

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PF/23/3843

Re: Property at 32 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Property”)

Parties:

Mrs Valerija Mikkelson, 32 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Homeowner”)

Residential Management Group Scotland Limited, Unit 6, 95 Morrison Street, Glasgow (“the Property Factor”)

Tribunal Members:

Fiona Watson (Legal Member)

Andrew McFarlane (Ordinary Surveyor Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has not failed to comply with sections 6.1 and 6.12 of the Property Factor Code of Conduct 2021.

Background

1. By application received between 1 November 2023 and 18 November 2023 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Code of Conduct for Property Factors (“the Code”) and had failed to comply with the Property Factor Duties.
2. The Application comprised the following documents: -

- (i) application form comprising the First-tier Tribunal standard application form (C2) indicating that the parts of the Code complained of are 6.1 and 6.12;
 - (ii) copy correspondence between the Homeowner and Property Factor
 - (iii) copy photographs of common areas within the building of which the Property forms part, and
 - (iv) a copy of the Property Factor's written statements of services (WSoS)
3. On 1 December 2023, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 4 March 2024 by telephone conference call.

Case Management Discussion

4. The CMD took place on 4 March 2024 by telephone conference call. The Homeowner was present on the call and was unrepresented. The Property Factor was represented by Ms Harrison, an employee of the Property Factor.
5. The Tribunal advised the Parties that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required.
6. The Applicant submitted that the roof of the building, of which the Property forms part, has been neglected by the Property Factor. The state of the roof was described as "appalling." It was submitted that there was a recurring issue of water ingress connected with the roof and which was causing the homeowner continual stress. There has been water ingress since the Property was built. There is a Premier Guarantee in place and which expires in spring 2025 and the Property Factor has failed to make a claim on it. Photos have been lodged alongside the application and which show the effects of the water ingress within the

common stairwell. The issue has been patched up on a number of occasions by the Property Factor's contractor, Texc Roofing. The Property Factor has failed to fix the root cause of the issue. Following a vote by the Homeowners within the block, further roof works were authorised and carried out in December 2023. It was submitted that the Homeowner has no faith that the root cause of the water ingress has been investigated and resolved, and it is likely that there will be further leaks.

7. The Applicant submitted that the block has four floors and that she lives on the first floor. There is a communal staircase, and there is no lift. The roof is a flat roof. The block was developed in 2015 by Places for People. The Applicant purchased the Property new. In 2018, the developer handed over the management of the block to the Property Factor.
8. Ms Harrison on behalf of the Property Factor submitted that she has limited information that she is able to provide, as the property manager, Ms Downes, is on annual leave and unable to attend the CMD today. Ms Harrison submitted that she works in the finance department and has some knowledge regarding invoices which have been raised relating to the block's roof repairs. It was submitted that Ms Downes recently returned to work after a period of maternity leave, and there had been another property manager managing the block in Ms Downe's absence. It was submitted that works could only be carried out on the roof when the Property Factor had a majority of homeowners agreeing to such works. There had been difficulties in the past in obtaining sufficient responses from homeowners to be able to instruct works. It was submitted that most recent roof works were carried out in December 2023 and which works included the erection of scaffolding, the fixing of a hole in a wall, and the repair of the flat roof. It was submitted that Ms Harrison was not aware of any further issues being raised by homeowners in the block regarding the roof since those works were completed.
9. Following a short adjournment, the Tribunal advised that a Hearing would be fixed and which Hearing would take place in-person. The

Tribunal would issue a Direction for the Property Factor to lodge a written response to the application within 21 days, with a further period of 21 days thereafter for the Applicant to respond to any points contained within the Property Factor's response, if she wished to do so.

10. The Tribunal adjourned the CMD to a Hearing to take place in-person.
11. Prior to the Hearing, the Property Factor lodged written representations and documents to be relied upon at the Hearing. The Applicant responded to this within the time permitted.

The Hearing

12. A Hearing took place in person on 5 July 2024. The Homeowner was present and represented herself. The Property Factor was represented by Ms Downes (Property Manager) and with some assistance from Ms Urquhart (Property Manager). Ms Harrison, another employee of the Property Factor, attended as an observer.

