

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 19(3) of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference numbers:

FTS/HPC/PF/23/0571

FTS/HPC/PF/23/0575

Re: Flats at 0/1 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 (Chairperson) Mike Links (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make a Property Factor Enforcement Order (PFEO):

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 a determination 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.

Proposed PFEO

3. By Notice in terms of Section 19(2) of the Act, the Tribunal proposed the following PFEO and gave the Parties an opportunity to make representations;
"No later than [3 weeks from date of PFEO] the Property Factor must at its own cost and expense
 1. *Provide the Homeowners and the Tribunal with the information requested by them in respect of the Common Repair proposed by the Property Factor on 18 May 2022 including the scope of the works, the rates for the works, the Property Factor's reasons for (i) selecting City Building for the work and not putting the work to tender and (ii) not seeking a guarantee for the work;*
 2. *Provide the Homeowners and the Tribunal with a named property manager or contact for the Properties with whom the Homeowners can communicate directly in future;*
 3. *Provide the Homeowners and the Tribunal with the schedule for routine building and backcourt inspections and maintenance for the current year and confirm whether or not the schedule has been complied with to date;*
 4. *Provide the Homeowners and the Tribunal with their proposals for carrying out the recommendations listed in the August/ September 2023 Report issued to Dr. Black and carry out these recommendations at their own cost;*
 5. *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 loss and suffering caused to them by the Property Factor's actions;*
 6. *Refund to the Homeowners all of the management fees and backcourt maintenance paid by them to the Property Factor since 16 August 2021, the date on which the relevant Property Factor Code of Conduct came into force;*
 7. *Refund £150.00 to each Homeowner by a direct payment and not by a credit to their common charges account in respect of the roof repair arranged and paid for by them.*
 8. *Evidence to the Tribunal that items 1-7 above have been carried out."*

Property Factor's Representations.

4. By email dated 19 October 2023, the Property Factor responded as follows:
"Provide the Homeowners and the Tribunal with the information requested by them in respect of the Common Repair proposed by the Property Factor on 18 May 2022 including the scope of the works, the rates for the works, the Property Factor's

reasons for (i) selecting City Building for the work and not putting the work to tender and (ii) not seeking a guarantee for the work.

Representation

The common repair from May 2022 was for a roof repair following reports of water ingress on the flat roof. Consents were issued to owners on 18 May 2022 and job line subsequently cancelled due to no majority consent being received. Upon review, we do agree that the description of works for the job were not as detailed as they should have been, and further information could have been provided. We have addressed this with our repairs team to ensure scopes of works issued include full details of the proposed works.

The scope of works advised that a scaffold would be required, and liquid plastic repairs be carried out with a total block cost inclusive of building labour costs of £9105.04.

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.

I can confirm that any works carried out by City Building Glasgow do have a guarantee and any follow up works reported will be arranged as a warranty repair

Provide the Homeowners and the Tribunal with a named property manager or contact for the Properties with whom the Homeowners can communicate directly in future.

Representation

The Commercial Agent for the property is Scott Fletcher, Scott can be contacted on 07500 651 007 or by e mail at Scott.Fletcher@LowtherHomes.com Scott has met with the owners at the property and I can confirm they have his contact information.

Provide the Homeowners and the Tribunal with the schedule for routine building and backcourt inspections and maintenance for the current year and confirm whether or not the schedule has been complied with to date.

Representation

I have attached a breakdown of the specification for Environmental Services, including backcourt inspections. I can confirm that charges billed to owners from August 2021 have been refunded due to services not being complete to the required standard.

We will carry out monthly inspections at the property from October 2023 and can confirm that the environmental services will be carried out fortnightly, the address is on the schedule for Mondays, however, if adverse weather, it will be moved to an alternative day the same week.

Provide the Homeowners and the Tribunal with their proposals for carrying out the recommendations listed in the August/ September 2023 Report issued to Dr. Black and carry out these recommendations at their own cost.

Representation

Scott has spoken with the owners, and we are proposing an owner led project. This will involve a further full scope of works being carried out at the property, detailing

works required. This will then be uploaded to public contracts Scotland for 14 days where contractors will submit a quotation. Following this, we will prepare the quotations and arrange a meeting of proprietors to discuss the options available and take a vote in line with the deeds. Present at the meeting will be Lowther commercial agent and a repairs technical officer.

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 loss and suffering caused to them by the Property Factor's actions.

Representation

I can confirm that a refund of £500 has been applied to owner's accounts and contact made to obtain bank details to arrange payment directly to their account.

Refund to the Homeowners all of the management fees and backcourt maintenance paid by them to the Property Factor since 16 August 2021, the date on which the relevant Property Factor Code of Conduct came into force.

Representation

I can confirm a refund of £412.70 has been applied to owners account for Management Fees and Back Court Maintenance applied since 16 August 2021. Contact has been made to obtain bank details to arrange payment directly to their account.

