

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 23**

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)

DECISION

**The Tribunal determined that the Property Factor has failed to comply with the
Property Factor Enforcement Order ("PFE0") dated 5 February 2026**

The decision of the Tribunal is unanimous.

Background

1. The Applicant lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application stated that the Respondent has failed to carry out its property factor duties.
2. A CMD took place by telephone conference call on 13 November 2024. Prior to the CMD both parties lodged written submissions. The Legal Member of the Tribunal then became aware of a conflict of interest and recused himself from further consideration of the case. The parties were notified that the case would be heard by a differently constituted Tribunal.
3. The parties were notified that a further CMD would take place on 10 March 2025 at 2pm by telephone conference call. The Applicant participated. The

Respondent did not participate and was not represented. Following the CMD the Applicant lodged a further brief submission which was circulated to the Respondent. The Respondent lodged a brief response.

4. Following the CMD the Tribunal issued a written decision with statement of reasons and a proposed property factor enforcement order. In terms of the decision, the Tribunal determined that the Respondent had failed to carry out its property factor duties to a reasonable standard. The Tribunal indicated that prior to making a PFEO, the parties would have the opportunity to make representations on the proposed order in terms of Section 19(2)(b) of the 2011 Act.
5. Both parties requested a review of the Tribunal's decision and also submitted representations in relation to the proposed PFEO. On 17 November 2025, the Tribunal issued decisions in relation to both review requests. Both were refused. The parties were offered the opportunity to make further representations in relation to the PFEO but did not do so.
6. On 5 February 2026, the Tribunal issued a PFEO. This required the Respondent to do the following:-
 - (a) 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 Kingsmeadow's 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.
 - (b) 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 re-instate the wall.
 - (c) 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.
 - (d) 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.
 - (e) 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.
 - (f) Within 28 days of intimation of the PFEO, to pay to the Applicant the sum of £500 for his time, effort, and inconvenience.

7. On 15 April 2026, the Respondent sent an email to the Tribunal which stated that they had complied with all parts of the PFEO.
8. On 16 April 2026, the Applicant notified the Tribunal that he was about to go on holiday and would confirm whether the Respondent had complied and after the AGM which was due to take place on 15 May 2026.
9. On 18 May 2026, the Applicant lodged a submission with the Tribunal. This stated that the Respondent had complied with parts 1, 4, 5 and 6 of the PFEO but had not complied with parts 2 and 3. He stated that three quotes had been obtained from stonemasons and a timetable of inspections had been provided. However, at the homeowners' meeting, the Respondent stated that they did not know if the wall repairs were necessary. The Respondent also failed to produce any records of the inspections or inspection reports. No vote was taken on the wall repairs and instead the Respondent undertook to investigate if they were necessary.
10. On 26 May 2026, the Respondent sent a letter to the Tribunal which said that they were not qualified Building Surveyors and could not determine whether wall repairs are necessary. They stated that they had obtained the quotes, as stipulated in the order. They said that they were willing to obtain a quote from a building surveyor. The Tribunal sought clarification of the outcome of the AGM and whether a vote had been taken in relation to the wall repairs. The Respondent was also asked to provide evidence of compliance with parts 2 and 3 of the PFEO as this was in dispute. The Respondent provided a response. This said that a meeting was held on 13 May 2026 and that "the agreement by majority is to appoint a surveyor to coordinate repairs." They attached a copy of the meeting minutes, the three quotes and the requests sent to their approved surveyors for an cost estimate.
11. The Applicant sent a further submission to the Tribunal on 10 June 2026. This stated that the Respondent had not provided any record of inspections, wall inspections had not taken place, and that inspections had not taken place on the dates provided. He also stated that, as the Respondent was unable to confirm if the quotes obtained related to the damage to the wall, part 3 of the PFEO has not been met.
12. The Tribunal determined that it was not possible to make a decision on compliance with the PFEO on the submissions alone and the parties were advised that a teleconference hearing would take place on 14 August 2026 at 10am.
13. On 31 July 2026, the Applicant lodged a written submission together with a copy of a new set of minutes which had been issued by the Respondent in relation to the meeting and two inspection reports. On 4 August 2026, the Applicant sent a further brief submission. This stated, "In respect of wall repairs, the factor advised FTS of the owners AGM decision of 13 May 2026 "The agreement by majority is to appoint a surveyor to coordinate repairs." This is not disputed"". The submission goes on to say that (as of 4 August) the Respondent had notified homeowners that they did not intend to implement that

instruction and instead required “majority instruction”. This is contrary to the DOC.

