

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/24/5227

Property: Flat 0/2, 301 Alexandra Parade, Glasgow G31 3EW (“the Property”)

The Parties:-

Ms Heulwen Jones, Flat 0/2, 301 Alexandra Parade, Glasgow G31 3EW (“the homeowner”)

Hacking & Paterson Management Services Limited, registered in Scotland under the Companies Acts (SC073599) and having their registered office at 1 Newton Terrace, Charing Cross, Glasgow G3 7PL (“the property factors”)

Tribunal Members: George Clark (Legal Member/Chairman) and Sara Hesp (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber determined that the property factors have not failed to comply with OSP2, OSP3, OSP4, OSP6, OSP11 or Sections 1.5, 2.1, 2.3, 2.4, 2.7, 6.1, 6.4, 6.6, 6.8, 6.12 or 7.1 of the Property Factors Code of Conduct effective from 16 August 2021 and have not failed to comply with the property factor’s duties.

Background

1. By application, dated 11 November 2024, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011 (“the Act”). She alleged failures to comply with OSP2, OSP3, OSP4, OSP6, OSP11 or Sections 1.5, 2.1, 2.3, 2.4, 2.7, 6.1, 6.4, 6.6, 6.8, 6.12 or 7.1 of the Property Factors Code of Conduct effective from 16 August 2021 (“the 2021 Code”), and a failure to carry out the property factor’s duties.

2. The homeowner's complaint, in summary, is that, on 29 July 2024, she asked the property factors to arrange for three contractors to visit the block and provide a cost for making a portion of the roof water and weather-proof. It had been leaking since January 2023. At the date of her formal complaint (10 October 2024), they had only received two quotes and one of them was for a survey, not a repair. The quotes had not been disseminated to the other owners. The property factors had not chased the contractors for quotes, and action had only taken place when the homeowner asked for an update. A quote from Northwest Roofing was dated 28 August 2024, but the homeowner did not receive it until 8 October. She complained to the property factors on 10 October 2024 and was advised on the following day that they would respond within 14 days, but it was not until 1 November that the Associate Factoring Director replied. and then it was to say that he needed another 14 days.
3. The homeowner contended that the property factors had failed to be open and transparent in communications, had failed to respond in a timely manner, repeatedly exceeding their own timeline, had failed to expedite matters pertaining to maintenance of the block, and had failed to use their access to homeowners in any way that benefitted the block or increased understanding of problems within the block. They had failed to make routine visits to assess the condition of the block, had failed to ensure that gutter clearance was carried out annually at an appropriate time of year and had failed to upload documents to their portal in a timely fashion or to update the portal with details of the team responsible for the block. They had also repeatedly made excuses for not answering emails within their 7-day timeline and misrepresented the truth and failed to carry out their promises.
4. The homeowner also complained that the property factors had failed to make contact with another owner over an 18-month period, but the Tribunal did not consider this complaint further, as it did not relate to the service provided to the homeowner and it would be for that owner, not the homeowner, to complain if he was not satisfied with the service provided to him by the property factors.
5. The homeowner provided the Tribunal with copies of the property factors "Terms of Service and Delivery Standards" ("WSS") dated 22 August 2023, an email of 15 November 2024 from Mr Alastair Leitch, the property factors' Associate Factoring Director, apologising for having had to ask for a further period for review, which was due to an unplanned period away from the office following a family bereavement. He offered an unreserved apology for the homeowner's negative experience, accepting that there were times when the property factors had not upheld the terms of their WSS, particularly in relation to timescales for communication replies and actioning specific requests timeously. He advised the homeowner that he had credited her common charges account with the sum of £120, being the equivalent of six months' management fees, as

a goodwill gesture.

