



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 (1) of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/24/0904

Re: Property at 1/1 181 Deanston Drive, Glasgow, G41 3JZ ("the Property")

The Parties:

Ms Muniba Malik, 1/1 181 Deanston Drive, Glasgow, G41 3JZ ("the Applicant")

Cumming, Turner and Watt, 40 Carlton Place, Glasgow, G5 9TS ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Robert Buchan (Ordinary Member)

Background

[1] The Application had previously called for a Hearing conducted as a Case Management Discussion ("CMD") by conference call on 21 August 2024. The Respondent failed to appear or be in attendance at that CMD. The Tribunal made a Direction ordering the Respondent to set out a full detailed response to the Application and appear or be represented at the next Hearing. Nothing further was heard from the Respondent.

Case Management Discussion

[2] The Application then called for another CMD by conference call at 10 am on 27 January 2025. The Applicant was personally present once again. There was once again no appearance by or on behalf of the Respondent. The Respondent had also failed to comply with the Direction made.

[3] The Tribunal discussed the situation with the Applicant and explained that despite the non-participation of the Respondent, the Tribunal would require to hear evidence

before any making any final decision. The Tribunal also discussed with the Applicant that she should carefully consider the terms of any Property Factor Enforcement Order that she might ask the Tribunal to make. The Applicant sought financial compensation in the sum of £25,582.00 plus repayment of management fees, an apology and future assurances as to how the Respondent would improve their practices.

[4] The Tribunal asked the Applicant to consider the terms of Section 20 of the Property Factors (Scotland) Act 2011. This provided that the Tribunal could “*where appropriate*” include in a Property Factor Enforcement Order that a Respondent “*make such payment to the homeowner as the First-tier Tribunal considers reasonable.*” It was explained that this was different from a negligence action in Court where the nature of any award was focussed on awarding appropriate financial redress to atone for any negligence suffered.

[5] The Applicant was encouraged to consider this carefully as the Tribunal would have to itself carefully consider such matters in the event that the Tribunal did decide to make a Property Factor Enforcement Order. The Tribunal continued the Application to a Hearing in person for evidence to be heard and a final decision to be made.

[6] The Sections of the Code alleged to have been breached are:

<i>Overarching Standards of Practice</i>	2, 4 and 11
<i>Communications and Consultation</i>	2.1 and 2.7
<i>Carrying out repairs and maintenance</i>	6.4, 6.6 and 6.7
<i>Complaints Resolution</i>	7.1

The Hearing

[7] The Application then called for a Hearing at 10 am on 6 November 2025 in Glasgow Tribunals Centre. The Applicant was present together with her partner, Mr Kareem Nasif. There was again no appearance on behalf of the Respondent. Nothing further had been heard from the Respondent and they appear to have decided not to engage with the proceedings.

[8] The Tribunal heard evidence from the Applicant and Mr Nasif in support of the Application. The Tribunal asked questions throughout to ensure that it understood the evidence. The Tribunal comments on the evidence heard as follows.

Ms Muniba Malik

[9] The Tribunal heard evidence from the Applicant. The Tribunal considered her evidence to be credible and reliable. She talked the Tribunal through her complaints regarding the Respondent.

[10] In October/November 2022, there was a leak from a communal pipe which runs through her Property. The pipe was owned in common by the eight properties in the tenement building in which the Applicant's home is situated. The tenement building is factored by the Respondent. The Applicant explained that the Respondent failed to respond to calls and emails and the problem got worse with the Respondent doing nothing to assist. The cause of the water penetration was an old internal cast iron rain-water pipe which had reached the end of its life and needed to be completely replaced, work that would involve all of the owners above and below the Applicant's flat. Subsequently, dry rot was discovered but this could not be tackled until the source of the water penetration was dealt with. Despite many emails and phone calls over the course of a year, the Respondent did not take appropriate action to organise the necessary work and in the meantime the extent of the dry rot spread. Eventually, the Applicant liaised with her neighbours in the building and organised the repair works herself and was reimbursed by the neighbours.

[11] The Applicant explained that she felt stressed and unwell by the mould which subsequently developed in her Property. She moved out of her own home to live with family in November 2023. The Applicant explained how her Property had become affected by dry rot arising from the continuous leak into the Property. She incurred significant expense then in fixing the dry rot that developed. The Applicant tried to recover these costs from her insurance company, but they said that the Applicant was not covered because the damage was arising from wear and tear caused by a lack of maintenance and repair.

[12] Abbey Services replaced the pipe in November 2023 at a total cost of £3,456.00 at a cost to each proprietor of £432.00.

[13] The Applicant pointed out that in the whole time period of her complaints, no one from the Respondent ever came to her Property to see the damage for themselves.

