

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/24/4965

Re:

**Property at 8/7 Silvermills, Stockbridge, Edinburgh, EH3 5BF
("the Property")**

The Parties:

Mr Derek Baillie, 8/7 Silvermills, Stockbridge, Edinburgh, EH3 5BF
("the Applicant")

James Gibb Property Factors, 4 Athol Place, Edinburgh, EH3 8TH
("the Respondent")

Tribunal Members:

Mr Iain MacRae (Legal Member)

Mr Nicholas Allan (Ordinary Member)

Representation

Applicant: Self

Respondent: Absent

DECISION

1. The respondent has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 (**the 2011 Act**) in that it did not comply with Overarching Standards of Practice 6 and 11 and section 6.1 of the 2021 Property Section 6.1 of the 2021 Property Factor Code of Conduct effective from 16 August 2021 in that between 23 January 2026 an October 2025 (a) by instructing the repair of a leak in a timely way; (b) did not provide the applicant with responses within a reasonable timescale to his enquires about the leak; and (c) failed to help to prevent further damage or

deterioration by seeking to make prompt repairs to a good standard to the guttering above the garage 8/6 owned by the applicant;

2. The decision is unanimous

Background

3. This is an application for an order under Rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 17 of the Property Factors (Scotland) Act 2011 ("**the 2011 Act**"). The Applicant alleged breaches of the Property Factors Code of Conduct (**the Code**) by the Respondent.
4. The applicant lodged written representations on 15 June and the Respondent did so on 19 June 2025. At the case management discussion (CMD) on 10 July 2025 the respondent confirmed that he was only now relying on Sections 6.3 and 6.7 of the 2021 Code in that the respondent had failed to carry out a repair and failed to respond to queries and complaints timeously.
5. The Factor became the Registered Property Factor in respect of the dwelling on 18 April 2011. In terms of section 14(5) of the 2011 Act it was under a duty to comply with the property factor code of conduct in respect of the development from that date.

Hearing

6. The respondent had confirmed that it did not intend to participate in the hearing and relied on its written submissions and the documents provided.

Applicant's case

7. The applicant gave evidence. He explained the background events as set out in the application, his written submissions and the document lodged. The respondent had not arranged for a repair to a leaking gutter over his garage in

a timely manner. They were made aware of the fault on 22 October 2022, then on 9 January 2023; email 23 January 2023, in a meeting with Nic Mayall, Director on 11 January 2024, and email of 27 August 2024. The leak was shown as outstanding in a tracker of outstanding jobs sent to the respondent by the resident's committee.

8. The respondent's inspection report of 31 January 2024 noted the fault. At a meeting at Stockbridge Church in November 2024 the respondent's representatives had thought the work had been carried out. He had checked the gutter on his way to the meeting that evening and it had not. The respondent's representatives seemed genuinely surprised to hear that. It was Ed Gibson a neighbouring homeowner who eventually fixed the leak.
9. Ed Gibson, flat 6/1 gave evidence. He is aged 74 and is retired property maintenance surveyor. He was actively involved in the residents' association. He was regularly a liaison between the factor, homeowners and tradesmen. He was knowledgeable about the various trades who had attended the development. He took it upon himself to fix the gutter. He carried out a temporary fix in October 2024 and then a more permanent one fix in October 2025.

Respondent's case

10. The respondent was not represented. Their position is as set out in the written representation of Steve Paterson, undated but received on 19 June 2025 and the Direction response received 26 September 2025.
11. The respondent accepted clearly they could have done better but said they did instruct contractors twice more in 2023 to attend to this, and other issues. While they don't claim to have handled this matter particularly well, they did take action several times over the period from it first being reported, and as such it is unfair to say that we have not taken action to resolve a problem, even if the problem was not resolved until recently. The leaking gutter is noted in the Site inspection report 31 January 2024. They relied on invoices from various contractor's visits (S Huthersall 20.3.23; AO Blair 17.7.23 and 19.1.24 and

Cleland Roofing Solutions 10.9.24) either for gutter cleaning or roof repairs. Unless the contractor visits when it is raining, any gutter leaks may not be evident. On the issue of the leaking gutter joint at the garages 8/6 and 8/7, following his last response (made on 19 June 2025) he checked the gutters in question, on a very wet day, and observed that the gutter joint was leaking. He instructed Burns and Watson, roofing contractor on 4 September 2025. They attended shortly afterwards, sealed the joint and carried out a water test. There was no evidence of the gutter leaking. As sealing up plastic gutter joints is generally is not a long term solution, Burns and Watson were to be re-attending that day to assess whether the profile of the gutter is one that is still available,. If so they will return to replace the joints with new ones. If not it may be best to replace the whole gutter on the garage block.

