



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

Reference number: FTS/HPC/PF/24/2666

Re: Property at 56c Woodlea Grove, Glenrothes, KY7 4AE ("the Property")

The Parties:

Mr Stuart Massie, 35 Balgrove Road, Gauldry, Newport On Tay, DD6 8SH ("the Homeowner")

James Gibb Property Management Ltd, Red Tree Magenta, 3rd Floor, 270 Glasgow Road, Glasgow, G73 1UZ ("Property Factor")

Tribunal Members

Nicola Irvine (Chairperson) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with sections 2.7, and 3.7 of the Property Factor Code of Conduct 2021 ("the Code"). The Tribunal made a Proposed Property Factor Enforcement Order, which should be read with this decision.

Background

1. The Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the 2021 Code of Conduct for Property Factors ("the "Code").
2. On 9 August 2024, a Legal Member of the Tribunal with delegated powers of the President referred the application to a case management discussion ("CMD").

3. This application came before the Tribunal for CMD on 19 November 2024 and a hearing on 10 June 2025.
4. The Tribunal received written representations from the Homeowner on 6 November 2024, 16, 19, 20, 22 and 30 December 2024, 3 January 2025, 13 and 26 February 2025, 6 June 2025 and 8 July 2025.
5. The Tribunal received written representations from the Property Factor on 1 and 5 August 2025.
6. The Tribunal noted that several sections of the Code were at issue. The Tribunal noted the concession made by the Property Factor in relation to communication, albeit the there was no acceptance that the Code had been breached.
7. The Tribunal had the following documents before it:
 - Application form C2 from the Homeowner received 12 June 2024
 - Property Factor Code of Conduct Letter (relating to the 2021 code) dated 28 July 2024
 - Property Factor Duties Letter dated 30 July 2024
 - Property Factor's submissions referred to at paragraph 5 above.
 - Homeowner's submission of referred to at paragraph 4 above.
8. Both parties had received the documents each had lodged. From the terms of the documents lodged by both parties and the matters that were noted at the CMD, there was no substantive factual dispute between the parties.

The Hearing – 14 October 2025

9. This was a hearing in connection with an application in terms of rule 43 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ("the rules") and section 17 of the Property Factors (Scotland) Act 2011, ("the Act"). The Homeowner participated in the Hearing which took place by conference call. The Property Factor was not represented and the Hearing. The Tribunal Clerk made contact with the Property Factor's office and was advised that Mrs Cooper who was involved in the CMDs was not in the office and the hearing was not in the diary. The Tribunal confirmed with the Tribunal Clerk that intimation of the hearing date had been sent to the Property Factor by email on 11 July 2025. The Homeowner advised the Tribunal that he wished the hearing to proceed, rather than adjourned to another date. In all of the circumstances, the Tribunal decided to proceed with the hearing in the absence of the Property Factor.

The Homeowners' position

10. The Homeowner advised that he was content to rely upon his written response to the Notice of Direction issued by the Tribunal on 8 July 2025. He no longer relied on any breach of the Overarching Standards of Practice and his position was as set out in the written submission dated 8 July 2025. He did not wish to supplement that by oral evidence. The Tribunal advised the Homeowner that it would consider his written submission along with the written submission of the Property Factor and issue a written decision in due course.

The Property Factor's position

11. The Property Factor's position is set out in the written representations submitted on 5 August 2025.
12. The Property Factor conceded that some communication fell short of the service level the Homeowner should expect. An apology was advanced for that shortfall in service at the CMDs.

Findings in fact

13. The Homeowner is the former proprietor of 56c Woodlea Grove, Glenrothes, KY7 4AE, having owned the Property from November 2007 to 20 January 2023.
14. The Property Factor is the properly appointed Factor in respect of the Property.
15. The Property Factor failed to respond to email correspondence from the Homeowner within the timescales set out in its Written Statement of Services.
16. The Property Factor delayed in issuing an invoice to the Homeowner dated 21 May 2024, and no explanation was given to demonstrate that there was a good reason for the delay.

