



Statement of Decision with reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an Application made under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Reference number: FTS/HPC/PF/24/2146 (the Application”)

Property: 106 William Street, Hamilton, ML3 9AX (“the Property”)

The Parties:

Mr. Barrie McGarva, residing at the Property (“the Homeowner”)

Newton Property Management, having a place of business at 87 Port Dundas Road Glasgow G4 0HF (“the Property Factor”) per their agents, Pollock Fairbridge, Solicitors, Pavilion 5, Buchanan Court, Cumbernauld Road, Stepps, Glasgow, G33 6HZ (“the Property Factor’s Agents”)

Tribunal Members

Karen Moore (Chairperson) Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor had not failed to comply with the Section 14 duty in respect of OSP12 of the Property Factor Code of Conduct effective after 16 August 2021 (“the 2021 Code”), all as required by Section 14(5) of the Act.

Background

1. By applications received on 30 May 2024 the Homeowner, Mr. McGarva, applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for determinations that the Property Factor had failed to comply with the Code

of Conduct for Property Factors 2012 (“the 2012 Code”) and the Code of Conduct for Property Factors 2021 (“the 2021 Code”).

2. Application referenced FTS/HPC/PF/24/2145 complained of a breach of the 2012 Code at Section 4.8 in respect of incidents which occurred before 16 August 2021, when the 2012 Code ceased to apply.
3. Application referenced FTS/HPC/PF/24/2146 complained of a breach of the 2021 Code at OSP12 in respect of incidents which occurred on and after 16 August 2021, when the 2021 Code came into force.
4. Both applications were accepted by the tribunal chamber and a Case Management Discussion (CMD) was held on 7 October 2024 at 10.00 by telephone conference call for both applications. Mr. McGarva took part and was unrepresented. The Property Factor was represented by Mr. Fairbridge of the Property Factor’s Agents supported by Ms. C. Flanagan of the Property Factor
5. At the CMD, the Tribunal explained to Mr. McGarva that the application process was a legal process and, although less formal than court proceedings, the terms of the Act and the Tribunal Rules must be followed. The Tribunal explained that the onus was on him to demonstrate that the applications were compliant with the legislation and, in particular, with Sections 17 (2) and (3) of the Act. The Tribunal adjourned the CMD to a further CMD and issued a Direction in respect of information or evidence required from Mr. McGarva to establish compliance with the Act.
6. Mr. McGarva complied with the Direction sufficiently to allow the applications to proceed.
7. The adjourned CMD was held on 16 January 2025 at 10.00 by telephone conference call. Mr. McGarva took part and was unrepresented. The Property Factor was represented by Mr. Fairbridge of the Property Factor’s Agents supported by Ms. C. Flanagan of the Property Factor.
8. The Tribunal noted that Mr. McGarva’s complaints had been clarified as the Property Factor proceeding to debt recovery court action in respect of FTS/HPC/PF/24/2145 and the 2012 Code and a meeting in March 2024 at the Property Factor’s Agents’ offices during which Mr. McGarva claimed to have been intimidated in respect of FTS/HPC/PF/24/2146 and the 2021 Code.

9. For the Property Factor, Mr. Fairbridge stated that the Property Factor has acted properly throughout and had taken steps which were not only reasonable, but necessary.
10. The Tribunal advised that as the applications were opposed the Tribunal would adjourn the CMD to a Hearing of evidence.

Hearing

11. The Hearing was held on 1 August 2025 at 10.00 at the Tribunal Centre, Brandongate, Hamilton. Mr. McGarva took part and was unrepresented. The Property Factor was represented by Mr. Fairbridge of the Property Factor's Agents supported by Ms. C. Flanagan of the Property Factor.
12. The Tribunal dealt with and heard evidence, firstly, in respect of FTS/HPC/PF/24/2145 (form C1) and, at the close of those proceedings dealt with and heard evidence in respect of FTS/HPC/PF/24/2146 (form C2). The Tribunal's decision in respect of FTS/HPC/PF/24/2145 is set out in a separate written decision.
13. The complaint dealt with was a breach of OSP12 of the 2021 Code which states: "You must not communicate with homeowners in any way that is abusive, intimidating or threatening."

Homeowner's Evidence.

