Housing and Property Chamber
First-tier Tribunal for Scotland

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

Decision on homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/21/2375

103 Linksfield Court, Aberdeen, AB24 1GU ("the Property")

Parties:

Federico Garcia Lopez de la Torre, 103 Linksfield Court, Aberdeen, AB24 1GU ("the Homeowner")

Aberdeen City Council, Marischal College, Business Hub 6, First Floor South, Aberdeen, AB10 1 AB ("the Property Factor")

Tribunal Members:

Josephine Bonnar (Legal Member)
Elizabeth Dickson (Ordinary Member)

This decision should be read in conjunction with: -

The Tribunal's decision with statement of reasons dated 29 August 2022

The proposed PFEO dated 29 August 2022.

The Upper Tribunal decision dated 8 September 2023

The amended proposed PFEO dated 23 October 2023

DECISION

The Tribunal determined that a Property Factor should be issued in amended terms.

The decision is unanimous.

Background

1. The Homeowner lodged an application with the Tribunal in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act.

2. On 3 November 2021, a Legal Member of the Tribunal with delegated powers of the President referred the matter to the Tribunal. A case management discussion ("CMD") took place on 12 January 2022. Following the CMD, the Tribunal determined that the application should proceed to a hearing by video conference. Following receipt of a number of direction requests from the Homeowner, a further CMD was arranged and took place on 23 March 2022.

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3. A hearing took place by WEBEX on 5 May and 6 July 2022. The Homeowner participated. The Property Factor was represented by Mr Donald. The Tribunal also heard evidence from Mr Stoddart and Ms Barclay.

4. Following the hearing the Tribunal determined that the Property Factor had failed to comply with Sections 1, 2.1, 2.3, and 2.5 of the 2012 Code, OSP 4 of the 2021 Code and had failed to carry out their property factor duties in relation to changing the lock on the drying room without notifying him that they had done so and failing to provide him with a new key after the lock change. A written decision with statement of reasons was issued with a proposed PFEO. The Applicant appealed the decision and on 8 September 2023, the Upper Tribunal upheld some of his appeal points and determined that, in addition to the complaints that the Tribunal had upheld, that the Property Factor had also failed to comply with Section 6.9 of the 2012 Code, OSP 4 of the 2021 Code (in relation to another complaint under this section) and failed to carry out property factor duties in relation to issuing a non-unique key and poor communication. The case was remitted back to the Tribunal. The Tribunal issued an amended proposed PFEO and invited the parties to submit further representations regarding the proposed order, in terms of Section 19(2) of the 2011 Act. The Applicant lodged a detailed submissions and a number of documents. The Tribunal determined that a hearing should take place in relation to the terms of the final PFEO. Prior to the hearing, the Applicant lodged an amended submission and further documents. The Respondent lodged a brief submission.

5. The hearing took place by WEBEX on 21 February 2024. The Applicant participated and the Respondent was represented by Mr Milne, solicitor.

The Hearing

6. At the start of the hearing, Mr Milne confirmed that he had no objection to Mr Garcia's amended submissions and the Tribunal confirmed that these would be allowed. The Tribunal noted that the Applicant appeared to be arguing that the Tribunal can and should make a Property Factor Enforcement Order that fully compensates him for the losses he attributes to the actions and failures on the part of the Respondent. In other words, the Tribunal has the same powers as a Sheriff or Judge would have if the Applicant had raised court

proceedings for damages based on contract or delict. Mr Garcia confirmed that this is the basis of his submissions. He said that the starting point of his argument is Section 19(4) of the 2011 Act which states that "Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court of tribunal". He said that he could not raise proceedings in the Sheriff Court because he had made an application to the Tribunal in relation to the same matters. He also stated that the Tribunal proceedings had taken two years, and in the meantime his entitlement to take court action has prescribed. He added that, as the Tribunal has the power to award any amount that they consider to be appropriate, they can award a sum which would fully compensate him for his losses.

