



Statement of Decision with reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and Section 23 of the Property Factors (Scotland) Act 2011 (“the PF Act”)

Reference number: FTS/HPC/PF/23/1724 ("the Application")

Re: 2F1, Chilton, Gracefield Court, Musselburgh, EH21 6LL ("the Property")

The Parties:

Mrs. Jane Calder residing at Pyat Shaws Cottage, Longyester, Near Gifford, EH41 4PL ("the Homeowner") per her representative, Mr. Garry Calder, of the same address.

Charles White Limited, having a place of business at 14 New Mart Road, Edinburgh, EH14 1RL ("the Property Factor")

Decision

The Tribunal determined that the Property Factor had complied with the Property Factor Enforcement Order in full.

Tribunal Members

Karen Moore (Chairperson) and David Godfrey (Surveyor and Ordinary Member)

Background

- Having determined by Decision dated 16 September 2024 that the Property Factor had failed to comply with the Section 14 duty and its property factor's duties in terms of the Act, the Tribunal made the following Property Factor Enforcement Order ("PFEO"):

No later than 31 December 2024 the Property Factor must at its own cost and expense

1. refund to the Homeowner her share of the cost of the AGM held on 16 June 2022 and pay to her the sum of £100.00 in compensation for the inconvenience which the Property Factor has caused her in regard to this aspect of her complaint;
 2. correct its Written Statement of Services with regard to the erroneous references to the Deed of Declaration of Conditions by Malcolm Bremner Homes Limited recorded in the G.R.S. (Midlothian) on 13 October 1987 which affects the Property;
 3. review its procedures in respect of the process and protocols for dealing with calling meetings for the development of which the Property forms part to ensure that the calling of meetings conforms to the said Deed of Declarations relating to meetings or to the Property Factor's own custom and practice and set these out in a written document as a Standard Operating Procedure for staff and customers in a written document;
 4. correct its Written Statement of Services with regard to the said reviewed process and protocols for dealing with calling meetings;
 5. issue the said reviewed process and protocols Standard Operating Procedure to the Homeowner;
 6. issue the said reviewed process and protocols Standard Operating Procedure to relevant staff and train relevant staff in the said Standard Operating Procedure and
 7. evidence to the Tribunal that items 1-6 above have been carried out.
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2. By email dated 19 December 2024, the Property Factor submitted a bundle of documents in compliance with the PFEO.
 3. By emails dated 3 January 2025 to both Parties, the tribunal administration requested their views on the Property Factor's compliance with the PFEO.
 4. The Property Factor replied by email dated 6 January 2025 that they considered that they had complied. They did not expand on this in writing.
 5. By email dated 21 January 2025, the Homeowner replied that she considered that the Property Factor had not complied in respect of Items 2- 5 of the

PFEO and that it was unclear to her that Items 6 and 7 had been complied with.

6. Her written response is as follows:

*"Do you agree that the actions in the PEFO have been completed? NO
PFEO Item 1 Yes, this item does conform with the PFEO.
PFEO Item 2 No, this item does not conform with the PFEO. CWL has issued a generic Written Statement of Services (WSoS) that makes no mention of Gracefield Court and consequently it contains many items that are at odds with Gracefield Court's Deed of Declaration of Conditions (DoDC). Whilst CWL supplement their WSoS with another document named Gracefield Court Development Schedule 2025 (GCDS), this document simply references sections within their generic WSoS and hence the generic approach of their WSoS is continued. It therefore, remains the fact that these documents do not align with the Gracefield Court's DoDC and hence the requirements of Item 2 has not been met by CWL*

PFEO Item 3 No, this item does not conform with the PFEO. Section Nineteenth of the DoDC describes the process that is to be applied for meetings. CWL's response to this item does not conform with Section Nineteenth of the DoDC the requirements of Item 3 has not been met by CWL.

PFEO Item 4 2 & 3 above.

PFEO Item 5 No, this item does not conform with the PFEO. Please see response for items Unclear as, whilst this item could be considered conforming with the PFEO, the content of what has been issued does not conform with the PFEO's requirements.

PFEO Item 6 Unclear, as, whilst this item could be considered conforming with the PFEO, the training's subject matter etc appears to be inappropriate as its content does not conform with the PFEO.

