

# Housing and Property Chamber First-tier Tribunal for Scotland

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The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)  
Property Factors (Scotland) Act 2011 (“the Act”) Section 19

Statement of Reasons by the Tribunal in terms of the First-tier Tribunal for Scotland  
Housing and Property Chamber (Procedure) Regulations 2017 (“the regulations”) Section  
26

**Chamber Ref:** FTS/HPC/PF/20/2597

**Re.:** 54 Eden Court, Cupar, Fife, KY15 5US (“the property”)

## **The Parties:-**

Mrs Margaret Smith, 54 Eden Court, Cupar, Fife, KY15 5US (“**the homeowner**”) represented  
by Mr Gordon Smith, 1402 Kew Eye Apartments, Ealing Road, Brentford, TW8 0GA

FirstPort Property Services Scotland, 199 St Vincent Street, Glasgow, G2 5QD (“**the property  
factor**”)

**Tribunal Members:** - Simone Sweeney (Legal Member) Elaine Munroe (Ordinary Member)

## **Decision**

Having taken into account representations from the parties under section 26 (2) (b) of the  
Act, the Tribunal unanimously determined that no property factor enforcement order  
should be issued against the property factor.

## Background

1. Reference is made to the terms of the decision of the Tribunal of 3<sup>rd</sup> May 2021 in which the Tribunal determined that the property factor had failed to comply with sections 3 and 3.3 of the Code of Conduct for Property Factors (“the Code”) as required by section 14(5) of the Act.
2. Having made that determination, in terms of section 19(1) (b) of the Act, the Tribunal issued to parties a proposed Property Factor Enforcement Order (“PFEO”) on the same date.
3. The proposed PFEO was in the following terms,

*“Within 28 days from the date of issue of this order, for the property factor to:-*

- *revise its document, ‘Our Management Fees Explained’ to provide clarity on whether the accounts administration fee is included within the management fee and to provide an explanation of how the estate management fee is quantified.*
- *provide a copy of this revised document to the homeowner.*
- *provide a copy of this revised document to the Tribunal’s administration.*
- *provide to the homeowner payment of £150 by way of compensation for the time, preparation and inconvenience she has experienced in having to bring this application.”*

4. Parties were invited to make representations to that proposed PFEO in terms of section 19 (2) of the Act.
5. By email dated 7<sup>th</sup> June 2021, the property factor’s Credit Control manager, Steven J. Maxwell, wrote to the Tribunal’s administration in the following terms:- “I refer to the undernoted email issued to Mrs Smith this morning and would be obliged if you could update the case notes as a matter of course that the PFEO has been complied with.”
6. Attached to the email was a copy letter addressed to the homeowner from the property factor’s Roger Bodden dated 4<sup>th</sup> June 2021. The letter provided,

*“Further to the decision of the Housing and Property Chamber (First-tier Tribunal for Scotland), we enclose a cheque for £150 and a revised copy of the ‘Our Management Fees Explained’ document. Please accept our sincere apologies for the inconvenience you have experienced in resolving your concerns.”*

7. Also attached to the property factor’s email was a copy of the revised, ‘Our Management Fees Explained’ document.
8. The Tribunal sought the homeowner’s response to the property factor’s email.
9. By email dated, 10<sup>th</sup> June 2021, Mr Gordon Smith replied to the Tribunal on behalf of the homeowner. The email, insofar as is relevant, provided,

*“...my Mother is happy with the response. On behalf of her, can I thank the Tribunal and all involved for their time in listening to the issues.”*

#### **Reasons for decision**

10. The section of the document, ‘Our Management Fees Explained’ which caused concern to the homeowner was, specifically,

*“Our Management Fee is the fee you pay to FirstPort Scotland to cover the costs of a wide range of activities we carry out to manage your development. Historically, the total fee is split between Property Management and Accounts Administration as highlighted and explained at your annual Accounts and Budget meetings.”*

11. The revised version of this paragraph provided,

*“Our fee is the total amount you pay to FirstPort Scotland to cover the costs of a wide range of activities we carry out to manage your development. Historically, the total fee was split between Estate Management fees and Accounts Administration fees as highlighted in your annual Accounts. It was determined by McCarthy and Stone at handover of the development that these fees should be split as follows; Estate Management fee 70% Accounts Administration 30% From 01 May 2021 we have combined both the Estate Management fee*

*and Accounts Administration fee into one 'Management Fee', and all future financial communications from that date will refer only to one singular management fee."*

12. The property factor had provided a copy of the revised document to the homeowner and to the Tribunal.
13. The email from Mr Smith dated 8<sup>th</sup> June 2021 provided no indication that the homeowner was discontent with the revised version of the document.
14. The letter from the property factor of 4<sup>th</sup> June referred to a cheque for the value of £150 being enclosed.
15. The email from Mr Smith dated 8<sup>th</sup> June 2021 provided no indication that the homeowner had not received the cheque.
16. Section 19 (3) of the Act requires the Tribunal to take account of any representations from parties made under section 19 (2) of the Act.
17. Having taken account of the representations from both parties, the Tribunal does not consider a PFEO necessary.
18. The practical effect of making a PFEO would be that the property factor would likely issue a letter to the homeowner in similar terms to his letter of 4<sup>th</sup> June 2021. That letter already satisfies the terms of the Tribunal's proposed order.
19. In all the circumstances the Tribunal is also mindful of the overriding objective at regulation 2 of the 2017 Regulations. This provides:

*"The overriding objective*

*"2. —(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*

*(2) Dealing with the proceedings justly includes—*

*(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*

*(b) seeking informality and flexibility in proceedings;*

*(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including*

*assisting any party in the presentation of the party's case without advocating the course they should take;*

*(d) using the special expertise of the panel and the committees effectively; and*

*(e) avoiding delay, so far as compatible with the proper consideration of the issues."*

20. The practical effect of the Tribunal making a PFEO at this time would be for the property factor to duplicate the action already taken by the letter of 4<sup>th</sup> June 2021. The action required by the Tribunal's proposed order has now been executed by the property factor. By issuing a PFEO at this juncture, the Tribunal would not be meeting the requirements of the overriding objective at regulation 2 (ie. avoiding delay or dealing with proceedings in a manner which is proportionate to the complexity of the issues).
21. Accordingly, the Tribunal determines that there is no need to make a PFEO. The Tribunal makes no further order in this application.

## **Appeals**

22. 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 within 30 days of the date the decision was sent to them.

Legal chairing member, at Glasgow, 25<sup>th</sup> June 2021