

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber) Property Factors (Scotland) Act 2011 (“the Act”), Section 19**

**The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the 2017 Regulations”)**

**Chamber Ref: FTS/HPC/PF/18/2450**

**Property at 159 The Auld Road, Cumbernauld, Glasgow G67 2RG (“the Property”)**

**The Parties: -**

**Mrs Pauline Scott, 159 The Auld Road, Cumbernauld, Glasgow G67 2RG (“the homeowner”)**

**Sanctuary Scotland, Floor 8, Fleming House, 2 Tryst Road, Cumbernauld, Glasgow, G67 1JW (“the property factor”)**

**Tribunal Members: -**

**Simone Sweeney (Legal Member) Sara Hesp (Ordinary Surveyor Member)**

### **Decision of the Tribunal Chamber**

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the property factor has failed to comply with section 6.1 of the Code of Conduct for Property Factors (“the Code”) as required by section 14(5) of the Act but find no breach of sections 6.9, 7.1 and 7.2 of the Code. The Tribunal determined that the property factor has failed to carry out the Property Factor’s duties in terms of Section 17 of the Act.

## **Background**

1. By application dated 21<sup>st</sup> September 2018, the homeowner applied to the Tribunal for a determination on whether the property factor had complied with sections 6.1, 6.9, 7.1 and 7.2 of the Code imposed by section 14 of the Act and to carry out the property factor duties in terms of section 17 of the Act.
2. The homeowner formally intimated her complaint to the property factors, in compliance with section 17(3) of the Act by emails dated between March and October 2018 and letter dated 14<sup>th</sup> September 2018. Copies of the, letter and the emails were produced by the homeowner as part of an appendix to the application.
3. By decision dated 31<sup>st</sup> October 2018, a Convenor referred the application to the Tribunal for a hearing. Notices of referral were sent to the parties on 8<sup>th</sup> November 2018. A hearing was assigned for 21<sup>st</sup> December 2018 in Glasgow.
4. A hearing took place on 21<sup>st</sup> December 2018 at 10am within the Glasgow Tribunals centre, 3 Atlantic Quay, Glasgow. In attendance at the hearing was the homeowner and, on behalf of the factors, Ms Pat Cahill, Director, Ms Maureen Law, factoring assistant and Mr Sandy McCutcheon, Head of Maintenance and Reinvestment.

## **Preliminary issue**

5. The Tribunal chair referred to section 7 of the homeowner's application form. The chair noted that the homeowner had not completed section 7B and asked whether her complaint related to a failure of the property factor's duties. The homeowner confirmed that she wished to amend her application to include a failure of the property factor's duties. The representatives from the property factor did not oppose this amendment. They confirmed that they had had notice of the entire complaint. The Tribunal allowed the application to be amended.

6. The Tribunal chair reminded parties that within the papers was a letter from the property factor dated 18<sup>th</sup> July 2018. Within that letter were certain admissions by the property factor and an offer of compensation. The homeowner confirmed that she had refused this offer. She wanted the property factor to recognise the extent of the inconvenience she had been put to and to compensate her accordingly. She hoped that this would be the outcome of the hearing. The chair enquired if parties would benefit from the opportunity to discuss a possible settlement before proceeding with the hearing and advised that the Tribunal would allow parties time to do that. Ms Cahill refused this offer. She advised that the property factor was satisfied that the factor's actions had been reasonable throughout, had responded to communications in "*reasonable timescales*," had already acknowledged Ms Scott's inconvenience and had satisfied all that was required of them.
7. The Tribunal proceeded with the hearing.

## **Evidence of the homeowner**

### **Section 6.1**

8. Section 6.1 of the code provides,

*"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."*
9. The homeowner was invited to describe how the property factor had breached section 6.1 of the code. Following a period of bad weather, the homeowner had reported a leak in the roof of her property on 20<sup>th</sup> March 2018. Water was coming through the ceiling of her son's bedroom. This was not the first occasion that water had leaked into her home through the ceiling of this room. The homeowner been told on the telephone that repairs would be completed in 20 days. The repairs were not completed in this time. The works were not completed until the week beginning 22<sup>nd</sup> May 2018. After the initial report, the homeowner alleged that she had required to chase progress of the repairs on a number of occasions. No