The Homeowner

13. The Homeowner submitted that there was an issue with the roof which had been causing her stress for many years. The Homeowner moved into the Property in 2015 which is when the issues started. Places for People built the complex and the Property Factor took over management in 2018. The Homeowner has raised issues constantly but has not been listened to. The Homeowner stated that the Property Factor has a commercial relationship with her and the other homeowners and they pay them to provide a service which she does not consider has been given.
14. The Homeowner submitted that the roof had been neglected, it is wet and mouldy and leaking. Children can slip in the stairwell and hurt themselves. The roof should have been fixed before it got to this stage.
15. The Homeowner submitted that when she reports an issue to the Property Factor, there can be months between communications from the

Property Factor. The Homeowner referred to page five of the WSoS which sets out when a tender exercise is required. It was submitted that the roofing company used to carry out the repairs, Texc Roofing, have a negative record with the complex but the Property Factor consistently chooses them despite them not fixing the issue. It was submitted that the Property Factor has acted with a lack of urgency despite the response times set out in the WSoS.

16. It was submitted that the most recent issue was reported to Tracy Urquhart of the Property Factor on 22 September 2022 and there was no tender for the works to repair the roof. There was a follow up e-mail on 6 October 2022 and then it was April 2023 before the Homeowner next heard from Ms Urquhart. Said communication listed a different issue.
17. It was submitted that the WSoS is vague, and communications are not clear or transparent.
18. The Homeowner submitted that in August 2023 she asked Ms Downes for an update because she had had no further communications since April. Ms Downes replied that she had not had enough consent from other owners to carry out repairs. The Homeowner submitted that she then printed off forms and went door to door to get enough votes for the repair to be carried out. It was submitted that the Property Factor should be more proactive and that the homeowners had had to do their job for them.
19. It was submitted that the Property Factor is not transparent and that they say the roof has been fixed by Texc Roofing but there is no sight of any report setting out what has been done or if there are any guarantees for the work. The homeowners just have to take the Property Factor's word for it. The Homeowner submitted that she had asked Ms Downes why nothing had been done in August 2023 and Ms Downes had replied that she was on maternity leave. The Homeowner submitted that it was not good enough that it appeared that nobody had stepped in to deal with matters in her absence.

20. The Homeowner submitted that she asked the Property Factor about the Premier Guarantee for the building and was met with silence. The Property Factor then said that a copy had been provided in 2020 but the Homeowner did not recall receiving this and a further copy was then sent to her.
21. The Homeowner submitted that she has no confidence that the roofing issues will be addressed. The Homeowner considered that this is a structural issue which has been evident since the beginning. The owners have drawn attention to the issues but there has been a lack of care on the part of the Property Factor to help them. The Homeowner submitted that she is concerned that she will never be able to sell her Property with the ongoing roof leak problem. It was submitted that seeing the building deteriorating on a daily basis was upsetting and that they pay the Property Factor to look after it for them.
22. The Homeowner submitted that she received an e-mail from Ms Downes on the 15th of January 2024 saying that the roof had been fixed prior to Christmas. Thereafter, a further e-mail was received on the 11th of April 2024 by another neighbour which said that the whole of the roof might need replaced. The Homeowner submitted that this was entirely contradictory. The Property Factor has billed homeowners for repairs that they have no assurance of, being two sets of repairs at £2k each and the roof is still not fixed.
23. The Homeowner submitted that when it comes to the Premier Guarantee, they have been told by the Property Factor that it is up to the homeowners to deal with that. It was submitted that if the Property Factor had dealt with the issue immediately then it wouldn't have got to this state. Homeowners are now facing a £5k excess payment, and works that they require to organise themselves through the Premier Guarantee, because the Property Factor hadn't looked after the roof before now as they are paid to do.
24. The Homeowner submitted that the mould spores are affecting her lungs, that this is now an emergency and that nobody is helping them.

