Housing and Property Chamber
First-tier Tribunal for Scotland

Decision and Statement of Reasons under Section 17 (1) of the Property Factors (Scotland) Act 2011 ("The Act")

Reference number: FTS/HPC/PF/24/2475

Re: Property at 8 Alloa Park Drive, Alloa, FK10 1 QY ("the Property")

The Parties:

Mr Alan Frazer, 8 Alloa Park Drive, Alloa, FK10 1QY ("the Applicant")

Ross and Liddell.60 St Enoch Square, Glasgow, G1 4AW ("the Respondent")

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Ms J. Heppenstall (Ordinary Member)

Background

[1] The Applicant seeks a determination that the Respondent has breached their obligations under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* ("The Code").

[2] The paragraphs of the Code alleged to have been breached are:

Carrying out repairs and maintenance: Section 6.4 and 6.5

Overview of Claim

[3] The substance of the allegation is that the Respondent failed to take adequate action when a storm blew down a fence in the Applicant's garden. The Application also alleges that the Respondent has inadequate procedures in place for emergency repairs. The Respondent's position is that the fence blowing down was not an emergency and the Applicant didn't give the Respondent a reasonable chance to work through their processes to take action to fix the fence. They say that the Applicant acted too hastily in paying a contractor privately to fix the fence.

Previous Procedure

[4] The Application had previously called for a Case Management Discussion (CMD) where case management orders had been made in the form of Directions regulating the production of any further evidence and continuing the matter for an evidential Hearing in person.

The Hearing

[5] The Application then called for a Hearing at Wallace House, Stirling at 10 am on 27 June 2025. The Applicant was personally present. Mr Doig, Solicitor was present with the Respondent's own Ms Jennifer Johnston. Neither party had any preliminary matters to raise. Both parties remained as per the positions set out in their respective representations. Mr Frazer confirmed that he would be his only witness. Mr Doig explained that Ms Johnstone would likewise be the Respondent's only witness.

[6] The Tribunal began by adjourning to allow parties an opportunity to see if any resolution could be reached. Parties agreed to have a discussion, but they reported that after good natured discussions, no resolution had been reached. Accordingly, the Tribunal began hearing evidence. After each witness gave evidence, each party had the opportunity to cross examine the other. The Tribunal also asked questions throughout to ensure that it understood the evidence. At the conclusion of evidence, each party also had the opportunity to make closing submissions and to specifically draw the Tribunal's attention to any relevant approach which it was said the Tribunal ought to take to the case. Parties also had the opportunity to draw the Tribunal's attention to the relevant sections of the Code alleged to have been breached.

[7] The Tribunal comments on the evidence heard as follows:

Mr Alan Frazer

[8] Mr Frazer's evidence was straightforward to understand. He was the proprietor of 8 Alloa Park Drive, Alloa which was in a development factored by the Respondent. At around 9am on the morning of 22 January 2024, the Applicant telephoned the Respondent and reported that his garden fence at the side of his garden adjacent to Alloa Park Drive had been blow over by a storm the previous night. The Applicant also referred to a further area of fencing which was not on the Applicant's Property which had also been damaged. Mr Frazer explained that he described the situation as an emergency to the telephone operator who told him that the repair request would be actioned. Mr Frazer explained that he then sent photographs in a further email to the Respondent chasing for progress later that day. On 24 January 2024, Mr Frazer stated that he had still heard nothing further and continued to press for action by sending a

further email. On 26 January 2024, Mr Fraser then emailed the Respondent and explained that he considered that due to "*safety security and privacy issues*" he had no alternative other than to source his own contractor to carry out the necessary fence repairs. On 1 February 2024, the Applicant then paid a local contractor the sum of £780.00 according to his Application form to carry out the work (although during the Hearing the figure of £790.00 was also used and the invoice actually submitted by Mr Frazer was then in the sum of £792.00). Whilst Mr Frazer said in his evidence that the fence was repaired on 1 February 2024, he had also stated in a paper apart to his Application that: " …*I then got a reply from Sharon Manion on Monday 29th (*January*), apologising, saying a contractor would be on site that week. By that time I had had the repair to the side of the Property done, however the front* (the area of fencing not on the Applicant's Property*) was still needing attended* to." This suggested that the fence repair might have been completed or at least was substantially in motion actually before 1 February 2024.

