



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”)

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 residing at the Property (“the Homeowner”)
Park Property Management, having a place of business at 11 Somerset Place,
Glasgow, G3 7JT (“the Property Factor”)

Tribunal Members

Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member) (“the Tribunal”)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has not failed to comply with Section 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.

Background

1. By application dated 17 May 2023, the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with Section 5.3 of the Code and the property factor duties (“the Application”).
2. The Application was accepted by the tribunal chamber and a Case Management Discussion (“CMD”) took place by telephone conference on 20 September 2023. The outcome of the CMD was that the Homeowner removed the property factor duties complaint from the Application and, as the Application was opposed, a Hearing was fixed. The Hearing took place by telephone conference on 9 January 2024. The outcome of the Hearing

was that the tribunal determined that the Property Factor had not failed to comply with Section 5.3 of the Code.

3. The Homeowner appealed the determination of the tribunal to the Upper Tribunal. The Upper Tribunal allowed the appeal, quashed the decision of the tribunal and remitted the case to a differently constituted tribunal, being the Tribunal.

Hearing

4. A Hearing was fixed for 9 October 2024 at the Glasgow Tribunal Centre. Prior to the Hearing, the Homeowner wrote to the Tribunal advising that she would not attend as she is working abroad. The Tribunal responded by asking if the Homeowner wished a postponement or to appoint a representative to act on her behalf. The Homeowner advised that she wished the Hearing to proceed in her absence.
5. A Hearing took place on 9 October 2024 at the Glasgow Tribunal Centre. The Homeowner was not in attendance. The Property Factor was represented by Mr Paul McDermott with his colleague, Mr McCubbin, also in attendance on behalf of the Property Factor.
6. The Tribunal explained that the Hearing would proceed in the absence of the Homeowner and that the Tribunal would have regard to the Application and the background papers lodged by the Homeowner.
7. The Tribunal advised that the Homeowner's complaint is a breach of Section 5.3 of the Code which states:
"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.

8. The Tribunal had regard to the Application and the background papers. The Application sets out that the Homeowner has owned the Property for 14 years and did not have cause to claim on the common buildings policy until 14 December 2022 when there was a leak in the hall cupboard which caused considerable damage. She called the Property Factor's "out of hours" service and was told she should call an emergency plumber and that there was cover with the insurance policy. The person to whom she spoke was not aware of the excess on the insurance policy but said the Homeowner would be covered by insurance. The Homeowner instructed an emergency plumber and another plumber at a total cost of £405.60. She stated that both plumbers told her that the cause had been a frozen external common pipe which had backed up to her hall cupboard. She later contacted the insurers about a claim and was told that the policy excess was £3,000.00. The Application explains that the Homeowner then studied that Act and Code, and, raised a grievance with the Property Factor in respect of the "ridiculous policy excess of £3,000.00 on each individual flat." The Application states that Property Factor admitted full responsibility and stated that their actions were "not acceptable". The Homeowner was offered a credit of a quarter management fee to her account as a goodwill gesture which she rejected as she sought compensation for the plumber costs at least.
9. The background papers to the Application contain:
 - i) photographs of water damage to a cupboard in which a boiler is installed and a photograph of a WC with adjacent skirting loose from a wall;
 - ii) Two plumbers' invoices totalling £405.60;
 - iii) Copy correspondence dated between 28 December 2022 and 23 March 2023 between the Homeowner and the Property Factor in respect of the complaint raised by the Homeowner.
10. With regard to the copy correspondence, the Tribunal noted that, in her email dated 30th January 2023, the Property Factor's Customer Services Director upheld a complaint in respect of Section 5.3 of the Code and credited the Homeowner with a quarter management fee in redress. This concluded the Property Factor's Stage 1 process. The Homeowner was not satisfied and her complaint escalated to Stage 2 and focused on the Property Factor's failure to provide an annual insurance statement each year. The Stage 2 complaint was handled by Mr. McDermott of the Property Factor who rejected the complaint (i) on the basis that Section 5.3 of the Code does not impose a timescale for issuing the annual insurance statement other than for a change of insurer and (ii) on the basis that the Property Factor had assisted the Homeowner and had compensated her.

