

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/25/0685**

**Re: Property at Flat 3/1, 235 Onslow Drive, Dennistoun, Glasgow, G31 2QE (“the Property”)**

### **Parties:**

**Ms Jacqueline Adams, Flat 3/1, 235 Onslow Drive, Dennistoun, Glasgow, G31 2QE (“the Homeowner”)**

**Ross & Liddell, 60 St Enoch Square, Glasgow, G1 4AW (“the Property Factor”)**

### **Tribunal Members:**

**Fiona Watson (Legal Member)**

**Nick Allan (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with parts 3 and 6 of the Overarching Standards of Practice and sections 2.1 and 3.1 of the Property Factor Code of Conduct 2021.**

### **Background**

1. By application received on 18 February 2025 (“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”).

2. The Application comprised the following documents: -
  - (i) application form in the First-tier Tribunal standard application form C2 (relating to matters after August 2021), indicating that the parts of the Code complained of are “*OSP 2, 3, 4 and 6 and sections 2.1 and 3.1*”;
  - (ii) copy correspondence between the Homeowner and Property Factor;
  - (iii) a copy of the Property Factor’s written statement of services (WSoS)
  
3. On 10 March 2025, 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 8 July 2025 by telephone conference call.

### **Case Management Discussion**

4. The CMD took place on 8 July 2025 by telephone conference call. The Homeowner was present on the call and represented herself. Mrs Johnston, Associate Director, Complaints Resolution (an employee of the Property Factor) was present, alongside Mr Doig of Raeside Chisolm, Solicitors, who represented the Property Factor. Written submissions were submitted by the Respondent prior to the CMD.
  
5. The Homeowner submitted that there had been major works carried out to the building of which her flat forms part. The Homeowner resides on the top floor of the four-story building. The works carried out involved stone work to the building façade, mullions and lintels. It was submitted that when the scaffolding was removed, the Homeowner found that the lintels attached to her Property had been strapped with metal and reinforced instead of being replaced and/or repaired with stone. The Homeowner submitted that she was unaware that this would be done as she had understood that they would be replaced with stone. It was submitted that the Property Factor had failed to send her sufficient information to advise her of this and to allow her to make an informed

decision on whether to agree to proceed with the works. The Homeowner considered that it looked unsightly. It was submitted that there had been poor communication by the Property Factor.

6. The Homeowner submitted that she appreciated that it would cost a lot of money for the lintels to be replaced by stone, and that if it was impossible to do so given the state of disrepair of the lintels, then other options should be investigated. The Homeowner did not consider it fair or appropriate to put the cost of doing so on the owners, who had not agreed to the metal strapping being done. It was submitted that some of the owners could not afford further costs.
7. The Property Factor's representative submitted that the Homeowner's property is the only one with the metal strapping due to the condition of the lintels found by the contractors. The homeowners had appointed a project manager (AYL) and the contractor and AYL had agreed together that this was the most appropriate action to take. There had already been an increase in costs, and to replace these lintels with stone given the state of disrepair would have increased costs further. It was submitted that the homeowners in the building were notified that there would be changes to the works, albeit it was conceded that technical drawings were not included in that correspondence to show the metal strapping proposed. It was submitted that AYL had the authority of the owners to instruct the contractors to carry out those works.
8. It was submitted that it was not deemed to be a viable option to have full scaffolding erected again to replace the lintels with stone. The repairs to the Homeowner's lintels could not be done in the same way as the others on the building due to their state of disrepair.
9. It was submitted that the Property Factor had taken the advice of the contractor and made a suggestion of painting the metal strapping (with Keim coating) which could work to blend it into the building more, however this was rejected by the Homeowner. The cost of doing so would involve the erection of a scaffolding tower which would bring the overall costs to approximately £900 and which would require to be (i) authorised by all owners in the building and (ii) paid for by all owners in

the building. It was not known what lifespan the Keim coating would have, and how often it might require to be renewed.

10. The Tribunal advised that given that the application was disputed by the Property Factor, evidence would require to be heard in order for the Tribunal to determine whether any breaches of the Code had occurred. The Tribunal advised that a Hearing would be fixed for evidence to be heard, and which Hearing would take place in-person.