PFEO Item 7 Unclear, as whilst this item could be considered conforming with the PFEO, what has been issued to the FTT does not conform with the PFEO."

7. The Property Factor responded further by email of 22 January 2025 refuting the Homeowner's position.
8. Therefore, the Tribunal fixed a Hearing to determine whether or not the Property Factor had complied with the PFEO.

Hearing

9. The Hearing took place on 22 August 2025 at 10.00 by Webinar. Mrs. Calder, the Homeowner was present and represented by Mr. Calder. The Property Factor was represented by Ms. R. Rae. As with the substantive Hearings, the Hearing dealt with the three other PFEO concerning the same Parties and the same Property.
10. The Tribunal addressed each item of the PFEO in turn.
11. The Parties agreed that Item 1 of the PFEO had been complied with.
12. Item 7, being the obligation on the Property Factor to submit evidence of compliance was not discussed as it was evident that the Property Factor had evidenced their actions to the Tribunal.
13. Accordingly, the Tribunal found that Items 1 and 7 of the PFEO had been complied with.
14. The Tribunal heard evidence in respect of Items 2 – 6, inclusive, of the PFEO.

Item 2

correct its Written Statement of Services with regard to the erroneous references to the Deed of Declaration of Conditions by Malcolm Bremner Homes Limited recorded in the G.R.S. (Midlothian) on 13 October 1987 which affects the Property

Property Factor's Position

15. For the Property Factor, Miss Rae confirmed to the Tribunal that the Property Factor's view is that the Written Statement of Services ("WSS") lodged on 19th December 2024 satisfies this part of the PFEO.

16. Miss Rae stated that, coinciding with the issue of the PFEO, the Property Factor was undertaking a reworking of their written statements of services and were moving towards generic written statement of services for all developments with a schedule annexed particular to each development. Therefore, the Property Factor had issued a generic written statement of services with a schedule relative to the Gracefield Court development in this instance.

Homeowner's Position

17. Mr. Calder for his wife, the Homeowner, strongly refuted that the Property Factor's approach complied with the wording of the PFEO. He stressed that the order was "to correct" the WSS with regard to erroneous references. He stressed that the Property Factor had not corrected the WSS but had issued a new WSS. He stressed further that the new WSS did not resolve the issues of the original WSS's compatibility with the title deeds. Mr. Calder's firm and unequivocal view was that the WSS ought to align with the terms of the Deed of Conditions affecting the Property, and as the new WSS did not do this, it did not comply with this part of the PFEO. His view was that a WSS bespoke to the Property should have been produced.

18. In further explanation, Mr. Calder referred the Tribunal to certain parts of the new WSS which did not comply with Item 2 of the PFEO. Although, Mr. Calder had numerous examples to which he wished to refer, he agreed with the Tribunal that, as all of these examples followed the same theme being that the WSS did not reflect the title deeds, he agreed to restrict the examples to the most salient.

19. Mr. Calder referred the Tribunal to page 1 and Section 2.00, Authority to Act, His position was that the Property Factor had empowered themselves beyond the scope of the title deeds by delegating authority to themselves which was

which was not expressed in the title deeds. This level of delegation had not been agreed between the homeowners and the Property Factor, neither expressed nor implied, and so the WSS was incorrect in this regard.

20. With reference to page 3 and Section 4.0, Repairs/Maintenance, Mr. Calder pointed out that there are no delegated monetary levels in the title deeds and so the Property Factor cannot impose this nor can the Property Factor empower themselves in respect of instructing repairs outwith the title deeds. With further reference to Repairs/maintenance, Mr. Calder pointed out that the Schedule for the Gracefield Court development annexed to the WSS is incorrect as it also refers to delegated monetary levels of authority. He noted that this Schedule does not mention common buildings insurance.

21. With reference to Page 10 and Section 6.5, Mr. Calder's strong position was that the Property Factor has no power to call meetings and, in particular, has no power to call meetings to "make decisions". Mr. Calder stressed that only the homeowners have this right and entitlement as set out in the title deeds. Accordingly, the new WSS is inaccurate in respect of the way in which meetings can be called and so it does not comply with the Deed of Declaration of Conditions. Mr. Calder again stressed that the WSS must align with the title deeds. He did not accept that the Property Factor had any power or right in their capacity as factor to call meetings or as a matter of contract in terms of the WSS, nor did he accept Miss Rae's point that the title deeds did not prohibit the Property Factor from calling meetings.

