

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 Ref: HPC/LM/2852

Dr Michael Marshall, The Lodge House, Kingsmeadows, Peebles, EH45 9HR (“the Applicant”)

James Gibb Residential Factors, Red Tree Magenta 3rd Floor, 270 Glasgow Road, Rutherglen (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 23 April 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 23 April 2025, it proposed to make a PFEO in the following terms:

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1. Within 3 months of intimation of the PFEO, to obtain three quotes from suitably qualified accountants and thereafter consult with the homeowners in the development regarding the instruction of an accountant to prepare the accounts of the Kingsmeadows Owners Association for the financial years from 2021 to 2025. If instructed by the homeowners, to appoint the selected accountant to prepare the accounts and provide the accountant with all requested relevant information and documents to enable them to do this.

2. Within 28 days of intimation of the PFEO, to provide the Applicant with a timetable for inspections for 2025 and 2026, to include the dates and times upon which the inspections will take place.
3. Within 28 days of intimation of the PFEO, to provide the Applicant with a full explanation for the absence of surplus funds by reference to the profit and loss/balance sheet submitted by the Applicant to the Tribunal.
4. Within 28 days of intimation of the PFEO, if there are surplus funds, to reimburse the Applicant and the other homeowners with all sums due to them.
5. Within 28 days of intimation of the PFEO, to pay to the Applicant the sum of £500 for his time, effort, and inconvenience."

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.

Both parties requested a review of the decision and also submitted representations in relation to the proposed PFEO. On 17 November 2025, the Tribunal issued decisions with statements of reasons on the review requests. Both were refused. The parties were notified that they could provide additional comments or representations in relation to the proposed PFEO but failed to do so.

The Parties Submissions

The Applicant states the following: -

1. Part 1 of the proposed PFEO - The proposal in relation to the provision of accounts is inadequate as it is dependant on the further instructions of the homeowners. The provision of accounts is a requirement of the DMS. There has been no deed of variation. Accounts are necessary as the Association is a body corporate which owns assets. The cost of the accounts should be covered by the management fee already charged and should not result in additional cost to the homeowners. The Respondent should also be directed, once the accounts are available, to rectify any management defects identified in the accounts. This is likely to include the failure to collect service charges from Granton Homes Ltd, the 14th member of the association. The Applicant suggested alternative wording.
2. Part 3 of the PFEO should be amended to require the Respondent to provide a summary of all charges (such as a management fees) that should have been billed to the 14th member of the KOA.
3. Part 4 of the PFEO should be amended to say that if the owners have been incorrectly charged, the Applicant and other homeowners should be reimbursed.

4. Part 2 of the PFEO – inspections and maintenance are mandatory and must be provided by the Respondent. The boundary wall requires to be repaired, this is conceded. The Applicant proposes that the Respondent also be directed to obtain quotes for the boundary wall and pay £1000 to KOA as compensation for a failure to carry out historic maintenance.

The Respondent stated the following:

The proposed PFEO requires the Respondent to obtain quotes from accountants to determine if there are surplus funds. The quotes are likely to be in the region of several hundred pounds, and the other 12 owners are unlikely to agree as they are happy with the status quo. A majority would require to agree. The Respondent is also unclear as to what the accountant is to do as there is no separate bank account for KOA. All that can be provided are the invoices from contractors and invoices to homeowners. That information can already be provided without any accounting input. The Applicant has only experienced inconvenience because he has refused to accept the facts.

The Reasons for the decision.

The Applicant's submissions

For the most part, the Applicant's submissions are not relevant to the Tribunal's decision on the application. They appear to relate to complaints which were not made and facts which were not established. The Tribunal upheld most of the Applicant's complaints and determined that the Respondent had failed to carry out their property factor duties by failing to carry out inspections, arrange maintenance, provide accounts and financial information and ensure that funds are held in the name of the association. The alleged failure to comply with a previous PFEO was not upheld. The application did not include a complaint that the Respondent is wrongly apportioning the common charges among 13 owners when it should be 14. This may be a complaint that the Applicant intended to make, and may be the underlying issue behind some of the complaints that were specified, but it was not one of the complaints which were considered or upheld.

