



Decision and Statement of Reasons under Section 17 (1) of the Property Factors (Scotland) Act 2011 ("The Act")

Reference number: FTS/HPC/PF/25/2514

Re: Property at 8/5 ORCHARD BRAE AVENUE, EDINBURGH, EH4 2HP ("the Property")

The Parties:

Mr Daniel Thomson, 8/5 ORCHARD BRAE AVENUE, EDINBURGH, EH4 2HP ("the Applicant")

TRINITY FACTORING SERVICES, 209 BRUNTSFIELD PLACE, EDINBURGH, EH10 4DH ("the Respondent")

Tribunal Members:

Mr Andrew McLaughlin (Legal Member); Ms Sara Hesp (Ordinary Member)

Background

[1] By Application in Form C2, the Applicant seeks a determination that the Respondent has failed to comply with The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors 2021 (*"The Code"*).

[2] The Application covers many paragraphs of the Code but essentially relates to an alleged failure adequately to manage repairs to a pipe that caused leakages into the Applicant's Property and a property below and the associated communications. The Respondent has submitted representations denying the alleged breaches.

The Hearing

[3] The Application called for a Hearing at 10am in George House, Edinburgh on 28 May 2026. The Applicant was personally present. As anticipated, there was no appearance by or on behalf of the Respondent who had informed the Tribunal that they would not attend but instead would rest on their written representations. The Tribunal heard

evidence from the Applicant and asked questions to try and ensure that it understood the basis of the Application. The Tribunal comments on the Applicant's evidence as follows.

The Applicant

[4] The Applicant's evidence is that on 10 January 2022, he reported to the Respondent that a communal waste pipe in his home was leaking unsanitary fluid. There was a damp unsavoury smell. It was not an emergency and the Applicant described it as a slow leak. He was unsure if it was toilet waste or a general leak. The Respondent arranged for a contractor to attend at the Respondent's Property on 27 January 2022. The repair was thought to have been attended to. The Applicant further reported to the Respondent that the cosmetic aspects of the repair had not been completed. On 9 April 2022, another contractor from *Absolute Plumbing* attended at the Property and completed the boxing in of the pipe work finishing the job. The Applicant reported that the contractor on this occasion remarked that the previous work had all the hallmarks of a "cowboy builder".

[5] The Applicant considered the matter to be resolved. Then on 11 November 2023, he unexpectedly received a knock on the door from the fire brigade. They told him there was a hazardous leak into the flat downstairs. The fire brigade made contact again on 16 November 2023. They informed the Applicant that unless someone got home to turn off the water then they would have to force the door.

[6] The Applicant's evidence was that the fire brigade's assessment was that there had been a continued slow leak from the area of the initial repair which had caused some damage to the Property downstairs.

[7] The Applicant then described raising this issue promptly with the Respondent. He described that the Respondent did not reply or take any action between 11 November 2023 and 5 December 2023. The Applicant described a period of poor communication from the Respondent right at a time when their communications and actions should have been stepping up. The Respondent continued failing to respond to the Applicant and resolve the issues through January 2024. On 19 February 2024, the Applicant eventually received a "*holding response*" from the Respondent. The Applicant was particularly aggrieved by the Respondent's failures because they he was aware that the occupier of the Property downstairs was a vulnerable man in poor health.

[8] In March 2024, the Respondent arranged for a company called *Property Revival Solutions* to assess the situation in the Property. The Applicant then described how a decision was made that it would be necessary to replace the entire kitchen of the Property. The Applicant had to spend time dealing with the various insurance companies involved. He described in detail the financial aspects of the kitchen being replaced.

[9] The Applicant described raising a formal complaint to the Respondent in line with their complaints process on 3 April 2025. He received a holding response on 10 April

2025. He pressed them for a full response on 2 May and received another response of sorts on 5 May. The Applicant emailed the Respondent again on 6 May escalating his complaint. A response to this was not received until 27 June 2025 which was out with the timescales set out in the Respondent's Written Statement of Services ("WSS"). The WSS states that a complaint should be acknowledged in 5 working days before a full written response is received within 20 working days. There is a third stage where if the complainer remains unsatisfied with the response then the Director of Operations will issue a final decision within 15 working days.

[10] Having heard from the Applicant, the Tribunal made the following findings in fact.

