

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/LM/25/3755

21 Glenbrae Road, Port Glasgow, PA14 5TR ("the Property")

Paul McEwan, 21 Glenbrae Road, Port Glasgow, PA14 5TR ("the Applicant")

**Curb 6 Ltd T/A Curb Factoring, Watling House, Callender Business Park,
Callender Road, Falkirk, FK1 1XR ("the Respondent")**

Tribunal Members:

Josephine Bonnar (Legal Member) and Peter McEachran (Ordinary Member)

DECISION

The Tribunal determined that the Respondent has failed to comply with Sections 2.7, 6.1, 6.4 and 7.1 of the Property Factor Code of Conduct as required by Section 14(5) of the Act. The Tribunal also determined that the Respondent has not failed to comply with Sections 2.1 and 6.6 of the Code

The decision of the Tribunal is unanimous.

Background

- 1. The Applicant lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application stated that the Respondent had failed to comply with a number of sections of the Code of Conduct for Property Factors and had failed to carry out its property factor duties. Various documents were lodged with the application. After the application was lodged but before it was accepted, the Applicant advised the Tribunal that he wished to proceed with the Code complaints only. He withdrew the complaints in relation to property factor duties.**
- 2. The parties were notified that a CMD would take place by telephone conference call on 20 August 2026 at 10am. Prior to the CMD the Respondent lodged**

written submissions.

3. The CMD took place on 20 August 2026. The Applicant participated. The Respondent was represented by Ms Mina.

Summary of Discussion

4. At the start of the CMD, the Tribunal dealt with several preliminary issues;
 - (a) As the Tribunal can only consider complaints which have been notified in terms of Section 17(3) of the 2011 Act, the Legal Member advised the parties that they would only be able to consider the complaints under paragraphs 2.1, 2.5, 2.7, 6.1, 6.4, 6.6, 6.9, 7.1, 7.4 and 7.5. Paragraphs 1.1, 1.2, 1.3, 2.8, 3.1, 3.2 and 3.5 which were specified in the application form but not notified prior to the application being made could not be considered
 - (b) As the property factor duties complaints had been withdrawn only the Code of conduct would be considered
 - (c) The Tribunal noted that the factual issues related to repairs involving a fence, slabs, a ramp, a wall and flooding. The email correspondence from the parties indicated that all repairs had now been completed. Both parties confirmed that this was the case.
 - (d) Both parties confirmed that all relevant correspondence between the parties in relation to the dispute had been lodged.
 - (e) In relation to the Respondent's submission, Ms Mina said that although some of the factual complaints were admitted it was not conceded that there had been a failure to comply with the Code

Section 2.1 of the Code

5. Mr McEwan said that in emails between January and May 2025, he was given repeated assurances that the work would be done. There was also correspondence in August 2025. After Louis left, he was directed back to the webform.
6. Ms Mina said that the emails to Louis went to the generic email address. The Respondent apologised for this in the stage 2 response. The Applicant did not receive enough updates after Mr Kennedy left.

Section 2.5

7. Following discussion about the terms of this section of the Code, Mr McEwan said that it did not appear to apply and confirmed that it would be withdrawn.

Section 2.7

8. Mr McEwan said that there were occasions when he did not receive a response to his enquiries and then he was directed to the webform which broke the email chain. He referred to his email of 23 September 2025. He gave the Respondent 21 days to respond but did not get a response until 22 October 2025.
9. Ms Mina said that the Respondent has a two stage complaints process. Stage 1 has a 5 working day response time. Stage 2 has a 20 working day response time. As Mr McEwan had already applied to the Tribunal, his complaint was escalated to stage 2, and he received his response within 20 working days.
10. Mr McEwan said that the thought the WSS said 21 days. He also said he could not refer the Tribunal to any other specific instances where the Respondent had failed to comply with this section. Ms Mina said that the documents lodged show that there were replies. She also said that the Respondent has a generic email address which should be used. After Louis left, the Respondent did not have access to his emails. Mr McEwan said that he disputed that this was an issue as all his emails were sent to FACTORING PUBLIC FOLDER, but it was Louis who would respond. He added that he was not aware that he had left until he failed to respond. Then a member of staff responded to an email and told him to use the web form. That is where the continuity broke down. Ms Mina referred to G2 page 50, an email which said that Fiona was not there and that Brian would respond.

