



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/24/1791

6/1, 339 Glasgow Harbour Terraces, Glasgow, G11 6BH ("the Property")

Parties:

Mr John Carruthers, 6/1, 339 Glasgow Harbour Terraces, Glasgow, G11 6BH ("the Applicant") - Homeowner

Hacking & Paterson Management Services, 1 Newton Terrace, Glasgow, G3 7PL ("the Respondent") - Property Factor

Tribunal Members:

Nicola Weir (Legal Member) and Nick Allan (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 Overarching Standards of Practice 1, 2 and 6 and Sections 2.4,2.7,6.1 and 6.4 of the Code of Conduct, all as stated in their Decision dated 11 February 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 9 May 2025, the Property Factor submitted representations confirming that they were not of appealing the Decision itself but were seeking that the terms of the proposed PSEO be revised. This was on the basis that they did not consider they had the delegated authority from the collective homeowners to comply with the terms of, in particular, paragraphs 1 and 2 of the proposed PFEO. They lodged a copy of a solicitors' letter in support of their representations. Their solicitor referred to their authorisation to act as stemming from the "overriding deed of conditions"

4. On 14 May 2025, the Homeowner submitted his written representations in response and attached a copy of the Property Factor's current written statement or services which sets out their "authority to act" and the services they provide to the homeowners, including in respect of common repairs. It was noted that their authority to act was stated to be through "Custom and Practice" as opposed to in accordance with a deed of conditions. The Homeowner's position was that the Property Factor had not seemingly required to seek authority previously from the collective homeowners or the homeowners' association "GHOA" in respect of previous or ongoing works instructed in respect of water ingress into his property from the common parts but if they did now require such authority, there was a mechanism in place for them to do so and he did not understand why this had not already been done. The Homeowner also updated the Tribunal to advise that since the date of the Evidential Hearing (11 February 2025), no further progress had been made in respect of the necessary works.

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. It was noted by the Tribunal that the Property Factor had not previously raised in these proceedings the issue of any lack of authority in respect of the works requiring to be done, nor put this forward as an explanation for the delays experienced by the Homeowner in having the issues affecting his Property resolved.

7. However, having considered the matter further, and having taken cognisance of both parties' representations, the Tribunal decided to vary paragraphs 1 and 2 of the proposed PFEO and issue the following Property Factor Enforcement Order ("PFEO"):-

"1. The Property Factor is ordered to:-

- (i) *comply with the terms of their current Terms of Service and Delivery Standards, in particular Section 2 (Authority to Act) and Section 3 (Services Provided) in respect of carrying out their "Core Factoring Services" including "arranging and administering the maintenance of common property by appointing contractors and service suppliers" in connection with all further necessary works required to resolve the water*

- ingress into the main bedroom, the spare bedroom and the kitchen of the Homeowner's Property and the rectification of all damage caused to the Homeowner's Property by the water ingress or remedial works;*
- (ii) *to include, if considered necessary by the Property Factor, consulting with and seeking authority from the collective group of homeowners to the proposed works or any part of them;*
- with a view to said works being completed satisfactorily within a period of 6 months from the date of issue of the PFEO;*
2. *The Property Factor is ordered to obtain from Allied Surveyors or any other third-party contractor they have instructed in the matter, a written specification of the further works to be undertaken in terms of paragraph 1 above and the estimated timeframe for each stage of the works being completed, and to provide the Homeowner with a copy of same, all within 30 days of the date of issue of the PFEO;*
 3. *The Property Factor is ordered to provide regular updates to the Homeowner, by way of meeting or otherwise, on the progress of the works specified in paragraph 1 above on an ongoing basis until all works are completed and the water ingress issues resolved; said updates to be provided at least once per month, with the Property Factor providing the Homeowner with written details of their proposed schedule and method of providing updates, all within 30 days of the date of issue of the PFEO.*
 4. *The Property Factor is ordered to pay the Homeowner the sum of £750 from its own funds in respect of his time and efforts, and the distress, worry and inconvenience caused to the Homeowner as a consequence of the Property Factor's breaches of the Code; said sum to be paid to the Homeowner within 30 days of the date of issue of the PFEO.*
 5. *The Property Factor shall provide evidence to the Tribunal of compliance with paragraphs 2 to 5 of the PFEO 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

29 May 2025
Date