



STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Reference: FTS/HPC/PF/23/2290

Property address: 30 Westfield Avenue, Flat 48, Edinburgh, EH11 2TZ (“the Property”)

The Parties

Mr Kacper Trela, 30 Westfield Avenue, Flat 48, Edinburgh, EH11 2TZ (“the Homeowner”)

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

Tribunal Members

Ms H Forbes (Legal Member)

Ms S Brydon (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs OSP11, 1.1, 1.2 and 2.7 of the 2021 Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

Background

1. By application received in the period between 11th July and 18th September 2023, the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraphs OSP1, OSP2, OSP4, OSP5, OSP6, OSP8, OSP11, 1.1, 1.2, 1.3, 1E17, 2.6 and 2.7 of the 2021 Code, and whether the Property Factor had failed in carrying out their property factor duties. The Homeowner lodged notifications to the Property Factor, correspondence between the parties, and a copy of the Property Factor’s Written Statement of Services (“WSS”).

2. A Case Management Discussion (“CMD”) set down for 19th December 2023 was postponed at the request of the Homeowner.
3. A CMD took place by telephone conference on 20th March 2024. The Homeowner was in attendance. The Property Factor was represented by Ms Vicky Aitken. All confirmed receipt of the case file (hereinafter referred to as ‘CF[page number]’). The application was adjourned to a hearing.
4. By emails dated 24th and 29th July 2024, the Homeowner made applications to amend his application. The Homeowner was informed that his applications to amend were accepted in part. An amendment to include some matters arising from meetings held on 23rd October 2023 and 26th July 2024 was allowed. The Tribunal indicated that matters relating to commercial vehicle parking, bird-proofing, electricity rates and a leak in 2021 would not be accepted.
5. A hearing scheduled for 31st July 2024 was postponed at the Property Factor’s request.
6. By email dated 20th August 2024, the Property Factor lodged representations and productions (referred to hereafter as ‘PF[page number]’).
7. By email dated 21st August 2024, the Homeowner lodged representations and productions (referred to hereafter as ‘HO[page number]’).

The Hearing

8. A hearing was convened on 26th November 2024 by video conference. The Homeowner was in attendance. The Property Factor was represented by Miss Michelle Rush, Director.

Background

The Homeowner’s position

9. The Homeowner provided some background to the application, stating that he had experienced several issues since purchasing the Property in December 2020. He had attempted to contact the Property Factor often and had been passed around. He had not been informed when the Property Factor had changed. He had only received a copy of the Written Statement of Services (“WSS”) a few months ago.

The Property Factor’s position

10. Ms Rush said she understood the challenges faced by the Homeowner. He is in a small minority of private homeowners within the development. It was her position that she had tried to make sure there was no bias, but the reality is that votes often run in favour of Wheatley Homes East, as the largest homeowner. The Property Factor has tried to take significant measures to

assist the Homeowner, but he remains unsatisfied. Ms Rush said she was not aware of any further communication breaches, but the Homeowner tends to engage different people within Wheatley Group in different ways. Wheatley Homes East owns all but two of the properties within the development, so there is only one other private homeowner.

OSP1

You must conduct your business in a way that complies with all relevant legislation

The Homeowner's position

11. The Homeowner said the Property Factor had failed to comply with this paragraph of the Code by failing to comply with the Act and Code.

The Property Factor's position

12. Ms Rush said the Homeowner had failed to provide any supporting detail to substantiate this complaint. The Property Factor accepted there had been communication errors, but did not accept that this issue fell within this paragraph of the Code.

OSP2

You must be honest, open, transparent and fair in your dealings with homeowners

The Homeowner's position

13. The Homeowner said he requested a meeting regarding the installation of a personal charging point for an electric vehicle, which the Property Factor tried to delay. The Property Factor and majority owner of properties in the development is the same group – Wheatley. The Property Factor favours Wheatley in all its dealings. They are not giving equal treatment to all homeowners. It is not in Wheatley's interests to have meetings. The Homeowner referred to CF086, which was an email dated 23rd March 2023 from the Homeowner to the Property Factor recapping on matters discussed during a call, and requesting a meeting of homeowners to be held by 7th April 2023 to consider his request. This meeting took place in October 2023. In July 2024, the Homeowner met with a representative of Wheatley Homes East Limited to discuss matters. Ms Rush joined the meeting.
14. In his application and the notification to the Property Factor, the Homeowner stated that the Property Factor was taking unreasonably long to communicate, passing the responsibility over from one person to another.

