



**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”) in respect of an Application in terms of Section 17 of the Property Factors (Scotland) Act 2011 (“the PF Act”)**

**Reference number:** FTS/HPC/PF/23/1224

**Property:** Rowardennan Lodges, Rowardennan, Stirlingshire, G63 0AR (“the Property”)

**The Parties:**

Mr. Adrian McNally residing at 49, Academy Place, Bathgate, West Lothian, EH48 1AS (“the Homeowner”)

Blythswood Property Management, Munro House, Quarrywood Court, Livingston, EH54 6AX (“the Property Factor”)

**Tribunal Members:**

Karen Moore (Chairperson) Carol Jones (Ordinary Member)

**Decision**

The Tribunal revoked the Property Factor Enforcement Order dated 31 January 2025 on the grounds that the Tribunal does not have jurisdiction in terms of the PF Act.

**Background**

1. Having determined by Decision dated 25 July 2024 that the Property Factor had failed to comply with the Section 14 duty and having heard the Parties on a Proposed Property Factor Enforcement Order (“PFEO”), the Tribunal further determined by a Decision dated 31 January 2025 to make the following Property Factor Enforcement Order (“PFEO”):

*“1. No later than 21 February 2025, the Property Factor must send to Scottish Power, as the utility supplier for the electricity supply which eventually*

*supplies the lodge owned by the Homeowner, a letter in the following terms. The Property Factor should insert the relevant details at the appropriate sections :*

*“Addressee [Property Factor to identify correct addressee]*

*Heading: Account Number [Property Factor to insert]*

*MPAN: [Property Factor to insert]*

*Homeowner: Mr. Adrian McInally*

*Property: Lodge [Property Factor to insert lodge number or identifier]*

*Dear Sirs,*

*As Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 19 of the Property Factors (Scotland) Act 2011, I write to you for clarification of the appropriate rate of VAT to be applied in respect of the electricity supplied to the above lodge.*

*Please clarify and confirm if the VAT should be 20% or 5%.*

*The facts of the matter are: Blythswood Property Management are the property managers of the holiday chalet complex at Rowardennan G63 0AR; Lodge [Property Factor to insert lodge number or identifier] forms part of that complex;*

*Electricity is supplied to the holiday chalet complex and the lodge via an adjacent site;*

*The main supply of electricity to the adjacent site is metered to MPAN: [Property Factor to insert];*

*The primary or main supply is invoiced to Account Number [Property Factor to insert];*

*The primary or main supply is received within land outwith the lodge [Property Factor to insert lodge number or identifier];*

*The VAT at the rate of 20% is applied to the main supply invoice;*

*The supply is distributed to a central meter which serves the lodge and other lodges all situated within the holiday chalet complex;*

*The supply is then distributed further and sub-metered to the lodge [Property Factor to insert lodge number or identifier];*

*A reading is taken at the sub-meter for the usage at the said lodge;*

*The electricity usage is apportioned against the main supply usage and invoiced accordingly;*

*Blythswood Property Management act on behalf of the owner of the land to which the primary or main supply is distributed and metered in respect of the apportioning the cost of supply to the said lodge;*

*Blythswood Property Management act on behalf of the owner of the land to which the primary or main supply is distributed in respect of the collection of the apportioned cost of the supply to the said lodge;*

*The 20% rate of VAT has been applied to the cost of the sub-metered supply to the lodge;*

*The lodge is a holiday home and treated as non-domestic for rating purposes; Please clarify if 20% is the correct rate of VAT to be applied to the supply to the said lodge or if the rate should be the lower rate of 5%.*

*2. The Property Factor should provide a copy of the letter with proof of sending to both the Tribunal and the Homeowner.”*

2. By emails dated 27 March 2025 to both Parties, the tribunal administration requested the Parties' views on the Property Factor's compliance with the PFEO. By email dated 27 March 2025, the Homeowner submitted in detail why he did not accept that the Property Factor had complied and highlighted discrepancies between the template letter set out in the PFEO and the letter issued by the Property Factor. By email dated 3 April 2025, the Property Factor, with reference to their email of 19 February 2025, replied that they considered that they had complied. Therefore, the Tribunal fixed a Hearing to determine whether or not the Property Factor had complied with the PFEO.

## Hearing

3. The Hearing took place on 10 September 2025 at 10.00 by telephone conference call. Mr. McNally, the Homeowner, took part and was not represented. The Property Factor was represented by Ms. Hales. The Tribunal heard evidence from both Parties.

## Proceedings in respect of Application FTS/HPC/PF/23/1224

4. Co-incidentally, the Tribunal had been dealing with another application, referenced FTS/HPC/23/0926 concerning the same Parties and the same Property. During the course of a Hearing on 9 October 2025 in respect of that application, the Tribunal was made aware by the Property Factor's lay representative for that application that the Homeowner had not been in ownership of the Property since 2017 and so had no locus or standing to raise those proceedings.
5. The effect of the information provided at that Hearing on this Application is that the Homeowner has no locus or standing to raise these proceedings.

## Decision of the Tribunal and reasons for the decision

6. Having determined that the Homeowner is not a homeowner as defined by Section 10(5) of the PF Act which states "*homeowner*" means (a)an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or (b)an owner of residential property adjoining or neighbouring land which is (i)managed or maintained by a property factor, and (ii)available for use by the owner.", it follows that the Homeowner is not entitled to raise the proceedings in terms of Section 17(1) of the PF Act which states "A homeowner may apply to the First-tier Tribunal for (a) determination"
7. Accordingly, the Tribunal has no jurisdiction to proceed further with the Application and so revokes the PFEO.
8. 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.

**Motion in terms of Rule 40 of the Rules.**

9. Mr. Johnstone, the Property Factor's lay representative, on behalf of the Property Factor moved that expenses be awarded to the Property Factor in respect of the Homeowner's conduct in raising and pursuing the Application in the knowledge that he was not a homeowner and so had had no title or interest to do so.

10. The Tribunal advised that it would allow the Parties an opportunity to make representations on that matter. The Parties agreed that the representations could be dealt with by written submissions in terms of Rule 18 of the Rules.

11. Therefore, the Tribunal **Directs** the Property Factor to submit written representations in respect of Rule 40 to both the Tribunal and the Homeowner no later than close of business on **15 November 2025** and Directs the Homeowner to respond to those written representations to both the Tribunal and the Property Factor no later than close of business on **15 December 2025**.

12. For the benefit of the Parties, the wording of Rule 40 is:

*"40 (1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. (2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made."*

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Legal Member/Chair

9 October 2025

Date



