

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)

Chamber Reference: FTS/HPC/PF/22/3985; FTS/HPC/PF/23/0884; FTS/HPC/PF/23/0885; FTS/HPC/PF/23/0888; FTS/HPC/PF/23/0889; FTS/HPC/PF/23/0890; FTS/HPC/PF/23/0891; and FTS/HPC/PF/23/1203

Property addresses: Property address: 28E, 30E, 28P, 28R, 30C, 30G, 30L, 30P and 30Q Diriebught Road, Inverness, IV2 3QY

The Parties

**Dr Robert Anderson
Mrs Lesley Leslie
Mrs Anita Bennis
Mr Jamie Stranraer-Mull
Mr Fred Kelly
Mr Malcolm Petrie
Mr Jeffrey Geary
Miss Mhairi Dalglish (“the Homeowners”)**

First Port Property Services, Queensway House, 11 Queensway, New Milton, Hampshire, BH25 5NR (“the Property Factor”)

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it. The decision of the Tribunal is unanimous.

Reasons for Decision

1. In the Tribunal’s decision of 21st August 2023, it proposed to make a PFEO as follows:

“Within 28 days of intimation to them of the PFEO, the Property Factor is required to:

1. Instruct an independent audit of the development account to ensure that the final account is accurate, the cost of the audit to be borne by the Property Factor;

2. Pay to the Homeowners the sum of £100 each for the failure to comply with paragraph 3.1 of the Code of Conduct for Property Factors (“the Code”);
 3. Pay to the Homeowner, Dr Anderson, an additional sum of £600 to compensate for the distress, frustration and inconvenience caused as a result of the Property Factor’s failure to comply with the Code.”
2. The Tribunal indicated that, prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act. The decision was issued on 21st August 2023.
 3. By representations dated 3rd September 2023, the Homeowners suggested changes to paragraph 1 of the proposed PFEO to influence the terms of reference of the audit.
 4. By email dated 19th September 2023, the Property Factor provided representations in response to the Homeowners.
 5. The Homeowner submitted further written representations, to which the Property Factor responded at the request of the Tribunal.
 6. Having taken the representations into account, and particularly the Property Factor’s representations that the accounts should be presented to the auditor in the format created by their system, the Tribunal decided not to amend the terms of the proposed PFEO.
 7. The Tribunal has now confirmed its decision made in terms of Section 19(1)(a) of the Act.

Property Factor Enforcement Order

8. The First-tier Tribunal hereby makes the following PFEO:

“Within 28 days of intimation to them of the PFEO, the Property Factor is required to:

1. Instruct an independent audit of the development account to ensure that the final account is accurate, the cost of the audit to be borne by the Property Factor;
2. Pay to the Homeowners the sum of £100 each for the failure to comply with paragraph 3.1 of the Code of Conduct for Property Factors (“the Code”);
3. Pay to the Homeowner, Dr Anderson, an additional sum of £600 to compensate for the distress, frustration and inconvenience caused as a result of the Property Factor’s failure to comply with the Code.”

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member and Chairperson

9th October 2023