Applicant's submissions

12. The respondent should be ordered to comply with their duties, apologise for not having undertaken the repair, not be allowed to charge the homeowners for any work until they have checked the work was carried out or allow the residents to check that it has been carried out to an adequate standard.
13. **Findings in fact:**
14. Silvermills, Stockbridge, Edinburgh is a development of seven blocks of flat dwellinghouses, garages, and common areas (**'The Development'**);
15. The respondent has performed the role of the property factor of the Development since 13 October 2005
16. The applicant is the heritable proprietor of flat 8/7 Silvermills, Stockbridge, Edinburgh (**'the Property'**) and associated garage at 8/6 (**the garage**);
17. The garage forms of of a block of five garages numbered 6/6, 6/5, 6/7, 8/6 & 8/7.
18. By letter dated 31 October 2022 the applicant reported to the respondent that there was leaking guttering throughout the development.
19. By letter dated 22 November 2022 the applicant reported to the respondent that the guttering above his garage No. 8/6 was leaking (**the leak**)

20. On 30 November 2022 the respondent instructed A. O. Blair Roofing and Building (**AO Blair**) to repair the leak which they described as a badly leaking guttering joint, almost directly above garage door 8/6.
21. Having carried out a repair to the leak AO Blair sent an invoice to the respondent dated 22 December 2022 in the amount of £225.
22. On 9 January 2023 the applicant emailed a letter to the respondent seeking a reply to his two previous letters (dated 31 October and 22 November 2022) which were attached.
23. On 23 January 2023 the applicant emailed a letter to the respondent seeking a reply to his three previous letters dated 31 October and 22 November 2022 and 9 January 2023 which were attached to the email.
24. On 3 February 2023, the Development Manager Lisa Cockerell and her senior manager met members of the development committee at the development and discussed a list of repairs including the leak.
25. By email to the applicant dated 6 February 2023 (in reply to the applicants dated 23 January 2023) Lisa Cockerell, development manager stated:-

“There are several leaking gutters throughout the development which I will be looking to raise all in one job today and ask that the contractor has these repairs as soon as possible.

I will also work through the committees (*sic*) list to ensure that all items are addressed and completed within a timely manner, but please let me know if there is anything else I can help with in the meantime.”
26. The applicant was not informed of the repair by AO Blair until he received his factoring invoice 61686415 dated 21 February 2023 which debited the full £225 of the AO Blair invoice against the applicant's account.
27. The applicant challenged the entry.
28. The respondent's invoice 61729277 dated 23 May 2023 credits the £225 AO Blair invoice against the applicant's account and debits a 1/90 share of the £225 to his account.
29. The applicant and Ed Gibson, attended a meeting at the respondent's offices in Edinburgh on 11 January 2024. The respondent was represented by, Nik Mayall, Director. The outstanding repair to the leak was discussed.

30. Ed Gibson, Nic Mayall and the development manager Lisa Cockerell undertook a walk around at the development on 23 January 2024. Outstanding repairs, include the leak were noted.
31. The respondent prepared a 'Silvermills Inspection Report' dated 31 January 2024 which shows the leak as an outstanding repair.
32. The development's residents' association prepared and provided to the respondent a Silvermills Tracker Document with a running inventory of maintenance and repair items that were outstanding. The versions dated May 2024 and 12th June 2025 both show the leak as outstanding;
33. On 27 August 2024 the applicant reported to the respondent that the leak had still not been repaired.
34. In October 2024 Ed Gibson a homeowner at the Development and member of the resident's association carried out a temporary repair to the leak;
35. At some point between 20 June and 4 September 2025 the respondent's Steve Paterson attended the development to inspect the guttering at the garage which he noted was still leaking. On 4 September 2025 he instructed Burns and Watson roofing contractor to attend. Between 4 and 25 September 2025 Burns and Watson attended and applied sealant to the guttering joint and carried out a water test. They reported to the respondent that there was no evidence of the gutter leaking. Burns and Watson had attended on the day of or the day before the 2024 Silvermills AGM.
36. Sealing plastic gutter joints with mastic is not a long term solution. Burns and Watson were to re-attend the garage on 26 September 2025 to assess whether the joint could be replaced with a new one or if the whole gutter on the garage block required to be replaced. The respondent did not report the outcome of this to the applicant or the tribunal.
37. At the Development AGM in October 2025 it was reported to the respondent that the leak was still unrepaired.
38. On 30 October 2025 Ed Gibson repaired to the leak.

