

Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the PF Act”) and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number: FTS/HPC/PF/24/2022 (“the Application”)

Re: Flat 3/2, 478, Keppochhill Road, Glasgow, G21 1JE (“the Property”)

The Parties:

Mr. Hamid Rasool, residing at Bucknall Farm, Scotter Common, Gainsborough, DN21 3JF (“the Homeowner”)

Ross and Liddell having a place of business at 60, St. Enoch Square, Glasgow G1 4AW (“the Property Factor”) per their agents, Raeside Chisholm Solicitors Limited, Tontine House, 8, Gordon Street, Glasgow G1 3PL (“the Property Factor’s Agents”)

Tribunal Members

Karen Moore (Chairperson) and Kingsley Bruce (Surveyor and Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor breached OSP11 and Section 2.7 of the Code and in their duty to comply with these parts of the Code.

The Tribunal proposed to make a Property Factor Enforcement Order.

Background

1. The Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the 2021 Code of Conduct for Property Factors (“the Code”). The

Application complains of the following breaches of the Code:- OSP at OSP 1, 2, 4, 5, 6, and 1, Section 2, Communications and Consultation at 2.3, 2.4 and 2.7 and Section 6 Carrying out repairs and maintenance at 6.1, 6.4, 6.6, 6.7 and 6.9.

2. The Application also complained of failures to comply with property factor duties by failing to comply with these parts of the Code.
3. The Application comprised the following documents (i) First-tier Tribunal standard application form, Form "C2" (ii) copy correspondence between the Parties relating to the water ingress at the Property (iii) a copy of the Property Factor's Written Statement of Services and (iv) copy of the Applicant's handwritten notes of calls to the Property Factor and (v) photographs of the water ingress.
4. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (CMD) was held on 22 August 2024 at 14.00 by telephone conference call. Prior to the CMD, the Property Factor submitted a detailed statement opposing the Applications.
5. The Homeowner was present at the CMD and was unrepresented. The Property Factor was represented by Mr. Nimmo of the Applicant's Agents accompanied by Ms. Johnston, one of the Property Factor's senior employees.
6. At the CMD, Mr. Rasool confirmed that the core issue was the water ingress at the Property and the Property Factor's failure to have effective repairs carried out, all as detailed in the Application. Mr. Rasool also complained of delays in communications by the Property Factor. For the Property Factor, Mr. Nimmo advised that the Property Factor, at their own cost, had commissioned a "track and locate" procedure in an attempt to determine the source of the water ingress. Mr. Nimmo stated that the Property Factor accepted that there had been delays in communications with Mr. Rasool and

that there had been delays in arranging a tender for works. Mr. Nimmo added that an offer of compensation had been made to Mr. Rasool. The outcome of the CMD was that a Hearing was fixed and intimated to the Parties.

7. Prior to the CMD, both Parties submitted further information.

Hearing

8. A Hearing of evidence was held on 14 February 2025 by Webex. The Homeowner was present and was unrepresented. The Property Factor was represented by Mr. Nimmo of the Applicant's Agents accompanied by Ms. Johnston, one of the Property Factor's senior employees, who also gave evidence.

Homeowner's Evidence

Overarching Standards of Practice

OSP1. You must conduct your business in a way that complies with all relevant legislation.

9. Mr. Rasool stated that this part of his complaint referred to the Property Factor's breach of the Health and Safety at Work Act 1974 (wrongly referred to him as a 1973 Act). Mr. Rasool did not provide a specific section in the Act but it appeared to the Tribunal that he may have been referring to Section 4 of that Act which places a general duty on persons having control of premises in respect of persons who are not employees (whether for profit or not). Section 4 is restricted to non-domestic properties and so does not appear to apply in this case.
10. Mr. Rasool stated that The Management of Health and Safety at Work Regulations 1999 at Regulation 3(b)(i) also applied to the Property Factor. These Regulations apply to persons caught by the Health and Safety at Work Act 1974 and so, on the Tribunal's assessment of the application of that Act, the Regulations do not apply to the Property Factor.

11. In any event, Mr. Rasool did not evidence in what way the Property Factor had breached the Act and the Regulations and did not evidence that he had given the Property Factor sufficient notice of this part of his complaint as required by Section 17 of the PF Act.

OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

12. Mr. Rasool stated that this part of his complaint referred to a letter dated 20 February 2024 which he had received from Ms. Johnston of the Property Factor and in which she wrote "I have no knowledge of the specifics of your issue". Mr. Rasool pointed out that this is dishonest as he had copied Ms. Johnston into correspondence on at least six occasions and that she had responded on at least one occasion.

In cross-examination, Mr. Rasool did not accept that Ms. Johnston's intention was to set out why she could investigate his complaint independently. He did not accept that she had no involvement in the Property Factor's handling of his issues and insisted that Ms. Johnston was dishonest.

OSP4. You must not provide information that is deliberately or negligently misleading or false.

13. Mr. Rasool stated that this part of his complaint also referred to the letter dated 20 February 2024 from Ms. Johnston but also referred to the Property Factor failing to provide a contractor, Evana Roofing, with the "trace and locate" report. Mr. Rasool asserted that had the Property Factor passed on the report, as stated in the letter of 20 February 2024, Evana Roofing would have carried out all of the work recommended by that report, whereas Evan Roofing carried out incomplete works.

14. In cross-examination, Mr. Rasool did not accept that there had been or might have been a miscommunication between the property manager for the Property and Mr. Rasool which had only become apparent when Ms.

Johnston carried out her complaint investigation. Mr. Rasool did not accept that confusion had arisen as, in their email correspondence of September 2023, the Property and Mr. Rasool had been referring to different repairs. Mr. Rasool accepted he did not know whether or not Evana Roofing had been given the full “trace and locate” report and insisted that the letter of 20 February 2024 was misleading or false.

OSP5. You must apply your policies consistently and reasonably.

15. Mr. Rasool stated that this part of his complaint referred to the Property Factor’s Written Statement of Services (WSS). He stated that the routine building inspection service which they provide is inadequate as it is a twice yearly inspection from ground level. He asserted that this is not an acceptable standard and does not comply with the Scottish Quality Standard.

16. In cross-examination, Mr. Rasool accepted that the WSS set out the scope of the service but did not accept that this was an acceptable standard as he did not accept the competence and qualifications of the inspectors. He stated that he considered the trace and locate inadequate as it only related to his Property.

OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.

17. Mr. Rasool’s issue in this part of his complaint is that the Property Factor have not carried out inspections professionally and did not take a professional approach with the “trace and locate” report. He asserted that he cannot tell if the Property Factor do as they tell him.

18. In cross-examination, Mr. Rasool did not accept that Evana Roofing had been instructed to return to the Property to redo part of their work. He did not accept that, in her letter of 20 February 2024, Ms. Johnston had explained fully the Property Factor’s role in carrying out inspections as the Property Factor does not make inspections of repairs carried out by contractors such

as Evana. His overall position was that a competent property factor would have done more to mitigate the cost of repairs increasing. He asserted that they should take a “stitch in time” approach and should impress on owners the need to fund repairs, particularly with water ingress.

In respect of acting in a “timely way”, Mr. Rasool did not accept that response times of around three days is reasonable.

OSP 11 You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

19. Mr. Rasool's issue in this part of his complaint is the Property Factor's response times. With reference to the copy emails lodged, Mr. Rasool pointed out occasions when he had to chase the Property Factor for a response. He accepted that the Property Factor had apologised for this and had offered compensation which he viewed as inadequate.

Consultation and Communications

2.3 The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

20. Mr. Rasool's point is this part of his complaint is the Property Factor's WSS should set out the qualifications and training of their staff. Although the Code does not require this, Mr. Rasool's view is that it is best practice.

2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

21. Mr. Rasool agreed that this part of his complaint could be deleted as not being relevant.

2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as

possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

22. Mr. Rasool's issue in this part of his complaint is the Property Factor's response times and, to a great extent, repeated his complaint in respect of OSP11.

Carrying out repairs and maintenance.

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' 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.

6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

23. Mr. Rasool's issue in this part of his complaint is an expansion of the points he put forward in respect of OSP6: that the Property Factor have not carried out inspections professionally and did not take forward the "trace and locate" report recommendations. Mr. Rasool was critical that the "trace and locate" report recommended gutter cleaning when annual gutter cleaning was supposed to have been carried out. He stated that the Property Factor delayed in progressing the "trace and locate" recommendations **and did not delay** in getting contractor quotes. With reference to the productions lodged, Mr. Rasool stressed that the Property Factor failed to recognise the urgency of the work required.