6. The homeowner also provided copies of two quotations for roof works, one for £489 (14 August 2024) and the other for £6,408 (16 October 2024) and a quote, dated 28 August 2024 from Northwest Roofing for carrying out a full roof and building fabric survey, together with copies of extensive email correspondence between the Parties. The emails indicated that, whilst the majority of owners in the block were in favour of carrying out roof works, two owners said that they could not afford it. The property factors advised that the options were either for the other owners to make up the missing shares, in which case they could apply for up to 50% grant assistance, or, if a majority were willing to pay their shares, for those owners to meet the full cost and seek help from Glasgow City Council's Missing Shares Scheme, but under that option, they would not receive any grant assistance.
7. Amongst the correspondence submitted by the homeowner was the property factors' response of 15 November 2024 to her formal complaint of 10 October. They pointed out that there had been various meetings and communications on the need for major repairs to the roof. Following a request from the owner of Flat 3/1, they had asked for quotes, but had only received two responses, one for minimal work and the other stating that the contractors did not wish to quote for specific work without the guidance of a survey. A third quote had been received some weeks later for a much larger sum than the first one and the responses had been so varied both in terms of specification of work and cost that the property factors could not present them to the owners and recommended a further meeting at which they could seek instructions from the owners on how they wished to proceed. The property factors apologised that it had taken so long to ingather the requested quotes/reports but did not agree that their service was one of oversight, delays and incompetence, as the homeowner had contended in her complaint. The collective homeowners had chosen not to agree with the property factors' proposals, restricting their ability to deal with issues and manage the tenement effectively. The property factors could only upload the quotes on to their portal once a proposal was made to the owners, but they could be made available on request. They accepted that there had been occasions when they had failed to adhere to their WSS in the extensive communications the homeowner had had with their office over a protracted period and reiterated their apologies for such failures, but noted that they had attempted to provide full and transparent responses on each occasion. They felt that there was a level of frustration that a common repairs scheme had not been able to be progressed, but this was due to the owners' inability for various reasons to agree to the proposed scheme and any other options the property factors had put to them. They stated that the dates provided for the completion of gutter cleaning showed that this work had been carried out on an approximate annual basis over the 5 years from 2019-2023.

8. On 29 November 2024, the property factors replied in detail to the homeowner following her application to the Tribunal. They dealt with it by way of reference to each Section of the Code of Conduct under which a failure to comply was alleged and, for ease of convenience and to avoid repetition, their responses are summarised in the Reasons for Decision section of this Decision.
9. On 9 June 2025, the property factors made written representations to the Tribunal. They referred to their final response of 29 November 2024 to her complaint and confirmed that it had become evident in their extensive communication over a protracted period that they had not upheld their timescales in accordance with their WSS and they had apologised sincerely to the homeowner for this. They did not, however, agree that other breaches as alleged in the correspondence had occurred.
10. On 16 June 2025, the homeowner responded to the property factors' representations. She stated that at no time during the many years that they had acted as factors for the Property did they adhere to their own WSS and respond within the required time. She cited as an example correspondence regarding the return of her float. This, however, post-dated the application, so could not be considered by the Tribunal.
11. On 31 July 2025, the homeowner advised the Tribunal that she would not be attending the Case Management Discussion.

Case Management Discussion

12. A Case Management Discussion was held by means of a telephone conference call on the morning of 6 August 2025. The homeowner was not present or represented. The property factors were represented by Mr Alastair Leitch.
13. Mr Leitch reiterated that the property factors accept that there were lapses in communication. The process was to try to instigate a repairs scheme of some sort, whether based on contractors' estimates or a major scheme supervised by a surveyor. Despite two meetings in 2023 and one in 2024, they could not get owners' agreement. The owners indicated that it was too expensive. The property factors asked 3 contractors to quote for the work on a roof that was in need of major repair. One of the contractors said that they would need guidance on how much they were to do. With such a spectrum of quotes, they sent the homeowner a letter to explain how difficult it had become and said that a meeting of owners would be required, but by then, the owners had decided to change factors. There was no delegated authority in the WSS, so any work would require owners' consent and funding in advance. Their contract with the owners did not include arranging periodic inspections of the roof. He accepted that there had been failings and that changes of staff could not be used as an

excuse. The property factors had not been as responsive as they should have been and that was the reason that they gave a refund to the homeowner.

Findings of Fact

- i. The homeowner is the proprietor of the Property.
- ii. The property factors, in the course of their business, manage the common parts of the block of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors were registered on The Scottish Property Factor Register on 1 November 2012. Their current registration is dated 2 April 2019.
- v. The homeowner has notified the property factors in writing as to why he considers that the property factors have breached the Codes of Conduct under the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 11 November 2024, under Section 17(1) of the Act.

Reasons for Decision

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
15. The Tribunal considered carefully all the evidence before it, namely the written representations of both Parties and the oral evidence given at the Case Management Discussion. Not every document forming part of the written representations is referred to in the following statement of Reasons for Decision, but the Tribunal took all of them into account in arriving at its Decision.
16. The Tribunal’s view was that the property factors had found themselves in a difficult situation and that they got as far as they could in trying to persuade the owners to agree some sort of repairs scheme, but the owners could not reach agreement as to the scope of the work and two owners were, apparently, not prepared or not able to meet their share of the cost. The property factors had, however, not retained very good control of the process and contractors had not all quoted for the same work. In hindsight, a better approach would have been to appoint a surveyor to produce a job specification against which all three contractors would be asked to quote, but it was at least possible that two of the owners would not have agreed to pay for the survey, and the remainder were,

understandably, not willing to pick up the missing shares of the actual repair costs.