Section 6.1

11. In response to a question from the Tribunal, Ms Mina said that she could not explain why nothing happened with the quote from December 2024 until May 2026. She had been unable to find the answer. She could not ascertain when the work order was raised although thinks it was 2025 and does not know why the work was not carried out until the following year. She said that she could not provide any evidence that the contractor had been chased for progress. However, contractors doing this kind of work often have a large backlog so that might be the reason. Ms Mina said that the Applicant was updated but not properly and that they apologised for that.

Section 6.4

12. Ms Mina said that this type of work can take longer than others to complete because it is weather dependent. The work itself took one day to complete.

Section 6.6

13. Ms Mina said that they only obtained one quote for the work. It's not unusual for them to do so for this type of work as there are not many companies who do it. In any event the Respondent goes through a procurement process because they are part of a housing association. She added that although she

does not know if the contractor had worked on this development before, it is a company that they use regularly. In relation to the development some of the woods and paths are owned by Link Housing Association, some are owned by the Council, and some are owned in common by the homeowners. It's a complicated site.

14. Mr McEwan said that he does not know if this contractor had worked on the estate before. While his complaint was being considered a contractor came and nailed panels to close the gap in the fence. A week later they were gone. However, he does not know if it was the same contractor. A contractor also came out and removed sections of the slabs and installed a ramp for the mower. Whoever it was that did the work, it was poor quality.

Section 6.9

15. Following discussion, the complaint under this section was withdrawn.

Section 7.1

16. In terms of timescales Mr McEwan said that they did not carry through to resolution. However, he accepted that he received the stage 2 response within 20 working days of notifying the Respondent of the complaints. He said that his email of 9 September 2024 should have been treated as a formal complaint. Ms Mina said that she does not know why it was not treated as a complaint. She said that a communication does not need to use the word "complaint" when it is clear that is what it is. If she had been dealing with it she would have treated it as a complaint.

Sections 7.4 and 7.5

17. Following discussion these complaints were withdrawn.

Final submissions

18. Mr McEwan asked the Tribunal to have regard to the concessions made by the Respondent when deciding what would be reasonable to resolve the complaints
19. Ms Mina said that she only wanted to re-iterate that the Respondent has apologised for the failures which occurred and asked the Tribunal to note that the factual complaints have been resolved and that compensation of £100 has already been paid. This was not conditional upon withdrawal of the application.

Findings in Fact

20. The Applicant is the owner of the property.

21. The Respondent is the property factor for the property.
22. On 16 June 2023, the Applicant sent an email to the Respondent to report that repairs were required to a damaged boundary fence and damaged slabs on a footpath. The email stated that the Applicant had previously submitted a contact form but had received no response.
23. On 23 June 2023, the Applicant sent a further email to the Respondent. This referred to a telephone conversation about a proposed inspection by Kevin Connelly of the boundary fence and damaged slabs and requests an update.
24. On 23 June 2023, the Respondent sent a reply to the Applicant which stated that Kevin Connelly had inspected and has instructed repair work. The fence repair would be completed within 20 days and the access point onto the grass within the development would be converted to a ramp during the week commencing 5 July 2023.
25. On 22 February 2024, the Applicant emailed the Respondent. He stated that the ramp which had been installed was substandard and that replacement of the fence rails was unsatisfactory and shoddy.
26. On 14 June 2024, the Applicant submitted a contact form to the Respondent notifying them that there were still issues with the fence and ramp and that there were flooding problems associated with the ramp.
27. On 30 August 2024, the Respondent sent a response to the Applicant. They apologised for the delay in responding and noted that their records indicated that work had been instructed following his communications in June 2023. The Applicant was asked for details of his concerns and photographs of the affected areas.
28. On 30 August 2024, the Applicant replied with photographs and said that the fence had not been repaired, that the ramp was substandard and that the contractors often left grass cuttings and debris after they had carried out work.
29. On 9 September 2024, the Applicant sent an email to the Respondent formally notifying them that he was making payments to his factoring account under protest due to the unresolved issues which had been ongoing since June 2023. He specified the outstanding issues as the damaged fence, a poorly finished slab section and problems with the poor-quality ramp and flooding associated with it. He referred to his email of 30 August 2024 noting that he had not received an acknowledgement. He stated that he wanted a full response within 21 days.
30. On 10 September 2024, Louis Kennedy provided a response on behalf of the Respondent. He apologised for the delay and stated that he would now be the point of contact. He said that he would ensure that the issues were resolved and suggested that he speak to the Applicant by telephone.
31. On 27 September 2024, Louis Kennedy on behalf of the Respondent sent a further email to the Applicant. This provided a list of proposed work. This

