

# **Housing and Property Chamber**

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

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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011  
Section 19(1)(a)**

**Chamber Refs: FTS/HPC/PF/22/4041**

**1/ 4 17 Springfield Gardens, Glasgow, G31 4HT ("the Property")**

**Parties:**

**Petr Berka, 1/ 4 17 Springfield Gardens, Glasgow, G31 4HT ("the Homeowner")**

**Newton Property Management Ltd, 87 Port Dundas Road, Glasgow ("the  
Property Factor")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)**

### **DECISION**

**The Tribunal determined that the Property Factor has not failed to comply with  
OSP 1 and 5 and section 2.5 of the Property Factor Code of Conduct as  
required by Section 14(5) of the Act.**

**The decision of the Tribunal is unanimous.**

### **Background**

1. The Homeowner lodged six separate applications in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The applications state that the Property Factor has failed to comply with the 2021 Code and failed to carry out their property factor duties. Documents were lodged in support of the applications including copies of emails and letters addressed to the Property Factor. The written statement of services was also lodged.
2. A Legal Member of the Tribunal with delegated powers of the President referred the applications to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 20 June 2023 at 10am at Glasgow Tribunal Centre.

3. Following service of the first application, the Property Factor lodged written representations. They indicated that they did not wish to attend a hearing on the applications. They referred to previous applications determined by the Tribunal and said that application 4041 contained a number of similarities. They also referred to the language used by the Homeowner in his correspondence with the Property Factor, which included allegations of criminal behaviour by both the Property Factor and the Tribunal. The Tribunal noted that Mr Berka had submitted a letter from the Property Factor dated 7 December 2022 with the application. This letter indicates that, due to the excessive number of emails received from Mr Berka, the Property Factor had decided that they would not respond to future correspondence. They would continue to act on reports of an emergency nature but could not provide responses as it was having an adverse impact on their ability to manage the property. They referred to the WSS, which makes provision for this decision.
4. The CMD took place on 20 June 2023. The Homeowner attended. The Property Factor was not represented. Although he participated in the CMD, Mr Berka did not have a copy of his applications, which limited his ability to address some of the issues raised by the Tribunal.

### **Summary of Discussion at the CMD**

5. The Tribunal noted that this application comprises three application forms, each of which has a related notification letter of the same date. The first is dated 7 November 2022 and refers to the overarching standards of practice ("OSPs") but does not specify which of these apply and section 2.5 of the Code. The second also dated 7 November 2022, refers to OSP 1 and 5. The third is dated 4 January 2023 and refers to OSP 2 and 4 and section 2.7 of the Code. The letter submitted for this complaint is dated 25 November 2022. The Tribunal also noted that a copy email had been provided to evidence the sending of the notification letter or letters dated 7 November 2022 but not for the letter of 25 November. Following discussion, Mr Berka said that he would withdraw this part of the application.
6. Mr Berka told the Tribunal that the second application form was probably to replace the first but that he would need to consider both before confirming the position. The Tribunal noted that both relate to the same issue – the cleaning products used in the common areas of the block of flats. He had asked the Property Factor to arrange for these to be changed to odourless products. They refused, due to increased cost, but have not provided evidence of the price difference. They also failed to consult with the other owners in the block about the issue. Mr Berka is concerned because, in his view, the scented chemicals are dangerous. He cannot provide evidence, but he believes that all chemicals are dangerous. The contractor only started to use the current products during COVID. The smell is very unpleasant. Mr Berka advised the Tribunal that he lives on the first floor of the block. There are 16 flats, 4 on each floor. He has a ten-year-old child. He is not aware whether the other

residents have any concerns.

7. The Tribunal noted that the Property Factor had submitted written representations in relation to the complaints. These state that the application is premature because Mr Berka had not exhausted the complaints process. They also say that the product used is a standard one and is safe, that odourless replacements would be more expensive and less effective, and that Mr Berka refused to meet with the Property Factor and the contractor to discuss the matter. The Tribunal noted that clarification of the sections of the Code, which apply is required together with evidence that the Property Factor was notified about the alleged breach of section 2.7 if this is to be part of the application. Otherwise, the application would only be considered in relation to the other sections of the Code that were notified.
8. Following the CMD the Tribunal issued a direction to the Homeowner. In response, Mr Berka stated that both application forms dated 7 November 2022 were to be considered and that he was not insisting on his complaint under section 2.7 of the Code.
9. The parties were notified that a hearing would take place at Glasgow Tribunal Centre on 6 November 2023. Mr Berka attended. The Property Factor was not represented.

