

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/25/1100

**Flat 1/2 2 Lochburn Gardens, Glasgow, G20 0SL
("the Property")**

The Parties:-

**Mr Raymond Tortolano & Mrs Sukla Tortolano, 37 Whiteford Road, Stepps,
Glasgow, G33 6GA**

("the Homeowner")

**Newton Property Management Limited, 87 Dundas Road, Glasgow, G4 0HF
represented by
("the Factor")**

**Tribunal Members:
Fiona Cook (Legal Member)
Sara Hesp (Ordinary Member)**

DECISION

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

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

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "the Rules"

Background

1. The Homeowners made an application to the First-tier Tribunal on 11th March 2025. The application was accepted by the Tribunal on 10th April 2025.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 9th September 2025. The alleged breaches of the Code were not accepted by the Respondent and a hearing was arranged for the Tribunal to decide on the application.
3. The Homeowners are the joint owners of the Property and purchased the Property in 2014. The Respondent has factored the Property throughout that time and the Homeowners understand that the Respondent had factored the Property since the development had been completed. The Homeowners let the Property to tenants and do not reside there.
5. The Homeowners asked the Tribunal to decide that the Respondent had failed to comply with paragraphs 2.1 and 2.7 of Section 2: Communications and Consultation; paragraphs 6.1, 6.3, 6.4 and 6.6 of Section 6: Carrying Out Repairs and Maintenance of the Code of Conduct. They also asked the Tribunal to decide that there had been a failure to carry out the Property Factor’s duties.
6. The Homeowner’s complaint is that the Respondent delayed with requests by them to investigate and arrange repairs to cracked rendering on the external wall at the Property. The Applicants first contacted the Respondent about the repair on 31st October 2023. The repair was completed on 11th November 2024.

Hearing

7. An oral hearing took place at the Glasgow Tribunal Centre on 18th February 2026.
8. The Respondent was not present or represented. The Tribunal asked the hearing clerk to contact the Respondent to establish whether they intended to attend the hearing and were told that the member of staff who had attended the CMD was not available and were not aware that arrangements had been made for another member of their staff to attend.
9. While the reason for the absence of the particular staff member who had attended the CMD was noted by the Tribunal as being a good reason, the Tribunal decided to proceed with the hearing as the Respondent was aware of the hearing, had been given notice of the hearing and had not made a request to adjourn the hearing or make provision for another member of their staff to attend. The Tribunal had the Respondent’s written representations which had been prepared in advance of the CMD on 9th September 2025 and which set out their response to the Homeowners application.

Preliminary Matters

10. In the absence of a request to adjourn the hearing the Tribunal were mindful of their obligation, in terms of the Tribunal's overriding objectives, to avoid delays when determining an application and as they had the Respondent's written representations, and no further productions or representations had been lodged by either Party since the CMD they decided to proceed with the hearing. The unanimous decision of the Tribunal was to continue with hearing.
11. The Tribunal sought clarification from the Homeowners as to what parts of the Code were to be considered by them and specifically what the Tribunal was being asked to consider in relation to the alleged breach of the Property Factor's duties. The Homeowners accepted that what was being referred to in that part of their application was already covered by the sections of the code that they had referred to earlier in their application and withdrew that part of their application. The Tribunal noted that they were now being asked to consider that the Respondent had failed to comply with paragraphs 2.1 and 2.7 of Section 2: Communications and Consultation; paragraphs 6.1, 6.3, 6.4 and 6.6 of Section 6: Carrying Out Repairs and Maintenance of the Code of Conduct.

Summary of submissions

12. The Homeowners had reported that it took the Respondent over a year to deal with the repair to the Property and that they had spent time emailing and phoning the Respondent about the work due to the lack of progress. This had caused them inconvenience and stress.
13. The Respondent, in their written representations, set out the dates when calls and emails from the Homeowners had been responded to and felt that they had responded to queries and complaints in terms of the timescales provided in their Written Statement of Services ("WSS"). They also stated that they had adhered to their procedures when dealing with the repair, noted that the temporary repair by the tenants had resolved issues with water ingress and that the quotation process had been delayed due to a particular storm (Storm Isha) which resulted in priority being given to repairs where the damage was more significant. They also responded to the lack of range of options regarding the repair by setting out the difficulties in obtaining competing quotes for the required work.

Discussion

14. The Tribunal asked the Homeowners to clarify what remedy they were seeking. They explained that they felt that the sums that had been offered by the Respondent previously were derisory sums (£25 then later £50) and that by referring to these payments as a "goodwill gesture" the Respondent was absolving themselves of any responsibility for the delays in the repair being completed and not offering an appropriate apology.

