

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/24/0802 and FTS/HPC/PF/23/4336.

Flat 3/2, 4 Sussex Street, Glasgow, G41 1DU ('the Property')

The Parties:

Crawford Hill ('the Homeowner')

Speirs Gumley, Red Tree Magenta, 270 Glasgow Road, Rutherglen, G73 1UZ ('the Factor')

Tribunal members:

Jacqui Taylor (Legal Member) and Helen Barclay (Ordinary Member).

Background

1. By C1 application dated 5th December 2024 and C2 application dated 16th February 2024 the Homeowner applied to the Tribunal for a determination that the Factor had failed to comply with the following sections of the 2012 and 2021 Codes of Conduct.

C1 Application: breach of section 7.2 of the 2012 Code of Conduct.

C2 Application: breach of OSP 2, OSP4 and OSP 12 of the 2021 Code of Conduct.

The Homeowner's complaints relate to installation of a ring video doorbell by the proprietor of flat 3/1, 4 Sussex Street, Glasgow, G41 1DU.

2. The Homeowner provided the Tribunal with a copy of the letter of notification relating to the C1 complaint dated 17th January 2024 and the letter of notification relating to the C2 complaint dated 7th March 2024.

3. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 3rd April 2024, he intimated that he had decided to refer the applications (which application paperwork comprises documents received between 6th December 2023 and 25th March 2024) to a Tribunal.

4. Written Representations from the Factor dated 8th May 2024:

'We received notification of the decision to refer a complaint by Mr Crawford Hill to a Tribunal for determination. Considering the subject of the complaint is a Ring Doorbell installation by another homeowners on their own private door, we fail to understand why the President has decided to refer this matter to a hearing. We request that this decision be reviewed. Our Written Statement makes clear that we manage the common parts. Property Factors generally do not have powers to grant consent in properties they manage; equally they have no powers of enforcement against groups, or individual Owners, who may be in breach of Title. The submission by the client contains various inaccuracies, we have repeatedly advised the client we did not provide permission for the Ring doorbell to be installed. I would also point out to the President that the owner who installed the security device did so on advice from the Police following incidents at the property. The applicant is fully aware that the Property Manager has no authority on such matters and cannot remove the device, we consider the application to be entirely vexatious. I would ask that the President carries out a further review and dismisses the application on the basis that:

- The subject matter does not fall within the remit of the Property Managers duties.*
- The owner who installed the device did so following Police advice.*
- We did not give permission for the Ring doorbell to be installed.*
- We do not control behaviours of individuals - this is a civil enforcement matter for the co-owners of the development collectively or individually.*
- The resolution the applicant is seeking is not achievable.'*

5. The detail of the Homeowner's applications:

'On 1st February 2021 I noticed that a Ring video doorbell had been installed on the back of my neighbour's door at flat 3/1. Due to COVID restrictions I called Gillian McPeake who was property inspector for our development at that time. She told me that she was aware of the installation as my neighbour had called her about it a few days before and she had told her that the Ring video doorbell could be mounted on the back of door 3/1 but not on the walls. Gillian also said that as this technology was now available then why not use it? Unfortunately, Gillian has not considered the privacy implications for neighbouring residents who must also use the common area to enter and exit their property. See attached pictures which show the CCTV device mounted externally on door 3/1 where it monitors and records the common areas which are not part of a resident's property. The device is also sited 1 - 1.5 metres in front of my doorway where it detects motion and records audio and video on a 24/7 basis. This device is a nuisance which is causing intolerable interference with the use and enjoyment of my property. Had the owner or Gillian reviewed the Ring installation guide (see link [Ring Installation Guide – Ring Help](#)) they would have been aware that Ring devices are designed to monitor activity WITHIN an owner's property and not for mounting externally. The Ring installation guide says "ensure your Ring device is picking up motion and activity only on your property." Additionally, the device must meet local privacy laws and the user must obtain written permission from all other owners within the block before installation. This is what Gillian should have advised the owner of flat 3/1 in the first instance. In a later teleconference call with Speirs Gumley's managing director, Iain Friel and Gillian McPeake, Iain correctly stated that no one is allowed to install CCTV devices to record and monitor the common areas because the common areas are outside the owner's property boundary. His advice follows the information given in the Ring

