

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision

Section 17 and 19 (2) (a) of the Property Factors (Scotland) Act 2011 (“the Act”) and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/25/2804

Re: 18 King Street, Aberdeen AB24 5AX (“the Property”)

The Parties:

Mr Mark Brankin (“the Applicant”)

Mrs Cheryl Brankin
(“the Applicant’s Representative”)

Newton Property Management Limited
(“the Respondent”)

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)

Peter McEachran, Chartered Surveyor, (Ordinary Member)
(the “tribunal”)

Decision

I) The Respondent has breached the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2021.

II) The tribunal proposes to make a property factor enforcement order in the following terms: The Respondent will provide an undertaking that it will communicate effectively with the Applicant in relation to the programme of works to be carried out on the tenement building at 18 King Street, Aberdeen, AB24 5AX, and ensure that regular updates with regard to progress of any grant application(s) and interaction with contractors engaged in the repairs. The Respondent will also provide an undertaking that it will do all within its power to ensure that the said works are progressed in an efficient and proper manner. The undertakings will require to be provided within fifteen days of the Tribunal making the final property factor enforcement order in terms of Section 19 (3) of the 2011 Act.

Background

1. This is an application by Mr Mark Brankin in respect of the property which he owns. It is in connection with the Respondent's actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act) and alleged breaches of the Property Factors (Scotland) Act 2011 Code of Conduct. The application also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act. The applications were accepted by the Tribunal for determination on 11 August 2025. The application was accompanied by a number of documents.
2. Prior to the case management Discussion, each party submitted written representations.
3. A case management discussion was held by audio conference on 10 December 2025. The Applicant was present and was represented by his wife, Mrs Cheryl Brankin. The Respondent was represented by Miss Catherine Flanagan, its Customer Relationship Manager.
4. A hearing was held at Aberdeen Sheriff Court on 21 May 2026. The Applicant was present and was represented by his wife, Mrs Cheryl Brankin who also gave evidence. The Respondent was represented by Miss Catherine Flanagan.

Preliminary Matters

5. It was noted that, included in the application, was reference to the Respondent's alleged breach of section 1 of the Code which relates to the contents of the written statement of services. After discussion, Mrs Brankin conceded that it was not so much the contents of the written statement of services that the Applicant was concerned about, but rather its failure to follow the service standards set out in the Code. She conceded that the Applicant's position was not that the Respondent had failed to include certain matters in the written statement of services and she withdrew from the application potential breaches of Section 1.1, 1.5B4 and D14/15.
6. It was noted that the matters left for determination were an alleged failure of the Applicant to comply with the property factor's duties and to comply with sections 2.1,2.3,2.5, 2.7, 6.1,6.2,6.4,6.7 and 7.2 of the Code.

Matters not in Dispute

7. The Applicant is the owner of the Property which he purchased in December 2002 and which he lived in until 2017. Thereafter, the Property was let out and has been vacant since August 2025. The Applicant owns no other properties which he lets out.

8. The Property is a flat on the second floor of a tenement consisting of three commercial premises on the ground floor, six flats on each of the first and second floors and three flats on the third floor.
9. The tenement within which the Property is situated is in a state of disrepair and requires a considerable amount of work. The detail of the works required is contained within the report of Squire Associates dated 5 December 2024.

Current Position

10. Miss Flanagan set out the current position with repairs. She said that Squire Associates, which provided a report on the condition of the tenement and the work which required to be done, were acting as project manager and had an indication that that an application for grant funding from Aberdeen City Council would be favourably considered. Miss Flanagan said that the works had been put out to tender by the project manager and that two quotations had been received: one for £281,000 and one for £317,000. She said that letters had been sent to all fifteen owners requiring them to consent to the works being done and for applications to be made for grant funding. Miss Flanagan said that one commercial owner and two residential owners had not returned the necessary consent forms, although the commercial owner concerned had been in dialogue with Squire Associates seeking more information on the proposed works. She understood that there had been two meetings with that owner. Miss Flanagan said that the project manager had been chasing the owners who had not returned the necessary consent forms. Miss Flanagan said that there were concerns that the quotations received would be out of date before the grant applications could be made.
11. Mrs Brankin said that the Applicant's overarching position was that the Respondent had been slow to deal with the significant issues in the tenement building, including water ingress. She said that there had been poor communication and that this was demonstrated by the information on the current position which had just been given by Miss Flanagan and which, she said, the Applicant had been unaware of prior to the hearing.