14. Mr. McGarva's evidence was as set out in the application form and in his written response to the Direction.
15. Mr. McGarva accepted from the outset that he has owed a considerable debt to the Property Factor for some time and that this debt began prior to the Property Factor taking over factoring of the development of which the Property forms part.
16. Mr. McGarva explained that he has had a medical condition since birth and has been diagnosed with depression since 2001. He has not been employment since 2009. He explained that he had been open with the Property Factor regarding his medical conditions from the start of their appointment to factor the development of which the Property forms part, Accordingly, the Property Factor ought to have been aware that his condition

fell within the protected characteristics as set out in the Equality Act 2010 and that he was entitled to protection in terms of that Act.

17. Mr. McGarva's evidence was that, from November 2023, he had had telephone conversations with Mr. Fairbridge in an attempt to set up a meeting to discuss his outstanding balance on his factoring account. The meeting itself took place on 11th January 2024 and was attended by Mr. McGarva, Mr. William Cowie and his son Stewart Cowie, both employees of the Property Factor and Mr. Fairbridge. The meeting took place at the Property Factor's Glasgow office.
18. Mr McGarva stated that Mr. Fairbridge was the only spokesperson at that meeting and that Mr. Fairbridge repeatedly threatened that "sequestration" is the next step in the debt recovery procedure. Mr. McGarva stated that this happened on four separate occasions. Mr. McGarva's position was that he did not understand why Mr Fairbridge stressed this point as there had been no explanation or attempt to introduce the subject at the meeting.
19. Mr. McGarva's evidence was that he has a full knowledge of debt procedures as he is aware of the debtors' handbook and stressed that Mr. Fairbridge was not telling him anything new in respect of debt recovery.
20. Mr. McGarva's evidence was that, during the course of the meeting, he was asked to pay £2,000.00 towards the sum due by him. He stated that debt at that time stood at around £7,000.00. Mr. McGarva stated that the Property Factor knew that he relies on benefits and would not be able to pay £2,000.00.
21. Mr. McGarva's evidence was that the Property Factor treated him differently to his other creditors. He explained that he has several creditors who asked for evidence of his medical conditions and for income and expenditure and information but the Property Factor did not do this. Although the Property Factor knew that he relied on benefits, they did not ask him to complete an income and expenditure form until May 2023. Mr. McGarva's point was that the Property Factor was in breach of OSP 12 as they intimidated him without any prior knowledge of his personal circumstances.
22. Mr. McGarva stated that at that time he received £130.00 per week in benefits and had no savings. Regardless of this, the Property Factor repeatedly asked him to pay £2,000.00. Mr. McGarva maintained that this was intimidating as

someone on benefits cannot raise that level of money. He pointed out that as he was already in debt, it was not credible for him to be able to borrow funds and as he did not have the ability to repay a loan. He stated that he knew that debt agencies such as Step Change and the Citizens Advice Bureau refer to this as an oppressive practice.

23. Mr. McGarva's evidence was that Mr. Fairbridge mentioned the DWP as a source of financing and that Mr. Fairbridge made a point of saying that it would not be in the interest of the DWP for Mr. McGarva to lose his house over this debt. Mr. McGarva considered that this was further intimidating as he was being told that he was potentially homeless. Mr. McGarva stated that he found this particularly distressing as his elderly mother is in a care home adjacent to the Property and is visited daily by him.
24. Mr. McGarva's evidence was that the Property Factor brought Mr. Fairbridge into the proceedings late in the day for the sole purpose of intimidating him. Mr. McGarva stated that he was unequivocal on this point and cannot see any other perspective or view as to why Mr. Fairbridge was acting on behalf of the Property Factor other than to threaten that he would lose his home.
25. At this point, Mr. McGarva referred to Mr. Fairbridge as "the lower echelons of his profession, not accredited and not a specialist." The Tribunal warned Mr. McGarva against making such remarks. Mr. McGarva's position was that the brief given to Mr. Fairbridge by the Property Factor was to intimidate Mr. McGarva because the Property Factor viewed his medical condition as a "sob story" and was hostile towards him.
26. Mr. McGarva pointed out that neither Mr. Cowie spoke at the meeting on 11th January 2024 and that they left everything to Mr. Fairbridge.
27. Mr. McGarva stated that the Property Factor had tried to avoid having a face to face meeting with him and gave him a Dictaphone so that he could provide them with oral comments rather than anything in writing. His position was also that one of the Property Factor's employees named Jack insisted on a face to face meeting and had referred him to advice agencies. Jack further insisted that Mr. McGarva register his complaints by email in the full knowledge that Mr. McGarva was unable to do so.

