

Housing and Property Chamber First-tier Tribunal for Scotland



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/23/0253 and 2605

15/13 Allanfield Place, Edinburgh, EH7 5AL (“the Property”)

Parties:

Walter Zayachivsky, 36 – 3 Restalrig Road, Edinburgh (“the Applicant”)

James Gibb, 4 Atholl Place, Edinburgh (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of 28 February 2026.

Decision

The Tribunal determines that it should make a PFEO in the terms originally proposed, under deletion of the time limit for compliance as the Respondent has already complied.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal's decision of 5 March 2025, it proposed to make a PFEO in the following terms: -

1. The Tribunal order the Respondent to pay to the Applicant the sum of £750 for his time, effort, and inconvenience, 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.

On 11 March 2026, the Respondent advised the Tribunal that the sum of £750 had been paid to the Applicant on 9 March 2026. They provided a copy of an email from the Applicant acknowledging receipt of the payment.

On 14 March 2026, the Applicant submitted a number of documents. On 16 March 2026, the Applicant submitted a copy of the written decision and the proposed PFEO with handwritten comments marked on both documents. On the proposed PFEO he stated "I purchased the Allanfield apartment in 2022 on the basis of its modern aesthetic and up to date construction to environmental standard and easily maintained on assumption that after 13 years the development had matured beyond NHBC guarantee so all defects and deficiencies were ironed out and under a PF regime. All my assumptions were contrary to fact when balcony wall had not been snagged, the expansion vessel and other snags had to be remedied by me." There were extensive comments on the written decision. At the end of the decision, he concluded his remarks by stating that he had been forced to sell the property due to lack of confidence in the ability of the Respondent. They lacked technical knowledge and took no responsibility for repairs, and a handyman would have alleviated this failure. He said that there are still outstanding matters.

On 19 March 2026, the Applicant submitted a letter to the Tribunal which had been omitted from his submission on 14 March 2026. This stated that he awaited confirmation of the PFEO. He said that he was grateful for the award of £750 but that no monetary compensation could make up for the sustained level of personal abuse and humiliation which had a profound and adverse effect on his health and wellbeing. He added that he had lost the property, that issues were not fully resolved and that he was out of pocket and that the tribunal process had been too "legally bound and overwhelming and non-commensurate for the matter in hand". The Applicant then stated that he is looking for "full compensation where appropriate to meet all of my expenses as follows..." The Applicant then referred to abuse by the Respondent, lack of an operation and maintenance manual, failures to carry out repairs, issues with the balcony and other issues including the lack of a roof hatch. There are references to a number of costs which the Applicant states that he has incurred including excessive insurance costs (estimated at £1500) and the cost of repairing the expansion vessel. The Applicant concludes, "The above issues remain outstanding and so I am looking for the Tribunal confirmation of these matters prior to taking further action to recover all of my expenses"

The Applicant was asked to clarify whether he was seeking a review of the decision or permission to appeal. By email dated 20 March 2026, the Applicant responded stating "My letter, notes and attachments were intended as comments for the PFEO and a summary of the outstanding matters to be confirmed by the Tribunal for the FOS to take up these matters. For example, this includes the insurance for the expansion

vessel failure that Marsh have confirmed they will settle upon the direction from James Gibb since 2022.”

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 carry out its property factor duties to a reasonable standard and failed to comply with OSPs 6, 7, 9 and 10 and sections 2.2, 6.1 and 6.4 of the 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.

Based on their brief submission and the fact that they have already issued the payment to the Applicant, the Tribunal concludes that the Respondent is content with the terms of the proposed PFEO.

In relation to the Applicant’s submission, the Tribunal notes the following:

1. It appears that the Applicant is seeking a higher award of compensation. As with all his submissions during the progress of the applications, the Applicant’s submissions are difficult to follow and at times irrelevant. However, his concluding remarks in the letter of 14 March 2026 suggest that he is of the view that the Tribunal should award him a sum which will directly compensate him for losses he claims that he sustained as a result of the Respondent’s actions. However, it is also noted that the Applicant accepted the payment of £750 from the Respondent which may have suggested to them that he was content with this award.
2. The email of 20 March 2026 refers to outstanding matters “to be confirmed by the Tribunal”. The Applicant appears to misunderstand the process. He submitted two applications to the Tribunal. The Tribunal has issued its final decision on these applications. Some of his complaints were upheld, others were not. There are no outstanding matters for the Tribunal to determine (other than the terms of the PFEO) as the Applicant has not requested a review or permission to appeal. The Tribunal has no involvement or input into any other action the Applicant may take.
3. The Applicant makes a number of references to matters which were not before the Tribunal. He endeavoured to give evidence about some of these issues, but they were not part of the applications under consideration. These include a dispute about an insurance claim relating to an expansion vessel and complaints about a balcony repair. He also refers to matters which were not mentioned at any time during the tribunal process, such as a missing smoke vent in the common hallway. The Applicant also demonstrates again that he does not understand the role of a property factor. For example, he holds them responsible for a failure by the developer to carry out snagging work at the development.
4. In terms of the specific losses mentioned in the submission; -

- (a) The complaints about abuse and aggressive behaviour were not upheld.
- (b) The balcony repair (£165 plus VAT) and the cost of new garage doors (£73,96) were not considered by the Tribunal as they were not included in the applications.
- (c) Estimated overpayment of insurance premiums - £1500. Although the Tribunal concluded that the Respondent appears to have incorrectly apportioned the insurance costs during the period of the Applicant's ownership of the property, the Applicant failed to establish his loss arising from this failure. He also failed to establish that the insurance charges were excessive or that insurance could have been obtained at a better price. The documents submitted by the Respondent demonstrated that the broker had endeavoured to obtain a better quote, without success. The Applicant also appears to miss the point that he was not just responsible for insuring his flat, but also liable to contribute to the insurance for the common parts of the block and within the development as a whole. The figure of £1500 appears to be a random figure, unsupported by calculations or evidence. In any event, disputes over sums due by property factors to homeowners and vice versa fall within the jurisdiction of the Sheriff Court and not the Tribunal.

Based on the complaints which were upheld, and the established impact that the Respondent's failure to comply with the Code and carry out their duties had on the Applicant, the Tribunal is satisfied that the award specified in the proposed PFEO is appropriate and that the Applicant has failed to demonstrate or establish that a higher award should be made.

The Tribunal is therefore satisfied that a PFEO should be issued in the terms originally proposed, under deletion of the time limit, as the sum has already been paid. The parties should note that the award is not in addition to the sum specified in the proposed order and therefore the Respondent has effectively already complied with this order.

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 £750 for his time, effort, and inconvenience.

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.

Josephine Bonnar, Legal Member

24 April 2026