



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)**

**Reference number:**

FTS/HPC/PF/23/3590

FTS/HPC/PF/24/1449

Re: 1/38 Chapel Lane, Edinburgh, EH6 6ST (“the Property”)

**The Parties:**

Mr. Myko Clelland, 1/38 Chapel Lane, Edinburgh, EH6 6ST

(“the Homeowner”)

and

James Gibb Property Management Ltd, 4 Atholl Place, Edinburgh, EH3 8HT

(“the Property Factor”)

**Tribunal Members**

Nicola Irvine (Chairperson) and Andrew McFarlane (Ordinary (Surveyor) Member)

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with sections 2.7, 6.4, 7.1 and 7.2 of the Property Factor Code of Conduct 2021 (“the 2021 Code”) and sections 2.5, 6.1, 7.1 and 7.2 of the Property Factor Code of Conduct 2012 (“2012 Code”). The Tribunal made a Proposed Property Factor Enforcement Order, which should be read with this decision.**

## **Background**

1. The Tribunal received written representations from the Property Factor on 24 July 2024.
2. A case management discussion ('CMD') took place on 9 August 2024. The Tribunal noted that the sections of the 2012 code at issue were 2.5, 6.1, 7.1, and 7.2. The Tribunal noted the concessions made by the Property Factor in relation to sections 2.7, 7.1 and 7.2 of the 2021 code. Therefore, the only section of the 2021 code at issue was 6.4.
3. The Homeowner lodged additional written representations on 4 November 2024.
4. On 7 November 2024, the Tribunal received an email from the Property Factor advising that it would not be represented the Hearing.
5. The Tribunal had the following documents before it:
  - Application form C1 from the Homeowner dated 10 October 2023
  - Application form C2 from the Homeowner dated 1 November 2023
  - Property Factor Code of Conduct Letter (relating to the 2012 code) dated 23 November 2023
  - Property Factor Code of Conduct Letter (relating to the 2021 code) dated 23 November 2023
  - Property Factor Duties Letter dated 23 November 2023
  - Copy correspondence between the parties
  - Property Factor's submission of 24 July 2024
  - Homeowner's submission of 4 November 2024.
6. Both parties had received the documents each had lodged. From the terms of the documents lodged by both parties and the matters that were noted at the CMD, it was clear that there was no factual dispute between the parties. The Property Factor had already conceded that it had breached sections 2.7, 7.1 and 7.2 of the 2021 Code.

## **The Hearing – 12 November 2024**

7. This was a hearing in connection with 2 applications in terms of rule 43 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ("the rules") and section 17 of the Property Factors (Scotland) Act 2011, ("the Act"). The Homeowner participated in the Hearing which took place by conference call. The Property Factor was not represented and the Hearing proceeded in its absence.

### **The Homeowners' position**

8. In relation to both Codes, the Homeowner's position was succinctly set out in the written submissions lodged on 4 November 2024. The only paragraph in dispute regarding the 2021 Code was section 6.4. In that regard, the Homeowner referred to 2 incidents. The first related to work required to the garage to have lines delineating parking spaces and the related number repainted and graffiti removed. The second incident related to work required to the roof. The work has still not been carried out at the garage. In relation to the roof repairs, the Property Factor sent a letter to the Homeowner and other proprietors on 27 June 2024 advising that proprietors had been unable to join the meeting, and that a rescheduled meeting would be arranged "soon". No further correspondence or communication has been received from the Property Manager to arrange a meeting to discuss the roof repairs.

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

9. In the Property Factor's response of 24 July 2024, there was an acknowledgement that they had received the Property Factor Code of Conduct Letter relating to both Codes dated 23 November 2023. However, the Property Factor proceeded on the basis that it had not received a complaint under the 2012 Code. The Property Factor did not comment on the breaches of the 2012 Code as set out in the Property Factor Code of Conduct Letter (relating to the 2012 Code).
10. In relation to the 2021 Code, the Property Factor conceded a breach of paragraphs 2.7, 7.1 and 7.2.

### **Findings in fact**

11. The Homeowner is the proprietor of 1/38 Chapel Lane, Edinburgh, EH6 6ST.
12. The Property Factor is the properly appointed Factor in respect of the Property.
13. The Property Factor failed to respond to enquiries and complaints from the Homeowner within the timescales set out in its written statement of services.
14. Despite the Homeowner's numerous emails from October 2022 to June 2024, the Property Factor has failed to arrange work to be undertaken in the garage despite advising that would be arranged and followed up.

15. Notwithstanding the Property Factor's letter of 27 June 2024, no further meeting has been arranged to discuss roof repairs required.
16. The Property Factor failed to apply its own complaints handling procedure consistently.
17. Having failed to apply its own complaints handling procedure, the Property Factor failed to issue a final decision in writing.

