



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

Chamber Ref: FTS/HPC/PF/23/4457

Re: Property at Westpark View, 65 Kirk Brae, Cults, Aberdeen, AB15 9QR (“the Property”)

The Parties:

Mr James Stephen, Westpark View, 65 Kirk Brae, Cults, Aberdeen, AB15 9QR (“the Applicant”)

James Gibb Property Management Ltd, Red Tree Magenta (3rd Floor), 270 Glasgow Road, Rutherglen, G73 1UZ (“the Respondent”)

Tribunal Members:

Mark Thorley (Legal Member), Sandra Brydon (Ordinary Member)

Decision

The First-Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has complied with the duty under Section 14 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”) and in particular has complied with Sections 2.6, 2.7 and 6.4 of the Code of Conduct for Property Factors 2021.

Background

This is an application under Rule 43 of the First-Tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”), for a determination that the Respondent has failed to comply with the duty under Section 14 of the 2011 Act. In particular, the Applicant stated that the Respondent has failed to comply with Sections 2.6, 2.7 and 6.4 of the Code of Conduct for Property Factors 2021.

The Applicant’s complaint can be summarised as follows:

1. The Applicant made application to the Tribunal on 7 December 2023.

2. The Applicant set out that the Respondent had failed to comply with the 2021 Code in terms of the overarching Standards of Practice 1, 2, 4 and 11, Sections 2.1, 2.6 and 2.7, 6.1 and 6.4.

The complaints were as follows:-

1. That the Respondent's balloted the development under the request of two owners, to allow them to make decisions on behalf of the development. The Applicant disputed that a Factor had the legal authority to do this.
2. That the Respondent did not apportion costs correctly.
3. That although the Factor Agreement set out that they could proceed with work up to a maximum of Twenty Five Pounds (£25) per property, that they proceeded to replace two lights totalling One Hundred and Fifty Three Pounds and Sixty Pence (£153.60), which when split should have equated to Thirty Pounds and Seventy Two Pence (£30.72) per property.
4. That the Respondent instructed an electrical contractor to remove a light that was not communal property and was instead purchased and installed privately, without consultation. A complaint was issued to the Respondent, who offered to refund the cost of the light only if provided with a copy of the receipt.

On 12 March 2024, the Tribunal accepted the application for determination.

A case management hearing was initially arranged for 17 July 2024. The Applicant was unable to attend. A further case management hearing was then assigned for 20 November 2024. The Applicant was offshore at that time.

A case management hearing was then assigned for 25 February 2025. This took place. The Applicant was present. The Respondent was present also and represented.

It was concluded at the case management discussion that an evidential hearing would be required, at which neither party would bring witnesses.

The Applicant was invited to lodge a copy of his invoice from his solicitors, which he did.

A hearing was set up by way of video conference on 9 September 2025 but the Applicant was working out of the country and the case could not proceed on that date.

On 22 November 2025 the Applicant indicated that he had to terminate the engagement with his solicitors. He had not been able to secure any alternative representation. He was offshore and unable to attend a hearing but provided written documentation regarding his complaint. He was aware that the Tribunal would consider these documents on the day of the hearing.

Hearing – 2 December 2025

At the hearing, Mr MacDonald appeared for the Respondent.

The Tribunal advised that they believed that there was sufficient documentation that had been lodged.

Findings in fact

1. The Applicant lives at Flat K, Westpark View, 65 Kirk Brae, Cults, Aberdeen, AB15 9QR.
2. The Respondent has a complaints handling procedure within its written statement of service.
3. The Applicant made a complaint to the Respondent in or about October 2023. This was then formulated in a communication from the Applicant to the Respondent on 30 January 2024.
4. The initial complaint was acknowledged on 6 November 2023 by the Respondent.
5. The Applicant informed the Respondent that he did not wish email communication from them and in addition that any posted communication would be returned.
6. A ballot took place of homeowners to identify if the homeowners wished to appoint two owners to take responsibility for making the majority of decisions. The ballot determined that the homeowners were not in favour and subsequently no action was taken.
7. The Respondent received a request from a homeowner that a light was out in a communal stairway. The Respondent raised a work order with an approved contractor and replaced this. The Applicant had previously replaced the light. The Applicant was then billed a share of the cost of the replacement. The Applicant was offered reimbursement of that share upon production of a receipt.
8. The Applicant raised a complaint on 22 October 2023. That was acknowledged by the Respondent on 6 November 2023. A response was to be provided by 11 December 2023. By then, the Applicant had indicated that he did not wish any email communication and had indeed blocked the Respondent. The complaint did not proceed to Stage 2 of the complaints procedure.

Reasons for decision

The Tribunal gave careful consideration to all of the background papers, including the application and initial supporting documents; the further written representations and supporting documents that had been received.

Breaches of the Code

- 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 homeowner's 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 they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.
- 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 conditions 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 the 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 available if required by a homeowner.
- 2.7 A property factor should respond to enquiries or 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.
- 6.1 This section of the code covers the use of both in-house staff and external contractors by property factors. Whilst 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 maintain proper repairs to a good standard.
- 6.4 Where a property factor arranges inspections or repairs are supposed to 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 away on a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

- 2.1 On balance, the Tribunal did not find a breach of the section of code to have been established. The allegation is that this section was breached on the basis that the Respondent organised a ballot of homeowners to identify if the owners wished to appoint two owners to take responsibility for making the majority of decisions. The Applicant set out that he did not believe that this was within the remit of the Respondent. Property factors are tasked with ensuring good communication with homeowners. A mechanism that would have allowed them to have dealt with that on a more streamlined process could not be regarded as being a breach of the Code. In any event, as matters transpired, the ballot did not agree with appointing two homeowners. Accordingly, it could not be considered that the Respondent had failed to comply with Section 2.1 of the Code.
- 2.6 This related to the Respondent receiving a request that a light was out in the communal stairway. The Applicant indicated that he had previously replaced the light. The Applicant was then billed a share of the cost of replacement. The property factor was, in terms of the Code, required to undertake works to the property, following upon requests to do so, except where there was an agreed level of delegated authority or in an emergency. Standing that this was the replacement of a light, the matter could have been referred to as an emergency. The Applicant was billed a share of the cost of replacement, which would have been in the normal course. It was then noted by the Respondent that the Applicant had already replaced the light. He was offered then a reimbursement of his share upon production of a receipt for the purchase of a light. It is difficult to envisage that the Respondent could have done much more.
- 2.8 The Applicant raised a complaint. It was acknowledged by the Respondent and that a response was to be provided by 11 December 2023. By then, the Applicant had indicated he did not wish any email communication from the Respondent. The application in itself, by the applicant, was relayed to the Tribunal on 7 December 2023. Accordingly, it would appear that, by that time, the Respondent could not have made a further response to the complaint, because the matter was already before the Tribunal. The Respondent does have in place a complaints procedure. In these circumstances, it could not be seen that the Respondent had breached the terms of the Code.

Although reference is made to Sections 6.1 and 6.4 of the Code, matters were more appropriately dealt with in terms of Section 2 of the Code. Reference is made to the reasons for decision here.

In summary, the Tribunal concluded that the Respondent had not breached the terms of the Code of Conduct.

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.

27/01/2026

Legal Member

Date