The Property Factor's position

11. Mr McDermott gave evidence on behalf of the Property Factor. Firstly, he explained that the Property Factor's Customer Services Director had erred in her Stage 1 letter stating that Section 5.3 of the Code had been breached. He stated that there had been a misunderstanding by that Director as the Homeowner had referred to a three-month time limit for sending out the annual insurance statement in her complaint and so the Director had presumed that there had been a change of insurance provider, when, in fact, the policy had renewed. Mr. McDermott stated that the mistake was clarified in his response at Stage 2 of the complaint procedure. He stated that the goodwill gesture of a credit of a quarter management fee remained credited to the Homeowner's factoring account.
12. Mr McDermott stated that the focus in the original Hearing had been on the meaning of "annual" and "annually" and that a "great weigh" had been placed on the mistaken admission of a breach, with the breach being referred to as "an admission of guilt".
13. With regard to the facts of this case, Mr. McDermott stated that the block of flats of which the Property forms part has always been covered by the same block insurance policy which has renewed annually on 1 September and that the annual insurance statement is issued to homeowners once the policy document is received and checked. This is routine for all properties managed by the Property Factor.
14. Mr. McDermott confirmed that the Homeowner had contacted the "out of hours" service on the evening of 14 December in respect of water ingress. With reference to the transcript of the telephone call, Mr. McDermott stated that the Homeowner had been assisted fully. The call had been a video call and the call handler had explained how to minimise water damage. The call handler had made a return call to the Homeowner to confirm the issue had been escalated to a property manager and explained the insurance process that the Homeowner should arrange for a plumber, retain receipts for the work carried out and claim this on the policy. The call handler did not know the policy excess.
15. Mr. McDermott stated that on the following day, the Property Factor issued the annual insurance statement to the Homeowner. The annual insurance statement showed the policy excess to be £3,000.00. Mr McDermott said the insurance excess was high because of the claims history of the building in respect of escape of water, there having been seven recent claims. He explained that the only company prepared to provide cover was the one the block was insured by.

16. Mr. McDermott stated that, at the CMD and the original Hearing, the Homeowner accepted that she had not read previous annual insurance statements and would not have read this one had there not been a water leak and the possibility of a claim. He confirmed that, as set out in his Stage 2 reply to the Homeowner dated 23 March 2023, that annual insurance statements were always issued and were issued in 2021 and 2022.
17. Mr. McCubbin gave evidence and explained that the Property Factor's broker began the renewal process ahead of the renewal date. In this case, the policy was renewed on 1 September 2022 and the actual policy document itself was received by the Property Factor around 40 days later. The policy document was in the process of checking around the time of the water ingress to the Property and the annual insurance statement was issued to the Homeowner on 15 December 2023, the day after she had contacted the "out of hours" service. He accepted that there had been a slight delay of policy checking, but pointed out that the policy document had been received mid-October 2022 and the annual insurance statement was issued on 15 December 2022, being two months' later, this was within the three month period allowed for new policies.
18. In summing up, Mr McDermott referred to the Upper Tribunal Decision and the references to the Overarching Standards of Practice (OSP). He stated that the Property Factor adheres to these routinely as it is the Property Factor's job to comply with the whole Code. With specific reference to OSP 6, Mr. McDermott's view is that, in this case, the "service" is obtaining the insurance policy and that issuing the annual insurance statement is ancillary to this. He stated that the Property Factor had adhered to OSP6 and had made sure that a block policy was always in place. He noted that the Upper Tribunal had stated "*The decision about whether there has been a breach of the code is for the FTS alone.*"
19. For ease of reference, the wording of OSP 6 is "*You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.*"
20. Mr. McDermott asked the Tribunal to note that training in respect of call handling and insurance had been carried out and that the Property Factor now had a portal to allow homeowners to access information more easily.
21. With regard to the Tribunal's questions in respect of the outcome sought by the Homeowner, Mr. McDermott stated that as far as he knew, the Homeowner had not made a claim on the policy and he did not know how the sum of £700.00 noted in the Application had been calculated. He was

aware that there would have been water damage which needed to be repaired.

