

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/23/0160

Re: Property at Flat 2/3, 245 Paisley Road West, Glasgow, G51 1NE (“the Property”)

Parties:

Miss Bethany Christie, Flat 2/3, 245 Paisley Road West, Glasgow, G51 1NE (“the Homeowner”)

James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX (“the Property Factor”)

Tribunal Members:

Fiona Watson (Legal Member)

Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -

- (i) has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at OSP 2, 6 and 11 and Sections 2.7, 6.1 and 6.4 and
- (ii) has failed to comply with the Property Factor’s Duties.

Background

1. By application received between 3 January 2023 and 10 March 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 in the First-tier Tribunal standard application form indicating that the parts of the Code complained of are Overarching Standards of Practice at OSP2, OSP5, OSP6 and OSP11, Communications and Consultation at 2.7 and Carrying out repairs and maintenance at 6.1, 6.4 and 6.12 alleging a failure to comply with the Property Factor duties
- (ii) copy correspondence between the Homeowner and Property Factor
- (iii) copy photographs of the roof of the building of which the Property forms part, and
- (iv) a copy of the Property Factor’s written statements of services (WSoS)

3. On 23 March 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 25 May 2023 at 10.00 by telephone conference call.

4. Prior to the CMD, the Property Factor submitted written representations together with further copy correspondence between the Parties.

Case Management Discussion

5. The CMD took place on 25 May 2023 at 10.00 by telephone conference call. The Homeowner was present on the call and was unrepresented. She was accompanied by her mother as a supporter. The Property Factor was represented by Ms. Stead and Mr. Wallace.

6. 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. The Tribunal advised that it appeared that the

issues arose from the repair of the common roof from which water leaks into the Property and the standard of response times by the Property Factor. The Homeowner agreed that the way in which the Property Factor has dealt with repairs is an example of the level of service. She explained that it was not until she read the Property Factor's response to the Application that she became aware that co-owners are not willing to give consent to have repairs carried out. She stated that there was a lack of consistency with different management levels of the Property Factor with different officers saying different things and a general lack of consistency, urgency and communication in compliance with the WSoS. The Homeowner gave an example of one of the Property Factor staff advising that emergency repairs could be taken forward even if there was no co-owner agreement.

7. For the Property Factor, Mrs. Stead and Mr. Wallace accepted that there had been issues with responses and a reduction in the fee of £75.00 was offered but not accepted. Mrs. Stead explained that emergency works would only be carried out without co-owner consent if there was a health and safety concern and risk of harm, and that the work would be to make safe rather than a full repair.
8. Mr. Wallace explained that there have been historical roofing and other issues with the building since October 2016, and, as the co-owners have not taken up any proposals for substantive works, the Property Factor has been limited to reactive repairs. Mr. Wallace stated that the Property Factor now has costs for a survey which will shortly be referred to the co-owners for authority to instruct the survey and roof works. Mr. Wallace stated that it was likely a project manager would be required and a tender for works and that consent of the co-owners would be needed.
9. In response to questions from the Tribunal, the Homeowner advised that water is still ingressing. Mr. Wallace advised that the Property Factor had had limited feedback from the contractors and accepted that the Homeowner would not be aware of the history of the roof and the reluctance of co-owners in the past. Ms Stead explained that the onus in respect of repairs history fell to the seller and not the Property Factor.

Mr. Wallace explained that there are eleven ownerships in the building of which the Property forms part, five are shops and six are flats and that there are varying common property shares.

10. A Hearing was fixed and a Direction issued for further information and a copy of the title deeds to be provided.
11. The Property Factor provided further information by way of email of 26 October 2023 which included (i) copy title sheet (ii) photographs of the roof (iii) correspondence with the Homeowner and (iv) copy contractors' invoices.

The Hearing

12. A Hearing took place in person on 13 November 2023. The Homeowner was present and represented herself. The Property Factor was represented by Ms. Stead and Mr. Wallace. Neither party had any witnesses.
13. The Property Factor had submitted further documents on 26 October 2023 which included:
 - (i) a copy of their WSoS
 - (ii) a copy title sheet to the Property
 - (iii) correspondence with the Homeowner and
 - (iv) contractors' invoices from 2013 to date.

The Homeowner

14. The Homeowner submitted that the issues with water ingress started in October 2021 when she moved into the Property, having purchased the property in July 2021. The Homeowner was a first-time buyer. She flagged up to the Property Factor as soon as the water ingress became apparent. At that early stage it was only in her bedroom which is at the front of the Property and it thereafter occurred every time it rained. At that point it was a minor leak and it has worsened over time.

