

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/23/2376

Property: Flat 4, 30 Partick Bridge Street, Glasgow G11 6PQ (“the Property”)

The Parties:-

Miss Megan Espie, Flat 4, 30 Partick Bridge Street, Glasgow G11 6PQ (“the homeowner”)

Ross and Liddell Limited, registered in Scotland under the Companies’ Acts (SC097770), having their registered office at 60 St Enoch Square, Glasgow G1 4AW (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Nick Allan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was able to decide the application without a Hearing and decided that the property factors had not failed to comply with the Property Factors Code of Conduct effective from 16 August 2021.

Background

1. By application, received on 20 July 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with Sections 6.1, 6.4, 6.12 and 7.1 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code”).

2. The homeowner's complaint related to a leak coming through her bedroom ceiling, which she reported to the property factors on 24 March 2022. Above her bedroom lies a balcony for the flat above the Property, which is the source of the leak. After multiple phone calls and emails to the property factors, they sent a roofing contractor to carry out temporary repairs on 1 May 2022, but the leak continued.
3. In July 2022, the property factors notified the homeowner that they had a quote to undertake further leak investigations but would have to write to all owners and collect votes in favour, as the damage to the balcony was a communal issue.
4. On 31 August 2022, the homeowner requested an update and on 1 September the property factors replied that they still needed more votes and would send out a reminder. The homeowner emailed them again on 13 November and was told they needed one more vote.
5. On 15 November 2022, the property factors advised that they now had enough votes. The homeowner asked for a timeline for the proposed work and, following a chasing email on 15 December, the property factors told her that they were still gathering quotes.
6. Surveyors came out on 16 and 23 January 2023, carried out tests and prepared a detailed report. Due to the property factors' property manager (Mr Lyon) being on paternity leave, it was not until 28 February that they confirmed that they had the report. They said they would have to read through it properly before suggesting the next steps but did not give a timetable for that to happen.
7. The homeowner emailed again on 8 March 2023 asking for an update and was told by Mr Lyon that he was leaving the company and would pass the issue on to the new property manager to progress things. No action followed, so the homeowner lodged a formal complaint with the property factors on 17 March 2023, a year after the problem was first reported.
8. On 14 April, she received a reply in which the property factors apologised and stated that they would gather estimates as quickly as possible. On 1 June 2023, the property factors told her that there was a considerable price discrepancy in the three quotes they had received and that they had asked a firm of surveyors to advise on which was the best quote. On 21 June, after the homeowner again asked about progress, the property factors said they were still chasing a response

from the surveyors. As at the date of the application (20 July), she had heard nothing further.

9. The homeowner contended that the property factors had not sought to make prompt repairs to a good standard (a breach of Section 6.1 of the Code), had not arranged inspections and repairs in an appropriate timescale and had not informed her of progress or of estimated timescales for completion (a breach of Section 6.4 of the Code), had not continued to liaise with contractors to remedy the defects causing the leak without constant reminders from her (a breach of Section 6.12 of the Code) and, whilst they had replied to her formal complaint within 21 days, they had not issued her with maximum timescales for progression of the complaint and had not given her a timescale for the repair (a breach of Section 7.1 of the Code).
10. On 23 October 2023, Raeside Chisholm Solicitors Limited, Glasgow, provided the Tribunal with the property factors' written submissions, in which they rejected the assertion that they were in breach of their duties under Sections 6.1, 6.4, 6.12 and 7.1 of the Code. They stated that, when the homeowner reported that she was experiencing water ingress, they immediately reported it to contractors on their approved list. The contractors did not attend immediately and said that they had been unable to gain access to the flat above the Property. Through the good offices of the property factors, the owner of that flat was contacted, and arrangements made for the contractors to attend around 27 April 2022 to effect repairs.
11. On 17 May 2022, the homeowner advised the property factors that the issue of water ingress was again apparent. The property factors immediately contacted three contractors for quotes. No quotations were received until 24 June 2022. That quotation was £4,230 plus VAT and was the only one received. Following discussions with the upstairs owner and an adjustment to the scope of works, the quotation was restricted to £2,280 plus VAT. At that level, the property factors required to seek the approval of the proprietors to appoint a surveyor to consider the scope of works and the tender documentation. Proprietors were asked on 12 July 2022 to approve the appointment of a surveyor. Responses were sporadic and it was only after issuing reminders on 11 August, 26 August and 25 October that majority consent was obtained. Only two surveyors had provided a quotation by 14 November when majority consent was given, and the property factors then re-engaged with a third surveyor, but no quote was forthcoming.