Refund £150.00 to each Homeowner by a direct payment and not by a credit to their common charges account in respect of the roof repair arranged and paid for by them.

Representation

I can confirm that a refund of £150 has been applied to owner's accounts and contact made to obtain bank details to arrange payment directly to their account."

5. The Tribunal treated the Property Factor's responses as an attempt to satisfy the terms of the Proposed PFEO and so render a full PFEO unnecessary.

Homeowner's Representations

6. Dr. Black on behalf of the Homeowners responded as follows:

"I write to confirm that with respect to points 5. and 6., Mr Karnowski and I have now received payments of £500.00 and £150.00 to our personal bank accounts. We consider these areas of the proposed PFEO to have been addressed.

The other points raised in my previous letter (27/10/23) regarding non compliance with the PFEO on the part of the Property Factor remain outstanding.

Mr Karnowski and I are still seeking a response to these points from the Property Factor, and would welcome any further information or guidance that the Tribunal is in a position to offer.

I have listed these points below for clarity:

Provide the Home Owners and the Tribunal with the information requested by them in respect of the Common Repair proposed by the Property Factor on 18 May 2022 including the scope of the works, the rates for the works, the Property Factor's reasons for (i) selecting City Building for the work and not putting the work to tender and (ii) not seeking a guarantee for the work.

We are pleased that the Property Factor has acknowledged that the description of works for the proposed roof repair was not as detailed as it should have been, and that further information should have been provided. We are also pleased by the Property Factor's statement that scopes of works issued in future will include full details of the proposed works. These are welcomed and positive developments. We have also had verbal agreement from the Property Factor that in future, 'before and after' photographs will be provided for all work being carried out at the property, and hope to receive this agreement in writing in due course. Unfortunately, it is not the case that the Property Factor have since provided the information requested regarding the proposed roof repair in May 2022, and we are confused by the statement in the recent correspondence stating that "the scope of works advised that a scaffold would be required, and liquid plastic repairs be carried out with a total block cost inclusive of building labour costs of £9105.04." The facts are that Mr Karnowski and I have requested several times, verbally and in writing, to be provided with a copy of the assessment carried out in May 2002 that generated the quote for these proposed works.

We have been informed by our local officer, Scott Fletcher, that neither he nor his manager can find any written record of this assessment on any of Lowther's systems. Mr Fletcher has contacted City Building in the hope that they can provide this, but as yet, no information has been forthcoming. The possible implications of the absence of any written record of this assessment are of course extremely serious. In addition, we are still seeking clarification regarding a RICO report on the roof issued by Lowther on 06/09/23. The report recommends that "external works" to the roof are undertaken to address "roof defects", but does not specify what these defects or proposed works are. We therefore do not understand where the brief description of works provided in the recent correspondence from Ms Aitken has come from. We wish all parties to know that it is deeply unsatisfactory that we continue to have a lack of clarity regarding the state of the roof of the building, the types of repairs required, and the genuine costs involved. This is a most essential repair, and information that in our view is basic and should be straightforward to access has continued to be unavailable to us. We have been alarmed to be informed recently that this information is not held by the Property Factor. For these reasons, we do not consider the Property Factor to have fully addressed this aspect of the proposed PFEO. We would also like more information about the nature of the guarantee that accompanies City Building works. Specifically we think it is important to be informed regarding the length of time works are covered for, when warranty periods expired, and what works would be classed as a "warranty repair".

Provide the Homeowners and the Tribunal with their proposals for carrying out the recommendations listed in the August/ September 2023 Report issued to Dr. Black and carry out these recommendations at their own cost. As already noted, we are still waiting for more information to clarify the content of the August/September 2023 RICO report. We are pleased that meetings

have taken place with Mr Fletcher to discuss the next steps regarding the above and the option of an owner led project. Whilst this has been significantly hampered by the ongoing lack of clarity about the required roof repairs, we acknowledge the efforts made by Mr Fletcher to maintain communication and meet with us to outline how an owner led project could work. We would like written clarification that “carry out recommendations at their own cost” refers to the Property Factor paying for these costs, and that this is not at the cost of home owners.”

Hearing on Proposed PFEO.

7. Having regard to the disparity in the responses from the Parties, the Tribunal ordered a Hearing in respect of the Proposed PFEO. The Hearing was intimated to the Parties and took place on 1 March 2024 at 10.00 by telephone conference call. Both Homeowners attended and took part. The Property Factor did not attend and did not take part.
8. Prior to the Hearing, Dr. Black on behalf of the Homeowners submitted a Timeline of Events following the initial CMD and a copy of a survey of the Property issued to the Homeowners by the Property Factor.
9. The Tribunal was satisfied that the Property Factor had been notified of the Hearing and so proceeded in their absence.
10. The Tribunal dealt with the each element of the Proposed PFEO in turn:-
 - a) Item 1 of the Proposed PFEO

Provide the Homeowners and the Tribunal with the information requested by them in respect of the Common Repair proposed by the Property Factor on 18 May 2022 including the scope of the works, the rates for the works, the Property Factor’s reasons for (i) selecting City Building for the work and not putting the work to tender and (ii) not seeking a guarantee for the work.