update on progress of the repairs was forthcoming by the property factor. The homeowner advised that the contractors employed by the property factor were Timetra. Vans displaying the Timetra livery were located on the same street as her property is located and works were being carried out at other properties during this time. The homeowner was of the view that there was no reason why the property factor could not have had the contractors address the problems with her roof at the same time. This had caused the homeowner frustration. Whilst she accepted that the bad weather had placed the property factor's resources under pressure, she felt that did not prevent the property factor communicating with her. The homeowner alleged that delay was also caused by a failure on the part of the contractors by erecting scaffolding at the wrong location. The homeowner had recovered emails between the property factor and the homeowner by way of a subject access request in December 2018. She sought permission to lodge them with the Tribunal in support of her application. The factor confirmed there was no opposition to the request and the Tribunal allowed the copy emails to be received. Emails dated 26<sup>th</sup> April, 11<sup>th</sup>, 18<sup>th</sup> and 22<sup>nd</sup> May 2018 were produced. Within the email dated 26<sup>th</sup> April from the contractor to the property factor there was reference to a backlog of work existing due to weather conditions and delay in the contractor recovering costs from sub-contractors due to personnel being on leave. The email of 11th May from the property factor accepted that the factor had, *"failed in service not attending to roof within routine timescale."* The email of 22<sup>nd</sup> May from the contractors to the property factor referred to delay in the scaffolding being erected and the roof contractor being on holiday until 31<sup>st</sup> May. It was the homeowner's position that none of these delays had been shared with her. She alleged that the property factor had failed to inform her of the progress of the works required without reason and by this failure had breached section 6.1 of the code.

10. The homeowner provided a description of her property and the damage which she alleged to have occurred. Her property is a maisonette flat positioned on the top floor of a building in which there are 8 similar flats. The block in which the homeowner's flat is located was built in 1967. It is brick built with a render finish and the original, pitched, sloping roof.

Following a bad storm she discovered water running down the wall of her son's bedroom. This room is located at the side corner of the building. Within the loft area above her son's room, the homeowner found the beams to be "saturated" and the carpet of the bedroom was wet. The homeowner had not taken any photographs at the time. At the request of the property factor the homeowner had recovered estimates from various tradesmen indicating the likely costs of repairs required as a result of the damage. The homeowner was asked about the previous water ingress to which she had referred. The homeowner advised that there had been water ingress at the same area of the bedroom in 2010, 2013 and 2016. The homeowner submitted that the worst leak occurred in 2010 when she described water to be "pouring" into her son's room through the ceiling and the light fitting from exactly the same part of the roof which she believed to have been damaged in 2018. In 2013, the property factor carried out repairs to the roof with a cherry picker following a similar problem. In 2016 the homeowner had repair works undertaken in the loft area to remedy another leak of water. Again, the homeowner maintained that the water was emanating from the same part of the roof which had caused problems in 2010 and 2013. It was the homeowner's submission that had the property factor carried out work effectively when first reported in 2010, then the subsequent issues of water ingress may not have occurred. It was the homeowner's evidence that the water ingress was the result of a leak at the same part of the roof on each occasion and that the property factor had failed to remedy the problem.

11. Section 6.9 of the Code provides,

*"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."*

12. When invited to explain how the property factor had breached this section of the code, the homeowner submitted that, as a result of inadequate works by the contractors to the roof, the homeowner had been required to contact the property factor about what she understood to be the same repair between 2010 and 2018. The homeowner submitted that she did not believe that the property factor had made any effort to take up with the

contractor that their service had been inadequate. The homeowner claimed that the poor workmanship and the on-going problems with the roof had left her at a disadvantage as her insurance premiums would now be higher.

13. Section 7.1 provides,

*“You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.”*

14. The homeowner claimed that the level of customer service which she had received from the property factor was not satisfactory. She had been forced to call the factor on 6 occasions to enquire when the repairs would be carried out to the roof of her home. She was provided with an email address by which she could contact the property factor about her complaint but discovered that the email address was incorrect. The homeowner directed the Tribunal to various emails on which she was relying to support this position. The homeowner relied upon an email dated 5<sup>th</sup> September 2018 from the property factor to the homeowner. This read,

*“With regards to your comments regarding us not having records of your previous reports regarding leaks, on closer scrutiny of our historical repairs system, I can see that you made contact with our Customer Service Centre between September and November 2013 to discuss a roof leak at that time and chase up the repairs. I am sorry that I overlooked this information previously, however as I have advised, in line with our complaints procedure, we would normally only investigate issues that have occurred within the last 6 months.”*

It was the homeowner’s position that she would have expected the property factor to be able to trace previous reports easily. Moreover the homeowner suggested that the content of this email highlighted that the same problem had occurred previously.