Complaint 16

7. Mr. Garcia referred to Document 2 (D2) in his bundle, a letter from his insurer which (he said) established that the Respondent accepted that the water ingress that occurred in 2016 and damage to his property were caused by the contractor who carried out the roof works. He said that the Upper Tribunal had instructed the Tribunal to assess causation and quantification (Para 11 of the UT decision). He referred to D3, a letter from Zurich Insurance company to Lindsay and Kirk (his solicitor) in which they deny liability because the incident had been caused by Keepmoat (the contractor). He then referred to D6, a note of a telephone call made by April Craine (Fee earner) which states that the claim was to be re-directed to the contractor, because the insurers had rejected the claim.

8. In relation to his claim for loss of earnings, Mr Garcia said that he was a self-employed taxi driver at the relevant time and was working the night shift. He was claiming for 5 days loss of earnings because he had to stay home due to the water ingress and waiting for someone to come and inspect it. He referred to D8, his tax return, as evidence of the sum he had lost. He also referred to a timeline he had prepared at the time as evidence of the number of days he could not work. Mr Garcia then referred to D4, a quote for the repair work dated 1 February 2017. He said that a large amount of water had come through the ceiling. He could not leave the property unattended. He said that the Insurers eventually paid him the sum of £6296 and £630 for the damage. This was a contribution to his losses. He did not know why they did not offer to carry out the work. He suspects fraud or criminality. They only offered a contribution. He referred to D10, a copy of a cheque from the Insurer. In response to questions from the Tribunal Mr Garcia said that the insurer sent out a loss adjuster. The Council sent a clerk of works. He said that he has not carried out any work to repair the damage to his property because the cheque did not cover everything that was needed, including the redecoration cost of £3331. All rooms in the property were affected by the water ingress. He could not afford to do the work because the whole cost was not recovered. In response to further questions, Mr Garcia said that he was also given the sum of £500 for disturbance so he was not claiming this from the Council.

9. Mr Milne told the Tribunal that the Council disputes that it is liable for any of the losses claimed and does not accept that the Upper Tribunal indicated that he should be compensated in this way. He said that the Applicant ought to have

raised proceedings in the Sheriff Court. The sums being claimed are outwith the discretion of the Tribunal. In any event, there is no reasonable evidence to support the claim that these alleged losses are connected to a breach of the Code. Mr Milne said that the Tribunal should make a final order in the terms which were originally proposed.

Property Factor Duties complaints (b) (e) and (f)

10. Mr Garcia said that he was claiming the sum of £40 which was the equivalent of an hour or an hour and a half's work for having to go to the Council to collect a replacement key after he discovered that he could not get into the drying room. He said that he usually worked from 3pm to 6.30 am. He had to go at the start of his shift. He couldn't go for it earlier as he had to sleep until 2pm. He said that he was deprived of access for 108 days, when the key he collected was not correct. He thinks he phoned a few times during that period to notify them he still had no key, but he has no record of that. It was difficult for him to chase it up because he worked at night. He had a right to use the drying room. After 108 days a key was put through his letterbox. In response to questions, Mr Garcia said that he used the drying room from time to time but that is not the point. He should be compensated as it was his drying room.

11. When asked for clarification of the relevant dates and timeline Mr Garcia said that there was a fire on 21 June 2020. This resulted in a lock change on 7 July 2020. His bikes went missing on 19 December 2020. He had heard rumours about the keys not being unique before that but only discovered it was true after the bikes were removed. In terms of the value of the items, Mr Garcia referred to page 101 and 102, two receipts. These related to the newer bike and the padlock. He also had an older bike for which he no longer has a receipt. He does not know who took the bikes, but the lock had not been forced, so someone opened the room using a key. On the balance of probabilities, the bikes were taken by someone who had no right to access the drying room. The absence of a unique key led to an increased risk and that is all he has to establish.