[14] The Respondent had initially obtained a quote from Abbey Services but then "*sat on it for two months*". The quote for the necessary repairs was obtained in March 2023. The Respondent did not even inform the Applicant about having received the quote until June 2023 and only then it was in response to a call from the Applicant. They then did nothing to canvas the owners about going ahead with the works and obtaining funding. The Applicant described how she then effectively took on the role of factor herself to organise Abbey Services carrying out the repairs. Once she had accomplished this, she then had to use her "*life savings*" to pay for the works to treat the dry rot.

[15] There was a report from the dry rot contractors which concluded that the dry rot had been caused by the leaking pipe although it did not go so far as to express any view about whether the dry rot was caused by the pipe leaking for a particular length of time or whether it could have been avoided. The assessment for the dry rot was carried out at the end of November 2023. There was some discussion about the total costs paid by the

Applicant to the dry rot contractors. These were borne alone by the Applicant as they related solely to the treatment of her own Property. The Applicant appeared to conclude after checking her papers and some discussions with her partner, that the total paid was £9,720.80 plus vat. The Vat paid was irrecoverable and so the Applicant paid the total sum of £11,664.96.

[16] The Applicant explained how she pays the sum of £140.00 per year to the Respondent. All eight properties in the building do likewise. She explained that all the residents dutifully pay this and get very little for their money. She explained that the service she received was extremely poor and she was ultimately left to deal with matters herself. If the Respondent had simply not been involved at all then she would have been much better off as she would have been able to deal with things herself much more promptly.

[17] The Tribunal carefully examined the emails, quotes, and documentation submitted by the Applicant and discussed this fully with her.

[18] Mr Kareem Nasif also gave evidence. The scope of his evidence was in short compass and was more or less simply to corroborate the evidence given by the Applicant.

[19] The Tribunal found both witnesses to be credible and reliable. There evidence was corroborated by the documentary evidence submitted with the Application.

[20] Having considered the documentary evidence and having heard evidence, the Tribunal made the following findings in facts.

Findings in Fact

- 1) The Applicant owns and occupies the Property known as 1/1 181 Deanston Drive, Glasgow, G41 3JZ.
- 2) The Property is in a block of eight properties in a tenement building which are factored by the Respondent.
- 3) In or around October/November 2022, the Applicant reported a leak in the Property to the Respondent which was caused by a leak in a communal pipe.
- 4) The Respondent is the relevant property factor for the building and is therefore responsible for the management of maintenance and repair issues to the communal areas of the building in which the Property is situated.
- 5) The Applicant and the other proprietors in the building pay a management fee and there is nothing to suggest that they are in anything other than good financial standing with the Respondent.
- 6) It took the Respondent nine months from the report of the initial leak to circulate a quote from a contractor known as Abbey Services which they had obtained in March 2023, but then did nothing with until June 2023. Even after June 2023, they

did nothing to liaise with the residents about arranging funding and instructing the works.

- 7) The Respondent failed to return the Applicant's calls pressing for an update re progress.
- 8) The Respondent failed adequately to respond to the Applicant's emails asking for updates re progress.
- 9) The Respondent sent intermittent emails to the Applicant which fell short of adequately dealing with matters.
- 10) On 16 October 2023, the Respondent's Robert Watt sent an email to the Applicant acknowledging that repairs had not been carried out, apologising and stating that the Applicant's email of 11 June 2023 with another video of the leak was "*missed*"
- 11) The Respondent lodged a formal complaint with the Respondent by email dated 9 January 2023. The Applicant had also lodged a previous complaint by email dated 6 November 2022. The Respondent completely ignored these complaints and made no response whatsoever.
- 12) In November 2023, the Applicant decided to dispense with the requirement of liaising with the Respondent and organised the repair works herself by liaising with Abbey Services and the other residents in the building.
- 13) Once the Applicant successfully organised the repair herself, she then required to treat the dry rot which had by then affected her Property and which had been caused by exposure to the leak in the Property.
- 14) The Respondent suffered significant expense in treating the dry rot which has now been successfully removed.
- 15) The Respondent has been paid a management fee of around £140.00 a year by each of the Applicant and the other 7 properties in the building.
- 16) The Respondent have failed to engage with the Tribunal process of offer any explanation for their actions.

[21] Having made the above findings in fact the Tribunal therefore made the following findings regarding the sections of the Code alleged to have been breached.

The Code

"OSP2. You must be honest, open, transparent and fair in your dealings with homeowners."

[22] The Tribunal finds that the Respondent has breached this section of the Code. They have not been fair to the Applicant. They have charged a management fee and not offered a fair service in return.

“OSP4. You must not provide information that is deliberately or negligently misleading or false.”

[23] The Tribunal does not find that the Respondent has breached this ground. Their failings are better expressed against parts of the Code.

“OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.”

[24] The Tribunal finds that self-evidently the Respondent has breached this section of the Code. There are multiple emails asking for action, updates and replies to telephone calls and eventually pleading for action.

“2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners’ responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.”

[25] The Tribunal finds that the Respondent has breached this section of the Code. Again, this is self-evident. There was a clear lack of communication by the Respondent.

