

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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

**Decision by the Tribunal**  
**In an Application under section 17 of the Property Factors (Scotland) Act 2011**  
**(“the 2011 Act”)**

**by**

**Alastair Thomson, 3/7 West Grange Gardens, Edinburgh EH9 2RA (“the Applicant”)**

**James Gibb Property Management Ltd t/a James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT (“the Respondent”)**

**Chamber Ref: FTS/HPC/PF/2556**

**Re: West Grange Gardens, Edinburgh EH9 2RA (“the Property”)**

**Tribunal Members:**

John McHugh (Chairman) and Andrew Murray (Ordinary (Surveyor) Member).

**Decision**

**The Tribunal decides to issue a Property Factor Enforcement Order. Having considered the representations received from the parties on the terms of the Proposed Property Factor Enforcement Order the Tribunal has decided to issue the Property Factor Enforcement Order in its originally proposed form.**

The decision is unanimous.

## Reasons for Decision

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act” and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”.

On 2 July 2019, the Tribunal issued its decision that the Respondent had failed to carry out its duties under section 14 of the 2011 Act. The Tribunal issued a Proposed Property Factor Enforcement Order (“PFEO”) to the parties for comment on the same date in the following terms:

*“Within 42 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:*

*1 Communicate to the Applicant the identity of the member of the Respondent's staff who will be responsible for future communication between the Applicant and other owners within the Development on the one part and the Respondent on the other.*

*2 Instruct, at the Respondent's sole cost, a survey by an RICS member Building surveyor as to the current condition of the roof of the Development and the likely requirements and costs of future maintenance and replacement of the roof.*

*3 Provide a full copy of the surveyor's report to the owners and seek their instructions as to the carrying out of works.*

*4 Prepare and provide to owners a programme of works which schedules anticipated future maintenance requirements over the next ten years.*

*5 Confirm in writing to the office of the Tribunal that steps 1-4 have been carried out.”*

On 10 July 2019 the Applicant made written representations upon the terms of the Proposed PFEO. He sought that the PFEO should include an order that the Respondent should be liable to pay the sum of £11570 being a sum to cover woodwork repairs and which he considers reflects additional costs incurred by residents as a result of the Respondent's delays in addressing the painting of the woodwork. He also seeks that the Respondent should be liable to pay the sum of £1380.08 in respect of additional charges to be incurred by a decision to paint the garage doors white, which he advised was not a change in specification but had been known for some years.

On 18 July 2019, the Respondent made written representations. Parts of those representations were directed towards making comment and a request for “correction” of the Decision and in that respect the representations were not relevant to the present exercise which is to allow parties the opportunity to comment on the

terms of the Proposed PFEO. They may have been relevant to an application for review of the Decision and we have therefore dealt with them in a separate decision.

As regards the Respondent's representations which are relevant to the terms of the PFEO, the Respondent has indicated that it will meet the cost of the survey of the building required by the proposed PFEO as well as the cost of preparation of a schedule of works by a third party. The remainder of the representations are directed towards the question of compensation and are in response to the terms of the Applicant's letter of 10 July 2019.

The Respondent's position is that the majority of woodwork repairs relate to the private windows; the scaffolding is being used for the private works and that there had been a historic misunderstanding regarding the colour which the doors were to be painted.

On 23 July 2019, the Applicant made further written representations in response to those of the Respondent in which he indicated his disagreement with what was stated by the Respondent.

We do not consider that we are in possession of sufficient facts to determine that the additional costs which the Applicant has identified are the direct consequence of the breaches of the Respondent's duties under the Code which we have found to exist. Accordingly, we do not find it reasonable to issue a PFEO which makes a finding that the Respondent should be liable for such costs.

The matter is one for our discretion and we are of the view that the Proposed PFEO is in appropriate terms and, accordingly, in terms of section 19(3) of the 2011 Act we hereby issue the following PFEO:

*"Within 42 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:*

*1 Communicate to the Applicant the identity of the member of the Respondent's staff who will be responsible for future communication between the Applicant and other owners within the Development on the one part and the Respondent on the other.*

*2 Instruct, at the Respondent's sole cost, a survey by an RICS member Building surveyor as to the current condition of the roof of the Development and the likely requirements and costs of future maintenance and replacement of the roof.*

*3 Provide a full copy of the surveyor's report to the owners and seek their instructions as to the carrying out of works.*

*4 Prepare and provide to owners a programme of works which schedules anticipated future maintenance requirements over the next ten years.*

*5 Confirm in writing to the office of the Tribunal that steps 1-4 have been carried out."*

## **APPEALS**

In terms of section 46 of the Tribunals (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.

**Signed**

**Date 5 September 2019**

**JOHN M MCHUGH**

**Chairing Member**