Item 3

review its procedures in respect of the process and protocols for dealing with calling meetings for the development of which the Property forms part to ensure that the calling of meetings conforms to the said Deed of Declarations relating to meetings or to the Property Factor's own custom and practice and set these out in a written document as a Standard Operating Procedure for staff and customers in a written document;

Property Factor's Position

22. For the Property Factor, Miss Rae confirmed to the Tribunal that the Property Factor's view is that the Standard Operating Procedure (SOP) lodged on 19th December 2024 satisfies this part of the PFEO. She stated that the extract from the Deed of Declaration of Conditions, Clause Nineteenth, forms part of the Schedule to the new WSS.

Homeowner's Position

23. Mr. Calder refuted that the SOP complied with the wording of the PFEO. He pointed out that the SOP makes no mention of the Deed of Declaration of Conditions and Clause Nineteenth but refers to this by reference to another document. His position was that the SOP itself should set out the process narrated in Clause Nineteenth. Accordingly, the SOP is lacking in respect of the way in which meetings can be called in terms of the Deed of Declaration of Conditions and so it does not comply with the PFEO.

Item 4

correct its Written Statement of Services with regard to the said reviewed process and protocols for dealing with calling meetings

Property Factor's Position

24. For the Property Factor, Miss Rae again confirmed that the Property Factor's view is that the Written Statement of Services ("WSS") lodged on 19th December 2024 satisfies this part of the PFEO.

Homeowner's Position

25. Mr. Calder again strongly refuted that the Property Factor's approach complied with the wording of the PFEO. His position was that, as with the SOP, the WSS should set out the process narrated in Clause Nineteenth of the Deed of Declaration of Conditions. He reaffirmed his position that the WSS ought to be bespoke and ought to wholly align with the title deeds.

Item 5

issue the said reviewed process and protocols Standard Operating Procedure to the Homeowner

The Parties were satisfied that the SOP had been issued, albeit the Homeowner did not accept that the SOP was compliant.

Item 6

issue the said reviewed process and protocols Standard Operating Procedure to relevant staff and train relevant staff in the said Standard Operating Procedure and

Property Factor's Position

26. For the Property Factor, Miss Rae confirmed that training sessions had taken place as evidenced by the sign in sheet which had been lodged. She confirmed that training extended to the procedure for calling meetings for the Gracefield Court Development, in particular, and agreed that the training was in respect of calling the meeting and not decision making at the meeting. She confirmed that the recently appointed property manager for the Gracefield Court Development had taken part in the training.
27. Miss Rae confirmed that there was no intention that the Property Factor make decisions which fell to the homeowners.

Homeowner's Position

28. Mr. Calder for his wife accepted that the training had taken place.

Further evidence available to the Tribunal.

29. In addition to the Homeowner's written submissions of 21 January 2025 and the oral evidence, the Tribunal had available to it the Code of Conduct for Property Factors ("the 2021 Code") and its Decision dated 16 September 2024.

Findings in Fact.

30. The Tribunal found the following facts established:
 - i) The Property Factor made payment to the Homeowner as required by Clause 1 of the PFEO;
 - ii) The Property Factor issued a new WSS in a generic format and with a Schedule particular to the Gracefield Court development;

- iii) The new WSS does not contain references to the specific title deeds for the Gracefield Court development;
- iv) The new WSS does not contain erroneous references to the specific title deeds to the for Gracefield Court development
- v) The new WSS sets out the ways in which the Property Factor conducts their business;
- vi) The new WSS conforms to Section 1 of the 2021 Code;
- vii) The Property Factor prepared and put in place a SOP for calling meetings;
- viii) The SOP makes reference to the procedure set out in Clause Nineteenth of the Deed of Declaration of Conditions relative to the Gracefield Court development;
- ix) The Property Factor has trained the relevant staff in respect of the SOP.

Issues for the Tribunal

31. The issue for the Tribunal was has the Property Factor complied with the PFEO?

Decision of the Tribunal and reasons for the Decision.

