



**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/23/2339 ("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 has complied with the Property Factor Enforcement Order in full.

**Tribunal Members**

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

**Background**

1. 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 ("PFOE"):

*“No later than 31 December 2024 the Property Factor must at its own cost and expense 1. refund or write off the Homeowner’s share of the cost of the work carried out by Fitzpatrick Property Services invoiced on 5 August 2022 and to 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 routine and emergency repairs for the development of which the Property forms part and set these out in a written document as a Standard Operating Procedure (“the SOP”) for staff and customers; 4. correct its Written Statement of Services with regard to the said reviewed process and protocols for dealing with routine and emergency repairs; 5. review the accreditation and certification of its approved contractors to ensure that all contractors are properly accredited and certified; 6. update its repairs case management system to ensure that all approved contractors are shown as properly accredited and certified; 7. include in the said SOP, a process and protocol for dealing with occasions where the repairs case management system shows that a contractor is not properly accredited and certified; 8. include in the said SOP, a process and protocol for selecting contractors in respect of appropriate skills and location to the Property; 9. issue the said SOP to the Homeowner; 10. issue the said SOP to relevant staff and, thereafter, train relevant staff in the said SOP; 11. issue the corrected Written Statement of Services and 12. evidence to the Tribunal that items 1-11 above have been carried out..”*

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 the Parties’ views on the Property Factor’s compliance with the PFEO. The Property Factor replied by email dated 6 January 2025 and submitted that they considered that they had complied. By email dated 21

January 2025, the Homeowner submitted in detail why she did not accept that the Property Factor had complied fully. By further email of 22 January 2025, the Property Factor submitted further comments refuting the Homeowner's position.

4. Therefore, the Tribunal fixed a Hearing to determine whether or not the Property Factor had complied with the PFEO.

## **Hearing**

5. 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.
6. As with the substantive hearings which dealt with four applications of complaint by the Homeowner against the Property Factor, the Hearing on 22 August 2025 dealt with four PFEOs concerning the same Parties and the same Property. All four PFEOs contained the same order in respect of Item 2 and contained broadly the same orders in respect of all other Items, the differences in wording being relevant to the complaint set out in each application. With regard to this Application, the complaint centred on the Property Factor's process and protocols for dealing with routine and emergency repairs and for dealing with the accreditation of contractors.
7. At the Hearing session, the Tribunal dealt with the PFEO for Application FTS/HPC/PF/23/1724 first and heard the Parties on Items 2 and 3 of that Application. As the Parties' arguments for Items 2 of that PFEO were the same as the arguments for Item 2 of this PFEO, the Tribunal did not rehear those arguments but applied the arguments to this PFEO. These arguments are repeated below.
8. As the Parties' arguments in respect of the PFEO Items which dealt with SOPs in the FTS/HPC/PF/23/1724 were in line with their arguments for the

SOP Items in this PFEO, the Tribunal did not rehear those arguments but applied them to this PFEO. These arguments are also repeated below.

9. In reaching its decision, the Tribunal had regard to both the oral evidence at the Hearing and the Parties' written submissions in their emails of January 2025.
10. The Parties agreed that Item 1 of the PFEO had been complied with. Item 12, 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. Accordingly, the Tribunal found that Items 1 and 12 of the PFEO had been complied with without further evidence.

## **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**

11. 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.
12. Miss Rae's evidence was 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.
13. The Property Factor's written submission states: "*PFEO item 2 on all cases directed us to "correct its Written Statement of Services with regard to the*

*erroneous references to the Deed of Declarations of Conditions by Malcolm Bremner Homes Limited recorded in the GRS (Midlothian) on 13 October 1987 which affects the Property". We have removed all references as requested and therefore believe we have met this direction on the PFEOs. We disagree with the applicant's position on our Written Statement of Services and do not believe they are relevant to the PFEO itself which only directed us to remove the references as cited above. "*

### **Homeowner's Position**

14. 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.
15. 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.
16. 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 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.

17. 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
18. The Homeowner's written submission states "*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.*"

### **Item 3**

*its procedures in respect of the process and protocols for dealing with routine and emergency repairs for the development of which the Property forms part and set these out in a written document as a Standard Operating Procedure ("the SOP") for staff and customers*

### **Property Factor's Position**

19. 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.

20. In their written response of 22 January 2025, the Property Factor directs the Tribunal to their comments in respect of the PFEO for application FTS/HPC/PF/23/1789 which in turn refers the Tribunal to the SOPs submitted by them for that PFEO and for this PFEO.

### **Homeowner's Position**

21. 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 terms of the Deed of Declaration of Conditions and so it does not comply with the PFEO.

22. The Homeowner's written submission states: "No, this item does not conform with the PFEO. What CWL have written within their WSoS does not conform with the DoDC since CWL are providing themselves with Authority to Act and spend property owner funds even though the DoDC and no property owners has given CWL such authority . To address this non-conformity CWL would need to put forward their proposal to Gracefield Court's property owners for a vote. The voting process requires to conform with the DoDC and the outcome of such a vote would then inform wording of CWL's WSoS."

