

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Reference: FTS/HPC/PF/23/2290

Property address: 30 Westfield Avenue, Flat 48, Edinburgh, EH11 2TZ (“the Property”)

The Parties

Mr Kacper Trela, 30 Westfield Avenue, Flat 48, Edinburgh, EH11 2TZ (“the Homeowner”)

Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Property Factor”)

Tribunal Members

Ms H Forbes (Legal Member) and Ms S Brydon (Ordinary Member)

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it. The decision is unanimous.

Reasons for Decision

1. In the Tribunal’s decision of 1st September 2025, it proposed to make a PFEO as follows:

“The Property Factor is required, within 30 days of the making of this Property Factor Enforcement Order, to make payment in the sum of £250.00 to the Homeowner as compensation for the distress, frustration and inconvenience caused as a result of its failure to comply with the Code of Conduct.”

2. The Tribunal indicated that, prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act. The decision was issued on 2nd September 2025.

3. By email dated 2nd September 2025, the Homeowner requested permission to appeal and submitted representations on the proposed PFEO under section 19(2)(b) of the Act.
4. By decision dated 9th September 2025, the Tribunal refused leave to appeal.
5. The representations made under section 19(2)(b) of the Act contained a significant amount of extraneous information that appeared to be an attempt to provide further evidence and change the Tribunal's decision. The Homeowner stated:

The Decision upholds breaches of the Property Factors' Code (OSP11, Code paras 1.1, 1.2 and 2.7). However, the proposed monetary order alone does not fully remedy the issues identified in the Decision and the evidence. I respectfully ask the Tribunal to expand the PFEO with specific corrective measures and to adjust compensation to reflect the duration and impact.

6. The Homeowner included the following specific corrective measures:

F. Orders sought (additions to the PFEO, to be complied with within 30 days)

- 1) Disclosure: Produce to me and the Tribunal the full pack for the 23 October 2023 meeting-notice list and method of service, attendance list, minutes, vote record-and any proxy/mandate authorising anyone to vote on behalf of the other private owner. If no such mandate exists, provide a signed negative confirmation.*
- 2) Meetings procedure and SLA: Issue a written procedure (with timescales) for arranging proprietors' meetings on owners' request regarding shared property or improvements, consistent with the WSS and Code paras 2.6-2.7; circulate it to all owners in the block.*
- 3) Building-specific interest declaration and factor/agent clarity: Re-issue (or amend) Part 1 for this block to explicitly declare (a) that Wheatley Homes East is factor and Lowther is managing agent; (b) the number/proportion of units owned by Wheatley entities in this development; and (c) the conflict-management steps to be followed for decisions affecting this building. Provide proof of service to all proprietors.*
- 4) WSS service record going forward: Confirm the service method and schedule for Parts 1 and 2, including annual provision and availability of hard copy on request.*
- 5) Compensation: Increase compensation from GBP 250 to GBP 750 to reflect (i) refusal/delay of a core service (meeting), (ii) months of avoidable delay tied to unrelated communal-funding exploration, and*

(iii) demonstrable confusion over identity/interest evidenced in the Decision.

Tribunal response

7.

- (1) This is evidence that could have been requested by the Homeowner prior to the hearing. The Tribunal has not identified the need for, or requested, any further evidence, having made its decision on the evidence before it.
- (2) The Tribunal did not find a failure to comply with paragraph 2.6. As for 2.7, the findings of the Tribunal related to the Property Factor's admitted failure to comply with the timescales in its complaints procedure. The Tribunal did not make any findings that the Property Factor required to amend any procedure in respect of arranging meetings. Having found that the Property Factor had not failed to comply with the Code in this regard, it would not be appropriate to include specific measures within the PFEO.
- (3) The Tribunal considered that the declaration within the WSS fulfilled the requirements of the Code. The Tribunal considered it was sufficient to make an observation within its decision that the Property Factor may be advised to consider clarifying the various roles and identities of those involved within the larger group to assist homeowners. Having found that the Property Factor had not failed to comply with the Code in this regard, it would not be appropriate to include specific measures within the PFEO.
- (4) It is not clear what is meant by a WSS service record. The Code is clear on what is expected from a property factor in this regard and the Tribunal does not see a need to include this within the PFEO.
- (5) The Tribunal did not make any findings that the Property Factor had refused or delayed in a core service in respect of arranging meetings. The Tribunal did not make any findings that the Property Factor had erred by delaying the meeting due to funding exploration. The Tribunal found that the Property Factor had not erred in respect of the declaration within the WSS. In all the circumstances, the Tribunal considers the sum of compensation granted to be fair and appropriate.

8. The Tribunal has now confirmed its decision made in terms of Section 19(1)(a) of the Act. The Tribunal agrees that it would be appropriate to make a PFEO, notwithstanding that the Property Factor claims to have made payment to the Homeowner.

Property Factor Enforcement Order

9. The First-tier Tribunal hereby makes the following PFEO:

The Property Factor is required, within 30 days of the making of this Property Factor Enforcement Order, to make payment in the sum of £250.00 to the Homeowner as compensation for the distress, frustration and inconvenience caused as a result of its failure to comply with the Code of Conduct.

10. Under section 24 (1) of the Act, a person who, without reasonable excuse, fails to comply with the Property Factor Enforcement Order commits an offence.

Right of Appeal

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.

Helen Forbes
Legal Member and Chairperson
27th October 2025