



## **First-tier Tribunal for Scotland (Housing and Property Chamber)**

### **Decision with Statement of Reasons under Section 19 of the Property Factors (Scotland) Act 2011**

**Reference number: FTS/HPC/PF/24/3938**

**Re: Property at Flat 4, 28 Ayr Street, Springburn, Glasgow, G21 4DG (“the Property”)**

#### **The Parties:**

**Mrs Cheryl Callaghan as executor of Carole Weinstein, 17G Newabbey Road, Gartcosh, Glasgow, G69 8DN (“the Applicant”)**

**James Gibb Property Management Ltd, Red Tree Magenta (3rd Floor), 270 Glasgow Road, Rutherglen, G73 1UZ (“the Respondent”)**

#### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the duty under section 14(5) of the Property Factors (Scotland) Act 2011 (“the 2011 Act”), and in particular has failed to comply with sections 2.7, 6.1 and 6.4 of the Code of Conduct for Property Factors 2021.

The Tribunal therefore proposes to make a property factor enforcement order (“PFEO”).

#### **Background**

- 1 This is an application under rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) for a determination that the Respondent has failed to comply with the duty under section 14 of the 2011 Act. In particular, the Applicant stated that the Respondent had failed to comply with sections 2.7, 6.1, 6.4 and 6.5 of the Code of Conduct for Property Factors 2021.
- 2 The Applicant’s complaint can be summarised as follows: -
  - (i) The Respondent failed to carry out routine maintenance, including maintaining the external grounds, and failed to carry out routine repairs, including a leak from an overflow pipe and cracked tiles.

- (ii) The Respondent failed to respond timeously to emails and failed to return the Applicant's calls.
- 3 The Applicant sought the recovery of all charges paid to the Respondent since the overflow leak was first reported in February 2020.
- 4 The application was referred to a case management discussion ("CMD") to take place by teleconference on 23 June 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.
- 5 On 3 April 2025 the Tribunal received written representations from the Respondent in response to the application. The Tribunal also received written confirmation from the Respondent that they did not wish to attend the CMD.

### **The CMD**

- 6 The CMD took place on 23 June 2025. The Applicant joined the call. The Respondent was not present, nor represented.
- 7 The Tribunal confirmed that the Applicant had received the Respondent's written representations and sought her comments on these. The Applicant outlined the history of communications with the Respondent, particularly the lack of response. The Applicant stated that the Respondent had previously advised that the repair to the external pipe had been addressed by the Respondent, therefore it was difficult to accept that they had no responsibility for this.
- 8 The Tribunal discussed the specific sections of the Code, which the Applicant alleged had been breached. The Applicant confirmed that section 6.5 did not apply, and that she was relying upon sections 2.7, 6.1 and 6.4 of the Code.
- 9 The Tribunal therefore determined to adjourn the CMD to require the Applicant to submit a full response to the Respondent's representations, including a chronology of her communications with the Respondent. The Respondent would then be given the opportunity to provide any further written representations in response. The Tribunal determined thereafter that it would likely proceed to a decision on the basis of the written representations.
- 10 Following the CMD the Tribunal issued a Direction to the parties requiring the Applicant to provide further written submissions on the following points:-
  - (i) A written statement outlining her response to the Respondent's written representations. The statement should include a chronology of the Applicant's communications with the Respondent, along with any other information she wishes to provide, highlighting the alleged breaches of the relevant code sections on which she intends to rely.

- 11 The Respondent was also directed to make any further written representations in response to the Applicant's submissions.
- 12 On 4 July 2025 the Tribunal received a response to the Direction from the Applicant. No further written representations were received from the Respondent.

