

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Property Factors (Scotland) Act 2011 ("the Act") and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Reference number: FTS/HPC/PF/23/1224

Property at Rowardennan Lodges, Rowardennan, Stirlingshire, G63 0AR ("the Property")

The Parties:

Mr. Adrian McInally residing at 49, Academy Place, Bathgate, West Lothian, EH48 1AS ("the Homeowner")

Blythswood Property Management, Munro House, Quarrywood Court, Livingston, EH54 6AX ("the Property Factor")

Tribunal Members

Karen Moore (Chairperson) Carol Jones (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") made the Property Factor Enforcement Order (PFEKO) as issued by separate Notice.

Background

1. By applications received between 2 April 2023 and 6 June 2023 ("the Applications") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the Code of Conduct for Property Factors 2012 ("the 2012 Code"), the Code of Conduct for Property Factors 2021 ("the 2021 Code") and had failed to comply with the Property Factor Duties.

2. By Decision dated 25 July 2024, the Tribunal determined that the Property Factor had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2012 at Financial Obligations at Section 3.6a and had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at Financial Obligations at Section 3.2.
1. The Tribunal proposed the following Property Factor Enforcement Order (PFEO) and gave notice of this to the Parties in terms of Section 19(2) of the Act: "*No later than 26 August 2024, the Property Factor must at its own cost and expense 1. refund to the Homeowner his share of the reserve fund and to pay to him, from their own funds, the sum of £250.00 in lieu of interest and in compensation for the inconvenience which the Property Factor has caused him in regard to this aspect of his complaint; 2. send to the utility supplier the letter which it had previously agreed to send, and, before doing so, to consult with the Homeowner to ensure that the letter is worded in a way which satisfies the Homeowner's concerns and 3. Evidence to the Tribunal that items 1 and 2 above have been carried out*"

Hearing

2. Both Parties made written representations to the Tribunal and so a Hearing in respect of the terms of the Proposed PFEO took place on 24 January 2025 at 10.00 by telephone conference call. Mr. McInally, the Homeowner took part and was not represented. The Property Factor was represented by Ms Hales.
3. Neither Party had understood that the Proposed PFEO was not a formal order on which they must take action. The Tribunal explained that the Hearing was the forum to discuss the PFEO wording.
4. The Parties agreed that paragraph 1 of the Proposed PFEO had been complied with and the monies had been paid to Mr. McInally.
5. With regard to paragraph 2 of the Proposed PFEO, Ms Hales confirmed that her letter of 7 October 2024 addressed to Scottish Power attempted to comply with this part of the Proposed PFEO. Mr. McInally disputed that this letter sufficed and met the requirements of the Proposed PFEO and stressed that the letter was imbalanced in respect of a third party landowner. He stressed that the letter was factually incorrect. Ms Hales accepted that she had taken instruction from a third party who was the "account holder" for the main electricity supply.

6. The Parties were agreed on the facts of how the electricity was supplied to Mr. McInally's lodge, that it was supplied by Scottish Power to a property outwith the lodge, that the supply was sub-metered to all of the lodges in the Rowardennan complex, that meter readings are taken by a fellow lodge owner and that electricity use is apportioned from the main account and invoiced by the Property Factor applying VAT at 20%.
7. The Tribunal heard the Parties on their respective views and adjourned the Hearing briefly to discuss and reconvened the Hearing to advise of its intention in respect of the PFEO.
8. The Tribunal advised the Parties that it recognised that the dispute between the Parties was whether the electricity supply to the lodge attracted VAT at 5% or 20%, exacerbated further by the Property Factor's refusal or reluctance to write to Scottish Power on behalf of Mr. McInally as Homeowner without interference by the third party landowner. The Tribunal advised that, having found in its Decision of 25 July 2024 that the Property Factor was influenced by the third party landowner in a possible conflict of interest with Mr. McInally, the purpose of the PFEO was to have the Property Factor write a factual letter on Mr. McInally's behalf to Scottish Power for a definitive answer on the VAT rate. Therefore, the Tribunal advised that it would make a PFEO and provide a template letter for the Property Factor to issue.

Decision of the Tribunal.

9. For the reasons set out above, the Tribunal issued the PFEO by separate Notice of even date herewith.

Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by this 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 Upper Tribunal. That party must seek permission to appeal from the Upper Tribunal within 14 days of the date this decision was sent to them.



Legal Member/Chair

Date 31 January 2025