Tribunal's observations in relation to the sections of the Codes at issue

17. The Property Factor did not concede any particular sections of the Code had been breached in relation to communication. Accordingly, the Tribunal considered all of the paragraphs of the Code struck at by the Homeowner.

Section 2.1 of the Code

18. The main thrust of this section of the Code is that Homeowners should be consulted in decision making and have access to information in order to understand the operation of the property factor to enable them to check whether the property factor has met its obligations. The Homeowner submits that the Property Factor failed to make good, prompt communication and had no willingness to find resolution. The evidence bundle lodged by the Homeowner includes a copy of an email exchange between the parties on 22 May 2024. Page 50 of the Homeowner's written submissions shows that the Property Factor provided a copy of the invoice which is now known to be in dispute. It appears that this was sent to the Homeowner in or around 4 June 2024. The invoice contains a narrative "22/11/22 Property Revival Solutions Ltd – external downpipe repair". Page 38 of the Homeowner's written submissions contains further specification of the work carried out. Pages 66 and 67 of the Property Factor's written submissions contain a screenshot apparently recording when the Homeowner accessed his portal with the Property Factor. The Homeowner therefore appears to have been able to access information. Whilst the complaint does not appear to strike at this particular paragraph of the Code, the Tribunal noted that the Property Factor made an offer to resolve the Homeowner's complaint, and that offer was rejected. The Tribunal found that there had been no evidence to establish a breach of this section of the Code.

Section 2.7 of the Code

19. The Homeowner relied on page 54, 55 and 58 of his written submission in support of the contention that the Property Factor breached this paragraph of the Code. Whilst the Tribunal has not seen a full chronology of all communication between the parties, the Property Factor conceded that its communication with the Homeowner fell short of the standard to be expected. The Homeowner submits that he received no response to his emails of 29 November 2013, 16 December 2023 and 22 May 2024. The Property Factor has not produced any documentation to contradict that. The Tribunal found that the Property Factor failed to respond to these emails within the timescale specified in its Written Statement of Services ("WSS") and therefore breached this section of the Code.

Sections 3.1 and 3.2 of the Code

20. As referred to in paragraph 20 of this decision, the Property Factor issued an invoice which is now known to be in dispute. The Homeowner obtained information about that invoice and therefore knew what he was being asked to pay for. Although the invoice in question related to work which was apparently

carried out on 22 November 2022, the invoice was not issued to the Homeowner until after he sold the Property. The Property Factor has not provided an explanation about why the work carried out by Property Revival Solutions Ltd was not billed to the Homeowner at a much earlier date, the Tribunal noted the Property Factor's offer to write off the balance of the Homeowner's account and pay £150 in compensation. That offer was rejected by the Homeowner. The Tribunal was satisfied that the Homeowner was made aware what he was being asked to pay for and how the charges had been calculated. The Tribunal was not persuaded that there was any improper charge for services by the Property Factor or that there had been any failure to provide clarity and transparency. The Tribunal therefore found that there was no breach of these sections of the Code.

Sections 3.5 and 3.6 of the Code

21. The Homeowner contends that this section of the Code was breached because the Property Factor failed to inform him of an outstanding invoice at the time that his float was returned and a re-sale fee paid. Section 3.5 of the Code relates to a situation where a Homeowner has terminated a Property Factor's appointment or the Property Factor has terminated the arrangement. Neither of these events came to pass; the Homeowner did not terminate the Property Factor's appointment and the Property Factor continues to manage the Property. Section 3.6 of the Code relates to a situation where there is a change of Property Factor. This situation did not arise. Sections 3.5 and 3.6 of the Code have no application to the circumstances surrounding the relationship between the parties. The Tribunal found that there was no breach of these sections of the Code.

