



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

Reference number: FTS/HPC/PF/24/2943

Re: Property at 1 Elsie Inglis Way, Edinburgh, EH7 5FQ (“the Property”)

The Parties:

Mr Matthew Smith, 1/22 Elsie Inglis Way, Edinburgh, EH7 5FQ (“the Applicant”)

Speirs Gumley, Red Tree Magenta, 270 Glasgow Road, Glasgow, G73 1UZ (“the Respondent”)

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”).

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

Carrying out repairs and maintenance: Section 6.1; 6.2, 6.8 & 6.9

The Applicant also alleged that the Respondent had not complied with the Property Factor’s Duties in terms of Section 17 (5) of the Act.

Overview of Claim

[3] The substance of the allegations can be categorised as relating to failing to take sufficient action to fix a leak in the roof of the building in which the Applicant’s own fifth-floor flat is situated. The roof is said to be owned in common by the proprietors of the building in which the Property is situated and is therefore within the remit of the Respondent’s responsibilities on behalf of the proprietors. The Applicant alleges that the Respondent has failed to deal with matters adequately.

[4] There was a previous Hearing conducted as a Case Management Discussion. The Respondent had explained that this issue was well known and widely documented and that the Respondent had been pressing the builder, Bellway Homes (“Bellway”), to resolve this building defect over a substantial period. The Tribunal made a Direction ordering the Respondent to submit a written response documenting their efforts to resolve this issue. The Respondent duly complied with this Direction and submitted a significant file of correspondence showing the efforts made by the Respondent to press Bellway to address matters.

[5] The Application had then proceeded to a Hearing. The Applicant had not been in attendance and the Application had been refused in his absence. That was on account of the non-attendance plus the extensive information provided by the Respondent which was said by the Respondent to have fully answered the allegations. However, the Applicant then applied for recall of that decision and this was granted. A further Hearing was therefore assigned to hear evidence.

The Hearing

[6] The Application then called for a Hearing at 11 am in George House, George Street Edinburgh on 29 January 2026. The Applicant was personally present. The Respondent was represented by their own Ms Carrie Smith and Mr Tom McKie.

[7] Neither party had any preliminary matters to raise. The Tribunal began by ensuring that each party had the relevant documentation and was familiar with the materials described above which set out the Application. All parties understood this and were content to start the Hearing.

[8] The Tribunal thereafter began hearing evidence. After each witness gave evidence, the other party had the right to cross-examine. The Tribunal also asked questions throughout to ensure that it understood the evidence. At the conclusion of evidence, each party also had the right to make closing submissions.

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

Mr Matthew Smith

[10] Mr Smith is the owner and occupier of the property known as 1/22 Elsie Inglis Way, Edinburgh, EH7 5FQ. His property is a top floor flat in a tenement building. In January 2022, the building suffered storm damage. A section of the ceiling in a communal area outside the Applicant’s front door developed a leak. He contacted the Respondent and they organised for emergency repairs to be carried out on the roof to make it secure. It became apparent that the roof had wider structural problems stemming from

inadequacies in its initial construction which went beyond mere storm damage. The building was effectively still under warranty from Bellway who had constructed the building under the terms of a ten year NHBSC guarantee. Again it was accepted again by the Applicant that the Respondent had acted appropriately in engaging with Bellway and calling upon them to honour the terms of the warranty and to effect the necessary repairs on the building.

[11] The Applicant's position was that the Respondent did not do this forcefully enough and allowed things to lag without chasing them sufficiently for progress. It appeared to take three whole years for the issues to be finally resolved.

[12] The Applicant's position was that until the full structural repairs were carried out by Bellway, there was still a leak in the corridor ceiling outside his front door. The evidence about the precise extent of the leak was contested. The Respondent would later suggest that the ongoing leak was not particularly significant.

[13] The Respondent had submitted a dossier outlining all their written communications with Bellway attempting to move matters forwards towards a resolution. The Applicant had analysed this and suggested that there significant periods of time when there were no emails sent to Bellway chasing for progress. The Applicant had submitted a useful table which set out the periods of time between the various emails. He explained that he had even gone so far as to consult a solicitor and have a lawyer's letter sent to the Respondent to try and encourage action. The repairs were ultimately completed by Bellway in the middle of 2025.

[14] The analysis of the frequency of the emails was set out in a table which set out in a tabular form the number of days between emails sent to Bellway. There were clearly months when no issue was taken with the frequency of the emails sent. But there were other sections of the table highlighted in red which indicated that the Applicant was clearly unhappy with the lack of regular emails. These included various time periods and included a range from 31 days between emails to 206 days between emails. The Tribunal looked at this document carefully and also considered the actual emails themselves. The Tribunal noted that the period of 206 days alleged to have passed between chasing emails included a significant period of time when Bellway had indicated that they were obtaining their own specialist report.

