total under this account to be £360.

The Respondent also advises that the sum of £1470 of legal expenses pre-dated 21 May 2021 and so should be excluded from the PFEO. The Respondent produced a copy of an invoice by Alex M Adamson Debt Collection in the sum of £1470.40. That invoice was dated 19 April 2021. We are therefore satisfied that this element of the charges relates to works carried out before 21 May 2021.

The Respondent also made an argument based on principle that because the debts of the Applicant had been reallocated among other owners, the Applicant had no loss for which to be re-imbursed. Further, the Respondent argued that it had not accepted at the hearing on 28 January 2026 that it ought to make any payments to the other owners via the new factor. The Respondent considered that the Tribunal's discretion extended only to disputes between the particular parties to this case and that making a PFEO which ordered payments to third party owners would be beyond the jurisdiction of the Tribunal.

The Applicant responded with a written submission dated 11 February 2026. He believed that the payment of £32.78 was part of a course of inappropriate debt recovery and so ought to be included within the PFEO.

The Applicant rejects the Respondent's argument that as his account is at a zero balance because of subsequent reallocation to other owners, there is no balance to be repaid. Further, he argues that the function of the PFEO is to correct the consequences of the Respondent's breaches and that that can be achieved regardless of where the burden of the debt now rests and that the Tribunal therefore may make an order which affects third party owners.

The Respondent sent a further written submission on 12 February 2026. It contained no new points.

Decision

In relation to the £32.78, we find as a matter of fact that it was incurred prior to the Respondent becoming aware of the Applicant's inability to pay and so we will exclude that from the PFEO. For the same reason, we exclude the sum of £1470.40 from the PFEO. The sums to be included in the PFEO are therefore a direct payment to the Applicant of £360 (£392.78-£32.78) and to the other owners via the new ground maintenance factors £885.25 (£2355.65-£1470.40)

In relation to the extent of the power of the Tribunal in making a PFEO we have the following comments. The Tribunal has been given a wide discretion by section 20 of the 2011 Act and, in particular, by section 20(1)(a). The legislation contains no specific limitation upon the Tribunal's powers. When PFEOs are made they often contain non-financial elements eg an order that a property factor should tender an apology to persons affected by its conduct or that it should conduct its affairs differently in future or that it should perform a reconciliation of accounts. Many PFEOs require a payment to be made. Sometimes the approach adopted might be to order the payment of a token amount which the Tribunal considers reflects the deficiencies in service provided eg where the Tribunal might order payment of a sum which reflects an element of service originally charged for but not provided. In other cases, the Tribunal might have regard to the property factor's quarterly charges and relate any payment to that amount again reflecting periods during which there has been found to be deficient performance by the property factor. In yet further cases, the PFEO may contain a financial provision without explicit reference to the method of calculation. Often the sums involved are relatively modest. Amounts ordered to be paid in terms of a PFEO are not awards of damages in the traditional sense and, given the wide discretion afforded to the Tribunal, ought not to be subjected to the

rules which would apply to the quantification of damages in, for example, a breach of contract action.

In this case, the PFEO has a focus upon amounts inappropriately charged by the Respondent to the Applicant and how the situation might be remedied. We have sought to do that by reference to the various individual charges made at the time in question. Those charges were originally imposed upon the Applicant and then later spread among other owners. In addition, a new property factor has taken over one of the affected contracts. Many of the affected owners may have moved home since the time the charges were paid by them and therefore will not directly benefit from any amounts paid now. This makes it very difficult to achieve a perfect outcome where all of the effects of the Respondent's breach are remedied in the hands of the many affected persons. However, we consider that there is no force in the Respondent's submission that the Tribunal does not have the power to make an order which requires payment via a new factor or to persons other than the Applicant. The making of PFEOs which require payment to affected owners other than the specific applicant in each case is common. The Tribunal frequently deals with applications made by a single homeowner in a wider development which raises overcharging or poor service delivery which affects the whole development. In those cases, the Tribunal commonly makes PFEOs requiring crediting of amounts to the factoring account of all of the affected owners. It would be an undesirable development if the Tribunal was to be fettered in its ability to adopt this approach. It might lead to an increase in applications by multiple owners in connection with the same complaint or might lead to a diversity in outcomes where a single homeowner with a successful application is treated differently from other owners within the same development who have not applied to the Tribunal. Those would be undesirable results. We therefore consider that the legislation intends to provide the Tribunal with the power to make PFEOs which require payment by a respondent property factor to third parties.

PFEO

We therefore now make a PFEO in the following terms:

“Within 31 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Credit to the Applicant’s factoring account the sum of £360*
- 2 Transfer to the new factors responsible for the grounds maintenance of the Development the sum of £885.25 and to provide an explanation that such sums to be applied by the new factors to the benefit of the current owners of properties within the Development who are responsible for payments for ground maintenance.*
- 3 Confirm in writing to the office of the Tribunal that step 1 and 2 above have been carried out.”*

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.

JOHN M MCHUGH

CHAIRMAN

Date: 10 April 2026