installation guide. 2) The letter sent to flat 3/1 does not mention that the common areas are external to a resident's property and does not mention that other neighbours, residents have a right to privacy within the common areas. I can also confirm that the owner of flat 3/1 has never sought or obtained my permission to install the device since receiving this letter. Section 11.5 of Gillian's letter states "Determine the existence of a nuisance or disturbance affecting all or any of the proprietors in the Development and to take, or instruct the Property Manager or any other appropriate person or body to take, any action deemed necessary by the proprietors to terminate or remove such nuisance or disturbance." Speirs Gumley have been made aware of this situation but have not taken this action? The letter to the owner of flat 3/1 lists two paragraphs which I assumed had been extracted from our Deeds of Conditions. I found Section 5, Alterations written in my copy of the Deeds of Conditions however Section 11 is not there. Having contacted Gillian recently her reply says "Having reviewed the Deeds, this extract appears to have been inserted in error," see attached email. Both the above points show a poor handling of the matter between Speirs Gumley and the owner of flat 3/1 which I am forced to put up with. Additionally, Speirs Gumley have attempted to ignore the problem saying it's a Civil matter and point me to other agencies, Police, lawyers etc which is most unhelpful. Surely if Speirs Gumley can allow the owner of flat 3/1 to have the Ring video doorbell installed on the back of door 3/1, then they can contact the owner and get it taken down after realising the privacy implications to neighbouring residents.'

6. Documents lodged by the Homeowner:

6.1 The Factor's Written Statement of Services.

6.2 Deed of Conditions by Miller Homes Limited dated 13th July 2004.

6.3 Photographs of the door of flat 3/1 showing a video door bell and a notice that reads 'This property is protected by 24 hour CCTV surveillance.'

7. Case Management Discussion.

A Case Management Discussion by conference call took place in respect of the applications at 2pm on 24th July 2024.

The Homeowner attended.

The Factor did not attend and was not represented.

The Factor had sent an email to the Tribunal administration dated 13th June 2024 advising that they would not attend the CMD. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

7.1 Preliminary matters.

7.1.1 The Homeowner provided the following factual information:

7.1.1.1 The Homeowner purchased the Property from the original developer in December 2007.

7.1.1.2 The Property is a top floor flat.

7.1.1.3 There are a total of 44 blocks in the development and a total of 12 flats in the block forming 4 Sussex Street, Glasgow.

7.1.1.4 There are three flats on the top floor of 4 Sussex Street, Glasgow: flats 3/1, 3/2 and 3/3.

7.1.1.5 The Factor was appointed as factor of the development by the original developer.

7.1.1.6 The owner of flat 3/1 4 Sussex Street, Glasgow installed a video doorbell on the external side of her front door in February 2021.

7.1.1.7 After the door bell had been installed the Homeowner called the Factor and spoke to Gillian McPeake who advised him that she had spoken to the owner of flat 3/1 and suggested that she install the doorbell on the back of the front door of her flat and not on the walls.

7.1.2 The Tribunal advised the Homeowner that it is a requirement of section 17(3) of the Property Factors (Scotland) Act 2011 that applications must have been notified to the Factor. The Homeowner acknowledged that the C1 letter of notification only referred to section 2.1 of the Code of Conduct and the application referred to section 7.2 of the Code of Conduct. Also, he had not provided the Tribunal with evidence that he had delivered the C2 letter of notification dated 7th March 2024 to the Factor. He agreed to amend the C1 application and provide the Tribunal with updated letters of notification and evidence of their delivery, as necessary.

7.1.3 In relation to the Factor's written representations the Homeowner advised the Tribunal as follows:

7.1.3.1 The Factor created the problem regarding the video door bell that had been installed by the owner of flat 3/1 by telling her she should install it on the back of her front door.

7.1.3.2 He accepted that it was likely that the owner of flat 3/1 had installed the door bell following police advice.

7.1.3.3 In connection with the statement that the Factor did not give the owner of flat 3/1 permission to install the doorbell he advised that the Factor had told her to install the door bell on the back of the door.

7.1.3.4 The Factor created the problem by allowing the owner of flat 3/1 to install the door bell on the back of the front door of her property.

7.2 Outcome of the Case Management Discussion

The case management discussion was adjourned to an in person hearing at the Glasgow Tribunal Centre at 2pm on 30th October 2024.

8. Additional Written representations.

The Factor sent the Tribunal written representations dated 6th September 2024 which referred to their letter dated 8th May 2024.

The Homeowner sent the Tribunal written representations dated 10th September 2024 explaining that he disagreed with the position of the Factor as detailed in their letter dated 8th May 2024.

9. Amended Application.

The Homeowner sent the Tribunal an amended C1 application by email on 18th October 2024. The application sought a determination that the Factor had failed to comply with the section 2.1 of the 2012 Code of Conduct.

10. Notification

The Homeowner sent the Tribunal a copy of the email he had sent to the Factor dated 18th October 2024 sending the Factor copies of his letters of notification detailing his C1 and C2 complaints.

