



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Reference number:

FTS/HPC/PF/24/4839

Re: 76 Maxwellton Avenue, East Kilbride, G74 3DY (“the Property”)

The Parties:

Mrs. Emma Buchanan, 2 Lampson Lane, Killearn, G63 9PF (“the Homeowner”)

and

South Lanarkshire Council, Council Offices, Almada Street, Hamilton, ML3 0AA (“the Property Factor”)

Tribunal Members

Nicola Irvine (Chairperson) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with sections 1, 2.7, 3.1, 3.2, 6.1, 6.4 and overarching standard of practice 6 of the Property Factor Code of Conduct 2021 (“the Code”). The Tribunal made a Proposed Property Factor Enforcement Order, which should be read with this decision.

Background

1. The Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the Code.

2. A case management discussion ('CMD') took place on 8 May 2025. The Tribunal issued a note summarising the CMD, along with a notice of direction, requiring both parties to lodge certain documents by 6 June 2025.
3. The Tribunal had the following documents before it:
 - Application form C2 from the Homeowner received on 18 October 2024
 - Property Factor Code of Conduct Letter (relating to the Code) dated 16 October 2024
 - Copy email correspondence between the parties from 30 December 2020 to 11 October 2024
 - Homeowner's written representations dated 13 March 2025
 - Email from Homeowner on 18 March 2025 attaching a dampness investigation survey
 - Email from Homeowner on 6 March 2025 attaching a response to the notice of direction and attaching an inventory of productions
 - Email from Property Factor on 12 June 2025 requesting an extension of time to respond to the notice of direction
 - Email from Homeowner on 23 July 2025 attaching email correspondence between the parties
 - Email from Homeowner on 16 September 2025 attaching further email correspondence between the parties
 - Email from Homeowner on 15 October 2025 attaching photographs
 - Email from Property Factor on 24 October 2025 attaching copy correspondence and pre-tender costs for proposed work
4. Both parties had received the documents each had lodged. Although the Property Factor was represented at the CMD and had lodged some documentation, no written representations were lodged by the Property Factor and it failed to comply with the notice of direction.

The Hearing – 28 October 2025

5. This hearing was fixed in terms of rule 24 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ("the rules") to determine an application made in terms of rule 43 and section 17 of the Property Factors (Scotland) Act 2011, ("the Act"). The Homeowner participated in the Hearing which took place in person at the Glasgow Tribunal Centre. The Property Factor was not represented and the Hearing proceeded in its absence.

The Homeowners' position

6. The Homeowner purchased the Property in October 2020. Her parents and brother live in the Property. Her brother suffers from health conditions and is living in a property which is adversely affected by dampness. His bedroom, in particular, is badly affected by dampness. Electrical outlets in his bedroom do not work because of water ingress. Document 13 of the Homeowner's inventory of productions contains a series of photographs showing dampness in her brother's bedroom, dehumidifier bags containing water and dampness in the walls. She contends that the following parts of the Code have been breached by the Property Factor:-

7. Section 1
The Homeowner states that she did not receive the Written Statement of Services ("WSS") from the Property Factor. She receives all correspondence from the Property Factor by letter to the property address. When she was researching the process of making the present application, she managed to download the WSS from the Property Factor's website.

8. Section 2.4
The Homeowner referred the Tribunal to document 3 on her inventory of productions. She was aware that the Property Factor had instructed a dampness investigation survey. She sent an email to the Property Factor on 5 June 2024 requesting a copy of it. The report is dated 23 April 2024 and the Property Factor only sent it to the Homeowner on 14 March 2025. No explanation was given by the Property Factor as to why the report was not sent to her before 14 March 2025.

9. Section 2.7
The Homeowner referred the Tribunal to documents 1 and 2 on her inventory of productions. Document 1 is a print out demonstrating that she submitted a complaint to the Property Factor on 12 August 2024. Document 2 contains emails sent by the Homeowner to the Property Factor on 2 and 10 October 2024 and these emails demonstrate that no response was received from the Property Factor to the complaint made on 12 August 2024.

10. Sections 3.1 & 3.2
The Homeowner referred the Tribunal to document 8 on her inventory of productions. She asked the Property Factor for a breakdown of charges in respect of works to the gutters of the property. She was initially told that the Property Factor could not give a breakdown. Subsequently she received a breakdown of the cost of the work. Given the initial response that she received, she is not confident about how charges are calculated unless a breakdown is

given. She considers that the Property Factor has not been transparent in relation to accounting procedures.

