

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision with Reasons 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/23/1578

**Flat 1/1, 64 Kempock Street, Gourock, PA19 1ND
 (“the Property”)**

The Parties:-

**Mrs Elaine Cannon, Flat 1/1, 64 Kempock Street, Gourock, PA19 1ND
 (“the Homeowner”)**

**Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS
 (“the Factor”)**

Tribunal Members:

Alison Kelly (Legal Member)

Leslie Forrest (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, OSP 3, OSP 6 and OSP 11,
Sections 2.7, 5.7, 6.1, 6.4 and 7.1
and
- (ii) has failed to comply with the Property Factor’s Duties.

Background

1. The Applicant lodged an application with the Tribunal on 16th May 2023.
2. The Application was processed by the Tribunal. The Tribunal required the Applicant, in terms of section 17(3) of the Property Factors (Scotland) Act

2011 (“the Act”) to notify the Respondent in writing as to why she considered that the Respondent had failed to carry out its duties or comply with the Code of Conduct for Property Factors 2021 (“the Code”).

3. The Applicant sent a letter to the Respondent on 13th June 2023.
4. On 26th June 2023 the Applicant advised the Tribunal that she had received no response from the Respondent.
5. On 19th July 2023 the Tribunal accepted the Applicant’s application, and a Case Management Discussion was fixed for 21st September 2023.
6. The papers were served on the Respondent.
7. The Tribunal’s letter of 10th August 2023 advised that written representations must be returned to the office by 31st August 2023.
8. On 20th September 2023 Robert Watt of the Respondent sent an email to the Tribunal in which he made an offer to settle, and apologised for not responding sooner, saying that the papers had been filed with the accounts department and he had only received the notification letter in the last few days.

Case Management Discussion

9. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself. The Respondent was represented by Robert Watt, one of the three partners of the firm.
10. The Chairperson made introductions and confirmed the purposes of a CMD in terms of Rule 17 of the Rules.
11. The Applicant said that she had read the email sent by the Respondent the previous day. She said that she was not prepared to accept the offer to settle the matter.
12. The Applicant said that the substance of her case was contained in the documents she had lodged, being her chronology, her Property factors Duties Letter and her Property Factors Code of Conduct letter.
13. The Applicant said that she had not, despite having a telephone call with Mr Watt and reminding him about it, had any response to her complaint.
14. The Applicant confirmed that the correspondence she had lodged with the Tribunal was a complete set of the correspondence she had had with the Respondent up to the date of her application.

15. The Applicant said that the roof repair had been partially dealt with. The roofers came and put scaffolding up. They were on the roof for 45 minutes. They carried out a repair, but they did not check the whole roof. There was now water ingress from another part of the roof.
16. The Applicant said that the flat was within a tenement block. There were two commercial properties on the ground floor, two single story flats above, and two maisonette flats above that. The Applicant lives in a first floor, single story flat.
17. Mr Watt said that he accepted that there had been a lack of communication going out to the homeowners, for which he apologised. He said that the roof repair had been part of an insurance claim. Once matters were in the hands of a loss adjuster it was really up to them how matters progressed. It is out of the factor's hands. He said that he has asked the roofer to come out and have another look.
18. Mr Watt also accepted that the Complaints Procedure had not been followed, and again he apologised. He was asked how many properties his firm managed, and he said that he thought it was about three hundred or four hundred. He was asked how many members of staff he had, and he thought it was about nine. The staff all cover various jobs, including repairs, accounts etc.
19. Mr Watt was asked what the process or procedure was when a letter of complaint came in. He said that it should be passed to his bother or himself to deal with. He could not explain why that had not happened in this case. He accepted that he had had a phone conversation with the Applicant when she had reminded him about the complaint, but he said that it must have slipped his mind. He said that he would like to get the matter resolved. He said that he took tribunal applications very seriously and his staff should have known to pass an application on as soon as it came in.
20. Mr Watt was asked if he could provide exact dates and copies of correspondence to do with the roof repair, and he said that he could.
21. The Tribunal considered that the matter required to go to a Hearing for full investigation of the circumstances to be made, and that the Hearing should be in person at the Glasgow Tribunal Centre.
22. Matters which were agreed were that there had been no response to the Applicant's complaint and that there had been no communication with the homeowners about the repair.
23. The Applicant did not think she had any other documents she wished to lodge but she would check. She thought she might bring one witness, her upstairs neighbour.