24. Mr. Rasool expressed extreme frustration with the Property Factor's handling of the water ingress and failing to distinguish between routine and emergency repairs. With reference to the productions lodged, he pointed out that work to a ground floor soffit stone was instructed whereas the water was coming at roof level. He expressed frustration that the Property Factor did not appear to recognise that this was unusual.

25. In cross-examination, Mr. Rasool did not accept that the gutters could have become blocked between the gutter clean and the "trace and locate" work. He did not accept that Ms. Johnston's letter of 20 February 2024 gave a satisfactory explanation. He did not accept that he had contributed to delays by not accepting a temporary repair as suggested by the Property Factor. Mr. Rasool's point, again, was that a "stitch in time" approach ought to have been taken to draw a line under the water ingress and that the Property Factor ought to have instructed Evana Roofing to carry out work to effect a permanent repair, recovering the cost from his co-owners through the common charges account.

26. He accepted that a contractor had placed a tarpaulin in the roof space but stressed that he had not agreed to a temporary repair and had insisted on a full repair. He did not accept that the email chains submitted to the Tribunal showed otherwise.

6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

27. Mr. Rasool accepted that this part of his complaint was not wholly relevant and related to the Property Factor's appointment of Evana Roofing to deal with all roof matters.

6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

28. Mr. Rasool's complaint is that the Property Factor's property visits are inadequate. He noted that the Property Factor's position is that inspections are not taken at a height and stressed that this approach does not meet the Repairing Standard and the Scottish Quality Standard. Mr. Rasool's view is that the Property Factor's approach leaves homeowners vulnerable to the building becoming damaged. He expressed concern that the qualifications and training of staff were not made known as this meant that their competence to carry out inspections could not be assessed.

29. In cross-examination, Mr. Rasool accepted that the Code did not require the qualifications and training of staff to be made known and stressed that this should be done as a matter of best practice.

6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.

30. Mr. Rasool agreed that this part of his complaint could be deleted as not being relevant.

Property Factor's Evidence

30. Ms. Johnston gave evidence on behalf of the Property Factor. In the main, her evidence was not specific in respect of Mr. Rasool's complaints but set out the Property Factor's general and usual approach to repairs notifications, the categorisation of repairs and financial levels of delegated authority.

31. With regard to specific elements of the Application, Ms. Johnston stated that the wording “I have no knowledge of the specifics of your issue” was correct as she had had no personal dealings with Mr. Rasool.
32. In cross-examination, she accepted that she had been copied in on email correspondence but stated that she had not acted on the emails and had left these for the relevant staff to action.
33. With reference to the ground floor soffit stone repair. Ms. Johnston clarified that this was an error and that the stone in question was at roof level and above Mr. Rasool’s property.
34. In cross-examination and in answer to questions from the Tribunal, Ms. Johnstone explained that the error became apparent when she carried out her investigation into Mr. Rasool’s’ compliant. She clarified that the soffit stone repair was not instructed as part of the “trace and locate” report recommendations but was instructed by the property manager following a site inspection.
35. Ms. Johnston maintained that her letter of 20 February 2024 and her colleague, Ms. Harkins’ final response letter set out the Property Factor’s position. She stated that both found that there had been no Code breaches other than communication delays for which a reasonable level of compensation had been offered.
36. With regard to the “trace and locate” report, Ms. Johnston confirmed that the report and its recommendations had been provide to the three contractors who had been asked to tender for the work.
37. In answer to Mr. Rasool’s questions about the limitations of the “trace and locate” report, Ms. Johnston explained that this related to the report being instructed as water ingress to the Property and to an insurance claim for the Property and not the block as a whole.

38. In answer to Mr. Rasool's questions about the categorisation of the repair, Ms. Johnston stated that it had been reported as dampness and not as water ingress and so was not categorised as such and was not noted as a priority.
39. In answer to Mr. Rasool's questions in respect of the volume of his emails and calls which went unanswered, Ms. Johnston stated that she did not exactly know how many not answered or answered late, but accepted fault on behalf of the Property Factor.
40. From the Property Factor's records which she viewed as she gave evidence, Ms. Johnston advised that two inspections of the Property had been carried out in 2022 and, although staining was noted, it was not evident to the Property Factor that there was a water ingress problem. A subsequent inspection by a different staff member did highlight issues, which prompted action.
41. In answer to questions from the Tribunal, Ms. Johnston agreed that this was her summation and that she did not have direct knowledge of the outcome and proposed actions, if any, of the inspection reports.
42. With regard to the general condition of the Property, Ms. Johnston advised the Tribunal that Hollis, surveyors, have been instructed to carry out a tender project for substantial roof works. She stated that only Mr. Rasool is in support of this project and that other owners have indicated that either they are unable to afford the works or are not interested in the works being carried out.
43. With regard to the Property Factor's procedures, Ms. Johnston advised the Tribunal that the Property Factor has improved their communications procedures and now has a live chat application available on their website.