Item 2

correct its Written Statement of Services with regard to the erroneous references to the Deed of Declaration of Conditions by Malcolm Bremner Homes Limited recorded in the G.R.S. (Midlothian) on 13 October 1987 which affects the Property

32. The Tribunal determined that the Property Factor had complied with this part of the PFEO.

33. In reaching its decision, the Tribunal had regard to the previous or old WSS which was bespoke to the Gracefield Court development, its Decision dated 16 September 2024 and its reason for making and wording this part of the PFEO.

34. Clause 37 of that Decision states “*Section 1.2 of the WSoS states “CWL must operate at all times in accordance with the terms of the DC”, DC being the*

Deed of Conditions. However, the Deed of Conditions does not give the Property Factor power to call meetings. The Deed of Conditions sets out that this power is vested in the owners alone". Clause 49 of that Decision states "*The Property Factor's WSoS at Section 7.8 is erroneous and its statement at 1.2 that "The Deed of Conditions (DC) ... conveys a delegated authority to the Managing Agent in the management and maintenance of the common areas of the development" is wholly incorrect as the Deed of Conditions give no such delegation. This is a deliberate falsehood, or at best, a negligent misinterpretation of the Deed of Conditions.*" At Clause 65 of that Decision, the Tribunal states that it intends to address these erroneous references by having the Property Factor update the then WSS. Therefore, the Tribunal ordered the Property Factor in terms of Item 2 of the PFEO.

35. The Tribunal did not order the Property Factor to do any more than "correct" the wrong references to the content of the title deed in the old WSS and did not prescribe the format which this correction should take. Having had regard to the new WSS, the Tribunal is satisfied that, by adopting a generic approach and so removing references to the title deeds specific to the Property in the core part of the WSS and dealing with these in the Schedule annexed, the Property Factor has complied with this part of the PFEO.
36. The Tribunal notes the Homeowner's strong position that the WSS must align with the title deeds and can find no basis for this. The content of a written statement of services can be found in the 2021 Code which has the status of statutory guidance. There is no obligation, specific or implied, that property factors must reflect or align their written statements with the titles for each development which they factor.

Item 3

review its procedures in respect of the process and protocols for dealing with calling meetings for the development of which the Property forms part to ensure that the calling of meetings conforms to the said Deed of Declarations relating to meetings or to the Property Factor's own custom and practice and

set these out in a written document as a Standard Operating Procedure for staff and customers in a written document;

37. The Tribunal determined that the Property Factor had complied with this part of the PFEO.
38. In reaching its decision, the Tribunal, again, had regard to its Decision dated 16 September 2024 and its reason for making and wording this part of the PFEO. As noted in the above paragraphs, the intention and purpose was to ensure that, if calling meetings at which decisions might be taken, the Property Factor should have regard to the Deed of Declaration of Conditions. The Tribunal did not prescribe how the Property Factor should review their procedures and set out their SOP as these are operational business matters for the Property Factor. Having had regard to the SOP, the Tribunal is satisfied that it deals appropriately with a process which is compliant with the title deeds.
39. With regard to meetings in general, the Tribunal refers the Parties to Clause 42 of its Decision of 16 September 2024 which states: "*The Tribunal's view is that the wording of the Deed of Conditions does not negate the Property Factor's appointment as they clearly act in that capacity nor does it negate the Property Factor being able to call meetings as a consultation tool in the normal course of its business. The wording does, however, negate the Property Factor's ability to act in terms of and rely on the Deed of Conditions.*"

Item 4

correct its Written Statement of Services with regard to the said reviewed process and protocols for dealing with calling meetings

40. The Tribunal determined that the Property Factor had complied with this part of the PFEO.

41. In reaching its decision, the Tribunal followed its reasoning set out in respect of Item 2 and Item 3 above and was satisfied the new WSS complied with this part of the PFEO.

Item 5

issue the said reviewed process and protocols Standard Operating Procedure to the Homeowner

42. As the Parties were satisfied that the SOP had been issued, the Tribunal determined that the Property Factor had complied with this part of the PFEO.

Item 6

issue the said reviewed process and protocols Standard Operating Procedure to relevant staff and train relevant staff in the said Standard Operating Procedure and

43. As the Parties were satisfied that the SOP had been issued, the Tribunal determined that the Property Factor had complied with this part of the PFEO.

44. This Decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

22 August 2025

Legal Member/Chair

Date