11. The Tribunal adjourned the CMD to an in-person Hearing to take place on 9 January 2026.

### **The Hearing**

12. A Hearing took place in person on 9 January 2026. The Homeowner (HO) was present and represented herself. Jennifer Johnston, an employee of the Property Factor (PF) was present, with the Property Factor being represented by Mr Doig of Raeside Chisolm, Solicitors. A late submission by the Applicant comprising an email and photographs of the lintel was allowed to be lodged late, being unopposed by the Property Factor.

### **The Homeowner**

13. The Homeowner submitted that changes were made by the surveyors to the drawings which were not available to them. This was not fair. It was not known that any revised drawings were available, and there was no mention of steel plates being used in any conversations with the PF. There was a communications failure by the PF. The HO did not have the proper information to make an informed decision. The information was not easily accessible. It was not known to the HO that there had been any discussions about the use of metal plates versus replacing the stone.

14. It was submitted that the omission to enclose the revised plans in the communications from the PF nor make any mention of the use of metal

plates left the HO with the impression that the lintels were being replaced by stone as originally planned.

15. It was submitted that the PF had not demonstrated reasonable care and skill in their dealings with the HO. No care had been taken in their communications to the HO. There were missing documents. The HO could not make an informed choice. The HO should have had access to all of the information available to be able to understand what they were being asked to agree to. There had been a severe communications failure. This had a direct effect on the HO's property.
16. It was submitted that the HO's property looks unfinished. It looks like there is something wrong with it and sticks out from the others in the block. It will affect the value of the Property. Had the HO known that metal plates were to be used, she would not have agreed to those works taking place. The HO submitted that she understood that when doing work, the contractors can come across things that they didn't know about when they started which might cause their plan to change, but this particular issue should have been raised with her before a decision was taken on the use of metal plates on her property.
17. It was submitted that the HO had paid additional costs on the basis of information put to her in a letter from the PF seeing a vote on options. At no point were metal plates mentioned. There was no plan attached nor even reference to plans being available, in their letter of 6 October. The letter only attached photographs of the lintels. The HO would not have voted the way she had, had she known about the potential for use of metal strapping, and as the majority vote was very small, it wouldn't have passed without her vote. Whilst the PF had apologised for not enclosing the plans with their letter, this is not helpful. The PF had proposed that to resolve matters, all HOs should pay for additional work to rectify, which is not acceptable. The HOs have already paid £11k each with two of the shares being paid for by the local authority. The HOs should not be put in a position where they have to make any further payment.

18. It was submitted that had the HO been told about the proposal to use metal plates she would have questioned this, and would have asked what the alternative options were. She was given no such opportunity to question the decision. It was submitted that the surveyors had informed the PF of their decision to use metal strapping and the PF should have informed the owners at the time. The HO gave her agreement to works based on being told that the lintels would be replaced by stone, and did not give her consent for the use of metal strapping.
19. It was submitted that there was discoloration on the lintels and reference was made to photos recently lodged showing brown staining. The HO submitted that she was concerned at what was causing this.
20. The HO accepted under cross examination that AYL had been appointed as the supervising surveyors and that they had authority to make decisions, whilst overseeing the work of the stonemasons. The HO accepted that the original product (linograph) could not be applied to her lintels due to the extent of the cracking found.

### **The Property Factor**

21. The Property Factor (PF) referred to their written response to the application as being the basis of their defence to the application, the terms of which will not be replicated in this decision.
22. The Property Factor submitted in evidence that the surveyor, AYL, was appointed to manage the project. The PF communicated findings from AYL to the owners as they were received. The letter sent to owners of 6 October sets out information received from AYL. It was accepted that drawings from AYL were not sent with the letter.
23. It was submitted that the decision to install steel plates had already been made by AYL and did not form part of the vote put to owners. The vote was asking owners whether they should cut back stone and leave the background with exposed face or whether to re-boss with mortar. The decision to use steel plates on the HO's lintels was separate, and one

which had already been made by AYL and which was not subject to a vote. This would have been seen had the drawings been provided.

24. It was submitted that costs had been obtained to apply a Keim coating to the steel plates versus replacing the lintel with stone. It was submitted that it would cost approximately £1k for the Keim coating versus approximately £4k-5k to replace the lintels with stone.