The Homeowners did not accept that the Property Factor had addressed this part of the Proposed PFEO and explained that Mr. Fletcher had advised them that the information was not available. Dr. Black advised the Tribunal that she had made a subject access request for the information and was told that the information could not be found. The Property Factor explained why City Building were chosen but did not explain why there was no tender and did not provide information on the scope of the works nor on the rates of the work. The Property Factor did not explain why the information was not available.

- b) Item 2 of the Proposed PFEO

Provide the Homeowners and the Tribunal with a named property manager or contact for the Properties with whom the Homeowners can communicate directly in future.

The Homeowners accepted that Mr. Fletcher had been named and that he communicated with them. However, they pointed out that Mr. Fletcher appeared to have no decision-making authority in the Property Factor's organisation and could not provide them with any meaningful information.

c) Item 3 of the Proposed PFEO

Provide the Homeowners and the Tribunal with the schedule for routine building and backcourt inspections and maintenance for the current year and confirm whether or not the schedule has been complied with to date.

The Homeowners accepted that a schedule had been provided but advised that it was not being adhered to. Dr. Black advised that she had enquired about opting out of the service but had been told this was not possible as the Property Factor owned a property in the block of flats.

The Tribunal accepted that the Property Factor had complied with the strict wording of this part of the Proposed PFEO.

d) Item 4 of the Proposed PFEO

Provide the Homeowners and the Tribunal with their proposals for carrying out the recommendations listed in the August/ September 2023 Report issued to Dr. Black and carry out these recommendations at their own cost.

The Homeowners maintained the comments made in their emails of October 2023 that the full information and proposals had not been fully explained and that no work had been carried out. They stated that the "owner-led" project had not progressed and that, although they had received an independent survey report from civil engineers, Brown and Wallace, dated 18 January 2024 no works specification had been prepared. They stated that they were "completely in the dark" as to the Property Factor's proposals.

The Property Factor's response to this part of the Proposed PFEO was a narration of what they intend to do but without any evidence that their intentions had been carried through or would be carried through.

e) Items 5, 6 and 7 of the Proposed PFEO all relate to monetary payments which the Homeowners accepted have been received.

11. At the Hearing, the Homeowners advised the Tribunal that they continued to be frustrated and exhausted in their dealings with the Property Factor on a day to day basis and despaired that the roof would ever be repaired properly.

Findings in Fact

1. From the representations made by the Parties and by the Homeowners at the Hearing, the Tribunal made the following findings in fact: -
 - i) The Property Factor did not provide the full information required by Item 1 of the Proposed PFEO;

- ii) The Property Factor had named as required by Item 2 of the Proposed PFEO;
- iii) The named contact does not have sufficient authority to provide the Homeowners with relevant and useful information;
- iv) The Property Factor provided the schedule for routine building and backcourt inspections and maintenance required by Item 3 of the Proposed PFEO;
- v) The Property Factor does not adhere to the schedule for routine building and backcourt inspections and maintenance;
- vi) The Property Factor did not provide the information required by Item 4 of the Proposed PFEO ;
- vii) The Property Factor has not carried out the work required by Item 4 of the Proposed PFEO;
- viii) The Property Factor has made the payments required by Items 5, 6 and 7 of the Proposed PFEO;
- ix) The Homeowners continue to suffer frustration and inconvenience by the direct failures of the Property Factor.

Issues for Tribunal

12. The issue for the Tribunal was should a full PFEO be made and, if so, on what terms should it be made.

Section 19 (3) Decision with reasons

13. The Tribunal had regard to Section 19(3) of the Act which states: *“If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order.”*
14. The Tribunal took account of the written representations of both Parties made under Section 19 (2) (a) of the Act. From the Applications, the CMD and its Findings in Fact at the Hearing as narrated above, the Tribunal was satisfied that the Property Factor had failed to carry out the property factor's duties and had failed to comply with the section 14 duty. Therefore, the Tribunal was bound to make a PFEO.

Section 20

15. The Tribunal had regard to Section 20 of the Act which states: *(1)A property factor enforcement order is an order requiring the property factor to (a)execute such action as the First-tier Tribunal considers necessary, (b)where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable. (2)A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made and (3) A property factor enforcement order may specify particular steps which the property factor must take.”*
16. The Tribunal had regard to Section 20(1) of the Act and took the view that it was necessary to order the Property Factor to execute actions (i) to ensure that the roof at

the Property is made good and is in a wind and water-tight condition and (ii) to ensure that the backcourt maintenance and environmental works are carried out to an acceptable standard. The Tribunal took the view that as further stress and frustration had been suffered by the Homeowners, further payment should be made to the Homeowners.

17. Therefore, the Tribunal made a PFEO by separate notice.

18. The decision is unanimous.

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.

Signed

Karen Moore, Chairperson

20 March 2024

