

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision with reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 21 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference numbers: FTS/HPC/PF/23/0571 and FTS/HPC/PF/23/0575

Re: Flats at 1/1 and 3/1, 64, Thornwood Drive, Glasgow, G11 7PS (“the Properties”)

The Parties:

Dr. Kate Black, residing at Flat 0/1, 64, Thornwood Drive, Glasgow, G11 7PS and Mr. Paul Karnowski, residing at Flat 3/1, 64, Thornwood Drive, Glasgow, G11 7PS (“the Homeowners”)

Lowther Homes, having a place of business at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Property Factor”)

Tribunal Members

Karen Moore (Legal Member and Chairperson) and Nick Allan (Surveyor and Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has complied with the Property Factor Enforcement Order dated 20 March 2024 as varied in respect of Paragraphs 1- 8 inclusive. The Tribunal revoked Paragraphs 9, 10 and 11 as no longer necessary.

Background

1. By applications received between 24 February 2023 and 26 June 2023 (“the Applications”) the Homeowners applied to the First-tier Tribunal for Scotland

(Housing and Property Chamber for determinations that the Property Factor had failed to comply with the Codes of Conduct for Property Factors and had failed to comply with the Property Factor Duties.

2. By Decision dated 5 October 2023 the Tribunal determined that the Property Factor had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at Sections 2.7, 6.4, 6.6 and 6.12 in respect of both Applications and had failed to comply with the Property Factor's Duties in respect of Application FTS/HPC/23/0575. The Tribunal proposed a Property Factor Enforcement Order (PFEO) and gave notice of this to the Parties in terms of Section 19(2) of the Act.

3. Following representations from the Parties, a Hearing in respect of the terms of the Proposed PFEO took place on 1 March 2024. The outcome of the Hearing was that the Tribunal made the following PFEO:

"No later than 22 April 2024, the Property Factor must at its own cost and expense:

1. Provide the Homeowners and the Tribunal with a full explanation as to why the information requested by the Homeowners in respect of the Common Repair proposed by the Property Factor on 18 May 2022 is not available including an explanation as to why there is no information on the scope of the works and the rates for the works given that a cost for the works was provided.

2. Explain fully to the Homeowners and the Tribunal what is meant by the Property Factor's statement in their representations of 19 October 2023 that "City Building Glasgow were the contractor for these works as they were raised via our repairs system, and they are our appointed contractor. Our parent company, Wheatley Group, jointly owns City Building Glasgow and our repairs service in the West of Scotland is delivered by them." and explain why this phrase means that work was not put out to tender.

3. Provide the Homeowners and the Tribunal with a named contact for the Properties who has the power and responsibility to provide full and meaningful information and has decision making powers in respect of common works with whom the Homeowners can communicate directly in future.

4. Explain fully to the Homeowners and the Tribunal why the schedule for routine building and backcourt inspections and maintenance is not carried out.

5. Carry out a one-off comprehensive maintenance of the backcourt to include a brush and tidy of bin areas, removal of any bulk uplift from backcourt, de-litter grass areas, mow and strim these grass areas as the gardening season allows, prune shrub beds and hedges as the gardening season allows, scrape weeds from pathways, apply weed killer to hard-standing areas as required and clear and dispose of all fallen leaves to ensure that the backcourt and hardstanding are in a neat and tidy condition and that at the sole cost of the Property Factor.

6. In addition to compensation already paid to the Homeowner, compensate each Homeowner in the sum of £500.00 by a direct payment and not by a credit to their common charges account for the further loss and suffering caused to them by the Property Factor's actions.

7. Evidence to the Tribunal that items 1-6 have been carried out within the set timescale.

Secondly: No later than 22 September 2024, the Property Factor must at its own cost and expense:

8. Repair or replace the roof at the Property by carrying out the Key Findings recommendations marked as Immediate and Short Term as set out on pages 2 and 3 of the Roof Conditions Survey Report prepared by A. McKay BSc MRICS of Brown + Wallace and issued on 18 January 2024, which Report is lodged with the case papers and is in the possession of the Parties and the Tribunal and from which the Parties and the Tribunal can identify the actions to be taken.