25. The PF submitted that in relation to the recent photographs lodged by the HO showing discolouration of the metal plates, this has been raised with the contractor who said it appeared to show the underside of the metal plates and could be treated with the Keim coating, but would need to be inspected.

26. It was submitted that all communications received from the surveyors were circulated to the owners. The PF does not have any written communications from the surveyor which specifically say that steel is to be used, and that this is simply set out on the drawings. It was submitted that had the PF received a specific communication about the use of steel, this would have been circulated to owners. There had been no direct communication from the contractor on this.

27. It was submitted that the warranty for the works expired in December 2024 as there was a 12-month defects period for any rectification.

28. It was submitted that the steel could be treated to blend in better with the surrounding stone, but that this would be at a cost to the owners. This work would go beyond the original specification of the contract as approved/varied by the surveyors and the cost of same has to be borne by the owners.

### **Findings in Fact.**

29. The Tribunal had regard to the Application and written representations 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.

30. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property forms part of the fourth floor of a tenement building comprising eight properties;
- iii) The Property Factor was appointed as manager of the Property and the tenement of which it forms part;
- iv) The Homeowner agreed to works being carried out to the tenement building involving repairs to, and replacement of, the stone façade include multiple lintels and mullions;
- v) The Property Factor appointed AYL Surveyors to manage the project;
- vi) Scaffolding was erected as part of the works;
- vii) During the course of the works, a decision was taken by AYL Surveyors to use metal strapping on the lintels pertaining to the Homeowner's property, as opposed to replacing the stone, due to the extent of cracking in said lintels and the additional costs associated with replacing with stone as opposed to the more cost-effective option of using metal strapping;
- viii) The decision to use metal strapping on the lintels pertaining to the Homeowner's property was not communicated to the Homeowner and she only became aware of same once the scaffolding was removed;
- ix) The decision to use metal strapping on the lintels pertaining to the Homeowner's property was not communicated by the surveyor to the Property Factor prior to carrying out said works.
- x) The decision to use metal strapping on the lintels pertaining to the Homeowner's property was not agreed to by the Homeowner.

### **Decision of the Tribunal with reasons**

31. From the Tribunal's Findings in Fact, the Tribunal found that the Property Factor has failed to comply with sections 2.1 and 3.1 of the 2021 Code and parts 3 and 6 of the OSP.

32. With regard to the specific parts of the Overarching Standards of

Practice and the 2021 Code referred to in the Application and the information before it, the Tribunal made the following findings: -

(i) OSP2

*“You must be open, honest, transparent and fair in your dealings with homeowners.”*

The Tribunal was not satisfied on the basis of the evidence before it, that there had been a failure by the Property Factor to comply with this part of the Overarching Standards of Practice. The PF submitted in their evidence that they had circulated all communications received from the surveyors, AYL, to the owners. They submitted that they had not received a specific communication from AYL regarding the use of steel strapping on the HO's lintels. Had they received such a communication, it would have been circulated. This evidence was not challenged by the HO. The tribunal accepted this evidence. It was admitted by the PF that they had failed to attach the surveyor's drawings to their letter of 6 October to owners, and which drawings purported to show the use of steel strapping, but that this was a decision which had already been made by AYL. The evidence of the PF that the vote set out in said letter was not related to the use of the metal strapping was accepted by the tribunal. There was no evidence to satisfy the tribunal that the PF had failed to be open, honest, transparent or fair.

(ii) OSP3

*“You must provide information in a clear and easily accessible way.”*

The Tribunal was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice. The HO was not provided with clear information. Whilst it is accepted that the PF was not provided with a direct communication from the surveyor that there had been a decision made to use metal strapping on the HO's lintels as opposed to replacing the stone, the PF submitted in evidence that the

surveyor's amended drawings showed this decision. Firstly, those drawings were not provided to the HO. Secondly, it is not at all obvious to the lay person that those drawings, lodged by the PF, show the proposed use of metal lintels. Even if the drawings had been produced alongside the letter of 6 October, the tribunal is not satisfied that it would have been immediately obvious to the HO that there was a proposed use of metal strappings. The PF was in possession of the drawings at the point the letter of 6 October was issued and therefore this change to the original proposal should have been highlighted to the HO. Whilst it is accepted that the decision had already been made by the surveyor at that point (hence inclusion in the drawings), by highlighting this to the HO at that time they could have asked questions, sought information as to any alternative solutions, and with the scaffolding still being up at that stage, alternative works could have been agreed and carried out.