12. To assist the homeowner, and without formal approval from the majority of proprietors, the property factors underwrote the expense of the surveyor's quotation and instructed CRPG Surveyors in early January 2023. They inspected on 16 and 23 January and provided their report on 13 February. A copy of the report was provided to the homeowner on 28 February 2023.
13. As a result of a change of personnel, the property factors overlooked issuing the report to all owners until they received the homeowner's initial complaint. On noting the oversight, they immediately advised owners that the report was available on their online portal. They sought quotes from contractors on 10 April 2023.
14. Only two contractors quoted, Northwest Roofing and Glasgow Property Maintenance. Northwest's quotation was open for acceptance until 19 October, but the property factors cannot instruct the works without majority consent. They continued to encourage those who have not voted against the work to support it with a view to obtaining a majority vote to allow the works to progress. The property factors' Client Support Department have continued to notify the homeowner of the status of the vote, the latest communication being 7 September 2023.
15. The property factors recognised that Section 6.1 of the Code relates to both their staff and to the contractors appointed by them but contended that, at all times, they had endeavoured to assist the homeowner in resolving the difficulties she had encountered. Given the cost of repairs, however, they required to engage with surveyors and to date had encountered refusal or failure on the part of the owners as a group to pay for the survey report and the repairs. Further, the Section states that a property factor "can" help rather than "must" help.
16. In relation to Section 6.4 of the Code, the property factors' position was that they have not received majority consent to carry out repairs, so cannot offer a likely timescale for completion of the works.
17. With regard to Section 6.12 of the Code, the view of the property factors was that there had been no defective work undertaken. Emergency repairs had been attempted but were unsuccessful. No subsequent works have been undertaken by a third-party contractor in a negligent manner which is defective and requires to be remedied.
18. Finally, the property factors refuted the assertion that they had breached Section 7.1 of the Code. They have a complaints procedure that is applied consistently and reasonably. It does include a maximum

timescale for progression of the complaint, but the timescale of when repairs will be carried out is not relevant to this Section of the Code.

19. On 8 January 2023, the homeowner made further written submissions to the Tribunal. She had provided with the application a copy of the property factors' Written Statement of Services ("WSS") and she now supplied copies of emails between the Parties, a screen shot from the property factors' online portal showing the current number of votes in favour of progressing repairs, and dated photographs of the damage to her bedroom ceiling.
20. The homeowner stated that she considered that the leak came under the heading of "Emergency Repair", so, in terms of the WSS, should have been undertaken within a reasonable and practical timescale. Her view was that this had not happened in the present case, nor had it been treated as a health and safety issue. She contended that the property factors had known about the issues with the roof for almost 10 years and provided copies of emails and excerpts from a report obtained in 2018, following what appeared to have been a previous leak into the Property. The Tribunal did not regard these as relevant to the present complaint, as it relates to a leak first reported in March 2022, but the Tribunal did accept that it indicated there had been historical issues of a similar nature, which had been attributed to the construction of the balconies. The other copy emails between the Parties were those referred to in her application.
21. The homeowner argued that the property factors had failed to co-ordinate contractors to make prompt repairs to a good standard and that this had led to deterioration of the building externally and internally. Due to a combination of the property factors' team members not communicating with each other and her issue being forgotten about and not progressing for weeks at a time, as well as long periods of time taken for them to reply to emails and not keeping her up to date, Section 6.1 of the Code had been breached.
22. The property factors could not give her an estimated time for completion of the proposed works, thus breaching Section 6.4 of the Code of Conduct.
23. The homeowner made reference to Section 2.7 of the Code, in effect adding it to the application. The property factors' WSS states that they will provide a written acknowledgement within 5 working days and aim to respond fully to complaints, in writing, within 15 working days from the date of their written acknowledgement. They had failed to do this.

24. The homeowner also added a complaint under Section 6.6 of the Code. She said that the property factors had taken many months to gather initially 3 quotes, all of which were varying in cost. One of them pulled out and she was not made aware of that at the time. The property factors then went ahead and put forward the cheaper of the two remaining quotes to the proprietors and when she asked for a breakdown of how their Client Repair Team came to that decision, they were unable to adequately explain how it had been reached.

