



**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/24/0763

Re: 3/2, 72 Garthland Drive, Glasgow, G31 2RB (“the Property”)

**The Parties:**

Mr. Stephen Fenelon, 5 Bath Square, Ardrossan, KA22 8DP

(“the Homeowner”)

and

91BC Property Services Limited, Garscadden House, Dalsetter Crescent, Glasgow, G15 8TG

(“the Property Factor”)

**Tribunal Members**

Nicola Irvine (Chairperson) and Nick Allan (Ordinary (Surveyor) Member)

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for a Property Factor Enforcement Order.**

**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 2021 Code of Conduct for Property Factors (“the Code”).
2. Case management discussions (“CMD”) took place on 9 August 2024, 18 February 2025, 16 July 2025 and 4 November 2025. Following each of these

CMDs, the Tribunal issued a note summarising the discussion, along with a notice of direction, requiring parties to lodge certain documentation.

3. On 13 March 2025, the Homeowner submitted documents and email correspondence between the parties. On 17 August 2025, the Homeowner submitted written representations and email correspondence between the parties. On 29 November 2025, the Homeowner submitted written representations and email correspondence between the parties.
4. The Property Factor did not submit any written representations.
5. The Tribunal sent an email to the parties on 15 December 2025, advising them of the date and time of the hearing, which was to take place by telephone conference call.

### **Hearing: 19 March 2026**

6. The hearing took place on 19 March 2026 at 10.00am by telephone conference call. The Homeowner was present on the call and represented himself. The Property Factor was represented by Mr Francesco Mele. The Tribunal heard evidence from the Homeowner. Throughout his evidence he referred in general terms to emails which had passed between the parties. The Tribunal explained to the Homeowner that emails do not “speak for themselves” and are not self-proving and asked the Homeowner to give evidence about any particular emails he wished the Tribunal to consider. The Homeowner continued to refer to emails in general terms and the Tribunal Chair reminded him several times that he should refer to specific emails if he wished the Tribunal to consider them. The Tribunal had a 51 page pdf from the Homeowner which contained various emails. Any reference to page numbers is a reference to the page number of the pdf unless otherwise stated. The Homeowner gave evidence about specific parts of the Code which he contended had been breached. The evidence given by the Homeowner is summarised below. The summary is not a verbatim account of what was said at the hearing but rather an outline of the matters relevant to the Tribunal’s consideration of this application. At the conclusion of the evidence, the Tribunal adjourned the hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to the parties in due course.

### **The Homeowners’ position**

7. The Property Factor breached the following sections of the Code:-
8. **Section 1.1**

The Property Factor failed to apply any procedure at all at the time he first made a complaint. He believes that he did not receive a copy of the Written Statement of Services (“WSS”) until 8 months after he made a complaint. There is no

documentation lodged which relates to the provision of the WSS. He believes that he asked for a copy of the WSS by email but he does not have that email lodged. Reference was made to an email the Property Factor sent him on 14 April 2022 (page 5 of 51) which referred to the WSS. He believes that he received the WSS after that email. He believes that section 1.1 of the Code has been breached.

#### **9. Section 2.1**

The Property Factor failed to respond promptly to complaints. The Homeowner sent 40 emails and did not receive a response. Reference was made to an email he sent on 15 May 2022 (page 1 of 51) and an email from his letting agent to him on 29 September 2021 (page 50 of 51). He did not receive a substantive response to his emails. On this basis, the Property Factor has breached section 2.7 of the Code.

#### **10. Section 2.5**

When the application was prepared, he had a different interpretation of this section of the Code. It was conceded that there was no breach of this section of the Code.

