

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)
In an Application under section 17 of the Property Factors (Scotland) Act 2011
by**

**Mr. Hamish Anderson, residing at Flat 1/1, 65 Hillfoot Street, Dennistoun, Glasgow
G31 2NB (“the Applicant”)**

**Newton Property Management Limited, 87 Port Dundas Road, Glasgow G4 0HF
 (“the Respondent”)**

Tribunal Reference No: FTS/HPC/PF/24/3014

**Re: Property at Flat 1/1, 65 Hillfoot Street, Dennistoun, Glasgow G31 2NB (“the
Property”)**

Tribunal Members:

Andrew Cowan (Chairman) and Mary Lyden (Ordinary (General) Member).

DECISION

The Respondent has failed to carry out its property factor’s duties.

The Respondent has failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

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We make the following findings in fact:

- 1 The Applicant is the owner of Flat 1/1, 65 Hillfoot Street, Dennistoun, Glasgow G31 2NB (hereinafter "the Property").
- 2 The Property is located within a development of flatted blocks and associated common areas (hereinafter "the Development")
- 3 A Deed of Conditions governs the arrangements for the sharing of costs relating to common property within the Development among the proprietors of the properties within the Development.
- 4 The Respondent is the property factor responsible for the management of common areas within the Development.
- 5 The property factor's duties which apply to the Respondent arise from the Statement of Services and the Deed of Conditions.
- 6 The letter dated 25th March 2024, from the Respondent to the owners of the properties within the Development in relation to proposed common repairs, was issued outwith the authority of the Respondent. The Respondent breached their duty to proceed within the authority of the Deed of Conditions in that respect.

Hearing

A hearing took place by telephone conference on 4th July 2025.

The Applicant was present at the hearing.

The Respondent was represented at the hearing by Catherine Flanagan, Customer Relationship Manager for the Respondent. No other witnesses were called by either party.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (effective from 16th August 2021) as "the Code".

The Respondent is a Registered Property Factor and must comply with the Code under section 14(5) of the 2011 Act.

The Tribunal had available to it, and considered, the documents lodged on behalf of the Applicant and the Respondent.

The documents before us included a copy of the Applicant's Title Certificate for the Property (Title Number GLA 186737). That title includes burdens arising under the terms of a Deed of Conditions by Regency Homes (Scotland) Limited registered 26th October which we refer to as "the Deed of Conditions".

The documents before us also included versions of the Respondent's Written Statement of Services ("WSS")

- a) WSS marked as "revised July 2021" (hereinafter referred to as "the 2021 WSS")
- b) WSS which included "August 2023 changes" and referred to by the Respondents as the 2024 WSS (hereinafter referred to as "the 2024 WSS")

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The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of failure to carry out the property factor's duties.

The Written Statement of Services and the Deed of Conditions are relied upon in the Application as a source of the property factor's duties.

The Code

The Applicant complains of the Respondents' failure to comply with the Code.

The Applicant complains of breaches of the Overarching Standards of Practice ("OSP") as defined in the code. The OSPs which the Respondent should apply, and which the Applicant considers have been breached by the Respondent are:

- OSP1.** You must conduct your business in a way that complies with all relevant legislation.
- OSP4.** You must not provide information that is deliberately or negligently misleading or false.
- OSP5.** You must apply your policies consistently and reasonably.

The Applicant also complains of breaches of Sections 1.5 (A) (3), 2.6 and 6.4 of the Code.

The elements of the Code relied upon in the application provide:

" Section 1: Written Statement of Services

A. Authority to Act

- 1.5** The WSS must make specific reference to any relevant legislation and must set out the following:

(3) where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners.



Section 2: Communication and Consultation

- 2.6. A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

Section 6: Carrying out Repairs and Maintenance

- 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.

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The Matters in Dispute

The Applicant complains in relation to the following issues:

- (1) Authority of the Respondent to Instruct Works at the Development
- (2) Financial Level of Delegated Authority of Respond as Property Factors

We deal with these issues below.

(1) Authority of the Respondent to Instruct Works at the Development

By letter dated 25th March 2024 to the owners at the development the Respondent intimidated their proposal to carry out painting to the common stairwells at the development. The letter confirmed that the Respondent had obtained contractor's tenders for these works and provided costs from those tenders. The letter intimated a breakdown of the cost of those works as shared between the 18 owners at the development. The letter confirmed that the cost of the proposed works to each owner at the development would be £313.50.

The letter stated:

"We will assume that it is in order, to instruct these works and incur all additional charges and fees should we fail to receive an objection from the majority of owners within 14 days of the date of this letter. The instruction will be placed with J.S. Harvie and Co as the most competitive contractor.

