

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Decision Property Factors (Scotland) Act 2011: Section 19.**

**Reference number: FTS/HPC/PF/21/2566**

**Re: Flat 13, 3 Braid Avenue, Cardross, Argyll and Bute, G82 5QF (“the Property”)**

**The Parties:**

**Mr Alan Ferguson, Flat 13, 3 Braid Avenue, Cardross, Argyll and Bute, G82 5QF  
 (“the Applicant”)**

**Speirs Gumley Property Management, Red Tree Magenta, 270 Glasgow Road,  
Glasgow, G73 1UZ  
 (“the Respondent”)**

**Tribunal Members:**

**Martin J. McAllister, Solicitor, (Legal Member)**

**Elaine Munroe, (Ordinary Member)**

**(the “tribunal”)**

### **1. Background**

This is an application made by the Applicant in respect of alleged breaches of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”) and failure to comply with the property factor’s duties in terms of the Act.

On 24<sup>th</sup> March 2022, the Tribunal made a Decision which was issued to the parties on 29<sup>th</sup> March 2022. A proposed Property Factor Enforcement Order was issued to the parties on the same date.

### **2. Proposed Property Enforcement Order**

**The Respondent is to pay compensation of £800 to the Applicant within twenty-eight days of service of the Property Factor Enforcement Order.**

### 3. Representations

The terms of the proposed factor enforcement order were intimated to the parties who were invited to make representations.

The Respondent made no representations.

The Applicant submitted an email to the Tribunal on 12<sup>th</sup> April 2022 in which he stated that the resolution he was seeking was that the Respondent *“be ordered to identify all developments currently under their management, which have a provision for a simple majority vote in their Deed of Conditions and notify said owners they have been misled and that requested changes to common parts may have been frustrated as a result.”*

### 4. Determination on the making of a property factor enforcement order.

Section 19 (3) of the Property Factors (Scotland) Act 2011 states:

“If the 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’s duties or, as the case may be, to comply with the section 14 duty, the Tribunal must make a property factor enforcement order.”

The tribunal considered the representations made by the Applicant. A property factor enforcement order can only be made in relation to an application which the Tribunal has before it. The Applicant sought a determination in respect of the Respondent’s compliance with the Code and the property factor’s duties in respect of the Property. The tribunal determined that it could not make an order relating to other developments managed by the Respondent and in relation to homeowners other than the Applicant.

The tribunal determined that it was appropriate to make a property factor enforcement order in terms of the proposed property factor enforcement order and made the order as follows:

**The Respondent is to pay compensation of £800 to the Applicant within twenty-eight days of service of the Property Factor Enforcement Order.**

### 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.**

Martin J. McAllister, Legal Member  
of the First-tier Tribunal for Scotland  
31<sup>st</sup> May 2022