

# 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 Reference: FTS/HPC/PF/24/1381**

**Property address: 85 Whiteford Road, Stepps, Glasgow, G33 6GA (“the Property”)**

### **The Parties**

**Mr Stephen McDougall, 11 Pear Tree Drive, Stepps, Glasgow, G33 6NT (“the Homeowner”)**

**Hacking and Paterson, 1 Newton Terrace, Glasgow, G3 7PL (“the Property Factor”)**

### **Tribunal Members**

**Ms H Forbes (Legal Member) and Ms E Munroe (Ordinary Member)**

### **Decision**

The Tribunal has decided that it should make a PFEO in amended terms.

The decision is unanimous.

### **Reasons for Decision**

1. In the Tribunal’s decision of 3<sup>rd</sup> February 2025, which was amended to correct an omission and minor typographical errors on 24<sup>th</sup> February 2025, the Tribunal proposed to make a PFEO as follows:

“The Property Factor is required, within 30 days of the making of this Property Factor Enforcement Order, to:

- (i) Issue a fresh Written Statement of Service to the Homeowner which deletes the reference to custom and practice as the source of its authority to act and states the correct basis of that authority as being derived from the Deed of Conditions registered by Taywood Homes Ltd. on 9<sup>th</sup> August 2000;

- (ii) Make payment of the sum of £200.00 as compensation for its failure to comply with the Code of Conduct and the failure to carry out its property factor duties.”
2. The Tribunal indicated that, prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.
3. Representations were received under section 19(2)(b) of the Act from the Homeowner in the following terms:

*• Now that the tribunal have concluded that the property factor deliberately misled myself and the tribunal by incorrectly claiming that their authority to act was correctly stated as “custom and practice” the property factor must now be reported to Police Scotland for this offence. These offences were clearly indicated by HPCAdmin and the tribunal in their email containing the Direction to the property factor. Please ensure the property factor is reported to the Police for all the criminal offences they have committed as outlined in the case.*

*• I’d just like to question why the tribunal are only proposing a £200 compensation for the failure to correctly state its source of authority when the Upper Tribunal set a precedent in case FTS/HPC/PF/22/2528 (already mentioned in earlier responses) by imposing a £500 compensation payment for the exact same breach of “its persistent failure to comply with its duty to state the correct basis of its authority to act as property factor.” The key phrase from the Sheriff being “persistent failure to comply with its duty” – I find it strange and extremely concerning that the tribunal make no reference to the property factor’s “persistent failure to comply with its duty to state the correct basis of its authority to act” – this “persistent failure” would certainly require a much higher compensation payment than the usual £200 offered for “one off” failures and there is even a case for a compensation of much higher than the £500 imposed in a previous case as its clear the £500 compensation payment was not sufficiently high enough to deter the property factor from repeating their failure to comply with its duties.*

*• It is clear from the evidence I have provided and the rulings of previous cases (going back as far as 2013!) that the property factor has persistently failed to comply with its duty to state the correct basis of its authority to act as a property factor and so to ensure that householders do not have to go through what I have just gone through the PFEO should also include the property factor to issue a fresh Written Statement of Service to all its customers which deletes the reference to custom and practice as the source of its authority to act and states the correct basis of that authority as being derived from the Deed of Conditions for all their customers whose title deeds state so. The property factor should also be forced to pay compensation to every*

*customer who they have incorrectly stated their authority to act as “Custom and practice” – from what I’ve seen the property factor has incorrectly stated its authority to act for every customer it has ever had! The tribunals are going to be extremely busy with 70,000+ applications for the same failure to comply with its duties unless a PFEO is issued to correct the WSS for every single customer the property factor has!*

- *As stated in the Property Factors Code of Conduct in Section 1.5A “homeowners and property factors may wish to consider formalising their appointment” if they operate under Custom and Practice. To avoid further confusion and wasting tax payer’s money on thousands of future tribunals on the same topic the practice of Custom and Practice should be banned and a PFEO issued to force the property factor to formalise their appointment with all their customers.*

- *Since the property factor has no evidence that they have been appointed the property factor must now write to all households in that development and make them aware that they are free to choose another property factor without incurring any termination charges and apologise to the households for failing to carry out its duties and broken the Code of Conduct in relation to the households in that development.*

