

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 Ref: FTS/HPC/PF/21/0425 FTS/HPC/PF/21/0379 FTS/HPC/PF/21/0403
FTS/HPC/PF/21/0398 FTS/HPC/PF/21/0424 FTS/HPC/PF/21/0510**

The Properties:

**37B Garry Drive, Foxbar, Paisley, PA2 9BX
37A Garry Drive, Foxbar, Paisley, PA2 9BX
41D Garry Drive, Foxbar, Paisley, PA2 9BX
35E Garry Drive, Foxbar, Paisley, PA2 9BX
37D Garry Drive, Foxbar, Paisley, PA2 9BX
35D Garry Drive, Foxbar, Paisley, PA2 9BX**

(“The Properties”)

The Parties:-

**Michelle Devoy, residing at 37B Garry Drive, Foxbar, Paisley, PA2 9BX
Diane Burgess, residing at 37A Garry Drive, Foxbar, Paisley, PA2 9BX
Helen Coulter, residing at 41D Garry Drive, Foxbar, Paisley, PA2 9BX
Elbarsri Simari, residing at 35E Garry Drive, Foxbar, Paisley, PA2 9BX
Catherine Urquhart, residing at 37D Garry Drive, Foxbar, Paisley, PA2 9BX
Irina Delibozova residing at 35D Garry Drive, Foxbar, Paisley, PA2 9BX**

(“the Applicants”)

Miller Property Management Ltd, a company incorporated under the Companies Acts and having a place of business at Suite 2/2, Waverley House, Caird Park, Hamilton, ML3 0QA

(“The Factor”)

Tribunal Members:

**Graham Harding (Legal Member)
Robert Buchan (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 22 April 2022.

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

In the Tribunal's decision of 22 April 2022, it proposed to make a PFEO as follows:

- (1) The Factor shall prepare a schedule of proposed staff training by an outside third party not employed by the Factor to ensure that all staff are fully aware of the respondent's obligations:
to have detailed knowledge of the terms of the Code of Practice for Property Factors and to ensure that they comply with it;
to comply with their duties arising from the Deed of Conditions;
to ensure adequate customer relations and to communicate effectively;
to ensure all staff are fully aware of the respondent's complaints procedure and when to implement this;
including details of the provider of the training and timescales for the provision of delivery of the training to be provided to the Tribunal for their approval.
- (2) The Factor must issue an invoice to each Applicant (with the exception of Ms Burgess and Ms Urquhart) removing the apportionment of outstanding debt amounting to £189.00 per property.
- (3) The Factor must organise a meeting with all owners at the development with an agenda circulated in advance and with the intention of resolving all outstanding issues and agreeing the future management of the development.
- (4) The Factor shall refer itself to the Information Commissioner's Office for it to determine if the Factor was in breach of General Data Protection Regulations by disclosing the non-paying owners' names, addresses and sums owed to the other owners and report the ICO findings to the Tribunal and the non-paying owners on receipt.

The Factor shall confirm to the Tribunal that it has complied with the foregoing in writing within a period of 28 days from the date of service of the PFEO.

The Tribunal indicated that prior to making a property factor enforcement order, 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 Tribunal's decision was intimated to the parties on 22 April 2022.

By correspondence dated 22 April 2022 the Factor requested that the Tribunal review its decision.

By its decision dated 23 May 2022 the Tribunal refused the Factor's request for a review on the grounds that it was wholly without merit.

The Tribunal confirms its decision made in terms of section 19(1)(a) of the Act. The Tribunal agreed that it would be appropriate to make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (5) The Factor shall prepare a schedule of proposed staff training by an outside third party not employed by the Factor to ensure that all staff are fully aware of the respondent's obligations:
 - to have detailed knowledge of the terms of the Code of Practice for Property Factors and to ensure that they comply with it;
 - to comply with their duties arising from the Deed of Conditions;
 - to ensure adequate customer relations and to communicate effectively;
 - to ensure all staff are fully aware of the respondent's complaints procedure and when to implement this;
 - including details of the provider of the training and timescales for the provision of delivery of the training to be provided to the Tribunal for their approval.
- (6) The Factor must issue an invoice to each Applicant (with the exception of Ms Burgess and Ms Urquhart) removing the apportionment of outstanding debt amounting to £189.00 per property.
- (7) The Factor must organise a meeting with all owners at the development with an agenda circulated in advance and with the intention of resolving all outstanding issues and agreeing the future management of the development.
- (8) The Factor shall refer itself to the Information Commissioner's Office for it to determine if the Factor was in breach of General Data Protection Regulations by disclosing the non-paying owners' names, addresses and sums owed to the other owners and report the ICO findings to the Tribunal and the non-paying owners on receipt.

The Factor shall confirm to the Tribunal that it has complied with the foregoing in writing within a period of 28 days from the date of service 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 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.



Graham Harding

Legal Member and Chair

3 August 2022

Date