15. The Tribunal noted that the Homeowners were seeking a payment representing their 4 quarterly property management fees to the Respondent from 29th November 2023 until 28th November 2024 inclusive, a sum of £258.07 with an additional payment of the same sum to represent the inconvenience and stress that they had experienced by having to contact the Respondent during that time. They requested a total sum of £516.14.
16. Responding to a question by the Tribunal as to what other services the Homeowners received by paying the quarterly management fees it was noted that the Respondent was responsible for the maintenance of the common parts of the Property and services such as carpet cleaning and maintenance of the car park and play area were included in the fee. There was no suggestion that these services had not been provided during the 12 month period referred to in paragraph 15.
17. It was noted that the Homeowners had rejected the goodwill payments, and they confirmed that they had not responded to the Respondent when asked what might resolve their complaint as they had decided by that stage to make an application to the Tribunal. The Homeowners suggested that they should be compensated by the Respondent for having to bring their case to the Tribunal and for the time they had spent preparing their case and attending at hearings.

The Tribunal make the following findings in fact:

18. The Homeowners are the owners of Flat 1/2 2 Lochburn Gardens, Glasgow, G20 0SL ("the Property").
19. The Property is a flat within the Lochburn Gardens development (hereinafter "the Development").
20. The Factor performed the role of the property factor of the Development. They have a Written Statement of Services. These were sent to the Tribunal as part of the Homeowners productions bundle.
21. The Homeowners reported damage to their Property to the Respondent on 31st October 2023. They reported damage to the external wall above the windows alongside the balcony of the property. They advised that their tenants had made a repair as "there was an issue with water ingress" but felt that a professional contractor should investigate the damage.
22. The damage was reported by them by telephone and by email. Their email of 31st October 2023 referred to an earlier telephone conversation, and photographs were attached to the email (these photographs were not seen by the Tribunal).
23. Receipt of the email was acknowledged by the Respondent later the same afternoon. The email was passed to David Docherty the Homeowners property manager. The parties thereafter communicated by email and

telephone about progress with the repair. The Homeowners provided copies of the emails, and these were contained in the casefile. The Respondent replied to all but one email, an email sent by the Homeowner on 20th December 2023. The Homeowner sent a further email on 7th February 2024. A response was sent by the Respondent on 9th February 2024. Subsequent emails were replied to by the Respondent within 3 or 4 days.

24. The repair was not completed until November 2024 and the Homeowners paid their share of the invoice (which from memory was an eighth share of the invoice.) The temporary repair by the Homeowner's tenants was very much seen as a temporary repair and the Homeowners had and from the outset advised the Respondent that they wanted a professional repair to be undertaken. Notwithstanding the temporary nature of the tenant's repair there had been no further noticeable water ingress at the Property.
25. No issue was taken regarding the competency of the eventual repair.
26. The majority of emails sent by the Homeowners to the Respondent were acknowledged by them and replies were sent. Some of the emails, including those on 5th March 2024, 18th April 2024 and 15th May 2024 and a telephone call of 13th September 2024 (acknowledged by the Respondent in their email to the Homeowners of the same date) were chase up communications where an update was being sought. Responses were sent by the Respondent to those enquiries.
27. The email where no response was received was an email by the Homeowner to the Respondent's employee David Docherty sent on 20th December 2023. The Homeowner telephoned the Respondent on 7th February 2024 for an update due to there being no response.
28. The Homeowner provided the Respondent with information in their initial email of 31st October 2023 about the repair that their tenant had made but were then asked by the Respondent's employee David Docherty about the repair in an email to them on 24th November 2023. The Homeowners replied the same day to advise that this had been mentioned in their original email of 31st October 2023.
29. On 24th September 2024 the Homeowners made a formal complaint about the service the Respondent was providing.

Reasons for Decision

30. The main basis of the Homeowners complaint is the that the Property Factor delayed in carry out the repair to the external wall outside their property. They had not replied to emails and calls about the repair, and the Homeowners had spent time chasing up the Property Factors.

31. Section 2.1 of the Code states: -

“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."

32. The Tribunal noted that the Homeowners had access to the WSS and were aware of their right to make a formal complaint (which they did) and ultimately to make an application to the Tribunal, again which they did. They were also consulted in relation to the eventual repair at the Property. It was accepted by the Tribunal that the Respondent's communication could have been better during the time being considered but did not find that this section of the code had been breached as generally emails and calls were responded to and the Homeowners were aware of the timescales for responses set out in WSS remedies open to them in the event they were not satisfied with the service they were receiving.