15. The Homeowner submitted that she could not get a response from the Property Factor quickly and not in line with the timescales set out in their WSoS. It was submitted that if a contractor came to look at the roof, they would say that they would return to carry out work but would not do so. It was submitted that this happened at least three or four times. The Homeowner submitted that in January 2022 she was informed by the Property Factor's development manager that a contractor had attended and the problem had been solved. However, the problem had not been alleviated at all and in fact worsened. In February 2022 dampness appeared in the kitchen and the living room, both of which are located to the rear of the Property. The Homeowner relayed this to the Property Factor and used their hotline for emergency call outs. A roofer attended and had a look at the roof but said that they were not able to do anything at that time and that they would come back, but they would not do so. Trying to get a response from the Property Factor regarding progress or timescales was very difficult.
16. The Homeowner submitted that since she has raised the water ingress issues with the Property Factor, she has been transparent with them and sent them photographs to give them an idea of the level of damage being caused within the Property and the distress being caused to her. It was submitted that the Property Factor had not been transparent with her and it had been difficult to obtain clear answers from them as to planned repairs or action to be taken. The Homeowner submitted that the first time she learned that there had been a difficulty in getting other owners within the tenement to consent to works, was at the CMD. The Property Factor had not informed her of this prior to then. It was submitted that this showed a lack of transparency by the Property Factor in their dealings with her.
17. The Homeowner submitted that the Property Factor had been consistently slow to respond to correspondence and had not adhered to their timescales set out in their WSoS which was to respond within 5 working days. Their response times were not consistent and often the Property Factor would say that they were about to do something and then did not do it. The Homeowner submitted that since the CMD, a letter

was issued to all of the owners within the tenement with a ballot form to agree to a survey for roofing works. The Property Factor had notified the Homeowner that they would send a reminder out to owners after two weeks. After four weeks this still had not been done and the Homeowner required to chase the Property Factor for this to happen.

18. The Homeowner submitted that there had been difficulty in obtaining timely responses from the Property Factor. It was submitted that when water is coming into your home this is an urgent matter that should be responded to quickly. It was submitted that the Property Factor did not provide timescales for when next steps would be taken nor what those next steps were intended to be and this caused frustration to the Homeowner. The Property Factor did not send follow up emails nor did they send unprompted updates on outstanding repair issues. The Homeowners submitted that the burden was on her to chase the Property Factor and find out what was happening.
19. The Homeowner submitted that had the Property Factor responded promptly to her concerns, then they could have alleviated the extent of the dampness caused in the Property, which will lead to mould and rot. The Homeowner submitted that the Property Factor did not apply appropriate timescales given the nature and urgency of the issues.
20. The Homeowner submitted that she used the emergency call out facility in October 2022 when she had water ingress in three rooms at the same time. A contractor attended but did not make a repair as the weather was "too wild". The Homeowner obtained a second opinion from an independent roofer who advised her that an inadequate repair had been carried out which meant that the gutters had been over-sealed and were overflowing. The Homeowner raised this with the Property Factor but no further action was taken by them to follow this up or to remedy same. The Homeowner submitted that her experience with the contractors had not been a positive one and she does not trust them now and has no confidence in the service.
21. The Homeowner submitted that the Property Factor had apologised, and while she acknowledged that such an apology was welcomed, she still

considers that there is a lack of transparency, progress or appropriate updates from the Property Factor and that matters have simply not changed as regards their practice.

The Property Factor

22. The Property Factor acknowledged that there had been issues with the timescales within which their responses had been issued. The Property Factor submitted that they have apologised to the Homeowner for this and recognised this failing on their part, and had offered her a gesture of goodwill which had been refused.
23. The Property Factor submitted that there had been several repairs carried out to the roof, many of which were prior to the Homeowner's period of ownership. It was submitted that clearly these repairs had not been entirely successful. The Property Factor had suggested that they should arrange a survey to establish the full extent of the issues but that they had not received the required majority consent of the owners within the tenement to instruct this. The Property Factor could not go ahead without their consent as the cost of a survey exceeded their authority to act, which was set at £350+VAT. The Property Factor admitted that they should have suggested having a survey done to the owners sooner than May 2023. It was submitted that prior to then, the Property Factor had obtained quotations of around £7,000 from two roofers which reaffirmed their view that a survey should be done to establish the nature of the issues and ensure that any work done would be cover all issues.
24. The Property Factor submitted that they considered that they had been open and transparent with the Homeowner but they accepted that the Homeowner had to contact them many times and for this they have apologised. They have responded to all correspondence.
25. The Property Factor submitted that in their most recent ballot to owners to seek consent to a roof survey, they had left this open for a longer period than usual to try and get a higher level of response. This has only just been closed due to not receiving a majority consent and their next step will be to advise the Homeowner to refer the matter to Glasgow City

Council. The Property Factor submitted that they are unable to take matters any further. They can only instruct repairs within their authorised limit of £350+VAT. Anything beyond that requires majority consent of the owners within the tenement. This is a long-standing issue. The Property Factor submitted that the other owner on the top floor who resides next door to this particular Property has had a roof repair done before, but they are not aware that he suffers from water ingress to the same extent as the Homeowner.

