



Notes on a Hearing of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 17 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”)

Chamber Ref: FTS/HPC/PF/23/3604 and FTS/HPC/PF/23/4523

Re: Property at 51D Lenzie Way, Glasgow G21 3TB (“the Property”)

Parties:

Seymour Lopez, residing at 51D Lenzie Way, Glasgow G21 3TB (“the Applicant”)

Homesbook Factoring Limited, 66A Townhead, Kirkintilloch, Glasgow G66 1NZ (“the Respondent”)

Tribunal Members:

James Bauld (Legal Member)

Mary Lyden (Ordinary (Housing) Member)

Background

1. The history of this application is narrated in the hearing note issued after hearing which took place on 7 October 2024

The hearing

2. A further hearing took place on 23 April 2026 at Glasgow Tribunal Centre
3. The applicant was in attendance, and the property factor was represented by Mr Craig Rodger, its Director. He was accompanied by Mr Wilson McMillan.
4. The applicant had lodged an updated bundle of documents prior to the hearing
5. During the hearing the tribunal heard from both the applicant and from Mr Rodger. Various issues were raised and discussed.

Discussions at the hearing

6. The two applications each alleged the same breaches of the Code of Conduct for Property Factors. At a previous Case Management Discussion (“CMD”) on 22 April 2024, it became clear on questioning the applicant that his complaints were based on the contents of the revised Code of Conduct which was introduced with effect from 12 August 2021. He was unaware of the original Code which had been in place since 2012 and was unaware that the contents of the two Codes differed in certain respects.
7. At that previous CMD, it was accepted by the respondent that the two Codes had seven sections which had identical headings and they were happy for the tribunal to proceed to consider the complaints under those general headings.
8. In respect of the complaints under the 2021 Code of Conduct, the applicant alleged breaches of sections 1.1a, 1.A, a,b,B.c,d,C.h,i, 2.1, 2.2, 3.1, 3.2, 3.4, 3.10, 3.11, 4.11, 5.1, 6.4, 7.1 and 7.2 together with breaches of the Overarching Standards of Practice (“OSP”) numbers 1, 2, 4, 10 and 12.
9. At the earlier CMD and the hearing of 7 October 2024, the applicant had disputed that the property factor was properly appointed at a meeting which

had taken place in April 2019. It was noted that the applicant now accepts that meeting took place and that the factor was properly appointed.

10. It was agreed by the parties that the appointment of the respondent as the factor for this property had ended on 31 March 2025. The applicant indicated that a committee and a residents' association had now been constituted and the development was being self-factored.
11. The applicant was invited to address the tribunal setting out the parts of the Code of Conduct which he believed had been breached and to show evidence of the breaches.
12. He began by raising the issue of the electricity bill for the common supply to the common stairs. He indicated that this bill had not been paid by the respondent and that he had asked them to produce evidence of payment on a number of occasions.
13. It was noted that a copy of the final electricity bill addressed to the respondent was lodged by the applicant. It was listed in his own bundle of documents as document number SL1/59. The bill showed an amount outstanding of £2,518.57.
14. It was then acknowledged by the applicant that the respondent had raised a court action against him in respect of unpaid factoring bills
15. That action had proceeded at Glasgow Sheriff Court under the court reference GLW-SG-1183-23. Within the applicant's bundle of documents, document SL2/92 was a copy of an order of the sheriff in relation to this application.
16. The applicant conceded that this action had been settled in October 2025 by him agreeing to make a payment to the respondent of the sum of £1500.
17. It was noted that the applicant's complaints generally related to allegations that the respondent had failed to carry out works, had failed to provide

evidence of the works done and had overcharged the applicant in respect of his share of common works

18. The tribunal asked the applicant to confirm why he had made a payment in settlement of a court action where the respondent was obviously alleging that the applicant owed money to the respondent if it was his position that he did not owe money and that he had been overcharged by the respondent. The applicant could not satisfactorily answer that question. The tribunal indicated to the applicant that the only inference which could be drawn from that settlement was that he ultimately had agreed that he owed the respondent money for services provided by the respondent on his behalf and that he had a liability to pay for them. By settling the court action, the only inference which could properly be drawn was that the applicant was effectively acknowledging and conceding that the respondent's accounting was effectively correct and that the applicant accepted services had been provided and that he was liable to pay for those services.

19. The applicant seemed to accept that inference although he then indicated that his agreement to settle the court action was a mistake on his part.

