

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/24/0893

Re: 1-16 Park Manor, Crieff PH7 4LJ

Parties:

Mr Peter Boyle, 15 Park Manor, Crieff PH7 4LJ (the Homeowner")

**James Gibb Property Management Limited, Unit J, Prospect Business Centre,
Gemini Crescent, Dundee ("the Factor")**

Tribunal Member:

**Graham Harding (Legal Member)
Sandra Brydon (Ordinary Member)**

DECISION

The Respondent has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections OSP 2, 4 and 6 and Section 3.1 of the 2021 Code.

The decision is unanimous.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the 2011 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors July 2021 as "the 2021 Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Respondent became a Registered Property Factor on 23 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By correspondence dated 23 February 2024 the Homeowner submitted an application complaining that the Factor was in breach of Sections of the 2021 Code. The Homeowner submitted written statements outlining his complaint together with a List of Documents and emails. The Homeowner submitted that these demonstrated breaches of the 2021 Code.
2. By Notice of Acceptance dated 12 March 2024 a legal member of the Tribunal with delegated powers accepted the Homeowner's application and a Case Management Discussion ("CMD") was assigned.
3. By email dated 15 May 2024 the Factor submitted written representations to the Tribunal disputing it was in breach of the 2021 Code and submitting an Inventory of Productions.
4. By correspondence received on 28 June 2024 the Homeowner submitted a further list of documents to the Tribunal.
5. A CMD was held by teleconference on 9 July 2024. The Homeowner attended in person and the Respondent was represented by Ms Jo Cooper.
6. The Tribunal noted the issues as being:-
 - (i) The length of time it had taken the Factor to arrange a new tariff for electricity at the property;
 - (ii) The inaccuracy of meter readings and the resulting invoices provided by the suppliers for electricity at the property;
 - (iii) The way in which the energy broker, Indigo Swan's commission was paid and how this was explained to the Homeowner by the Factor; and
 - (iv) The time taken to install a smart meter at the property.

As there were factual matters in dispute the Tribunal determined to adjourn the CMD to an in-person hearing and suggested to the Factor that it would be helpful to hear from the Factor's property manager, Mr Gillespie and a representative from Indigo Swan at the hearing.

7. By correspondence received on 3 December 2024 the Homeowner submitted a further List of Documents to the Tribunal.
8. By correspondence received on 20 March 2025 the Homeowner submitted a further List of Documents to the Tribunal.

9. By email dated 27 March 2025 the Factor submitted written representations to the Tribunal.

The Hearing

10. A hearing was held at Wallace House, Stirling on 1 April 2025. The Applicant attended in person, supported by his wife Mrs Pauline Boyle. The Factor did not attend nor were they represented. The Tribunal noted from the Factor's written representations of 27 March 2025 that they did not intend to attend the hearing or be represented.

OSP2

11. The Homeowner explained to the Tribunal that the Factor had initially said that commission to the energy broker, Indigo Swan was paid by the energy supplier and not the customer. The Homeowner went on to say that even after he had passed on to the Factor's Ms Cooper information received from Indigo Swan how their commission was paid by way of an uplift in the standing charge on customers' accounts it had been suggested by Ms Cooper that he had been misinformed. The Homeowner referred the Tribunal to the Factor's written representations of May 2024 where they had accepted that they had wrongly claimed that the energy broker's commission was the subject of commercially sensitive information and had subsequently apologised for their error.

OSP3

12. The Homeowner referred the Tribunal to the various invoices for the supply of electricity at the property which had been altered or cancelled amounting to over 40 in total. The Homeowner said that he had received a final bill from SSE that was thousands of kilowatt hours overcharged and it had taken the Factor until February 2024 to invoice the correct amount. The Homeowner said that Indigo Swan had been managing this account from October 2022 until February 2023. The Homeowner said he had advised the Factor what the correct reading should have been but the invoice received was for £2000.00 more than the cost should have been. The Homeowner went on to refer to several invoices not being available on the Factor's portal. The Homeowner submitted there was a lack of clarity and that there remained issues with regards to the rates for the night meter with an invoice still outstanding.

OSP 4

13. The Homeowner again referred the Tribunal to his submissions with regards to the commission paid to the energy broker.

OSP6

14. The Homeowner explained that he was concerned at the time it had taken to transfer the energy supply. He said that the Factor had been appointed on 26

February 2023 but that SSE had not been informed until 23 March 2023 a delay of almost one month. And the Letter of Authority was not signed until 29 March 2023 with the change of tenancy being completed on 13 April 2023. The homeowner went on to say that SSE had requested meter readings but none had been produced and that a request was then made on 3 May 2023 with data gathered on 1 May and the request completed on 23 May. The account was then scheduled to start on 14 June 2023 and actually started on 27 June 2023. The Homeowner submitted that Indigo Swan had said that the changeover should only take 28 days. The Homeowner said that he now was finally more or less agreeing with Indigo Swan's calculation but that he still had concerns with the way in which the contract had been ended. The Homeowner noted that the Factor had now set up an energy team to deal directly with the energy broker but submitted that past actions should not have adversely impacted on homeowners.

Section 3.1 of the 2021 Code

15. The Homeowner said that prior to their appointment the Factor had not advised homeowners that they would be using an energy broker and it had taken until May 2024 to accept that commission was being paid by homeowners. The Homeowner referred to the need for accurate meter readings being provided and confirmed that a homeowner could provide the Factor with readings if requested. The Homeowner referred to the Factor's written representations and queried how the Factor could not be responsible for meter readings and it not be part of their core services when the utility supply was in the Factor's name. The Homeowner went on to say that the Factor had not addressed the issue of the failure to install a smart meter at the property despite this being requested in early 2023.