26. The Property Factor submitted that in their documents lodged on 26 October 2023, these show a lot of evidence of repairs having been instructed over the years. However, they have been unable to obtain the necessary consent from the other owners to carry out more extensive works above their authority to act cost limit.

Findings in Fact.

27. The Tribunal had regard to the Application 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.

28. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property Factor did not deal with correspondence from the Homeowners within reasonable timescales and in line with their WSoS;
- iii) The Property Factor did not provide the Homeowner with clear information as to the history of the roof issues prior to May 2023;
- iv) The Property Factor has instructed various roof repairs as required but has been unable to obtain the necessary majority consent of the owners in the tenement to instruct a full survey or carry out more extensive repairs;
- v) The Homeowner has suffered distress, frustration and inconvenience due to the Property Factor's failures.

Decision of the Tribunal with reasons

29. From the Tribunal's Findings in Fact, the Tribunal found that the Property Factor failed to comply with the 2021 Code and with the Property Factor duties.

30. With regard to the specific breaches of the 2021 Code and the information before it, the Tribunal made the following findings as regards the following parts of the Code:-

(i) Overarching Standards of Practice 2

"You must be honest, open, transparent and fair in your dealings with Homeowners." The Tribunal found that the Property Factor did not comply with this part of the Code by their failure to be transparent in their communications to the Homeowner with reference to the history of the roof repair issues and their inability to obtain majority consent of the owners for more extensive works. The Property Factor had failed to advise the Homeowner at an earlier stage of their ability to apply to Glasgow City Council for assistance.

(ii) Overarching Standards of Practice 5

"You must apply your policies and procedures consistently and reasonably." 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.

(iii) Overarching Standards of Practice 6

"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 Tribunal found that the Property Factor did not comply with this part of the Code by their failure to respond to communications from the Homeowner in a timely way.

(iv) Overarching Standards of Practice 11

“You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.” The Tribunal found that the Property Factor did not comply with this part of the Code by their failure to respond to communications from the Homeowner within reasonable timescales and in line with their own WSoS.

(v) 2021 Code at Section 2.7

“A Property Factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their Written Statement Services. 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 Tribunal found that the Property Factor did not comply with this part of the Code by their failure to respond to enquiries and complaints from the Homeowner within the timescales confirmed in their Written Statement Services and which failure was by their own admission.

(vi) 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 found that the Property Factor did not comply with this part of the Code by their failure to attempt to seek the consent of the owners in the tenement to instruct a survey for the roof earlier than May 2023.

(vii) 2021 Code at Section 6.4

“Where a Property Factor arranges inspections and repairs this must be done in an appropriate timescale and Homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of Homeowners

a cost threshold below which job-specific progress reports are not required. Where work is cancelled, Homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work". The Tribunal found that the Property Factor did not comply with this part of the Code by failing to update the Homeowner as to the progress of works or timescales for further action.

(viii) 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 on a number of occasions, within the terms of their authority to act cost limit.

Property Factor Duties

31. The Tribunal found further that the Property Factor had failed to comply with the Property Factor Duties, by their failure to respond to enquiries and complaints from the Homeowner within the timescales confirmed in their Written Statement Services and by their failure to update the Homeowner as to the progress of works or timescales for further action.

Property Factor Enforcement Order (PFEO)

32. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the Property Factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *“(1) The First-tier Tribunal must, in relation to a Homeowner’s application referred to it ... decide ... whether to make a Property Factor enforcement order”* and the Tribunal proposes to make a PFEO.

33. Section 20 of the Act states: *“(1) A Property Factor enforcement order is an order requiring the Property Factor to (a) execute such action as the First-tier Tribunal considers necessary and (b) where appropriate, make such payment to the Homeowner as the First-tier Tribunal considers reasonable. (2) A Property Factor enforcement order must specify the period within which any action required must be executed or any payment required must be made. (3) A Property Factor enforcement order may specify particular steps which the Property Factor must take.”*

34. The Tribunal proposes to make a PFEO to order the Property Factor to make reasonable payment to the Homeowner to compensate them for inconvenience, frustration and time spent. There being no direct evidence of financial loss, the Tribunal considers that a sum of £150.00 is reasonable in all the circumstances.

35. Section 19 (2) of the Act states: - *“In any case where the First-tier Tribunal proposes to make a Property Factor enforcement order, it must before doing so (a) give notice of the proposal to the Property Factor, and (b) allow the parties an opportunity to make representations to it.”*

36. The Tribunal, by separate notice intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.

37. 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

15 November 2023