#### **11. Section 6.1**

The Property Factor appointed a roofer who replaced the roof at the Property. The roofing contractor wilfully cut the flue pipe connected to his boiler. The Homeowner told the Property Factor not to disturb the flue because that would impact on his boiler. The Property Factor denied that the roofer cut the flue and then admitted that it had been cut. The consequence of the flue pipe being cut was that carbon monoxide backed up and the boiler was condemned. The roofing contractor accepted that they had caused the damage. The Homeowner's letting agent contacted him to alert him to the problem. The Property Factor and the roofing contractor advised the letting agent that they could not undertake any investigation for 4 weeks, so the Homeowner's letting agent arranged for an engineer to attend and put the pipe back together. That has been in place ever since. His engineer advised that a further repair would be required. There has been no further repair carried out. The Homeowner has requested quotes from contractors and has been told that it will be difficult to repair. The Homeowner has never been reimbursed for the cost of the call out and no insurance claim has ever been made. Reference was made to an email from his letting agent on 13 September 2021 which provided details of a report from a contractor who attended the Property (page 27 of 51). The Homeowner also referred to an email from the Property Factor to him on 30 September 2021 which advised that Glasgow Property Maintenance had accepted responsibility

for the fault with the flue and agreed to pay for all works to bring the boiler back to a working condition (page 49 of 51), along with his response asking the Property Factor how it is going to address compensation for the tenant who was living in the Property. The Homeowner explained that an email from the project manager dated 8 October 2021 (page 48 of 51) confirmed that the contractor had been instructed to maintain the flue for the duration of the works. That email advised the Homeowner that the flue had been condemned and that the contractor would pay for all costs concerning the boiler and the flue repair.

## **12. Section 6.5**

The Homeowner does not know if emergency arrangements are part of the service provided by the Property Factor. He does not know if the Property Factor has any emergency procedures.

## **13. Section 7.1**

He is not aware if the Property Factor has a procedure. He referred to an email he received from the Property Factor on 14 April 2022 (page 5 of 51) which provides details of the complaints procedure. This procedure was not complied with. He emailed countless times. He referred to an email he sent to the Property Factor on 13 April 2022 (page 21 of 51) which states that he sent 35+ emails along with his letting agent and that emails have been ignored. He attempted multiple methods of contact and tried to contact the Property Factor every day.

## **14. Section 7.2**

Nothing happened to bring his complaint to a conclusion. The Property Factor invited him to make an application to the Tribunal. No final decision was intimated to him in writing.

### **The Property Factor's position**

15. Dealing with each of the sections of the Code complained of, the Property Factor's position is as follows:

## **16. Section 1.1**

The WSS is published on the Property Factor's website for customers and non-customers. In addition, a letter is provided to all customers to access a portal which contains a link to the WSS. There has been no breach of this section of the Code.

## **17. Section 2.1**

The Homeowner has not provided any evidence to establish a breach of this section of the Code. The complaints procedure is set out in the WSS. The Property Factor suggested to the Homeowner that he should follow stage 1 of the complaints procedure but he did not. A representative of the Property Factor invited the Homeowner on several occasions to have a conversation about the issues but the Homeowner did not engage with that process. Examples of this are contained in an email from a representative of the Property Factor on 4 April 2022 (page 4 of 51) which states “I agree this has gone on too long and this is why I think that it would useful to discuss your concerns”. The Homeowner’s response to that email on 5 May 2022, stating “I have reiterated my position countless times, there is nothing to discuss”. Stage 1 of the complaints process was not followed by the Homeowner, so the Property Factor did not breach this section of the Code.

## **18. Section 2.5**

The Homeowner accepted that there was no breach of this section of the Code.

## **19. Section 6.1**

The Property Factor has an emergency line available to homeowners on a 24/7 basis. The Property Factor approaches repairs differently depending on the nature of the repair required. They aim to have necessary repairs carried out within 2 weeks and desirable repairs carried out within 4 weeks. The Property Factor did everything it could at the time in relation to the issue with the Homeowner’s flue. Reference was made to an email from the project manager dated 8 October 2021. That email states that when the flue was condemned, the contractor attended with a gas-safety engineer and ensured there was no carbon monoxide. The email also stated that the contractor confirmed that they would pay all costs concerning the boiler and flue repair. The Property Factor believes that a repair was carried out within 4 weeks of the initial damage and the tenant moved back into the Property. The Property Factor understood that the project manager was liaising with the Homeowner’s letting agent about reimbursing the Homeowner.

