



**Decision and 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 numbers: FTS/HPC/PF/23/2234,(2235) (2236) (2237) (2239) (2240)**

**Re: Flat 0/1, Flat 1/2 and Flat 0/2 Pendeen Road, Barlanark, Glasgow, G33 4SL**

**The Parties:**

**Ms Alaine Fleming, Bernadette Buchan, Susan Walker, Flats 0/1, Flat 1/2 and Flat 0/2 Pendeen Road, Barlanark, Glasgow, G33 4SL (“the Applicants”)**

**Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS (“the Respondent”)**

**Tribunal Members:**

**Mr A. McLaughlin (Legal Member) and Mr N. Allan (Ordinary Member)**

**Background**

[1] The Applicants seek a determination that the Respondent has breached their obligations under both the 2012 Code and the 2021 versions of *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* (“The 2012 Code”) and the (“2021 Code”).

[2] The paragraphs of the two Codes alleged to have been breached are extensive. The Applications are near identical in their theme but not exactly so in the detail- particularly in respect of the standards of the Codes said to have been breached.

[3] All three 2012 Code Applications are the identical and allege the same breaches. The Three 2021 Code Applications are then all slightly different. There were therefore six Applications to be considered in this one conjoined Hearing covering a vast number of alleged breaches of two different Codes.

**Overview of Complaints**

[4] That being said, the substance of the complaints is relatively straightforward. The Three Applicants are proprietors of Properties in a tenement building with balconies. They have all lived there for decades. The building is in a poor state of repair. In 2019 the balconies generally deteriorated and started to appear cracked and unsafe. The Applicants reported this to the Respondent who is the relevant property factor. The substance of the allegations is that the Respondent has failed adequately to communicate and respond to the Applicants appropriately and failed to take the necessary action to effect the repairs. Then, because they delayed so long, when they finally did take some action, the situation had worsened purely because of the delay meaning the proposed costs of the necessary works had increased significantly.

### **Previous Procedure**

[5] The Application had previously called for a Case Management Discussions (CMD) to regulate procedure. The Tribunal made a Direction ordering the Respondent to set out in numbered paragraphs, a full written account of the whole situation. This should have set out what happened, when it happened and what could have been done better and what was being done to fix matters. The Respondent however declined to engage with the Tribunal and did nothing either to appear at the CMDs, submit representations, or appear at the Hearings. The Respondent appeared to show no willingness to engage and so the Tribunal process was conducted in the absence of the Respondent and without any input whatsoever from the Respondent.

### **The Hearing**

[6] Evidence was heard by a Hearing conducted by conference call on 14 February and 11 November 2025. The Applicants were present although Ms Buchan did not attend on 14 February. She joined the call and gave evidence on 11 November. It had been explained that she was happy to have the Hearing commence on 14 February in her absence. Ms Walker briefly had a representative, a Mr Gordon Watson, who entered proceedings on her behalf at a Hearing that had to be adjourned cause Ms Buchan was unwell and couldn't give evidence. Mr Watson's services had then been dispensed with by Ms Buchan by the time the Hearing proceed hearing more evidence again on 11 November. Ms Buchan expressly did not seek any other representation.

[7] The Applicants had no preliminary matters to raise. The Tribunal therefore began hearing evidence from the Applicants. The Tribunal discussed all aspects of the Application with the Applicants.

[8] The Tribunal comments on the evidence heard as follows.

## **Ms Susan Walker**

[9] Ms Walker has lived in her property for 33 years. She does not have a balcony but has one above her own Property. At the end of 2018, she noticed the balcony above her had a corner section that appeared to her eyes to have split. In 2021 and 2022 she considered that it started looking like a dangerous situation as *"it started coming away from the brick work"*. Ms Walker had been in touch with the Respondent about the balcony from the outset and had tried to get them out to assess matters from 2018. She explained that in 2018 it had been *"all phone calls"* to the Respondent to try and encourage them to take action. At some point in or about 2022, an assessor of some sort, acting on the instruction of the Respondent, attended the building and appeared to carry out some sort of inspection.

[10] He was said to have noted that steel enforcement rods were exposed and rusting and the parapet and railings around the balconies were cracked. Ms Walker became increasingly concerned and sent a letter to the Respondent in 2021 calling upon them to take action. Ms Walker explained that the assessor told her that the situation was dangerous. Since then, Ms Walker and the other Applicants remain apprehensive about the safety of the balconies. They have long since stopped using them or standing under them. In or around March 2023, the Respondent appears to have presented the Applicants with a quote for the necessary repairs. This called upon each resident of the building to pay the sum of £1,543.00 for the costs of the maintenance works. There are six residents in the block.

[11] The Applicants have not paid this sum. The reasons as to why they have not paid it are less than clear. It appears that they are worried that if they pay it and other residents do not, they have no confidence that they will get their money back. They also seem to take the view that the Respondent's delays have meant that the repairs are now more expensive than they would have been if action was taken in 2018. There is no firm evidence about that. The Respondent is now just flatly ignoring them. They still pay the Respondent's invoices. These invoices were said to be *"around £200 a quarter"*.