14. On 11 August 2026, the Respondent submitted a copy of an email dated 10 August which had been sent to the Applicant about the wall repairs. It said that they had obtained estimates from surveyors, as agreed at the AGM. These had been presented to the homeowners with a request that they vote on them and provide the required funds.
15. The Hearing took place on 14 August 2026. The Applicant participated. The Respondent was represented by Mr Smith.

The Hearing

16. At the start of the hearing the Legal Member advised the parties that the only matter which was under discussion was whether the Respondent has complied with parts 2 and 3 of the PFEO.
17. Mr Smith told the Tribunal that the stonemason quotes which had been obtained were all different and the specification of the work was not the same. For example, some proposed repairing 25 square metres while another was based on 30 square metres. There were concerns that they would not be making an informed decision by selecting one of the estimates. The owners agreed. It was decided that a surveyor should be appointed to inspect, advise and monitor the work. There were eleven attendees at the meeting. The two who did not attend did not provide a proxy. There was a quorum.
18. Dr Marshall said that there are 14 members of the association. 10 were present and 4 were missing. He accepted that most people were there. He told the Tribunal that he has no recollection of a vote being taken. He did not vote. However, he accepts that the majority were in favour of the proposal, based on the discussions.
19. Mr Smith said that there was a show of hands and the majority were in favour. After the Respondent issued the surveyor quotes, eight of the fourteen confirmed their agreement and provided the funds. The total cost was £1980, which is £141 per property. The surveyor was instructed. No one had voted against it. The other 6 had just not responded. The Respondent decided to underwrite the missing shares, and the other owners will be invoiced when the invoice is received.
20. Dr Marshall said that he is content that a majority were in favour of instructing a surveyor but the quotes from surveyors were not available at the meeting and the vote taken later was not valid because decisions can only be made at meetings. A binding decision had been made, and the Respondent should have just instructed a surveyor. They did not need to take another vote as the sum in question was within their delegated authority. Mr Smith denied that they could have proceeded without getting approval and funds.

21. Dr Marshall said that the delay is having an impact. The wall is deteriorating and the cost of getting it repaired is increasing. Mr Smith said that the relevant action has been taken and the matter can be progressed when they get the survey report.
22. In relation to the issue of inspections, Dr Marshall said that he was provided with a list of inspection dates within the 28 days specified in the order. These were 30 January, 19 March and 22 May 2025 and 26 January, 27 April, 27 July and 26 October 2026. In relation to the dates which have passed, he does not believe those inspections took place. The Tribunal noted that two inspection reports had been submitted by Dr Marshall. The first is headed "Kingsmeadow House" The date at the top of the page is January 2026 and the report states that the "completed date" was 26 January 2026. There are photographs of internal communal areas, external photographs of the house, grassy and wooded areas, a roadway and a parking area. The second report is headed "Kingsmeadow's owners association." It is also dated January 2026 although the completion date is 17 March 2026. Mr Smith said that the later date was when the report was uploaded to the system and not when it was carried out. This report only has photographs of outdoor areas including part of a building, the parking area, and grassy/wooded areas. All of the photographs in the second report are also in the first report. Mr Smith said that he had carried out the July 2026 inspection, but a report has not yet been uploaded. However, the April report is on the system.
23. Dr Marshall said that it is clear from the reports that the Respondent has only inspected Kingsmeadow House and its common parts. He said that none of the photographs relate to the areas he shares with the owners of the flats. There are no photographs of the boundary wall which has not been inspected. Mr Smith disputed that the open areas shown in the reports are not common property but said that he is not sure if the wall was inspected during that inspection.
24. The Tribunal noted that the available documentary evidence was insufficient for the Tribunal to decide whether the inspection report covered the areas shared by the flats and Dr Marshall's house. It was agreed that a direction would be issued for further documents and submissions following the hearing.