12. Mr Milne told the Tribunal that the respondent cannot be held liable for a criminal act. The bikes may have been removed by someone who was entitled to enter the drying room, one of the other 2 owners/tenants. He said that there is also no evidence to support the loss of earnings. In relation to the factoring fee, he said that Mr Garcia still had the benefit of factoring services being provided and is not entitled to a refund.

The Tribunal make the following additional findings in fact: -

13. The Applicant experienced water ingress at his property between 15 October 2016 and 22 October 2016.

14. The Applicant accepted the sum of £7426 from his insurer for the damage caused to his property by the water ingress.

15. The Applicant did not make a claim (or raise proceedings) against either the Respondent or the contractor who replaced the roof, for the damage to his property caused by water ingress.

16. The Applicant did not use the sums received from his insurer to carry out any repairs to his property caused by the water ingress.

17. On 25 November 2019 the Applicant discovered that the lock had been changed on the drying room which he owns in common with the proprietors of two other flats.

18. The Applicant contacted the Respondent and collected a replacement key. The key did not open the lock.

19. The Applicant was provided with a replacement key which opened the drying room on 12 March 2020.

20. A further lock change took place on 7 July 2020.

21. The Applicant discovered that two bicycles had been removed from the drying room on 19 December 2020.

22. Prior to the discovery he had heard a rumour that the drying room keys were not unique.

23. On 19 December 2020 he discovered that his drying room could be opened by another drying room key.

24. The Applicant is a taxi driver and works from approximately 3pm to 6am.

Reasons for Decision

Section 19 of the 2011 Act

(2) 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

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court or tribunal.

(Note – section 22 relates to appeals against decisions of the Tribunal.)

Section 20 of the 2011 Act

(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,
(b) Where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.

25. The Homeowner argues that the effect of Section 19(4) of the 2011 Act is that he is precluded from raising proceedings against the Property Factor the Sheriff Court for damages. The Tribunal is not persuaded by this argument for the following reasons: -

(a) The losses which form the basis of the submissions relate to various events which occurred between 2016 and 2021. The Applicant did not pursue these losses against the Respondent during this period. His application to the Tribunal was not made until 30 September 2021.

(b) The Tribunal's jurisdiction is restricted to a determination of whether a property factor has complied with the 2011 Act. It does not have jurisdiction in relation to all disputes between factors and their clients. For example, if a homeowner fails to pay their factoring charges, a property factor must raise proceedings in the Sheriff Court for payment. A homeowner is entitled to defend these proceedings and may do so on the basis that services were not provided. The Court may have regard to a decision issued by the Tribunal, if an application had previously been made by the homeowner, but ultimately it is for the court to decide whether the factor is entitled to an order for payment. The effect of Section 19(4) is to preclude a homeowner or a property factor from raising proceedings at court about whether the Property Factor has complied with the 2011 Act, if the Tribunal has already issued a decision in connection with same.

(c) Unless otherwise agreed by parties, the Courts usually have jurisdiction to deal with contractual disputes and actions based on delict.

(d) In court proceedings parties have the benefit and protection afforded by strict rules of procedure and evidence. A Pursuer must fully specify their case, factually and legally, in written pleadings, and a failure to do so may result in a case being dismissed without any evidence being heard. The Applicant expects the Tribunal to allow him to circumvent this process and the protection it affords

a defender.

26. During the hearing, the Applicant argued that, even if he still had a right of action against the Respondent, this may have prescribed during the two years or so that have elapsed since his application was submitted. This is not a persuasive argument. If his claims have prescribed, it is because he chose not to pursue them at the relevant time and an application in terms of the 2011 Act should not be seen as way to avoid the consequences of the law on prescription and leave a property factor open to claims for an unlimited period.

27. The Tribunal is satisfied that Section 19(4) does not prevent an aggrieved homeowner from raising court proceedings against a property factor for losses or damages incurred because of a property factor failing to comply with a statutory, contractual or delictual obligation owed to the homeowner.