24. Mr Watt, having only recently had sight of the Application, could not confirm at this time what documents he might want to lodge, or what witnesses he might want to call.
25. Following the CMD, The Tribunal issued Directions to both Parties. The Applicant complied fully with the direction. The Direction issued to the Respondent was lengthy and detailed documentation and evidence required by the Tribunal in relation to correspondence with contractors, insurer, loss adjuster mentioned by Mr Watt at the CMD, inspection records for the whole tenement block, details of staff training carried out in relation to complaints handling and details of investigation carried out by the respondent to identify why the current Tribunal application was not dealt with immediately on receipt. Said documentation was to be submitted by 30 October 2023. The Respondent did not comply with the Direction. The Tribunal had issued a reminder by email to Mr Robert Watt on 24th November 2023, but no response was received.

THE HEARING

26. The Hearing took place on 19 December 2023 in Beacon Arts Centre, Greenock. The Homeowner Mrs Cannon was present and was not represented. The property factor was not present and was not represented.
27. Given that there was no attendance by the Respondent, the Tribunal decided to invite the applicant's witness, Mr Derek Morrison, to join the Hearing. Mr Morrison is a product director for a software company, and works mainly from home. He resides at 2/1, 64 Kempock Street, Gourrock, PA19 1 ND, which is a maisonette flat at the top of the block.
28. The Application comprised the following documents: -
- (i) the First-tier Tribunal standard application form, Form "C2", indicating that the parts of the 2021 Code complained of are: Overarching Standards of Practice at OSPs 2, 3, 6 and 11, Communications and Consultation at Section 2.7, Carrying out repairs and maintenance at Sections 6.1, 6.4, Insurance at Section 5.7 and Complaints Resolution at Section 7.1,
 - (ii) copy intimation letter to the Property Factor,
 - (iii) copy email correspondence with the Property Factor,
 - (iv) a copy of the Property Factor's Written Statement of Services and
 - v) detailed chronology of events and lodged on 7 December 2023 an updated chronology including matters arising since the previous Case Management Discussion including documents in support of each element.

Heads of Complaint

29. Mrs Cannon expanded on the Application and supporting documents and answered the Tribunal's questions on the Application in respect of the broad heads of complaint complained of in the Application and the outcome which she was seeking.

