



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

**Decision: Failure to comply with Property Factor Enforcement Order (“PFEO”):
Property Factors (Scotland) Act 2011 Sections 23 and 24 (“the 2011 Act”)**

Chamber Ref: FTS/HPC/PF/23/1217

Re: Flat 1/3 10 Archerhill Square, Glasgow G13 4TD

Parties:

Mr Kashif Naeem, 223 Auldhouse Road, Glasgow G43 1DF (“the Homeowner”)

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow G1 1HL
 (“the Factor”)**

Tribunal Member:

**Graham Harding (Legal Member)
Elizabeth Dickson (Ordinary Member)**

Decision

The Tribunal determined:

- 1. The Factor has failed to comply with the PFEO dated 31 March 2024;**
- 2. To serve a Notice of Failure to Comply on the Scottish Ministers in terms of section 23(2) of the 2011 Act;**
- 3. To report the Factor’s failure to the police for prosecution in terms of section 24 of the 2011 Act.**

The decision of the Tribunal is unanimous.

Reasons for Decision

4. In the Tribunal’s decision of 20 November 2023, it determined that the Factor was in breach of Sections OSP1, OSP2, OSP3, OSP6, 2.1, 2.4, 2.6, 2.7, 3.1, 4.6, 5.3, 6.6, 6.9, 6.10 and 6.11 of the Code of Conduct for Property Factors.
5. On 31 March 2024 the Tribunal issued a PFEO which required the Factor:
 1. Refund the Homeowner all of the management fees and concierge fees charged to the Homeowner’s account since 16 August 2021, the date on which the Code of Conduct came into force; and
 2. Evidence the Tribunal that item 1 has been carried out within a period of one month from the date of issue of the PFEO.

6. By emails dated 14 May and 31 May 2024 the Homeowner advised that the Factor had not completed the actions required by the PFEO.
7. No information or representations about compliance have been received from the Factor and no excuse for the failure has been presented.
8. The Tribunal accordingly determines that the Factor has failed to comply with the PFEO and that there is no reasonable excuse for the failure.

Appeals

A homeowner or property factor 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.

Graham Harding Legal Member and Chair

5 August 2024 Date