Findings in Fact

22. The Tribunal made the following Findings in Fact:

- i) The Homeowner is the owner of the Property which is part of a block of flatted dwellinghouses;
- ii) The Property Factor registered as a Property Factor provides factoring services to the block of which the Property forms part.
- iii) The Property Factor arranges an annual common insurance policy for the block;
- iv) The Property Factor issued an annual insurance statement sometime in 2021;
- v) The annual policy was renewed on 1 September 2022;
- vi) The policy excess in relation to damage caused by escape of water was £3000.00;
- vii) On 14th December 2022, the Homeowner discovered a water leak in a cupboard in the hall of the Property;
- viii) The Homeowner contacted the Property Factor's "out of hours" service by telephone call;
- ix) The call handler took the call by video call;
- x) The call handler provided advice to the Homeowner and made a return call to provide an update on action taken;
- xi) Both calls were recorded and a transcript made;
- xii) The Homeowner was advised to call an emergency plumber and to claim the cost on the insurance policy;
- xiii) The Homeowner incurred costs of £405.60 in instructing plumbers to attend;
- xiv) On 15 December 2022, following the Homeowner's call the previous day, the Property Factor issued an annual insurance statement to the Homeowner;
- xv) The Homeowner raised a complaint with the Property Factor on 28 December 2022;
- xvi) The complaint included a notification that Section 5.3 of the Code had been breached;
- xvii) The Property Factor dealt with the complaint in accordance with Stage 1 of their complaints procedure and their Written Standards of Service;
- xviii) The Property Factor issued an email dated 30 January 2023 upholding the Stage 1 complaint in respect of Section 5.3 of the Code;
- xix) The email of 30 January 2023 stated that the Property Factor appeared to be in breach of the Code and that this was not acceptable;
- xx) The Property Factor credited the Homeowner's factoring account with a quarter management fee as a goodwill gesture;

- xxi) The Homeowner was not satisfied with the response, and the complaint was escalated to Stage 2 of the Property Factor's complaints procedure;
- xxii) The basis of the Homeowner's Stage 2 complaint was that the Property Factor did not issue an annual insurance statement within three months' of the policy being renewed;
- xxiii) During the complaint handling process, the Property Factor took the view that the admission of breach of Section 5.3 as stated in the Stage 1 response email of 30 January 2023 was in error;
- xxiv) The error in the 30 January 2023 Stage 1 response email was based on the writer's mistaken belief that the common block policy was a new policy and not a renewed policy and
- xxv) By letter dated 23rd March 2023, the Property Factor's Managing Director informed the Homeowner that he did not agree that Section 5.3 of the Code had been breached and that her complaint was not upheld.

Issues for the Tribunal

23. The issue for the Tribunal is whether or not, on the facts before it, the Property Factor complied with Section 5.3 of the Code.
24. The Tribunal is mindful that it must construe the legislation purposively in such a way as to give effect to the objectives and policies that underlie the legislative intent. (Shields and Another v Housing and Property Chamber [2019] UT 2 at paragraph 2 and Great Stuart Trustees v McDonald 2015 SC 379 at 386 paragraph 20). In *Shields and Another v Housing and Property Chamber*, Sheriff Deutsch points out that, as the Act was promoted as a private member's Bill, there is a lack of Scottish Government policy memoranda. However, it is clear from the progression of the Act that its key purpose is to regulate the property management business in Scotland.
25. The preamble of the Act states this is "*An Act of the Scottish Parliament to establish a register of property factors and require property factors to be registered; to make provision in relation to the resolution of disputes between homeowners and property factors; and for connected purposes.*" The provisions of the Act at Section 17 sets out how dispute resolution is to be achieved by application to the First-tier Tribunal. Section 14 of the Act provides for a statutory code of conduct to set out the operating standards with which the property factors must comply and against which disputes between homeowners and property factors will be determined.
26. In terms of Section 14 of the Act, the Scottish Parliament, by Order, made a Code of Conduct which became effective in 2012 and, again by Order,

made a replacement Code of Conduct which became effective in 2021, the latter being the Code at the heart of this case. Both Codes of Conduct set out minimum standards of practice for registered property factors.