30. **Core Issue** - Mrs Cannon said that the “number one issue” was the need to get the roof repairs carried out as it was no longer simply an issue of damage to the properties but also a matter of public safety. This was supported by Mr Morrison’s statement that there were now many loose tiles on the roof and given the severe weather these could be blown off and potentially cause damage to persons and property.
31. Mr Morrison described the condition of his property. He occupies a maisonette flat spread over the top two floors of the building. He said that the roof issues began after a storm in 2019. Environmental Health lodged a Statutory Notice in July 2021. He had chased the factors on numerous occasions regarding the repairs required. Although a roofer had attended on several occasions to look at the damage, nothing was done. However given the extent of water ingress, Mr. Morrison arranged for CBR Roofing to carry out repairs and paid the whole sum of £1,450 himself. This was in September 2021. He is still awaiting reimbursement from the factor despite their assurances that this would be forthcoming. The roof requires further repair given the issues have not been fully resolved and his property now has significant dampness in the three bedrooms and bathroom in the upper level and also in the living room on the lower level.
32. A second Statutory Notice has been issued dated 25 September 2023 in relation to water penetration adversely impacting the property condition. The factor is aware of this.
33. Mrs Cannon said that while there is no damage to her own property at present, damage can be seen in the common close and the water ingress will eventually reach her own property. Mrs Cannon spoke of the frustration and effect on mental health due to the Respondent’s lack of response and action.
34. Mrs Cannon said that Robert Watt from CTW normally dealt with the property but he was on holiday in November / December 2023. The owner received an email from Neil Watt dated 4 December 2023 saying that the factors were not willing to accept the cost of £3,078 for the roof repair required until such times as they had a breakdown and the money from all owners or confirmation from the council that they would cover missing shares. He also said that arrears across the entire development were £5,343.77, but he gave no breakdown of how this was calculated, or whether it included the £1,450 sum due to Mr. Morrison.
35. OSP 2.
Mrs Cannon said that she has owned her property since 2022. Since then she has had little communication from the factors apart from bills. They do not respond to emails or telephone calls and she considers that they are not transparent or honest as there is never a breakdown of charges in the bills. She made reference to documentation she had submitted in support of this allegation.

36. OSP 3.

Mrs Cannon referred to documentation she had lodged. She reiterated that bills were never accurate or fully itemised. Mr Morrison agreed.

Mrs Cannon highlighted a recent bill sent, including a charge as follows:

23/8/23 CBR Roofing roof repairs £1,450

There was no explanation given on the bill as to what repairs had been carried out or whether this was the sum paid out personally by Mr Morrison in 2021.

37. OSP 6.

Mrs Cannon referred to the documentation provided. She highlighted that the Respondents staff did not appear to be well trained and could not provide information when asked. She was of the view that services were not carried out at all never mind with reasonable care and skill.

Mrs Cannon said that she and Mr Morrison had taken some matters into their own hands by putting letters through the door of other homeowners in order to try to move matters along as the factors were making no progress.

38. OSP 11.

At the CMD, Mr Robert Watt accepted that the factors had not dealt with Mrs Cannon's complaint within a reasonable timescale or in line with their own procedures.

39. s2.7 (Communication and Consultation)

Again Mrs Cannon referred to her documents submitted and to her updated chronology of events since the CMD. Matters had not improved. When asked, Mrs Cannon stated that the factors had never arranged a block meeting to discuss issues. When the homeowners arranged their own meeting they invited the factors to attend but they said they were not available.

A company called Abbey Roofing have been out to look at the roof on several occasions. They confirmed to the owners that they would not carry out work for the factors unless they were paid up front as they had experienced very late payments from them in the past.

40. s 5.7 (Insurance)

As far as the homeowners were aware, no claim has been made on insurance on the roof despite mention of loss adjusters by Mr Watt at the CMD. They have not answered any questions about insurance claims.

41. s 6.1 (Carrying out repairs and maintenance)

Mrs Cannon pointed out that despite having been advised by the Respondent that Robert Watt inspected the property every couple of months, nobody had ever seen him do so and no written reports of inspections had ever been provided.

Mrs Cannon said that this was a big issue for her. 6.2 states that a factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard. She could see the deterioration in the building caused by water ingress and is worried about it as described earlier.

42. s 6.4 (Inspections and repairs)

As previously mentioned, it appears that no inspections are carried out.

43. s 7.1 (Complaints handling)

As previously mentioned, Mr Watt accepted at the CMD that the procedure had not been followed. The Tribunal had wished to address this matter at the Hearing and had directed the Respondent to provide details of training staff undergo in respect of complaint handling, but the direction was not complied with.

44. Property Factor Duties.

Again, with reference to the supporting documents lodged with the Application, Mrs Cannon stated that the Property Factor has simply not provided a service which is acceptable in any way and have not complied with their duties. In spite of Mrs Cannon withholding payment pending clarification of charges, the factor has added a late payment fee to her account.

