



**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 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 to vary the 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. 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 or 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."*

### **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 Tribunal heard from all those present. The Tribunal was advised that roof work had commenced at the Property, albeit after the date for compliance as set out in the PFEO. The roof work was not fully complete. Communication issues with Property Factor continued causing the Homeowner's further frustration. The Property Factor acknowledged and apologised for continued failings.
7. The Tribunal noted that progress had been made and that, in their representations of 16 January 2025, the Property Factor had requested further time to conclude the works. The Tribunal asked Mrs. Mackay if she could provide an undertaking to this effect and she confirmed that she could do so. She confirmed that an extended period to 22 March 2025 to conclude the work was achievable.
8. The Tribunal asked Mrs. Mackay if the Property Factor had a view on compensating the Homeowners for the further frustration and inconvenience which they have suffered. Mrs. Mackay stated that the Property Factor would be open to compensation.

#### **Application of Section 21 of the Act**

9. The Tribunal advised the Parties, that in terms of Section 21 of the Act which states: *“(1) 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 consider reasonable, or (b) where it considers that the action required by the order is no longer necessary, revoke it. (2) Where subsection (3) applies, 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. (3) This subsection applies where (a) the First-tier Tribunal considers, on the submission of the property factor or otherwise, that any action required by a property factor enforcement order has not been, or will not be, executed during the period within which the order requires the work to be executed, and (b) the First-tier Tribunal (i) considers that satisfactory progress has been made in executing the action required, or (ii) has received a written undertaking from the property factor stating that the action required will be executed by a later date which the First-tier Tribunal considers satisfactory.”*
10. The Tribunal advised the Parties, therefore, that in terms of Section 21, it was bound to vary the PFEO to extend the period for compliance.

11. The Tribunal had regard to the continued frustration and inconvenience suffered by the Homeowners and took the view that the sum of £200.00 each is reasonable compensation.

### **Decision of the Tribunal.**

12. For the reasons set out above, the Tribunal varied the PFEO to allow an extended period for compliance and for further compensation of £200.00 each to be paid to the Homeowners.

### **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 23 January 2025