12. Findings in Fact

- a) The Applicant is the owner of the Property which is a second floor flat in a tenement building.
- b) The Respondent is the property factor and manages the tenement building at 18 King Street, Aberdeen for the owners.
- c) Significant common repair works require to be carried out to the tenement building. These works are identified in the report of Squire Associates dated 5 December 2024.
- d) It is hoped that grant assistance for the works will be obtained from Aberdeen City Council.
- e) The consent of owners is required before progress can be made with grant applications and for the works instructed.
- f) The Respondent has not communicated effectively with the Applicant in respect of some aspects of the works which are required to be carried out at 18 King Street, Aberdeen.

- g) The respondent has not replied timeously and effectively to some enquiries made by the Applicant.

Reasons

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 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.

13. The tribunal had a considerable number of emails and letters which had been submitted by the parties. These, and the evidence of Mr and Mrs Brankin and Miss Flanagan demonstrate the significant issues there were and are with the Property. The Applicant had been in communication with the Respondent since 2016 with regard to the condition of the tenement building and, in particular, in connection with water ingress.
14. The emails show that the Respondent had replied to the Applicant when issues were raised by him. They do demonstrate that, on some occasions, the Respondent did not communicate effectively because of delays in its response. On 20 December 2024, Euan Urquhart, a property manager of the Respondent, acknowledged that "communication in the past has taken some time" and that measures were being put in place to improve systems. On 22 April 2024, the Applicant had emailed the Respondent asking for the current state with outstanding repairs. No response was received and a reminder was sent on 20 May 2024. This resulted in an acknowledgement being sent on 28 May 2024 which provided no substantive information. On the same day, the Applicant initiated a telephone conversation with Mr Urquhart to get the information that was being sought.
15. Miss Flanagan said that the Respondent had consulted the homeowners with regard to what needed to be done. Her evidence, which was supported by the report from Squire Associates, was that there had been a number of "patch" and temporary repairs which had not been effective in stopping water ingress and that only the proposed extensive common repairs would have the desired effect in resolving issues.
16. Although not relevant in the determination of the application since the matters referred to occurred after it was accepted for determination, the evidence of Miss Flanagan about the current situation with repairs is interesting. She said that fifteen of the eighteen owners in the tenement had responded to Squire Associates, the project manager, and gave evidence on what had been happening in the previous five months or so. The Applicant said that he had not been given this information by the Respondent. In particular, he had been given no information on the number of owners who had not responded to the project manager or the costings which had been obtained. Miss Flanagan said that it was the intention of the Respondent

to provide information on the status of the repairs and the access to grant assistance on the website portal which could be accessed by homeowners. The Applicant said that he had no knowledge of this portal and Miss Flanagan said that access information may have been sent to the Property. Parties confirmed that other information, such as the Respondent's invoices were sent by email. Miss Flanagan said that she would ensure that the Applicant had the information necessary to access the portal.

17. It was understandable to the Tribunal that Mr and Mrs Brankin were concerned about the condition of the tenement and that they are anxious that repairs are put in hand as quickly as possible. Mrs Brankin said that she was mindful of the obligations to maintain any let property to the repairing standard and that, as a consequence of the water ingress, the Property had not been let since August 2025.
18. The tribunal accepted the evidence of Miss Flanagan that the Respondent was aware of the issues with the tenement building and that it had been taking steps to progress repairs. It considered that communication with the Applicant could have been better.
19. The tribunal considered whether the Respondent had complied with this paragraph of the Code. On balance, the tribunal determined that the Respondent had not complied. In an extremely worrying situation for the Applicant, the Respondent could have communicated better.

2.3 The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

20. The Applicant accepted that the written statement of services did set out how homeowners can access information and that the Respondent had therefore not breached this paragraph of the Code.

2.5 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.

21. Mrs Brankin said that, on one occasion at a weekend, there was significant water ingress and she and her husband did not have contact information to report it.
22. Miss Flanagan said that there is a contact service which deals with out of hours issues and that full contact information is on the Respondent's website.

23. The tribunal determined that no evidence had been produced to support the Applicant's position that the Respondent had failed to comply with this paragraph of the Code.

2.7 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.

