

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/23/2288**

**Property: 4/5 Weavers Linn, Tweedbank, Galashiels TD1 3SX (“the Property”)**

**The Parties:-**

**Miss Rachael Keith, 4/5 Weavers Linn, Tweedbank, Galashiels TD1 3SX (“the homeowner”)**

**James Gibb Property Management Limited, registered in Scotland under the Companies’ Acts (SC299465), having their registered office at Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ and having a place of business at 4 Atholl Place, Edinburgh EH3 8HT (“the property factors”)**

**Tribunal Members:**

**George Clark (Legal Member/Chairman) and Mrs Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided that the property factors had failed to comply with OSP11 and Sections 2.7 and 6.4 of the Property Factors Code of Conduct effective from 16 August 2021 and had failed to carry out the Property Factor’s duties. The Tribunal decided not to make a Property Factor Enforcement Order.**

**Background**

1. By application, received by the Tribunal on 11 July 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with Overarching Standards of Practice (“OSPs”) 1, 2, 5, 6 and 11 and Sections 2.1, 2.7, 6.1, 6.4, 6.7, 7.1 and 7.2 of the Property Factors Code of Conduct effective from 16 August

2021. She also alleged a failure to comply with the Property Factor's duties.

2. The homeowner told the Tribunal that her complaints related to the external balcony of the flat above the Property. The underside of the balcony formed part of the ceiling of the bay window of the Property. She had reported to the property factors on 9 January 2023 that damp had appeared on the ceiling and wall of the bay window area. The property factors had responded to her email, saying they would contact the upstairs neighbour, but not to a later email stating the problem had worsened since her original report. On 19 January, the upstairs neighbour told the homeowner that he had not been contacted by the property factors. They replied to the homeowner on that day, asking for her contacts to pass on to the contractor, who telephoned her on 25 January to say he was unable to assist until the external repairs had been carried out, as he was a painter and decorator. The property factors then told the homeowner that they had instructed a roofing company and would chase them up that day. By 30 January, the roofer had not made contact and the homeowner emailed the property factors, who said they would chase up the contractor again.
3. The homeowner requested another update on 15 February, as she had still not heard from the roofing contractor. She contacted the property factors again on 21 February to obtain the contractor's details with a view to speaking to him directly, which she did on 24 February. He told her that he had attended the property 3.5 weeks ago and changed two damaged roof tiles. The homeowner then advised the property factors by email on 27 February that the work done would not have resolved the damp issue. She received no reply and, after several telephone calls to the property factors when she was told that someone would call her back, as this had not happened, she felt she had no choice but to make a formal complaint, which she did on 20 March. All her dealings thus far had been with one individual employee of the property factors.
4. The homeowner received a reply from the property factors' Property Manager on 21 March, but he did not provide a complaint reference number. He said he had organised an appropriate contractor. On 31 March, she emailed the Property Manager, requesting a complaint reference number and details of the complaint handler. She advised that the contractor had attended the previous week and was sending a report of his findings and suggested next steps. On 4 April, she received a letter from the property factors, outlining the work

specification and requesting all owners in the block to pay £166.35 each to fund the repair. On 9 April, the homeowner emailed the Property Manager to ask why the work was not covered by insurance. She also raised concerns about her Stage 1 complaint, as she had not received a formal reply. That email was not responded to. The homeowner contacted the property factors twice by phone to query this and was told that the Property Manager would call back, which he failed to do.

5. On 18 April, the homeowner emailed the Property Manager and the generic email address for the property factors with queries about their letter of 4 April and advising them that they had not responded to her last few emails or returned her calls. The Property Manager replied on 19 April to say he would call the homeowner on the following day, but he failed to do so. On 12 May, the homeowner emailed again, to request an update on the outcome of the letter of 4 April but did not receive a reply. Meantime, her solicitor had confirmed to her that the balcony constitutes a common part and that the property factors were, therefore, responsible for organising the repair.
6. As the homeowner had still not received any reply and the damage was worsening, she felt she had no choice but to make a Stage 2 formal complaint, which she did on 22 May. As at the date of the application, this had not been acknowledged, but on 23 May, the property factors confirmed in a letter to all the residents of the blocks affected that 56% of the funds had been received and requested that the other owners pay their shares.
7. The homeowner said that she was still no closer to having the issue resolved and would like the property factors to respond to her communications as per their Written Statement of Services, to keep her updated on the progress of the repairs and to compensate her for the stress caused by this lengthy and upsetting process.
8. On 24 August 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the property factors were invited to make any written representations by 14 September 2023.
9. On 8 September 2023, the property factors made written submissions to the Tribunal. They stated their view that the homeowner had only provided an explanation for her belief that the property factors had failed to comply with the Code of Conduct in relation to her complaints under Sections 6.4 and 7.1. They questioned whether this was in fact a common repair, or whether the balcony is incorporated into and