Cross examination

28. In response to Mr. Fairbridge's questions, Mr. McGarva agreed that his complaint focused on Mr. Fairbridge's conduct at the meeting on 11th January 2024.
29. Mr. McGarva strongly denied that Mr. Fairbridge could have said or did say third party "funds" and not "finance". Mr. McGarva did not accept that Mr. Fairbridge was not suggesting that he take out a loan from the DWP or another party.
30. In response to questions from Mr. Fairbridge, Mr. McGarva maintained his position that references to sequestration and losing his house were threatening and intimidating and did not accept that it was a simple fact that, if the debt was not paid, sequestration would be the next step.
31. Mr. McGarva accepted that the Property Factor's agents' letter of 5th March 2024 sets out the content of the meeting to his satisfaction and stated that it covered the salient points.
32. Mr. McGarva maintained his position that the use of the word "sequestration" four times without explaining why it was being used was intimidatory and did not accept that it was a simple factual explanation.
33. Mr. McGarva maintained, as a paid employee of the Property Factor, Mr. Fairbridge's actions were covered by the provisions of the Code.
34. In response to Mr. Fairbridge's questions, Mr. McGarva confirmed that he understood that the limit for sequestration proceedings was £5,000.00. He did not accept that the purpose of requesting payment of the sum of £2,000.00 was to bring his debt under the sequestration limit and he did not accept that he had been advised to go to agencies for advice other than DWP.
35. In response to Mr. Fairbridge's question, Mr. McGarva accepted that he had been sequestered by the Property Factor and so any reference to sequestration at the meeting had been accurate. Mr. McGarva repeated that he had not been told anything at the meeting which he did not already know and had not been introduced to new concepts as he had been fully aware of the process.
36. In response to questions from the Tribunal as to whether Mr. McGarva thought he was being asked to seek a loan or assistance from the DWP, Mr. McGarva said that he did not think of that at all as his greater focus was on the comment that it was not in the interest of the DWP for Mr McGarva to lose

his home. He stated that his whole impression was that he was in danger of losing his house.

Property Factor's Evidence

37. Mr. Fairbridge did not lead any evidence on behalf of the Property Factor

Summing Up

38. In summing up, Mr. McGarva pointed out that the Property Factor and Mr. Fairbridge, in particular, chose not to give evidence and stated that the Tribunal should draw from this that Mr. McGarva's position was the correct one. He stated that he had spoken with "clarity and lucidity" and that the Tribunal should be careful in considering the information before it.

39. For the Property Factor, Mr. Fairbridge stated that Mr. McGarva, in his own words, confirmed that the letter of 5th March 2024 was an accurate version of the meeting. He stated that his own choice not to give evidence was based on his professional opinion as to what was the best course of action for his client.

40. Mr. Fairbridge stated that it is of fundamental importance that the phrase "no one wants to see that happen" relating to Mr. McGarva losing his house was an accurate picture as to what would happen if the debt was not paid and that the purpose of the meeting was to assist and help.

41. Mr. Fairbridge referred the Tribunal to Appendix 1 of the 2021 Code which provides guidance in respect of interpretation of words and phrases used in the 2021 Code and emphasised that the guidance applied a reasonable approach in the meaning of the wording.

42. Mr. McGarva, at this point stated that, he did not understand that the summing-up was his final submission. The Tribunal allowed him to revisit his submission.

43. Mr. McGarva stated that his clear evidence was that Mr. Fairbridge mentioned obtaining finance and not funds three times and had threatened sequestration and the loss of his house four times.

44. Mr. McGarva submitted that Mr. Fairbridge had chosen not to rebut any of his evidence and asked the Tribunal to consider why he had not done this and why he declined to put his version on record. Mr. McGarva submitted that no

negative connotations can be drawn from his evidence and so on the findings in fact had to be based on his evidence alone.