## **Ms Elaine Fleming**

[12] Ms Fleming has lived in her home for 22 years. Her evidence was near identical to Ms Walker's and more or less fully corroborated her account of the situation. Ms Fleming's Application also noted that her Written Statement of Services ("WSS") says that she is 33.3 per cent liable for the costs of maintenance of the common areas of the building in which her Property is situated. She pointed out that this must be wrong as there are six properties in the block meaning she should only be responsible at most for a sixth share.

[13] Ms Fleming spoke to letters she had sent to the Respondent about the issue. She had felt so concerned about the situation that she had gone to her local MP who had written a letter to the Respondent calling upon them to take action.

### **Ms Bernadette Buchan**

[14] Ms Buchan's evidence similarly served to corroborate the accounts given by her fellow Applicants.

### **Assessment of Evidence**

[15] The Applicants came across as credible and reliable. They were genuinely frustrated with the way the Respondent had communicated with them about what clearly appeared to be a major problem in their lives and one which very much appeared to be within the remit of the Respondent. The Tribunal couldn't help but note that the Respondent had not communicated with the Tribunal never mind the Applicants. This corroborated the Applicants' own accounts that they had been ignored about the whole process.

[16] The Tribunal however did note that it seemed that in March 2023 all the residents had been presented with a quote for funding the relevant repairs. Nobody appears to have paid this. Irrespective of the failings of the Respondent, it does seem therefore that the whole issue could have been resolved by now and the repairs done if the residents had paid. It was a frustration to the Tribunal that there was just no input from the Respondent. Perhaps they might have made much of the March 2023 quote and been able to explain what had been going on behind the scenes before then. As it was, this quote appeared to be the only action taken by the Respondent. It seems unlikely that there could not have been a whole other narrative put forward by the Respondent, but the Tribunal clearly could only work with the evidence before it.

[17] Having considered the Application and having heard evidence, the Tribunal made the following findings in fact,

1. *The Applicants are the proprietors of Flat 0/1, Flat 1/2 and Flat 0/2 Pendeen Road, Barlanark, Glasgow, G33 4SL.*
2. *The Property is factored by the Respondent within the meaning of the Property Factors (Scotland) Act 2011.*
3. *In or around 2018, the Applicants routinely would telephone the Respondent and bring to their attention safety concerns about the balconies in the building.*
4. *The Applicants have noted that the balconies have started crumbling and now appear quite unsafe. The Applicants no longer use their balconies.*

5. *The Respondent mostly ignores the Applicant and there is no evidence of meaningful engagement or any form of basic customer service.*
6. *In or around 2022 or 2023, an assessor of some sort appears to have attended and carried out some form of assessment. This more likely than not resulted in the six separate dwellings in the building being presented with a quote for repairs in March 2023 requesting that the Respondent be put in funds to allow the repairs to be carried out. The quote required each property to advance the sum of £1,543.00 to allow the works to start.*
7. *None of the proprietors appear to have paid their share.*
8. *No repair works have therefore been progressed.*
9. *The Respondent continues to ignore the Applicants' communications. The Applicants continue to pay the Respondent's regular invoices.*
10. *The Respondent issued Elaine Fleming with a WSS which suggests that she is liable for 33.3 per cent of the total maintenance costs of the building. There are 6 properties in the building and so Ms Fleming's WSS does not accurately reflect her obligations. The Respondent has been called upon to address this issue but has done nothing.*
11. *The Respondent has failed to communicate or engage with the Tribunal regarding these matters. The Respondent continues to ignore the Applicants.*
12. *The Respondent has not engaged with the Tribunal process.*

[18] Having made the above findings in fact, the Tribunal makes the following findings in respect of the paragraphs of the Codes alleged to have been breached.

[19] The Tribunal starts with the 2021 Code.

### **2021 Code**

[20] All three Applicants refer to breaches of the same Overarching Standards of Practice for 2021 Codes.

*"OSP1. You must conduct your business in a way that complies with all relevant legislation."*

[21] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

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

[22] The Tribunal finds this standard to have been breached. The Respondent has been none of these things to the Applicants.

*"OSP4. You must not provide information that is deliberately or negligently misleading or false."*

[23] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards

*"OSP5. You must apply your policies consistently and reasonably."*

[26] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

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

[27] The Tribunal finds this standard to have been breached. The Respondent has self-evidently failed to respond to the Applicants' enquiries at all.

[28] Then all three Applications refer to sections 1.1, 1.2 and 1.3 of the Code.

*"1.1 A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First-tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code."*

[29] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*"1.2 A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:*

- *within 4 weeks of the property factor:-*
  - *agreeing in writing to provide services to them; or*
  - *the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;*
  - *identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.*
- *at the earliest opportunity (in a period not exceeding 3 months) where:*
  - *o substantial change is required to the terms of the WSS.*

*Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version."*

[30] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*"1.3 At all other times, a copy of the latest WSS must be made available by the property factor on request by a homeowner."*

[31] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

[32] Then para 1- B4 and - C6 are both raised by Ms Buchan and Ms Walker which again relate to the content of the WSS.

