

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 23(1)**

Chamber Ref: FTS/HPC/PF/22/3982 and FTS/HPC/PF/4023

Flat 2/3, The Pirns, King Street, Galashiels TD1 1PX ("the Property")

The Parties:

John Rankine, Morva, 9 Buccleuch Street, Innerleithen, EH44 6LA ("the Homeowner")

James Gibb Residential Factors, Bellahouston Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ ("the Property Factor")

The Tribunal: -

Melanie Barbour (Legal Member)

David Godfrey (Ordinary Member)

DECISION

The Tribunal determined that the Property Factor has failed to comply with the Property Factor Enforcement Order ("PFEO") dated 22 February 2024. The decision of the Tribunal is unanimous.

BACKGROUND

1. On 22 February 2024, the Tribunal issued a PFEO in the following terms: -

1. Within a period of two months from the date of the PFEO the Factor must:

- a. Set up a meeting inviting all owners of properties in the development at the Pirns, King Street, Galashiels ("the development") to consider
 - i. the terms of the development schedule,
 - ii. to agree what items of communal property will be defined in the areas of responsibility or the factors.
 - iii. to agree the frequency in which it will carry out property inspections and carryout communal maintenance works.
 - iv. to consider and agree the level of delegated authority required and amend if appropriate.
 - v. to consider and agree if a float is required and the value of it.
 - vi. to consider and agree how often the factors will hold an owners' meeting and to determine the date of the first owner's meeting.

b. To consider and agree with owners: -

- i. what outstanding repairs are required to be carried out to the development having regard to the findings of the F3 Survey or any further survey carried out for the development.

2. Within a period of three months from the date of the PFEO the Factor must:

- a. Seek agreement with owners of properties in the development at the Pirns, King Street, Galashiels about the timetable for works that will be done and to draw up a programme of works which shall set out all repair and maintenance works to be carried out and a timetable when all works will be commenced and a proposed date when each work will be completed.
 - b. Provide quotes to the owners for the costs of all proposed works; and
 - c. Ingather all costs from owners and commence works in terms of the agreed timetable of proposed works; failing which report to all owners that the works cannot commence due to lack of agreement/ and or funds, and to arrange to hold a further owner's meeting to discuss alternative progress.
3. Within a period of three months from the date of the PFEO the Factor must pay the homeowner compensation of ONE THOUSAND TWO HUNDRED POUNDS (£1,200.00) STERLING for the inconvenience suffered.
 4. Provide to the Tribunal written confirmation that items (1) to (3) have been completed.

2. The PFEO was issued to the parties.
3. On 23 May 2024, the Property Factor sent an email to the Tribunal stating that they had complied with the PFEO. They advised that they had made the payment of £1,200 to the Homeowner; and an owners' meeting was arranged by the Property Factor in March and held on 12 April 2024. They attached the Agenda and Minutes. They considered that they had complied with the PFEO.
4. On 22 May 2024 the Homeowner cc. ed the tribunal into an email to Christine Grahame MSP. Attached to that email was a submission on the Homeowner's assessment of the PFEO. On a number of issues, the Homeowner set out why he did not consider that the PFEO had been complied with.
5. In view of the detail of each party's position. A direction was issued giving either party the opportunity to respond to the other's compliance submission. The Homeowner provided a response on 2 July 2024. The Property Factor provided a response on 2 July 2024. The parties provided various documents with their responses.
6. Reference is made to the full terms of those four responses and the accompanying documentation.

ASSESSMENT AND REASONS FOR DECISION

PFEO Part 1

7. The Homeowner did not consider that a meeting had taken place as required by the PFEO. The Property Factor's agenda referred to the following three matters "development schedule; repair apportionment split; and development works - roof update F3/ Cleland Roofing. Part 1 of the PFEO sets out each matter to be considered at the meeting. The Homeowner did not consider that Part 1 had been complied with. He referred to the note taken by his partner of

the meeting. He noted what was not discussed. He also noted that the Property Factor had not implemented changes to the development schedule as at the time of writing.