Part 1 of Proposed PFEO – In the decision, the Tribunal acknowledges that the DMS requires the Respondent to provide accounts and concludes that they have failed to do so. However, the Tribunal does not agree with the Applicant's interpretation of the relevant clauses. Clause 8 sets out the managers "duties". 8(e) requires the manager to prepare the accounts of the Association for each financial year. The word "accounts" is not defined. However, the Respondent's interpretation of this provision is that it would involve the instruction of a qualified accountant as they do not have staff with the requisite skills. This is a reasonable argument – the preparation of proper accounts of this nature is not one of the services usually provided by a factor. The Applicant refers to the terms of the development schedule. However, the Tribunal is of the view that the Respondent is entitled to instruct a suitably qualified professional and to pass on the associated costs. It would only be covered by the management fee if the Respondent was doing the work in house, as part of their day-to-day management of the development. In the circumstances, the Tribunal does not agree with the proposed

amendment to the order. The Respondent should obtain quotes and consult with the owners about the appointment. They are also entitled to insist upon payment in advance from the homeowners, since it could not be classed as emergency work within their delegated authority.

Part 3 and 4. The proposed amendments are based again on the issue of the number of members of KOA. As previously indicated, this concern or complaint was not part of the application and there are no findings in the decision regarding this matter.

Part 2 – The Tribunal is not persuaded that the Applicant has established that the Respondent should be ordered to make a payment of compensation to KOA. The figure appears to have been chosen at random, and KOA are not a party to this application. However, the Tribunal agrees that the proposed order should be amended to include a requirement that they obtain quotes and consult with the homeowners in relation to the boundary wall repair.

The Respondent's submissions

Some of the Respondent's comments are also based on incorrect interpretation of the written decision and the DMS which applies to the property. The Tribunal did not propose to order the Respondent to obtain quotes from accountants to establish if there are surplus funds. The Tribunal proposed this part of the order because the DMS requires the manager to do this, and the Respondent must act in accordance with the DMS. The Respondent's comments about the associated costs are noted. However, the Tribunal is satisfied that the Respondent can consult with the homeowners and ingather funds before they instruct the work. The Tribunal does not understand the remainder of the submission. If the preparation of the accounts in question is a simple matter, which does not require a qualified accountant, then presumably the Respondent can do it themselves. However, the Applicant is not looking for copies of invoices. He is evidently looking for a full statement of income and expenditure. The Respondent must be in a position to provide this information, to the homeowners or an accountant, even if there is no separate bank account. The Respondent's comment about inconvenience is without merit. The Respondent did not participate in the tribunal process and provided minimal submissions. They did not establish that there are no surplus funds.

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 carry out its property factor duties to a reasonable standard.

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 is therefore satisfied that a PFEO should be issued in the terms originally proposed but with one amendment.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) Within 3 months of intimation of the PFEO, to obtain three quotes from suitably qualified accountants and thereafter consult with the homeowners in the development regarding the appointment of an accountant to prepare the accounts of the Kingsmeadows Owners Association for the financial years from 2021 to 2025. If instructed by the homeowners, to appoint the selected accountant to prepare the accounts and provide the accountant with all requested relevant information and documents to enable them to do this.
- (2) Within 3 months of intimation of the PFEO, to obtain three quotes from suitably qualified stone masons in relation to the damage to the boundary wall and thereafter consult with the homeowners in the development regarding the instruction of the work required to repair and e-instate the wall.
- (3) Within 28 days of intimation of the PFEO, to provide the Applicant with a timetable for inspections for 2025 and 2026, to include the dates and times upon which the inspections will take place.
- (4) Within 28 days of intimation of the PFEO, to provide the Applicant with a full explanation for the absence of surplus funds by reference to the profit and loss/balance sheet submitted by the Applicant to the Tribunal.
- (5) Within 28 days of intimation of the PFEO, if there are surplus funds, to reimburse the Applicant and the other homeowners with all sums due to them.
- (6) Within 28 days of intimation of the PFEO, to pay to the Applicant the sum of £500 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.