



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

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Property Factors (Scotland) Act 2011 ("The 2011 Act")

2021 Code of Conduct for Property Factors ("The 2021 Code")

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("The Rules")

Reference number: FTS/HPC/PF/25/0809

Re: Property at 19/22 Salamander Place, Edinburgh, EH6 7JJ ("the Property")

The Parties:

Mr Graham Morris ("the Applicant and representative") and Jack Newlands ("the Applicant")

Ross and Liddell Limited, ("the Respondent and factor") represented by Mr Doig

Tribunal Members:

Stuart Gibb (Legal Member) and Robert Buchan (Ordinary Member)

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the 2021 Code "; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "the Rules"

The Decision

The Tribunal finds the Respondent in breach of Section 6.4 of the 2021 Code. The breach not being material, no Property Factor Enforcement Order (PFE0) will be imposed.

Background

1. This is the second Tribunal involving the parties; the first being determined in March 2025 under reference FTS/HPC/PF/24/1636. The Tribunal concluded in that case that the factor had breached Section 2.7 of the 2021 Code of Conduct but applied no sanction. The Tribunal had considered claims for breaches of Sections 2.1, 2.7, 6.1 and 6.4 of the 2021 Code.
2. In the present case, Mr Morris and Mr Newland are the Applicants and the homeowners. Mr Morris represented both Applicants at the Case Management Discussions (CMDs) and the Hearing. The Applicants had lodged one application form, a C2. Breaches of Sections 2.1, 2.3, 2.4, 2.6, 2.7, 6.1, 6.4, 6.6 and 6.9 of the 2021 Code were specified in the application.
3. The Respondent was contracted as Factor of the development. The Respondent was represented at the CMDs and the Hearing by Mr Doig.
4. The Factor had arranged for repairs to the emergency lighting system in the block in August and September 2024 without seeking alternate quotes for the work or consultation with the homeowners. Approximately, 14 out of 45 lights required to be replaced following an inspection carried out on 2nd August 2024. The repair was instructed by the factor on 9th September 2024 and intimated to the proprietors on the same day. The cost was £2394. There was a question as to whether or not this was properly treated as an emergency repair.
5. Telephone CMDs attended by the parties took place on 18th September 2025 and 19th March 2026 after which Directions Notices were issued.
6. Written submissions were directed from both parties to be received ahead of the Hearing and the Tribunal is grateful to both parties for providing written submissions laying out their respective positions.

Hearing and Process

1. The Hearing was conducted by video. The Applicant's position was as laid out in his application and his submissions. He was invited to expand on and comment on his most recent submission in which he had addressed each head of claim and he answered also questions from the Legal Member. Having done that he was questioned by Mr Buchan. Mr Doig was invited to address the Tribunal on his latest submission which laid out the Respondent's position and which referenced his earlier submissions and to comment also on Mr Morris's submission. He was then questioned by Mr Buchan. Both Mr Morris and Mr Doig were invited to comment further before the Hearing

concluded. Miss Johnstone from Ross and Liddell provided additional information as required. There was some confusion as the Respondent was using different numbering from the bundle being used by the Respondent's agent and the Tribunal and it became apparent that the numbering was out by 15 and the issue was addressed from time to time throughout the Hearing. Mr Newland was not present and took no part in the Hearing.

2. The parties agreed that there was a degree of overlap arising when applying the circumstances, evidence and submissions to the various Sections of the Code allegedly breached.
3. We will now address each alleged breach of the 2021 Code as narrated in the Applicant's submission.
4. Section 2.1 of the 2021 Code states; "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." What constitutes good communication is subjective; it is not an objective absolute. What is adequate to meet one person's needs or wishes may not be adequate for another person or meet their wishes. Section 2.1 only promotes and recommends good communication and mutual respect as a generality; it does not lay down a test for what is and is not good communication.
5. It is clear from reviewing the communication between the parties that the quality of the communication in the webchat was, at times, less than ideal but the Tribunal considers that the obligation of good communication and respect cannot be considered as only one sided. It is a bilateral obligation. There cannot be good communication without mutual respect and it is clear from the web chat starting at page 42 of the bundle that the Respondent uses disparaging language from time to time. The Factor's employees appear to remain measured and polite throughout the two hours the Applicant spent on the webchat that day. The Applicant's frustration and irritation and impatience are manifest. They are also manifest in his first submission of 14th August 2025 where he suggests there is a deliberate policy of delay to frustrate customers in the webchat and that he should receive 100% of the attention of the person with whom he is dealing. The fact that a particular piece of information is unavailable quickly or there is an error or mistake or, an arguably, unfortunate word choice does not in the view of the Tribunal amount necessarily to poor communication. The 2021 Code and the Tribunal do not expect perfection but, rather, a professional level of service. Section 2.1, like Section 6.1, is a guiding paragraph setting broad parameters and principle within which the sections following operate.
6. The failure of the Factor to adopt a course of action that the Applicant considers to be preferable does not amount to poor communication. In his

submission the Applicant cites examples where he wished letters to be sent out by the Factors and their failure to do so is cited as an example of poor communication. In the view of the Tribunal that does not amount to poor communication for the purposes of the 2021 Code. The Factors have a discretion as to how they operate while adhering to the terms of the 2021 Code.