1. *The Applicant is proprietor of the Property known as 8/5 Orchard Brae Avenue, Edinburgh, EH4 2HP.*
2. *The Property is in a block of flats factored by the Respondent.*
3. *On 10 January 2022, the Applicant reported to the Respondent that a communal waste pipe in his home was leaking unsanitary fluid. It was not an emergency but rather a slow leak.*
4. *The Respondent arranged for a contractor to attend at the Respondent's Property on 27 January 2022. The repair was thought to have been attended to. The Applicant further reported to the Respondent that the cosmetic aspects of the repair had not been completed. On 9 April 2022, another contractor from Absolute Plumbing attended at the Property and completed the boxing in of the pipe work finishing the job. The Applicant considered the matter to be resolved.*
5. *On 11 November 2023, the Applicant unexpectedly received a knock on the door from the fire brigade. They told him there was a hazardous leak into the flat downstairs. The Fire Brigade made contact again on 16 November 2023. They informed the Applicant that unless someone got home to turn off the water then they would have to force the door.*
6. *The fire brigade's assessment was that there had been a continued slow leak from the area of the initial repair which had caused some damage to the Property downstairs.*
7. *The Applicant raised this issue promptly with the Respondent. From November 2023 and into 2024, the Respondent's communications and engagement with the Applicant fell below the necessary standards.*
8. *The Applicant raised a formal complaint to the Respondent in line with their complaints process on 3 April 2025. He received a holding response on 10 April 2025. He pressed them for a full response on 2 May and received another response of sorts on 5 May. The Applicant emailed the Respondent again on 6 May escalating their complaint. A response to this was not received until 27 June 2025 which was out with the timescales set out in the Respondent's Written Statement of Services*

[11] Having made the above findings in fact, the Tribunal then considered the various sections of the Code alleged to have been breached.

"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."

[12] The Tribunal concludes that this standard has been breached. The Respondent's initial communications about the repair were good but after the incident with the fire brigade in November 2023, their communications and engagement fell short of this standard. There were delays and an initial failure to respond when an explanation as to what action was being taken and an acknowledgement of the unfortunate recurrence of the leak and the impact on the Applicant would have been appropriate.

"2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to."

[13] The Tribunal does not find that this standard has been breached. There was no evidence of the Applicant having any such relevant request refused.

"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."

[14] The Tribunal concludes that this standard has been breached. The Respondent's initial communications about the repair were good but after the incident with the fire brigade in November 2023, their communications and engagement fell short of this standard. They also failed adequately to respond to the Applicant's complaints within the timescales set out in the WSS. There were delays and an initial failure to respond when an explanation as to what action was being taken and an acknowledgement of the unfortunate recurrence of the leak and the impact on the Applicant would have been appropriate.

"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."

[15] The Tribunal does not find this standard to have been breached. The Tribunal is not satisfied with the Respondent's communications but there is no evidence that the Respondent is actually responsible for the damage. They arranged the initial repair promptly and thought that the repair had been concluded and the whole matter resolved until November 2023.

"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."

[16] This standard has been breached in that the Respondent did not keep the Applicant up to date regarding timescales and next steps from November 2023 onwards.

"6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner."

[17] The Tribunal does not find this standard to have been breached. The Tribunal is not satisfied with the Respondent's communications but there is no evidence that the Respondent is actually responsible for the damage. They arranged the initial repair promptly and thought that the repair had been concluded and the whole matter resolved until November 2023. There was also no evidence of any request for information about why the particular contractor was appointed as having been refused.

"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."

[18] The Tribunal does not find that this standard has been breached. It does not seem relevant to the Application or facts found established. There was also no evidence of any request for information about why the particular contractor was appointed as having been refused.

"6.12 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner."

[19] The Tribunal does not find that this standard has been breached. It does not seem relevant to the Application or facts found established. There was no evidence of any relevant request having been refused.

"7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request."

The procedure must include:

- The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*
- The complaints process must, at some point, require the homeowner to make their complaint in writing.*
- Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*
- How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*
- Where the property factor provides access to alternative dispute resolution services, information on this."*

[20] The Tribunal does not find this standard to have been breached. The Respondent has the relevant policy, the issue was with their adherence to it.

"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."

[21] The Tribunal finds that this standard has been breached. The Respondent's Director of Operations does not appear to have responded as set out in the WSS.

Proposed Property Factor Enforcement Order

[22] Having made the above findings in respect of the sections of the Code said to have been breached and having set out the reasons for those findings, the Tribunal proposes to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[23] The Tribunal considers that appropriate remedy for the breaches established, is to order that the Respondent "*execute certain action*" in terms of Section 20 (1) (a) of the Act. The action that will be ordered is as follows:

1. The Respondent must provide the Applicant with a monetary payment of £500.00. This should take the form of a monetary payment rather than a deduction in fees.

[24] The Tribunal orders that the above steps are completed within 30 days of the date of this decision.

Reasons

[25] The Tribunal considers that the Respondent's failings have caused the Applicant unnecessary stress and inconvenience. The Tribunal cannot accept however that the Respondent might be liable to the Applicant for costs associated with the Applicant installing a new kitchen. There is simply insufficient evidence to suggest that as a matter of fact, the Respondent's delays caused the damage to worsen. They certainly were not responsible for any initial damage and also were under the impression for around 18 months that the whole matter had been resolved.

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.

Andrew McLaughlin

Legal Member and Chair

29 June 2026

