

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



**First-tier tribunal for Scotland (Housing and Property Chamber)**  
**(“the tribunal”)**

**Decision: Property Factors (Scotland) Act 2011 (“the 2011 Act”), Section 23(1)**

**Chamber Ref: FTS/HPC/PF/19/1362**

**Property at 19/4 Fettes Rise, Edinburgh, EH4 1QH**  
**(“The Property”)**

**The Parties:-**

**Mr Steve Collins, 19/4 Fettes Rise, Edinburgh, EH4 1QH**  
**(“the Applicant”)**

**James Gibb Property Management Limited, 4 Atholl Place, Edinburgh, EH3 8HT**  
**(“the Respondent”)**

**Tribunal Members:**  
**Ms Susanne L M Tanner QC (Legal Member)**  
**Ms Elaine Munroe (Ordinary Member)**

### **DECISION**

1. The tribunal decided that the Property Factor has complied with the PFEO made on 19 July 2021, as varied on 24 August 2021.
2. The decision of the tribunal is unanimous.

### **STATEMENT OF REASONS**

#### **Property Factor Enforcement Order (“PFEO”)**

1. The tribunal made a PFEO on 19 July 2021 in terms of Section 19(3) of the 2011 Act, as varied on 24 August 2021, which provides:

*“3. Within 28 days of intimation of the PFEO the Respondent must:*

*3.1. Pay to the Applicant in cleared funds the sums of:*

*(i) ONE THOUSAND POUNDS (£1000.00) STERLING in respect of the Respondent’s failures to comply with the Code of Conduct and with its property factors duties; and in respect of the Applicant’s time and inconvenience in dealing with the complaints process and the tribunal proceedings in relation to the Respondent’s said failures;*

*3.2. Produce evidence to the tribunal that the payments in order 3.1 have been made to the Applicant;*

*3.3. Produce evidence to the tribunal that the two insurance claims in respect of the garage door and stair window have been pursued to their conclusion and that any funds received from the insurer have been remitted to the new property factor for the Development for disbursement to homeowners.”*

2. The original PFEO was intimated to parties and was re-intimated following the revision.
3. After the period for compliance had passed, both parties were requested to confirm whether the specified actions in the PFEO had been satisfactorily completed or whether a variation or revocation of the PFEO was sought.

## **Representations from parties**

4. In relation to orders 3.1 and 3.2, the Respondent has provided evidence that the specified payment has been made and the Applicant has confirmed receipt of the same.
5. In relation to the remaining orders in 3.3, the Respondent is of the view that the actions have been satisfactorily completed. Evidence has been provided that the insurance claim in respect of the garage door has been pursued to its conclusion and that any funds received from the insurer have been remitted to the new property factor for the Development for disbursement to homeowners. In respect of the common stair window, the Respondent has advised that the claim was pursued, it was not an insured peril and no sums was paid out by the insurer in respect of this matter.

6. The Applicant agrees that the insurance claim in respect of the garage door has been pursued to its conclusion and that the sum has been so remitted. However, the Applicant is not so satisfied in relation to the insurance claim in respect of the common stair window. He is of the view that the Respondent should pay £460.00 to the new property factor for the Development in respect of the insurance claim for the common stair window, in order that the sum may be disbursed to homeowners. Although not stated explicitly, it is inferred that he submits that this should be paid from the Respondent's own funds.

### **Decision in terms of Section 23 of the 2011 Act**

7. The PFEO was intimated to parties and re-intimated following variation. The period for payment to be made and the actions to be executed has expired, as required by Section 23(3)(a) of the 2011 Act.
8. The tribunal considered the terms of Section 23(3) of the 2011 Act.
9. The tribunal is satisfied that the requirements of Section 23(3) of the 2011 Act are met and it is open to the tribunal to decide whether the Property Factor has failed to comply with the PFEO in terms of Section 23(1) of the 2011 Act.
10. The tribunal considered the orders in the PFEO and the parties' submissions and decided on the balance of probabilities, that the Respondent has complied with the PFEO, in so far as payment of the monetary award to the Applicant and provided proof of the same (orders 3.1 and 3.2); and the order in respect of the two said insurance claims (order 3.3).
11. There is no dispute that the insurance claim in respect of the garage door has been pursued to its conclusion and that the sum received by the Respondent has been remitted to the new property factor for disbursement to the proprietors. In respect of the insurance claim for the stair window, the claim has been pursued to its conclusion by the Respondent, it was not an insured peril and no insurance monies were paid to the Respondent on behalf of the proprietors. In those circumstances, it would be wholly unreasonable to expect the Respondent to make payment of £460.00 from their own funds to the new property factor for disbursement to owners, as submitted by the Applicant.

### **Appeals**

12. **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.**

Ms. Susanne L. M. Tanner Q.C.  
Legal Member

2 November 2021