

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)

Reference number: FTS/HPC/PF/20/1981

3 Mitre Road, Broomhill, Glasgow, G11 7AZ (“the Property”)

The Parties:

Alison Tait, 3 Mitre Road, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1979

1 Mitre Road, Glasgow, G11 7AZ (“the Property”)

The Parties:

Kieran Burns, 1 Mitre Road, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the
Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in cursive script, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1977

5 Mitre Road, Glasgow, G11 7AZ (“the Property”)

The Parties:

Patricia Barr, 5 Mitre Road, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the
Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1975

7 Mitre Road, Glasgow, G11 7AZ (“the Property”)

The Parties:

Elizabeth Gordon, 7 Mitre Road, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1974

1 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Jennifer McMillen, 1 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1973

2 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Barbara McGivern, 2 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1971

4 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

**Shira Kirkhope, 4 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)
Reference number:**

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the
Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar', written in a cursive style.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1970

5 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Jean McFarlane, 5 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar', written in a cursive style.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1969

6 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

**Mary Massey, 6 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)
Reference number:**

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the
Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1964

8 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Margaret McLean, 8 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar', written in a cursive style.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1962

10 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

James Cloughley, 10 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar', written in a cursive style.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1961

11 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Ian Buchanan, 11 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £250 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts and failure to reply to

enquiries and complaints within prompt timescales, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. However, they accepted the decision of the Tribunal in relation to “the communication issue” in Mr Buchanan’s case. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the accounts, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified. We have no dispute in regard to the proposal for the communication complaint via Mr Buchanan but again would be keen to have some understanding of how the sum of £250 was quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The

Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive compensation. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only two breaches of the Code had been established. However, the breaches could not be regarded as minor or trivial in nature. The breach of Section 2.5 related to several emails sent to the Property Factor over a number of months. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 2.5 or 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failures and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £250 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.



Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member

30 August 2021

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)

Reference number: FTS/HPC/PF/20/1960

12 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

David Fletcher, 12 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in cursive script, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1959

13 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Carolyn McGeoghegan, 13 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member

30 August 2021

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)

Reference number: FTS/HPC/PF/20/1958

14 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Sheila Sharp, 14 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1957

22 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Susan Duffy, 22 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1956

21 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Sheila Neilson, 21 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

Life Property Management (now known as James Gibb Residential Factors) Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

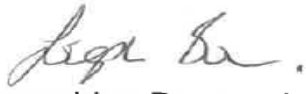
- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in cursive script, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:
Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1955

20 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Susan Beatt, 20 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.

A handwritten signature in black ink, appearing to read 'Josephine Bonnar'.

Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021

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)

Reference number: FTS/HPC/PF/20/1954

19 Mitre Court, Glasgow, G11 7AZ (“the Property”)

The Parties:

Nancy Beatt, 19 Mitre Court, Broomhill, Glasgow, G11 7AZ, (“the Homeowner”)

**Life Property Management (now known as James Gibb Residential Factors)
Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ (“the Property Factor”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 14 July 2021

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 14 July 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of

intimation of the PFEO.

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 Property Factors (Scotland) Act 2011 (“the 2011 Act”). The Tribunal’s decision was intimated to the parties on 22 July 2021. The Homeowner did not lodge any written representations. On 30 July 2021, the Property Factor notified the Tribunal that it intended to seek a review of the decision and was taking legal advice on the grounds for that request. On 17 August 2021, the Property Factor advised that they had decided to accept the decision of the Tribunal, for economic reasons. The Property Factor also advised that they intended to take steps to comply with the order. The Tribunal notified the parties that a PFEO had not yet been issued. In their response on 23 August 2021, the Property Factor submitted an email which stated, “given the circumstances surrounding the proposed £100 applied per applicant for late provision of accounts, we disagree with the position taken by the tribunal. There were clear reasons why we did not conclude the account, given it was a terminated contract and we had to conclude all aspects of accounting. In the circumstances we could not create an accrual on the account until the dispute regarding the Council tax was concluded. Had this not been a terminated contract, we could have applied an accrual while the cost remained in dispute. This decision taken in consideration of the Property Factors Act 2021 has consequences with financial reporting regulations. In addition, we would be keen to understand how the figure of £100 has been quantified”.

The Tribunal notes that the Property Factor’s representations challenge both the Tribunal’s decision that there had been a failure to comply with section 3.1 of the Code, and the amount of compensation proposed. No specific issue is taken with the proposal that the Property Factor should issue a letter of apology to the Homeowner.

Section 19(3) of the Act states, “If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal **must make a property factor enforcement order**”. Section 19(2)(b) states that, before the Tribunal issues a PFEO that it “allow the parties an opportunity to make representations” in relation to the proposed PFEO.

The first part of the Property Factor’s submission appears to relate to the Tribunal’s decision, rather than the proposed order. For the reasons outlined in detail in the written decision, the Tribunal was satisfied that the Property Factor had failed to comply with Section 3.1 of the Code. The basis for the decision was that the Tribunal was not satisfied, having regard to the explanation offered by the Property Factor, that they had demonstrated “a good reason” for the accounts being issued eight months later than the timescale stipulated in the Code. The Tribunal specifically considered and rejected the explanation put forward in relation to the Council tax dispute. The Tribunal remains satisfied that the Property Factor failed to comply with Section 3.1 of Code.

The second part of the submission challenges the amount of compensation proposed and takes issue with the fact that each Applicant is to receive this sum. The Tribunal notes that the content of a PFEO is at the discretion of the Tribunal. This discretion

extends to the amount of any compensation to be paid. In this case, the Tribunal noted that only one breach of the Code had been established. However, the breach could not be regarded as minor or trivial in nature. Section 3.1 stipulates that a Property Factor must make all financial information available within 3 months of termination of contract. The Property Factor did not issue the final accounts until 11 months after the end of the contract. It was also evident, from the Homeowner's evidence, that this caused inconvenience and difficulties for the new factor and the homeowners. It is also irrelevant that 18 other Homeowners submitted similar applications to the Tribunal. Each application is a separate matter, even if similar or related cases are heard together. Furthermore, the sum awarded is intended to compensate the Homeowner, rather than penalise the Property Factor. In any event, although the Property Factor questions the amount of compensation, it does not explain the basis for the challenge or what it considers ought to have been awarded.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Act in that it did not comply with Section 3.1 of the Code of Conduct for Property Factors. The Tribunal is satisfied that the Homeowner suffered inconvenience because of the Property Factor's failure and that it is appropriate that they be compensated for this inconvenience and receive a letter of apology.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

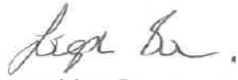
- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the delay in issuing the final accounts, within 28 days of intimation of the PFEO.

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.



Josephine Bonnar, Legal Member:

Josephine Bonnar, Legal Member
30 August 2021