11. Hearing

An inperson hearing at the Glasgow Tribunal Centre, York Street, Glasgow in respect of the applications at 2pm on 30th October 2024.

The Homeowner attended.

Brian McManus, Executive Director of Speirs Gumley attended and represented the Factor.

Gillian McPeake, Associate Director of Speirs Gumley attended as a witness.

11.1 Evidence of Gillian McPeake.

At the start of the hearing Gillian McPeake gave evidence. She advised as follows:

11.1.1 She was Associate Director of Speirs Gumley.

11.1.2 In 2021 she had been the main point of contact at Speirs Gumley in relation to matters concerning 4 Sussex Street, Glasgow.

11.1.3 In 2021 she had been contacted by the owner of flat 3/1 regarding the installation of a video door bell. The owner of flat 3/1 had been consulting Police Scotland as she had security concerns about her property.

11.1.4 She advised the owner of flat 3/1 that she could not install a video door bell on a common area of the property.

11.1.5 She did not say to the owner of flat 3/1 that she could or should fit it to another part of her property.

11.1.6 She remembered these conversations as they took place over several weeks and she has not had many enquiries about installing video doorbells.

11.1.7 She had consulted the video door bell guide.

11.1.8 When speaking to the owner of flat 3/1 she had always retained her stance that they were managing agents and they would not get involved in a neighbour dispute.

11.1.9 She had sent a letter dated 11th March 2021 to the owner of flat 3/1 which stated that the owner of flat 3/1 should get the agreement of the other owners before fitting a video door bell. Copies had been sent to the other owners for information. That letter had contained an error as it wrongly referred to section 11.5 of the title deeds and that section did not exist.

The Homeowner and Mr McManus were given the opportunity to ask Gillian McPeake questions. The Homeowner did not ask Gillian McPeake any questions but insisted that Gillian McPeake had said to the owner of flat 3/1 that she could install the video door bell on the back of her door.

11.2 The detail of the parties' representations is as follows:

C1: Section 2.1 of the 2012 Code of Conduct: 'You must not provide information which is misleading or false'.

The Homeowner's representations:

The Homeowner explained that he believes that the Factor wrongly managed matters when they were approached by the owner of flat 3/1 regarding her proposed installation of a video doorbell. He had spoken to Gillian McPeake on 1st February 2021 and she had said to him that she had told the owner of flat 3/1 to install the door bell on the back of the door of her property and not on the common walls. This was false as the Factor should have said to the owner of flat 3/1 that the video doorbell should not be installed until she had obtained the consent of all of the other owners to the installation.

The Homeowner also explained that the Factor had made an incorrect statement in their letter dated 11th March 2021 where they had referred to paragraph 11.5 of the title deeds. The letter included what seemed to be a quotation from the titles in relation to a majority of votes at a resident's meeting having authority to determine

the existence of a nuisance or disturbance. He explained that there is no such provision in the titles of the Property.

The Factor's representations:

Mr McManus explained that the Factor does not usually get involved in neighbour disputes of this kind. However, on this occasion they decided to write to the owner of flat 3/1. The owner had spoken to the police about her proposed installation of a video door bell. They did not give her permission to install the door bell. Mr McManus pointed out that the letter the Homeowner refers to dated 11th March 2021 had been sent to the owner of flat 3/1. The other owners had been provided with a copy for information. He accepted that the letter had erroneously referred to paragraph 11.5 of the title deeds.

The Tribunal's decision:

The thrust of the Homeowner's complaint is that Gillian McPeake told the owner of flat 3/1 that the video doorbell could be mounted on the back of door 3/1 but not on the walls.

However, Gillian McPeake in her evidence states that she did not say this.

The Tribunal accepted the evidence of Gillian McPeake. She was a credible witness. Mrs Taylor had asked her how she was able to remember the detail of the conversation with the owner of flat 3/1 from 2021. She had replied explaining that she specifically remembered the conversation as she had not had many enquiries regarding the possible installation of video door bells and she had received a number of complaints about this matter. The Tribunal found this to be a credible explanation. The Tribunal accepted her evidence that she had advised the owner of flat 3/1 that she could not install a video door bell on a common area of the property and that she did not say to the owner of flat 3/1 that she could or should fit it to another part of her property.

The Tribunal acknowledged that the evidence of the Homeowner was that Gillian McPeake had said to him that she had advised the owner of flat 3/1 that she could install the video door bell on the back of the door and not the walls. The Tribunal were unable to prefer this evidence as the Homeowner had produced no evidence to support his version of events.