28. The Applicant's submissions also appear to be based on the premise that the Tribunal is obliged to make an order for payment which will directly compensate him for all losses suffered in connection with the failure to comply with the Code and/or carry out their duties. This is not the case. There is nothing in the 2011 Act which obliges a Tribunal to make an order for compensation. A PFEO must be issued, if a breach is established, but this does not have to be a monetary award. The Tribunal has the power to make an order for payment, where "appropriate". The sum to be awarded is wholly within the discretion of the Tribunal. The only qualification is that the Tribunal must consider the sum in question to be "reasonable". However, the Tribunal concedes that, where a monetary award is made, the Tribunal should demonstrate how it reached the figure in question and identify what factors were considered. These factors **might** include losses suffered by a homeowner which are directly attributable to the breach which has occurred, but the legislation does not stipulate that the Tribunal **must** make an award on this basis.

29. For the sake of completeness, the Tribunal notes that the Applicant argues that the Upper Tribunal, when it partially upheld his appeal, "instructed" the Tribunal to assess "causation and quantification". In his written submissions, he states, "Therefore what remains to be determined by the Tribunal are questions of causation and quantification which would involve consideration of whether and, if so, how and to what extent the Property Factor Enforcement order requires to be altered". This is the Applicant's own statement. When asked, he referred the Tribunal to the last paragraph of the Upper Tribunal decision which states, "I remit the matter back to the FTS. I direct the FTS to determine what, if any, remedy should be granted in light of my decision. That will involve consideration of whether and, if so, to what extent the Property Factor Enforcement Order dated 29 August 2022, requires to be altered. I do not consider that a differently constituted FTS is required: to the contrary, having heard the evidence and made no adverse finding regarding the Appellants credibility or reliability, the panel is well placed to determine the outstanding matters. Determination of questions of causation and quantification remain live".

30. For the sake of clarity, it is important to note that the Tribunal has not issued a PFEO. What was issued with the decision dated 29 August 2022, was a **proposed** PFEO, as required by section 19 of the 2011 Act. The Tribunal is not persuaded that the Upper Tribunal directed or "instructed" them to assess causation or quantification. The statement appears to be an observation that the Upper Tribunal has not done so. The only direction issued was that the Tribunal should determine what remedy should be granted in light of the decision to overturn the decision of the Tribunal in relation to 4 of the complaints in the application.

The PFEO

31. The Respondent's submissions and evidence at the hearing were in fairly brief terms. Simply put, they invite the Tribunal to make a final PFEO in the same terms as the proposed order and state that the Order should not relate directly to the alleged losses which, in any event, are not attributable to the breaches which were established.

32. The Applicant's submissions relate to the increase between the sum specified in the original proposed order (£500) and the sum specified in the amended version (£700), following the successful appeal. He states that the sum to be awarded should increase to £7932. He focuses on his complaints under section 6.9 of the 2012 Code and the three property factor duties complaints.

Complaint 16 – Section 6.9 of the Code. You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

33. The Applicant's submission in relation to this complaint is misconceived for several reasons. The Applicant states that the Tribunal ought to award him the sum of £5645 for the breach of this section. This is broken down into the following components: solicitor's costs, £260; survey fee, £144; loss of earnings, £378; and re-instatement costs, £4683 (being the difference between the sum paid to him by the insurance company and the actual cost of re-instating the property).

34. This section of the Code requires a property factor to "pursue" a contractor to "remedy the defects in any inadequate work or service provided". The documentary and oral evidence (at the hearing on 21 February 2024) appear to establish that in October 2016 the Applicant experienced water ingress during or following the replacement of the roof of the tower block by contractors instructed by the Respondent. However, although there is some evidence to suggest that the roof works were the cause of the water ingress which occurred in October 2016, this was not the only incident. The main focus of the evidence at the original hearing were later incidents of water ingress, from 2018 onwards, which appear to have been caused by a damaged stack pipe, probably unrelated to the 2016 works. The present condition of the Applicant's

property is largely attributable to the original water ingress since the Applicant, by his own admission, did not use the sums received from the insurance company to re-instate the property in 2017. The photographs lodged of the damage appear to have been taken in 2016.