Further procedure

25. Although the direction issued by the Tribunal required the Respondent to lodge a submission after they had received a copy of the Applicant's submissions, the Respondent sent an email submission to the Tribunal on 26 August 2026. This stated that Kingsmeadow House is the main building in the development and consists of 12 properties. Kingsmeadow's Owners Association includes the house and landscaped areas consisting of 13 properties. Dr Marshall's property forms part of KOA and is the only standalone unit. The submission goes on to state that, as per their WSS, they carry out visual, non-disruptive inspections of the fabric of the property from ground level only. This might include internal stairwells, bin stores, car parks and landscaped areas. The areas inspected are limited to those which are safe and accessible. Not all parts

of the development will be inspected at every visit. The inspection of the whole development might be spread throughout the year and over several visits. In relation to the January 2026 inspection, this included the internal stairwells of KH, bin stores, car park and landscaped areas relating to KH. They also inspected the pathway leading from Dr Marshall's house to the main building which forms part of the landscaped areas. The Respondent conceded that the report does not include photographic evidence of the areas in question, the report nonetheless demonstrates compliance because several common landscaped areas were inspected and there is no requirement to inspect every aspect of the landscaped areas. The submission concludes by stating that all four of the 2026 inspection reports had been uploaded to the client portal. At least one of those will cover the areas common to KH and KOA.

26. On 4 September 2026 the Applicant lodged a submission and bundle of documents in response to the direction. This included a further copy of the inspection reports with comments on the photographs. The Applicant also lodged a copy of his land certificate and title plan, and a copy of the title sheet and plan for one of the flats in KH for comparison purposes. His position is that the Respondent has only inspected and provided reports for KH. The common parts of the development which he shares with KH, and which are the common areas of KOA have not been inspected. The Applicant also stated that the Respondent's actions in relation to the wall repairs do not comply with the PFEO.

Findings in Fact

27. The Respondent provided the Applicant with a list of dates upon which they state that inspections of the development had taken place or were scheduled to take place.
28. In relation to an inspection on 26 January 2026, the Respondent produced two reports. One is headed Kingsmeadow's House and the other Kingsmeadow's Owners Association.
29. The only property common to the Applicant's property and the flats in Kingsmeadow's House are the gardens, and the development boundary wall and gate.
30. The inspection report provided by the Respondent for KOA dated January 2026 does not include photographs or other evidence that the gardens or boundary wall common to KOA and KH had been inspected.
31. The Respondent did not inspect the KOA common property in January 2026.
32. The Respondent obtained three estimates from stonemasons for repairs to the boundary wall and consulted the homeowners about instructing repair work. Following discussion, the majority of the homeowners agreed that a building surveyor should be instructed to assist them to determine what work is required.

Reasons for Decision

33. At this stage in the process, the only issue for the Tribunal to determine is whether the property factor has complied with the PFEO which was issued. The Tribunal cannot consider the original complaints of new or consider new complaints which have arisen, even if these relate to the actions of the property factor in relation to the PFEO.
34. Both parties agree that the Respondent has complied with parts 1, 4, 5 and 6 of the PFEO and the Tribunal is satisfied that this is the case.

