



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/24/2534 and FTS/HPC/PF/24/2535

Re: Property at Flat 6, 9 West Powburn, Edinburgh EH9 3EN (“the Property”)

Parties:

Mrs Elizabeth Foxwell, 55 Coulter Crescent, Edinburgh EH16 6DZ (“the homeowner”)

James Gibb Residential Factors, a trading name of James Gibb Property Management Limited, incorporated in Scotland (SC299465) and having their registered office at 3rd Floor, Red Tree Magenta, 270 Glasgow Road, Rutherglen, Glasgow G73 1UZ (“the property factors”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be decided without a Hearing and determined that the applications should be refused.

Background

1. By applications, dated 4 June 2024, the homeowner complained under Section 17(1) of the Property Factors (Scotland) Act 2011 that the property factors had failed to comply with the Code of Conduct for Property Factors effective from 1 October 2012 (“the 2012 Code”) and the Code of Conduct for Property Factors effective from 16 August 2021 (“the 2021 Code”) and had failed to comply with the Property Factor’s duties. The applications were later refined and resubmitted on 12 August 2024.
2. The complaint was made under Sections 1A, 1B, 1C, 1D, 1E, 2.1, 2.4, 2.5, 3.3, 6.2, 6.3, 6.6, 6.7, 6.8 and 7 of the 2012 Code and OSP1, OSP2, OSP3, OSP4, OSP 5, OSP8, OSP9, OSP11 and Sections 1.1A, 1.1B, 1.1E, 2.1, 2.4, 2.5, 2.6, 2.7, 3.1 and 3.2 of the 2021 Code. The homeowner also alleged failure to comply with the property factor’s duties.

3. The applications formed part of 436 pages of written documentation, including a letter from the property factors of 5 February 2020, in which they referred to their acquisition of Life Property Management Limited on 1 August 2019 and stated that they had been working on an integration plan which would enable them to take the best bits from each company. They had created a new Written Statement of Services (“WSS”), which was available on their website, and they encouraged homeowners to take the time to read it and the Development Schedule which was available on their client portal. They also advised that they had introduced a formal, fully manned, out-of-hours contact centre to deal with emergency situations outwith their normal working hours. Having an external company ensured that all calls could be managed more effectively and efficiently. They pointed out that, as it was an external company, there would be a small annual charge, which would be applied to their forthcoming invoice and that they had successfully negotiated a very competitive rate of £5.00 plus VAT per owner per year.
4. The homeowner provided copies of Issue 01 of the WSS, dated April 2013, Issue 12, dated August 2021 a partial copy of Issue 15, dated March 2023, and Issue 16, dated July 2024. Issue 12 gave a contact number for emergency repairs and stated that, outwith office hours, the call would be transferred to their 24 hour, 365 days a year, control centre, Property Response 24. Under “Declaration of Interest”, there was a disclosure by the property factors that their out-of-hours contact centre, Property Response 24, had a familial affiliation with one of their Directors. Issue 12 was the full revision of the WSS to reflect the coming into force of the 2021 Code. The Development Schedule for Issue 12 was not included in the written representations, but the Development Schedule for Issue 15 gave the property factors delegated authority to act, for non-emergency works, up to £20 plus VAT per property. Issue 16 includes, within the Core Management Service “Providing access to out of hours emergency maintenance services for common areas. It does not contain disclosure of any familial connection between Property Response 24 and one of their Directors.
5. The homeowner’s complaint was almost entirely focused on the appointment Property Response 24 (“PR24”) to provide the out-of-hours response service, and the involvement in that company of Mr David Reid, the Group Managing Director of the property factors, and his wife. Before Mr Reid joined the property factors in 2019, the service had been provided in-house. Mr Reid had been a Director of both PR24 and LPM prior to the merger of the latter with the property factors and his wife remained a 25% shareholder in PR24. Six months after joining the property factors, Mr Reid was introduced in a Newsletter as being a new Director of the property factors. The same Newsletter told owners that a new 24-hour charged for emergency call handling service was being introduced. The property factors’ clients had no say in this change. The service was charged from 3 February 2020, but owners were only told about it and the annual charge of £6 via the Newsletter of 5 February 2020. When she started to ask questions after a bad experience with PR24, she was repeatedly told by the property factors’ Executive Director, Mr Nic Mayall that the contract was tendered for every two years

with at least two other competitors. She had repeatedly asked for proof of this, but it had not been forthcoming. The homeowner's view was that the property factors had not provided due diligence or gone through a fair tender process before awarding the contract and that they had colluded with Mr and Mrs Reid, with no intention of sense-checking tendering for the service. If the contract was put out to tender every two years, she would have expected revised contracts to be signed around February 2022 and February 2024, but the dates of the contracts did not match up with that expectation.