8. In the Property Factor's response of 2 July 2024, they attached the agenda and the minute of the meeting. They state in their response that they discussed the frequency of property inspections. The tribunal finds no reference in the minute to this being discussed.
9. There also does not appear to have been any discussion about the frequency in which they would carry out communal maintenance works.
10. The Homeowner advised that the development schedule was discussed but the Property Factor was not prepared to update it at that time.
11. Further, the minutes do not show that the Property Factor and owners discussed how often an owner's meeting would be held and whether a date was fixed for the first or next owner's meeting. The Property Factor makes no reference to this in their response.
12. In terms of part 1 (b) of the PFEO, the Homeowner did not consider that there had been any progress in terms of moving forward with the outstanding repairs.
13. The Property Factor in their response of 2 July advised that the condition of the building was discussed, and that F3 Surveyors had previously been asked to carry out a tender for roof work and a copy of their tender report was attached. That report was dated 5 May 2023. In addition, the Property Factors also submitted a quote from Cleland Roofing dated 14 December 2023; and a second quote from Cleland Roofing dated 20 April 2024. They do not explain what these quotes relate to.
14. The terms of the part 1 (b) PFEO set out that what was to be discussed was "*what outstanding repairs are required to be carried out to the development having regard to the findings of the F3 Survey or any further survey carried out for the development.*"

15. As set out in the Tribunal's decision, at paragraph 30 "A building survey report was carried out by F3 Surveyors on 6 May 2022. It set out recommended works including immediate/short-term works; medium terms work; and longer-term works. The recommended repair costs total £82, 524. Out of that total, £60,444 were red costs which suggests that they should be carried out in the short term."
16. There was no reference in the minutes or the agenda to that earlier report. It is not apparent if all matters in that report were also discussed. It is not clear to us that the F3 survey report submitted by the Property Factor in July 2024 was prepared having regard to the full terms of the earlier survey report.
17. The PFEO also refers to the requirement to discuss what outstanding repairs are required having regard to that F3 report or any other further survey. The Homeowner's complaints relate to various and wide-ranging outstanding issues relating to the development and not only to roof works.
18. In our decision at paragraph 223 when considering a proposed PFEO we record that "We would confirm that the application appears to have been made in large part due to issues arising from outstanding maintenance and repair of the roof; stairwell, outbuildings; water ingress; and maintenance of gardening areas. There are also issues involving communication, and changes to the development schedule without consultation. The lack of any programme of works to address repairs has led to further concern."
19. The tribunal expected that the meeting would be an opportunity for all repairs to be discussed. We did not expect it to be restricted to "Development Works – roof update F3-Cleland Roofing".
20. From the information presented by the Property Factor themselves, we find that they did not address all matters raised by the Homeowner in his application and all matters to be addressed having regard to the terms of the PFEO.
21. As noted in the Homeowner's most recent response he is still concerned about any lack of progress with outstanding works which he considers have health and safety implications, the meeting should have discussed those outstanding

repair and maintenance matters together with the other issues raised by the Homeowner, the F3 report of 6 May 2022, and any other repair and maintenance matter raised by any other owners at the meeting.

22. We find that the Property Factor took a restrictive approach in fixing the agenda and failed to discuss all repair and maintenance matters with the owners at the meeting. This is in addition to their failure to discuss the other matters already mentioned.

23. We would also have expected to be set out (preferably in the minute of the meeting) but at least, in their response to the tribunal a note confirming that all matters of repair and maintenance were discussed and agreed with owners. There is no evidence that any such wide-ranging discussion took place, or that owners agreed that these were all the repair works which were outstanding.

24. Further, we do not find the submission of the Agenda, the Minute, the F3 Survey of 5 May 2023, and two quotes from Cleland, to be particularly clear, or enlightening if they are intended as a means of confirming what had been agreed between the Property Factor and the owners. The lack of clear information, and a failure to communicate with owners has been an ongoing concern of the Homeowner. The tribunal did not find the Property Factor's communication under Part 1 clear or understandable.