(9) Mr Frazer's position was that the Respondent had failed to carry out the repair within the timescales set out for emergency repairs at Section 2 of the Respondent's service level agreement and that they had breached their obligations under the Code. Mr Frazer invited the Tribunal to order that the Respondent should refund Mr Frazer the sum spent by him on his fence repairs. Whilst Mr Frazer's application referred to the additional area of fencing which took some months to repair, it was apparent that his evidence was focussed on the fact the Respondent failed to reimburse him the £792.00 paid to Mr Frazer's own contractor. There was no evidence presented which suggested that the additional fence area at the bottom of shared drive presented any kind of emergency. Neither was there any specific evidence presented by Mr Frazer that the Respondent's handling of that repair was negligent.

[10] Mr Doig's questions of Mr Fraser focussed on the details of the communications between the parties. He also drew Mr Frazer's attention to the specific terms of the service level agreement between the parties which set out the expected service standards for carrying out emergency and routine repairs and responding to enquires. He challenged Mr Frazer to acknowledge that by the time the seven working day period provided for carrying out non-emergency repairs had come and gone, the Applicant had already carried out the necessary repairs.

[11] The Tribunal considered that Mr Frazer was clearly not being dishonest with the Tribunal. His evidence was clearly a truthful account of his true position. But that is not to say that the Tribunal could accept the conclusions the Applicant reached albeit those appeared to be honestly held. The Tribunal asked Mr Frazer whether he thought he would get his money back when he went ahead and ordered his own repair. He said that he "*hoped*" he would. It appeared to the Tribunal that Mr Frazer knew he was taking something of a gamble in going ahead and ordering repairs at his own expense.

[12] The Tribunal then heard from Ms Jennifer Johnston who is an Associate Director of the Respondent. Ms Johnston explained that she had investigated Mr Frazer's complaint and was familiar with the details of what happened. She explained that Storm Isha was a significant weather phenomenon which caused much disruption on 21/22 January 2024. Ms Johnston confirmed that the Applicant had contacted the Respondent by telephoning their repairs number on the morning of 22 January 2024. The Tribunal was supplied with a copy of the contemporaneous note taken by the call handler. This note not only acknowledged and documented the call itself but also showed that during the call itself, the instruction to carry out the repair was given to the Respondent's contractor. The instruction also gave the contractor Mr Frazer's contact details and asked them to contact him directly for any further information.

[13] Ms Johnston's position was that this was communicated to the Applicant during the call and that there therefore did not require to be the further follow up by the Respondent which the Applicant appeared to consider necessary. Ms Johnston explained that the Respondent did not consider that the repair was urgent and it did not therefore trigger the requirement for the Respondent to organise the repair within hours.

[14] Instead the Respondent justifiably considered it to be "*a routine repair*" which the service level agreement advised would typically be completed within seven days. Ms Johnston contrasted the fence repair with what she considered to be an example of a typical emergency repair which might be a burst pipe or a collapsed ceiling. Ms Johnston was taken through the relevant communications between the Applicant and the Respondent.

[15] The Tribunal considered Ms Johnston's evidence to be credible and reliable. She appeared familiar with the facts and her conclusions appeared reasonable. Her evidence was supported by the documentary evidence. Having considered the documentary evidence and having heard evidence, the Tribunal made the following findings in fact.