17. The Tribunal found that there had clearly been failings in communication, particularly the failure to circulate the quotes to all owners simultaneously and the failure to advise the homeowner until 8 October 2024 of the Northwest Roofing estimate dated 28 August. There had also been a pattern of the homeowner having to chase up replies to questions she asked of them. This failing had been accepted by the property factors and they had apologised and refunded a sum which equated to six months' factoring fees. The Tribunal regarded the level of refund as reasonable in all the circumstances.
18. The Tribunal noted that the property factors' remit did not include arranging periodic inspections of the roof and that the homeowner had stated in her formal complaint of 10 October 2024 that gutter cleaning had been invoiced on 8 February 2019, 14 May 2020, 14 December 2020, 18 January 2022, 1 March 2023 and 10 November 2023. The Tribunal acknowledged that the cleaning had not always been carried out at the same time of year, following leaf-fall, but there was no evidence that this had prejudiced the owners in any way.
19. The Tribunal then considered the written and oral evidence in relation to the alleged failure to comply with the various Sections of the 2021 Code.
20. **OSP2** states "You must be honest, open and transparent and fair in your dealings with homeowners". The homeowner's complaint related mainly to the issues with communication, including the failure to disseminate quotes to all owners at the same time and the delay in sending out the quote from Northwest Roofing. The property factors referred in their letter of 29 November 2024 to the timeline attached to their response to the homeowner of 15 November 2024, which detailed the actions they had taken. The Tribunal did not uphold the complaint under OSP2 as, whilst the communication had at times been poor, there was no evidence that the property factors had not been honest, open and transparent in their dealings with the homeowner.
21. **OSP3** states "You must provide information in a clear and easily accessible way". The homeowner did not provide any specific instances of the property factors providing any information that was not clear or accessible, so the Tribunal did not uphold the complaint under OSP3.
22. **OSP4** states "You must not provide information that is deliberately or negligently misleading or false". The homeowner's complaints appear to relate to delays in providing information or responding to queries. She did not provide evidence that any information provided had been deliberately or negligently misleading or false, so the Tribunal did not uphold the complaint under OSP4.

23. **OSP6** states “You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including making sure that staff have the training and information they need to be effective.” The Tribunal did not uphold the complaint under OSP6. The view of the Tribunal was that the staff involved had used reasonable skill and care in a situation that was becoming increasingly difficult and there was no evidence to suggest they did not have adequate training. Accordingly, the Tribunal did not uphold the complaint under OSP6.
24. **OSP11** states “You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.” The Tribunal noted that the property factors had acknowledged that there had been occasions when they had not responded to communications within the timescales stated in their WSS, but they had apologised for this and had refunded the equivalent of six months’ management fees. The homeowner did not regard this as sufficient, but the Tribunal determined that the compensation was reasonable and that, accordingly, it would not uphold the complaint under OSP11.
25. The relevant portion of **Section 1.5** provides that the WSS must make specific reference to any relevant legislation and must set out a statement of the basis of the authority the property factor has to act on behalf of all the homeowners in the group and, where applicable, a statement of any level of delegated authority. It also specifies what should be included in a WSS. The property factors provided with their letter of 29 November 2024 a copy of their WSS, which clearly sets out their authority to act, namely custom and practice. It does not contain any provision for delegated authority. It details the services provided, the financial and charging arrangements, the process for communication and consultation, a declaration of interest, information about the 2011 Act and on how to end the arrangement. The Tribunal did not, therefore, uphold the complaint under Section 1.5 of the Code. The homeowner’s complaint did not contain any allegation that the requirements of Section 1.5 in relation to what should be included in a WSS had not been met. The complaint was a failure to comply with the terms of the WSS.
26. **Section 2.1** stresses that good communication is the foundation for building a positive relationship with homeowners and states in general terms that, as it is the responsibility of homeowners to make sure the common parts of their building are maintained to a good standard, homeowners need to be consulted appropriately in decision making and have access to the information they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations. As it does not, however, impose any specific obligations of property factors, the Tribunal did not uphold the complaint under Section 2.1 of the Code.

