

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Reference number: FTS/HPC/PF/22/1769 and 22/2026

Re: Property at Flat 1/ 4, 17 Springfield Gardens, Glasgow G31 4HT (“the Property”)

The Parties:

Mr. Petr Berka residing at the Property (“the Homeowner”)

Newton Property Management Limited having a place of business at 87, Port Dundas Road, Glasgow G4 0HP (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) and John Blackwood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -

- (i) has not failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2012 (“the 2012 Code”) at Section 2.1, Section 3 and Section 6.1;
- (ii) has not failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 (“the 2021 Code”) at Section 2.1, Section 3 and Section 6.1 and
- (iii) has not failed to comply with the Property Factor’s Duties.

Background

1. By applications received between 10 June 2022 and 19 August 2022 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had

failed to comply with the 2012 Code and the 2021 Code. The Applications are as follows:

- i) Application Form C1 and given Chamber reference FTS/HPC/PF/22/1769 which complained of breaches of the 2012 Code at Section 2.1, Section 3 and Section 6.1 and
 - ii) Application Form C2 and given Chamber reference FTS/HPC/22/2026 which complained of breaches of the 2021 Code at Section 2.1, Section 3 and Section 6.1.
2. Both Applications complained of a failure to comply with the property factor duties. Both Applications comprised copy correspondence between the Homeowner and Property Factor, copy electricity accounts for the common lighting, the Property Factor's written statements of services (WSS) with weekly and monthly cleaning specifications, copy formal letters intimating the complaints and photographs of the common areas.
 3. On 24 August 2022, 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 28 October 2022 at 10.00 by telephone conference call.
 4. Prior to the CMD, the Property Factor submitted written representations together with a copy WSS, copy correspondence between the Parties and a copy plan showing the layout of the development of which the Property forms part ("the Development"). The Property Factor indicated that they did not intend to attend a CMD or a Hearing. The Homeowner, thereafter, indicated that he did not intend to attend a CMD or a Hearing. As both Parties indicated that they did not wish to attend proceedings, the Tribunal wrote to the Parties to advise, that unless it heard to the contrary, in terms of Rule 18 of the Rules, the Tribunal would proceed on the written submissions on 28 October 2022. Neither Party submitted any further productions or written representations.

Rule 18 Proceedings

5. The Rule 18 Proceedings took place on 28 October 2022 at 10.00 by telephone conference call between the Tribunal members. The Tribunal members gave full consideration to the written representations and documents lodged by both Parties. There was little difference between the documents lodged by the Parties as both lodged the same email correspondence and the same WSS. The difference lay in the Parties' perceptions of what the Property Factor required to do in compliance with the Codes and the property factor duties.
6. In both Applications, the Homeowner makes four general areas of complaint: carrying out and charging for bulk uplifts; common lighting metering and charging;

the standard of paintwork and charging for cleaning paintwork and litter picking. The Tribunal dealt with these four general areas in turn.

Carrying out and charging for bulk uplifts

7. This complaint was raised under Application Form C1 reference FTS/HPC/PF/22/1769 at Section 2.1 of the 2012 Code which states: *“You must not provide information which is misleading or false”* and under Application Form C2 reference FTS/HPC/22/2026 at Section 2.1 of the 2021 Code which states: *“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.”*
8. The complaint intimation letter dated 14 August 2022 sent by the Homeowner to the Property Factor detailed this complaint as *“you failed to explain the charge for the bulk uplift on 18/11/21. You present false information”*
9. The Homeowner’s written submissions expanded further on this in email correspondence to the Property Factor expressing the view that the Property Factor arranged a charge for a “bulk uplift” of large items in the bin store area without authority. The Homeowner advised that he had been in the process of contacting Glasgow City Council to arrange a bulk uplift of the items and requested that the Property Factor send photographs of bulky items they had been instructed to remove. The Homeowner’s position is that type of service should be provided by Glasgow City Council and not by the Property Factor who makes a charge for it.
10. The Property Factor’s response was set out in their emails and explained that they acted in response to calls and emails received from other proprietors as the items in question were blocking access to the bins. The Property Factor offered to contact the Homeowner direct if an issue arose with bulky items being left in the bin store again. Thereafter, the Property Factor notified the Homeowner when bulky items had been left in the bin store area, providing a photograph.

Common lighting metering and charging

11. This complaint was raised under Application Form C1 reference FTS/HPC/PF/22/1769 of the 2012 Code at Section 3. The Homeowner did not identify any specific paragraphs of Section 3 and there appeared to the Tribunal none which has relevance to the complaint as set out in the complaint intimation letter dated 14 August 2022. The preamble to Section 3 of the 2012 Code states: *“While transparency is important in the full range of your services, it is especially*

important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved." The Tribunal dealt with the complaint under this part of Section 3.

