

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)

FTS/HPC/PF/21/2397

Flat 1, 182 Slateford Road, Edinburgh (“the property”)

Parties:

Allan Moffat, Margaret Moffat, Braemar, Eaglesfield, Lockerbie (“The Homeowner”)

Melville Property Ltd, 7 West Georgie Park, Edinburgh (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Mary Lyden (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of 7 July 2022.

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 7 July 2022, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £1000 for their time, effort, and inconvenience,
- (2) The Tribunal order the Property Factor to provide the Homeowner with a detailed financial breakdown of charges made, and a description of the activities and works carried out, for the periods 2020/21 and 2021/22. This must include the annual charge for each of the services provided and, where the

service is provided by in-house staff, a breakdown of how the sum is calculated.

- (3) The Tribunal order the Property Factor to provide the Homeowner with a copy of all invoices relating to services carried out at the development by contractors and copies of all electricity bills for communal electricity, for the periods 2020/21 and 2021/22.
- (4) The Tribunal order the Property Factor to provide the Homeowner with full details of the services which were withdrawn on 1 August 2022 and a breakdown of how this withdrawal affected their monthly service charge.
- (5) The Tribunal order the Property Factor to provide the Homeowner with evidence of a development bank account and payments to this account from the owner of the 19 town houses.

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. Neither party lodged any written representations.

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**”.

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 3.3, 4.4 and 7.2 of the Code of Conduct for Property Factors. The Tribunal is also satisfied that they Property Factor has failed to carry out its property factor duties.

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 £1000 for their time, effort, and inconvenience,
- (2) The Tribunal order the Property Factor to provide the Homeowner with a detailed financial breakdown of charges made, and a description of the activities and works carried out, for the periods 2020/21 and 2021/22. This must include the annual charge for each of the services provided and, where the service is provided by in-house staff, a breakdown of how the sum is calculated.

- (3) The Tribunal order the Property Factor to provide the Homeowner with a copy of all invoices relating to services carried out at the development by contractors and copies of all electricity bills for communal electricity, for the periods 2020/21 and 2021/22.
- (4) The Tribunal order the Property Factor to provide the Homeowner with full details of the services which were withdrawn on 1 August 2022 and a breakdown of how this withdrawal affected their monthly service charge.
- (5) The Tribunal order the Property Factor to provide the Homeowner with evidence of a development bank account and payments to this account from the owner of the 19 town houses.

All 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
23 August 2022