included the removal of the damaged fence on the grounds that it served no purpose and work in relation to the ramp and sloped area on the grass, specifically clearing the debris. The email states that the wall specified in the Applicant's email is not dangerous and not communal, but the owner would be notified that repairs should be undertaken. The ramp was not in a dangerous condition, and no work was required and there was no evidence of flooding on inspection.

32. On 3 October 2024, the Applicant sent an email to the Respondent. This referred to a telephone conversation and provided a response to the proposed work. The Applicant stated that the fence is a boundary fence which has a purpose and should be repaired. The email also said that a contractor had attended on 2 October 2024 to do some weeding, but the work was not satisfactory and there was debris all over his property. The Applicant also stated that the edging round the ramp was unfinished, and there were issues with the wall, the ramp and flooding.
33. On 22 January 2025, the Respondent sent an email to the Applicant which stated that previous concerns had been passed on to Brian, the technical officer, and that the sender understood that Brian had liaised with the Applicant and that a list of agreed work/actions had been confirmed.
34. On 23 January 2025 the applicant sent an email to the Respondent which stated that although he had been in touch with Brian, he had not been provided with a list of proposed work. The email stated that there were still outstanding repairs.
35. On 29 April 2025, the Applicant sent an email to the Respondent. He referred to previous correspondence and noted that it was some time since he had received an update. He noted that he had sent an email three weeks previously which had not been acknowledged. He made reference to applying to the Tribunal and said that he wanted an acknowledgement within 7 days and a plan of action within 28 days.
36. On 1 May 2025, the Respondent sent an email to the Applicant. They apologised for the delay and said that they were waiting to find out if work had been completed.
37. On 14 May 2025, the Respondent sent an email to the Applicant with a copy of a quote from a contractor. The quote was dated 23 December 2024. They asked the Applicant to confirm that he agreed with the content of the quote.
38. On 24 June 2025, the Respondent instructed RF Watters to proceed with the work specified in the quote.
39. On 13 August 2025, the Applicant sent an email to the Respondent which referred to a conversation which had taken place three months before. The email referred to the contractor quote and noted that nothing had happened since that date. The Respondent was asked for timescales for the work.