11. Section 6.1

The Property Factor was aware of damage being caused to the Property because of water ingress. The Property Factor commissioned a specialist report from Perspective Building Consultancy Ltd (“Perspective”). Almost a year passed before the Property Factor sent a copy of that report to the Homeowner, despite requests for a copy of the report. The report concluded that there was penetrating damp from the soffits and render which soaked through the brickwork to the internal properties. The report noted that the gable wall of the Property was the worst affected area resulting in the worst internal affected area. Several recommendations were made. Despite the recommendations, the Property Factor has still not obtained quotations or instructed any work. The consequence of the lack of action on the part of the Property Factor is that the Homeowner’s Property has suffered further water ingress and damage. The Homeowner referred to the photographs which have been produced which show the poor condition of the drain pipe outside the Property and the damage to the common stairwell. The Homeowner received a letter from the Property Factor dated 22 October 2025 advising her that the neighbour at no 78 Maxwellton Avenue submitted a complaint because there is water ingress through a hall light.

12. Section 6.4 & overarching standard of practice 6

The Homeowner referred the Tribunal to documents 5 and 12 on her inventory of productions. Document 5 show email correspondence demonstrating that the specialist report from Perspective was shared almost a year after it was commissioned. To date, the Property Factor has failed to provide any timescale as to when work might be carried out. In April 2025, the Homeowner received from the Property Factor a mandate for completion to express whether she wished a full tendering process to be undertaken in relation to roof and render repairs. She voted in favour of it, as did the other 5 owner occupiers of the block. There is only 1 property within the block which is owned by South Lanarkshire Council. Since voting in favour of the tendering process, she has heard nothing further. The pre-tender costs were estimated per property at £9,900 for roof repairs and £9,900 for render repairs. No explanation was given as to how these figures were calculated. Owners were advised that they could apply to pay the sums over a 12 month period. The Homeowner spoke to someone in the sundry team of the Property Factor and was told that no quotations had been obtained. The Property Factor’s email tot the Tribunal on 27 October 2025 contains a copy email from 3 April 2025 which states that if a majority vote was received, they would go to a full tendering process. Despite the terms of that email, no further action has been taken by the Property Factor to progress the repairs. Document 12 is an email which dates back to 30

December 2020 reporting damage to the Property as a result of water ingress. The Property Factor has been on notice that the Homeowner's Property has suffered damage for nearly 5 years and has not undertaken or progressed repairs within an appropriate timescale.

13. Since the Homeowner first reported the water ingress to the Property Factor, the condition of her Property has deteriorated. Her parents have incurred additional costs in relation to heating bills and dehumidifiers. The Homeowner wants the Property Factor to proceed with the tendering process and to consult with Homeowners, advise them of timescales for work being carried out and provide information to Homeowners about grant applications.

The Property Factor's position

14. The Property Factor did not submit any written representations and was not represented at the hearing. The Property Factor's position about the application was therefore unknown to the Tribunal.

Findings in fact

15. The Homeowner is the proprietor of 76 Maxwellton Avenue, East Kilbride, G74 3DY.
16. The Property Factor is the properly appointed Factor in respect of the Property.
17. The Property Factor failed to provide the Homeowner with its Written Statement of Services within 4 weeks of the Homeowner purchasing the Property or it being notified of the purchase.
18. The Property Factor failed to respond to the Homeowner's enquiries and complaints within the timescales set out in its Written Statement of Services.
19. The Property Factor failed to provide transparency to the Homeowner of how charges were calculated.
20. There has been a failure on the part of the Property Factor to seek to make prompt repairs which may have caused further deterioration to the Homeowner's Property.
21. Having obtained a specialist dampness report, the Property Factor failed to arrange repairs in an appropriate timescale, failed to provide estimated

timescales for completion and failed to keep the Homeowner informed of progress.

22. The Property Factor failed to provide to the Homeowner with services using reasonable care and skill and in a timely way.

Tribunal's observations on the parts of the Code said to have been breached

23. The Homeowner purchased the Property in October 2020. In terms of section 1 of the Code, the Property Factor should have provided a copy of its WSS to the Homeowner within 4 weeks of her purchase or the date it was notified of the purchase. The evidence given by the Homeowner was not challenged and there was no material before the Tribunal to suggest that the Property Factor provided the Homeowner with a WSS. The Tribunal concluded that the Property Factor breached section 1 of the Code.

24. Section 2.4 of the Code obliges the Property Factor to consider a request for information and make the information available unless there is good reason not to. The Homeowner requested a copy of the specialist report obtained by the Property Factor. Although no explanation was given for the delay of almost a year to provide the report, the Property Factor did ultimately provide a copy to the Homeowner. The Tribunal concluded that there was no breach of section 2.4 of the Code.