Additional evidence before the Tribunal

45. In addition to the oral evidence, the Tribunal had the written statements which formed part of the Application and in response to the Direction.

Tribunal's assessment of the evidence

46. The Tribunal assessed Mr. McGarva's evidence as being neither reliable nor credible. Mr. McGarva made it perfectly clear that he had multiple creditors and that he was fully familiar with debt recovery processes and procedures. Regardless of any health or disability issues, the Tribunal found it wholly lacking in credibility that Mr. McGarva did not appreciate the purpose of the meeting on 11 January 2024 was to discuss his indebtedness and that he did not anticipate that the Property Factor would be likely to point out that the next step in the process would be sequestration.

47. The Tribunal had no reason to believe that Mr. Fairbridge, as an enrolled solicitor, did anything other than put forward his client's factual position that they were at the end of the debt collection road and would have no alternative but to proceed to sequestration. The Tribunal found that reference to Mr. McGarva losing his house was a statement of fact and that it was both responsible and proper for Mr. Fairbridge to make this clear.

48. The Tribunal found that Mr. McGarva personal attack on Mr. Fairbridge to be unacceptable and without substance. There was no evidence, credible or otherwise, to support Mr. McGarva's statement that the Property Factor had instructed Mr. Fairbridge to intimidate him and found it wholly improbable that Mr. Fairbridge, as an enrolled solicitor, would have accepted that instruction.

49. The Tribunal did not agree with Mr. McGarva that his evidence was unchallenged. It was clearly and fully challenged by Mr. Fairbridge's cross-examination.

Findings in Fact.

50. The Tribunal made the following findings in fact and that on the balance of probability:
- a) Mr. McGarva is a homeowner in terms of the PF Act;
 - b) The Property Factor is a property factor in terms of the PF Act;
 - c) Mr. McGarva owes a considerable debt to the Property Factor;
 - d) A meeting took place between the Parties on 28 September 2023;
 - e) The purpose of the meeting was to impress upon Mr. McGarva the severity of the situation in respect of the debt due to the Property Factor;
 - f) The meeting was attended by the Property Factor's employees and their solicitor, Mr. Fairbridge and by Mr. McGarva;
 - g) Mr. Fairbridge set out the factual position of the consequences of Mr. McGarva's continued indebtedness to the Property Factor;
 - h) Mr. McGarva has many creditors and is familiar with the debt recovery process in Scotland;
 - i) The purpose of the meeting was not to intimidate Mr. McGarva but to give him warning of the final outcome of his failure to reduce his debt;
 - j) Mr. McGarva was sequestrated by the Property Factor.

Issue for the Tribunal.

51. The primary issue for the Tribunal is whether or not Mr. McGarva as the homeowner complied with Section 17(3) of the PF Act.
52. Section 17 (2) states: "An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty".
53. Section 17 (3) of the PF Act states: "No such application may be made unless (a)the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and (b)the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern."
54. Therefore, before making an application to the Tribunal the homeowner must give prior written intimation of the specific breach and the reasons why the homeowner considers there has been a breach.

55. The Tribunal had regard to the papers which accompanied the Application and in particular to correspondence between Mr. McGarva and the Property Factor dated 5 and 15 April 2024 and to the Property Factor's agents' letter of 14 March 2024. Taking these letters together and taking as wide a view as possible on the contents, the Tribunal was satisfied that Section 17(3) of the PF Act was complied with.

Decision of the Tribunal with reasons for the Decision.

56. The Tribunal had regard to all of the evidence before it and to its Findings in Fact and determined that there had been no intimidation or threats to Mr. McGarva. The Tribunal determined that the remarks made by Mr. Fairbridge at the meeting on 11 January 2024 had been a fair explanation of the next steps in a debt recovery process. The Tribunal found that it was not reasonable to conclude that the remarks intimidated or threatened Mr. McGarva, a seasoned debtor and, by his own admission, fully educated on debt processes, nor did the remarks intend to intimidate or threaten him.

57. For the sake of completeness, the Tribunal accepted that, taking a wide view of the definitions set out in the 2021 Code, it applied to Mr. Fairbridge as an agent of the Property Factor.

58. Accordingly, the Tribunal dismissed the Application.

59. This decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

_____ 24 August 2025
Legal Member/Chair Date