25. Evidence was heard from Jakub Nowak, who resides at 32, Flat 8 , Tudsbery Avenue. Mr Nowak stated that he moved into his property in April 2015 which was straight after the building was deemed habitable. He lives on the second floor, it being a four-storey building. He first noticed issues with the roof towards the end of 2015 and start of 2016, shortly after he bought the flat.
26. Mr Nowak stated that he spoke to his neighbour who also had problems, and his neighbour had to put buckets out to catch leaking water. Mr Nowak stated that he did not recall when the leaks in the staircase started but he thought it was around 2016 or 2017. He didn't act on it at the time because he was on the second floor but his neighbour on the third floor was most affected by it, being on the top floor, and his neighbour had asked Places for People to fix it.
27. Mr Nowak stated that the roof on his floor, being the 2nd floor, is now bad. When he walks into his flat, he can see that the wall is wet, paint is coming off and there is mould. Mr Nowak stated that there was mould on the top floor which is also really bad.
28. Mr Nowak stated that communications with the Property Factor are OK and that they respond to emails and say that they will act on it, and that they are polite. When it comes to fixing issues, this is not straightforward. Mr Nowak stated that the lights have not been working in the stairwell since January and he's been told a few times that will be fixed soon but they're still not fixed. Mr Nowak stated that when it comes to actions, it is quite disappointing that they pay a lot of money for services that are not done properly by the Property Factor. Mr Nowak stated that he was very disappointed and sad. He works hard and took a mortgage to buy a new flat to ensure that there would be no issues with the property. He likes his flat, neighbours and area but it is depressing that they need to fight for repairs. Mr Nowak stated that the Property Factor has carried out two sets of works on the roof and they were told that the roof was fixed and had been charged for each set of works. However, they have recently been told that the roof is not repairable and it may need replaced and a claim should be made under the Premier Guarantee. This will

involve a £5k excess chargeable to the homeowners.

29. Mr Nowak stated that he wanted the roof to be fixed properly, he has a 10 year warranty for structure and he is happy for the Premier Guarantee to step in and replace the roof but he does not think he should be charged £5k for it when he already been charged two sets of £2k to fix the roof which hasn't worked. Mr Nowak stated that he wants the Property Factor to pay the cost of the excess charged by premier Guarantee.
30. Mr Nowak stated that after the last repair was carried out, he checked the stair and sent emails to the Property Factor advising them that water was still coming through. There is a cupboard at the end of the wall which has an electricity supply and water appears to be running through that on all floors.
31. Evidence was then heard from Deividas Pienauskas who resides at 32, Flat 10, Tudsbery Avenue, which is a top floor flat. Mr Pienauskas moved into the property in April 2021. The leak was already there and it was detailed in the home report that two areas were affected. The previous owner had said that they were dealing with the Property Factor on the matter and there was an ongoing fix. Mr Pienauskas then received a charge for the repair even though he hadn't been living there at the time. Mr Pienauskas stated that it is constantly getting worse and they now have mould spreading fast which is bad for his lungs. They have been pushing to get repairs carried out. Mr Pienauskas stated that he has slipped on the floor himself due to leaking water. There are two children residing in flat 9 and he is concerned that they may slip and have an accident. He's been living in the property for three years and it has been getting worse during that time. Mr Pienauskas stated that the Property Factor does not respond to communications and does not answer phone calls. He stated that he would give them a one out of ten rating regarding communications. Mr Pienauskas stated that he wants a scheduled plan of what works will be done and any further bills should not come to the homeowners as the Property Factor has not fixed the roof despite being paid to do so. Mr Pienauskas stated that he was concerned that if the

roof is not fixed he will require to sell his flat and that this will put off potential purchasers. Other neighbours are planning to leave and the property is a death trap. Water finds a way of getting through and despite two repairs, the leak continues. They now have mould. They need a scheduled plan of what work is going to be carried out, which company is going to do it and that the Property Factor will not bill the homeowners any further. Mr Pienauskas stated that he is concerned that water is going into an electrical cupboard in the hallway and that this is a fire risk.

32. Mr Pienauskas stated that they pay money to the Property Factor for stair cleaning and grass cutting, all of which is done. However, the roof issues are just not dealt with.