40. On 13 August 2025, the Applicant received an automated respond to his email which directed him to the web form.
41. On 14 August 2025, the Applicant received a response to his email which stated that Louis (Kennedy) no longer worked for the respondent and that the writer was obtaining an update.
42. On 14 August 2025, the Applicant sent an email to the Respondent to complain about being directed to the web form when he had an ongoing complaint which was the subject of an email trail. He provided a list of his requirements.
43. On 23 September 2025, the Applicant notified the Respondent of his complaints in terms of the Code of Conduct. This was acknowledged on 24 September 2025.
44. On 22 October 2025, the Respondent issued a stage 2 response. This stated that the repairs administration team had been instructed to proceed with the quote from RF Watters on 9 June 2025. The letter acknowledged that the work was not carried out and stated that this is because the contractor failed to take it forward. The letter proposed an alternative course of action in relation to the ramp area repair or that the contractor quote works be instructed with some modifications. The Respondent also provided a response to the alleged breaches of the Code. The letter concluded by stating that once the preferred option for the outstanding work has been agreed, it would be carried out.
45. On 3 June 2026, RF Watters issued an invoice to the Respondent in connection with work carried out at the development in relation to the fence, fence posts, ramp and slabs.
46. On 24 July 2026, RF Watters sent an email to the Respondent which said that the original works order had not been received and had to be re-sent. This was the reason for the delay in carrying out the work. In addition, they had to wait until the weather conditions were suitable for the work in question.

Reasons for Decision

47. Although the parties told the Tribunal that all the relevant correspondence had been lodged, a review of the correspondence suggests that one or two emails may have been missed. However, the documents lodged appear to provide a clear picture of the communications between the parties during the relevant period. The Tribunal notes that the outstanding work has now been carried out to the Applicant's satisfaction and that the Respondent does not dispute most of the factual complaints which were made. The only dispute between the parties is the extent to which the Respondent's actions and failures breach the sections of the Code specified in the application.

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 they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

48. In his notification letter to the Respondent the Applicant stated that the Respondent has failed to comply with this section of the Code through their failure to “provide accurate and timely information.” During the CMD he referred to repeated promises to get work done which did not materialise.

49. This section of the Code is a very general one. It is not specifically about the timescales for (and accuracy of) responses to enquiries but more generally about the importance of communication and consultation. The Tribunal is not persuaded that the Respondent has failed to comply with this section of the Code. The Respondent’s communication with the Applicant was certainly poor in relation to his complaints, but there is no evidence that the Respondent does not generally consult with homeowners about work or communicate with them about common charges and repairs. A breach of this section has not been established.

Section 2.7 - A property factor should respond to enquiries and complaints received orally and/in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if they are not able to respond within the agreed timescale.

50. The Applicant lodged a copy of the Respondent’s WSS with the application. Section 7.2 of the WSS deals with response times. In relation to enquiries, the WSS states that the Respondent aims to answer written and telephone enquiries within five working days. As confirmed by Ms Mina during the CMD, stage 1 complaints should get a response within 5 working days and stage 2 complaints within 20 working days.

51. The only communication that the Applicant specifically referred to in his evidence at the hearing was the email notifying the Respondent of the Code complaints on 23 September 2025. This was treated as a stage 2 complaint by the Respondent because the Applicant had already submitted his application to the Tribunal. A full response was issued to him on 22 October 2025. Having regard to the public holiday on 29 September 2025, this response was issued on the 20th working day after the complaint was submitted.

52. In relation to the other communications/enquires the Tribunal notes the following: -

- (a) The Applicant received a response to his emails dated 16 and 23 June 2023 on 23 June 2023. This was within 5 working days. There is no evidence that there was any further communication with the Respondent in 2023.
 - (b) The Applicant sent an email about defective work on 22 February 2024. There is no evidence that he received a response.
 - (c) The Applicant sent an email enquiry to the Respondent on 14 June 2024. He did not receive a response until 30 August 2024. It was therefore significantly beyond the 5 working day period stipulated.
 - (d) The Applicant sent a further email on 30 August 2024. There is no evidence that he received a response.
 - (e) The Applicant sent a complaint on 9 September 2024. He received a response the following day. However, the email was not processed in accordance with the Complaints procedure
 - (f) The Applicant sent an email to the Respondent on 3 October 2024. There is no evidence that he received a response.
 - (g) On 23 January 2025, the Applicant sent an email to the Respondent. There is no evidence that he received a response.
 - (h) On 14 August 2024, the Applicant sent emails to the Respondent. He received a holding response but did not receive a full response.
53. The Tribunal notes that the Respondent's representative stated at the CMD that she had reviewed the paperwork and was satisfied that all relevant correspondence had been submitted. The Tribunal is therefore satisfied that the Respondent has failed to comply with this section of the Code in relation to emails sent on 22 February 2024, 14 June 2024, 30 August 2024, 9 September 2024, 3 October 2024, 23 January 2025 and 14 August 2025.

