

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
("The Act") Section 19(2)**

Chamber Ref: FTS/HPC/LM/23/1919

Re: Property at John Walker Drive, Kilmarnock ("the Property")

The Parties:

Miss Linda Marshall, 11 Bowmore Place, Kilmarnock, KA3 1TF ("the Applicant")

**Scottish Woodlands Ltd, Landscaping Division, Research Park, Riccarton, Edinburgh,
EH14 4AP ("the Respondent")**

Tribunal Members:

Andrew McLaughlin (Legal Member) and Mary Lyden (Ordinary Member)

Background

[1] On 27 August 2025, The Tribunal made the following Proposed Property Factor Enforcement Order ("PFEO"):

The Respondent is to:

- 1. Make a monetary payment to the Applicant in the sum of £250.00 to account for the stress and inconvenience caused as a result of the Respondent's breaches of the Code.*
- 2. Conduct a thorough budget reconciliation and share their findings with all the residents within 2 months and inform the residents of the steps taken to address the issues raised in this Decision.*
- 3. Prepare a new and improved WSS that addresses the concerns set out in this Decision and the breaches found established.*

[2] Parties were expressly informed that the proposed PFEO should be taken as notice for the purposes of section 19(2)(a) of the Act and that parties had consequently been given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) of the Act should reach the First-tier Tribunal by no later than 14 days after the date that the Decision and the proposed PFEO was sent to them by the First-tier Tribunal.

[3] By email dated 16 September 2025, The Respondent timeously submitted representations on the proposed PFEO. The Applicant did not submit any representations.

Respondent's representations

[4] The Respondent explains that they have now already made the monetary payment referred to in part 1 of the Proposed PFEO.

[5] The Respondent also explains that that they have already also complied with the second proposed part of the PFEO. Evidence has also been supplied of the necessary steps having been taken.

[6] On the basis that no comment to the contrary has been made by the Applicant, the Tribunal agrees that there is therefore no need to incorporate either of the first two parts of the Proposed PFEO in a final PFEO.

[7] That leaves the third part of the Proposed PFEO. Here the Respondent submits that the terms of the third part of the Proposed PFEO "*lacks specification*". The Respondent explains that a third version of the relevant written statement of services dated September 2024 is now produced. The Tribunal imagines it is to understand that this latest version of the WSS addresses the concerns which the Tribunal identified with the previous two versions of the WSS and which were referred to in its decision.

[8] The parts of the 2021 Code which relate to the written statement of services ("WSS") and which were found by the Tribunal to be in breach are as follows:

2021 Code:

1(2); 1.5C (6); 1.5D (13); 1.5.G.19 and 1.5.G.20.

[9] Reviewing these parts of the Code against the latest WSS produced, the Tribunal concludes as follows. (The Tribunal does not conclude that it is necessary to comment on part 1 (2) as that is more to do with the act of issuing the WSS rather than the specific terms of the WSS itself.)

1.5C(6) *“the management fee charged by the property factor, including any fee structure and also the property factor’s policy for reviewing and increasing or decreasing this management fee;”*

[10] This appears now to be satisfactorily addressed in the September 2024 WSS at page 6.

1.5.D (13) *“...how homeowners can access information, documents and policies/procedures that they may need to understand the operation of the property factor”*

[11] This appears to be addressed on page 2 of the new WSS. Here it states that:

“The areas for which we are responsible can be seen on the plan appended to this Statement, to comply with the Property Factors (Scotland) Act 2011 we are providing you with this Statement of Services which details in a clear and simple format the terms and service delivery standards between Scottish Woodlands and you, the homeowner. The current document will always be available by logging into our web portal at <https://myaccount.scottishwoodlands.co.uk> alternatively a paper copy will be supplied on request.”

[12] This seems sufficient to comply with the Code.

1 (5) G.19 How to End the Arrangement

“...clear information on when and how a homeowner should inform the property factor of an impending change in ownership of their property (including details of any reasonable period of notice which is required by the property factor to comply with its duties under this Code. This information should also state any charges for early termination/administration costs.”

[13] On Page 12 of the new WSS it states that:

“New Clients

When a new client purchases a property, their appointed solicitor should make them aware that there is an Estate Manager in place and they should provide the new client with all relevant information relating to common management issues and costs, prior to concluding the purchase. Upon confirmation of a new client, we will contact the new owner within 4 weeks of the confirmed date of entry or the date we are subsequently advised of ownership, whichever occurs first. In this communication we will detail the current management provisions, including share allocations for the development, and provide details of the budgeted expenditure, including our charges, and we will thereafter address any questions which may be raised from the information provided.”

[14] The Code however appears to require explicit provision for what someone selling their Property should also do. In that regard the new WSS appears still to fall short of the requirements of the Code. It doesn't say what someone selling their property is to do.

1 [5] G (20)... *"clear information that homeowners may (by collective or majority agreement or as set out in their title deeds) terminate or change the service arrangement including signposting to any relevant legislation, for example the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. This information should include any "cooling off" period or period of notice."*

[15] The new WSS at page 14 states that:

"How to End the Arrangement

Scottish Woodlands Limited is appointed as the Estate Manager by your Developer. We have taken ownership of the Strategic Open Space as a result. The Deed of Conditions requires that we maintain the Strategic Open Space. There is no provision in the Deed of Conditions and/or relevant title deeds for the ownership of the Strategic Open Space, and our obligation to maintain it, to be transferred to any other party."

[16] This appears to comply with the terms of paragraph 1 (5) (G) 20.

[17] This means that the only aspect of the new WSS which remains non-conform to the Code is Page 12 which ought to comply with paragraph 1 (5) G 19 of the Code. This also means that the only part of the proposed PFEO as a whole which remains still unaddressed is that the new WSS should comply with this part of the Code.

Decision

[18] Accordingly the Tribunal makes a Property Factor Enforcement Order in the following terms:

The Respondent is to update the WSS dated September 2024 by revising it to comply with paragraph 1 (5) G 19 of the 2021 Code. It should also say what a resident selling their property should do.

Timescales

[19] The Tribunal notes that the Respondent seeks extra time to address any further changes which are to be required to the September 2024 WSS. The Tribunal sees no reason not to allow that. The change required does not seem urgent or time critical to the Tribunal.

[20] Accordingly the Tribunal will order that the Property Factor Enforcement Order should be complied with within 3 months of the date of this order.

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

Andrew McLaughlin
Legal Member and Chair
21 October 2025