The Property Factor's position

15. Ms Rush said the Property Factor denied any failure to comply with this paragraph, stating that the Homeowner had been in touch with various people within Wheatley Homes East.

OSP4

You must not provide information that is deliberately or negligently misleading or false

16. The Property Factor informed the Homeowner that it would not be beneficial to have a meeting to discuss the matter of the personal charging point. The Homeowner said that was misleading information, as he was aware that a meeting would be beneficial to him. Without such a meeting, he did not have legal avenues to challenge the Property Factor. It was his position that he required a vote on the matter in order to make a proper legal challenge. The Homeowner said the WSS listed arranging owners' meetings as one of the Property Factor's core services (CF65).
17. The Homeowner said the Property Factor also prevented him from taking action under the Title Conditions (Scotland) Act 2003, as they refused to provide him with the details of other homeowners, saying they were not authorised to provide these details. The Homeowner wished to contact other homeowners to arrange a meeting. There are 193 properties within three blocks in the development, and the Homeowner said it would have been too expensive to seek Title Deeds for each property in order to find out which properties were privately owned. The Homeowner said provision of owners' details falls within general management of the development in terms of the WSS. He believed it was a reasonable request to make. The Property Factor also refused to release the information under a Freedom of Information request. The Homeowner eventually discovered the address of the only other private homeowner, by purchasing one Title Deed.

The Property Factor's position

18. Ms Rush said the Property Factor denied any failure to comply with this paragraph. The Homeowner was informed by telephone that he could not have a parking space for his exclusive use. The Title Deed states that parking will remain unallocated and the parking area is common property. The Property Factor's position was that it would not be beneficial to hold a meeting in those circumstances.
19. Ms Rush referred to the Property Factor's written representations which stated that it had been explained to the Homeowner that the Property Factor was exploring options to instal communal EV chargers, and that a meeting of residents would take place when this investigation had been carried out. A meeting took place in October 2023, when funding had been granted for charging points.

20. Ms Rush said it was not the case that the failure to hold a meeting prevented the Homeowner from taking action. Although the Homeowner had been told his request was not feasible, the Property Factor was working behind the scenes to explore grant funding for charging points. This delayed the meeting from June to October 2023. With regard to the matter of the Homeowner requesting details of other homeowners, Ms Rush said the Property Factor was prevented by data protection legislation from sharing such details, and the Homeowner was directed to the Land Register.

OSP5

You must apply your policies consistently and reasonably

The Homeowner's position

21. The Homeowner said the Property Factor had not complied with this paragraph by failing to arrange meetings. Even at the meeting in July 2024, the Property Factor would not take action regarding parking matters as they did not wish to upset Wheatley Homes East tenants. There was some further discussion on this matter, and the matter of upgraded bike sheds, however, these matters do not form part of the current application to the Tribunal, and were specifically excluded when the applications to amend were considered.
22. The Homeowner said he believed the Property Factor would have treated his request differently if it benefitted Wheatley Homes East.

The Property Factor's position

23. Ms Rush said the Property Factor denied any failure to comply with this paragraph. There was no bias towards Wheatley Homes East. The same approach was taken in all situations. The Title Deeds are very clear about parking, stating that the parking area is a common area.

OSP6

You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective

The Homeowner's position

24. The Homeowner said this had been covered earlier, and referred to the Property Factor's refusal to call a meeting, as required by the WSS. The Homeowner said he had been requesting a meeting by telephone for a long time, but there is no official record of that. He requested a meeting on 23rd March 2023 and it took place in October 2023. This is not reasonable.

- 25.** The Homeowner had also complained in the second application to amend that the Property Factor failed to inform all the required parties of the meeting on 23rd October 2023, as the other private homeowner was not informed. It was his position that Wheatley Homes voted on behalf of the other private homeowner in the absence of proper authorisation. The decision of the meeting was not, therefore, legally binding.

The Property Factor's position

- 26.** Ms Rush said the Property Factor denied any failure to comply with this paragraph. She reiterated that the delay was due to the Property Factor investigating and securing funding for common EV chargers. This took longer than expected but the Homeowner was informed of the delay.
- 27.** Ms Rush said the Property Factor was unable to locate the meeting invitation to the other private homeowner, however, the homeowner had since confirmed that she did not object to the installation of EV chargers (PF 6/51).