27. **Section 2.3** states that the WSS must set out how homeowners can access information, documents and policies/procedures, which can be made available in digital format, but they must provide paper copy in response to any reasonable request by a homeowner. The property factors, in their letter of 29 November 2024, referred to Section 5.9 of their WSS. It sets out clearly that a homeowner can access all such matters by visiting the property factors' website, an App or Web Portal or by contacting the Factoring Team. The Tribunal was satisfied that Section 5.9 of the WSS met the requirements of Section 2.3 of the Code, so did not uphold the complaint under that Section.
28. **Section 2.4** states "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 a good reason not to." There was no evidence provided by the homeowner in support of the complaint under Section 2.4 of the Code, so it was not upheld by the Tribunal.
29. **Section 2.7** states that "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 keep the homeowner(s) informed if they are not able to respond within the agreed timescale." The Tribunal noted that the property factors had acknowledged that there had been failings in communication and had apologised and compensated the homeowner. As the Tribunal regarded the apology as sincere and the compensation as reasonable, it regarded the matter as resolved and did not uphold the complaint under Section 2.7.
30. **Section 6.1**, like Section 2.1, does not impose any specific duty on the property factor. It states that, whilst it is homeowners' responsibility 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. In their letter of 29 November 2024, the property factors advised that it was the collective homeowners who had restricted the property factors' ability to effectively have repairs carried out due to what they understood to be financial reasons. The Tribunal agreed with that position and did not uphold the complaint under Section 6.1 of the Code. The property factors had sought quotes, had had extensive communication with the owners, including three meetings, but the owners could not agree, so the property factors were unable to take matters further on their behalf.
31. **Section 6.4** states "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 beneath which job-

specific reports are not required.” In their letter of 29 November 2024, the property factors accepted that there had been occasions when they had not met timescales, but said that it was evident that there had been extensive correspondence with the homeowners. The Tribunal noted from the timeline provided in their response of 15 November 2024 to the homeowner’s complaint, that there was extensive communication between January 2023 and October 2024. The owners had not agreed on a repairs scheme, so there was no work on which the property factors could report progress or estimated timescales for completion. The Tribunal did not uphold the complaint under Section 6.4 of the Code.

32. **Section 6.6** provides that “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 property factors stated in their letter of 29 November 2024 that they had engaged the services of a surveyor who followed through a process of recommendations in relation to the condition of the tenement, but works were restricted due to the owners’ financial situations and instructions were not forthcoming that would have allowed suitable repairs to be progressed. On 30 April 2024, the property factors had suggested that the owners might want to arrange a meeting amongst themselves to decide how they wished to proceed and let the property factors know which approach they would prefer to take forward. In that letter, they set out four options for the owners to consider. Accordingly, the Tribunal did not uphold the complaint under Section 6.6 of the Code.
33. **Section 6.8** states that property factors must take reasonable steps to appoint contractors who have public liability insurance. There was no indication from the homeowner that any contractors appointed by the property factors might not have such insurance, so the Tribunal did not uphold the complaint.
34. **Section 6.12** (paraphrasing) requires property factors to continue to liaise with contractors in order to remedy the defects in any inadequate work that they have organised on behalf of homeowners. The homeowner did not provide any evidence that she had asked the property factors to pursue contractors regarding any inadequate work, so the Tribunal did not uphold the complaint under Section 6.12.
35. **Section 7.1** states that a property factor must have a written complaints handling procedure and sets out various matters that it must include. The Tribunal did not uphold this complaint. The property factors provided with their letter of 29 November a copy of their WSS and their Formal Complaints Handling Procedure document. The latter document sets out a two-stage process and provides details of the right to apply to the Tribunal if an owner is not satisfied that their complaint has been resolved. It includes the address, telephone number, email address and website details for the Tribunal

Property Factor's Duties

36. The Tribunal understood the homeowner's complaint to relate to the property factors' failures to meet the timescales for replies to enquiries and responses to complaints set out in their WSS. The view of the Tribunal was that these matters had been dealt with by means of acknowledgement, apology and compensation, so the Tribunal did not uphold the complaint.
37. Although the Tribunal was satisfied that the property factors had taken appropriate steps to apologise and compensate the homeowner for their communication failings, so did not decide that they had failed to comply with the Code of Conduct, the Tribunal was concerned at the number of occasions where the homeowner had to chase them for responses and where these reminders produced another apology. The Tribunal suggests that the property factors review their internal processes to see how performance in this regard might be improved, including the way in which incoming emails are dealt with if the recipient is absent.
38. The Tribunal's Decision was unanimous.

Right of 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.

George Clark

Legal Member

14 August 2025
Date