The Tribunal determined that the Factor had not provided information that was misleading or false in relation to their handling of the video door bell that had been installed by the owner of flat 3/1 and the Factor had not breached section 2.1 of the 2012 Code of Conduct in relation to this part of his complaint.

In connection with the incorrect quotation from the title deeds contained in the letter by Gillian McPeake dated 11th March 2021, the Tribunal determine that the letter contained an inaccurate reference from the title deeds as the paragraph 11.5 quoted in the letter does not exist within the Deed of Conditions by Miller Homes Limited in

respect of Mariners Wynd, Glasgow (which includes the Property) dated 2nd November 2007. The Tribunal determine that the Factor had breached section 2.1 of the 2012 Code of Conduct in relation to this part of his complaint.

OSP 2 of the 2021 Code of Conduct:

“You must be honest, open, transparent and fair in your dealings with homeowners.”.

The Homeowner’s representations:

The Homeowner explained that his complaint under OSP 2 is largely the same as his complaint under section 2.1 of the 2012 Code of Conduct. The Factor should have sent a letter to the owner of flat 3/1 asking her to remove the video door bell.

The Factor’s representations:

Mr McManus referred the Tribunal to his written submissions and earlier statement.

The Tribunal’s decision:

The Tribunal find that The installation of a video door bell by the owner of flat 3/1 on the door of her property, which was not a common part of the development at 4 Sussex Street, Glasgow was a dispute between homeowners and a civil dispute.

The Tribunal acknowledge that the Factor’s written statement of services includes a section headed ‘Services not included’ which includes ‘mediating disputes between homeowners’ and ‘dealing with social nuisance or civil disputes’.

The Tribunal determine that the Factor had exceeded the level of service detailed in their written statement of services by sending the letter dated 11th March 2021 to the owner of flat 3/1. They had issued the letter regarding a dispute between neighbours even though their written statement of services says that they do not do this. In the letter the Factor had asked the owner of flat 3/1 to obtain the consent to the owners to allow the door bell to remain in situ and explained that if it was not removed they considered that she did not have the required consent to keep the door bell.

The Tribunal find that the Factor was not obliged to do anymore in relation to the installation of the door bell by the owner of flat 3/1 given the exclusions detailed in the Factor’s written statement of services regarding not mediating between neighbours or dealing with social nuisance or civil disputes. The Tribunal determine that the Factor has not breached OSP2 by not writing to the owner of flat 3/1 and requiring that she remove the video doorbell.

OSP 4 of the 2021 Code of Conduct:

“You must not provide information that is deliberately or negligently misleading or false”.

The Homeowner’s representations:

The Homeowner explained that his complaint under OSP 4 is also largely the same as his complaint under section 2.1 of the 2012 Code of Conduct. As before, the

Factor should have sent a letter to the owner of flat 3/1 asking her to remove the video door bell.

The Factor's representations:

Mr McManus referred the Tribunal to his written submissions and earlier statement.

The Tribunal's decision:

The Tribunal refer to their decision under OSP 2. They accept that the letter from the Factor to the owner of flat 3/1 contained an erroneous reference to the title deeds but they did not find this error to be deliberate or negligently misleading or false. They also find that the fact that the letter to the owner of flat 3/1 did not insist that she remove the video doorbell was not deliberately or negligently misleading or false. The video door bell had been installed on the private property of flat 3/1. It had not been installed on a common part of 4 Sussex Street, Glasgow. The Factor had no jurisdiction to require the owner of flat 3/1 to remove the video door bell from her own property. The Tribunal determine that the Factor did not provide information that was deliberately or negligently misleading or false and has not breached OSP4 in relation to this complaint.

OSP 12 of the 2021 Code of Conduct:

"You must not communicate with homeowners in any way that is abusive, intimidating or threatening".

The Homeowner's representations:

The Homeowner withdrew this complaint.

12. Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with section 2.1 of the 2012 Code of Conduct.

The Tribunal then considered whether to issue a Property Factor Enforcement Order.

The Tribunal were mindful that the letter from the Factor to the owner of flat 3/1 dated 11th March 2021 had not been addressed to the Homeowner and had been issued to the owner of flat 3/1 but the Factor had sent copies to the other owners (including the Homeowner) for information. The Tribunal also noted that Gillian McPeake had sent an email to the Homeowner dated 16th November 2023 acknowledging her error. The Tribunal determined that the Factor had corrected the error that had been made in the letter of 11th March 2021 and the Tribunal determined that it was not appropriate to make a Property Factor Enforcement Order in relation to this matter.

13. Appeals

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.

Jacqui Taylor

SignedDate 1st November 2024

Chairperson