6. The property factors had told the homeowner that the 24-hour emergency call handling service was a core service, but it was not set out as such in the WSS or the Development Schedule. Her view was that it was a third-party invoiced service and that she should be entitled to see the tender documentation. The owners were paying for a call handling service which only covered the communal areas, the out-of-hours contractor would only carry out a temporary fix and the owners would have to source and pay their own contractors for a permanent fix. She had sourced two companies who operate in the central belt, do not charge an annual fee and make a permanent fix. In the updated WSS of July 2024, there was no mention of a familial relationship or of PR24. The homeowner believed that Mr Reid had abused his power as CEO of the property factors and that this was an unlawfully imposed service and that the property factors had failed to carry out the Property Factor's duties by not providing the owners with options as to whether they wanted a 24-hour call out service when they decided to end their answering machine service in 2020. They did not offer them the option of a list of contractors' contact numbers for owners to call directly, and did not provide adequate cover by PR24, as it was limited to communal areas. Mr Reid and his wife were continuing to make personal financial gain by using the services of PR24. She contended that the property factors had behaved unethically and unlawfully. There was no authorised maximum spend provision specified anywhere in any of the documents from the property factors and thousands of owners were paying £6 a year to a company 25% of which was owned by Mrs Lorna Reid.
7. In further submissions of 14 November 2024, the homeowner provided copies of records from Companies House. These showed that Mr David Reid and Mr Nic Mayall had resigned as Directors of the property factors on 29 October 2024 and that Mr Reid and Mrs Lorna Reid had resigned as Directors of PR24 on 1 June 2018. She also stated that it had been decided at the AGM of the Owners' Association on 26 September 2024 to terminate the services of PR24. The property factors had, however, refused to partly refund the annual charge, but, in her view, the contract between the property factors and PR24 could be terminated on one month's notice. Instead, the owners, who had paid for the service to February 2025 did not receive a partial refund. Mr Reid was also a director of Property Managers Association Scotland and the Chief Operating Officer of The Property Institute, whilst Mr Mayall is a Director of The Property Management Association, so how could she make a complaint to either of those bodies? Both Mr Reid and Mr Mayall had lied to her, originally saying the PR24 service was a core service, then changing that to say it was their delegated authority to spend up to a maximum sum without

seeking specific permission from owners. They had lied about the tender process, later watering that down to a process of “sense-checking”, then telling the AGM on 26 September 2024 that it was up to them who they used and that they did not need to put the service out to tender.

8. The homeowner believed that fraud had been committed on a massive scale and that the Tribunal was her only recourse for any kind of justice. Police Scotland had told her that they could do nothing unless the Tribunal concluded that something untoward had occurred.
9. On 14 April 2025, the property factors provided written representations. They stated that they did not intend to attend the Case Management Discussion and wished to rely on written submissions only. Their references to their WSS were to Issue 10, dated January 2020, a copy of which they provided' together with a copy of the Development Schedule dated 3 November 2018.
10. The property factors stated that LPM had employed PR24 for a number of years for emergency cover. The annual charge for the period from 3 February 2020 to 2 February 2021 was not invoiced to owners until the quarterly invoice for the period to May 2020, issued on 2 June 2020. The Development Schedule of 3 November 2018 indicated that at the time, the property factors had an agreed level of delegated authority of £20 plus VAT per flat. This allowed them to implement the service undertaken by PR24, the cost of which was £5 plus VAT. They had explained in their letter of 5 February 2020 how and why PR24 were appointed, under the heading “Emergency Out of Hours Response”. The homeowner had provided no evidence that a request for tendering information was made before 2023/2024.
11. The property factors confirmed that they do not and have never received any commission, fee or other payment or benefit from PR24. Their WSS clearly advised that they did not have a financial or other interest other than the familial affiliation of one of their directors at the time. They had published a summary of changes to the WSS on their website after each Issue was updated. This was not done in 2024, because the WSS was completely rewritten. The information on the tendering process had been issued to the homeowner on 6 August 2024 and included various pdf documents which are easily accessible. They accepted that incorrect information regarding the tendering of the PR24 contract was given in an email of 14 March 2024, but the correct information had been provided in the email of 6 August 2024.
12. They confirmed that they do not currently provide an out of hours service. It is provided by a third-party, and the property factors provided the details and information to homeowners on how to get in touch with PR24. The homeowners have now opted out of the PR24 service, so have no out-of-hours cover.
13. In summary, the property factors' position was that the PR24 contract had been fully and correctly advised to owners and appropriately detailed in their

