

Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number: FTS/HPC/PF/23/4109

Re: Flat 2/2, 259, Renfrew Street, Glasgow, G3 6TT (“the Property”)

The Parties:

Mr. Alex Tabatabaie residing at the Property (“the Homeowner”)

Ross and Liddell 60 St Enoch Square Glasgow G1 4AW (“the Property Factor”) per their agents, Raeside Chisholm Solicitors Limited, Tontine House, 8, Gordon Street, Glasgow G1 3PL (“the Property Factor’s Agents”)

Tribunal Members

Karen Moore (Chairperson) Carol Jones (Surveyor and Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor 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 at Section 6.4.

The First-tier Tribunal did not propose to make a Property Factor Enforcement Order.

Background:

1. By application received between 22 December 2023 and 5 January 2024 (“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 Code of Conduct for Property Factors 2021 (“the Code”) at Sections 2.7 and 6.4 and had failed to comply with the Property Factor Duties. The homeowner later amended the Application to a complaint in respect of Section 6.4 of the Code, only.
2. As part of the Application, the Homeowner submitted an inventoried bundle of the following documents: i) copy notification to the Property Factor of the matter complained of in the Application; ii) Copy of the Property Factor’s Written Statement of Services and iii) Copy correspondence between the Parties.
3. The Application was accepted by the tribunal chamber and a Case Management Discussion (CMD) was held on 18 April 2024 at 10.00 by

telephone conference call. Prior to that CMD, the Property Factor's Agents submitted written representations on their behalf and the Homeowner also submitted further representations. The outcome of the CMD was that a Hearing of evidence was fixed and a Direction was issued by the Tribunal. The Parties complied with the Direction.

Hearing

4. The Hearing was fixed for 2 September 2024 at 10.00 at the Glasgow Tribunal Centre. Prior to the Hearing, the Homeowner, by email, advised the Tribunal that he could not attend. He did not request that the Hearing be postponed or adjourned. In his email, he asked that his evidence be considered and he set out claims for compensation. Accordingly, the Hearing proceeded in his absence. The Property Factor was present and represented by Ms. J. Johnston, one of their senior employees, and by Mr. Doig of their agents.

Homeowner's Position

5. The Homeowner's position is set out in the CMD Note and in the representations and productions which he lodged.
6. The Homeowner's complaint centres on one breach of the Code, Section 6.4, with regard to a lack of communication from the period June 2023 until February 2024 in respect of the progress being made with a significant roof repair. The Homeowner's view is that he obtained information and updates because he took the initiative and made direct contact with the Property Factor as evidenced by emails.
7. In his email prior to the Hearing, the Homeowner noted that *"The evidence submitted by the factors lawyer almost exclusively shows communication outwith the mentioned timeframe. And any shown communication is instigated by myself."* In that email, the Homeowner sought an apology from the factors and compensation of an insurance excess of £350, a deduction from the property management fee of £100 and a further £400 for *"the many hours I have had to waste on this"*.

Evidence heard at the Hearing.

8. The Tribunal heard from Mr. Doig with reference to the written submissions lodged and from Ms. Johnston. They submitted that there had been ongoing issues with water ingress at the building of which the Property forms part. Ms. Johnston advised that the water ingress affects only the Homeowner's Property. She explained that proposals for roofing works had been going on since 2019 and that there had been difficulties in getting the owners in the building to agree to have works carried out. Ms. Johnston explained that the scope of the works required, even if limited to essential repairs, is both extensive and expensive,

requiring temporary road closures and scaffolding. She explained that a previous large repair and further temporary repairs had been carried out with no success. Mr. Doig and Ms. Johnston explained that a previous tender had had to be abandoned as it had not taken account of the temporary road closure procedure.

9. With regard to specific timings, and, with reference to the written submissions lodged, Mr. Doig and Ms. Johnston explained that a tender process had begun in December 2021 with a proposal by the Property Factor for a survey to assess the scope of the works required. This was followed up with approval from the owners being obtained, funding ingathered and the instruction of CRGP surveyors to provide a report in March 2022. A full survey report was issued in September 2022 and CRGP was instructed to proceed to tender stage in January 2023. The tender report was published for the owners to review in June 2023. A meeting was held in March 2024, some 9 months later and the majority or owners voted for essential repairs outlined as option 1 in the CRGP report. Only 2 out of 5 owners paid their share and the Property Factor has now closed this project.
10. With reference to the written submissions lodged, Mr. Doig submitted that the Property Factor had been in contact with the Homeowner but accepted that this had not been as proactive as the Homeowner would have wished and it was accepted that some communication actions had not been carried out within reasonable times partly due to the property manager dealing with the works leaving the company during this period. The Property Factor has apologised.
11. Mr. Doig and Ms. Johnston explained that from June 2023 until February 2024, the Property Factor had attempted to revive that tender process but could not secure sufficient owner support and funding, and so, Glasgow City Council have stepped in and may progress the works. With reference to the written submissions lodged, Ms. Johnston advised that there had been a process of updates and an owners' meeting since February 2024.
12. With regard to the outcome sought by the Homeowner, Mr. Doig submitted that the insurance excess of £350 was a commitment due by the Homeowner regardless of the Property Factor's action, that the Homeowner had already received two *ex gratia* payments of £50.00 each and that there was no supporting evidence for either the reason for or the calculation of the payment of £400.00.

Findings in Fact.

13. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property is a top floor flat;
- iii) There has been water ingress from the common roof area into the Property;
- iv) Repairs have not been successful;
- v) An extensive roof repair or roof replacement is required;
- vi) The majority of the current owners of the common roof are in agreement in respect of the roof work but the required funds have not been paid in full and so the owners have not instructed the Property Factor with regard to this;
- vii) Glasgow City Council has undertaken to consider progressing the works using its statutory powers;
- viii) The Property Factor has been slow to provide the Homeowner with updates on the progress of works throughout the process;
- ix) The Homeowner required to chase the Property Factor for updates and progress reports from June 2023 to February 2024.

Decision of the Tribunal with reasons

14. Section 6.4 of the Code states: *“Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.”*

From the evidence and its Findings in Facts, the Tribunal’s view is that the Property Factor had not informed the Homeowner of the progress, or lack thereof, in respect of the roof works and that the Homeowner was the one who contacted the Property Factor. Accordingly, the Tribunal found that the Property Factor had failed to comply with strict terms of Section 6.4.

Property Factor Enforcement Order (PFEO)

15. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *“(1)The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.”*

16. The Tribunal’s view is that, although the Property Factor did not serve the

Homeowner well in their contact with him, the Property Factor's progress was hindered to some degree by a lack of engagement by all the homeowners. The Tribunal had regard to the fact that the Property Factor's communication has improved in recent months and the Glasgow City Council are now involved and may consider taking the repair forward. Had this not been the case, the Tribunal would have proposed a PFEO to deal with this, but a PFEO in this regard is not now required.

17. The Tribunal had regard to the Homeowner's claim for compensation. There is no substantive evidence to support the sum sought. The Tribunal might have considered a small amount of compensation to account for inconvenience but noted that the Property Factor had already made an ex gratia payment. Therefore, the Tribunal does not propose to make a PFEO.

18. The decision is 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

Karen Moore, Chairperson

10 September 2024