OSP8

You must ensure all staff and any sub-contracting agents are aware of relevant provision in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property

The Homeowner's position

- 28.** The Homeowner said the Property Factor was not aware of the burdens in the Title Deeds. The Property Factor had previously informed him that parking was not part of their remit, though this was provided for in the Title Deed.
- 29.** There was some discussion about parking enforcement in relation to vans, but this had been specifically excluded by the Tribunal when considering the Homeowner's applications to amend, so no findings have been made in that regard.

The Property Factor's position

- 30.** Ms Rush said the Property Factor denied any failure to comply with this paragraph. The Property Factor is responsible for managing common areas, including the car park.

OSP11

You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure

The Homeowner's position

31. The Property Factor had accepted a failure to comply with this paragraph of the Code. The Homeowner said, despite the Property Factor's acceptance, issues remain, and this is not an isolated incident. The Homeowner said he understood investigation of a complaint may sometimes take longer, but he would have expected to be kept informed. These were not complicated issues, and twenty working days was a reasonable length of time to investigate.

The Property Factor's position

32. Ms Rush confirmed the Property Factor accepts this failure by failing to issue their response to the Homeowner's complaint within the required 20 days. Responding to questions from the Tribunal, Ms Rush said the Homeowner made his stage two complaint on 5th April 2023 and raised further issues on 3rd May 2023. The response was issued on 26th May 2023. The investigations required into the complaint took longer than expected because of all the issues raised by the Homeowner.

Paragraphs 1.1 and 1.2

1.1 A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First-tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code.

1.2 A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:

- *within 4 weeks of the property factor:-*
 - *agreeing in writing to provide services to them; or*
 - *the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;*
 - *identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.*
- *at the earliest opportunity (in a period not exceeding 3 months) where:*
 - *substantial change is required to the terms of the WSS.*

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.

The Homeowner's position

33. The Homeowner said he was not provided with a WSS by the Property Factor or his previous factor. He had received a copy for the purposes of this application, and an annual copy this year. The Homeowner said he did not recall receiving the WSS on 13th December 2022. There had been issues with his property not showing up on the Property Factor's system, so that may be the reason he did not receive it.

The Property Factor's position

34. Ms Rush said the WSS is issued annually. A letter was issued to the Homeowner on 13th December 2022 (PF43/51), following the change of Property Factor. The letter set out the applicable charges. Ms Rush said it is likely that the WSS was enclosed with the letter, although it is not referred to in the letter. The letter comprises part 1 of the WSS and part 2 is generic and included in booklet form (PF25/51). The Property Factor does not accept a failure to comply with these paragraphs. The WSS is also available on the Property Factor's website.

Paragraph 1.3

At all other times, a copy of the latest WSS must be made available by the property factor on request by a homeowner.

The Homeowner's position

35. The Homeowner said he requested a copy of the WSS by telephone but he was not provided with a copy.

The Property Factor's position

36. Ms Rush said there was no record of a request for a WSS that had not been met. The Property Factor's position is that the WSS has been provided on several occasions.

Paragraph 1E17

The WSS must set out: a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including where the property factor is an owner or acting as a landlord but not where it is undertaking letting agency work in respect of a property). If no interest is declared, then this must be clearly stated.

The Homeowner's position

37. The Homeowner said, as he did not receive the WSS, he was not informed that the Property Factor, Developer and proprietor of several units in the development are part of the same group of companies.

The Property Factor's position

38. Ms Rush said the WSS was provided to the Homeowner, and it contains a declaration of interest (PF40/51) which confirms the position. The Property Factor does not accept there was a failure to comply with this paragraph of the Code.

Paragraph 2.6

A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

The Homeowner's position

39. The Homeowner said this overlaps with the previous discussion in regard to the meeting to discuss the EV charging points. In his notification to the Property Factor, the Homeowner stated that the Property Factor appears to have a policy but refuses to apply it.

The Property Factor's position

40. Ms Rush said the Property Factor has a procedure for arranging proprietors' meetings as long as the topic is part of the factoring service. The fact that there was a meeting in October 2023 shows that the procedure was applied.