33. Mr Pienauskas stated that he has not contacted Premier Guarantee regarding the roof. When he moved in he was told to report issues to the Property Factor and he's never had contact details for the Premier Guarantee. Mr Pienauskas confirmed that there is no water ingress in his flat currently but he considers that it is just a matter of time.

The Property Factor

34. Ms Downes on behalf of the Property Factor submitted that the Property Factor is an independent company but part of the Places for People group. They did not manage the building prior to 2018 and that the roof issues should have come under a building defect and the Premier Guarantee would have kicked in or the builders should have dealt with it as a latent defect.

35. Ms Downes stated that they had a surveyor from the insurance company to attend the building to inspect, and he removed plasterboard in the stairwell. Ms Downes attended with him last month and the walls were not wet at that time. Ms Downes confirmed that she attends the building to inspect on a quarterly basis.

36. Ms Downes stated that they require the majority consent of homeowners to be able to instruct repairs above the threshold of £350, in terms of their WSoS. These roof repairs are classed as major works. They have

written out to homeowners requesting that they sign consent forms and return them and have not had previous success with this. Ms Downes stated that they would not attend the properties and knock on doors to get these forms signed, as they have been advised that this could be classed as harassment. They will write out to homeowners with consent forms and if not returned, they will send out a chaser letter.

37. Ms Downes stated that the building is one block which has two stairs and each stair has a different postal address, one being 2 Dingwall Place and the other being 32 Tudsbery Avenue. There is one roof over the block and all homeowners between the two stairs are responsible for that whole roof.

38. It was submitted that communications have been issued to the homeowners regarding the Premier Guarantee and that homeowners should contact the Premier Guarantee to have further repairs or, if required, replacement of the roof, carried out in terms of that guarantee. Any excess levied is with the Premier Guarantee and has nothing to do with the Property Factor.

39. Ms Downes confirmed that they have not arranged or attended an owners' meeting for that block, but they do arrange or attend owners meetings elsewhere from time to time. Owners can ask the Property Factor to hold a meeting if they wish to do so, but they have not done so.

40. Ms Downes submitted that when she was on maternity leave, her colleague Tracy Urquhart covered for her and wrote out to the homeowners during that time regarding the most recent repair.

41. Ms Downes stated that if the issues with the roof started at the very beginning of the block being released for habitation, then as this may be a defect in the building, the Premier Guarantee is in place to deal with these kinds of repairs. Ms Downes stated that she did not work for the company at the time of handover between Places for People and the Property Factor, when they took over management in 2018. She would require to check the records to ascertain what defects Places for People were aware of at that time.

42. Ms Downes confirmed that she inspects the building on a quarterly basis and she fills out a form following such an inspection, takes pictures and a record is kept. At the most recent inspection she was accompanied by a surveyor for a quote to see what required to be repaired. Ms Downes confirmed that the walls were dry on the day that she attended with the surveyor. They did not take any technical damp measurements. Ms Downes confirmed that she would be happy to share a copy of the surveyor's report with the homeowners when available.
43. Ms Downes confirmed that when contractors are sent out to carry out a repair, the contractor sends the Property Factor an invoice which details on it what work has been carried out. This is not automatically shared with the homeowners as the Property Factor issues their own invoice to each homeowner for their respective share of the costs. However, if requested, they can share a copy of the contractor's invoice with the homeowner. Ms Downes confirmed that she can ask the contractor to confirm if there is any guarantee of the work carried out by them.
44. Ms Downes submitted that they can only use contractors who are on their system. They have two roofing contractors, being Texc Roofing and City Roofing. These companies are on their system following a tender exercise. When a repair is reported they will contact the contractors they have on their system for a quote for the repair. It was submitted that for the most recent repair, the Property Factor approached both roofing contractors but only Texc responded. Rather than delay that repair, they went ahead with the one quote so that the homeowners could make a decision on it. It was submitted that the Property Factor is not aware of any performance issues with Texc.
45. It was submitted that there have been two repairs carried out on the roof, one relating to a leak above 32 Tudsbery and the other in relation to a leak above 2 Dingwall. It was submitted that the Property Factor does not consider that there has been a lack of care. Difficulties have been encountered regarding not being able to obtain owners' consent to instruct works. When asked what she thought of the owners going door to door to get consent themselves, rather than the Property Factor doing

it, Ms Downes replied that she considered this to be part of the homeowners' own responsibilities. It was submitted that the Property Factor had acted timeously in getting a roofer out quickly and issuing a repair quote to homeowners.