documents over the years. The familial connection between David Reid and PR24 was disclosed and was not withheld from owners.

14. Issue 10 of the WSS was attached to the property factors' representations. Section 4.3.3 states "If calling this number outwith office hours, your call will be transferred to our 24 hour, 365 days a year, control centre, Property Response 24." It adds "Typically, an initial emergency call out will be for "make safe" works only, until it is reviewed for potential insurance works". The Development Schedule confirms that the property factors' authority to act, for non-emergency repairs, is £20 plus VAT per household.
15. The property factors also provided a copy of their letter to owners of 5 February 2020, the contents of which are summarised in Paragraph 3 of this Decision, and of their Invoice of 2 June 2020, which included the charge for the first year for the PR24 service, commencing 3 February 2020. They also included a copy of their response of 6 August 2024 to the homeowner's complaint. In it, they explained that the then CEO and Board of Directors took the decision to add the PR24 service to their core services. It was not the sole decision of David Reid, and the then CEO had the final decision on the matter. The decision was no different to the property factors increasing their management fee on a regular basis. If they wished to outsource their administration department and add that cost to the management fee or identify it transparently, the owners collectively could choose to opt out as per their Deed of Conditions. The property factors were entitled to use an alternative company but, if there was a link to the organisation, the Code of Conduct requires them to identify it, which they had done in the case of PR24.
16. PR24 was owned and managed pre-2018 by a family member linked to a Director of LPM. LPM was acquired by the property factors in 2019. The out-of-hours service had been used by LPM since 2007 and formed part of the management service they provided. The cost of PR24 could simply have been added to the management fees, but, for the sake of transparency, it had always been shown as a separate line entry. In 2018, PR24 sold off the majority of the organisation to an unrelated third party. In 2019/2020, due to some issues with the property factors' out of hours calls, the decision was taken to utilise the services of PR24 to provide improved out of hours cover for their clients. If homeowners want James Gibb as their property factors, they either have to accept this service, opt out and manage the emergency services themselves or choose an alternative factor. The most recent tendering exercise in February 2024 involved the provision of three quotes, the cheapest of which was PR24, but the decision to retain them was also based on the fact that they are a Scottish-based supplier with an understanding of the land tenure system in Scotland. As a result of the homeowner's complaint, the Development Manager had been engaging with the Homeowners' Committee to agree a ballot of all homeowners on whether they wished to retain this service or not. They did not believe they had an obligation to provide details of their own internal tendering of the out-of-hours service, as it is a core provision as part of their management service.

17. In relation to the WSS, the property factors addressed the homeowner's contention that she had received a copy in 2014 but no further WSS until 2020. Any amendments to the WSS had been highlighted to owners and appeared on their website for homeowners to review. Any such changes were communicated through quarterly newsletters.
18. The homeowner responded with representations of 22 April 2025, in which she said that a number of owners had confirmed that they did not have a copy of Issue 10 of the WSS and that it was not uploaded on to the client portal. In further representations on 23 April 2025, the homeowner said that she had not gone "paperless" in her dealings with the property factors until 2023.