## **20. Section 6.5**

A full roof replacement was carried out. The cut to the flue pipe was not considered an emergency repair. This view was formed on the basis of what was reported by a gas-safe engineer who was instructed by the Property Factor. The Property Factor has emergency arrangements in place, but there was no breach of this section of the Code in this instance.

## **21. Section 7.1**

The WSS sets out the complaints procedure.

## **22. Section 7.2**

The Homeowner did not follow the complaints procedure, so no final decision was issued to him in respect of his complaint. The Property Factor did not breach this section of the Code. Reference was made to an email from a representative of the Property Factor dated 13 April 2022 (page 8 of 51) which acknowledged that the Homeowner had sent several emails, but it invited him to follow Stage 1 of the complaints procedure. That email also attached a copy of the WSS.

## **Findings in fact**

23. The Homeowner is the proprietor of 3/2, 72 Garthland Drive, Glasgow, G31 2RB.
24. The Property Factor is the properly appointed Factor in respect of the Property.
25. The Property Factor's Written Statement of Services is available to access on its website and through its customer portal.
26. The Property Factor instructed a roofing contractor to replace the roof at the Homeowner's Property and that work was managed by an external project manager.
27. The Property Factor communicated and consulted with the Homeowner about the proposed work.
28. The Homeowner advised the Property Factor that the flue connected to his Property was not to be disturbed. The Property Factor and the project manager passed this onto the roofing contractor. The flue connected to the Homeowner's Property was damaged by the roofing contractor appointed by the Property Factor.
29. The Property Factor instructed a gas-safety engineer to attend the Property to ensure that there was no carbon monoxide leak. The engineer advised the Property Factor that, although a repair was required, it was not urgent.

30. The Homeowner's letting agent instructed a contractor to effect a temporary repair. No further repair has been carried out.
31. The Property Factor has emergency arrangements in place and offer a telephone contact number which can be accessed 24 hours a day. The repair required to the Homeowner's Property was not deemed an emergency.
32. The Property Factor has a written complaints handling procedure. The Property Factor supplied a copy to the Homeowner.
33. The Homeowner did not follow the Property Factor's complaints procedure. The Property Factor's complaints handling process had therefore not been exhausted and no final decision on a complaint was issued to the Homeowner.

### **Tribunal's observations in relation to the sections of the Codes at issue**

#### **Section 1.1**

34. The evidence given on behalf of the Property Factor about the availability of the Written Statement for Services on its website and the availability on the customer portal was unchallenged. Whilst passive availability of the WSS is not sufficient for compliance with section 1.1, Mr Mele's evidence about a letter being sent out with a link to the WSS was unchallenged. In the course of the email exchange between the Homeowner the Property Factor that has been produced to the Tribunal, a copy of the WSS was provided, although it was clear from the Homeowner's evidence that not all email correspondence had been produced to the Tribunal. The Homeowner stated that he did not believe that he had received the WSS. The Homeowner's evidence in relation to this section of the Code was not very detailed and in contrast, the evidence of Mr Mele was detailed about the procedure that the Property Factor adopts in relation to this issue. The Tribunal preferred the evidence of Mr Mele in relation this issue and found that there has been no breach of this section of the Code.