### **Findings in fact**

- 13 The Applicant is the executor of her mother, the late Carole Weinstein, who was the owner of the property at Flat 4, 28 Ayr Street, Springburn, Glasgow, G21 4DG. The property forms part of a development of flatted properties consisting of one building with four stairwells within and six flats per stairwell ("the Ayr Street development"). The Respondent became the property factor for the Ayr Street development in 2019.
- 14 Carole Weinstein passed away on 2 February 2023.
- 15 The Respondent has a Written Statement of Services.
- 16 In terms of section 6.1.1 of the Respondent's Written Statement of Services, the Respondent "*endeavour to acknowledge receipt of a communication*" within 5 working days where the communication is by email, and within five working days when the enquiry is made by telephone. Section 6.1.1 further states that "*Timescales for resolution of queries, relevant to the prevailing issues, will be advised to the homeowner, where possible, on acknowledgement*".
- 17 The Applicant communicated with the Respondent on her mother's behalf regarding the factoring for the Ayr Street development.
- 18 On 8 March 2022 the Respondent wrote to the homeowners of Ayr Street highlighting leaking overflow pipes and asking residents to take remedial action.
- 19 On 30 November 2022 the Applicant emailed the Respondent querying the latest invoice from the Respondent. The Respondent replied on 5 December 2022 with a response to the query.
- 20 On 15 December 2022 the Respondent wrote to the homeowners of the Ayr Street development highlighting leaking overflow pipes and asking for residents to attend to these as soon as possible.
- 21 On 9 February 2023 the Applicant emailed the Respondent to inform them of her mother's passing. The Respondent replied that day requesting a copy of the death certificate to close the account. The Applicant provided a copy of the death certificate later that same day. On 10 February 2023 the Respondent provided the outstanding balance on the account.

- 22 On 1 March 2023 the Applicant emailed the Respondent with video evidence of a leak from the overflow pipe and the external areas. The Applicant received no response.
- 23 On 2 March 2023 the Applicant emailed the Respondent querying an invoice received and stating it would not be paid. The Applicant received no response.
- 24 On 25 August 2023 the Applicant emailed the Respondent highlighting ongoing bills. The Applicant requested the account be closed and that the Respondent's email address would be blocked.
- 25 In terms of section 7.4 of the Respondent's Written Statement of Services, the Respondent undertakes to acknowledge a stage 1 complaint within ten working days of receipt and provide a full response within twenty five working days from the date of the complaint acknowledgement.
- 26 In terms of section 7.5 of the Respondent's Written Statement of Services, the Respondent undertakes to acknowledge a stage 2 complaint within ten working days and provide a full response within twenty-five working days from the date of the complaint acknowledgement.
- 27 On 30 August 2023 the Applicant emailed the Respondent raising a complaint. The Applicant highlighted the leak from the overflow pipe and the deterioration in the external areas.
- 28 On 1 September 2023 the Respondent acknowledged the Applicant's complaint and stated that a response would be issued by 9 October 2023, unless otherwise advised.
- 29 On 14 September 2023 the Respondent provided a response to the Applicant's complaint. The Respondent confirmed that the leak from the overflow pipe had been rectified and that delays had been due to arranging access to private properties.
- 30 On 23 September 2023 the Applicant emailed the Respondent rejecting the complaint response.
- 31 On 2 October 2023 the Respondent emailed the Applicant advising that her complaint would be escalated to stage 2 and she would receive a response by 9 November 2023.
- 32 On 7 November 2023 the Respondent provided a response to the Applicant's stage 2 complaint.
- 33 The leaks from the overflow pipes are longstanding and have caused deterioration and damage to both the Applicant's property, and neighbouring properties.

- 34 As part of their services, the Respondent undertakes grounds maintenance twice per month between April and October each year. The works include grass cutting and edging, and cleaning the common areas of the development of litter, leaves, and debris. Between November and March the same work is to be undertaken once per month.
- 35 The Respondent carried out site visits at the Ayr Street development on 23 March 2022, 20 December 2022 and 16 February 2023.
- 36 On 7 April 2022 the Respondent wrote to the homeowners of Ayr Street asking for general waste to be placed in bins and for bulk items to be removed.
- 37 On 10 May 2022 the Respondent wrote to the homeowners of Ayr Street asking for bulk items to be removed.
- 38 On 17 June 2022 the Respondent wrote to the homeowners of Ayr Street asking for bins to be returned to bin stores once emptied.
- 39 On 16 February 2023 the Respondent wrote to the homeowners of Ayr Street requesting they use the correct bins for general waste and ensure bins were not overflowing.
- 40 The condition of the external grounds at the Ayr Street development has deteriorated due primarily to the presence of litter.
- 41 On 23 March 2021 the Respondent wrote to the homeowners of the Ayr Street Development notifying them that repairs were required to cracked and missing tiles on the external stairs.
- 42 The said correspondence from the Respondent stated *“of the four quotes that I have received, the costs per flat range from under £30 plus VAT to £185 plus VAT each. Obviously the most expensive option includes top of the range tiles as well as fitting metal stair nosings to minimise future damage. However with the cheaper option, if need be you could have the steps renewed every year for the next 6 years and you still won’t have spent as much on repairs”*.
- 43 The Respondent did not proceed with the repairs to the external stair tiles. The quote obtained was considered too expensive by the homeowners of the Ayr Street development.