35. The evidence did not establish that the condition of the property following the water ingress incidents in 2016 was due to a failure by the Respondent to pursue the contractor in relation to defective work. The Applicant reported the water ingress on Saturday 15 October 2016. The Respondent said they were already aware and had sent someone to investigate and repair. This appears to have been unsuccessful since the water ingress recurred on the 18 October. The Applicant had a visit that day from the contractor, the sub-contractor, and the Council. He spoke again to the contractor on 19 October. At 5pm on 22 October the Applicant was told by the contractor that the problem had been fixed. No further water ingress is recorded until 2018. The Applicant's complaint is not that the Respondent failed to get the contractor to correct their defective work but that they did not re-instate his property, arrange for the roofing contractor to so, or compensate him for the damage he had experienced. While that might give him a right of action against the Respondent and/or the contractor, it is not established that the losses he may have experienced are attributable to the Respondent failing to "pursue" the contractor to take the necessary steps to fix the roof if their work had caused the leak. It is not clear why it took a week to fix the leak, but steps were being taken by the contractor to deal with the matter from 15 October onwards.

36. Even if the Tribunal was satisfied that losses were caused by the breach of this section, the quantification of the alleged losses does not stand up to scrutiny. The largest part of the "claim" relates to the difference between the sum paid by the insurance company and what the Applicant claims that he needed to re-instate his property. This appears to be based on two estimates that he obtained and the claim that the insurance company only made a "contribution" to the costs. This is not supported by his own documentary evidence. This indicates that the only deductions were his policy excess of £250 and two items which were not required – a damp proof course and a lathe and plaster ceiling. The correspondence also indicates that the compensation was intended to cover the repairs but not loss of earnings, delays, or inconvenience. The Tribunal is therefore satisfied that the insurance company payment was based on the cost of re-instating the property to its previous condition. As the Applicant did not spend the sums received doing this, it is impossible to ascertain whether the sum he received was adequate. He could have obtained further quotes and done at least some of the work but chose not to do so.

37. The Tribunal is not clear why the Applicant had to pay for the survey report. It is not usual for contractors to charge for preparing a quote for work and neither this nor the solicitors' fee appear to be relevant losses. If the Applicant had pursued a claim or court action in connection with his losses, he would have incurred legal and other costs which may have been recoverable at the end of the process. However, the evidence appears to show that he chose instead to pursue his own insurer and chose to incur these costs in relation to this.

38. The evidence in relation to loss of earnings is inadequate. Again, the loss appears to be related to the water ingress rather than a failure by the Respondent to arrange for the contractor to fix the leak. He told the Tribunal that he was waiting in during the day for someone to come and assess the damage and he worked the night shift at the relevant time. Furthermore, the calculation of the loss is not clear. At the time, the Applicant was self-employed as a taxi driver. He has based his claim on a notional weekly income of £378. However, this appears to be based on his gross earnings and assumes that he worked 52 weeks a year. No account has been taken of the variations in earnings experienced by taxi drivers. For example, takings might be higher on a weekend night. However, even if the Tribunal accepted that he lost earnings of approximately £378, these uninsured losses should have been claimed in the usual way. The Applicant has not established that they arise from the Respondent's failure to pursue the contractor to rectify defective work.

39. In terms of the decision of August 2022, the Tribunal determined that the Property Factor had failed to act upon the Applicant's complaints about the leak from the roof. This was based on the evidence of phone calls he made to the Respondent. The Respondent did not dispute that no action had been taken. They said that they had no record of the calls. However, the Tribunals conclusions mainly related to the calls made by the Applicant between 2018 and 2021. The phone bills submitted only show two calls in October 2016. Most of the invoices relate to 2018 onwards. The Applicant does not address this period in his submissions because he was unable to prove that the problem with the stack pipe was in any way related to defective work carried out to the roof by contractors in 2016.