Reasons for Decision

39. The evidence from the applicant and Mr Ed Gibson was that the leaking gutter was not fully repaired until Mr Gibson repaired it until October 2025. Mr Gibson, with his experience as a development surveyor and having repaired the leak

was able to clearly describe the fault with the guttering was at the joint, and without resolving that, applying mastic sealant (as had been done on the day or two before the 2024 AGM) would not be effective. Mr Paterson's response the direction also stated that applying sealant would be unlikely to have effectively repaired the leak. This was why that had instructed Burns and Watson to re-attend to assess how to repair the leak. Mr Gibson had explained in his evidence that although the type of guttering fitted was discontinued he was able to establish from a Gutter Compatibility Chart that there was a compatible system so a replacement joint could be sourced. He explained how the joint system worked. The second time he inspected it (in October 2025) the gutter had moved off the joint seal. He disassembled then re-assembled the guttering joint in 2025 so that the repair was effective.

40. The totals invoice from AO Blair had been charged to the applicant despite this being a common repair. Part of the respondent's complaint was that the respondent had not checked if work had been carried out or been effective before they paid for it. The applicant had suggested that the respondent should check every repair regardless. We did not accept that would be a reasonable step to expect a factor to undertake. A Factor having such a responsibility would need to recover the cost of such checks and these would ultimately be borne by the homeowners. A more reasonable response might have been to advise the applicant that the work had been instructed. He could then have kept an eye out for progress. Alternatively, the respondent could have told the applicant once the work had been completed (when they received the invoice) and then could have checked it. He accepted on questions from the tribunal that this would have been a reasonable step to take and he would have checked to ensure the work was indeed done and done properly. In any event before he was aware that there had been an attempt at a repair he had informed the respondent that the guttering at his garage was still leaking.
41. We accept the respondent's submission (of response) that they had taken reasonable steps to instruct a repair on being notified of it. The applicant's letter to them of 31 October 2022 reports leaking guttering in general. The letter of 22 November 2022 specifically refers to the leak. On 30 November 2022 the

respondent sent a 'Residential Management Repair Order' number 33703301 to AO Blair. That gave clear instructions and asked the contractor to call the applicant on the number provided. On 22 December 2023 AO Blair issued an invoice with the corresponding order number. It referred to cleaning part of gutter and carrying out a repair. Part of the applicant's complaint was that the respondent had proceeded to pay the invoice and charge it to him without checking if the work had been done effectively. There is strength in the respondent's argument, which we accept, that having instructed reputable contractors the respondent was entitled, at least until they were informed otherwise, to rely on the contractor having undertaken the work to a reasonable and workmanlike standard. If the respondent was required to check on every individual routine repair carried out there would be a cost to that which would ultimately be borne by the homeowners. It may well not have been obvious to the person checking, who would likely be the development manager, if the repair was effective or not. We are therefore satisfied that there was no breach of the code thus far.

42. However where we are not so satisfied is in relation to events after the initial repair in December 2022. Whilst the applicant's email of 13 January 2023 is itself non-specific about what guttering needed repaired the email referred to and attached previous letters sent and the letter of 22 November 2022 specifically refers to the leak needing repaired. As at 23 January 2023 then, the respondent was aware that the guttering above the garage door had either not been effectively repaired, the repair had failed or another fault had developed. The matter was raised with the respondents on numerous occasions after that. It should not have taken one of the other homeowner to effect a temporary repair in October 2024 then a full repair in October 2025.
43. It was difficult to attach much weight to the statements of Steve Paterson, the senior property Manager. His evidence was not capable of being tested in cross examination. Apart from the AO Blair invoice already referred to we did not attach any weight to the other invoices referred to in the Direction response received on 26 September 2025. Two of those invoices predate the date the leak was reported and so are not relevant. The invoice from AO Blair dated 9