Case Management Discussion

19. A Case Management Discussion was held by means of a telephone conference call on the morning of 24 April 2025. The homeowner was present. The property factors were not present or represented.
20. The Tribunal began by clarifying with the homeowner that, as the almost complete focus of her complaints was the appointment of PR24 without seeking the prior agreement of the owners in the Development, should the Tribunal determine that the appointment did not involve any failure to comply with the Code of Conduct then her complaints under the various Sections of both Codes would, in essence, fall away. She agreed that was the case.
21. The homeowner told the Tribunal that the intimation that PR24 had been appointed was not sufficient notification and that she believed fraud had been committed because of the lack of transparency. Asked for her reaction to the statement by the property factors that changes to their WSS were highlighted in their newsletters, the homeowner said that she tended not to read them, as they were presented as James Gibb news. If fees were to be charged for PR24 they should have been detailed. The newsletters were informal. She advised that she had not read Issue 10 of the WSS. Her fundamental point was that the owners were not asked if they wanted the service and were being charged for a service they did not ask for and which the property factors used to provide in-house. The whole matter sat very uneasily with her and it was only when there was a problem in her flat which resulted in the downstairs occupant calling PR24, who then were admitted to the Property by her tenant and succeeded in making matters worse, that she had decided to look further at the matter of their appointment and had discovered that they were 25% owned by Mrs Lorna Reid. Nobody amongst the chat groups she had subsequently set up for owners and tenants at the Development had noticed that they were being charged extra for PR24 until the homeowner told them. She also implied that it could be no coincidence that Mr Reid and Mr Mayall had left the property factors after she made her applications to the Tribunal.
22. The homeowner told the Tribunal that she was content for the applications to be decided on the basis of written representations and the evidence she had

given at the Case Management Discussion and did not require to have an evidential Hearing. The Respondents had already indicated in their written representations that they were content for the matter to be decided on the basis of their written submissions.

Findings of Fact

- i. The homeowner is the proprietor of the Property, which is Flat 6 in a block at Number 9 West Powburn, Edinburgh, part of a Development of 76 self-contained flats.
- ii. The property factors, in the course of their business, have managed the common parts of the Development of which the Property forms part since 1999. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors first registered on 23 November 2012. Their present registration is dated 17 May 2019.
- v. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- vi. The homeowner made applications to the First-tier Tribunal for Scotland Housing and Property Chamber on 12 August 2024, under Section 17(1) of the Act.
- vii. The property factors’ WSS, read with the Development Schedule, limits the property factors’ delegated authority to act to £20 plus VAT per flat for non-emergency repairs.
- viii. Issue 10 of the property factors’ WSS, dated January 2020, sets out that out of hours requests for emergency repairs will be transferred to PR24. It also, in Section 9.2 includes a declaration that their out of hours contact centre, Property Response 24, has a familial affiliation with one of their Directors.
- ix. The property factors advised the homeowner in a letter dated 5 February 2020 of the introduction of a formal, fully manned, out of hours contact centre to deal with emergency situations, that they would be dealt with by Property Response 24 (“PR24”) and that there would be a small annual charge of £5 per owner per year, which would be added to their forthcoming invoice.
- x. The property factors’ invoice dated 2 June 2020 included £456 (£6 per flat) paid to PR24 for an annual out of hours service charge from 3 February 2020 to 2 February 2021.
- xi. The newsletter of 5 February 2020 advises the homeowner that the property factors have created a new WSS with a number of enhancements and changes and asks owners to please take the time to read it. It states that the new WSS is available for viewing or download from their website and the property factors ask owners who do not have access to the internet to give them a call and they will send a hard copy.
- xii. Mr David Reid and Mrs Lorna Reid resigned as Directors of PR24 on 1 June 2018.

- xiii. The property factors acquired Life Property Management Limited (“LPM”) on 1 August 2019.