Section 3.2 of the Code

16. The Homeowner submitted that he could have obtained a cheaper tariff for the supply of electricity at the property than that obtained by Indigo Swan.

Findings in Fact

17. The Homeowner is the owner of 15 Park Manor Crieff PH7 4LJ which forms part of a flatted development at 1 -16 Park Manor, Crieff ("the property")
18. The Factor has been the property factor for the property since 26 February 2023
19. The Factor has delegated an energy broker Indigo Swan to manage the supply of electricity at the property.

20. Indigo Swan were involved as energy broker at the property for the Factor's predecessors in office Newton Property Management.
21. Indigo Swan receive payment of commission from the utility suppliers by way of an uplift on the standing charge or unit rate paid by customers.
22. The Factor initially advised the Homeowner that the commission paid to the energy broker was paid by the energy supplier and not the customer.
23. When this advice was challenged by the Homeowner the Factor advised the Homeowner he had been misinformed.
24. The Factor subsequently refused to divulge the commission arrangements to the Homeowner as it wrongly believed this information to be commercially sensitive.
25. There is no system in place to provide the electricity supplier with accurate meter readings to ensure that invoices with estimated readings are avoided.
26. The Homeowner has requested that the Factor arrange for a smart meter be installed at the property to avoid the need for regular meter readings being taken.
27. No smart meter has been installed at the property.
28. The change of tenancy took from 26 February 2023 to 13 April to be completed.
29. The change to SSE supplying the property was completed on 27 June 2023.
30. The energy supply at the property is in the Factor's name.

Reasons for Decision

31. Whilst it is a matter for the Factor to decide whether or not to attend a hearing the Factor's reliance on its written representations has meant that the Tribunal has been unable to seek clarification on certain aspects of the issues in dispute.
32. The Factor has accepted in its written representations submitted on 15 May 2024 that it was wrong to have withheld information as regards the energy brokers commission from the Homeowner and has offered an apology to the Homeowner for his time and trouble involved in raising a formal complaint and proceedings before the Tribunal. Although the Factor has said that this was not done out of any desire to withhold information but due entirely to a misunderstanding of commercial sensitivities the Tribunal was satisfied from the documents produced and the Homeowner's oral evidence that the information provided to the homeowner with regards to the brokers commission was certainly not transparent and was at times misleading.

Whilst it is absolutely a matter for the Factor to decide to seek the advice of an energy broker on the placing of contracts for the supply of electricity there was an obligation on the part of the factor to provide the homeowner with the information requested and the Tribunal is satisfied that by failing to do so the Factor was in breach of OSP2, 3 and 4.

33. Since taking over management of the Homeowner's electricity supply at the property and with reference to appendix 1 attached to the Factors written representations dated 27 March 2025 EDF have submitted 10 invoices that match readings submitted by the Factor, 29 Invoices that are incorrect and that cancel each other out, one invoice that is missing and one invoice that is the subject of a query by Indigo Swan. The Factor has acknowledged that the time taken to resolve disputes with utility companies is frustrating but is of the view that this is outwith the control of the Factor. There was a delay on the part of the Factor in advising Indigo Swan of their appointment as Factor and some further delays in submitting meter readings but overall, according to Indigo Swan the net effect on the charges for electricity at the property resulted in the changeover taking four months rather than three months at a cost to homeowners of £19.37. Although the Tribunal understands that a private owner taking over an electricity supply or changing supplier may be able to do so within a matter of days rather than months the Tribunal is satisfied that the time taken in this case although longer than normal has not resulted in any substantial financial loss to the Homeowner. It may be however a matter for the Factor to consider whether the use of an energy broker is adding to the time taken to resolve issues with suppliers and to address issues with the changeover of suppliers. Having given careful consideration to these matters the Tribunal was not satisfied that the Factor was in breach of OSP 6 but given the number of inaccurate invoices issued to the homeowner the Tribunal does consider that it cannot be said that the Homeowner has been provided with information in a clear and accessible way and that the Factor is again in breach of OSP3
34. The Tribunal noted that the Factor has not addressed in either of its written submissions the failure to install a smart meter at the property. There may be some good reason for a smart meter not being installed since the Homeowner requested it in early 2023 but no explanation has been offered. The Factor's Written Statement of Services suggests that the provision of meter readings is at its discretion but it is clear that a smart meter would resolve issues around the submission of meter readings and avoid the incorrect billing issues that have occurred over the past two years. For this reason and the reasons given above at paragraphs 32 and 33 the Tribunal is satisfied that the Factor is in breach of Section 3.1 of the Code.
35. Although the Homeowner may well have been able to have obtained a cheaper tariff for the supply of electricity at the property than that obtained by Indigo Swan that is not the test for a breach of Section 3.2 of the Code. From the information before it the Tribunal is satisfied that the Factor is not in breach of Section 3.2 of the Code.

36. The Tribunal is satisfied that the Homeowner has been put to a considerable amount of trouble and inconvenience as a result of the Factor's breaches of the 2021 Code and its failure to acknowledge its failures during the formal complaints procedure. As a result, the Tribunal considers it appropriate to make a financial award to the Homeowner in the sum of £300.00. The Tribunal considered making an order for the installation of a smart meter at the property but in the circumstances although satisfied that this would clearly benefit both parties has determined to not make such an order in case there is some specific reason precluding the installation of a smart meter at the property but if there is not such a reason the Tribunal would strongly recommend that a smart meter is installed as soon as possible.

Proposed Property Factor Enforcement Order

37. The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

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 the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Graham Harding Legal Member and Chair

27 April 2025 Date