15. The homeowner was directed to the written statement of services by the Tribunal chair, specifically the section headed, “Complaints and Enquiries.” The homeowner accepted that this section set out the manner by which a homeowner could make a complaint, the timescales by which the property

factor intended to deal with complaints, the part of the website on which details of the complaints procedure could be found and what a homeowner could do if the complaint was not resolved to their satisfaction. The homeowner accepted that she had a copy of the written statement of services. She accepted that this section provided a clear written complaints resolution procedure setting out a series of steps and provided timescales.

16. Section 7.2 of the Code provides,

*“When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.”*

17. The homeowner accepted that the property factor had directed her to the First Trier Tribunal in light of her complaint having not been resolved. The homeowner accepted that she had managed to pursue the complaint to the Tribunal without difficulty.

18. Finally the homeowner emphasised that her greatest concern was that water had leaked into the same room at the same place on three occasions now. She was satisfied that this was proof of the property factor having not remedied the problem effectively the first time. As a result the homeowner was sure that her insurance premiums would increase which placed her at a significant financial disadvantage. When asked by the Tribunal chair if there was any documentary evidence available to support this submission, the homeowner confirmed that she had never made a claim against her insurance notwithstanding the damage. The reason she had failed to make a claim in 2018 was down to her being misled by the property factor. The property factor had requested that she provide quotes to indicate this likely cost to remedy the damage caused by the water ingress. The homeowner had wrongly assumed that this meant that she was to receive compensation from the property factor. On the understanding that she was to be compensated, the homeowner saw no reason to make a claim on her insurance.

## Evidence of the property factor

19. In response, the property factor denied having breached any section of the Code. With regards to section 6.1, it was accepted by the property factor that the homeowner has been given a timescale of 20 days by which the works would be completed. However this timescale is often altered once the extent of the problem is known. On behalf of the property factor, it was explained by Ms Cahill that because the homeowner's flat is located at the top of a 4 storey building scaffolding was required and this meant that the timescale of 20 days was impossible to meet. The property factor had recognised this in their letter to the homeowner dated, 18<sup>th</sup> July 2018. It read,

*“...I appreciate that you made numerous phone calls to the CSC to chase up the repairs to the roof and I would therefore like to offer you a goodwill payment of £25 in recognition of the serious inconvenience this has caused you.”*

20. The ordinary surveyor member referred to the terms of the written statement of services in which the property factor applies a timescale of 20 days to address “routine” repairs. The surveyor enquired how the property factor would know whether the repair was emergency, urgent or routine at the time of the complaint being recorded by a homeowner. In particular, how did the property factor know that the homeowner's repair was to be treated as “routine” when she first made contact. The ordinary surveyor expressed her concern that water ingress of the nature reported by the homeowner could be considered a “routine” repair.

21. Mr McCutcheon explained that an assumption had been made at the outset that this was a standard roof leak. Once the contractors instructed by the property factor (Timetra) had inspected the property they were able to communicate to the property factor the full extent of the problem. Mr McCutcheon explained that the report had been received immediately following a period of bad weather. Unfortunately many of the properties owned and factored by the property factor had reported issues and this had placed an overwhelming pressure on the contractor's resources. Mr McCutcheon emphasised that the property factor relies on the expertise of its contractors. It is the contractors who identify which works are required.



The contractors are provided with a works order by the property factor which lists all reports received requiring investigation and repair. The contractor works through these in date order of when the complaints are logged. The property factor did not dispute the homeowner's submissions about the length of time the repairs took to complete. The property factor accepted that the homeowner had required to make contact to establish what progress was being made with the repairs. The property factor accepted that an incorrect email address had been provided to the homeowner which meant that the homeowner's email communications to this address were not received by them. The property factor accepted that section 6.1 requires that the property factor "must" inform homeowners of progress of works. When asked by the Tribunal chair what evidence was available to show that they had met this requirement, the property factor conceded that there was none. The property factor accepted that, following receipt of her repair on 20<sup>th</sup> March 2018 and having provided the homeowner with a timescale of 20 days by which the repair would be completed, the property factor made that no communication to the homeowner during the 20 day period.

22. In terms of the alleged breach of section 6.9 of the code, the property factor referred to the allegations by the homeowner that there had been a failure to remedy an issue with the roof in 2010 which had resulted in water ingress at the same place twice, thereafter. Mr McCutcheon accepted that the homeowner had reported issues on the dates referred but submitted that the property factor had found no evidence that the water was coming through the ceiling at exactly the same place and that it was exactly the same repair which was required on each of the 3 occasions. Mr McCutcheon was of the opinion that the issue reported in March 2018 was a direct result of storm damage. He accepted that, on the face of it, a homeowner might believe that water coming through the ceiling 3 times was coming from the same area, but he thought this unlikely. Ms Law advised that the property factor had no record of any reports from the homeowner or any other resident at the block after the repairs had been completed in the past to express dissatisfaction with the works or that there was anything outstanding or incomplete. There was no reason for

the property factor to doubt the standard of works undertaken by their contractors. There was no basis for the property factor to pursue their contractor to remedy any inadequate work as required by section 6.9, therefore.

