

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### 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 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

**Chamber Reference:** FTS/HPC/PF/23/1674

**Property address:** Flat 0/1, 48 Minerva Way, Finnieston, Glasgow, G3 8GA (“the Property”)

### The Parties

**Miss Lawrie Anne Brown, Flat 0/1, 48 Minerva Way, Finnieston, Glasgow, G3 8GA (“the Homeowner)**

**Park Property Management, 11 Somerset Place, Glasgow, G3 7JT (“the Property Factor”)**

### Tribunal Members

Ms H Forbes (Legal Member)

Mr C Campbell (Ordinary Member)

### Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has not failed to comply with paragraph 5.3 of the 2021 Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

### Findings in Fact and Law

1.

- (i) The Homeowner is the heritable proprietor of the Property.

- (ii) The Property Factor registered as a Property Factor under registration number PF000423 on 13<sup>th</sup> March 2013.
- (iii) The Property Factor provides factoring services to the Development of which the Property forms part.
- (iv) There is a common insurance policy for the Development.
- (v) On or around 6<sup>th</sup> August 2021, an annual insurance statement was circulated by the Property Factor to Homeowners.
- (vi) The policy excess in relation to damage caused by escape of water was £3000.
- (vii) On or around 1<sup>st</sup> September 2022, the Property Factor arranged for renewal of the insurance policy. Homeowners were not provided with an annual insurance statement at that time.
- (viii) On 14<sup>th</sup> December 2022, the Homeowner discovered a leak in a cupboard in the hall of the Property. The Homeowner contacted the Property Factor's out of hours service and was advised to call an emergency plumber.
- (ix) The cause of the leak was a frozen pipe causing water to back-up into the Property.
- (x) The Homeowner incurred costs in having the damage repaired. The Homeowner believed the costs would be covered by insurance.
- (xi) On or around 22<sup>nd</sup> December 2022, following communication from the Homeowner, the Property Factor provided an annual insurance statement to homeowners.
- (xii) The policy excess in relation to damage caused by escape of water was £3000.
- (xiii) The cost of repairs to the Property was less than £3000.
- (xiv) The Homeowner raised a complaint with the Property Factor in January 2023, stating that paragraph 5.3 of the Code had been breached
- (xv) By email dated 30<sup>th</sup> January 2023, the Property Factor's Customer Services Director responded to the Homeowner, stating that she agreed with the complaint completely and that the Property Factor appeared to be in breach of the Code. The Property Factor offered the Homeowner a credit of a quarter management fee to her account as a goodwill gesture.
- (xvi) The Homeowner was not satisfied with the response, and the complaint was escalated to stage 2 of the Property Factor's complaints procedure.

- (xvii) By letter dated 23<sup>rd</sup> March 2023, the Property Factor's Managing Director informed the Homeowner that he did not agree that the Code had been breached. The complaint was not upheld.
- (xviii) The Property Factor has issued an annual insurance statement to homeowners as required by the Code.
- (xix) The Property Factor has not failed to comply with the Code.

## **Background**

2. By application dated 17<sup>th</sup> May 2023, the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraph 5.3 of the Code and whether the Property Factor had failed in carrying out their property factor duties. Details of the complaint were outlined in the Homeowner's application and associated documents.
3. By letter dated 21<sup>st</sup> August 2023, the Property Factor lodged written representations and productions.
4. A Case Management Discussion ("CMD") took place by telephone conference on 20<sup>th</sup> September 2023. The Homeowner was in attendance. The Property Factor was represented by Mr Paul McDermott. Mr McCubbin was also in attendance on behalf of the Property Factor. The Homeowner confirmed she was no longer insisting on a failure to carry out property factor duties. The case was continued to a hearing.

## **The Hearing**

5. A hearing took place by telephone conference on 9<sup>th</sup> January 2024. The Homeowner was in attendance. The Property Factor was represented by Mr Paul McDermott. Mr McCubbin, was also in attendance on behalf of the Property Factor.
- 6.

### **Paragraph 5.3**

*A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:*

- *the basis upon which their share of the insurance premium is calculated;*
- *the sum insured;*
- *the premium paid;*
- *the main elements of insurance cover provided by the policy and any excesses which apply;*

- *the name of the company providing insurance cover; and*
- *any other terms of the policy.*

*This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner.*

### **The Homeowner's position**

7. The Homeowner explained the background to the application. There was a leak into the Property on 14<sup>th</sup> December 2022. She called the Property Factor's out of hours service and was told she should call an emergency plumber. The person to whom she spoke was not aware of the excess on the insurance policy but said she would be covered by insurance. The Homeowner had not received an annual statement from the Property Factor since August 2021, so she was not aware of the excess. The Homeowner later contacted the Factor about the matter. She was provided with an annual statement of insurance on 22<sup>nd</sup> December 2022.
8. The Homeowner raised a formal complaint, and by email dated 30<sup>th</sup> January 2023, the Property Factor's Customer Services Director stated that she agreed with the complaint completely and that the Property Factor appeared to be in breach of the Code. The Homeowner was offered a credit of a quarter management fee to her account as a goodwill gesture.
9. By letter dated 23<sup>rd</sup> March 2023, the Property Factor's Managing Director informed the Homeowner that he did not agree that the Code had been breached. The Homeowner told the Tribunal that the Property Factor had clearly admitted the breach and should not have revoked this at a later stage.
10. The Homeowner referred to the definition of 'annual' in the Oxford dictionary, which is:
  - (i) Happening once a year;
  - (ii) Calculated over or covering a year;
  - (iii) (Of a plant) living for a year or less.