9. In this regard the Property Factor is to liaise with the Homeowners on a fortnightly basis, commencing on the week beginning 2 April 2024, to report to them of and to consult with them in respect of the Property Factor's actions in respect of: i) preparing a specification of works and tender for the said repair or replacement works; ii) obtaining guarantees for the said repair or replacement works; iii) the selection and appointment of contractors and clerks of works, if any; iv) the timetable for the said repair or replacement works, detailing start dates and proposed end

dates; v) the progress of the said repair or replacement works and vi) the completion of the said repair or replacement works.

10. As part of the process outlined above the Property Factor is to take account and have regard to all matters raised by the Homeowners as part of the consultation with them and is to provide the Homeowners with: vii) A copy of the paperwork relative to the specification of works and tender for the said repair or replacement works; viii) A copy of the contract for the said repair or replacement works; ix) A copy of the timetable for the said repair or replacement works, detailing start dates and proposed end dates; x) A copy of any completion certificates for the said repair or replacement works and xi) A copy of any guarantees for the said works.

11. Evidence to the Tribunal that items 8, 9 and 10 have been carried out within the set timescales.”

First Hearing in respect of compliance with PFEO

4. Following the expiry of the PFEO timescales, the tribunal chamber contacted the Parties in respect of compliance. Both Parties made representations. Both Parties stated that the PFEO had not been complied with in full, and, in particular, the core works as required by the second part of the PFEO had not been finalised.

Accordingly, a Hearing in respect of compliance with the PFEO was fixed for 23 January 2025. Prior to the Hearing both Parties submitted written representations.

5. The Hearing took place on 23 January 2025 at 10.00 by telephone conference call. Both Homeowners attended and took part. The Property Factor was represented by Mr. D. Adams, solicitor, of the Wheatley Group, the Property Factor's parent company, accompanied by Mrs H. Mackay, the Property Factor Manager.

6. The outcome of the Hearing was that the Tribunal varied the PFEO as required by Section 21 (2) of the PF Act which states : “.... the First-tier Tribunal must vary the property factor enforcement order (a)so as to extend, or further extend, the period within which any action required by the order must be executed, and (b)in such other manner as it thinks fit” and allowed until 22 March 2025 for the PFEO as varied to be complied with.

7. By email dated 21 March 2025, the Property Factor requested that an extension of the time limit for compliance be extended to 12 April 2025. The Tribunal allowed this without formally varying the PFEO.

Second Hearing in respect of compliance with the PFEO

8. Following the expiry of the PFEO timescales, the tribunal chamber contacted the Parties in respect of compliance. Both Parties made representations. Both Parties stated that the PFEO had not been complied with in full. Accordingly, a Hearing in respect of compliance with the PFEO was fixed for 14 October 2025. By email dated 9 October 2025, the Homeowners submitted written representations with photographic evidence showing a collapse of the ceiling in the common close.

9. The Hearing took place on 14 October 2025 at 10.00 by telephone conference call. Both Homeowners attended and took part. The Property Factor was represented by Mr. D. Adams, solicitor, of the Wheatley Group, the Property Factor's parent company, accompanied by Mrs M. Rush, one of the Property Factor's Directors.

10. The Tribunal heard from all Parties present. The Homeowners' joint position was that, although roof works had been carried out in April 2025, the collapse of the ceiling on or around 2 October 2025 showed that the roof works had been unsuccessful. They pointed out that a tarpaulin or plastic sheeting had been left in the roof space by the contractors and it was this tarpaulin or plastic sheeting which appeared to have caused the ceiling collapse. The Homeowners both stressed the toll which the ongoing roof issue continues to have on them, both in respect of their health and their homes.

11. The Property Factor's position was that the PFEO had been complied with by 25 April 2025 with the works being signed off as complete, and, that, whilst agreeing that there had been a ceiling collapse, stated that it might not necessarily be fully connected to the roof works. Their position was that the works required by the technical reports referred to in the PFEO had been undertaken. They agreed that the tarpaulin or plastic sheeting remained in situ.

12. The Tribunal noted that although the technical reports referred to the tarpaulin in the roof space, the recommended works did not go so far as to require it to be removed.

13. Having heard all Parties and having considered the precise wording of the PFEO and the technical reports referred to in the PFEO, the Tribunal took the view that it required further information in respect of the completion of the works and the cause of the recent ceiling collapse.

14. Therefore, the Tribunal adjourned the Hearing to a later date and issued the following Direction:

“The Property Factor is directed to Instruct Brown + Wallace or such other company of equal competence and skill to carry out an appropriate survey to :

a) ascertain if the Immediate and Short Term recommendations as set out on pages 2 and 3 of the Roof Conditions Survey Report prepared by A. McKay BSc MRICS of Brown + Wallace and issued on 18 January 2024 have been successfully completed

b) express a view as to the cause of the ceiling collapse in the common close on 2 October 2025 and recommend actions to address this cause and

c) issue a Report on their findings.