“2.7 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.”

[26] The Tribunal finds that the Respondent has breached this section of the Code. There are multiple breaches of the respondent's own written statement of services relating to timescales for dealing with repairs, liaising with homeowners and handling complaints

“6.4 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.”

[27] The Tribunal finds that the Respondent has breached this section of the Code. The Respondent took 4 months to obtain a quote for repairs and then failed to pass this on to the homeowners for another two months.

“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."

[28] The Tribunal does not find that the Respondent has breached this ground. Their failings are better expressed against parts of the Code.

"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."

[29] The Tribunal does not find that the Respondent has breached this ground. Their failings are better expressed against parts of the Code.

"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."

[30] The Tribunal does not find that the Respondent has breached this ground. Their failings are better expressed against parts of the Code.

"7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*
- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*
- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*
- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*

- *Where the property factor provides access to alternative dispute resolution services, information on this."*

[31] The Tribunal finds that the Respondent has breached this section of the Code. The Respondent's written statement of services says that "*Your complaint will be acknowledged within 7 working days of receipt to allow for proper investigation. We will investigate the complaint and endeavour to resolve it within 14 days.*" The various complaints made were not acknowledged, not obviously investigated and no effort at all was made to resolve them. The procedure may be written but there is no evidence that it has been performed.

Disposal

[32] Section 20 of the Act is in the following terms:

Section 20Property factor enforcement orders

(1) *A property factor enforcement order is an order requiring the property factor to—*

- (a)execute such action as the [F1First-tier Tribunal] considers necessary,*
- (b)where appropriate, make such payment to the homeowner as the [F2First-tier Tribunal] considers reasonable.*

[33] The Tribunal finds the Respondent's actions to be highly unsatisfactory. Completely ignoring reasonable complaints undermines the integrity of the Property Factor industry and the faith that members of the public may have in the benefits of having a Property Factor. The Respondent also did not engage at all with the Tribunal which appears somewhat unprofessional. It suggests that the Respondent may be simply overwhelmed and out of their depth and unable to deal with serious allegations under the Code never mind routine daily correspondence and complaints arising from ongoing business.

[34] The Tribunal does not consider that the Respondent's failings ought to lead to the level of damages claimed by the Applicant. It is not for the Tribunal to treat the Application as akin to a professional negligence action in the Courts, in which the Court is tasked with making a financial award to restore the Applicant to the financial position she would have been in but for the negligence of the Respondent. Had that been the case, then the Tribunal would have struggled with establishing the specific causation behind the dry rot as being specifically brought about by the delays in fixing the pipe. There was no evidence to say that it might not have been inevitable that there would have been dry rot even if the leak had been fixed quickly. It would also have to be remembered that the Respondent was not liable for the initial leak in the first place. The tenement building was around 120 years old and such issues arising were regrettably to be expected.

[35] The Tribunal therefore does not approach the task of assessing what order to make by reference to the alleged financial losses suffered by the Applicant. The Tribunal considers it must use its discretion to award the Applicant a sum of money that is reasonable. The Tribunal does not intend for this sum either to be punitive in the sense that it is a fine on the Respondent. Nor does it intend this money to be restorative in that it is not supposed to atone for the Applicant' entire alleged financial losses.

[36] Instead the Tribunal considers that the award should be based on taking a common sense approach and assessing the inconvenience and stress which the Respondent's breaches of the Code have caused the Applicant. The Tribunal does consider that there is also a credible argument that the Respondent's failures may well have led to the dry rot, or at least made it much worse. The Tribunal is mindful that the Applicant used her life savings to pay for the necessary remedial works for that dry rot. The Tribunal therefore considers that the Respondent's breaches have had extremely serious consequences and ought to be treated at the highest end of the scale of severity which the Tribunal uses to assess such matters. The Tribunal notes that there is no mitigation at all as a result of the non-engagement of the Respondent.

[37] Having considered the whole circumstances of the case, the Tribunal considers that the Respondent ought to take the following action and accordingly makes a Proposed Property Factor Enforcement Order in the following terms.

The Respondent must:

1. Issue a written apology to the Applicant for their breaches of the Code.
2. Provide the Tribunal with evidence of having undertaken firm wide training on how it will try and avoid these issues happening again and how procedures have been improved, and
3. Make a monetary payment of £5,000.00 to the Applicant as compensation. The payment should be by way of a direct payment to the Applicant rather than by way of a credit to the Applicant's account.

[38] The Tribunal orders that the above steps should be carried out within 28 days and will make a Proposed Property Factor Enforcement Order to this effect.

[39] Section 19 (2) of the Act states: - *"In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so (a) give notice of the proposal to the property factor, and (b) allow the parties an opportunity to make representations to it."*

[40] The Tribunal, by separate notice intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.

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

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.

Andrew McLaughlin
Legal Member

3 December 2025