### ***"B. Services Provided***

*(4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service);"*

[33] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

### ***"C. Financial and Charging Arrangements***

*(6) the management fee charged by the property factor, including any fee structure and also the property factor's policy for reviewing and increasing or decreasing this management fee;"*

[34] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

[35] Then standard C7 is raised by Ms Walker

*"C (7) what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner is responsible for. This is likely to be set out in the title deeds for the property. If management fees are charged at a flat rate rather than as a proportion, then this should be clearly stated";*

[36] The Tribunal finds that the Respondent has breached this in respect of Ms Elaine Fleming as they have supplied her with an inaccurate WSS and refused to respond to her communications about that issue. The inaccuracy relates to the correct share of the maintenance obligations for the building. Given the broader issues raised in these Applications, this is far from academic.

[37] Then D14 and D15 are raised by Ms Walker and Ms Buchan.

### ***"D. Communication and Consultation***

*(14) procedures and timescales for responding to enquiries and communications received from homeowners in writing and by telephone (including details of the property factor's standard working hours);*

(15) *the property factor's complaints handling procedure<sup>[4]</sup>;*"

[38] The Tribunal does not find these standards to have been breached. The Respondent's failings are better expressed against other standards. The information is there in the WSS, it is the performance of these standards that appears to be the problem.

[39] Then standards 2.1, 2.6 and 2.7 are raised by Ms Walker and possibly also by Ms Fleming who may have written these standards in the incorrect part of the Application form.

*"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."*

[40] The Tribunal finds that this standard has been breached by the Respondent. They have neither communicated nor consulted appropriately regarding the issues raised.

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

[41] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*"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".*

[42] The Tribunal finds this standard to have been breached. The Respondent have self-evidently failed to respond to the Applicants' enquiries at all.

[43] Then all three Applications refer to standards 6.1 and 6.3

*"6.1 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."*

[44] The Tribunal finds this standard to have been breached. The Respondent does not appear to have made prompt repairs.

*"6.3 A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention."*

[45] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

[46] Then all three Applications refer to paragraph 7.1 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."*

[47] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards. Again, the information is there in the WSS. It is performance that's the problem.

## **2012 Code.**

[48] The Tribunal noted that the 2021 Code took effect from 16 August 2021. The Tribunal took the view that much of the Respondent's failings could fairly also be attributed to before that date. The Tribunal therefore also considered it appropriate to make findings in respect of the 2012 Code.

*"1.The written statement should set out:*

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***B. Services Provided***

*c. the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service)"*

[49] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

***"C. Financial and Charging Arrangements***

*e. the management fee charged, including any fee structure"*

[50] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*"m. the timescales within which you will respond to enquiries and complaints received by letter or e-mail."*

[51] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*"n. your procedures and timescales for response when dealing with telephone enquiries;"*

[52] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*"2.1 You must not provide information which is misleading or false."*

[53] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards.

*2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies)*

[54] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other sections of the Code.

*2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (section 1 refers).*

[55] The Tribunal finds this standard to have been breached. The Respondent has not responded to enquiries and complaints in keeping with this standard.

*"6.7 You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you."*

[56] The Tribunal does not find this standard to have been breached. There does not appear to have been any evidence given about this.

*"7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors."*

[57] The Tribunal does not find this standard to have been breached. The Respondent's failings are better expressed against other standards. Again, there is a procedure, it is the performance that is the problem.

## **Property Factor Enforcement Order**

[58] Having made the above findings, the Tribunal proposes to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[59] The Tribunal considered that appropriate remedy for the breach established, would be payment of a sum of money in terms of Section 20 (1) (b) and an order on the Respondent to execute certain action, being an order to update the Applicant about the status of the repairs and issue an apology in terms of Section 20 (1) (a) .

[60] The Tribunal noted that there had been a prolonged period of inadequate communication. The Tribunal decided that there was no obvious scientific method for calculating what compensation might be appropriate. The Tribunal noted that the Respondent did appear to present the residents with a quote for the works which the residents appear largely to have ignored. It is possible therefore that the whole business

could have been fixed by now. It also seemed likely that the Respondent may well have done more to address the situation than their communications with the Applicants suggested.

[60] The Tribunal had to decide what was reasonable taking a common sense approach. The Tribunal took the view that the sum of £500.00 for each Applicant would be reasonable. The Tribunal will order that this sum is paid within a period of 28 days.

[61] The Tribunal will also order that the Respondent sends the Applicants a letter of apology within 28 days and also explains what they have done about the repairs and what the plan is to resolve matters as soon as possible.

[62] A Proposed Property Factor Enforcement Order will be made to this effect and is produced herewith.

## **APPEAL PROVISIONS**

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

**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.**

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**Legal Member**

**7 January 2026**