

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011  
Section 17(1)(b)**

**Chamber Ref: FTS/HPC/PF/19/2852**

**Re: Flat 8, Allison Court, 52B Allison Street, Glasgow, G42 8NL ("the Property")**

**The Parties:**

**Dr Wan Hock Cheah, 19 Glen Park Avenue, Glasgow, G46 7JE ("the Homeowner")**

**Southside Factoring and Related Services, Southside House, 135 Fifty Pitches Road, Glasgow, G51 4EB ("the Property Factor")**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Ahsan Khan (Ordinary Member)**

**DECISION**

The Tribunal determined that the Property Factor has not failed to comply with Section 1.1a B of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011* ("the 2011 Act").

The Decision of the Tribunal is unanimous

## **Introduction**

In this Decision the *Property Factors (Scotland) Act 2011* is referred to as "the 2011 Act"; the *Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors* is referred to as "the Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

The Property Factor is a Registered Property Factor and has a duty under section 14(5) of the 2011 Act to comply with the Code.

## **Background**

By application dated 8<sup>th</sup> September 2019 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with Section 1.1a B of the Code.

On 6<sup>th</sup> January 2020 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 17<sup>th</sup> January 2020 both parties were notified that the application had been referred to a Tribunal and that a hearing would take place at 10am on 4<sup>th</sup> March 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow.

## **The Hearing**

The hearing took place before the Tribunal at 10am on 4<sup>th</sup> March 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Homeowner attended. The Property Factor's Mrs Tait attended, and the Property Factor was represented by Mrs Mullen, solicitor.

The Tribunal conducted a preliminary discussion with the parties, in which the Homeowner confirmed that his complaint against the Property Factor related to his assertion that it had not properly fulfilled its duties in respect that it had exceeded its authority in relation to carrying out certain improvement and repair works in the back court of the Property.

However, the only complaint made in this application is of an alleged failure to comply with Section 1.1a B of the Code. That section concerns the obligation of the Property Factor to set out in a written statement of services the services provided, which include those listed in that section of the Code.

After comparing the written statement of services which the Homeowner accepted had been provided to him by the Property Factor, and in particular section 2 thereof, the Homeowner accepted that the written statement of services did comply with Section

1.1a B of the Code, but advised the Tribunal that his complaint against the Property Factors was a different one, being that it had exceeded its authority by acting as it had.

The Homeowner explained that though he accepted that the Property Factor was subject to its own written statement of services, and in terms thereof to follow the provisions of the Deed of Conditions for the Property, those legal provisions were subject to the application of "common sense", and his own subjective experience of what Property Factors ought to do based upon his 40 years' experience of dealing with other Property Factors in relation to about a dozen other properties that he owned.

The Homeowner argued that it was not enough for the Property Factor to comply with its written statement of services and the Deed of Conditions, as it also had to operate and behave subject to "common sense", and in accordance with his experience of the practice of other Property Factors in relation to other properties.

Mrs Mullen noted the Homeowner's explicit acceptance that his sole specified ground of complaint did not involve a breach of the Code, and invited the Tribunal to conclude that common sense was not a recognised source of law which modified, added to, or amended the legal obligations as set out in the written statement of services and the Deed of Conditions.

The Tribunal adjourned for a few minutes to consider parties' submissions. Upon resuming the Hearing, the Tribunal advised parties of its decision not to uphold the complaint made in this application.

The Tribunal took time to explain to the Homeowner, who has no legal training, that it could only consider the complaint set out in this application. As he accepted that there was no breach of Section 1.1a B, and that no other complaint in respect of any other breach of the Code was made by him in this application, the Tribunal must dismiss this application.

The Tribunal explained to the Homeowner that if he wanted to raise other complaints against the Property Factor on grounds other than breach of Section 1.1a B of the Code, then he would require to state those grounds in any future application which he might make to the Tribunal.

The Tribunal advised the Homeowner of the availability of legal advice from a variety of sources, which he might seek in considering whether he wishes to pursue any complaints against the Property Factor further.

### **Statement of Reasons**

Section 17 of the 2011 Act provides:

"17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, “*property factor's duties*” means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.”

Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor's duties and failure to ensure compliance with the Code. The Homeowner proceeds in this application only in respect of the latter of these.

Section 1 of the Code provides that the Property Factor must provide the Homeowner with a written statement of services. That must contain the information set out in Section 1.1a B.

The Homeowner accepted that the Property Factor had not breached this section of the Code, which is the only breach which he has raised in this application, and accordingly the Tribunal concludes that the Property Factor has not failed to comply with section 1.1a B of the Code.

## 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.

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Legal Member/Chair

04/03/20  
\_\_\_\_\_  
Date