Section 6.1 – This section of the Code covers the use of both in house staff and external contractors by property factors. While it is the homeowner's 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.

Section 6.4 – Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work., including estimated timescales for completion unless they have agreed with the group of homeowners a cost threshold below which job specific progress reports are not required. Where work is cancelled homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

- 54. The Tribunal is satisfied that the Respondent failed to comply with both of these paragraphs. In February 2024, the Applicant notified the Respondent that work carried out the previous year was defective and remedial work was required. The Respondent did not obtain a quote for the required work until December

2024, although the Applicant was not provided with a copy of that quote until May 2025. The work was not carried out until May 2026.

55. The Respondent accepts that there were delays although the Tribunal was told that some of the delay was caused by the contractor failing to act upon an instruction in May/June 2025. The Respondent also indicated that the work in question could only be carried out in favourable weather. However, even if allowances are made for the weather and the breakdown in communication, the time taken from the Applicant's report until completion is excessive. The Tribunal notes that the work only took one day to complete. It should have been carried out in the spring or summer of 2025. The Respondent ought to have systems in place to check that a contractor has received instructions and has provided timescales for completion of the work. The Tribunal is also satisfied that the Respondent failed to provide the Applicant with timescales and updates.

Section 6.6 – 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 against other factors such as likely quality and longevity, and the property factor must be able to demonstrate how and why they appointed contractors including cases where they have decided not to carry out competitive tendering exercise or use in house staff. This information must be made available if requested by the homeowner.

56. In the notification email, the Applicant stated that the Respondent failed to pursue contractors to remedy defective work. However, this section of the Code is not about what a property factor should do about defective work. It is about how contractors are appointed in the first place. The Respondent's representative was unable to confirm how and why this particular contractor came to be appointed but she explained that, as they are part of a housing association, contractors are generally appointed through a procurement exercise. This appears to explain why this contractor was chosen and only one quote obtained. However, there is no evidence that the Applicant asked the Respondent for information about the appointment. He complained about the quality of the work and said he wanted the defects to be addressed, but he does not appear to have asked them for details of how this or any other contractors were chosen. Based on the application and available evidence, a breach of this paragraph is not established.

Section 7.1 – A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code; WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request. (The section then sets out what must be included in the complaints procedure).

57. The Tribunal is satisfied that the Respondent has a complaints procedure. It is set out in the WSS. The Applicant's complaint, as set out in the notification

letter, is that the Respondent failed to acknowledge and handle complaints within required timescales.

58. The Tribunal is satisfied that the complaint issued by the Applicant on 23 September 2025, was processed appropriately in accordance with the Respondent's complaints procedure. A response was issued on 22 October 2025. Having regard to the holiday Monday 29 September 2025, the response was issued on the 20th working day after the complaint was received.
59. The Respondent concedes that the Applicant's email of 9 September 2024 should have been processed as a complaint. The language used by the Applicant made it clear that a formal complaint was being made. The Applicant received responses which partially addressed some of the repair issues he raised in the email. However, he did not receive a stage 1 complaint response. In relation to this email only the Tribunal is satisfied that the Respondent failed to apply their complaints procedure "consistently and reasonably" and therefore breached this section of the Code.

Proposed Property Factor Enforcement Order

60. The Tribunal notes that the Respondent has acknowledged that there were unacceptable delays and poor communication. They have already apologised and paid compensation in the sum of £100. Having regard to the length of time taken to carry out work which only took a day to complete the Tribunal is satisfied that further compensation in the sum of £400 should be paid for the delay and inconvenience

The Tribunal therefore proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

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.