24. As previously stated, the Respondent failed in April/May 2024 to respond timeously to enquiries made by the Applicant. Emails submitted by the Applicant demonstrate that the Respondent failed on other occasions to respond timeously to enquiries of the Applicant. Mrs Brankin referred to emails sent in November 2023. Miss Flanagan accepted that, on occasions, the Respondent did not respond timeously in accordance with its written statement of services. She said that the failures did not demonstrate a pattern of failure to respond timeously.

25. The tribunal considered emails submitted by the Applicant and the concession of Miss Flanagan and determined that the Respondent had failed to comply with this paragraph of 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.

26. Mrs Brankin said that the Applicant has repairing obligations as a landlord which could not be fulfilled because of the condition of the Property. She said that the Applicant had raised concerns over many years about such things as fire doors, water ingress and mould growth. She said that there had been "no movement" on the issues requiring attention. Mrs Brankin said that the Squires report had set out what had to be done and that the Respondent had delayed in implementing it. She referred to a six month period where nothing happened. She said that in June 2025 there had been discussion about possible grant funding. Mrs Brankin said that there had been a tarpaulin in place for years and that its purpose was to catch rainwater and prevent it coming into the building.

27. Miss Flanagan said that contractors had advised that nothing more could be done to remedy the serious defects in the building without the extensive works set out in the Squires report. She said that, notwithstanding this, the Respondent had been dealing with any repairs reported to it which were capable of being done.

28. Miss Flanagan referred to the written submissions of the Respondent and to details of works which it had instructed. The representations state that the Respondent had issued more than fifteen work instructions to the building since 2023 and that these included major repairs. Miss Flanagan referred to the various contractors' invoices submitted and she said that these support the Respondent's position that

it had instructed prompt repairs when matters had been reported to it, and when such repairs would have been effective.

29. Miss Flanagan said that, following the report by Squires Associates, there had been discussions with regard to possible grant funding from Aberdeen City Council. She said, in answer to Mrs Brankin's statement that the Applicant had no idea of costing, that it was a balancing act in relation to putting the proposed works to tender because the project manager would not want the quotations to get out of date. She explained that increasing costs would mean that any prices from a contractor would need to be revisited if there was a delay in getting approval for works, and that this would have consequences for the owners and the grant funders.
30. Miss Flanagan said that Squires Associates, the project manager, was responsible for getting responses from the homeowners and liaising with Aberdeen City Council.
31. Miss Flanagan said that applications for grant funding for the proposed works could not be submitted to Aberdeen City Council until all owners had responded. She said that she would have discussions with Squires Associates about the way forward and that this might involve approaching the Council for assistance if there were "missing shares."
32. The tribunal accepted that there are difficulties where there is a proposal for major works on a tenement. Consent of owners was required. In this particular case, all owners would also require to respond before grant funding applications could be made. It considered that it was to the credit of the project manager that it had managed to get responses from more than 80% of the owners in the tenement. The tribunal understood the frustration which the Applicant and other homeowners would be experiencing given the time which had elapsed since the Squires Associates report had been obtained but did not consider that there was evidence that, with regard to the major works, the Respondent had failed to progress matters.
33. The tribunal did not accept that the Respondent had failed to promptly effect other repairs to the common parts of the Property.
34. The tribunal determined that the Respondent had not failed to comply with this paragraph of the Code.

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.

35. Mrs Brankin said that she had concerns that the respondent had not properly addressed the issue of whether appropriate fire doors were installed in the tenement building.

36. Miss Flanagan said that appropriate fire rated doors were installed in the tenement property.

37. The tribunal determined that there was no evidence that the Respondent had failed to comply with this paragraph of the Code.

6.4 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.

38. The Applicant's position in relation to this was clear. He considered that there had been significant delay in addressing the works which were required. He said that the Squires report which had been provided in December 2024 had been authorised and instructed some six months previously. He also said that he did not receive a copy of the report until February 2025. He said that no explanation for the delay in progressing matters had been provided by the Respondent.

39. Miss Flanagan said that the Squires report was issued once it had been reviewed internally by the Respondent. She said that the Respondent had to rely on Squires Associates with regard to the timescale for the survey of the building and the issuing of the report.

40. Miss Flanagan said that the project manager could not instruct tenders until there had been more certainty with regard to the possibility of there being grant funding. She said that there would have been danger of the quotations expiring had tenders been sought earlier. She said that there were "multiple possible streams of grant funding" and that this was what Squires Associates would be exploring.