Section 3.7 of the Code

22. The Homeowner submits that the Property Factor breached this section of the Code because at the time he sold the Property, there was no mention of current or ongoing repair work. The Tribunal has no information about the reason for the delay in issuing an invoice to the Homeowner in respect of a repair carried out to a downpipe. This section of the Code states that the Property Manager must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be done within 3 months unless there is good reason not to. In the absence of any information about the reason for the delay in issuing the invoice, the Tribunal cannot find that there was good reason not to provide the final financial information within 3 months. One would think that the Property Factor must have been aware that an invoice was outstanding, given that the repair was instructed. It is not in dispute that the invoice relating to the repair to the downpipe was sent to the

Homeowner more than a year after the Homeowner sold the Property and long after the expiry of the 3 month period referred to in the Code. The Tribunal found that the Property Factor breached this section of the Code.

Section 3.8 of the Code

23. The Homeowner submits that this section of the Code was breached because his float was returned to him after he sold the Property and he was later sent an invoice for payment. This section of the Code obliges property factors to have a procedure in place for dealing with payments made in advance by homeowners, where the homeowner requires a refund. It is not in dispute that the Property Factor repaid the Homeowner his float, following his sale of the Property. The fact that an invoice was later issued does not engage this section of the Code. The Tribunal found that there was no breach of this section of the Code.

Section 4.1 of the Code

24. It is submitted by the Homeowner that he continued to be liable with other homeowners for a share of late payment fees. He referred to a letter dated 9 July 2024 (at page 31 of his bundle of evidence). In fact, that letter gave the Respondent notice that he alone would be liable for a late payment fee because he had not settled an invoice issued. The Tribunal noted from page 8 of the Property Factor's WSS that the Homeowner had notice that a late payment fee would be added to any invoice which remained unpaid after 30 days. The Tribunal considered that the complaint under this section of the Code was misconceived. There was no breach of this section.

Section 4.3 of the Code

25. As referred to in paragraph 25 of this decision, the Homeowner had notice that a late payment fee could be added in respect of an unpaid invoice. The invoice relates to work carried out whilst the Homeowner owned the Property. The Property Factor issued letter to the Homeowner on 17 June 2024 and 9 July 2024 that a late payment fee would be added if the invoice remained unpaid. The Tribunal was not persuaded that the late payment fee was unreasonable.

Section 4.4 of the Code

26. Page 8 of the Property Factor's WSS contains details of its debt recovery process. The Homeowner had notice that a late payment fee would be added to an unpaid invoice. The WSS is evidence of the Property Factor's procedure

and there was no evidence that the procedure had not been applied consistently. The Tribunal therefore found that there was no breach of this section of the Code.

Section 4.5 of the Code

27. The letters issued to the Homeowner on 17 June 2024 and 9 July 2024 contains details about where he could access free and impartial debt advice. As stated above, the Homeowner was given notice that a late payment fee would be added. The Tribunal found that there was no breach of this section of the Code.

Section 4.11 of the Code

28. This section of the Code relates to a property factor taking legal action against a homeowner. The Property Factor has not, to date, taken legal action against the Homeowner. This section of the Code is therefore not engaged and therefore there was no breach of this section of the Code.

Section 6.1 of the Code

29. It is submitted by the Homeowner that the Property Factor breached this section of the Code because no repairs were carried out to the downpipe. It is submitted that a damp issue still remains. The Tribunal has no evidence about the up to date condition of the Property. The Homeowner produced photographs of a downpipe, but there is no information about which downpipe this is, when the photographs were taken and by whom. There is no independent view about the present condition of the downpipe. There is an obligation on a property factor to instruct prompt repairs of a good standard. There is no evidence that there was any delay in instructing a repair or that there was any issue relating to the standard of a repair. The Tribunal observed that the invoice issued to the Property Factor by Propert Revival Solutions states that the “external downpipe in this area had been choked and was leaking onto this area”, which suggests that a repair had already been carried out. The Tribunal found that there was no breach of this section of the Code.