Due to the significant nature of these works, and in terms of our written statement of services we propose to charge you a share of an additional management fee for the administration of the works (referred to as a larger works fee) This will be charged separately to your account upon completion of the works and is chargeable in terms of our Written Statement of Services."

By email dated 28th March 2024 the Applicant raised a complaint with the Respondent in relation to several matters arising from the Respondent's letter of 25th March 2025. In particular, the Applicant complained that the Respondent could not obtain authority for carrying out the proposed works by seeking objections from a majority of the owners at the Development.

In his application to the Tribunal the Applicant refers to the terms of the Deed of Conditions which states:

FACTORS

..... "to enter into all such contracts and arrangements with third parties as are necessary from time to time in the exercise of its duties and to achieve performance of its function, subject always (where payment will be required of a share of the cost of any proposed common work the estimated amount of which share exceeds £150 (or such other amount as may be determined by the Proprietors of a majority of the Flats) to prior written authorisation by the Proprietors of a majority of the Flats or prior authorisation by majority vote of the Proprietors present at a meeting as aforementioned."

At the hearing the Applicant also referred to Section C "Charge for Services" para (a) of the WSS which states:

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“We will, on your behalf, repair and maintain the shared parts of the development. If we expect large-scale work to cost more than £75 (including VAT) per homeowner's property, (see section B (g)), we will only go ahead with it once a majority of owners has agreed the estimate for the work, or once we have received the full amount of the estimated cost from them.

However, for any large-scale work that costs more than £100 (including VAT) per property, we may charge an extra management fee, which is currently 10% of the cost of the repair before VAT. We will tell you, in writing, about any extra fees you have to pay in cases where we need permission for planned large-scale work. We will ask your permission to go ahead with the work and charge the fee.

However, in an emergency (or in any other circumstances we think are justified, such as a duty to maintain the property, as set out in the deed of conditions or other legislation) we can arrange the work and recover the cost from you without asking your permission first.”

The Applicant's complaint to this Tribunal is that the terms of the Respondent's letter of 25th March 2025 confirmed the Respondent would proceed with the proposed works unless a majority of owners at the Development objected to the proposed works. The Applicant considers that the Respondent has no authority to instruct works on this basis as the Deed of Conditions requires the Respondent to obtain the written consent of a majority of the owners at the development to proceed with such works, (where the proposed costs of such work exceed £150 per owner).

The Applicant also considers that the Respondent has not followed the process set out in their WSS which requires that works costing more than £75 per owner will only proceed once a majority of owners has agreed the estimate of costs for the work.

The Respondent's submission to the Tribunal in response to the matters raised by the Applicant are that:

- a) The last paragraph of Section C of the WSS advises owners at the Development that there are certain circumstances where the Respondent may not require the owners permission to carry out works. They submit that, as the definition of “common charges” within the deed of conditions includes expenses sought for “decoration”, they are not required to seek the consent of the owners at the development to instruct decoration works.
- b) They submit that there is “little difference” in asking permission to carry out works or objection to carrying out works. They consider that in both cases the owners are being consulted as per the requirements of the Code.
- c) At the hearing the Respondent's representative suggest that the proposed works were cyclical works and, as such, could be carried out under the terms of the Tenement Management scheme introduced by the Tenement Scotland Act 2004.

The Tribunal consider that the terms of the Respondent's letter dated 25th March 2025 breached the Property Factors' duties and the Code.

The delegated authority of the Respondent to instruct works is derived from the terms of the Deed of Conditions. That deed authorises the Respondent to instruct works up to a cost limit of £150 per owner. Any works which exceed that limit can only be instructed where the Respondent has the prior written authorisation of a majority of owners at the development.

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The Respondent requires to obtain the positive consent of a majority of owners to proceed with works which cost more than £150 per owner. They did not seek that consent by the terms of their letter of 25th March 2025. The Respondent cannot assume they have authority to instruct works by asking for objections to a proposal to instruct works within a defined period. That is not consistent with the Deed of Conditions or the Respondent's own WSS.

The Deed of Conditions and the WSS make no specific reference to cyclical works, or the authority of the factors to instruct such works. The terms of the tenement management scheme are not applicable in this case as the terms of the Deed of Conditions provides procedures for the making of decisions by the owners and the same such procedures apply as respects each flat at the Development.

The final paragraph of Section C(a) of the WSS cannot override the authority granted to the Respondent under the terms of the Deed of Conditions. Except in the case of a genuine emergency, (which parties accept is not an issue in this case) the Respondent must seek the written consent of a majority of owners at the Development to instruct works which will cost more than £150 per owner.