### **Reasons for decision**

- 44 The Tribunal was satisfied that it could proceed to a decision on the basis of the documentary evidence, in the absence of a hearing under Rule 18 of the Rules. The Respondent had confirmed they had no intention of participating in the proceedings, other than their initial written response to the application, and they had failed to provide any response to the Tribunal’s Direction. The Tribunal therefore considered it had sufficient information upon which to reach a determination of the application.

- 45 Section 17(3) of the 2011 Act states, in relation to applications to the Tribunal, that “ *No such application can 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 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 concerns*”. The Tribunal was satisfied based on the documentary evidence before it that the Applicant had notified the Respondent of their alleged failure to comply with the section 14 duty prior to making the application and that the Respondent had not sought to engage in any further correspondence with her regarding the issues raised following said notification.
- 46 The Tribunal therefore carefully considered the wording of the sections of the Code that the Applicant states have been breached by the Respondent in this case. It should be noted that some of the examples provided by the Applicant in support of the alleged breaches pre-dates the 2021 Code of Conduct therefore the Tribunal is restricted to consideration of those matters which occurred after 16 August 2021 when the existing Code came into effect.
- 47 Section 2.7 of the Code states:-
- “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.”*
- 48 The Tribunal accepted the Applicant’s submissions regarding the history of her communications with the Respondent. These were corroborated, in part, by the emails produced by both parties.
- 49 The Tribunal acknowledged the timescales for response to general queries as outlined in the Respondent’s written statement of services. Whilst the Respondent had been compliant, on occasion, with said timescales, there were instances where their response times fell short, an example being the emails sent by the Applicant on 1 and 2 March 2023. The Tribunal accepted that the Respondent had failed to acknowledge or respond to those emails. Whilst the Respondent had stated that this was due to an employee having left the organisation, ultimately the Tribunal would have expected the Respondent to have had safeguards in place to ensure that any outstanding emails were dealt with in the employee’s absence, such as auto-forwarding of emails or a review of the employee’s inbox.
- 50 Furthermore, the Tribunal accepted that the Applicant had not received a response from the Respondent to her emails of 17 September 2024 and 19 November 2024, other than an acknowledgement. The Respondent may have considered that there was little point in responding given that matters had progressed to the Tribunal, however the Respondent had clearly stated in their acknowledgements that the Applicant would receive a response. She had not.

The Tribunal therefore considered that this too amounted to a failure on the Respondent's part.

51 With regard to the Applicant's formal complaint, whilst the Tribunal noted her concerns about the Respondent's response times, ultimately these were in line with the timescales set down in the Respondent's complaints procedure.

52 The Applicant has also referred to telephone calls to the Respondent going unanswered, however in the absence of any specification regarding these calls the Tribunal is unable to make any findings.

53 The Tribunal therefore found the Respondent to be in breach of section 2.7 of the Code in respect of their failure to provide a response to the Applicant's emails of 1 and 2 March 2023, and 17 September and 19 November 2024.

54 Section 6.1 of the Code states:-

*"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."*

55 The Applicant references issues with the leaks from overflow pipes at the development. It is not disputed that the pipes pertain to private properties. Whilst a factor can assist in facilitating repairs where common parts are being affected, the Tribunal accepts that the overall responsibility for taking action to remedy any leaks therefore lies with the property owner. However, it is clear from the actions taken by the property factor, and the wording of section 6.1 of the Code, that a factor does have a role in facilitating repairs which are affecting multiple properties. The photographs produced by the Applicant evidence that the leaks have been a longstanding problem as can be seen by the staining and damage to external walls in the development.

56 The Tribunal accepts that the Respondent sought to prompt the responsible owners to address the leaks by issuing correspondence to them in March and December 2022. However, it does not appear that the leak was properly addressed until late 2023, as confirmed by the Respondent's complaint response to the Applicant. The Tribunal considered that the Respondent could have taken action at an earlier stage, either by seeking rights of access to the responsible property or by increasing their attempts at communicating the issue with the homeowner. The Tribunal accepts that due to their failures in this regard, significant inconvenience and distress was caused to the Applicant's mother. The Tribunal therefore concluded that the Respondent was in breach of section 6.1 of Code by virtue of their failure to take adequate steps to prevent further damage or deterioration caused by the water leaks.