40. The Tribunal is therefore not satisfied that the Applicant is entitled to the sums specified in his submissions in connection with a breach of section 6.9 of the 2012 Code.

Property Factor Duties

Complaint (b) – Installing a lock which does not have a unique key and thereby allowing access by unauthorised persons.

Complaint (e) – Failing to communicate effectively between departments of the Council

Complaint (f) – Failing to address/provide an appropriate response to various complaints which were made.

41. The Applicant states that he ought to be awarded the sum of £1135 in relation to complaint (b) and £452 for (e) and (f). The components are as follows; - theft of two bicycles, £500; Refund of factoring fee, £137; Compensation for infringement of the use and enjoyment of the drying room, £498; loss of

earnings, £40; refund of factoring fee, £88; compensation for private nuisance, £324.

42. The Applicant seeks an award of £500 for the loss of two bikes and a lock, a refund of half of his management fee for the period that there was no unique key to the drying room (137) and £498 for the same period for "the days in which his rights of use and enjoyment of the land were infringed". He has based this claim for £498 on a notional daily rate of £3.

43. As evidence in support of the claim for £500, the Applicant produced a police report in relation to the theft of the bikes, a receipt dated 20 June 2018 for one of the bikes and the lock. He stated that the other bike was older, and he did not have a receipt. The Applicant stated that he discovered that the bikes were missing on 19 December 2020. The Tribunal notes the following; -

(a) The loss and damage appear to be the result of a criminal act.

(b) The bikes appear to have been stored permanently in the drying room, a room which is supposed to be used for drying clothes and not storage.

(c) The drying room is not owned exclusively by the Applicant. It is shared with two other properties and the owners or tenants of those properties also have a key to the room.

(d) The bikes were stolen 5 months after the lock change.

(e) There is no evidence that, prior to the lock change, the key for the drying room was unique.

(f) The Applicant was aware that the key was possibly not unique and chose to continue to store his bikes in the drying room.

(g) The Applicant does not appear to have submitted an insurance claim for the loss.

(h) There is no evidence of the value of the older bike or its condition at the time it was taken.

(i) The evidence produced in relation to the newer bike is the receipt for the purchase of the bike some two and a half years before the theft.

44. For the reasons outlined, the Tribunal is not persuaded that the Applicant is entitled to the sum of £500. The drying room was not completely secure even before the lock change and there is no evidence that the failure by the Respondent to provide a unique key directly led to the theft of the bikes.

45. The other two sums specified in terms of claim (b) appear to have been arbitrarily chosen. During the period in question, the Respondent continued to provide a full factoring service –arranging insurance, lift maintenance, repairs. They may have been negligent in providing a key which was not unique, but

they rectified this when it was brought to their attention. The daily rate of £3 appears to have no legal basis. The Applicant had full use of the drying room at the relevant time.

46. Complaints (e) and (f) are both about communication. Complaint (e) relates to the failure by the Respondent's housing department to notify the Factoring Department that the lock on the drying room door had been changed. As a result, the Applicant was not notified or provided with a new key. Complaint (f) is about the failure of the Property Factor to respond to enquiries and complaints. These failures were also considered and determined in relation to the Code of Conduct.

47. The Tribunal is not persuaded that the losses specified in the submission can be attributed solely to communication failures. The Tribunal previously determined that duties complaints (a) and (c) had been established. The Respondent changed the locks on the drying room and did not notify the Applicant that they had done so. They also failed to provide him with a key. The lack of access to the drying room for a period arose from these failures rather than the failure of the housing officer to notify the factoring team about the lock change. The submissions do not address why the failure by the Respondent to answer complaints and enquiries led to any losses.

