



**Supplementary Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, in an application made to the Tribunal under Section 17 of the Act**

**Chamber reference: FTS/HPC/PF/21/1868**

**The Parties:**

**Ms Juliet Westwood, Flat 2/2, 171 Cumloden Drive, Glasgow G20 0JJ (“the homeowner”)**

**and**

**Maryhill Housing Association, 45 Garrioch Road, Glasgow G20 8RG (“the property factors”)**

**Tribunal Members – George Clark (Legal Member/Chairman) and Robert Buchan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having considered the representations of the Parties regarding the Property Factor Enforcement Order that the Tribunal proposed to make, decided that no changes to the proposed Order should be made and that the Order to be issued should be in the terms set out in the Section 19(2)(a) Notice which accompanied The Tribunal’s Decision of 24 November 2021.**

**Background**

1. On 24 November 2021, following a Hearing, the Tribunal decided that the property factors had failed to comply with their duties in terms of Section 6.9 of the Property Factors Code of Conduct (“the Code of Conduct”) made under Section 14 of the Property Factors (Scotland) Act 2011 (“the Act”) and had failed to carry out the Property Factor’s duties. The Tribunal proposed to make a Property Factor Enforcement Order (PFEO) as set out in a Notice under Section 19(2)(a) of the Act which accompanied its Decision. The proposed PFEO was in the following terms:

**“Within three months of the communication to the property factors of the PFEO, the property factors shall, unless prevented from doing so by unforeseen events, procure the completion of repairs to gutters, fascias and soffits at 171 Cumloden Drive, Glasgow in terms of their Programme of Works, as updated on 8 November 2021, and shall pay to the homeowner the sum of £200 by way of compensation for inconvenience and distress”.**

2. The Tribunal’s Decision was issued to the Parties for comment.
3. On 7 December 2021, the homeowner responded that she wanted the PFEO to include every item in the property factors’ full Programme of Works, as updated on 8 November 2021. She also wanted the repair of anchor points to be added to the PFEO. She expressed the view that the proposed award of compensation was at the lower end of the scale, given the distress caused to her by infestations, mould and the deterioration of the Property, added to the inconvenience and stress she had been caused over a period of 5 years. She sought to add supplementary evidence, including, on 9 December 2021 a comment that no work had yet started after the scaffolding was put up on 27 November. The Tribunal was not, however, prepared to accept any evidence submitted after the date of the Hearing to which its Decision related.
4. On 9 December 2021, the property factors objected to the homeowner’s request to extend the scope of the proposed PFEO on the ground that the remaining items in the Programme of Works could not proceed until the first three items had been completed. It would be necessary to obtain quotes and to investigate the availability of contractors and it was not practical or appropriate for the remainder of the works to be carried out within three months. In addition, it was possible that the quotes they obtained would exceed the level of their delegated authority, so would require owners’ consent. The property factors also felt that no compensation payment should be made, as they had already undertaken to meet the cost of works to the gutters, soffits and fascias and internal repairs within the homeowner’s property. This represented a cost saving to the homeowner of between £1,083 and £2,118 and the property factors felt that this represented reasonable compensation.
5. On 10 December 2021, the homeowner made further representations in which she again expressed her concern regarding the Programme of Works being done if it was not all included in the PFEO. She would have no objection to a longer period being allowed, perhaps six months, for the remainder of the works (those not included in the proposed PFEO) to be completed. She noted that the property factors had not, in their response, made any reference to the anchor points and

stated that they were confusing the cost of repairs and the issue of compensation for inconvenience and distress.

## **Reasons for Decision**

6. The Tribunal was not prepared to extend the scope of the PFEO to include the other items in the Programme of Works, as, should the anticipated cost of any item not fall within the scope of the property factors' delegated authority, the owners in the block would be required to vote on whether the work should go ahead, and the property factors might be unable to obtain the authority they required to carry out the work. The Tribunal was also not prepared to include repairs to anchor points, as the evidence of the property factors had been that they had instructed those repairs to be carried out, even though the anchor point contractors did not agree that repairs were necessary.
7. The Tribunal had, in its Decision, separated the issues of payment for work to be carried out and of compensation and had decided that a modest sum should be ordered by way of compensation for the homeowner's inconvenience and distress. The Tribunal did not consider it appropriate to revisit the level of compensation that it had included in the proposed PFEO.
8. Having considered the views of the Parties, the Tribunal decided not to alter the terms of the proposed PFEO.
9. The Tribunal's Decision was unanimous.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party 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.**

Legal Member/Chairman:

15 December 2021

George Clark