(iii) OSP4

*"You must not provide information that is deliberately or negligently misleading or false"*

The Tribunal was not satisfied on the basis of the evidence before it, that there had been a failure by the Property Factor to comply with this part of the Overarching Standards of Practice. There was no evidence before the tribunal that there had been any deliberate actions on the part of the PF to provide misleading or false information.

(iv) OSP 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 was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the

Overarching Standards of Practice. The tribunal found that the PF had failed to exercise reasonable care in their supervision of the project. It was reasonably foreseeable that should there be a fundamental change in the proposed works - such as the use of metal strapping on a property as opposed to the original proposed replacement of stone - that this would cause concern and distress to a homeowner, and that there should be a process in place between the PF and the contractor that such a proposed change of works should be flagged by the surveyor to the PF, who in turn will flag to the affected homeowner so that they can be consulted in any decisions to be made which will affect their property. The tribunal found it unsatisfactory that the PF considered it acceptable for the appointed surveyor to make such a decision change without any required notification process being in place. Whilst the tribunal did not accept the HO's submission that the use of metal strapping has affected the value of the property (as there was no evidence before it to suggest this to be the case) it was accepted that the use of the strapping is unsightly compared to the rest of the building, makes the Property stick out, and could result in some thinking that the Property has some sort of structural issue with it. The tribunal was satisfied that this was such a fundamental decision to make, that the surveyor being permitted by the PF to make such decision without any prior notification to the PF/owners, shows a lack of reasonable skill by the PF in supervision of the project and terms of engagement with contractors.

(v) 2021 Code at Section 2.1

*“Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners’ responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its*

*obligations.”*

The Tribunal was satisfied on the basis of the evidence before it, that there was a failure by the Property Factor to comply with this part of the Code. The HO did not have access to the information that they needed to understand the works being carried out to the building and particularly to their Property. The HO agreed to works being carried out to replace the stone. They did not agree to the use of metal plates on their property. Whilst it is accepted that there would have been additional costs incurred in replacing the stone on the HO's property due to the extent to the cracking, the use of metal plates was not the only option. As there were other options (such as a more costly stone replacement) this should have been discussed with the HO and the other owners. Clearly, any additional costs would have had to be agreed and the split of that determined. The HO may well have accepted to bear those costs themselves for the benefit of their particular Property. However, the HO was not given this opportunity to consider the alternatives nor be consulted. Reference is made above to the PF's failures in regards the lack of communication between them and their surveyor in this regard.

(vi) 2021 Code at Section 3.1

*“While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.”*

The Tribunal was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Code. The HO agreed to the project on the basis that they were being asked to pay for stone replacement of their lintels. They did not receive

stone replacement. Instead, they received metal strapping of their lintels, which they did not agree to nor had they been made aware was a possibility.

### **Property Factor Enforcement Order (PFEO)**

33. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with sections 2.1 and 3.1 of the 2021 Code and parts 3 and 6 of the OSP, 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.

34. 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.*”

35. The Tribunal proposes to make a PFEO to order the Property Factor to do as follows:

- (i) *The Property Factor must pay the homeowner the sum of £1,000 (ONE THOUSAND POUNDS STERLING) for the inconvenience and distress they have suffered, to be paid from the Property Factor’s own funds and at no cost to the owners. The said sum to be paid within 28 days of the communication to the Property Factor of the Property Factor Enforcement Order.*
  
- (ii) *The Property Factor must meet all costs associated with the erection of scaffolding on the building of which the Property forms*

*part, in the event that the Homeowner decide to proceed with additional works to the Property either to have the metal strapping removed and the stone work replaced or to have the existing metal strapping painted with a coating.*

36. 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.”*

37. 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.

38. 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.**

Fiona Watson  
Legal Member/Chairperson

6 March 2026