Part 3 – Inspections

35. Part 3 of the PFEO requires the Respondent, 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. It does not require the Respondent to provide evidence of their inspections or a report. There is no provision in the DOC or WSS which requires inspection reports to be prepared. Nonetheless, it is good practice for a property factor to have a detailed record, particularly when a development is complicated and extensive.
36. The Applicant's title sheet includes a DOC dated 29 January 2016 by Granton Homes Ltd. In the first section ("Definitions") "scheme property" is defined as ("the Gardens (subject always to the specific provisions herein relative thereto); (ii) all fencing, walls, railings, hedgerows and other boundary features within or bounding the gardens or within or bounding the development: (iii) the service media.>"). "Gardens" is defined as the area or areas hatched green on the map. The access road is to be maintained in equal shares by the owners in KH. The title sheet for one of the flats in KH indicates that the flats are also subject to this DOC. However, these properties are also subject to a DOC dated 15 March 2016, which relates only to the flats in KH. The plan attached to this title deed shows the development common parts which only the flat owners share and maintain. These include the KH building but also the grounds in the development, excluding the gardens specified in the other DOC. The Applicant's title does not include this second DOC and he does not share the grounds with KH and has no liability to contribute to their maintenance.
37. It is evident that all the photographs in the KOA inspection report are also in the KH report. The latter is more extensive as it includes internal photographs of KH. There are no photographs of the boundary wall. The outdoor areas appear to be woodland and landscaped areas. The Applicant states that none are of the gardens and the Respondent does not dispute this. At the hearing they argued that the grounds shown in the photographs are shared by the Applicant and the owners in KH. It is clear from a comparison of the title deeds that this is not the case.

38. Based on the available evidence and submissions, the Tribunal is satisfied that the January 2026 inspection report does not include the areas common to the Applicant's property and KH. In their submissions, the Respondent again stated that the landscaped areas are common property. They also state that all parts of the development are not inspected at each visit. However, the January KOA report does not include either the gardens or the boundary wall. It therefore appears that although the Respondent is now aware (following the previous Tribunal case) that there are two distinct developments, they have not taken the time to review the title deeds and establish what is common to KOA and what is common only to KH.
39. The Tribunal is therefore satisfied that the January 2026 report was not a report in relation to KOA scheme property. As they were obliged to provide a list of inspection dates, and their list included this date, the Respondents have failed to comply (in part) with this part of the PFE0. It seems likely that the other dates provided may also not have involved an inspection of the relevant areas. However, there is insufficient evidence available to establish that this is the case. The Tribunal determines that they have failed to comply with this part of the PFE0 because they provided a date to the Applicant upon which no inspection of KOA property took place.

Part 2 of the PFE0 - quotes and consultation in relation to boundary wall repairs.

40. Part 2 of the PFE0 requires the Respondent, within 3 months of intimation of the PFE0, 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 re-instate the wall.
41. The undisputed evidence presented to the Tribunal is that three quotes were obtained and that the Respondent then consulted with the homeowners at a meeting on 13 May 2026. Technically this was a few days after the 3 month deadline. However, the Tribunal is of the view that this is a very minor matter which would not lead to a failure to comply decision. It is for the Tribunal to decide upon compliance and the Applicant did not take issue with the timescales. It is also noted that Section 21 of the 2011 Act gives the Tribunal the power to extend time limits when it is appropriate to do so.
42. The Applicant argues that the Respondent failed to comply with this part of the order because the three quotes were not comparable and that the Respondent had been unable to advise the homeowners which (if any of them) correctly identified the damage. The Tribunal is not persuaded by this argument. The Respondent did as they were ordered to do. The quotes were obtained from stonemasons. Presumably the contractors inspected the wall before providing their estimate. It could not have been anticipated that the contractors would propose to deal with the repair in different ways so that they could not be directly compared. The Respondent appears to have proposed a sensible way forward by suggesting that they instruct a surveyor. It is unreasonable of the Applicant to suggest that the Respondent should have the necessary knowledge or

expertise in house. That is not the role of the factor. His frustration at the delay is understandable but it appears from the information provided that progress is now being made.

43. The Tribunal is satisfied that the Respondent obtained quotes and thereafter consulted the homeowners about the quotes and how to progress the wall repairs at a meeting. They have therefore complied with this part of the PFEO.

Decision

44. The Tribunal determines that the Property Factor has complied with parts 1, 2, 4, 5 and 6 of the PFEO. However, they have failed to comply with Part 3 of the PFEO because one of the dates provided to the Applicant was not a date upon which an inspection of his property took place.

Appeals

A homeowner or property factor 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.