27. The Code provides that the purpose of these standards is “*encouraging transparency in the way that they conduct their business in connection with the management of common property or the maintenance of land as detailed in the homeowner’s title deeds.*” The Code sets out twelve OSPs to underpin the way in which property factors must act in order to comply with the Code. The Code sets out specific actions which property factors must take and behaviours which they must adopt.

28. In this case, the complaint is in relation to Section 5.3 of the Code, the wording of which, for ease of reference is repeated here:

“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.”

29. The Tribunal took the view that the purpose of this Section of the Code, in light of the overarching standards of the Code, is (i) to ensure that property factors use their skill and care to ensure that suitable block policies are in place and are reviewed annually and (ii) to ensure that homeowners are aware and are reassured that their properties are covered by adequate buildings insurance policies and are aware of the terms of the policies.

Decision of the Tribunal and reasons for the Decision.

30. The complaint before the Tribunal is that the Property Factor had not complied with Section 5.3 of the Code within a fixed or acceptable timescale.

31. The Tribunal had regard to the wording of Section 5.3 of the Code and the reference to the word “*annual*” in the context of the phrase “*(or within 3 months following a change in insurance provider)*”. The Tribunal took the view that the meaning is that property factors have a duty to provide a

statement of the annual insurance policy (the word “annual” qualifying the words “insurance policy”) and, if the policy provision changes at any time throughout the policy term, another statement should be issued within three months’ of that change of policy provision. The Tribunal took the view that there is no set timescale to issue the annual insurance statement: the obligation is to issue it. The Tribunal’s reasons for this view is that the word “annual” relates to the policy term and not to the obligation and is an insurance industry standard term for the summary of the policy document. The Tribunal took the view that the Scottish Ministers did not intend a strict timescale for the statement to be issued as the property factor has no control over when they might receive the policy document and the summary of cover from the insurance provider and so it would be perverse to impose a timescale outwith the property factor’s control, the difference between an annual renewal and a new policy being that the annual renewal policy rolls on substantially on the same terms and so the Homeowner will most likely have the relevant information, whereas a new policy might be on substantially different terms and conditions.

32. In this case, the Parties agreed the key facts of the matter and so there was no dispute that the common buildings insurance policy was renewed with effect from 1 September 2022 and that the annual insurance statement was issued on 15 December 2022. The Tribunal accepted that the policy document was received by the Property Factor mid-October 2022. Even if a three month time limit applied by virtue of Section 5.3 of the Code, the issue of the statement was within this period.
33. No evidence was led or argument made that each annual statement must be issued within a calendar year of the preceding issue. No evidence was before the Tribunal to show when the annual insurance statement was issued in 2021 and so no evidence was available to show if the issue of the annual statement on 15 December 2022 was outwith a calendar year of the previous issue. In any event, as set out in the foregoing paragraphs, the Tribunal considers this as an irrelevance.
34. The Tribunal considered that the Homeowner is mistaken in a further aspect of her complaint in the Application. The policy excess of £3,000.00 does not apply to each individual flat but to each claim. However, as Section 5.3 does not impose an obligation in respect of the policy terms and conditions, this complaint is not relevant.
35. In reaching its decision the Tribunal agreed with the Property Factor that OSP 6 relates to arranging the policy and not necessarily to issuing the annual insurance statement. The Tribunal accepted that the policy was renewed on the due date and the renewal was “timely” in terms of OSP 6. In

any event, if OSP 6 applies also to the issue of the annual insurance statement, the Tribunal considered the time period between the receipt of the policy document mid- October 2022 and the issue of the annual insurance statement around two months later to be “timely”, given the care and skill required to review the policy document.

36. Accordingly, the Tribunal had no hesitation in finding in that the Property Factor has not failed to comply with Section 5.3 of the 2021 Property Factor Code of Conduct as required by section 14(5) of the Property Factors (Scotland) Act 2011.

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.

Signed

Karen Moore, Chairperson

9 October 2024

Legal Member

Date