23. The factors disputed any breach of section 7.1 of the Code. The property factor pointed to the complaints resolution procedure set out within their written statement of service which the homeowner had already accepted.
24. With regards to section 7.2 of the Code and the complaints process generally, Ms Cahill submitted that the property factor had investigated the homeowner's complaint in some detail. She was satisfied that the emails produced by the property factor in support of its position reflected that a detailed investigation had been carried out. The findings of these investigations were set out in various communications with the homeowner, including the letter from the property factor on 18<sup>th</sup> July 2018. This letter had been produced by both parties. It provided a contemporaneous account of what had occurred since the date of the homeowner having first reported her repair. Ms Cahill submitted that although no resolution had been achieved, she was satisfied that the property factor had handled the complaints procedure properly and effectively and the homeowner had been directed successfully to the First Tier Tribunal.

## **Findings in Fact**

25. That the homeowner is the heritable proprietor of 159 The Auld Road, Glasgow, G67 2RG.
26. That the property factor provides factoring services to the property.
27. That the homeowner made a report to the property factor by telephone on 20<sup>th</sup> March 2018 of water ingress at the property and requested repair.
28. That the report was received after a period of bad weather.
29. That the bad weather generated a higher number of repairs being reported to the property factor from customers.
30. That the property factor undertook to complete the necessary works in 20 days from 20<sup>th</sup> March 2018.

31. That the property factor provided this timescale without having had sight of the property.
32. That the contractors instructed by the property factor did not inspect the property until 23<sup>rd</sup> April 2018.
33. That the repairs were not carried out and completed by the property factors' contractors until week commencing 22<sup>nd</sup> May 2018.
34. That the 20 day timescale was not met by the property factors.
35. That the property factor did not advise the homeowner that the 20 day timescale would not be met.
36. That the property factor made no contact with the homeowner during the 20 day period to provide an update on the progress of the work.
37. That the homeowner contacted the property factor by telephone and email requesting an update on the works but did not receive a satisfactory answer.
38. That, by letter of 18<sup>th</sup> July 2018, the property factor recognised that the homeowner made *"numerous"* phone calls to *"chase up the repairs to the roof."*
39. That the homeowner experienced inconvenience.
40. That the property factor recognised that the homeowner had been put to *"serious inconvenience"* by letter of 18<sup>th</sup> July 2018.
41. That the homeowner made no further reports of water ingress at the property after 20<sup>th</sup> March 2018.
42. That the property factors had no record of any reports from any of the residents at the property of any inadequate work or service by the contractors.
43. That the property factors contractors completed the repairs effectively in May 2018.
44. That the homeowner had access to the property factor's written statement of services.
45. That the written statement of services contains a section headed *"Complaints and Enquiries."*

46. That the homeowner accepted that This section of the written statement of services sets out the steps which the property factor will follow in the event that a customer makes a complaint.
47. That this section of the written statement of services sets out the timescales which the property factor will follow when handling complaints from homeowners.
48. That this section of the written statement of services does not include the procedure which the property factor will follow when handling complaints against contractors.
49. That the homeowner was in communication with the property factor about her complaint until September 2018.
50. That the parties were unable to reach a resolution to the homeowner's issues.
51. That the property factor set out its position to the homeowner's complaint in writing in various emails
52. That the property factor provided information to the homeowner about the First Tier Tribunal (Housing and Property Chamber) in writing at various intervals including by letter of 18<sup>th</sup> July 2018 and by email dated 16<sup>th</sup> August 2018.
53. That the email of 16<sup>th</sup> August 2018 provided contact details for the First Tier Tribunal (Housing and Property Chamber) and a link to the relevant website.
54. That the homeowner submitted an application to the Tribunal on 21<sup>st</sup> September 2018.

### **Reasons for decision**

55. The property factor received a report of water ingress at the homeowner's property on 20<sup>th</sup> March 2018. The property factor gave an undertaking to the homeowner that the repairs would be completed in 20 days. This timescale was provided without knowing the extent of the problem. The contractor did not inspect the property until 23<sup>rd</sup> April 2018. This was beyond the 20 day timescale provided to the homeowner. By letter of 18<sup>th</sup> July 2018 the property factor acknowledged that the homeowner made "*numerous phone calls... to chase up repairs.*" There was no evidence available to the Tribunal that the property factor made any effort to contact

the homeowner with an update of the work as required by section 6.1. The property factor accepted that no contact had been made to the homeowner. The requirement on the property factor to inform homeowners of progress is mandatory. In the absence of any evidence to show that contact was made and given the admissions of the property factor, the Tribunal finds the property factor to be in breach of section 6.1 of the Code.