Property Factor Duties.

44. As the complaint in respect of Property Factor Duties is that the Property Factor did not comply with their duty to comply with the Code, the Parties confirmed that no further evidence was required in this respect.

Tribunal's assessment of the evidence.

45. The Tribunal found both Mr. Rasool and Ms. Johnston to be truthful with no attempt to deceive. However, the Tribunal found Mr. Rasool to have an unrealistic expectation of what to expect from the Property Factor in respect of the service standards offered by their WSS and in terms of the Code.

Findings in Fact.

46. From the evidence at the Hearing, the Application and the written submissions and the productions lodged, the Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property Factor is a land manager for the development;
- iii) The Homeowner rents the Property to tenants;
- iv) Water is ingressing into the Property;
- v) Repair work to address the water ingress has not been effective;
- vi) The Property Factor's WSS limits property inspections to twice yearly visual inspections from ground level;
- vii) The Property Factor does not carry out two inspections per year;
- viii) The Property Factor has not carried out an inspection since 2022;
- ix) The Code does not require the Property Factor to set out the qualifications and training of its individual staff members;
- x) The Property Factor is not subject to the Health and Safety at Work Act 1974 or to The Management of Health and Safety at Work Regulations 1999 in respect of this Application;
- xi) The Property Factor is not subject to the Scottish Quality Standard nor is it subject to the statutory Repairing Standard in respect of this Application;
- xii) The letter of 20 February 2024 issued by Ms. Johnston is accurate insofar as she did not have an active role in managing the Homeowner's complaints;
- xiii) The letter of 20 February 2024 issued by Ms. Johnston is accurate insofar as it explains a genuine miscommunication and misunderstanding of the soffit stone repair;
- xiv) The Property Factor failed to comply with their WSS in respect of

communications;

- xv) The Property Factor is not under an obligation to forward-fund repairs to the Property;
- xvi) The Property Factor's handling of his complaints caused the Homeowner frustration and aggravation;
- xvii) The Homeowner's co-owners do not agree to instruct the Property Factor to carry out roof repairs.

Issues for the Tribunal

47. The issue for the Tribunal are did the Property Factor breach the Code as set out in the Applications?

Decision of the Tribunal and Reasons for the Decision.

48. In reaching its decision the Tribunal noted that the core facts of the complaints were not disputed and that the dispute centred on the way in which the Property Factor had acted in line with their Written Statement of Services.
49. From its Findings in Facts, the only part or parts of the Application which the Tribunal found the Property Factor to have breached are the ways in which it communicated with the Homeowner. The Tribunal, therefore, finds that the Property Factor breached OSP11 and Section 2.7 of the Code. It follows that the Property Factor failed in their duty to comply with these parts of the Code.

Property Factor Enforcement Order (PFE0)

50. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states
“(1)The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.”

51. The Tribunal's view is that it is the same breach, failure to respond within the standards set by the WSS, which covers all three elements of the complaint and not three separate issues. The Tribunal took the view that, whilst frustrating for Mr. Rasool, the delays in corresponding with him were not significant and that the lack of progress in an effective repair lay with his co-owners refusal to agree to the work due to affordability of the costs.

52. The Tribunal noted that the Property Factor has made improvements to its communication procedure.

53. The Tribunal note the range of penalties sought by Mr. Rasool and took the view that these were either outwith the powers of the Tribunal in terms of the Act or disproportionate to the complaint.

54. The Tribunal did, however, accept that Mr. Rasool suffered inconvenience et as a result of the Property Factor's conduct. Accordingly, the Tribunal considers that he should awarded compensation in this regard.

55. The Tribunal considers the sum of £300.00 to be reasonable in respect of the total compensation.

56. Section 19(2)(a) of the Act states that before making a PFEO, the Tribunal must give Notice to the Parties and must give the Parties an opportunity to make representations. Therefore, in accordance with Section 19(2)(a) of the Act, the Tribunal issues separate Notice to the Parties.

57. This Decision is unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Karen Moore, Chairperson

07 May 2025