48. The Tribunal is not satisfied that the Applicant had to lose a day's pay to visit the Council offices to collect a key. As he did not usually start work until 3pm and then worked through the night, his visit to the office could have been made at the start of his shift. For the reasons previously outlined, the Tribunal is also not persuaded that part of the factoring fee should be re-imbursed. The Applicant continued to receive the same factoring services during the relevant time. As was established during the evidence, the Respondent's involvement in the drying room was a limited one – inspecting it from time to time and arranging repairs if these are required. There is no reason to believe that this did not continue during the period in question. Although the Applicant was certainly inconvenienced by the key issue, it is far from clear why it was not resolved more quickly. When he realised that his key did not work, he could have contacted the housing office or visited the office again to request a replacement. Although he thinks that he called, his evidence was not convincing. He was vague about what occurred, stating that he was busy, and added that he had no record of making any calls. The initial lack of access to the drying room may have been caused by the Respondent's actions but the length of time involved is due (at least in part) to the Applicant failing to pursue the matter.

Property Factor Enforcement Order

49. Although the Applicant's submissions relate to the increase between the sum specified in the original proposed order and the amended version, the Tribunal is of the view that the whole terms of the proposed order should be scrutinized at this stage. In terms of section 19, a PFEO must be issued. Having considered the breaches which are now established, the Tribunal is satisfied

that the breaches have caused inconvenience to the Applicant and that a monetary award seems appropriate. The Tribunal notes the following; -

(a) The Applicant was not provided with certain information and a WSS when he first purchased the property. He did not receive a copy of the WSS until a second request was made in May 2021. However, during the original hearing it was established that the Property Factor Team of the Respondent had been communicating with the Applicant since June 2015 and sending invoices. The correspondence clearly states that it comes from the Factoring Team and the PF registration number features on the letters and invoices. The Tribunal is of the view that the inconvenience experienced by the breach of this section was relatively minor. The Tribunal was not satisfied that he did not know that there was a property factor or how to report repairs issues. An award of £100 is made.

(b) The Tribunal and Upper Tribunal upheld several complaints relating to the provision of misleading and false information. Although the Tribunal was satisfied that staff members did not set out to deceive the Applicant, the breaches of section 2.1 of the 2012 Code and OSP of the 2021 Code caused considerable inconvenience to the Applicant. An award of £300 is made.

(c) For the reasons stated, the Tribunal is not persuaded that the Respondent failed to act on reports about water ingress when it occurred in 2016. They may have failed to deal with the resultant damage but, if the leak was caused by faulty work, this must have been addressed as the water ingress stopped within a week of the first report. However, the reports from 2018 onwards do appear to have been ignored. From the evidence it appears that this issue was probably unrelated to the roof works, but the Respondent could not have known that this was the case until the matter had been fully investigated. This was the view taken by the Upper Tribunal. The repair was not carried out until 2021. The Applicant lodged a series of phone bills. These show that he made calls to the repairs telephone number on two occasions in 2018, four in 2019, five in 2020 and four in 2021. In his evidence at the original hearing, Mr Garcia said that not all were related to water ingress, and he could not specify which were related to other matters. The Tribunal accepted that some of these calls related to episodes of water ingress which were not acknowledged, acted upon, or recorded. However, most of the evidence produced by the Applicant (including photographs) relates to the 2016 incidents and, as he did not arrange for any repairs to be carried out in 2016/17 the consequences of the later episodes were not evidenced. The Tribunal is however satisfied that the Property Factor provided a very poor service in relation to the later reports and that the delay in dealing with matters warrants an award of £650 for delay and inconvenience.

(d) The Tribunal is satisfied that the Applicant was provided with a very poor service by the Respondent in relation to the keys for the drying room. However, the Applicant appears to have made little use of the room, expect for storing his bikes in 2019. Furthermore, had he needed access, he could have contacted the Respondent again, borrowed a key from a neighbour to make a copy or changed the locks himself. An award of £150 is made.

50. The Tribunal determines that a PFEO should be issued which will require the Respondent to pay the sum of £1200 to the Applicant.

Appeals

A homeowner or property factor 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.

Josephine Bonnar, Legal Member
14 March 2024