The instruction referred to in Paragraph 1 above should be issued by the Property Factor no later than 31 October 2025 and should include a requirement that survey be carried out and the Report issued no later than 30 November 2025. The Property Factor is to provide the Homeowners and the Tribunal with a copy of the said Report within 5 working days of their receipt of it.”

15. The Property Factor complied with the Direction.

Second Hearing in respect of compliance with the PFEO

16. The Second Hearing, having been postponed from 16 April 2026, took place on 18 May 2026 at 10.00 by telephone conference call. Dr. Black of the Homeowners attended and represented Mr. Karnowski who could not attend due to ill-health. The Property Factor was represented by Mrs M. Rush, one of the Property Factor's Directors and Ms. Turner.

17. The Tribunal took the Parties through the PFEO in respect of their positions on the Property Factor's compliance. The Parties agreed that that there had been compliance with the first part of the PFEO, Paragraphs 1- 7, with the exception of Paragraph 3.

18. With regard to Paragraph 3, Br. Black's position was that, although there had been a named contact, that contact had since advised that he would only deal with matters regarding the roof and was not a contact for all factoring matters. Mrs. Rush's stated that she had not been aware of this and explained that the Property Factor does not normally provide a single named point of contact for homeowners who are expected to use the online reporting system. She explained that the reports are then passed on to area inspectors to handle. However, Mrs. Rush undertook to make enquiries with the named contact.

19. With regard to Paragraph 4, although accepting that the precise wording had been complied with by the Property Factor, Dr. Black's firm position was that the back court maintenance was not being carried out properly and that there had been cancellations. Mrs. Rush disputed the level of cancellations and stated there had been no charges for work not carried out.

20. With regard to the second part of the PFEO, paragraphs 8 – 11, Mrs. Rush's position was that, following the works carried out in terms of the PFEO, the roof had been watertight and was watertight between April 2025 and October 2025. Mrs. Rush stated that this was borne out by the Brown and Wallace Report.

21. Dr. Black's position in respect of paragraphs 8 – 11, and the Property Factor's response to the Direction referred to at 14 above, was that the roof had not been fully watertight and that he had not been given a full set of the photographic record prepared on behalf of the Property Factor. With reference to the photographs submitted by the Homeowner's, Dr. Black pointed out that there were broken tiles and gaps, moss and leaves had not been cleaned away, a skew had been widened but not sealed, the incorrect cap had been used to repair the chimney and the liquid coating on the flat roof and not set and so was not watertight. Dr. Black pointed out that the skylight was rotting and letting in water but none of the Property Factor's contractors had reported this or told the Homeowners.

22. With regard to water ingress, Dr. Black stated that this had continued after April 2025 and had been reported to the Property Factor by Mr. Karnowski. Dr. Black stated that had she, Mr. Karnowski and another owner had had the roof surveyed by two independent roof contractors who had agreed that there were still issues with water ingress. The necessary works had now been carried out at a cost of £900.00 per owner

23. Mrs. Rush advised that she was not aware of any further reports. She maintained her position that the PFEO had been complied with and stated that some matters raised by Dr. Black appeared to be outwith the terms of the PFEO.

Further evidence before the Tribunal.

24. The Tribunal had the benefit of the Brown + Wallace Reports and the photographs submitted by the Homeowners.

Issue for the Tribunal.

25. Section 23 (1) of the Act states : *“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. “*. Therefore, the issue for the Tribunal was whether or not the Property Factor had complied with the PFEO made by it.

26. From the evidence of the Parties and the information before it, the Tribunal was satisfied and found that the Property Factor had complied with Paragraphs 1-7 of the PFEO with the exception of Paragraph 3. Therefore, the Tribunal proceeded to determine whether or not the Property Factor had complied with the remaining Paragraphs.

PFEO Paragraph 3

Provide the Homeowners and the Tribunal with a named contact for the Properties who has the power and responsibility to provide full and meaningful information and has decision making powers in respect of common works with whom the Homeowners can communicate directly in future.