7. In his submission the Applicant at Section 2.1 (Paragraphs 1 and 2) tries to include the Respondent's responses to the case management of the Tribunal and other HPC cases involving the Respondent as examples of poor communication. These are rejected by the Tribunal as wholly irrelevant. The only issues before the Tribunal are those raised in his application.
8. The Tribunal accepts that the Written Statement of Service (WSS) clearly states that the Property will be inspected twice a year. The Applicant asked in the context of a web chat how often the electrician inspected the building. The Appellant was told the inspection was every three months which was a mistake. However, in the view of the Tribunal the error is neither material nor an example of poor communication; it is a mistake. There is no detriment to the Applicant.
9. The Applicant cites a number of examples where he has had to wait for a response in a webchat for between 3 and 8 minutes. He considers this to be poor communication and unreasonable delay. The Tribunal did not agree. A webchat system is to facilitate communication and it is unreasonable to expect it to flow like a conversation. The Applicant may not have been the only person the Respondent's employee was dealing with and it seems very unlikely that a junior employee would have a detailed knowledge of the Appellant's property and therefore would need time to seek information. The periods between responses are not unreasonable in the view of the Tribunal. Especially where, in places, the Appellant has made three comments before the employee has had an opportunity to answer the first as can be seen at pages 51 and 52 of the bundle. In any case, there are other methods of communication available to the Applicant if he finds the webchat inadequate.
10. Much of this case focused around the repair of emergency lighting and how that was organised by the Respondents. It is raised under various alleged breaches of the 2021 Code including as a breach of Section 2.1.
11. An inspection of the emergency lighting system took place on 2nd August 2024. It appears that the initial quotation was lost or overlooked and a second report was obtained on 20th August and another quotation was obtained and a repair was instructed on 9th September 2024. The owners were not advised until 12th September. The background to the Respondent's appointment of the electricians in August 2023 and the subsequent circumstances surrounding the repair to the emergency lighting system is detailed their submission of 12th March 2026.
12. The Applicant's position was that there was no tender process or consultation and that was a breach of various sections of the 2021 Code and not in

accordance with the WSS. In the web chat lodged before the Tribunal a member of the Factor's staff describes the loss of part of the emergency lighting system as a threat to life. Whilst it is an essential part of the safety systems within the building, the failure of some of the light bulbs cannot properly be described as a threat to life; that is hyperbolic and a poor choice of words. The Tribunal was told that the affected areas had windows and a skylight although it was not clear if the broken lights were in a single area or scattered throughout the system. On the balance of probabilities, the Tribunal found that the defective lights were scattered throughout the system. In other words, the affected areas were not entirely devoid of light. The Applicant focused on the difference between the use by the Factors of the words, a potential threat to life, an emergency and an urgent repair and tried to suggest, in essence, that the Factors were shifting their ground in an attempt to defend their actions in instructing the repair without a tender process. It seemed to the Tribunal unreasonable for the Applicant to take a hyperbolic phrase used by a junior employee and turn it into the declared position of the Respondents. The Tribunal was not directed to any other use of the phrase by the Factor in any other communication. Mr Doig told the Tribunal that the Factors treated it as urgent. It was an important and urgent repair in the view of the Tribunal. Within the range of options open to the Factor to deal with the issue they decided in their judgement that the matter should be addressed with as little delay as possible and consequently they decided not to go to tender. In the view of the Tribunal that was a reasonable and acceptable response and, in itself, not a breach of the WSS or 2021 Code. It was a course of action within their discretion when dealing with a matter of health and safety concern.

13. The Tribunal concluded that there had been no breach of Section 2.1
14. Section 2.3 says; "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." The Appellant's argument is laid out in his submission but it does not address the specific terms of Section 2.3. This section requires the Respondent to have set out how, and through what medium, documentation is available to their clients. The Respondents have done that and maintain a number of systems to access information. The Appellant cites an alleged failure to have certain documents available on the portal. However, when asked what detriment he had suffered as a consequence of any documents missing from the portal he was unable to specify a detriment other than at one point he said that it was a strain having to keep checking up on them. This section is about the provision of systems, not whether those systems are used by the Factors to the Applicant's satisfaction. There has been no breach of Section 2.3. The Applicant said that he did not use the portal.
15. Section 2.4 says;" Where information or documents must be made available to a homeowner by the property factor under the 2021 Code on request, the

property factor must consider the request and make the information available unless there is good reason not to.” In his submission the Applicant focuses on an example of a failure to provide the full timetable for the light repairs that he requested from the Factors. Mr Doig explained that what was being requested was a bespoke document being created solely for the Appellant. There was a delay in providing that as the person tasked with responding was ill (the Applicant cast doubt on the veracity of that but was unable to provide any evidence that this was a falsehood). Information addressing the Applicant’s request was provided but not in the format he expected. In the webchat the Applicant expresses surprise that not every document is available on the portal. The WSS and the 2021 Code do not require every document to be uploaded and made available on the portal. The Tribunal did not accept that there had been a breach of Section 2.4.