Paragraph 2.7

A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

The Homeowner's position

41. The Homeowner confirmed this had been considered previously under paragraph OSP11.

The Property Factor's position

42. Ms Rush confirmed it was accepted that the stage 2 complaint had not been responded to within the 20 days provided for in the complaints procedure.

Further procedure

43. At this stage, the hearing was adjourned, due to a lack of time to consider the alleged failure to carry out property factor duties.

44. The Tribunal decided to issue a Direction dated 26th November 2024 to parties in the following terms:

The Tribunal, on its own initiative, and for the purpose of making inquiries, gives the following Direction to the parties as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"):

The Property Factor must lodge

- (i) Details of the identity of the Property Factor for the development of which the Property forms part;*
- (ii) Details of the relationship between Lowther Homes Limited and Wheatley Homes East.*

The Homeowner must lodge any available evidence to support his assertion that the Property Factor did not have him listed as a homeowner.

Parties must lodge the requested evidence within 14 days of the issue of this Direction.

Reason for Direction

A hearing took place on 26th November 2024. An issue arose regarding the correct Property Factor and whether Lowther Homes Limited are acting as an agent for Wheatley Group East. Clarification is required on this matter. A further issue arose as to whether the Homeowner received documentation from the Property Factor as required by the Code. The Homeowner alluded to suspicions that he had not been included as a homeowner.

The Tribunal may request further documentation and/or submissions in due course.

- 45.** By email dated 9th December 2024, the Homeowner lodged his response to the Direction, comprising emails exchanged between the parties from April to July 2022 which indicate that the Property Factor was unable to locate his address.
- 46.** By email dated 20th December 2024, the Property Factor lodged their response to the Direction, as follows:

The Property Factor for the development is Wheatley Homes East Limited, Registered Office 8 New Mart Road Edinburgh EH14 1RL. Lowther homes acts as agent for Wheatley Homes East Limited. Attached is a screenshot from the 'Property Factors Register' verifying Wheatley Homes East Limited as the factor for the Westfield development (Appendix 1).

For reference, we have included the initial communication from Mr. Trela's welcome pack confirming the factor (Appendix 2).

Attached is part 1 of our written statement, issued to Mr. Trela on February 14, 2024, confirming the factor and Lowther's role (Appendix 3).

Additionally, our written statement of services part 2 provides further details of the factor (Appendix 4).

There is no objection to substitution of Wheatley Homes East Limited as the Property Factor in this application in lieu of Lowther Homes Limited in terms of Rule 32 of the Regulations.

The hearing

- 47.** A continued hearing took place by video conference on 13th August 2025. The Homeowner was in attendance. Ms Rush was in attendance to represent the Property Factor.
- 48.** The Homeowner indicated he had no objection to the name of the Respondent being amended to Wheatley Homes East Limited, commenting that the name of the Property Factor had been unclear from the beginning. The Tribunal decided to amend the name of the Property Factor accordingly.
- 49.** The Tribunal explained that it would not normally consider a failure to carry out property factor duties if the same matter had been complained of under the Code.

Failure to carry out property factor duties

The Property Factor failed to fulfil their duty to provide a core service in a form of calling the Proprietors' Meeting in order to discuss and vote on the proposed improvement to the Common Property.

The Homeowner's position

50. The Homeowner said he believed arranging meetings falls within the management of the Property, and is thus a core service. This is mentioned in the WSS.

The Property Factor's position

51. Ms Rush submitted that this had already been covered under OSP2 and OSP6. This was not a matter covered by the Title Deed burdens.

Summing up

The Homeowner

52. The Homeowner said he had been informed that Lowther Homes was the Property Factor. During the hearing, it had surfaced that this should be Wheatley Homes East Limited. The Property Factor owns most of the properties in the development. This had not been properly disclosed to the Homeowner. The Agent, Lowther Homes, is not competent to carry out their duties. The financial interests of the Agent and the Property Factor are interlinked at a group level.

53. The Homeowner said he received the Property Factor's letter of 14th February 2024, which constituted part I of the WSS, but he did not receive part II until the Property Factor submitted it as part of the current proceedings. It was his position that both parts should have been provided in hard copy. There was a significant delay in issuing the letter of 14th February 2024 to him. Neither part of the WSS disclosed the relationship between the Agent and the Property Factor. Part I states that the Agent carries out property management services on behalf of other registered property factors, naming the Property Factor. There is no reference to them being part of the same group. There was no disclosure of the vested interest between them. The Homeowner said this is very confusing and there was no impartiality on the part of either party. It was in the interests of the Property Factor not to have the meeting requested by the Homeowner.