12. This complaint was raised under Application Form C2 reference FTS/HPC/PF/22/2026 of the 2021 Code at Section 3. Again, the Homeowner did not identify any specific paragraphs of Section 3 of the 2021 Code. It appeared to the Tribunal that Section 3.1 which states "*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*" is the most relevant. The Tribunal dealt with the complaint under this part of Section 3.
13. The complaint intimation letter dated 14 August 2022 sent by the Homeowner to the Property Factor detailed this complaint as "*I do not know what I pay because you do not explain how we have 7 car park lights connected to our meter while our block has only 2 of those lights. you do not ask energy supplier to investigate despite me proving what the common electricity consumption is above of what it should be*"
14. The Homeowner's written submissions expanded further on this in email correspondence to the Property Factor requesting detail of the electrical systems at the Development, manufacturers' details and an explanation as to how the system was metered and charged. The Homeowner lodged common electricity accounts as part of the Applications.
15. The Property Factor's response was set out in their emails and explained in detail that the electrical supply was tested regularly, that increased testing would incur additional costs which would require to be approved by the other owners. The Property Factor explained that the street lighting is the responsibility of Glasgow City Council and that the owners are responsible for off-street lighting and close lighting. The Property Factor provided specifications of the lighting system and provided the information in its possession in respect of the systems, explaining that they could not provide information which they do not hold. The Property Factor instructed an electrical engineer to carry out a survey of the lighting free of charge to the Homeowner. The Property Factor's position is that the lighting metering and connection was carried out by the Development builder, Bellway, as part of the original construction and that Glasgow City Council might be able to assist with the building control plans and records. The Property Factor instructed an electrical engineer and the cleaners to confirm the number of private lights in the car park. This was confirmed as seven lights. The Property Factor suggested that Bellway may have spread the communal electricity liability across the whole Development in a way which was equitable. The Property Factor explained that they are bound by the metering system installed by Bellway, the developer.

The standard of paintwork and charging for cleaning paintwork

16. This complaint was raised under Application Form C1 reference FTS/HPC/PF/22/1769 of the 2012 Code at Section 6.1 which states: *“You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required”* and under Application Form C2 reference FTS/HPC/22/2026 at Section 6.1 which states *“This section of the Code covers the use of both in-house staff and external contractors by property factors. 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.”*
17. The complaint intimation letter dated 14 August 2022 sent by the Homeowner to the Property Factor detailed this complaint as *“Our wall repaint done in a way that disqualifies reasonable care and skill and the cost of the repair is not balanced with quality and longevity but rather supply of contracts for contractors.”*
18. The Homeowner’s written submissions expanded further on this in email correspondence to the Property Factor by stating that walls which had been painted recently had become marked and dirty and required to be repainted. The Homeowner suggested that the reason for the walls becoming marked was that the painting had not been carried out properly to a professional standard and that the paintwork had been damaged further by attempts by the cleaners to clean off the marks.
19. Property Factor’s response was set out in their emails and stated that the paint work had been carried out to the correct specification and had the completed work had been inspected and found to be satisfactory. The Property Factor’s view was that the marks on the wall had been caused by people traffic in the hallway and that it was the responsibility of the residents to take care when in the hallway.

Litter picking.

20. This complaint was raised under both Applications as failure to comply with property factor duties. The Homeowner’s complaint intimation letter dated 14 August 2022 to the Property Factor sets out the failure to comply with property factor duties as the Property Factor having *“repeatedly failed to ensure clean state of a part of managed land – repeatedly ignore request to have the corner area cleaned”*
21. The Homeowner’s written submissions expanded further on this in email correspondence to the Property Factor by stating that the common areas of the

development are not kept clear of litter. The Homeowner provided photographs of leaves as part of the Applications.

22. The Property Factor's response was set out in their emails and stated that the area was kept free of litter as far as possible given the location on the area in question to public street, a shopping area and a football ground. The area of ground in question was indicated on the Development layout plan as being a small area adjacent to St Michael's RC Church and the Gallowgate.

Findings in Fact.

23. The Tribunal had regard to all of the information before it whether referred to in full in this Decision or not in establishing the facts of the matter and that on the balance of probabilities.

24. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Homeowner is a homeowner in terms of the Act;
- iii) The Property Factor is a property factor in terms of the Act and is bound by Sections 14 of the Act, being the duty to comply with the statutory codes of conduct;
- iv) The Property Factor has a WSS which sets out weekly and monthly cleaning at the development of which the Property forms part;
- v) Regular cleaning of and litter picking at the Development takes place;
- vi) The Property Factor was instructed to arrange a bulk lift by residents of the Development and did so in accordance with that instruction;
- vii) There is communal electricity metering for the common electricity systems which serve the Development;
- viii) The communal electricity metering in the block of which the Property forms part is for seven car park lights;
- ix) The Property Factor makes a common charge for this lighting in accordance with the metering;
- x) The Homeowner requested that the Property Factor provide him with detail and specification in respect of the communal electricity metering;
- xi) The Property Factor provided the Homeowner with the information in its possession and obtained a supplementary report from an electrical engineer at no cost to the Homeowner;
- xii) The Property Factor arranged for painting of the common close and inspected the painting work carried out and
- xiii) The paintwork was subsequently marked and required to be cleaned.

