



**Decision and Statement of Reasons under Section 17 (1) of the Property Factors
(Scotland) Act 2011 (“The Act”)**

Reference number: FTS/HPC/PF/23/2799

Re: Property at 9/15 Risk Street, Dumbarton, G82 1SE (“the Property”)

The Parties:

Mrs Rosemary Watson, 73 Round Riding Road, Dumbarton, G82 2HX (“the Applicant”)

**West Dunbartonshire Council, 16 Church Street, Dumbarton, G82 1QL (“the
Respondent”)**

The Tribunal comprised: -

Mr A. McLaughlin

Legal Member

Mr K. Bruce

Ordinary Member

Background

[1] The Applicant seeks a determination that the Respondent has breached their obligations under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* (“The Code”). It should be noted that the Application relates to the older 2012 Code rather than the revised Code issued in 2021.

[2] The paragraphs of the Code alleged to have been breached are:

“1.1. You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code.

You must provide the written statement: to any new homeowners within four weeks of agreeing to provide services to them; to any new homeowner within four weeks of you being made aware of a change of ownership of a property which you already manage;

to existing homeowners within one year of initial registration as a property factor.

However, you must supply the full written statement before that time if you are requested to do so by a homeowner (within four weeks of the request) or by the

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homeowner housing panel (within the timescale the homeowner housing panel specifies);

to any homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement.”

“6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.”

“6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.”

“6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.”

Overview of Claim

[3] The substance of the allegations is that the Respondent failed to act adequately as Property Factor to organise and effect repairs on the building in which the Property is situated. It is also alleged that they failed to provide a copy of their Written Statement of Services (“WSS”) and tender documentation in line with their obligations. The Applicant is a joint executor of her late mother’s estate. Her late mother was the proprietor of the Property until her death.

Previous Procedure

[4] The Application had previously called for a Case Management Discussion (CMD) to regulate procedure. There had been a substantial delay in progressing to a Hearing as the Respondent’s principal solicitor had sadly passed away and the Respondent required some time to re-organise their defence of the Application. The Respondent denied breaching any of the relevant grounds and had submitted written representations setting out their position. The Application was then continued to a Hearing for evidence to be heard and a final decision to be made.

The Hearing

[5] The Application then called for a Hearing, in person, at Glasgow Tribunals Centre at 10 am on 7 November 2025. The Applicant was personally present along with her husband and her sister for support. The Respondent was represented by their own Mr Chris Anderson, solicitor and brought Mr Alan Young as witness on their behalf.

[6] The Tribunal began by enquiring whether there were any preliminary matters or whether each party was ready to start the Hearing. Each party confirmed that they had no preliminary matters to raise and were familiar with the documentation before the Tribunal and had nothing further to submit. There were no other preliminary matters. After each witness gave evidence, each party had the opportunity to cross examine the evidence given. The Tribunal also asked questions throughout to ensure that it understood the evidence. At the conclusion of evidence, each party also had the opportunity to make closing submissions and to specifically draw the Tribunal's attention to any relevant approach which it was said the Tribunal ought to take to the case. Parties also had the opportunity to draw the Tribunal's attention to the relevant sections of the Code alleged to have been breached. The Tribunal reminded parties that although the Tribunal had extensive written documentation before it, each party should assist the Tribunal by explicitly drawing the Tribunal's attention to all the relevant facts and documents that might support their case.

[7] The Tribunal comments on the evidence heard as follows:

Ms Rosemary Watson

[7] Ms Watson's late mother, Ms McGlinchey died on 8 January 2021. Ms Watson is one of two executors of her late mother's estate, along with her sister. Her position was as follows. Her late mother lived and owned the Property known as 9/15 Risk Street, Dumbarton, G82 1SE until her death. The property is factored by the Respondent who

also own several properties in the building. Water ingress into the Property was first noted in January 2021. On 12 July 2021, The Applicant requested that the Respondent provide them with a timescale for the repairs. The Applicant's position was that she had received unsatisfactory updates about the nature of the necessary repairs and information about the timescales for completion.

[8] Ms Watson explained that in June 2023, she requested a copy of the Respondent's WSS. The WSS was obtained in October 2023. The Applicant had initially telephoned and asked for a copy but appeared not to be provided with one. She then attended at one of the Respondent's municipal buildings and asked for a copy in person. She was informed that a copy would be posted out to her. This duly arrived 13 days later sometime in October 2023. In June 2023, the Applicant also asked the Respondent about inspecting the tendering documentation for the repair works. The Respondent was said to have informed the Applicant that the documentation would be available for inspection by the Respondent on attendance at the Respondent's offices at a scheduled appointment. The Applicant then appears not to have taken this any further.