16. A property factor must have a procedure to consult with all homeowners and seek homeowners’ consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner; Section 2.6. The Appellant did not argue that there was no procedure in place. He argued that there was no consent to proceed to carry out the repair to the emergency lighting and that it was not an emergency. When asked if he accepted there was a procedure in place he said; “I don’t know. I presume they will have something.” It was clear from the WSS that there was a procedure in place and consequently there was no breach of Section 2.6.
17. Section 2.7 states; “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.” The Respondents position was that there had been no breach of this section. The repairs had been dealt with as quickly and reasonably as possible. Their WSS allows them to partially respond and then to follow up within a reasonable timescale. It states also that they will endeavour to meet their service levels. The Applicant pointed out the issue of whether or not there had been a breach of this section had effectively been covered in other arguments in relation to Section 2.3. Taking into account the submissions and the arguments made under other sections which are relevant also to this Section the Tribunal concluded that there had been no breach of this Section.
18. Section 6.1 is an introductory paragraph setting out in broad terms what is expected of a Factor in relation to repairs. It says;” This section of the 2021 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.” The Applicant argued that the Factors had not kept up with required regular repairs but provides no example to support this allegation but in any case such an allegation is not covered by Section 6.1. The Tribunal found no breach of Section 6.1 of the 2021 Code.

19. Section 6.4 states;” 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.” The Applicant’s position was that as there had been no consultation with the homeowners for a repair that he considered was not an emergency there had been a breach of this section of the 2021 Code. It was accepted that there had been no tendering process. The Applicant felt there should have been one. The Respondent’s position was that the work was urgent and that the timescale was reasonable. Steps were taken to carry out the work expeditiously rather than delay what they considered to be urgent work. The timetable of events is described in paragraph 11 above. While it was an exaggeration to say that the loss of a third of the emergency lights was a risk to life, there was no doubt that it had health and safety implications and was urgent. Nevertheless, the Tribunal felt that such an urgent and important repair could and should have been carried out more expeditiously. Consequently, the Tribunal found there had been a breach of Section 6.4.
20. Section 6.6 states; “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.” This Section provides for a situation where the Factors consider it appropriate not to go out to tender but they must demonstrate why they came to that decision. Whilst the Applicant disagreed with the decision made by the Factors it was the view of the Tribunal that it was within the range of reasonable actions that the Factors could have taken. The Factors have explained the actions they took and why they thought they were appropriate in the circumstances. They appointed the company with the contract for maintenance of the emergency lighting to carry out the repair. They were familiar with the system and that was a reasonable explanation for why there had been no tendering process. The Tribunal found there had been no breach of Section 6.6.
21. Section 6.9 states:” If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.” The Applicant accepted that as there had been no tender process there could not have been a breach of this

section.

22. Throughout this process the Applicant has made serious and unsubstantiated allegations about the Respondents and the Tribunal. In the Tribunal he alleged that the Factor had fabricated or forged estimates for the purpose of proving that the emergency light repair instructed was value for money but he offered no proof. In his submission of 13th August 2025 the Applicant alleges that the Factors instructed the electrical contractors in exchange for a “kickback”. Again, he offered no evidence in the Tribunal to substantiate this allegation. Such behaviour does not reflect well on him and undermines his credibility.

23. The following is an obiter dicta observation intended for the benefit of both parties. The Applicant is clearly unhappy with the service being provided by the Respondent and he appears actively to seek to find fault in what the Respondents do or omit to do, which does not promote a healthy relationship. By his own admission he is unable to muster the sufficient support required of other homeowners in the block to vote to appoint a different factor. Accordingly, the relationship remains ongoing. The Tribunal would urge the parties to seek other avenues to improve the relationship such as the creation of a resident’s committee, better use of technology or more face to face meetings and for the Applicant to be more tolerant and forgiving of small mistakes.

24. Findings in Fact

1. The Homeowner bought the Property in a development of 85 flats in about 2017.
2. The Factor has factored the Property from completion of the development.
3. The emergency lighting system was inspected on 2nd August 2024.
4. Approximately one third of the lights were defective.
5. A quote for repair of the lights was prepared on 27th August 2024 and subsequently lost or mislaid by the Factor.
6. A second quote was obtained and the repair instructed on 9th September 2024.
7. No Tender process was followed. The contract was given to the electricians that held the maintenance contract for the emergency lighting system.
8. The defective lights were scattered throughout the system
9. The Applicant could not demonstrate any loss or material detriment arising out of a breach of the 2021 Code.

25. Property Factor Enforcement Order

The Applicant could not demonstrate any loss or material detriment arising out of a breach of the 2021 Code. The breach of the 2021 Code is not a material one and the Tribunal do not consider it appropriate to issue a Property Factor Enforcement Notice.

26. Appeals

In terms of section 46 of the Tribunals (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.

Chairperson of the tribunal; S Gibb
Dated: 15th October 2026