### **Tribunal's observations in relation to the sections of the Codes at issue**

#### Section 6.4 of the 2021 Code

18. The issue relating to the garage parking space lines/numbers being repainted and graffiti removed was first reported to the Property Factor by email on 17 October 2022. No response was received, and the Homeowner sent a further email on 16 December 2022. The Property Factor responded on the 19 December 2022 advising that it would arrange for the graffiti to be cleaned by the end of the week and quotes obtained in relation to painting. The Homeowner sent a further email on 21 December 2022 which attracted no response. Further email correspondence passed between the parties between January and June 2024. The Property Factor sent an email dated 18 June 2024 advising that the work had been instructed and that it would check it had been done. The evidence from the Homeowner is that, to date, the work has still not been carried out. In relation to the problems with the roof, the Homeowner has produced emails which demonstrate that he first reported a problem with leaks from the roof on 31 January 2021. The Property Factor acknowledged that first email on 2 February 2021, but from the material produced, it appears that no action was taken in relation to the leaks from the roof until more than a year later. The Property Factor's response to the present application states that the Homeowner reported a leak on 28 February 2022. That response appears to ignore the previous communication. The Homeowner continued his email correspondence about the roof leak throughout 2022, 2023 and this year, reporting that the leaks from the roof have affected his property. The Property Factor arranged a meeting of homeowners which was to take place by remote means. There was a technical difficulty which resulted in homeowners being unable to join the meeting. The Property Factor told homeowners in June 2024 that the meeting would be rearranged. However, that has not happened. The Property Factor has breached section 6.4 of the 2021 Code by failing to keep homeowners informed of progress and by failing to provide information on next steps.

#### Section 2.5 of the 2012 Code

19. As referred to in the preceding paragraph, the Property Factor appears to have taken no action in response to the Homeowner's reports relating to the roof until more than a year after the first report. The Tribunal has had sight of the emails from January 2021 to June 2024 in relation to the issues with the roof. Despite the numerous contacts from the Homeowner, the Property Factor did not deal with the enquiry about the leaks in the roof as fully and quickly as possible. This was a breach of the section 2.5 of the 2012 Code.

#### Section 6.1 of the 2012 Code

20. In relation to the roof repair which was first reported in January 2021, as set out in the preceding paragraphs, the Property Factor failed to inform the Homeowner of the progress of the work and estimate timescale for completion. This was a breach of section 6.1 of the 2012 Code.

#### Sections 7.1& 7.2 of the 2012 Code

21. Although the Property Factor has a clear written complaints procedure, they failed to follow that procedure. They also failed to issue a final decision in writing. This represents a breach of sections 7.1 and 7.2 of the 2012 Code.

### **Reasons**

22. Some of the breaches identified by the Homeowner occurred before August 2021 and some after that date. The Homeowner therefore presented two applications, one relating to each of the Codes. The Tribunal was satisfied, on the basis of the information presented by both parties, that some sections of both Codes had been breached. The Homeowner had set out matters clearly in the applications and accompanying documents and there was no factual dispute between the parties. The information provided confirmed breaches of the sections of the codes listed in paragraphs 18, 19, 20 and 21 above. The Property Factor conceded that a breach had occurred in relation to some sections of the 2021 Code.

23. Turning to the proposed order, the Tribunal took into account the inconvenience the Homeowner has had in pursuing matters. He has sent numerous emails over a 3 year period and received a response from the Property Factor to some of those emails. Some of the failings of the Property Factor continue to this day. The Homeowner wants the Property Factor to be proactive in managing the repair problems at the property. The Homeowner's useful enjoyment of his property has been diminished because of repairs required to the roof. Whilst the Tribunal recognises that the Property Factor cannot proceed to instruct a

roof repair or replacement without the required authority from proprietors, it can be proactive in managing the repairs issue by keeping proprietors informed and advising them of next steps and timescales. There is also a continuing failure in relation to the repairs to the garage which the Property Factor advised would be carried out. The Homeowner is hopeful that by concluding this procedure, the Property Factor might recognise the failings and rectify those failings by instructing the appropriate work. In light of all the foregoing it is proposed that the Property Factor is ordered to instruct the works to the garage they previously confirmed they would undertake and keep the Homeowner regularly updated on progress or clearly explain why they are not in a position to proceed as they previously confirmed, all with 28 days of the issue of the Order. Section 20 1(b) gives a tribunal power to order a property factor to make such payment to the homeowner as the tribunal considers reasonable. This is generally seen, in cases such as this, as “compensation” for inconvenience, time and effort expended in cases where a property factor has been found to have breached the code. Fixing a suitable sum involves consideration of mitigating and aggravating factors and recognising that this can never be an exact science. Tribunals have wide discretion in this area.

24. In this case there was no evidence presented by the Property Factor of mitigating factors despite there being an opportunity to present this at a hearing, which was not taken. In respect of aggravating factors there is the time which has elapsed since this matter was first raised with the Property Factor, 3 years, the indication that action was being taken which did not then happen on more than one occasion and continuing after it was accepted that complaints had not been addressed appropriately.

25. The Tribunal has decided that a global sum of £1000 to reflect the time and effort spent by the Homeowner and the inconvenience to him over the last 3 years was fair, proportionate and just in all of the circumstances.

### **Property Factor Enforcement Order (PFEO)**

26. Section 19 of the Act states: -

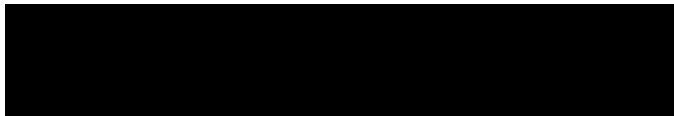
(2) In any case where the First-tier Tribunal proposes to make a Property Factor enforcement order, it must before doing so (a) give notice of the proposal to the Property Factor, and (b) allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor

has failed to carry out the Property Factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a Property Factor enforcement order.

27. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence.

**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.**



Chairperson of the Tribunal

Dated: 14 November 2024