56. The evidence of the property factor was that, having inspected the property on 23<sup>rd</sup> April 2018, the contractor indicated that the works would take a longer period of time than initially thought. This information was not shared with the homeowner. The homeowner identified that this information had been in the property factor's knowledge as a result of a subject access which she pursued. It is accepted that bad weather generated an increase in repairs being reported. It is accepted that this may have impacted on the contractor's resources. The Tribunal considers that it was unacceptable that a month passed before the homeowner's property was inspected. The Act places a duty on the property factor to conduct itself appropriately and responsibly in the service it provides to homeowners. It was open to the property factor to share with the homeowner information about the extent of the works required to her property and the extended period of time it was likely to complete these repairs. The lack of communication resulted in the homeowner making contact at regular intervals and failing to receive an adequate response. The property factors recognised the frustration which the homeowner experienced. By letter of 18<sup>th</sup> July 2018 the property factor offered £25 compensation for what they described to be "*serious inconvenience.*" The property factor failed to communicate effectively with the homeowner and in that failure has not satisfied the Property Factor's duties required by the Act.
57. It was a matter of agreement between the parties that the repairs required to address the leak in the roof of the homeowner's property were completed in the week beginning 22<sup>nd</sup> May 2018. There was no evidence before the Tribunal by either party to suggest that there were any concerns or reports made to the property factor that the repairs had not been

completed to a satisfactory standard. Section 6.9 places a duty on the property factor to pursue the contractor to remedy defects in any inadequate work or service provided. In the absence of any defects being reported there was no duty on the property factor to pursue the contractor. The Tribunal finds no breach of section 6.9 of the Code.

58. It was accepted by the homeowner that the written statement of services contained a written complaints resolution procedure which set out the steps which the property factor aims to follow. It was accepted that the timescales which the property factor aims to meet is within the complaints resolution procedure. There was no suggestion or evidence by the homeowner that the property factor had deviated from the procedure. The Tribunal finds no breach of section 7.1 of the Code. It should be noted that there was nothing within the written complaints resolution procedure to explain how the property factor would handle complaints against contractors. This is part of the duty on a property factor in terms of section 7.1 of the Code. However this was not part of the homeowner's complaint and it is identified by way of an observation only.
59. The property factor had set out their response to the homeowner's complaint in writing by letter and by email. Within the papers which the homeowner had lodged in support of her application, were the letter from the property factor of 18<sup>th</sup> July and the email from the property factor of 16<sup>th</sup> August 2018. Both documents confirmed the response of the property factor. Both documents provided information of how the homeowner may apply to the First Tier Tribunal (Housing and Property Chamber). In any event, the homeowner accepted that she had made an application to the Tribunal. In the circumstances the Tribunal does not find the property factor to be in breach of section 7.2 of the Code.
60. The Tribunal is satisfied that the homeowner has been inconvenienced by the failures by the property factor to meet its duties in terms of the Property Factor's duties and section 6.1 of the Code. The homeowner's evidence was that she wanted compensation for increased insurance premiums and for inconvenience. No documentary evidence of increased insurance premiums was produced. The evidence of the homeowner was that she had not made a claim against her insurance policy in 2018. The

homeowner's evidence was that she was inconvenienced by having to contact the property factor for updates. This was accepted by the property factor. The property factor had offered to the homeowner the sum of £25 by way of compensation. This offer was refused by the homeowner. The Tribunal recognises the inconvenience which the homeowner experienced following report of her repair in March 2018 but also the further time and inconvenience which the homeowner has experienced in pursuit of this complaint. Having recognised the homeowner's inconvenience it was open to the property factor to increase the offer of £25. Even when offered an opportunity by the Tribunal to discuss possible settlement with the homeowner, the property factor refused and the hearing went ahead. In recognition of the time spent by the homeowner and the inconvenience to her of pursuing this matter, the Tribunal order the property factor to pay to the homeowner the sum of £200.

## **Decision**

61. The Tribunal, having found the factor to be in breach of the Property Factor's duties and section 6.1 of the Code, propose a Property Factor Enforcement Order ("PFEO") to accompany this decision.

## **Appeals**

62. 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 within 30 days of the date the decision was sent to them.

Simone Sweeney, Legal member, 13<sup>th</sup> January 2019