- *As the tribunal found the property factor illegally charged customers a £5 admin fee for updating documentation relating to the updated Code of Conduct 2021 the PFEO must require the property factor refund this charge (+ around 3 ½ years interest) to the homeowner and every single customer they charged this fee to. The letter sent in 2021 was sent to all their customers and the property factor did not obtain consent from any customer so the ruling applies not just to the homeowner but to every customer they had at the time. As stated in my written representation, based on current customer numbers, the £5 per household fee resulted in the property factor illegally collecting around £400,000 from their customers – this is an extremely serious crime and must be refunded and reported to Police Scotland to determine whether any financial fraud has been committed by the Directors. The tribunal should be reminded, as it was included in my written representation, that Hacking and Paterson Management Services Ltd is registered as a private unlimited company which means that if the company has insufficient funds to repay any debts that all Directors are personally liable and would be required to pay from their own personal funds. So any claim from the Directors that the company is unable to repay this debt must be paid for through all of the Directors personal finances. “Unlimited companies are a fairly rare type of corporation aggregate as each member is jointly and severally liable for the debts of the company in the event of its winding-up.”  
<https://www.insolvencydirect.bis.gov.uk/freedomofinformationtechnical/technicalmanual/ch73-84/chapter%2075/Part%203/Part%203.htm>*

*• The PFEO should also require the property factor to write to all the households they sent their letter to in 2021 apologising for breaking the code of conduct and failing to carry out their duties by failing to seek consent before applying the £5 admin fee and informing their customers that due their failure to follow their WSS their customers can terminate their agreement and seek another property factor without incurring any fees. All homeowners are required to be informed that this fee was collected illegally and all homeowners have a right to know if their property factor has broken the law – which Hacking and Paterson have – as homeowners have a legal, contractual right to terminate any arrangement with the property factor without any charge if the property factor has failed to follow their Terms of Service. It is clear that Hacking and Paterson Management Services are serial offenders when it comes to breaking the Code of Conduct and the Property Factors Act and so the tribunal must take serious action against them to ensure that homeowners are not disadvantaged by rogue property factors!*

4. The Homeowner also submitted the following:

*Please see updated comments on proposed PFEO – these include 2 further points on:*

*Property factor to refund myself and all other customers the £5 admin fee (+ around 3 ½ years interest) that the property factor failed to get consent for (based on current customer numbers this would amount to a refund of around £400,000 + interest across their 80,000 customers).*

*Property factor to write to all their customers they had in August 2021 to inform them that they incorrectly and illegally charged them a £5 admin fee and inform that that as they breached their WSS the customer is legally allowed to terminate their agreement with the property factor and seek another property factor without penalty if they so wish.*

*I don't know why the tribunal omitted the breaches related to the £5 admin fee from the proposed PFEO in the first place – this addresses that omission.*

5. The Tribunal has now amended the proposed PFEO made in terms of Section 19(1)(a) of the Act.

## **PFEO**

6. The Tribunal hereby makes the following PFEO:

The Property Factor is required, within 30 days of the making of this Property Factor Enforcement Order, to:

- (i) Issue a fresh Written Statement of Service to the Homeowner which deletes the reference to custom and practice as the

source of its authority to act and states the correct basis of that authority as being derived from the Deed of Conditions registered by Taywood Homes Ltd. on 9<sup>th</sup> August 2000;

- (ii) Repay to the Homeowner the sum of £5 incorrectly charged as an administration fee for amending the Written Statement of Services;
- (iii) Make payment of the sum of £200.00 as compensation for its failure to comply with the Code of Conduct and the failure to carry out its property factor duties.

### **Reasons for decision**

7.
  - (i) It would not be appropriate to report the Property Factor to the police for failure to comply with its property factor duties, as this is not a criminal matter.
  - (ii) The Tribunal is unaware of any 'usual £200 offered for 'one-off' failures'. The Upper Tribunal did not impose a £500 compensation payment for the exact same breach in the case FTS/HPC/PF/22/2528. The Upper Tribunal drafted a proposed PFEO in the sum of £500, which proposed PFEO would then have been open to representations from parties. The facts and circumstances are not identical, and each case must be considered on its own facts and circumstances. The Tribunal is satisfied that the sum of £200 is a fair sum when the facts and circumstances of the current case are considered.
  - (iii) The Tribunal has addressed the issue of a new Written Statement of Services in the PFEO.
  - (iv) The Tribunal does not have the power to ban Custom and Practice.
  - (v) The matter of appointment is a new issue that did not form part of the current application.
  - (vi) The Tribunal has amended the PFEO to include a refund of the sum of £5 to the Homeowner.
  - (vii) The Tribunal has addressed the issues between the parties in this application and will not be ordering the Property Factor to do anything in respect of any other homeowners who were not party to the application.
8. Under section 24 (1) of the Act, a person who, without reasonable excuse, fails to comply with the Property Factor Enforcement Order commits an offence.

## **Right of Appeal**

**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.**

Helen Forbes  
Legal Member and Chairperson  
6<sup>th</sup> May 2026