

Housing and Property Chamber First-tier Tribunal for Scotland



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

Property Factor Enforcement Order following a Decision under Sections 17 and 19 of the Act.

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)

The Tribunal having determined by Decision dated 5 October 2023 that the Property Factor had failed to comply with the Section 14 duty and its property factor’s duties in terms of the Act, having determined to issue a Property Factor Enforcement Order (“PFEO”), and having given Notice in accordance with Section 19(2) (a) the Act of its proposed PFEO and having taken account of the representation, the Tribunal makes the following PFEO in terms of Section 20 of the Act.

Property Factor Enforcement Order

Firstly:

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.

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.

Karen Moore,

Chairperson

20 March 2023