20. The applicant then raised the issue of fly tipping within the general area. He indicated that the factor had agreed that they would inspect the area every fortnight and would arrange for uplifts to be done.

21. Mr Rodger indicated that the factor had made various attempts to resolve numerous issues relating to the uplift and disposal of rubbish within the area. They had made arrangements for large 1280 litre capacity bins to be installed and had to effectively fight with the council to get these installed. They took measures to prevent people using the normal bin areas in an attempt to tackle the fly tipping issue.

22. The next matter raised was the installation of a CCTV system. Mr Lopez alleged that only "dummy" (non-functioning) cameras had been installed and

that the various owners had been charged for a functioning CCTV system. The respondent denied the allegation that only dummy cameras have been installed. He indicated that a CCTV system had been installed but no charges had been levied against the owners and that there had been issues with unknown persons interfering with the circuit board which was linked to the CCTV system which prevented the system working properly.

23. The applicant indicated that he was now obtaining funding from the community council to have a new CCTV system installed
24. The applicant was asked whether he had specific evidence of fly tipping and the property factor doing nothing to remove items which had been dumped. He directed the tribunal's attention to photographs contained within his document bundle.
25. Photograph SL3/1 was taken in January 2024 and showed the parking area directly opposite the homeowner's window. The photograph showed various items which had seemingly been dumped within one parking space. The applicant then directed the tribunal's attention to another photograph (SL3/5) which showed the same area in October 2023. That photograph showed what appeared to be a lawnmower dumped beside one of the large 1280 litre capacity bins. The same lawnmower appears in the photograph in January 2024. The property factor conceded that the two photographs appeared to show the same lawnmower and that clearly this had not been uplifted in a period of approximately 2 to 3 months.
26. The applicant then raised an issue arising from the written statement of service which had been issued initially by the property factor
27. The original written statement indicated that if any repair was going to cost more than £50 per property then the property factor would notify the owners prior to work commencing. Mr Lopez complained that works in respect of the cleaning of the gutters and the roof valleys had been undertaken without appropriate procedure.

28. The tribunal noted that within the case papers was a copy of an email dated 11 January 2022 addressed to each owner in which the property factor indicates that the buildings at Lenzie Way and Lenzie Place were in desperate need of the gutters and valleys being cleared of growth and providing two quotations for the proposed works. One quotation was for a total cost of £11,325, the other was a cost of just over £30,000. The respective individual cost to each homeowner was stated to be either £75 and £199 per property owner. Owners were asked to complete a preferred option sheet indicating which quotation they preferred and were told that invoices would be sent out prior to any works being undertaken

29. A further mail from the property factor to Mr Lopez dated 13 June 2022 was also produced. It confirmed that the gutter cleaning and associated maintenance was something needing to be done as soon as possible but that unfortunately the factors were not in a position to fund that work due to the level of debt on the development being approximately £65,000. The email indicated that a large proportion of owners had failed to make payments in advance to allow these works to be instructed.

30. Mr. Lopez appeared to believe that he had been charged for this work without proper procedure being followed but it was clear that the documentation contained within the case file showed the exact opposite. A proposal to undertake this work was submitted to owners, together with appropriate quotations from contractors and the majority of owners had failed to provide the funds to the factor to enable the works to be undertaken.

31. Mr. Lopez then raised the question of a notice of potential liability ("NOPL") having been registered against his title. He was advised by the tribunal that this was not a matter which formed part of his application and thus fell outside the tribunal's remit. However, the legal member advised Mr Lopez that the use of NOPLs was covered by the Tenements (Scotland) Act 2004 and was a fairly standard procedure used by property factors to ensure that homeowners

dealt with outstanding debts if they sold a property. It was noted that Mr Lopez has settled all amounts due to the property factor. It was noted that a discharge of the notice will be prepared and registered. The legal member advised Mr Lopez that the impact of this notice would only be felt if he was selling the property and it still showed on the title register. The tribunal was happy to accept the undertaking given by the property factor that this notice would be removed and discharged.

