

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Proposed Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(2)

Chamber Ref: FTS/HPC/PF/22/0871
FTS/HPC/PF/22/0874
FTS/HPC/PF/22/0932
FTS/HPC/PF/22/0933
FTS/HPC/PF/22/2390

Re: Properties at Lauderdale Mansions, 44 Lauderdale Gardens and 47 Novar Drive, Hyndland Glasgow (“the Property”)

Parties:

Mrs Pauline Bourhill, Apartment 3/2, 44 Lauderdale Gardens, Lauderdale Mansions, Hyndland, Glasgow G12 9QT
Professor Sheila McLean, 47 Novar Drive, Hyndland, Glasgow G12 9UB
Mr Robert Friel and Mrs Marion Friel, Apartment 3/1 47 Novar Drive, Hyndland, Glasgow G12 9UB
Mr Mark McManus and Mrs Nadine McManus, 46 Lauderdale Gardens, Hyndland, Glasgow G12 9QT (“the Applicants”)

James Gibb Residential Factors, 65 Greendyke Street, Glasgow G1 5PX (“the Respondents”)

Tribunal Member:

Graham Harding (Legal Member)
Kingsley Bruce (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”):

(1) The Respondent must at their own expense within a period of 4 weeks from the date of receipt of this order instruct an independent HVAC engineer or other suitably qualified consultant to provide a report addressing the owners statutory and other legal obligations in respect of ventilating the underground car park at the properties and with particular regard as to facilitate the owners to make a decision on the most appropriate option for repair, renewal or replacement of the current

inoperative ventilation system. Said report must be sent to the Applicants and the Tribunal within two weeks of its receipt and a meeting of all owners called to discuss the report and any recommendations it contains as soon as practical thereafter.

Section 19 of the 2011 Act provides as follows:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a)give notice of the proposal to the property factor, and

(b)allow the parties an opportunity to make representations to it.

(3)If the First-tier 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 First-tier Tribunal must make a property factor enforcement order."

The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

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

Legal Member and Chair

9 February 2023 Date