Section 6.4 of the Code

30. This section of the Code relates to a property factor arranging an inspection of the property and the obligation to notify homeowners of the progress of work, unless there was an agreement about a threshold below which reporting was not required. On page 5 of the Property Factor’s WSS, it states that “development Homeowners will typically be given specific updates on reactive

repairs and may only become aware of the charge at the next invoicing period, in line with our delegated authority under the Deed, or as otherwise provided for under our management appointment". There was no evidence on way or another about what level of delegated authority the Property Factor had. In the absence of such evidence, the Tribunal was not persuaded that there had been a breach of this section of the Code.

Section 6.6 of the Code

31. The Homeowner makes reference to work charged for which was not carried out. There is no evidence before the Tribunal to support this statement. This section of the Code relates to arrangements to ensure that a range of options on repair are considered. The cost of a repair must be balanced with other factors such as 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. The Tribunal considered that this section of the Code was not engaged and therefore there was no breach of this section.

Section 7.1 of the Code

32. This paragraph relates to a property factor having a complaints handling procedure. The Property Factor's position is that the Homeowner failed to follow the complaints' procedure. The WSS sets out that any complaint must be in writing and addressed to First Stage Complaints Handling and thereafter to Final Stage Complaints Handling. Whilst the Homeowner makes reference to communication which went unanswered, there was no material before the Tribunal to indicate that the complaints handling procedure was followed by the Homeowner. In any event, the Tribunal was satisfied that the Property Factor had a complaints handling procedure in place.

Section 7.2 of the Code

33. The complaint under this section is that a final decision on the Homeowner's complaint was ever issued. As referred to above, there was no material before the Tribunal to indicate that the complaints handling procedure was followed by the Homeowner. The Tribunal therefore found that there was no breach of this section.

Reasons for decision

34. The main thrust of the Homeowner's complaint is that the Property Factor rendered an invoice to him for work carried out whilst he owned the Property but the invoice was only rendered after his period of ownership had ceased. Throughout the Homeowner's written submissions, he made several references to limitation. The legislation referred to by the Homeowner is English legislation and has no application in Scotland. In any event, the Tribunal has no jurisdiction to adjudicate upon any debt recovery claim the Property Factor may have and therefore issues of prescription are not relevant to the determination of the present application. The Tribunal was satisfied, on the basis of the information presented by both parties, that some sections of the Code had been breached. However the Tribunal considered the breaches under sections 2.7 and 3.7 to be of a minor nature and took account of the Property Factor's attempt to resolve matters by offering to write off the debit balance of the account and to pay compensation.

35. Turning to the proposed order, the Tribunal took into account the delay in the Property Factor issuing an invoice to the Homeowner following his sale of the Property, the failure on the part of the Property Factor to respond to some email correspondence and the inconvenience caused to the Homeowner. The Homeowner indicated that he wanted his account with the Property Factor to be closed and for compensation to be paid to him. The Property Factor offered both of these things but that offer was rejected by the Homeowner. The Tribunal does not have the power to order the closure of the Homeowner's account, but is empowered to award compensation for inconvenience. Section 20 1(b) gives a Tribunal power to order a property factor to make such payment to the homeowner as the Tribunal considers reasonable. This is generally seen, in cases such as this, as "compensation" for inconvenience, time and effort expended in cases where a property factor has been found to have breached the code. Fixing a suitable sum involves consideration of mitigating and aggravating factors and recognising that this can never be an exact science. Tribunals have wide discretion in this area.

36. In light of all the foregoing it is proposed that the Property Factor is ordered to pay compensation to the Homeowner of £150 for the inconvenience caused to him within 28 days of the issue of the Order.

Property Factor Enforcement Order (PFEO)

37. Section 19 of the Act states: -

(2) 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.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the Property Factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a Property Factor enforcement order.

38. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence.

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.

Nicola Irvine

Chairperson of the Tribunal

Dated: 14 October 2025