Issues for Tribunal

25. The issues for the Tribunal are: has the Property Factor breached those parts of the 2012 Code and the 2021 Code and the property factor duties as complained of in the Applications.

Decision of the Tribunal with reasons.

26. Section 19 of the Act states: “(1) *The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide (a) whether the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty, and (b) if so, whether to make a property factor enforcement order.*” Therefore, the Tribunal proceeded to make a decision in terms of Section 19 (1)(a) of the Act.

Carrying out and charging for bulk uplifts

27. Section 2.1 of the 2012 Code states: “*You must not provide information which is misleading or false.*” From the information before it the Tribunal could find no evidence of the Property Factor providing information which is misleading or false. The Property Factor was asked to explain the reason for a particular bulk uplift and did so accurately and truthfully. Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2012 Code.

28. Section 2.1 of the 2021 Code states: “*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.*” From the information before it, the Tribunal was satisfied that the Property Factor communicated with the Homeowner clearly and fully and maintained a professional approach when responding to emails from the Homeowner which, at times, were abrupt and discourteous. The Property Factor proposes solutions such as contacting the Homeowner if his neighbours instructed bulk uplifts but the Homeowner was dismissive of this. The Tribunal could find no evidence of the Property Factor failing to comply with this part of the 2021 Code

Common lighting metering and charging

29. The Tribunal dealt with this complaint under the preamble to Section 3 of the 2012 Code which states: “*While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved*” and under Section 3.1 which states “*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*”. From the information before it, the Tribunal took the view that the Property Factor dealt with the Homeowner’s requests for information clearly and fully, providing as much information as they had in their possession and obtaining an

independent report. The Homeowner is dissatisfied with the way in which metering and charging for common electricity is dealt with in the Development. This is not a responsibility of the Property Factor, but rest with the builder of that development. The Property Factor's role is to issue the charges in accordance with the metering and the title conditions. Nevertheless, the Property Factor went to great lengths to assist the Homeowner with detailed explanations and guidance. The Tribunal could find no evidence of the Property Factor failing to comply with this part of the 2012 Code or the 2021 Code.

The standard of paintwork and charging for cleaning paintwork

30. Section 6.1 of the 2012 Code states: *"You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required"* . From the information before it, the Tribunal could find no evidence of the Property Factor failing to comply with this part of the 2012 Code. The Property Factor's WSS sets out its process and, from the evidence of both Parties, the Homeowner was able to use the repair reporting procedures. The Tribunal accepts that the Homeowner was dissatisfied that the wall required to be repainted relatively soon after it was first painted but this dissatisfaction is at the level of misuse by fellow residents and not a breach of the 2012 Code by the Property Factor. Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2012 Code.

31. Section 6.1 of the 2021 Code states *"This section of the Code covers the use of both in-house staff and external contractors by property factors. 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."* From the information before it, the Tribunal, again, could find no evidence of the Property Factor failing to comply with this part of the 2021 Code. There is no evidence that the Property Factor's contractor did not carry out the painting to a good standard, the Property Factor having inspected the work and having found it to be satisfactory. There is no evidence that the Property Factor failed to help prevent further damage or deterioration as both Parties agree that, when notified of marks on the wall, the Property Factor arranged for it to be cleaned. Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

Litter picking.

32. This complaint was raised under both Applications as failure to comply with property factor duties by *"repeatedly failed to ensure clean state of a part of managed land – repeatedly ignore request to have the corner area cleaned"*

33. The Homeowner's written submissions stated that the common areas of the Development are not kept clear of litter. However, the photographs which the Homeowner provided do not support this. The Property Factor's response that the area was kept free of litter as far as possible given the location of the area in question in relation to a public street, a shopping area and a football ground is accepted by the Tribunal. The Tribunal took the view that it is not reasonable to expect the Property Factor to be responsible for daily litter picking, particularly given the open space nature and location of the area in question. There was no evidence of the Property Factor ignoring requests to have the area cleaned. Accordingly, the Tribunal finds that the Property Factor has not failed to comply with the property factor duties.

34. Having made a finding of no failures to comply, the Tribunal was not required to consider an order in terms of Section 19(1) (b) of the Act.

35. 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.



Karen Moore,

Chairperson

23 November 2022