

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Statement of Reasons on homeowner's application:
Property Factors (Scotland) Act 2011, Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/23/3425

Property Address: 10 McVicars Lane, Dundee, DD1 4LH
("the property")

The Parties Mr Logan Reidy, 10
McVicars Lane, Dundee,
DD1 4LH ("the
homeowner")

James Gibb Residential
Factors, Bellahouston
Business Centre, 423 Paisley
Road West, Glasgow, G51
1PZ ("the property factor")

Tribunal Members:

Mr Mark Thorley (Legal Member)
Mr Donald Wooley (Ordinary Member)

Decision:

1. The First Tier Tribunal for Scotland Housing and Property Chamber determined that the property factors have failed to comply with the Sections 2, 6 and 7 of the Property Factors Code of Conduct effective from 16 August 2021. The Tribunal proposes making a Property Factor Enforcement Order.

Background:

2. The applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) by application received on 28 September 2023. The application was accepted for determination on 18 December 2023. The Case Management Hearing took place initially on 5 March 2024. A subsequent case management discussion was held on 12 September 2024
3. At the Case Management Discussion the home owner attended
4. The application submitted by the homeowner on form C2 related to Section 2 of the 2021 Code of Conduct, namely “communications and consultation” and Section 6, the “carrying out of repairs and maintenance”. Accompanying correspondence also related to Section 7 “Complaints resolution”.
5. The homeowner’s complaint was that the property had been flooded from above. This happened in October 2022. There was then a three month period during which there appeared to be nothing taken forward. This had an effect on the mental health of the homeowner who, in addition to that, sustained a significant loss of rental income from the tenants that he had in the property as they were unable to enjoy full occupation. He wished compensation and an apology
6. Specifically, the homeowner made reference to 2.7 and 6.1 and 7 in the Code.

Findings in fact

7. The Tribunal made the following findings in fact:
 - a) The property factors are James Gibb Residential Factors.
 - b) The homeowner is Logan Reidy.
 - c) The property address is 10 McVicars Lane, Dundee, DD1 4LH.
 - d) There is a Written Statement of Services issued number 15 dated March 2023.
 - e) The property was flooded from above in October 2022. The homeowner notified the property factor.
 - f) There was an issue surrounding the insurer in terms of instruction of the work to be undertaken but this was not the responsibility of the homeowner.
 - g) The works to the property were delayed. The extent of the works to the property were significantly greater as a result of the delay to the property

- h) The property was tenanted when the flood took place.
- i) The tenants did not have the benefit of full beneficial occupation for many months.
- j) Details of the water ingress were logged by the property factor on 18 October 2022.
- k) Repair works were only approved by the loss adjuster on 6 April 2023.
- l) The landlord sustained a £300 per month loss of rental income over a five month period from January 2023-May 2023.
- m) The property factor accepted that in terms of complaints resolution that more could have been done.
- n) In addition, the property factor accepted that more could have been done from them in terms of communication with the homeowner.
- o) The property factor did not accept that there was any breach in respect of the carrying out of repairs.
- p) At the hearing the homeowner attended. The property factor relied on a written submission.
- q) The written submission sent to the Tribunal by the respondent on 11 September 2024 provided a detailed timeline of events.

Section 2 – Communication and consultation

8. Section 2.7 – A property factor should respond to enquiries or complaints received orally and/or in writing within the timescale confirmed in their WSS. Overall, the property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner informed if they are not able to respond in the agreed timescale.
9. These were works that were directly affecting the homeowner. The property factor seems to accept that there were issues with undertaking the work. There was a flood into the homeowner's property in October 2022. It appears that the property factor acknowledges that the water ingress was logged on 18 October 2022.
10. A job order was issued to Coronet Services on the same day.

11. Thereafter nothing appeared to happen for a period of approximately two months. The claim was intimated to an insurance group by Coronet Services. It appears that they issued this to the wrong insurer. The claim was then intimated to Marsh Claims on 15 December.
12. Further information is sought regarding the property being uninhabitable.
13. The homeowner contacted the property factor on 17 February 2023 making a complaint about the delays for this “emergency work”. It appears that the emergency work was not undertaken until approximately June 2023.
14. Although the issue of the identification of the insurer may not have been a matter for the property factor to deal with directly they were under a duty to communicate effectively with the homeowner. Further to proper intimation of the claim, they did not chase this up. The homeowner was left in a position where there had been a significant leak into his property. It took an inordinate period of time for this work to be undertaken. He continued to require to chase the property factor in order to get this work done.
15. The tribunal finds that the section of the Code has been breached.

6.1 – Carrying out repairs and maintenance

- 16.6.1 – This section of the Code covers in-house staff and external contactors by property factors. While it is the homeowner’s responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard..
17. There is a clear acknowledgement here that intimation of the flood was made on 18 October. It does not appear that works were actually undertaken and commenced in June 2023. This is an inordinate period of time. Although the property factors were not undertaking the work themselves and whereas it is acknowledged that insurers were involved and required Loss Adjusters, there clearly required to be a duty upon the property factor to continue to chase for this work to be undertaken. They did not do so.
18. Only the tribunal can determine that this section has been breached.

Section 7 – Complaints Resolution

- 19.7.1 – Stage 1 and stage 2. Your complaint will be logged and acknowledged within 10 working days of receipt. It will then be fully investigated by a complaint handler. During that investigation, you may

be contacted by the complaint handler for clarification or to discuss certain aspects of your complaint. All investigations will be fair, unbiased and professionally conducted. The investigation process should be completed within 25 working days from the date of the complaint. If, for any reason, it is likely to take longer than this, you will be notified in writing. Once our internal investigation is complete, you will receive a response from the investigating complaint handler. This will detail our findings and planned action to address the issues raised. As our complaint process is thorough, and our findings are signed off by a senior manager, we would hope that this would conclude our investigation and the complaint will be closed within 10 working days of writing to you. If you are dissatisfied at that stage with our response, please move to stage 2 of our complaints process.

20. On receipt of your stage 2 complaint, we will send an acknowledgement to you within 10 working days. Your stage 2 complaint will be allocated to a senior manager who will re-open the investigation and review the documentation relating to your complaint. On completion of our stage 2 investigation you will receive a final response from the senior manager which will detail their findings. You should receive this within 25 working days from the date of the acknowledgement letter. If, for any reason it is likely to take longer than this, you will be notified in writing. At this point our complaint process will have been exhausted.
21. A complaint was made by the homeowner on 6 November 2023.
22. The property factor acknowledged this. Timescales were not kept to.
23. The tribunal finds that the section above has been breached.

Proposed Factor Enforcement Order

24. Having considered the breach of the Code of Conduct had been established, we considered an appropriate remedy.

A proposed property factor enforcement order.

25. In terms of an appropriate remedy, there does appear to have been a significant delay in the work undertaken together with various other breaches. There should be a property factor enforcement order as set out in the attached PFEO.
26. There should be an award to reflect a proportion of the lost income and for stress related inconvenience totaling £1000.00 to be paid within 28 days. In addition the property factor should apologise to the homeowner again within a period of 28 days

Right of appeal

A homeowner or property factor, 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 a First-tier Tribunal. That party must seek permission to appeal within 7 days of the date the decision was sent to them.

Date:
5 March
2025

Chairman:

Mark
Thorley