#### **Section 2.1**

35. The emails referred to by the Homeowner and Mr Mele demonstrated that there was communication between the parties before the roof work started. The Homeowner gave instructions to the Property Manager that the flue connected to his Property was not to be interfered with. The Property Factor and the project manager passed this onto the contractor. It is very unfortunate that the roofing contractor caused damage to the flue pipe connected to the Homeowner's Property. However, it was clear to the Tribunal that there was good communication between the parties in relation to the proposed common work so that the Homeowner had some input. In relation to communication, the

Homeowner referred to multiple emails which he said went unanswered. From the emails referred to by both parties, the Tribunal concluded that the Property Factor did respond to emails. The responses were not satisfactory to the Homeowner, but the Property Factor did respond. The Property Factor offered to discuss matters with the Homeowner but he declined those offers. The Tribunal concluded, on the basis of the emails referred to, that there was no breach of this section of the Code.

#### Section 6.1

36. The Homeowner contended that the Property Factor did not instruct a repair with sufficient urgency and he arranged with his letting agent for a contractor to attend and carry out a temporary repair. The Tribunal found the Homeowner's evidence about this matter to be credible. The Tribunal also found Mr Mele's evidence about this issue to be credible. His evidence was that a gas safety engineer checked for the presence of carbon monoxide and advised the Property Factor that a repair was not an urgent requirement. Since the Tribunal is being asked to judge the conduct of the Property Factor, it has to consider what steps were taken by the Property Factor. The explanation given by Mr Mele demonstrates that the Property Factor was not simply ignoring the issue and leaving it to the Homeowner. On the contrary, the Property Factor instructed a gas safety engineer to attend, from whom they took advice. There was no evidence that any delay in the instruction of a contractor by the Property Factor caused a deterioration or further damage to the Property. The Tribunal concluded that there was evidence to demonstrate compliance with this section of the Code.

#### Section 6.5

37. The Homeowner's evidence in relation to this section did not assist the Tribunal's determination of this issue. Put simply, the Homeowner did not know if there were any emergency arrangements as part of the service provided. On the face of that evidence alone, the Homeowner does not overcome the burden of proving that the Property Factor has failed to comply with this section. Mr Mele gave evidence about the emergency arrangements in place. He explained that there is a 24 hour service for emergency repairs. He went on to explain that the Property Factor's approach is different depending on the type of repair. As already explained, the Property Factor was advised that the repair required to the flue pipe was not an emergency. The Tribunal concluded that there was no evidence to establish a breach of this section of the Code.

### Section 7.1

38. The Homeowner referred the Tribunal to a few emails contained in the pdf document lodged. The emails included an email dated 14 April 2022 from the Property Factor setting out what the complaints handling procedure is (page 5 of 51). The emails the Tribunal were directed to consider did not demonstrate that the Homeowner had followed the complaints procedure, although he did continue to correspond with the Property Factor. The Tribunal was not persuaded on the evidence produced that the Property Factor breached this section of the Code.

### Section 7.2

39. It was accepted that no final outcome to the Homeowner's complaint was sent to him in writing. This is because the Property Factor states that the Homeowner did not follow the complaints procedure. On the basis of the emails the Tribunal was directed to, there was insufficient evidence to demonstrate that the Homeowner had followed the complaints process. The Tribunal concluded that there was not evidence of a breach of this section of the Code.

## **Reasons**

40. The Homeowner was understandably vexed that damage had been caused to his Property, even after he specifically highlighted the issue in advance of work being carried out. The email correspondence which the Tribunal were directed to showed that the Property Factor and the project manager had alerted the roofing contractor to the issue and notwithstanding that, the damage was caused to the flue pipe. The email correspondence also shows that the project manager had received confirmation from the roofing contractor that effectively liability for the damage was accepted. The roofing contractor had advised the project manager that they would pay for the repair required to the flue and the boiler. There was no information before the Tribunal about whether the roofing contractor ultimately did pay for any work to be done to remedy the damage, It appears to the Tribunal that the Homeowner may have had a remedy against the roofing contractor, given the concession apparently made to the project manager.

41. From the oral evidence given and the documentation the Tribunal was asked to consider, the Tribunal did not find any breach of the Code by the Property Factor. The Tribunal therefore refused the application for the Property Factor Enforcement Order.

**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: 27 July 2026