### **Item 4**

*correct its Written Statement of Services with regard to the said reviewed process and protocols for dealing with routine and emergency repairs*

### **Property Factor's Position**

23. For the Property Factor, Miss Rae's evidence was 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.

24. In their written response of 22 January 2025, the Property Factor again directs the Tribunal to their comments in respect of the PFEO for application FTS/HPC/PF/23/1789 which in turn refers the Tribunal to the SOPs submitted by them for that PFEO and for this 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.

26. The Homeowner's written submission states: "*PFEO Item 4 No, this item does not conform with the PFEO. Please see response for items 2 & 3 above*"

### **Items 5 to 10 inclusive**

27. The Parties were satisfied that these Items had been complied with, albeit the Homeowner's written submission caveated her position with the phrase "*on the basis CWL is reporting compliance*" and that it is "*unclear*" if Item 7 had been complied with.

### **Item 11**

*issue the corrected Written Statement of Services*

28. The Homeowner's position on this Item, is as outlined in her position as set out at Item 2 and so is not rehearsed further here.

### **.Further evidence available to the Tribunal.**

29. In addition to the Parties' written submissions of January 2025 and the oral evidence, the Tribunal had available to it the bundle of documents submitted by the Property Factor on 19 December 2024, 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 issued a new WSS in a generic format and with a Schedule particular to the Gracefield Court development;
- ii) The new WSS does not contain references to the specific title deeds for the Gracefield Court development;
- iii) The new WSS does not contain erroneous references to the specific title deeds to the for Gracefield Court development
- iv) The new WSS sets out the ways in which the Property Factor conducts their business;
- v) The new WSS conforms to Section 1 of the 2021 Code;
- vi) The Property Factor reviewed its procedures in respect of the process and protocols for dealing with routine and emergency repairs for the Gracefield Court development and put in place a SOP for dealing with routine and emergency repairs ;
- vii) 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;
- viii) The SOP is comprehensive in how routine and emergency repairs and the accreditation of contractors should be dealt with;
- ix) The Property Factor has trained the relevant staff in respect of the SOP;
- x) The Property Factor issued the new WSS to the Homeowner.

## **Issues for the Tribunal**

31. The issue for the Tribunal is “has the Property Factor complied with the PFEO?”

## **Decision of the Tribunal and reasons for the Decision.**

### **Item 2**

32. The Tribunal determined that the Property Factor has 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. In the section of that Decision headed "*Decision of the Tribunal and Reasons for the Decision*", the Tribunal set out its reasons for its Decision, being the Tribunal's concern that the Property Factor had misinterpreted both their own WSS in force at that time and the title deeds affecting the Property.
35. In the section of that Decision headed "*Property Factor Enforcement Order (PFEO)*", the Tribunal stated that it intended to address these matters by instructing the Property Factor to issue an updated WSS and to issue procedures or protocols in respect of repairs. Therefore, the Tribunal ordered the Property Factor in terms of Item 2 of the PFEO.
36. 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.
37. 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.
38. The Tribunal does not agree with The Homeowner's written submission that the WSS gives the Property Factor powers beyond that in the title deeds. The WSS sets out the way in which the Property Factor will carry out their service

and duties and is compatible with the 2021 Code in that respect. The SOPs, referred to in the PFEO, compliment this in respect of day to day operations. The Tribunal sees no need for the WSS to set out owners' voting procedures in the WSS as these are procedures which the owners, and not the Property Factor, should follow.

### **Items 3 - 10**

39. The Tribunal determined that the Property Factor has complied with these parts of the PFEO.
40. In reaching its decision, the Tribunal, again, had regard to its Decision dated 16 September 2024 and its reasons for making and wording this part of the PFEO. In addition to the Tribunal's concerns that the Property Factor misinterpreted the titled deeds and the WSS, the Tribunal was further concerned that the Property Factor lacked proper processes for dealing with repairs and that the Property Factor's staff lacked training in respect of repairs, assessing the nature of repairs and the ways in which to select contractors.
41. As noted in the above paragraphs, the intention and purpose was to ensure that the WSS was accurate in respect of references to repairs processes, that the Property Factor had processes and procedures in place and that staff were trained on those processes and procedures. 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.
42. Having had regard to the SOP, the Tribunal is satisfied that it deals appropriately and comprehensively with a process which is compliant with the title deeds and with new WSS in respect of dealing with repairs and that the SOP guides staff on the steps to be taken to ensure this compliance.
43. The Tribunal does not agree with The Homeowner's written submission that the SOPs confer powers beyond the scope of the WSS and the title deeds on the Property Factor. The SOPs make specific and clear reference to both the

title deeds and the WSS in respect of how these govern the repairs processes.

**47. 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.

### Legal Member/Chair

29 September 2025

Date