Reasons for Decision

23. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
24. The Tribunal considered carefully all the evidence and documentation before it. The written representations run to many hundreds of pages and the applications are made under a very large number of Sections of the 2012 and 2021 Codes of Conduct. The Tribunal has considered everything presented to it, even if not every adminicle of evidence is set out in this Decision.
25. The view of the Tribunal was that there was no evidence before it to support the clearly held view of the homeowner that PR24 had been imposed on the Development as a result of the undue influence of Mr David Reid, whose wife owned 25% of the shares of that company. The Tribunal noted the response of the property factors that the appointment had been a Board decision. The Tribunal also noted that there had been issues with the property factors’ in-house emergency reports system and that, following the acquisition of PR24 six months earlier, they had been working to see how they might utilise the best bits of both companies. LPM had used PR24 since 2007, and the Tribunal saw no reason why they should not have considered appointing PR24, provided any possible conflict of interest was declared. Such a declaration was set out in Section 9.2 of Issue 10 of the WSS. The view of the Tribunal was that, as the property factors were choosing between the two systems that had been operated by James Gibb and by LPM prior to their merger, they were not obliged to put the contract out to tender before initially awarding it to PR24 or to seek approval of the homeowners before deciding which method to adopt. The Tribunal also noted that Mr Reid and his wife had resigned as Directors on 1 June 2018, more than a year before LPM were acquired by the property factors.
26. The Tribunal’s view that there was no evidence of impropriety in the appointment of PR24 was reinforced by the fact that the property factors did not try to conceal the appointment. They could have paid PR24 as an expense of their business and increased their factoring charges to recover the cost, but did not do so. They highlighted the appointment in a newsletter and included the cost as a separate item in their invoices. They also declared the familiar affiliation in their WSS.
27. Section 2.3 of the 2012 Code of Conduct (in force at the time of the appointment of PR24 and the publication of Issue 10 of the WSS) states that “If it is part of the service agreed with homeowners, you must also provide

details of arrangements for dealing with out-of-hours emergencies including how to contact out-of-hours contractors.” Until February 2020, it was part of the service included in the factoring fees.

28. The property factors’ letter to the homeowner of 5 February 2020 clearly set out the fact that PR24 had been appointed and that the negotiated annual cost per flat would be £5 plus VAT, a sum that would be included in the next invoice. It was included in the next invoice, dated 2 June 2020.
29. The view of the Tribunal was that the decision to outsource the emergency out-of-hours support was properly intimated to the homeowner on 5 February 2020, that it did not require her prior consent and that the possible conflict of interest had been properly declared in the WSS.
30. The homeowner complained that she had not been sent copies of any amended versions of the WSS after the one she received when she purchased the Property. The Tribunal accepted that it would not be usual practice nowadays for large property factors to send out new versions to all homeowners every time they make changes, and that the more common method is to signpost owners to a website or client portal. In the present case, the property factors confirmed that their practice is to advise owners in newsletters that they have made changes to the WSS, which can be found on the website. It appeared from the statement made by the homeowner at the Case Management Discussion that she does not read the newsletters sent by the property factors. That is her prerogative, but she cannot then argue that she has not been told that changes to the WSS have been made. The letter of 5 February 2020 clearly states that a new WSS, which contains a number of enhancements and changes is available on the property factors’ website.
31. In her representations of 22 April 2025, the homeowner said that a number of owners had confirmed that they did not have a copy of Issue 10 of the WSS and that it was not uploaded on to the client portal. The letter of 5 February 2020, however, makes it clear that it can be accessed on the property factors’ website, although hard copy can be sent to owners who do not have access to the internet, if they call the Client Support Team.
32. In further representations on 23 April 2025, the homeowner said that she had not gone “paperless” in her dealings with the property factors until 2023, but the intimation of the appointment of PR24 was contained in a letter, a copy of which, on the property factors’ headed notepaper, the homeowner included with her application. It directed her to the website and offered hard copy if she requested it, if she did not have access to the internet.
33. The conclusion of the Tribunal, after careful consideration of all the evidence before it, was that no evidence has been presented to suggest that the process by which PR24 were appointed was tainted. The appointment was properly intimated to homeowners on 5 February 2020, the arrangements were clearly set out in Issue 10 of the WSS, the homeowner could not pretend

ignorance of Issue 10 when the letter of 5 February 2020 told her of a new WSS and indicated where it could be found, and the WSS included a declaration of a familial affiliation between PR24 and one of the property factors' Directors. There was no lack of transparency and absolutely no evidence of the fraud alleged by the homeowner.

34. Having made that decision, it was not necessary for the Tribunal to then consider the complaints made under the various Sections of the 2012 and 2021 Codes or the complaint of failure to comply with the property factor's duties, as the entire applications were predicated upon the question of the appointment of PR24. The applications were, therefore, refused.

35. The Tribunal's Decision was unanimous.

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.

George Clark

Legal Member

24 April 2025
Date