54. The Homeowner said there was a clear procedure in the Title Deeds for changing Property Factor and the correct procedure had not been carried out. This was not part of his complaint as he had only become aware of this on 24th November 2024.

The Property Factor

55. Ms Rush said the Property Factor acknowledges the initial delay in communicating with the Homeowner. Ms Rush explained that part I of the WSS covers the relationship between the Agent and the Property Factor. This was issued to the Homeowner in February 2024, and it is compliant with the Code. It refers to part II of the WSS, which is available online. Ms Rush said there is no bias. The relationship is similar to that of other registered social landlords and is commonplace.

56. Ms Rush said the Property Factor accepts there was a delay in holding a meeting from June to October 2023, but this was due to good intentions, as the Property Factor was trying to access funds for communal electric chargers. This was not what the Homeowner wanted. The Title Deeds do not allow for individual parking spaces for homeowners, as requested by the Homeowner.

Findings in Fact and Law

57.

- (i) The Homeowner is the heritable proprietor of the Property.
- (ii) The Property Factor provides services to the development of which the Property forms part, through the services of its Agent, Lowther Homes Ltd. ("Lowther")
- (iii) The Homeowner has resided at the Property since December 2020.
- (iv) Lowther were appointed as Agent on 1st January 2023.
- (v) Lowther wrote to the Homeowner on 13th December 2022.
- (vi) Lowther did not provide the Homeowner with the WSS with their letter of 13th December 2022.
- (vii) On or around 17th February 2023, the Homeowner requested that the Property Factor call a proprietors' meeting to vote on a proposal for installing a personal charging point for the Homeowner.
- (viii) The Property Factor stated by letter dated 23rd March 2023 that no meeting would be called.
- (ix) Thereafter, the Homeowner raised a complaint with the Property Factor.
- (x) By email dated 5th April 2023, the Homeowner escalated the complaint to stage 2.
- (xi) By letter dated 26th May 2023, the Property Factor's Agent responded to the stage 2 complaint raised by the Homeowner.

- (xii) By email dated 10th July 2023, the Property Factor stated that it would not be beneficial to have a meeting to discuss a personal charging point as Wheatley Group's position remained that this was not permitted.
- (xiii) A meeting of homeowners and residents was called on 23rd October 2023.
- (xiv) By letter dated 14th February 2024, the Homeowner received the WSS Part I. The letter referred to Part II being previously provided and available online.
- (xv) A meeting took place between the Homeowner, a representative of Whatley Homes East, and a representative of Lowther on 26th July 2024.

Tribunal Decision and Reasons

OSP1

58. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. The Tribunal was not persuaded that a failure to comply with the Act should be included within this paragraph.

OSP2

59. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. The evidence did not indicate that the Property Factor had acted in a way that was not honest, open, transparent or fair in their dealings with the Homeowner. There was insufficient evidence to show that the Property Factor was not giving equal treatment to all homeowners. The Homeowner requested a meeting. The Property Factor eventually held a meeting. The delay in holding the meeting was for a legitimate reason, in that the Property Factor was attempting to source funding to instal communal electric chargers. The Homeowner was informed of this matter.

OSP4

60. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. By stating that the meeting would not be beneficial, the Property Factor was providing a subjective view. They were not providing false or misleading information. The Homeowner had been informed by telephone that his request for a private charging point could not be accommodated. The issue of providing the names of other homeowners does not appear to fall within this paragraph of the Code. In any event, the Property Factor is correct in their submission that they could not legitimately provide such information.

OSP5

- 61.** The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code by failing to arrange meetings. A meeting was arranged, with some delay, as the Property Factor was attempting to access funding.

OSP6

- 62.** The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. With regard to the matter of the delay in arranging the meeting, this matter has been covered above at OSP2 and OSP5. With regard to the matter of the meeting on 23rd October 2023, there was insufficient evidence to indicate that the Property Factor voted on behalf of the other private homeowner without authority or that the decision of the meeting was not legally binding.