33. Section 2.7 of the Code states: -

"A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale."

34. The Respondent's Communication Arrangements are set out in Section D of their WSS. They aimed to respond to telephone calls the same day, which they did. They aimed to respond to email within 5 working days which on most occasions they did. The Respondent issues an apology for a failure to reply to an email due to a member of staff being on annual leave. The Tribunal considered the breach across the communications between the Parties and noted that on the majority of occasions the Respondent had adhered to the time limits in their WSS but had failed to do so on one occasion. It was noted that the email which had not been responded to was sent on 20th December 2023 and shortly before a holiday period. The Respondent had provided an explanation for the failure to respond and issued an apology for that and therefore on balance the Tribunal did not find that the Respondent had breached this section of the Code.

35. Section 6.1 of the Code states:-

"This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard."

36. Due to the temporary repair carried out by the Homeowner's tenants no further water ingress was noted at the property and therefore no evidence of further damage or deterioration was provided, and the Tribunal decided this section of the Code had not been breached.
37. Section 6.3 of the Code states: -
- “A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. “
38. The WSS at Parts B, C and D provides information for homeowners about repairs. The Homeowners made the Respondent aware of the repair by emailing them and this was acknowledged. Setting aside the time taken to carry out the repair, from all the evidence seen on the casefile it was noted that contractors were contacted, and steps were taken by the Respondent to instruct the contractor as a visit was made by them in November 2023 when the temporary repair by the tenants was noted. The Tribunal decided that there was no breach of this section of the Code as there was a procedure in place that allowed the Homeowners to notify them of the required repair.
39. Section 6.4 of the Code states:-
- “Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.”
40. Parties were not in dispute in their written representations that the repair was intimated on 31st October 2023 and that it took until November 2024 for the professional repair to be undertaken. While the Tribunal noted the explanations for the delays set out in the Respondents written representations it was noted that Storm Isha was in January 2024 and that there was ample time thereafter for the work to be instructed prior to November 2024. From the information provided it seemed that little if anything had been done to progress the work between the email from the Respondent to the Homeowners on 17th May 2024 and the Homeowners chase up call made on 13th September 2024. While a further quote had been obtained by the Respondent when they replied on 13th September 2024 it was not clear when that was obtained and why the Homeowners had not been made aware of the quote and why steps had not been taken to progress the repair. It seemed to the Tribunal that had the repair been progressed before the Homeowners call to them in September 2024 then the application to the Tribunal could have been avoided. A period of in excess of 12 months from the date of reporting the repair to it being completed, having regard to the relatively minor nature of the repair was considered by the Tribunal to be inappropriate.

41. For these reasons the Tribunal determined that there had been a breach of this section of the Code. It was not unreasonable for the Homeowners to expect the repair to be completed in less time and they had provided the Respondent with ample time to instruct the repair prior to making a formal complaint.
42. Section 6.6 of the Code states:-

“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.”
43. The parties respective positions and as set out in their written representations was considered by the Tribunal. It was noted that the Respondent having obtained a quote for the work decided that the quote was too high and elected to obtain a second, more competitive quote. That does not seem to be unreasonable, and the Respondent may have been open to criticism had they proceeded with this quote, considering that there were no ongoing reports of water ingress. While that original quote was later withdrawn, that was not suggested as being something the Respondent could have foreseen. The Tribunal ultimately determined that the processes carried out by the Respondent to carry out the repair were not at fault in this case but the delay with the quotes being obtained and later instructed were and for that reason the Tribunal agreed that while section 6.4 of the Code had been breached section 6.6 of the Code had not been breached.
44. The Tribunal heard from the Homeowners about the additional work they had undertaken in contacting the Respondent about the repair. Their inconvenience and stress were noted. The Tribunal could not however make an award for the work they had gone to in preparing their case for the Tribunal as they had made a choice to apply to the Tribunal following completion of the repair and had therefore decided to dedicate time and effort to preparing and presenting their case.

Proposed Property Factor Enforcement Order

45. The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice. The Tribunal proposes to make the following Order:

“(One) The Factor must pay the Homeowners £100 for the inconvenience they have suffered from their own funds and at no cost to the owners. The

sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order. “

Appeals

A homeowner or property factor 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.

Fiona Cook

_____ Legal Member and Chair

18th February 2026