Findings in facts

1. *The Applicant is the proprietor of 8 Alloa Park Drive, Alloa, FK10 1 QY. The Property is factored by the Respondent within the meaning of the Property Factors (Scotland) Act 2011. The Applicant's garden fence adjacent to Alloa Park Drive is owned in common by the residents of the development. As such, maintenance of this fence is administered by the Respondent on behalf of the residents.*

2. *On the morning of 22 January 2024, the Applicant phoned the Respondent's repairs telephone number and reported that his fence had been blown over by Storm Isha the previous night.*

3. *The fence was lying collapsed into the side of the Applicant's garden leaving the garden somewhat exposed. The damaged fence itself still presented a boundary of some sort and anyone trying to access the Property would still have had to navigate scaling the damaged fence albeit that would be accomplished by any human or small animal with modest physical abilities.*

4. *Beyond the damaged fence was then a small grassy area, then a pavement and then a busy road, Alloa Park Drive.*

5. *The Applicant has two dogs and other animals. Keeping his back garden secure and fully enclosed is important to him as it keeps his dogs secure. The Applicant also has grandchildren who play in the garden.*

6. *The garden fence blowing down was highly inconvenient and was disruptive to the Applicant. The fence collapsing however did not cause any high risk of further ongoing damage or injury to life or property.*

7. *The Respondent logged the incident and instructed their contractor to carry out the necessary repair during the call itself. The contractor was supplied with the Applicant's telephone number. The Applicant was told that the repair had been logged with the contractor for repair. Given that there had been a significant storm the night before it was reasonable to assume that the Respondent's contractor would be experiencing high volumes of similar business. It was unreasonable to expect that the Respondent's contractor would have attended and fixed the fence within hours as an emergency.*

8. *The Respondent acted reasonably in assessing the incident as not constituting an emergency repair but rather a routine repair within the parameters of Section 2 of their service level agreement.*

9. *The Applicant did not allow the Respondent a seven-day period as set out at Section 2 of the service level agreement to have the fence repaired.*

10. *Before the seven-day period expired, the Applicant had already taken matters into his own hands and instructed a local contractor to fix the fence at a cost of £792.00.*

11. *The Applicant requested that the Respondent then reimburse the Applicant these costs. The Respondent explained that they could not do so as they had not instructed the works and neither was the contractor on their approved list. The Respondent did subsequently canvas with other residents whether those other residents would agree to the Respondent reimbursing the Applicant. The residents did not provide the requisite consent albeit the Applicant suggests that a far greater number of residents in the wider development should have been asked rather than the 12 residents in what was described as the Applicant's" parcel" of the development.*

12. *The Respondent adhered to the service expectations as set out in the service level agreement.*

[16] Having made the above findings in fact, the Tribunal makes the following findings in respect of the paragraphs of the Code alleged to have been breached.

The Code

"6.5 If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible."

[17] The Respondent has not breached this part of the Code. The Respondent clearly do have procedures in place and these procedures were followed when the Applicant's fence was damaged. The Tribunal was impressed that when the Applicant telephoned the Respondent on the morning of 22 January 2024, he was immediately connected with a call handler who accurately logged the incident and immediately instructed the necessary repair to be carried out by a contractor who was also provided with the Applicant's phone number and asked to liaise directly with him. The Tribunal considered that the fence blowing down was disruptive and inconvenient to Mr Frazer. It was not however an emergency. It presented no risk to the health and safety of anyone and neither did it present an unacceptable risk to the safety of Mr Frazer's property. There was no danger from the road as there was still a small grassy area and then a pavement between the exposed fence and the road. Animals and children could still have been safely supervised in the garden albeit dogs would have to kept on a lead. Doors and windows to the Property could of course still remain locked and secure. The Tribunal could not construe the situation as an emergency. The Tribunal is of course sympathetic to Mr Fraser but concludes that he was too hasty in taking matters into his own hands by undermining the Respondent's processes in motion and paying a private contractor.

"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."

[18] The Tribunal can see no basis for concluding that the Respondent has breached this part of the Code. The Respondent has acted reasonably in their dealings with the Applicant and are entitled to ensure that the interests of all residents are protected by not allowing individual residents to organise their own repairs to communal property by uninsured and unapproved contractors.

Proposed Property Factor Enforcement Order

[19] Having made the above findings in respect of the sections of the Code said to have been breached and having set out the reasons for those findings, the Tribunal declines to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act and refuses the Application.

APPEAL PROVISIONS

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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Andrew McLaughlin

_____ **1 July 2025.**

Legal Member