January 2024 refers to “Full gutter and downpipe clean” ((having been carried out using a cherry picker) so does not appear to relate to the leak. Ed Gibson confirmed in his evidence that the clean of the guttering at height, at the top of the blocks was a different job. The last invoice was from Cleland Roofing Solutions and is dated 10 September 2024. It refers Labour - CRS240688 - 3-5 and 3-7 Silvermills. It states that the defective union fittings to deepflow gutter were cut away and a 3M length of black plastic deep flow gutter was renewed where missing. Critically, from the plan of the development (submitted by the respondent) the garages at 3-5 and 3-7 and in a different area to garage 8-6 where the leak was. The work on this invoice appears to describe something other than a repair to the leak. Although Mr Gibson did speak to Cleland Roofing attending at the development for a full day and returning the following day we cannot be certain whether he was referring to them having attended to the leak or undertaking the work at the garage at 3-5 and 3-7. Without the Residential Management Repair Order number to the roofing contractor it is not clear if Cleland Roofing had been instructed to attend to a repair at a different block of garages or if they had been instructed to attend at the block containing garage 8/6 but repaired something else. What should have been clear to the respondent was that they did not repair the leak. Mr Gibson spoke the Burns and Watson having attended. Mr Paterson had also referred to this in his submission. It would certainly appear that the property manager were under the impression that the work had been done shortly, before the AGM as the applicant explained that they had told him the leak had been repaired and he said they appeared to be genuinely surprised to told that it had not been. It was not until after his response to the Tribunal made in 19 June 2025 that Mr Paterson took any steps. By then it was too little too late.

44. The applicant confirmed that he was only now relying on Sections 6.3 and 6.7 of the 2021 Code in that the respondent had failed to carry out a repair and failed to respond to queries and complaints timeously.
45. **OSP 6.** You 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. One of the services respondent provides is the instruction of routine property repairs.

What is clear from the evidence is that that they did not instruct the repair of the leak after 23 January 2023 a timely way and thus breached the Code.

46. **OSP 11.** You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure. Having made enquiries of progress of the repair to prevent the leak the applicant did not receive responses within a reasonable timescale. The only direct response he received was from the company director.

47. **Section 6.3** of the 2012 Code states that a property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. There was no evidence that the respondent did not have such a procedure in place. Indeed the applicant was able to report the repair.

48. **Section 6.7** of the 2021 Code states “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. The evidence presented did not relate to any cyclical maintenance programme. So we find no breach of this section.

49. The From C2 Application was that the respondent had failed to attend to repairs in a timely manner. This would be a breach of Section 6.1 of the 2021 Code in that they did not help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard. In their response received on 19 June 2025 the respondent states “*In his FTT submission, Mr Baillie states that JG failed to attend to repairs and maintenance in a timely manner, citing specifically a repair to a gutter above garage 8/6, which he states that he reported to JG by email on 31/10/22.* “ They go on to answer that complaint.

50. In his letter of 22 November 2022 the applicant noted that water was soaking the garage door and asked that the repair be carried out urgently in order to avoid it needing repair also. From January 2023 to October 2025 the respondent failed to make prompt repairs to the leak. By their one admission Mr Stevenson attended after after his submission dated 19 June 2025 and the respondent did not instruct a repair of the leak he witnessed.

Proposed Property Factor Enforcement Order

51. We considered whether we should make a property factor enforcement order ("PFEO"). The applicant had put the respondent on notice in January 2023 that there was still a leak at the garage. Either it had been repaired and the repair then failed or the repair was not effective at all. Either way the respondent has failed to deal with enquires, or instruct repairs within a reasonable time. The applicant has been put to time and trouble in asserting that he was correct in that the respondent had failed to comply with the codes and that should be marked in some way.
52. The applicant sought an order requiring the respondent to comply with their duties. That is not something we can do. We can only make a PEON order to reflect any breaches of the Code or duties complained of. We cannot account for potential future breaches. The applicant sought an order to the effect that the respondent should not be allowed to claim for payment of invoices from the homeowners until after they had checked the work had been carried out. That would be too onerous a task at one level. For example to monitor that the wheelie bins had been cleaned (the cost of which to the applicant was £1.67 a quarter) would involve someone going along and checking. If the respondents were required to check each and every piece of routine work that could involve significant work for which the homeowners would ultimately be responsible for paying through their monthly management charges. There could be further complications and expense. If a skilled tradesman is instructed to carry at work and carries out the work how that would be checked? Would the respondent be entitled to rely on the word of the tradesmen or be required instruct another tradesman to go and check. If the latter the homeowners would ultimately likely to be funding the cost of that added layer of Bureaucracy.

53. The Tribunal proposes to make a property factor enforcement order ("PFEO").
The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeal

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.

10 September 2026

Iain MacRae Legal Member

Date