41. Miss Flanagan said that the Respondent always contacted homeowners where costs for proposed works exceeded the cost threshold authority held by the Respondent. She said that, on occasions, the Respondent has borne the cost of repairs where there was imminent danger to the building and where there was not time to get front funding from the homeowners. She said that thereafter appropriate recovery of any sums expended would be recovered from the homeowners.

42. The tribunal accepted the evidence of the Respondent and determined that it had not breached this paragraph of the Code.

6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

43. Miss Flanagan said that there was no programme of cyclical maintenance agreed with homeowners. She said that there was an annual inspection of the Property and that ad hoc inspections were carried out if a member of staff had to visit the tenement building for any purpose.
44. Mrs Brankin said that she would have hoped that inspections would be carried out more regularly than on an annual basis.
45. This paragraph of the Code refers to good practice, not any mandatory requirement. There is a programme of annual inspection and the Applicant did not challenge that there were more frequent ad hoc inspections. There was no agreement with homeowners for there to be a programme of cyclical maintenance.
46. The tribunal determined that the Respondent had not breached this paragraph of the Code.

7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

47. Mrs Brankin said that she did not consider that the complaints made by the Applicant had been properly addressed.
48. Miss Flanagan said that her role with the Respondent involved dealing with all complaints and that she did not receive one from the Applicant. She said that the Applicant had not engaged the complaints process of the Respondent.
49. Mrs Brankin said that the Applicant may have not raised specific complaints in terms of the complaints process but that he had raised concerns about what he considered to be the Respondent's failings.
50. The tribunal determined that since the Respondent's in-house complaints procedure had not been used, there was no failure of the Respondent to comply with this paragraph of the Code.

Property factor's duties

51. Mrs Brankin said that the Respondent had failed to comply with the property factor's duties and that, as a consequence, the value of the Property had decreased. She said that the Applicant would be unlikely to get a purchaser for the property in its present condition.
52. The tribunal took no view on the value of the Property. It is reasonable that the value of any property would be adversely affected where there was a considerable amount of work requiring to be carried out to the common parts, and where there was some uncertainty as to the funding for such repairs. However, the tribunal determined that there was no evidence that the Respondent had failed to carry out

the property factor's duties. There was also no evidence that the Respondent had been responsible for any delay in works to the common parts being delayed.

Discussion

53. The tribunal considered whether it was appropriate to make a property factor enforcement order ("PFEO"). The Applicant wanted the proposed works to the Property to be commenced as soon as possible. This was entirely reasonable. It was clear from the evidence of Mr and Mrs Brankin that they were very concerned about the damage being caused to the Property because works had not progressed. The Applicant is also not able to let the Property, and is therefore losing income. The Respondent had breached the Code but its failure to comply had not impacted on the timescale for works to be progressed. Had the Respondent complied fully with the Code, there was no evidence that matters would be any further forward with regard to progress with the proposed works.
54. The tribunal therefore determined that it was not appropriate to make a PFEO which required the Respondent to pay any money to the Applicant. In view of the level of the failure to comply with the Code, any such award would be paltry.
55. The tribunal considered that Miss Flanagan had been effective in setting out the Respondent's position and it was noted, during adjournments, that she and Mr and Mrs Brankin appeared to have a good relationship. The tribunal had no part in directing how a property factor conducts its business but it may be helpful to both parties if Miss Flanagan continued to have an involvement in ensuring that the works to the tenement proceed as soon as possible.
56. The tribunal proposed that a PFEO be made in the following terms:

The Respondent will provide an undertaking that it will communicate effectively with the Applicant in relation to the programme of works to be carried out on the tenement building at 18 King Street, Aberdeen, AB24 5AX, and ensure that regular updates with regard to progress of any grant application(s) and interaction with contractors engaged in the repairs. The Respondent will also provide an undertaking that it will do all within its power to ensure that the said works are progressed in an efficient and proper manner. The undertakings will require to be provided within fifteen days of the Tribunal making the final property factor enforcement order in terms of Section 19 (3) of the 2011 Act.

57. In terms of section 19 (2) of the 2011 Act, in any case where it is proposed to make a property factor enforcement order, the Tribunal must give notice of the proposal to the property factor, and allow parties to make representations to it.

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.

**Martin J. McAllister,
Legal Member
2 June 2026**