### **The Homeowner's evidence and submissions**

10. Mr Berka told the Tribunal that the cleaning contractors changed the cleaning product during the pandemic and changed it again about a year ago. The current product also has a smell although it is perhaps not as strong as the previous one. His complaint relates to both products. He does not know whether other residents have complained or have any concerns. His main complaint is that the Property Factor has not consulted with the other homeowners or provided him with any information about the difference in price between the current products and odourless cleaning products. Mr Berka also advised the Tribunal that chemicals are known to cause harm and that the continued use of the chemicals is therefore a breach of the legislation. He added that the effects of the use of the chemicals could take ten years to appear. The smell in the detergent is a chemical, which is added to the product, and that breathing it in causes harm. In response to questions from the Tribunal, Mr Berka said that he has lived at the property for 12 years. The problem with the cleaning products only started during the pandemic when the product was changed. He thinks that he reported it back then. He has not sent any correspondence recently to the Property Factor about the cleaning products and has not yet experienced any health issues.

### **Findings in Fact**

11. By emails dated 15 August, 15 and 20 September, 4 October and 1 November 2023, the Homeowner asked the Property Factor to change the

cleaning products used in the common areas to odourless alternatives and to provide details of the difference in price between the products being used and odourless versions. On 7 November 2023, he submitted a formal complaint that the Property Factor had failed to comply with the Code of Conduct in relation to his complaint about the cleaning products.

12. The Property Factor responded to the enquires in emails dated 20 September, 27 September 4 October and 14 November 2023. The Property Factor stated that the products were mainstream and safe, that the cleaners would ventilate the area being cleaned and that odourless alternatives would be less effective and more expensive. They also offered to meet with the Homeowner to discuss the issue.
13. The Property Factor did not provide the Homeowner with details of the price difference or consult with other homeowners regarding the Homeowner's request to change to odourless cleaning products.

## **Reasons for Decision**

14. Having reviewed the previous decision of the Tribunal in relation Chamber references 1769 and 2026, the Tribunal is satisfied that these applications did not relate to the Homeowner's complaints about the cleaning products used at the property and that this application can therefore be considered. The Tribunal is not persuaded by the Property Factor's statement that the application is premature because the Homeowner failed to use the complaints procedure. On 7 December 2022, the Property Factor told the Homeowner by letter that they "will no longer respond to your correspondence". They added that they would review his emails and "if deemed of an emergency nature we will action these and these alone". They refer to a section of the WSS which allows them to do this. Although the complaints process is not specifically mentioned, the letter makes it clear that only emergency factoring issues will be actioned. It is a reasonable conclusion that the complaints process is included in the decision. At the hearing Mr Berka advised the Tribunal that this is not the case as a recent formal complaint was processed, but he could not have known this in advance, given the terms of the letter. The Tribunal is not satisfied that the Property Factor is entitled to rely on the failure by Mr Berka to activate the complaints process.
15. Prior to the CMD, both parties lodged a number of emails and the Property Factor lodged written submissions. However, only a few of the emails appear to relate to the dispute about the cleaning products. A large number relate to other disputed matters. However, it is clear from the correspondence that Mr Berka reported concerns about the cleaning products in several emails between August and November 2022. The Property Factor provided a response to these emails, culminating in an email dated 14 November 2022. They stated that they had been in contact with the cleaning company who had confirmed that the product was a mainstream one and was safe. They

provided a data sheet on the product. They also stated that a change to odourless products would mean an increase in cost and that the products would be less effective. Lastly, they offered to meet with Mr Berka to discuss the matter. Mr Berka did not take up the offer to meet.