Ms Carrie Smith

[15] The Tribunal heard from Ms Carrie Smith who is an associate Director of the Respondent. She has been the Property Manager since 2020. Ms Smith corroborated the Applicant's account of the storm damage to the building. She explained that the Respondent immediately appointed a contractor "*North Facades*" to make the roof safe and to secure the relevant section of the roof. The contractor then came back and reported the broader structural issues with the roof. Ms Smith reported that Bellway responded positively and were willing to engage. Bellway sent their own contractor out to assess what needed to be done. Ms Smith explained that the Respondent followed up in good faith. While this was ongoing, they liaised with the owners through

correspondence and also attended AGMs where the whole ongoing issues were discussed. Ms Smith explained that the residents had two options. The Respondent could keep pursuing Bellway for progress with the roof under the terms of the warranty or the residents could seek to have the works completed at their own expense and then seek reimbursement from Bellway. The residents very clearly opted for the Respondent to keep pursuing Bellway.

[16] Ms Smith commented that there were communications with Bellway which were not restricted to the emails produced and analysed by the Applicant. There would have been conversations and phone calls. Different teams within the Respondent's organisation would also have raised the issues through different channels.

[17] Ms Smith also explained that she had personally attended at the Property after the initial emergency repair had been carried out. She had seen a small jug outside the Applicant's Property with a very modest amount of water in it. She did not see anything that suggested that there were significant ongoing leaks and certainly nothing that required a bucket.

[18] The Tribunal also heard evidence from Mr McKie, whose evidence served largely to corroborate that of Ms Smith.

Comment on the evidence.

[19] The Tribunal found the evidence of Ms Smith and Mr McKie to be credible and reliable. It was thoughtfully given and backed up by contemporary evidence. It was true to say that there was no record produced of every conversation with Bellway and that there were instances when long periods of time passed without the Respondent chasing Bellway in an email that could be referred to, but the table produced by the Applicant seemed a rather blunt instrument. The Tribunal could not attach blame to the Respondent for their actions. If anything, the Tribunal was impressed with the way the Respondent had taken swift action regarding the initial repair. They had correctly identified the terms of the relevant warranty and brought this to Bellway's attention. They managed to secure Bellway honouring that warranty and informed the residents of the situation through regular AGMs. They also informed the residents that they could opt to pay for the works themselves and seek reimbursement from Bellway if they preferred. They then acted on the instructions given to persevere with Bellway carrying out the repairs themselves.

[20] In contrast, the evidence of the Applicant appeared somewhat two-dimensional and simply focussed on the days between emails that were sent over a period of some three years. The Tribunal considered the Applicant's evidence to be somewhat restricted by its tunnel vision in that regard.

[21] Having heard from the relevant parties and having considered the relevant evidence, the Tribunal made the following findings in fact.

Findings in Fact.

1. *The Applicant is the owner and occupier of the property known as 1/22 Elsie Inglis Way, Edinburgh, EH7 5FQ.*
2. *The property is a top floor flat in a tenement building. In January 2022, the building suffered storm damage. A section of the ceiling in a communal area outside the Applicant's front door developed a leak.*
3. *The Respondent organised for emergency repairs to be carried out on the roof to make it secure.*
4. *The roof had wider structural problems stemming from inadequacies in its construction which went beyond mere storm damage.*
5. *The building was still under warranty from Bellway Homes who had constructed the building under the terms of a ten year NHBSC guarantee. The Respondent liaised with Bellway regarding calling upon them to honour the terms of that guarantee.*
6. *The Respondent corresponded with Bellway throughout a substantial period of some three years until the repairs were successfully carried out.*
7. *The Respondent regularly updated the residents about the options open to them which included persevering with Bellway honouring the warranty or carrying out the work at their own expenses and seeing reimbursement.*
8. *The Respondent acted on the instructions of the residents to call on Bellway to carry out the work and liaised with them until the process was concluded.*

[22] Having made the above findings in fact, the Tribunal then proceeded to consider the paragraphs of the Code alleged to have been breached.

The Code

"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."

[23] The Tribunal does not find that the Respondent has breached this section of the Code. The Tribunal finds that the Respondent has acted prudently for the benefit of residents.

"6.2 Property factors may also agree, by contract, to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of homeowners which contribute to fire safety. For

example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters e.g. firefighters lifts, rising fire mains etc, or to ensure that common areas are kept free of combustible items and obstructions.”

[24] The Tribunal does not find that the Respondent has breached this section of the Code. When making his submissions, it became apparent that the Applicant likely included this section of the Code in error. In any event, it has not been breached.

“6.8 A property factor must take reasonable steps to appoint contractors who have public liability insurance.”

[25] The Tribunal does not find that the Respondent has breached this section of the Code. When making his submissions, it became apparent that the Applicant likely included this section of the Code in error. In any event, it has not been breached.

“6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.”

[26] The Tribunal does not find that the Respondent has breached this section of the Code. When making his submissions, it became apparent that the Applicant likely included this section of the Code in error. In any event, it has not been breached.

[27] The Tribunal also does not find that the Respondent have breached their Property Factor’s duties. In fact, the Tribunal finds that they have delivered their services to the residents diligently and professionally.

Decision

[28] Having made the above findings the Tribunal refused the Application, found no breach of the Code or the Property Factor’s Duties and made no Property Factor Enforcement Order.

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.

Legal Member/Chair

5 March 2026
Date