



PROPERTY FACTOR ENFORCEMENT ORDER

Issued by the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 ("the 2011 Act")

Chamber Ref: FTS/HPC/PF/24/2715

Flat 33, 1 Donaldson Drive, Edinburgh, EH12 5FA ("the Property")

Parties:

Dewar Place Lane Ltd, Flat 33, 1 Donaldson Drive, Edinburgh, EH12 5FA ("the Applicant")

FirstPort Property Services Ltd; FirstPort Property Services Scotland Ltd, PO Box 7730, New Milton, BH25 9EP ("the Respondents")

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Dickson (Ordinary Member)

NOTICE TO THE PARTIES

1. The Tribunal, having made such enquiries as it saw fit for the purpose of determining whether the property factor has complied with the Code of Conduct for Property Factors(2021), in terms of the Property Factors (Scotland) Act 2011 ("the 2011 Act") and determined that the property factor had failed to comply with Sections 3.1 and 3.2 of the Code of Conduct, all as stated in their Decision dated 12 May 2025.
2. The Tribunal intimated to parties, in terms of their said Decision, that they proposed to make a Property Factor Enforcement Order ("PFEO"). The terms of which were detailed in their Notice of Proposed PFEO, a copy of which was issued to parties, together with the Decision. The parties were given notice that they should ensure that any written representations they wished to make under Section 19(2)(b) of the 2011 Act reached the Chamber by no later than 14 days after the date that the Decision and Notice of Proposed PFEO was issued to them.

3. On 15 May 2025, the Homeowner submitted representations by way of two separate emails, seeking that the terms of the proposed PFEO be revised. The first email clarified that, if the Property Factor was to produce fresh invoices, there should also be corresponding credit notes issued in respect of the previous invoices issued, in order to avoid the Homeowner being 'double-charged'. The Homeowner was also disappointed that the Tribunal had not ordered the Property Factor to pay a financial penalty in respect of their "dishonest actions in trying to avoid issuing valid invoices", nor a contribution to the Homeowner's expenses in respect of the additional work caused and delays in the matter, caused by the Property Factors late submissions throughout the process. The Homeowner considered that the sum of £500 would be appropriate and made reference to their previous email dated 28 January 2025 in this regard. The second email sought to require that the Property Factor be ordered to produce a valid Certificate of Appointment (or correspondence concerning this matter) in order that it could be established which of the FirstPort group of companies is the appointed Property Factor of the development.
4. No representations had been submitted by the Property Factor within the 14 day time-limit specified in paragraph 2 above or when the Tribunal considered the Homeowner's representations which had been submitted timeously. Subsequently, on receipt of representations from the Property Factor by email dated 16 June 2025, the Tribunal reviewed same, noted that there was no explanation for their late lodging and declined to consider same further. The Property Factor had been issued with the proposed PFEO and Decision on 12 May 2025. The 14 day time limit was clearly explained in said documentation and expired on 27 May 2025 but the representations were not received until almost three weeks after that.
5. Section 19(3) of the 2011 Act requires the Tribunal to make a PFEO where they have determined that the Property Factor has failed to carry out property factor duties or comply with the Code of Conduct.
6. The Tribunal had considered the matter further, in view of the Homeowner's representations. It was the view of the Tribunal that the request by the Homeowner for the Property Factor to submit a Certificate of Appointment (or related correspondence) had not formed part of the original application but had been something that the Homeowner had sought to introduce at a later date, as the application progressed. The Property Factor had responded on the matter in their email dated 10 March 2025, explaining that they did not hold a copy of their Certificate of Appointment and that it was the responsibility of the POACC to provide this. The Property Factor had also explained how their appointment as Property Factor had come about. The Tribunal had made reference to this particular matter in their Decision (under the Heading "Further Procedure"), specifically paragraphs numbered 26,28,29 and 30. The Tribunal's view is that the Property Factor is the Respondent's Property Factor in terms of this application and as specified in the Property Factor's Written Statement of Services, which also makes specific reference to the FirstPort group of companies. The Tribunal did understand the confusion around this

matter, however, given that there is reference made in the documentation produced by the Property Factor to the various different limited companies within the group. It was also noted by the Tribunal that the Tribunal paperwork itself had "First Port Property Services Ltd" stated as the Respondent, although the application brought by the Applicant had specified "FirstPort Property Services Scotland Ltd" as the Respondent. This appeared to have been an administrative oversight. Given that paragraph 7 of the Respondent's Written Statement of Services, headed "Regulatory Status and Associations for Scotland" names FirstPort Property Services Scotland Ltd as holding the Property Factor Registration in Scotland and being a member of the Property Managers' Association Scotland, the Tribunal considered it appropriate to avoid further confusion to amend the designation of the Respondent on the Tribunal Case Management System to include the name of both linked limited companies and to include both in the final PFEO.

7. The Tribunal did not consider that the Homeowner had sought any financial penalty against the Property Factor in terms of the original application, nor a contribution towards their expenses. As to the Homeowner's representations in respect of the Property Factor's "dishonest actions", the Tribunal wishes to clarify that, although this is the Homeowner's view, the Tribunal did not make any findings of dishonesty in terms of their Decision. Similarly, the Homeowner's request for a contribution towards their expenses was not considered part of the application and the Homeowner had not accordingly been asked to quantify this. Rather, this formed part of the Homeowner's overall 'settlement proposal' to the Property Factor which was put forward in the Homeowner's email dated 28 January 2025. The Tribunal made reference to this email in paragraph 23 of their Decision.
8. However, having considered the remaining request of the Homeowner for credit notes or similar to be produced by the Property Factor in the event that they do issue fresh invoices to the Homeowner, the Tribunal is of the view that this would add clarity to paragraph 1 of the proposed PFEO and have accordingly decided to vary the terms of the proposed PFEO, as below.
9. The Tribunal has therefore determined to issue the following Property Factor Enforcement Order ("PFEO"):-

"The Property Factor is ordered to provide the Homeowner with either:-

- (1) *Valid, individual VAT invoices, addressed to the Homeowner, containing a valid VAT registration number in respect of the annual management fees plus VAT of 20% thereon that they have charged the Homeowner in the years since 2021, together with the Property Factor's written confirmation that this will be done on an ongoing basis and credit notes (or similar) issued to the Homeowner in respect of the original invoices, in order that the original invoices are cancelled and the Homeowner is not 'double-charged'; or*

- (2) *Written confirmation from HMRC that the Property Factor's existing invoicing and accounting practices to the Homeowner (being a VAT-registered limited company) in respect of the VAT of 20% on their management fees that they have charged the Homeowner are compliant with applicable VAT legislation/regulations; or*
- (3) *Written confirmation that they will now accept the Homeowner adopting the practice of "self-billing" in respect of the Property Factor's management fees plus VAT thereon at the rate of 20%, backdated to 2021, and on an ongoing basis.*

The Property Factor shall provide evidence to the Tribunal of compliance with Paragraph 1 within a period of 35 days of intimation of issue of the PFEO."

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

Legal Member/Chair

18 June 2025
Date