25. We find that the Property Factors has failed to comply with Part 1 of the PFEO

PFEO Part 2

26. The Homeowner does not consider that Part 2 had been complied with. The Homeowner advised that the owners have received no programme of works or timeline for the associated projects from James Gibb and no key stages to show progress, issues etc. He noted that one of the owners had become the point of contact for contractors, with contractors providing quotes to him and not the Property Factor. He advised that there had been no agreed timetable of works from the Property Factor and there had been no progress on major projects.

There had not been any issue with ingathering costs, and he did not foresee any issues with owners contributing to costs. In effect the Homeowner's position was that nothing had been done by the Property Factors to progress Part 2 of the PFEO.

27. The Property Factor did not address Part 2 in their compliance response dated 23 May 2024. In their response of 2 July 2024, they advised that the gathering of funds had not yet commenced as the owners wished for a structural engineer to assess the damp areas which had been exposed on the second level. They had provided a cost for structural engineers to attend and were waiting for the owners' instruction. They had advised that there were two options in terms of gathering funds, treating the roof works as one project and the potential damp works as a second project; or treating them both as one larger project'; they advised that one of the owners was going to discuss this with the owners and then he would instruct the Property Factor further.
28. We consider that the Property Factor has not complied with Part 2 of the PFEO. The overriding concern set out in the Homeowner's complaint was the complete failure by the Property Factor to take any action and progress maintenance and repair works. There had been some surveys undertaken when the application was made, the Homeowner referred to them in the application, but notably nothing in terms of repair work had been carried out following on from those surveys. Of concern, that pattern appears to have been replicated this year since the PFEO was issued. Put short there has been no progress towards actual repair works being done after the F3 survey and quotes were obtained.
29. Turning to the Property Factors' explanation for what has happened under Part 2. We do not accept that a secondary issue of damp should lead to further inaction by the Property Factor in terms of the issues which had been discussed and agreed by the owners at the Meeting. The PFEO was issued in February 2024. The Property Factor has submitted one survey report by F3 and two quotes for roof works. The Minutes of the meeting state that "*agreed at meeting to proceed with F3s involvement*" and "*JG to instruct*". The Minutes refer to a quote from Cleland Roofing which had been sent to one owner and would be sent to them. We presume that this might be one of the quotes they submitted

to the tribunal on 2 July 2024. They submitted a second quote in their email of 2 July 2024. We do not know what is happening with those two quotes.

30. The Minutes state that "*internal damp - owners advised they wish for a surveyor to have a look at this structure - F3 can obtain a costing for this from McColl's.*" We have not been advised if this costing has been obtained as of 2 July 2024.
31. We do not understand why Part 2 could not have been implemented in terms of what had been agreed in relation to the F3/Cleland's Roofing tender and quotes. While further works may have become part of any programme of works, the Property Factor appears to have failed to implement any part of Part 2, other than to provide quotes for some work, which quotes may have in fact been obtained due to the efforts of one of the other owners. We note that there is no proposed timetable for any works and no proposed programme of works; we do not know if any quote for damp has now been obtained (having been requested at the Owner's meeting on 12 April 2024); we note that there has been no attempt to start ingathering costs, even though the owners have agreed to proceed with certain works.
32. Importantly, Part 2 contained a fall-back provision, where Part 2 had not been implemented due to lack of agreement or funds then the Property Factor was to arrange a further owners meeting to discuss alternative progress. Neither party has advised us that this has set up and/or held. We assume that none has, and we find therefore that also to be a compliance failure by the Property Factor.
33. We find that Part 2 of the PFEO has not been complied with.

PFEO Part 3

34. This involved payment of compensation to the Homeowner.
35. We find that Part 3 has been complied with.

PFE0 Part 4.

36. The correspondence from the Property Factor shows that Parts (1) and (2) have not been completed.

37. We find that Part 4 has not been complied with.

DECISION

38. The Tribunal determines that the Property Factor has failed to comply with Parts 1, 2 and 4 of the PFE0 dated 22 February 2024.

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.