[9] The Applicant acknowledged that the building required wide reaching and extensive repairs. The Applicant noted that there had been issues with the work carried out by the original contractor and then delays in having the further remedial works carried out. She wondered why the Respondent weren't suing the original contractor or taking some form of legal action. She also speculated as to whether there were any collateral warranties in place although it was not clear that the Applicant was entirely familiar with what collateral warranties are and what their purpose might be. The issue was somewhat irrelevant as the Respondent had a contract with the original contractor in any event.

Respondent's evidence

Mr Alan Young

[10] Mr Young is the Respondent's Housing Asset and Investment Manager. He has thirty years' experience. Mr Young spoke very knowledgably about the issues involved in trying to carry out the necessary repairs to the building at Risk Street. He described the difficulties with the original contractor, Everwarm, who started the project. He spoke knowledgably about the works they carried out and the issues which arose as a result of those works which subsequently required to be addressed. He spoke about how the Respondent had carefully considered the legal position and whether it would be appropriate to pursue Everwarm. On the legal advice received, the Respondent had concluded that it would not assist anyone to raise any proceedings at this stage although that may of course be subject to change in the future. Mr Young also described that the Respondent's Barbara McLean had been communicating well with the residents about the repairs but then she was absent from work for around 5 or 6 months which naturally caused some difficulties. Mr Young however explained that he himself had had lengthy telephone discussions with the Applicant on the telephone. They had discussed the whole situation. The precise number of phone calls was challenged by the Applicant in cross, but it seemed clear that Mr Young certainly had spent significant time discussing the situation with the Applicant directly.

Closing submissions

Applicant's submissions

[11] The Applicant invited the Tribunal to find that the Respondent had breached their obligations under the relevant sections of the Code and sought what she described as an appropriate payment for the four years of anxiety caused by the Respondent's alleged failings. The Applicant had also explained that she had claimed the sum of £29, 838,44 from her insurance company and had received the sum of £20,905.40. She therefore asked the Tribunal to consider awarding her the shortfall of £8,933.40 not covered by the

insurer. These losses were said to arise from loss of rental income on the Property and other damage.

Respondent's submissions

[12] Mr Anderson spoke to his written submissions which set out the Respondent's position as follows.

[13] This Application to the First Tier Tribunal was made on 17 August 2023 and a letter dated 27 September 2023 addressed to the Respondent's Chief Executive set out the alleged breaches of the factoring duties required by section 17(5) of the 2011 Act. At this time the Respondents were not in receipt of the draft programme and timescale for completion of the works and so were unable to provide this information. The duty encompasses an obligation to have procedures in place, and it is respectfully submitted that the Respondents had procedures in place and used their best endeavours to keep the Appellant updated on progress. They were prevented from so doing as the result of factors out with their control. Council Officers contacted the Appellant to advise her of arrangements for investigations, inspections and liaisons with their contractor. This information was relayed to the Appellant by telephone updates by Barbara McLean, Customer Liaison Officer and on occasions with Mr Alan Young, Housing Asset and Investment Manager. Once in a position to provide accurate information on the timescales for the necessary work, a letter was hand-delivered to the Appellant's home address and to the property at 9/15, Risk Street, Dumbarton.

[14] Throughout an extensive period post-completion of the original works, the Respondent's officers liaised with the contractor (Everwarm) reporting issues with the roof and pursuing the contractor to investigate the cause of these issues, to perform appropriate tests and undertake remedial works. This was done on numerous occasions and at stages the problem appeared to have resolved, only to return at a later date. The situation was complex because the contractor was using sub-contractors. The

Respondent made an assessment of the situation and concluded that the best course of action was to conclude the relevant part of the contract and for the Respondent to undertake responsibility for appointing a new contractor to effect the required remedial work. It was submitted that was a decision which the Respondent was entitled to make, having regard to their duties under the 2011 Act and to mitigate their own loss and those suffered by the householders affected. The Respondent instructed a particular roofing company but unfortunately this company suddenly ceased trading. After due process, Hugh L.S. McConnell Limited were instructed to carry out the remedial work necessary to resolve the ongoing problems.

[15] As for the tendering documentation and issues relating to the WSS, after investigation, the Respondent recognised that an email was received and acknowledged, in which the Appellant requested copies of contract documents and WSS. However, the Appellant's email was not forwarded to the appropriate Officer timeously. A reply was drafted but was not issued. Following the initial Case Management Call in these proceedings, this email was forwarded to the Appellant and contained information on how these documents could be viewed. To date the Appellant has made no request to the Respondent to arrange to view the documents in question. The WSS would have been issued to the original owner and is readily available on the Respondent's web pages. It is noted that a copy of the WSS is included in the Appellant's evidence pack and accordingly it follows that she had access to this document, although it remains unclear whether this was sourced from the Respondent's web pages or if a copy was sent to her.

Comment on Evidence

[16] The Applicant's evidence appeared somewhat lacking in substance. It appeared more to be borne out of frustration at the fact the building required such substantial repairs. The Applicant could point to very little that the Respondent had actually done wrong. In that regard the Tribunal could not accept the Applicant's position as being

justified or reasonable. The Respondent's evidence in contrast was detailed, objective and appeared to comprehensively address the issues raised and respond to them. For this reason, the Tribunal preferred the evidence of the Respondent.