Breach of Property Factors Duties

The letter of 25th March 2024 was issued outwith the authority of the Respondent. The Respondent breached their duty to proceed within the authority of the Deed of Conditions.

Failure to comply with 2.6

The WSS issued by the Respondent requires the Respondent to seek a majority of owners agreement to estimates of works where the costs exceed £150 per owner. The Respondent did not seek such consent in their letter of 25th March 2024 and as such have failed to comply with Section 2.6 of the Code.



(2) Financial Level of Delegated Authority of Property Factors

In the 2021 WSS the Respondent confirms at Section B(g) that:

“We will get estimates from several tradesmen for the same job if the cost per homeowner's property for any repair is over £50 including VAT (see section C (a)). We will tell you about these estimates and get your agreement before the work starts. This may involve you voting with other homeowners on whether the work should go ahead or not.”

The 2021 WSS also confirms at Section C (a) that

“We will, on your behalf, repair and maintain the shared parts of the development If we expect large- scale work to cost more than £50 (including VAT) per homeowner's property, (see section B (g)), we will only go ahead with it once a majority of owners has agreed the estimate for the work, or once we have received the full amount of the estimated cost from them. However, for any large-scale work that costs more than £150 (including VAT) per homeowner's property, we may charge an extra management fee, which is currently 10% of the cost of the repair before VAT.”

In 2023 the Respondent issued a change to their WSS. The 2024 WSS, incorporating these changes, was issued to the Applicant.

In the 2024 WSS the Respondent had increased the cost of works, above which they required the agreement of a majority of owners to allow them to proceed with the works, to £75.

The revised section C(a) in the 2024 WSS now confirms that:

“We will, on your behalf, repair and maintain the shared parts of the development If we expect large- scale work to cost more than £75 (including VAT) per homeowner's property, (see section B (g)), we will only go ahead with it once a majority of owners has agreed the estimate for the work, or once we have received the full amount of the estimated cost from them. However, for any large-scale work that costs more than £100 (including VAT) per homeowner's property, we may charge an extra management fee, which is currently 10% of the cost of the repair before VAT.”

The Applicant complains that the Respondent did not have authority to increase the levels of their delegated authority to proceed with works from £50 to £75 per owner in the 2024 WSS. He submits that any delegated authority cost threshold must be agreed in writing with owners. He submits that owners have not agreed to an uplift in the delegated authority of the Respondent and therefore the Respondent does not have the authority to change the threshold limit above which they can only instruct works with the authority of a majority of owners.

The Respondent submits that the Deed of Conditions gives them authority to increase the level of delegated authority up to £150.

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The Deed of Conditions gives authority to the Respondent:

..... “to enter into all such contracts and arrangements with third parties as are necessary from time to time in the exercise of its duties and to achieve performance of its function, subject always (where payment will be required of a share of the cost of any proposed common work the estimated amount of which share exceeds £150 (or such other amount as may be determined by the Proprietors of a majority of the Flats) to prior written authorisation by the Proprietors of a majority of the Flats or prior authorisation by majority vote of the Proprietors present at a meeting as aforementioned.”

The Tribunal have determined that the Respondent has not exceeded their authority by uplifting the level of their delegated authority in the 2024 WSS.

The Deed of Conditions gives delegated authority to the Respondent to enter into contracts on behalf of the owners. It restricts that delegated authority works which costs up to £150 per owner's share, above which further consent of a majority of owners is required.

Although the delegated authority fixed by the Respondent could be any figure up to the £150 per owners share, the 2024 WSS has restricted the level of authority to £75 per owners share. The Respondent has chosen to restrict their authority to that level.

The Applicant sought to argue that as the owners had previously accepted the £50 level of delegated authority, such authority could only be amended by further agreement of the owners. The Tribunal do not accept that argument. The original £50 level of delegated authority was stated by the Respondent in the WSS. The Respondent can fix a higher level up to the £150 limit imposed by the Deed of Conditions. The Deed of Conditions is the Respondent's authority on this matter. If the Respondent's WSS terms are within the authority of the Deed of Conditions the Respondent does not require to seek further consent from the owners at the Development on that point.

The Tribunal have determined that there is no breach of the Property Factor's duties or the Code in relation to this part of the Applicant's complaint.

PROPERTY FACTOR ENFORCEMENT ORDER

We propose to make a property factor enforcement order (“PFEO”) in relation to the Applicant's first complaint. The terms of the proposed PFEO are set out in the attached document.

APPEALS

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.

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CHAIRMAN

Date: 18 August 2025