Her position was that the Code requires the statement of insurance to be sent out every 365 days, rather than at any time during the calendar year. The last statement had been sent out on 6<sup>th</sup> August 2021. The Homeowner appreciated that it was sent out early, and the following year's insurance was put in place from 1<sup>st</sup> September 2022, so the statement ought to have been issued on that date. The Homeowner said it would be reasonable if the document was sent out a few days early or late, but not four months late. The Homeowner said her definition of annual was common sense. If she was 4 months late in paying a bill, that would not be acceptable.

11. The Homeowner said the situation had caused her a lot of stress and upset and there should be some kind of penalty for the Property Factor. The offer made by the Property Factor of refund of a quarter management fee was not acceptable. This was a matter of principle, and the Property Factor had

accepted the breach. It was not acceptable now to say the Property Factor had accepted the breach in error. Asked what practical difference it would have made to the Homeowner if the insurance statement had been sent out timeously, the Homeowner said she would have had the document to refer to when the leak occurred and she would not have phoned the out of hours service. The lack of the document had caused stress and upset. The Homeowner said she accepted that the financial loss would have been the same even if she had had the insurance statement, but she would not have had the stress and the mis-information that occurred.

12. The Homeowner said she had not been aware of the £3000 excess the previous year, as she had not needed to look at the insurance statement. It made no difference that the excess had not changed the following year. The fact was that she had not been provided with the annual statement. The out of hours services had said she would be covered, but they did not have the relevant information. The out of hours service ought to have known the excess. The Homeowner did not think of referring to the previous insurance statement. The call handler said she was covered, so she called an emergency plumber.

### **The Property Factor's position**

13. Mr McDermott said the Property Factor's Customer Services Director had erred in stating that the Code had been breached, because the Homeowner had mistakenly referred to a three-month time limit for sending out the insurance statement in her complaint. However, the three-month limit was only in relation to new insurance providers, which was not the case here. The mistake was clarified in his response at stage two of the complaint procedure. As a result of this matter, four members of the Property Factor's staff have had training and achieved a qualification from the Institute of Professional Property Managers.
14. Mr McDermott said the legislature, in drafting the Code, had not seen fit to impose any deadlines other than the three months for new insurance providers. It was clear the legislature was happy to introduce a specific deadline for a particular element. They have not done this for the provision of a standard insurance renewal, and it was his position that this was informative, as it suggested the legislature did not intend there to be a specific timeframe. The current wording of the Code means the statement must be issued every year, and this accords with the definition in the Oxford dictionary.
15. Mr McDermott referred to annual reports from the Law Society of Scotland, and the Scottish Civil Justice Committee. The former's reports were issued in February, March, April and May on consecutive years. The latter's reports were issued each year within a six-month period. Mr McDermott was not able to direct the Tribunal to any particular legislative requirement for the issue of such reports, and said he had used these examples to show that annual reports of legal bodies were issued within a broad timeframe. Mr McDermott accepted that annual reports were different from an annual insurance statement. He stated that his point was that both bodies considered annual

reports could be distributed within a broad period of three to seven months. The Property Factor had issued their insurance statements in August 2021, December 2022 and September 2023. This complied with the requirements of the Code.

**16.** Asked whether he accepted it was not best practice to fail to send out the insurance statement timeously, Mr McDermott said the Property Factor attempts to exceed standards and would usually issue the statement within one month of renewal. It was his position that it would be incorrect to punish the Property Factor for a lack of specification of a timeframe within the Code.

**17.** Mr McDermott referred to the Homeowner's claim as vexatious, saying the Homeowner has said she wants the Property Factor to be punished. She alleges mismanagement and negligence and has threatened to take the matter to the press. She has been offered a detailed explanation and a goodwill gesture, but that is not enough for her. The Property Factor did not cause the leak. The Homeowner had not been truthful about what she was told by out of hours staff, and this could be seen from the transcript of the telephone call. She was told she was covered by insurance, which is correct. She had not read the policy the previous year and would not have done so until the leak happened. The Property Factor's actions have had no effect on the Homeowner. The damage would have happened anyway. The Homeowner is trying to better herself by inflating the cost of the work. No common property was affected. There is no evidence of negligence causing the damage. The claim ought to be dismissed.

**18.** Mr McDermott said the insurance excess was high because of the claims history of the building. It was his position that the out of hours staff would not know the insurance excess. They clearly told the Homeowner they did not know this.

### **Decision of the Tribunal**

**19.** The Tribunal found there was no breach of the Code by the Property Factor. The Tribunal considered that the term 'an annual insurance statement' means that the Property Factor must send out an insurance statement annually, i.e. once a year. The Code does not require that this be 365 days from the date of the last statement, or within a certain period after renewal with the same insurer. The Tribunal accepted the submission of the Property Factor that, had the legislature intended a strict deadline for the issuing of an insurance statement, it would have expressed an exact deadline, as it has where there is a new insurance provider.

### **Observations**

**20.** The Tribunal observed that there was no merit in the Property Factor's submission that the Homeowner's complaint was vexatious. The Homeowner was entitled to make an application to the Tribunal, in her belief that the Property Factor had breached the Code. The Property Factor did not observe good practice when it failed to send out an annual insurance statement at an

earlier stage. The Homeowner was entitled to know the terms of her current insurance policy, so that she could make an informed decision when and if an incident occurred. However, it was clear that the outcome of this incident would have been the same whether or not the Homeowner had the details of the insurance policy.

21. Having determined that the Property Factor has not failed to comply with the Code, the Tribunal determined not to make a Property Factor Enforcement Order.

## **Right of 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.**

Legal Member and Chairperson  
16<sup>th</sup> January 2024