45. Impact of Property Factor's conduct on the Homeowner.

Mrs Cannon, as previously discussed, noted that the dealings with the factor had caused a lot of distress and worry. Mr Morrison said that there was now significant damage to his property and that his partner is suffering from ill health, which could partly stem from living in a damp environment. Mr Morrison is also out of pocket in respect of a previous roof repair.

46. Mrs Cannon was asked what she wanted to achieve. She said the number one issue was to get the work done as not only was damage being caused to the property it was now a health and safety issue towards the general public. Mrs Cannon said that she wanted Robert Watt and Neil Watt to take responsibility and not blame each other for the factors failings, for them to clarify why no insurance claim had been made, to clarify why they had not exercised discretion in terms of their written statement of services to act where a health and safety risk existed, to be proactive and communicate, to break down bills and explain them, to review their staffing and training, to clarify the recent charge re CBR Roofing and to remove late billing charges from her account. Finally she would like them to acknowledge the significant effect their lack of action is having on the physical and mental health of the owners

Findings in Fact

47. The Tribunal had regard to the Application in full, and to the submissions made at the earlier CMD, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities. The Tribunal found the Mrs Cannon and Mr Morrison to be truthful, straightforward and measured in their submissions and found that they did not attempt to exaggerate the complaints. They were in fact so measured as to be somewhat understating the impact. It was an emotional matter for them

both but they remained calm and on point, which is to their credit given the circumstances.

48. 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;
- iii) The Property Factor has not acted or has delayed to take action to have the water ingress to the Property remedied;
- iv) Mr Morrison instructed roofing work in the sum of £1450.00 at his own cost;
- v) The Property Factor has not carried out repairs which are clearly necessary not only to prevent deterioration to the property but to mitigate a safety risk when they have the ability to do so in terms of their WSS
- vi) The Property Factor has not dealt with the Homeowners properly and in a professional way
- vii) The Homeowner has suffered unnecessary frustration, financial loss and inconvenience due to the Property Factor's failures.

Decision of the Tribunal with Reasons

49. From the Tribunal's Findings in Fact, the Tribunal had no hesitation in finding that the Property Factor failed to comply with the 2021 Code and with the Property Factor Duties.

50. 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."

51. The Tribunal's view is that the Property Factor's conduct and treatment of the Homeowner is totally unprofessional in all respects. The Tribunal considers that the Property Factor has shown complete disregard for their statutory duties and their customers. The property factor has also shown complete disregard for the Tribunal and its processes by ignoring the Direction and failing to attend the Hearing. The impression given at the CMD by Robert Watt was that the application could be made to "go away" by offering Mrs Cannon a sum of money and when this was not possible the Respondents ignored everything else in respect of the application.

52. The Property Factor's conduct has caused the Homeowner unnecessary frustration and both direct and indirect financial loss for which she ought to be compensated. Therefore, the Tribunal proposes to make a PFEO.

53. 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.”

54. The Tribunal proposes to make a PFEO to order the Property Factor to carry out a full repair to the roof as a matter of urgency and at their own cost. This should be done without recourse to either homeowners or the council.
55. The Tribunal agree with the Homeowner that she has not received an acceptable factoring service. The breaches of the Code are very serious. The Tribunal have considered the many previous decisions against the Respondent, which show a systemic disregard not only for their duties but also for the condition of homeowners’ properties and their likely deterioration from lack of action, and also for the physical and mental health of the homeowners to whom they are contracted to provide services and for which they charge a fee.
56. The Tribunal had regard for the amount of time and effort that Mrs Cannon had expended in attempting to elicit action from the factor and the frustration that their lack of response caused. Due to this, the Tribunal took a view that compensation in the sum of £2,000 should be made by the Factors to Mrs Cannon-this sum to be paid within 28 days from the date of this decision.
57. 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.”
58. 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.
59. 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.

Alison J Kelly, Chairperson

19th December 2023