Case Management Discussion

25. A Case Management Discussion was held by means of a telephone conference call on the morning of 18 January 2024. The homeowner was present. The property factors were represented by Mr David Doig of Raeside Chisholm Solicitors Limited, Glasgow and by Ms Jennifer Johnston, their Associate Director.
26. The property factors told the Tribunal that they are still awaiting a majority vote for the work to go ahead. They are one vote short and have 42% of the funding. They confirmed that they factor the whole block of which the Property forms part. The homeowner stated that she had not received any updates since 6 September 2023. The property factors responded that she could see the state of progress on their online portal.
27. The property factors emphasised that no mandatory obligation was imposed on them by Section 6.1 of the Code, but they had arranged the survey, obtained quotations and were still trying to get a majority vote to allow the work to go ahead. They have been doing their best to have the repairs instructed and carried out. An earlier temporary repair had been ineffective, and the property factors had determined that a full repair is necessary. The homeowner contended that the property factors had known in 2014 that water ingress was a problem. She had received a copy of a report in 2018. The property factors told the Tribunal that owners had been invited to carry out repairs, costing around £10,000 each at that time, but had declined to do so. Ms Johnston added that she was not aware of any other owners in the block suffering with water ingress. The homeowner's view was that nothing had been done promptly and she had had to give constant reminders to the property factors. There had also been a gap of a full month between Mr Lyon leaving and the property factors picking up the matter again.

28. The property factors argued that they cannot have fallen foul of Section 6.4 of the Code, as no work has been instructed. They did not accept the homeowner's assertion that this was an emergency repair. A temporary repair had been attempted, but the full repair is a complex matter requiring a survey, and work cannot be instructed in the absence of a majority vote in favour. Nobody has refused to sanction the work. They have simply not responded.
29. In relation to Section 6.6, the homeowner stated that Ms Johnston had told her on 14 August 2023 that they had two quotes and that the Repairs Team would be in touch, but she had heard nothing further until 6 September. She emphasised how long and drawn-out a process it had been. The property factors said that, looking at the wording of the Code, they did have arrangements in place to ensure a range of options on repair are considered and that they had told the homeowner why Northwest Roofing were being recommended. They had opted for the most competitive quote, having regard to the scope of works recommended by the two contractors. Accordingly, there had been no breach of Section 6.6 of the Code, although they accepted that a fuller explanation might have been offered. The homeowner commented that the more expensive quote appeared to offer a more comprehensive repair.
30. The homeowner withdrew her complaints under Sections 6.12 and 7.1 of the Code.
31. Under Section 2.7 of the Code, the homeowner stated that it had taken 20 working days for the property factors to respond to her complaint, with no apology for the delay. It had been sent on 17 March 2023 and the response was dated 14 April. The property factors said that they had acknowledged the complaint within 5 working days and that the full response had been sent 14 days later, taking account of the Good Friday and Easter Monday holidays.
32. The Parties agreed that it was not necessary to have a full evidential Hearing in the present case. The property factors concluded by saying they hoped that the homeowner was encouraged that only one further vote was required for them to have majority approval and that a further reminder had gone out last week to those who had not yet replied. They believed they had demonstrated their commitment to helping the homeowner. The homeowner said that she should have been advised of this development by the property factors, as the issue was directly affecting her Property.

33. The Parties then left the Case management Discussion, and the Tribunal Members considered all the evidence, written and oral, before them.

Findings of Fact

- i. The homeowner is the proprietor of the property, which is a flat (not a top flat) within a custom-built block of 33 flats in the Partick area of Glasgow.
- ii. The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors first registration is dated 1 November 2012 and their current registration is dated 24 April 2019.
- v. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber, received on 20 July 2023, under Section 17(1) of the Act.
- vii. The concerns set out in the application have not been addressed to the homeowner’s satisfaction.

Reasons for Decision

34. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing. In addition, the Parties had told the Tribunal that they did not regard a Hearing as necessary.

35. **Section 6.1 of the Code** states “*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 did not

uphold the complaint under this Section. There was no doubting the fact that it had taken far longer than it should have for the issues faced by the homeowner to be resolved, particularly as they affected the interior of the Property, but it seemed clear to the Tribunal that the primary reason for the delay was the ongoing failure of the owners within the block to give their consent to the repair works. The property factors have no power to authorise work at this level of expense without majority agreement, unless it can be classed as an emergency. The view of the Tribunal was that the property factors were entitled not to regard this as an emergency repair, when they had promptly organised a temporary repair (albeit one that did not prove effective). They had done all that could reasonably be expected of them in a situation where, despite a number of reminders, a majority of the other owners within the block had not given their approval. The Tribunal recognised that this has been a very frustrating matter for the homeowner, with no end in sight, but the fault for that lies with her co-proprietors, not with the property factors.

36. **Section 6.4 of the Code** provides *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.*” The Tribunal did not uphold the complaint under this Section. The property factors have endeavoured to arrange the necessary repairs, but the owners in the block have failed to give them the authority to go ahead. Accordingly, no work has been instructed, so it has not been possible for the property factors to provide estimated timescales for completion.