25. Although the Tribunal did not hear evidence about the timescales set out in the Property Factor's WSS, the Tribunal accepted the Homeowner's evidence that the Property Factor did not respond to her complaint within the timescale set out. The Homeowner's evidence was that the Homeowner's complaint was submitted on 12 August 2024 and by 10 October 2024, there was no response to her complaint. The Tribunal concluded that the Property Factor breached section 2.7 of the Code.

26. The Property Factor should be transparent in all accounting procedures and should be transparent with the Homeowner about how charges are calculated. The Tribunal accepted the Homeowner's evidence that she was told by the Property Factor that it was not possible to provide a breakdown of charges and then contradicted that by later providing a breakdown. It is important that the Homeowner has confidence that she knows what she is being asked to pay for. The Tribunal found that the Property Factor breached sections 3.1 and 3.2 of the Code.

27. The Property Factor obtained a specialist report in April 2024. That report made recommendations to have work carried out. Almost a year passed before the Property Factor provided the Homeowner with that report. In March 2025, the Property Factor issued mandates to Homeowners to establish whether they wished a tendering process to be undertaken. Despite the majority of Homeowners in the block providing the mandate, no tendering process has been started by the time of the hearing in these proceedings. Since the report was obtained by the Property Factor, the evidence is that the condition of the Homeowner's Property has deteriorated. This is concerning particularly because the Homeowner's brother suffers from health conditions and he is living in a Property which is affected by dampness. The Tribunal found that the Property Factor breached section 6.1 of the Code.

28. For the reasons set out in the preceding paragraph, the Tribunal found that the Property Factor breached section 6.4 of the Code and overarching standard of practice 6.

Reasons

29. The Tribunal found the Homeowner to be credible and reliable. The Homeowner had set out matters clearly in the application and accompanying documents. The documents lodged by her supported her oral evidence. Because the Property Factor was not represented, none of the oral evidence given by the Homeowner was challenged. There was no documentary evidence lodged by the Property Factor which contradicted the Homeowner's position. The Tribunal was satisfied, on the basis of the information presented by the Homeowner, that sections of the Code have been breached as referred to in paragraphs 23 to 28 above.

30. Turning to the proposed order, the Tribunal took into account the inconvenience the Homeowner has had in pursuing matters. She has sent numerous emails over a 5 year period and received a response from the Property Factor to some of those emails. Some of the failings of the Property Factor continue to this day. The Homeowner wants the Property Factor to be proactive in managing the repair problems at the Property. There has been a diminution in the useful enjoyment by the Homeowner's family because of repairs required. From the evidence presented, it would appear that the Property Factor received the required authority from proprietors to proceed with a tendering exercise. No explanation has been given to the Homeowner or the Tribunal as to why that process has not been undertaken. The Property Factor has not been proactive in managing the repairs issue by keeping proprietors informed and advising them of next steps and timescales. This is a continuing failure and the

Homeowner's Property continues to suffer further damage. The Homeowner is hopeful that by concluding this procedure, the Property Factor might recognise the failings and rectify those failings by instructing the appropriate work. In light of all the foregoing the Property Factor is ordered to undertake a tendering process in relation to the repairs identified as necessary in the Prospective report. The Property Factor is ordered to keep the Homeowner regularly updated on progress or clearly explain why they are not in a position to do so, all with 28 days of the issue of the Order. Section 20 1(b) gives a tribunal power to order a Property Factor to make such payment to the Homeowner as the Tribunal considers reasonable. This is generally seen, in cases such as this, as "compensation" for inconvenience, time and effort expended in cases where a property factor has been found to have breached the code. Fixing a suitable sum involves consideration of mitigating and aggravating factors and recognising that this can never be an exact science. Tribunals have wide discretion in this area.

31. In this case there was no evidence presented by the Property Factor at all and certainly no mitigating factors despite there being an opportunity to present this at a hearing, which was not taken. In respect of aggravating factors there is the time which has elapsed since this matter was first raised with the Property Factor, 5 years, the indication that action was being taken which did not then happen.
32. The Tribunal has decided that a global sum of £1,000 to reflect the time and effort spent by the Homeowner and the inconvenience to her over the last 5 years was fair, proportionate and just in all of the circumstances.

Property Factor Enforcement Order (PFEO)

33. Section 19 of the Act states: -

(2) In any case where the First-tier Tribunal proposes to make a Property Factor enforcement order, it must before doing so (a) give notice of the proposal to the Property Factor, and (b) allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the Property Factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a Property Factor enforcement order.

34. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence.

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.

Nicola Irvine

Chairperson of the Tribunal

Dated: 21 April 2026