forms part of the top floor flat, but advised that, in order to remedy the matter for the homeowner, they had chosen to treat it as a common repair. It was regrettable that the first contractor did not attend immediately and that, when he did, he did not review the balcony area, as he had been requested to do. It had taken longer than they would have liked to gather quotes, with the construction industry having become increasingly busy in recent years. Ultimately, only one quote was obtained. and the process of ingathering funds began on 4 April. As at 19 May, 56% of the funds had been ingathered and a reminder letter was sent out. A second reminder was sent on 3 July. The property factors' policy is to instruct works like this when they have 85% of the funds, but on this occasion, to speed up the process, they instructed the contractors on 24 July, with 81.3% of funds in place. The contractors then erected scaffolding, but the homeowner's upstairs neighbour objected to it, the outcome being that the work will be carried out by accessing the balcony from inside the top flat. The property factors doubted that the cost would be covered by insurance as it was a matter of deterioration of the fabric of the building over time. It was regrettable that the works were not yet complete, but the property factors believed they had explained the reasons which had contributed to the delay, which was not unusual in a situation where the source of water ingress needs to be identified, quotes obtained, funds ingathered and work instructed, relying on access through a private property.

10. On 10 October 2023, the homeowner responded to the property factors' written submissions, setting against each head of complaint the facts she regarded as relevant to it.

### **Case Management Discussion**

11. A Case Management Discussion was held by means of a telephone conference call on the morning of 1 November 2023. The homeowner was present. The property factors were represented by their Regional Director East, Mr Roger Bodden.
12. The Tribunal told the Parties at the outset that it would not be necessary to determine whether the balcony was a common part of the building. The property factors had chosen to treat it as such for the purpose of the repairs and had asked all owners to contribute to the cost. Accordingly, their actions fell to be judged against the requirements of the Code of Conduct and their Written Statement of Services.

13. Mr Bodden advised the Tribunal that the external works have now been completed and the internal repairs will be carried out through the insurers when the homeowner confirms that the work to the balcony appears to have been effective. The homeowner stated that there does not appear to be ongoing ingress of water.
14. The homeowner told the Tribunal that the main issue had been lack of communication and that it has been very stressful not knowing what is going on. She happened to be working at home on the day the work was carried out. Mr Bodden conceded that there had been issues with the property factors' complaints process in this case and that the individual concerned had "dropped the ball". The property factors had since done a fair amount of personnel and process change. He apologised to the homeowner for these shortcomings and offered £300 by way of compensation, with the homeowner also being refunded her share of the cost of the balcony repairs. The homeowner told the Tribunal that this offer of settlement was acceptable to her.
15. The Parties then disconnected from the telephone conference call and the Tribunal Members considered all the evidence, written and oral, before them.

### **Findings of Fact**

- i. The homeowner is the proprietor of the property, which is part of a Development of 149 houses and flats at Weavers Linn, Tweedbank.
- ii. The property factors, in the course of their business, manage the common parts of the Development of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The date of Registration of the property factors was 23 November 2012 and the date of their current registration is 17 May 2019.
- v. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.

- vi. The homeowner made an application, received by the First-tier Tribunal for Scotland Housing and Property Chamber on 11 July 2023, under Section 17(1) of the Act.
- vii. The concerns set out in the application have not been addressed to the homeowner's satisfaction.

### **Reasons for Decision**

- 16. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing.
- 17. As the Parties had agreed a settlement at the Hearing, it was not necessary for the Tribunal to consider the homeowner's complaints under each OSP and Section of the Code of Conduct. The Tribunal did, however, decide that the property factors had failed to comply with OSP11 and Section 2.7 of the Code of Conduct, in that they did not deal with the homeowner's enquiries and her complaints within the timescales confirmed in their Written Statement of Services ("WSS") and in line with their complaints handling procedures. The Tribunal also determined that the property factors had failed to comply with Section 6.4 of the Code of Conduct, as they had not met the requirement to keep homeowners informed of the progress of repair works. They had also failed to comply with the Property Factor's duties, in that Section 6 of their WSS sets out the number of days within which they endeavour to respond to emails, letters and enquiries, and they had clearly failed to comply with the Complaints procedure set out in detail in Section 7 of their WSS.
- 18. The Tribunal regarded the property factors' failings as serious, but noted that they had made an offer of compensation, which the homeowner had accepted and that they had taken steps to improve their processes. Accordingly, the Tribunal decided not to make a Property Factor Enforcement Order.
- 19. The decision of the Tribunal was unanimous.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

Signed

Date: 9 November 2023

George Clark (Legal Member/Chairman)