27. The Tribunal noted that the Property Factor had provided a named contact as required by the PFEO. The Tribunal accepted that this named contact may have advised the Homeowners that he understood his role to be less than ordered by the

Tribunal. The Tribunal had regard to Mrs. Rush's position that it is not the Property Factor's usual practice to provide named contacts. Whilst disappointing, the Tribunal found in fact that the Property Factor had complied with this Paragraph of the PFEO and took the view that it was open to the Homeowners to raise a complaint with the Property Factor in respect of the named contact's response to them.

28. The Tribunal found that the Property Factor had complied with this part of the PFEO.

PFEO Paragraph 8

Repair or replace the roof at the Property by carrying out the Key Findings recommendations marked as Immediate and Short Term as set out on pages 2 and 3 of the Roof Conditions Survey Report prepared by A. McKay BSc MRICS of Brown + Wallace and issued on 18 January 2024, which Report is lodged with the case papers and is in the possession of the Parties and the Tribunal and from which the Parties and the Tribunal can identify the actions to be taken.

29. From the Brown + Wallace Report of 28 November 2025, the Tribunal found in fact that the Immediate and Short Term works had been carried out. Whilst the Tribunal noted and accepted that there had been further water ingress, on the information before it the Tribunal could not be certain that this water ingress was connected to a failure to carry out the relevant works.

30. The Tribunal found that the Property Factor had complied with this part of the PFEO.

PFEO Paragraph 9

In this regard the Property Factor is to liaise with the Homeowners on a fortnightly basis, commencing on the week beginning 2 April 2024, to report to them of and to consult with them in respect of the Property Factor's actions in respect of: i) preparing a specification of works and tender for the said repair or replacement works; ii) obtaining guarantees for the said repair or replacement works; iii) the selection and appointment of contractors and clerks of works, if any; iv) the timetable for the said repair or replacement works, detailing start dates and proposed end dates; v) the progress of the said repair or replacement works and vi) the completion of the said repair or replacement works.

31. The Tribunal's view is that this part of the PFEO had been imposed to ensure improved communication between the Property Factor and the Homeowners. From the evidence before it the Tribunal could not be certain that each part of Paragraph 9 had been carried out. However, as the principal roof work had been completed, there is no longer a need for Paragraph 9. Therefore, in terms of Section 21(1) of the Act which states :"*Where the First-tier Tribunal has made a property factor enforcement order it may, at any time (a) vary the order in such manner as it considers reasonable, or (b) where it considers that the action required by the order is no longer necessary, revoke it.*", the Tribunal revokes this part of the PFEO.

PFEO Paragraph 10

10. As part of the process outlined above the Property Factor is to take account and have regard to all matters raised by the Homeowners as part of the consultation with them and is to provide the Homeowners with: vii) A copy of the paperwork relative to the specification of works and tender for the said repair or replacement works; viii) A copy of the contract for the said repair or replacement works; ix) A copy of the timetable for the said repair or replacement works, detailing start dates and proposed end dates; x) A copy of any completion certificates for the said repair or replacement works and xi) A copy of any guarantees for the said works.

32. As with Paragraph 9 of the PFEO, the Tribunal's view is that this part of the PFEO had been imposed to ensure improved communication between the Property Factor and the Homeowners. From the evidence before it the Tribunal could not be certain that each part of Paragraph 10 had been carried out. However, as the principal roof work had been completed, there is no longer a need for Paragraph 10. Therefore, in terms of Section 21(1) of the Act which states :"*Where the First-tier Tribunal has made a property factor enforcement order it may, at any time (a) vary the order in such manner as it considers reasonable, or (b) where it considers that the action required by the order is no longer necessary, revoke it.*", the Tribunal revokes this part of the PFEO.

PFEO Paragraph 11

Evidence to the Tribunal that items 8, 9 and 10 have been carried out within the set timescales.

33. The tribunal is aware that the set timescales were not complied with. As with Paragraphs 9 and 10 of the PFEO, the Tribunal's view is that as the principal roof work had been completed, there is no longer a need for Paragraph 11. Therefore, in terms of Section 21(1) of the Act which states :*"Where the First-tier Tribunal has made a property factor enforcement order it may, at any time (a) vary the order in such manner as it considers reasonable, or (b) where it considers that the action required by the order is no longer necessary, revoke it."*, the Tribunal revokes this part of the PFEO.

Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by this 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 Upper Tribunal. That party must seek permission to appeal from the Upper Tribunal within 14 days of the date this decision was sent to them.

Karen Moore Legal Member/Chair

Date 18 May 2026