57 Section 6.4 of the Code 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 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.”*

- 58 With regard to the aforementioned leaks from the overflow pipes, there was no evidence that the Respondent had kept the Applicant and other homeowners in the development updated with any progress on the repairs. The Respondent accepts that they ultimately arranged repairs to the leaking overflow pipe following cooperation with the owner. However, it does not appear that the progress or outcome of those repairs were communicated with the Applicant, other than in response to her formal complaint.
- 59 With regard to the external grounds maintenance, the Tribunal accepts that the Respondent has a schedule in place for the works as reflected in the Tribunal's findings in fact. The Respondent stated in their response that they carry out site inspections which have noted the standard of ground maintenance as satisfactory. They have produced three site visit reports dated 23 March 2022, 20 December 2022 and 16 February 2023. The description of “satisfactory” does not however correlate with the photographs produced by the Applicant which show a significant deterioration in the external grounds of the development. Furthermore, there is no evidence of any site visits carried out by the Respondent, other than those reflected in the three site visit reports. The Respondent states in their response that *“litter is a significant and constant issue at the development”*. If that is the case, the Tribunal would have expected the Respondent to take steps to mitigate this, either by increasing the site visits or increasing the frequency of grounds maintenance, in consultation with the homeowners. The Tribunal therefore concluded that the Respondent had not carried out inspections in an appropriate timescale with regard to the external grounds.
- 60 The Tribunal considered the broken tiles at the front steps of the block. From the photographs produced, the Tribunal could reasonably conclude that there would be a potential risk to any users of the steps given their condition. Whilst the Respondent had stated that no further action had been taken given the homeowners' refusal of the quote for the works, it was not clear what further investigation had been undertaken by the Respondent to identify alternative options. The letter they had produced to the homeowners noted a range of cost brackets, depending on the expected longevity of the repair. It did not appear that they had sought to explore these other options with the homeowners, nor provided any further update after the initial quote was refused.
- 61 The Tribunal therefore found the Respondent in breach of section 6.4 of the Code.



### **Proposed property factor enforcement order**

- 62 The Tribunal determined, for the above reasons and in terms of section 19(1)(a) of the 2011 Act, that the Respondent is in breach of sections 2.7, 6.1 and 6.4 of the Code.
- 63 Whilst some of the breaches may be considered minor, the Tribunal considered that the Applicant had been inconvenienced by the Respondent's breaches and therefore it would be reasonable to make a property factor enforcement order. The Tribunal noted that the Applicant has since sold the property and therefore considered that any order would be restricted to a compensatory payment.
- 64 The Tribunal therefore proposed to make the following Order:-

*(1) The Respondent must pay the Applicant the sum of £750 for the inconvenience she had suffered from their own funds, and at no cost to the owners. The said sums to be paid within 28 days of this communication to the Respondent of the Property Factor Enforcement Order.*

- 65 The decision of the Tribunal 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.**

**Ruth OHare**

Chairperson of the tribunal

Dated: 17 November 2025

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Notice of Proposal of the First-tier Tribunal for Scotland (Housing and Property Chamber) Under section 19(2)(a) of the Property Factors (Scotland) Act 2011**

**Reference number: FTS/HPC/PF/24/3938**

**Re: Property at Flat 4, 28 Ayr Street, Springburn, Glasgow, G21 4DG (“the Property”)**

**The Parties:**

**Mrs Cheryl Callaghan as executor of Carole Weinstein ., 17G Newabbey Road, Gartcosh, Glasgow, G69 8DN (“the Applicant”)**

**James Gibb Property Management Ltd, Red Tree Magenta (3rd Floor), 270 Glasgow Road, Rutherglen, G73 1UZ (“the Respondent”)**

**Tribunal Members: Ruth O’Hare, Legal Member, and Ahsan Khan, Ordinary Member**

**NOTICE TO THE PARTIES**

**Whereas in terms of their decision dated 14th August 2025, the Tribunal decided that the Factor had failed to comply with OSP 11 and section 2.7 of the 2021 Code of Conduct, all as stated in the said decision, The Tribunal propose to make a property factor enforcement order in the following terms:**

*“(1) The Respondent must pay the Applicant the sum of £750 for the inconvenience she had suffered from their own funds, and at no cost to the owners. The said sums to be paid within 28 days of this communication to the Respondent of the Property Factor Enforcement Order.”*

**This intimation of the Tribunal’s Decision and this Notice to make a Property Factor Enforcement Order to the parties should be taken as notice for the purposes of section 19(2)(a) of the Act and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) of the Act reach the Housing and Property Chamber’s office by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale**

then the Tribunal is likely to proceed to make a Property Factor Enforcement Order (PFEO) without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and constitute an offence.

### **Appeals**

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.

**Ruth Ohare**

**17 November 2025**