

Scottish Courts and Tribunals Service



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Dear Mr Griffin

SCOTTISH PARLIAMENTARY QUESTIONS S6W-39119, S6W-39120 and S6W-39122

The Cabinet Secretary in her response to the above PQs indicated that they related to operational matters within the responsibility of the Scottish Courts and Tribunals Service corporate body. I am now writing in response to the matters raised.

S6W-39119 asks: whether it will provide a list of the registered property factors that have failed to comply with a property factor enforcement order since the implementation of the Property Factors (Scotland) Act 2011; what further action was taken by the First-tier Tribunal for Scotland (Housing and Property Chamber) and on what date any such action was initiated.

Listed below are the property factors who have failed to comply with a PFEO (Property Factor Enforcement Order) since implementation of the Property Factors (Scotland) Act 2011. This information is caveated – a number of property factors share similar names and we cannot confirm if they are the same company. It is the name provided by the applicants at the application stage.

Property Factor	Failure to Comply with PFEO
Abbey Forth Property Management	5
Annan Property	1
Apex Property Factor	29
Be Factored	14
Bute Factors Ltd	1
Charles White Ltd	3
Collinswell Land Management Ltd	3
Cumming, Turner and Watt	11
Cunningham Housing Association	1
Factor4You	1
Factotum Scotland Ltd	1
FirstPort Property Services Scotland	8
GHA (Management) Ltd YourPlace Property Management	1
Grant and Wilson Property Management	1
Hacking and Paterson Management Services	2
James Gibb Property Management Ltd	1
James Gibb Residential Factors	3

Lets Move Residential Factors	1
Lowther Homes	4
Melville Property Ltd	7
Miller Property Management Ltd	13
MAXM Property Solutions	1
Peverel Scotland	1
Property 2	1
Quatermile Estate Ltd	2
Factor4You	1
Select Property Management Services (Aberdeen) Ltd	8
SGL Property Ltd	4
The Property Management Company	1
Total	130

Where a Failure to Comply has been recorded, these are usually referred to Police Scotland for further investigation and potential prosecution. There are instances when a referral is not made, for example: if a Certificate of Compliance was issued following the Failure to Comply and before referral; if the case is ongoing; or if the tribunal has advised referral would not be appropriate.

Please see list in response to S6W-39122, detailed below, which provides details on occasions when the First-tier Tribunal has made a referral to Police Scotland for prosecution in relation to section 24 of the Property Factors (Scotland) Act 2011 since the Act came into force broken down by calendar year.

S6W-39120 asks: what powers are available to the First-tier Tribunal for Scotland (Housing and Property Chamber) or any other relevant body when a property factor does not comply with a property factor enforcement order under the Property Factors (Scotland) Act 2011, and in how many cases since 2011 have these powers been used to secure compliance or impose penalties.

Where a PFEO has been issued, the Tribunal makes a decision on compliance with the Property Factor Enforcement Order (PFEO) after the period for compliance stated in the PFEO has expired.

If the Tribunal is satisfied that the PFEO has been complied with, a Certificate of Compliance is issued. If the Tribunal decides that the property factor has failed to comply with the PFEO, a Failure to Comply decision is issued. The Tribunal also advises the Property Factor Registration Team at the Scottish Government of this failure and refers the matter to Police Scotland, as it is an offence not to comply with a PFEO.

The Tribunal has no powers to impose a criminal penalty or civil penalty in relation to a failure to comply with a PFEO decision. Decisions of the Tribunal are published on the HPC website – www.housingandproperty.scot/previous-tribunal-decisions. The relevant statutory provisions are contained in Sections 23 and 24 of the Property Factors (Scotland) Act 2011 as amended and are attached at Annex A.

S6W-39122 asks: whether it will provide a list of occasions when the First-tier Tribunal has made a report to Police Scotland for prosecution in relation to section 24 of the Property Factors (Scotland) Act 2011 since the Act came into force.

We can now provide the number of occasions (we have equated 'list of occasions' as number of occasions) that the First-tier Tribunal has made a referral to Police Scotland for prosecution in relation to section 24 of the Property Factors (Scotland) Act 2011 since the Act came into force –

Calendar Year	Number of occasions Failure to Comply with PFEO has been referred to Police Scotland for prosecution
2012	0
2013	0
2014	1
2015	13
2016	15
2017	7
2018	10
2019	16
2020	1
2021	5
2022	1
2023	21
2024	19
2025 (to date)	0
Total	109

A copy of this letter will be placed in the Scottish Parliament Information Centre and published on the Scottish Courts and Tribunals Service website.

Yours sincerely



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23 Effect of failure to comply with property factor enforcement order

- (1) It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal.*
- (2) Where the First-tier Tribunal decides that a property factor has failed to comply with the property factor enforcement order, the First-tier Tribunal must serve notice of the failure on the Scottish Ministers.*
- (3) The First-tier Tribunal may not decide that a property factor has failed to comply with a property factor enforcement order—*
- (a) unless the period within which the order requires any work to be executed has ended, or*
 - (b) if the First-tier Tribunal is satisfied, on the submission of the property factor or otherwise—*
 - (i) that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
 - (ii) that any action required by the order is likely to endanger any person.*
- (4) Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a property factor has failed to comply with a property factor enforcement order, the First-tier Tribunal must serve notice on the Scottish Ministers stating that it considers the property factor to be unable to comply with the property factor enforcement order.*

24 Property factor enforcement order: offences

- (1) A person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.*
- (2) For the purposes of subsection (1), a person has reasonable excuse for failing to comply with a property factor enforcement order if—*
- (a) the person is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
 - (b) any action required by the order is likely to endanger any person.*
- (3) Subsection (2) does not affect the generality of the defence of reasonable excuse.*
- (4) A person cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal which made the property factor enforcement order in question has decided under section 23(1) that the property factor has failed to comply with it (but such a decision does not establish a presumption that the person has committed an offence under subsection (1)).*
- (5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*