[17] Having heard evidence and also having considered the documentation before the Tribunal, the Tribunal makes the following findings in fact.

Findings in facts

1. *Ms Watson's late mother, Ms McGlinchey died on 8 January 2021. Ms Watson and her sister are her executors of her late mother's estate.*
2. *The Applicant's late mother lived and owned the Property known as 9/15 Risk Street, Dumbarton, G82 1SE. The property is factored by the Respondent who also own several properties in the building.*
3. *Water ingress into the Property was noted in January 2021.*
4. *The problems were not restricted simply to the Property but throughout the building which has aged somewhat poorly and is in substantial need of repair throughout.*
5. *The Respondent has been well aware of these issues and renovating the building has been a significant project with a substantial budget and requiring significant resources.*
6. *The works were originally ostensibly completed by a contractor known as Everwarm.*
7. *The repairs were not successful.*
8. *Throughout an extensive period, post-completion of the original works, the Respondent's officers liaised with Everwarm reporting issues with the roof and pursuing the contractor to investigate the cause of these issues, to perform appropriate tests and undertake remedial works.*
9. *This was done on numerous occasions and at stages the problem appeared to have resolved, only to return at a later date. The situation was complex because the contractor was using sub-contractors. The Respondent made an assessment of the situation and*

concluded that the best course of action was to conclude the relevant part of the contract and for the Respondent to undertake responsibility for appointing a new contractor to effect the required remedial work.

- 10. The Respondent then instructed a particular roofing company but unfortunately this company suddenly ceased trading. After due process, Hugh L.S. McConnell Limited were instructed to carry out the remedial work necessary to resolve the ongoing problems.*
- 11. In June 2023, the Applicant requested a copy of the Respondent's Written Statement of Services. The relevant information was ultimately obtained in October 2023. The Applicant had initially emailed and then telephoned and asked for a copy but appeared not to be provided with one. She then attended at one of the Respondent's municipal buildings and asked for a copy in person. She was informed that a copy would be posted out to her. This duly arrived 13 days later sometime in October 2023. In June 2023, the Applicant also asked the Respondent about how she might obtain the relevant tendering documentation for the repair works.*
- 12. The Respondent informed the Applicant that the documentation would be made available for inspection by the Respondent on attendance at the Respondent's offices at a scheduled appointment. The Applicant did not take this any further.*
- 13. Council Officers contacted the Appellant to advise her of arrangements for investigations, inspections and liaisons with their contractor. This information was relayed to the Appellant by telephone updates by Barbara McLean, Customer Liaison Officer and on occasions with Mr Alan Young, Housing Asset and Investment Manager. Once in a position to provide accurate information on the timescales for the necessary work, a letter was hand-delivered to the Appellant's home address and to the property at 9/15, Risk Street, Dumbarton.*

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

The Code

“You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code.

You must provide the written statement: to any new homeowners within four weeks of agreeing to provide services to them; to any new homeowner within four weeks of you being made aware of a change of ownership of a property which you already manage.

to existing homeowners within one year of initial registration as a property factor.

However, you must supply the full written statement before that time if you are requested to do so by a homeowner (within four weeks of the request) or by the 4Code of Conduct for Property Factors; effective from 1 October 2012

homeowner housing panel (within the timescale the homeowner housing panel specifies);

to any homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement.”

[19] The Tribunal finds that this standard has not been breached. The Tribunal accepts that the document would have been available on the Respondent’s website and may have been in the Applicant’s late mother’s papers. The Respondent then posted out a copy when the Applicant attended at their offices to request a copy. The Tribunal cannot conclude that the Respondent has breached this paragraph of the Code.

“6.1 You must have in place procedures to allow homeowners to notify you of

matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required."

[20] The Tribunal finds that this standard has not been breached. The Tribunal accepts the Respondent's position that they dealt with a difficult situation as best they could and took reasonable steps to keep the Applicant informed. The Tribunal cannot conclude that the Respondent has breached this paragraph of the Code.

"6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance."

[21] The Tribunal finds that this standard has not been breached. The Tribunal informed the Applicant about that she needed to do if she wanted to inspect documentation relating to any tendering process. The Applicant didn't then follow through on this. The Tribunal cannot conclude that the Respondent has breached this paragraph of the Code.

"6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor."

[22] The Tribunal finds that this standard has not been breached. The Respondent had clearly carefully considered its position and acted on legal advice in deciding how to

deal with the situation. The Tribunal cannot conclude that the Respondent has breached this paragraph of the Code.

Proposed Property Factor Enforcement Order

[23] Having made the above findings in respect of the sections of the Code said to have been breached and having set out the reasons for those findings, the Tribunal refuses to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

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.

6 January 2026.

Legal Member