46. It was submitted that the Property Factor has a portal called RMG Living, where homeowners can access all invoices.

Findings in Fact.

47. The Tribunal had regard to the Application and written representations in full, and to the submissions made at the CMD and Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.

48. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) There have been two repairs carried out to the roof over the building of which the Property forms part;
- iii) Each repair has been carried out to a different part of the roof;
- iv) Each repair was organized by the Property Factor following obtaining necessary consent of the homeowners to the works
- v) There is an ongoing issue with the roof leaking;
- vi) The Homeowner has not invoked the terms of the Premier Guarantee which remains in place over the Property in relation to inherent defects.

Decision of the Tribunal with reasons

49. From the Tribunal's Findings in Fact, the Tribunal found that the Property Factor has not failed to comply with sections 6.1 and 6.12 of the 2021 Code.

50. With regard to the specific parts of the 2021 Code referred to in the Application and the information before it, the Tribunal made the following findings as regards the following parts of the Code:-

(i) 2021 Code at Section 6.1

“This section of the Code covers the use of both in-house staff and external contractors by Property Factors. While it is Homeowners’ responsibility, and good practice, to keep their property well maintained, a Property Factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.”

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Code. Two repairs have been carried out to the roof since the Property Factor took over management of the building in 2018. Each repair was organised by the Property Factor following reports of leaking by the homeowners. Each repair relates to a different part of the roof. There is no evidence before the Tribunal to satisfy it that either repair has not been carried out to a good standard, as is required by section 6.1. If there is an inherent defect with the roof, the homeowners are entitled to invoke the terms of the Premier Guarantee which is still in force for the building of which the Property forms part. The Property Factor is not responsible for any inherent issues prior to their appointment as managers of the building. There was no explanation before the Tribunal as to why the homeowners have not already invoked the terms of the Premier Guarantee, other than there being a reluctance to do so and incur a possible £5k excess. The Tribunal noted that Ms Downes had attended at the property recently with a surveyor to have an inspection carried out, and it was noted that the walls were dry at that point. The Tribunal was not persuaded that the Property Factor is not fulfilling its’ duties in this regard.

(ii) 2021 Code at Section 6.12

“If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their ‘authority to act’ (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the

property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.” The Tribunal was not satisfied on the basis of the evidence before it that there was any failure by the Property Factor to comply with this part of the Code. The Tribunal was satisfied that the Property Factor had instructed works and liaised with contractors for each of the roof repairs reported to them, within the terms of their authority to act cost limit. As set out above there was no evidence before the Tribunal to satisfy it that the work had not been carried out to a good standard and therefore was inadequate. The Tribunal noted that in her evidence, the Homeowner appeared at times to conflate the concept of a warranty on any repairs carried out by the roofing company for works instructed by the Property Factor, and the Premier Guarantee, which are two entirely separate things.

51. Whilst it was noted by the Tribunal that the Homeowner (and her two witnesses) stated that the Property Factor should be held liable for the payment of any excess levied as a result of the homeowners invoking the terms of the Premier Guarantee, the Tribunal was not persuaded that there was any basis for such a liability being imposed. The Tribunal was satisfied, on the basis of the evidence before it, that two repairs to the roof (each relating to two separate parts of the roof) have been carried out upon instruction by the Property Factor, and done so timeously upon obtaining the necessary consents from homeowners as required to enable them to act. The homeowners were free to invoke the terms of the Premier Guarantee at any point, and could have done so after the first repair was carried out and further leaking occurred, if they were so concerned that there was an inherent defect. They have chosen not to do so. It is not for the Property Factor to do so on their behalf.

Property Factor Enforcement Order (PFEO)

52. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has not failed to comply with the Code, the Tribunal makes no orders and the application is dismissed.

53. The decision is unanimous.

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/Chairperson

8 July 2024