16. The Tribunal is not persuaded that Mr Berka has established that the products being used at his property are harmful. They are only used to clean the common areas and the existence of a strong chemical smell is not enough to establish that he is at risk. No evidence was submitted that the products are harmful or unsuitable for use in the areas in question.
17. Although the Property Factor provided a written response to Mr Berka's enquiry and appear to have investigated his complaint about the cleaning products, they did not fully address the issues he had raised. When told that a change would lead to increased costs, Mr Berka asked them to provide details of the difference in price. If the cleaning contractor had stated that there would be an increase, presumably they could have provided these details. It is not clear why the Property Factor did not obtain this information and pass it on. Had they done so, the Property Factor could also have written out to the other homeowners to advise that Mr Berka had made a request for a change to odourless products. They could have consulted with the homeowners and arranged a vote on the proposed change. If the products were more expensive and less effective, the homeowners may well have voted for the status quo. However, they were not given the opportunity to consider the matter.
18. The Property Factor submitted a copy of a letter from Mr Berka with other documents lodged prior to the CMD. Parties who intend to make an application to the Tribunal, can use the template notification letter which is available on the Chamber website. The letter lodged is based on the template and is dated 7 November 2022. It refers to Sections 2.1, 2.3, 2.4 of the Code. It also refers to the overarching standards of practice (OSPs) although there is no specification of the relevant ones which apply. This letter was not lodged by the Homeowner with his application. He lodged two slightly different letters, also dated 7 November 2022. Both refer to the OSPs, but again do not specify which of these are relied upon. One of them also refers to section 2.5 of the Code. One of the application forms specifies OSP 1 and 5. The other does not identify which OSPs apply. An email dated 7 November 2022 to the Property Factor was also lodged. In their written response, the Property Factor refers to complaints under OSP 1, 5 and section 2.5. During the hearing, Mr Berka was asked about the letter lodged by the Property Factor. He could not explain why it differed from those submitted by himself.
19. Section 17 of the 2011 Act states that an application cannot be made to the Tribunal unless, "the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty". Although he was made aware of discrepancies in the paperwork at the CMD and hearing, Mr Berka failed to provide the Tribunal with a reasonable explanation for this. As the Property Factor makes specific

reference to OSP 1 and 5 and section 2.5, and do not indicate that they were not notified of these complaints, the Tribunal concludes that these are the sections of the Code, which should be considered in connection with the cleaning product complaint.

20. **OSP1 – You must conduct your business in a way that complies with all relevant legislation.** Mr Berka stated at the hearing that the use of the current cleaning products at the property is harmful and therefore not compliant with legislation, as the Property Factor is not permitted to cause harm to homeowners or put them at risk. As previously indicated in paragraph 16, the Homeowner has not established that they have done so. Furthermore, Mr Berka did not refer the Tribunal to any “relevant legislation” which has been breached. The Tribunal is also not persuaded that the failure by the Property Factor to provide details of the difference in cost, or consult with the other homeowners, establishes a breach of OSP 1.
21. **OSP 5 – You must apply your policies consistently and reasonably.** The Homeowner did not direct the Tribunal to any policies, which have not been applied in connection with the cleaning product complaint.
22. **Section 2.5 – A property factor must provide a homeowner with their contact details, including full postal address with postcode, telephone number, contact email address (if they have an email address) and any other mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners a property factor must also provide details of arrangements for dealing with out of hours emergencies including how a homeowner can contact out of hours contractors.**
23. It is not clear how this section is relevant to the complaint about cleaning products. There was no reference in the application or supporting documents to a failure to provide the information specified in this section. However, the Homeowner did lodge a copy of a letter from the Property Factor dated 7 December 2022. This letter indicates that the Property Factor had decided that they will no longer respond to his enquires as the volume of these is having an impact on their service delivery. Mr Berka told the Tribunal at the hearing that he recently had to go through the complaints process in relation to an issue he had raised because the Property Factor would not otherwise respond to his emails.
24. The Property Factor’s letter and their decision are not the subject of this application and are not referred to in the notification letters issued to the Property Factor. Furthermore, it is clear from the correspondence lodged by both parties, that the letter was issued some weeks after the Homeowner had made his enquires regarding the cleaning products and received several responses. No breach of Section 2.5 is established.
25. The Tribunal concludes that, although the Property Factor ought to have provided Mr Berka with the price difference information and consulted with other homeowners about the odourless products, their failure to do so is not a

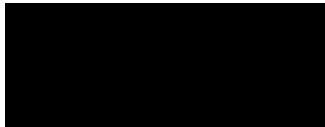
breach of OSP 1, 5 and Section 2.5 of the Code. As these are the only sections of the Code under consideration, the Homeowner's complaints are not upheld.

## **Decision**

26. The Tribunal determines that the Property Factor has not failed to comply with OSP 1, 5 and section 2.5 of the 2021 Code.

## **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.**



Josephine Bonnar, Legal Member

19 November 2023