32. The hearing then ended and the tribunal required to consider the evidence that had been produced and to decide whether there had been any breaches of the Code of Conduct, and if so, whether to make a Property Factor Enforcement order (“PFEO”)

Decision and reasons

33. The tribunal acknowledge and accept that this is a difficult and unusual case.
34. The homeowner clearly and commendably wishes to ensure that his property is appropriately maintained and that the general surrounding area is kept to an acceptable standard.
35. The burden of maintaining the property and the general surrounding area falls upon the homeowner in conjunction with the various other owners of the properties within the development. It appears that many of these owners do not wish to pay their respective shares of maintenance costs. There are undoubtedly many explanations for this unwillingness and reluctance.
36. Property factors are not obliged to fund repairs and maintenance for homeowners. They act as their agents. The Code of Conduct was introduced to ensure that property factors acted in an appropriate fashion.

37. The Code contains numerous sections which if examined by the tribunal in minute detail may lead the tribunal to find technical breaches by property factors in cases such as the present case where the tribunal is invited to consider a significant and extensive volume of paperwork. The case papers in this appeal amounted to several hundred pages.

38. The tribunal notes that there have been recent Upper Tribunal decisions which have indicated that the tribunal is entitled to take a “broad brush” approach to applications (*Roya Sheikholeslami against Spiers Gumley Property Management Ltd* , 4 June 2025, 2025UT36 UTS/AP/25/0012 & UTS/AP/25/0013) and also that applications which contain extensive and confusing documentation should be discouraged if not rejected (*Stephen McDougall against Hacking & Paterson Management Services* 17 December 2025, 2025UT103: UTS/AP/25/0031)

39. In the case of *Roya Sheikholeslami against Spiers Gumley Property Management Ltd*, Sheriff O'Carroll indicated at paragraph 22 of the judgment that the “***tribunal was obliged to apply its mind independently and impartially to the material before it including material which favoured the position of the respondent as well as the appellant. The tribunal was perfectly entitled in the context of dealing with a very large number of individual complaints and detailed examination of a large number of documents including financial records, emails and so on, to adopt a more broad brush approach applying its knowledge and expertise of the particular sector being the subject of the complaint***”

40. In this case the tribunal has carefully considered the evidence contained within the documents lodged and the oral evidence presented at the previous hearings by both parties. The tribunal concludes generally the property factor has complied with the Code. It is possible to take the example given by Mr. Lopez of the failure to remove the lawnmower for a period two months and to find that constitutes a breach of the Code.

41. The code contains a number of Overarching Standards of Practice (“OSP”) .

42. OSP6 states that a property factor “***must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective***”

43. Section 6.4 of the Code states that

“ 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”

44. The failure to remove the lawnmower in a period of two to three months could be construed as failure to carry out works “using ***reasonable care and skill and in a timely way,***” (OSP 6) or in “***an appropriate timescale***” (Section 6.4).

45. The tribunal accepts that that the above example constitutes a breach of the Code. Accordingly, the tribunal requires to consider whether to make a property factor enforcement order

Decision and discussion relating to whether a property factor enforcement order (PFEO) should be made

46. The tribunal has determined that there are breaches of the Code of Conduct and, having come to that conclusion, the tribunal is required to determine

whether it should make a property factor enforcement order in terms of section 19 of the 2011 Act

47. If the tribunal proposes to make such an order, then it must, before doing so, give notice of the proposal to the property factor and allow parties an opportunity to make representations upon the terms of the proposed order
48. In making an order, the tribunal can require the property factor to execute any action the tribunal considers necessary and where appropriate make an order for payment to the homeowner as the tribunal considers reasonable
49. The tribunal is required to determine cases taking into account its overriding objective to deal with the proceedings justly.
50. The Code breaches which have been shown by Mr Lopez involved a single item of rubbish left or not removed for a period of approximately two months.
51. Given that the property factors have now been removed from office, the only order that could be made would be a financial order. If such an order were to be made it would be at a relatively low amount. The tribunal has noted that the settlement of the court action narrated above involved the homeowner making a payment to the property factor in full and final settlement of all debts allegedly owed by the homeowner. It is clear that the settlement amount was less than the total amount being claimed originally by the property factor. It might therefore be assumed that the property factor has agreed a reduction in the amount being claimed to recognise minor matters such as the breaches narrated here.
52. The tribunal has taken the view that that it should not make any order given the minor nature of this breach and the minimal amount which would be awarded.

Decision

In the circumstances the tribunal has elected in terms of section 19 (1) (b) of the 2011 Act not to make a property factor enforcement order (“PFEO”) in this case and has determined that the applications should be dismissed

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.

James Bauld _____
Legal Member

12/6/26 _____
Date