37. **Section 6.6 of the Code** states that “*A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factors must be able to demonstrate how and why they appointed contractors.*” The Tribunal did not uphold the complaint under this Section. The view of the Tribunal was that it is within judicial knowledge that, since the COVID-19 lockdown and with many European workers having left the UK, it has become very much more difficult to find tradespeople, to obtain estimates and to ensure work is done timeously, as contractors face significant uncertainties as to availability of labour and the cost of materials.

38. The property factors explained in an email to the homeowner of 26 July 2023 that, “*Given the complex nature of the issue and the varying specifications received to date, with the subsequent withdrawal of [a] quote, we are left with no alternative than to obtain a cost for the surveyor to complete a specification, issue and analyse tenders to various other contractors and select the most appropriate contract and monitor/inspect to completion.*” The homeowner’s complaint was that

the property factors had taken many months to obtain 3 quotes, all of which were varying in cost and that she had not been made aware when one of them pulled out. The property factors then put forward the cheaper of the two remaining quotes to the proprietors and when she asked for a breakdown of how their Client Repair Team came to that decision, they were unable to adequately explain how it had been arrived at. The property factors, in their response of 14 April 2023 to the homeowner's complaint, stated that they had had to have repeated conversations with and send chaser emails to the original contractors when the homeowner told them that the temporary repair had not been successful, but it had been 5 weeks before the contractors provided an estimate. The property factors had successfully negotiated with the upstairs neighbour and the contractors to reduce the estimate by storing in the upstairs flat the slabs which had to be removed to allow the sealant work to be carried out. They had then approached two other contractors, but they were reluctant to quote without a confirmed scope of works. The property factors decided, therefore, that the appointment of a surveyor would be necessary. It took from July until November 2022 to obtain the majority approval of the appointment of a surveyor, despite reminders sent to proprietors on 11 and 26 August and 25 October. Estimates were received on 28 November and 15 December, but the third estimate did not arrive, so, as they had advance agreement and because of the passage of time, the property factors decided to underwrite the cost to prevent further delays as they ingathered the funds. The appointed surveyors inspected the Property on 16 and 23 January 2023 and a copy of their report was returned to them on 13 February. Following her contacting them, the property factors provided the homeowner with a copy of the report on 28 February.

39. The property factors accepted that, at this point, further action should have been taken, but the property factors had been unable to locate any record of the survey having been passed by Mr Lyon to the Client Support Team before the homeowner lodged her complaint on 17 March. They agreed that matters had taken far longer than they would have hoped to progress, largely subject to delays by the contractors, consent from owners, and more recently with Mr Lyon omitting to progress the work on receipt of the surveyor's report.
40. The view of the Tribunal was that, with the exception of a delay between 13 February, when they received the surveyor's report, and shortly after 13 March (the date of the homeowner's complaint), the property factors had acted reasonably in challenging circumstances. It was not their fault that contractors took a long time to quote, or pulled out of the process, and, as previously noted in relation to the quotes for the repair work, it had proved very difficult to obtain a majority vote for the appointment of a surveyor.
41. **Section 2.7 of the Code** provides that a property factor should respond to enquiries and complaints received orally and/or in writing within the

timescales confirmed in their WSS. The Tribunal did not uphold the complaint under this Section. The complaint was emailed to the property factors on Friday 17 March 2023. In terms of Section 13 of their WSS, the property factors then had 5 working days within which to acknowledge it and a further 15 working days within which to fully respond. The response was sent on 14 April. The Tribunal did not have evidence of the date on which it was acknowledged, so could not determine the date on which the 15 working day period commenced. Excluding the day on which it was sent (17 March) and Good Friday and Easter Monday, the response was sent on the 18th working day after the complaint was made, so the Tribunal could not make a finding that the property factors had failed to comply with Section 2.7 of the Code. Even if the acknowledgement had been sent as early as 20 March, the Tribunal would not have made a finding in favour of the homeowner, as the WSS says that the property factors “will aim” to respond fully within 15 working days of acknowledgment of the complaint. The Tribunal would not have regarded an overrun of just a few days as a failure to comply with the terms of the WSS.

42. The Tribunal did not consider the complaints under Sections 6.12 or 7.1 of the Code, as these had been withdrawn by the homeowner at the Case Management Discussion. Accordingly, the Tribunal did not uphold any element of the homeowner’s complaint. There is no doubting the frustration, anxiety and stress caused to the homeowner by the length of time it has taken to deal with the repairs issue, but the Tribunal concluded that the principal contributing factor has been the fact that the property factors do not have majority consent and, without that, they can do nothing to progress the matter to a successful conclusion.

43. The decision of the Tribunal was 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.

Signed

Date: 20 February 2024

George Clark (Legal Member/Chairman)