OSP8

- 63.** The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. There was insufficient evidence to show that the Property Factor is unaware of the Title Deeds and burdens or refuses to act accordingly. It may be the case that a member of staff previously stated that parking was not their remit, however, it was clear on the evidence before the Tribunal that the Property Factor is aware that they have a responsibility for managing common areas including the car park, which they do.

OSP11

- 64.** The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code by failing to respond to the complaint within the timescales provided. The Tribunal considered the breach was not significant given the timescales and the fact that the Homeowner raised further issues on 3rd May 2023, which complicated and delayed matters.

Paragraphs 1.1 and 1.2

- 65.** The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code by failing to provide a copy of the WSS in December 2022. The Tribunal was not persuaded, given the wording of the letter to the Homeowner dated 13th December 2022, that Part II the WSS was included. There was no reference to the WSS in the letter, although Ms Rush submitted that the information contained therein constituted Part I. The Tribunal also took into account the earlier emails in July 2022 which indicated that the Property Factor did not have the Homeowner on their system. This may have contributed to a delay in providing the WSS.

Paragraph 1.3

66. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. There was insufficient evidence to show that the Homeowner had requested a WSS and was not provided with the same. The letter from the Property Factor dated 14th February 2024 clearly refers to Part II of the WSS being available online.

Paragraph 1E17

67. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. The fact that the Homeowner did not receive the document timeously does not equate to a failure of this paragraph. The paragraph is directly concerned with the content of the WSS, and not with whether the WSS is received.

Paragraph 2.6

68. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code. The Property Factor clearly has a procedure to consult with all homeowners, and applies the procedure when appropriate, as indicated by the meeting in October 2023.

Paragraph 2.7

69. The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code as considered under OSP11.

Failure to carry out property factor duties

70. The Tribunal did not find that the Property Factor had failed to carry out their property factor duties. The WSS refers to the Property Factor arranging owners' meetings. The Title Deed refers to the right of the Factors or Proprietors to call a meeting. Neither document requires the Property Factor to call a meeting whenever one homeowner requests this. It would have been open to the Homeowner to arrange a meeting of proprietors, but it was not incumbent upon the Property Factor to do so when it was clear that the request of the Homeowner could not be fulfilled.

Observations

71. Although the Tribunal considered the declaration within the WSS fulfilled the requirements of the Code, it observed that the relationship between the Property Factor and the Agent, and other related bodies, was confusing and must have been so for the Homeowner. In contacting an email address 'talk@gha.org.uk' in April 2022, the Homeowner received responses from that email address, however, by 6th July 2022, the email address used by the Property Factor in the same email chain changed to 'talk@lowther-owner.com'. This appears to have been before Lowther had even taken over

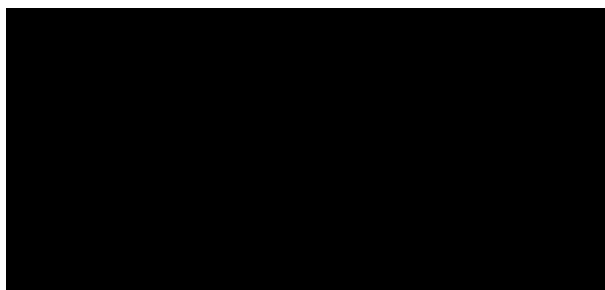
factoring services, if the information provided by the Property Factor for the purposes of this application is correct. It was clear that various email addresses from the various bodies involved were used to contact the Homeowner over a period of time, no doubt causing confusion for the Homeowner. The Tribunal was not persuaded that any fault for using different email addresses or contacting different members of staff lay with the Homeowner. The letter of 26th May 2023, which is written by the Managing Director of Lowther, on headed notepaper from Lowther, refers to the HO complaining about services from Wheatley Homes East, but then states 'Lowther Homes are appointed as factors for your property'. This letter is confusing as to identity of those involved. The Property Factor may be advised to consider clarifying the various roles and identities of those involved within the larger group to assist homeowners.

Proposed Property Factor Enforcement Order (PFE0)

- 72.** Having determined that the Property Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFE0. The Tribunal decided to make a PFE0.
- 73.** Section 19 of the Act requires the Tribunal to give notice of any proposed PFE0 to the Property Factor and allow parties an opportunity to make representations.
- 74.** A proposed PFE0 accompanies this decision. Comments may be made in respect of the proposed PFE0 within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Right of 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.



Legal Member

1st September 2025
Date

