

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION:** in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

**Chamber Ref: FTS/HPC/PF/21/1073**

**Flat 2/3, 4 Glaive Road, Glasgow, G13 2X (“the Property”)**

**The Parties:-**

**Ms Laura Macaulay, Flat 2/3, 4 Glaive Road, Glasgow, G13 2X (“the Homeowner”)**

**Lowther (Homes) Property Managers, Wheatley Property, 25 Cochrane Street, Glasgow, G1 1HL (“the Property Factor”)**

**Tribunal Members**

Ms H Forbes (Legal Member)

Mr A Taylor (Ordinary Member)

**Decision**

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has not failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraph 2.1 of the Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

**Background**

1. By application received in the period between 4<sup>th</sup> May and 12<sup>th</sup> June 2021, the Homeowner applied to the Tribunal for a determination as to whether the Property Factor had failed to comply with paragraph 2.1 of the Code.

2. Details of the alleged failures were outlined in the Homeowner's application and associated documents including correspondence between the parties, email correspondence retrieved as the result of a subject access request, and the Property Factor's Written Statement of Services. The complaint concerns information given to the Homeowner by the Property Factor in relation to a leak into the flat below the Property, including information regarding costs and liability for investigation and repair.
3. The Homeowner intimated her concerns to the Property Factor on 30<sup>th</sup> May 2021.
4. By decision dated 25<sup>th</sup> June 2021, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
5. Hearing notification letters were sent out to parties on 30<sup>th</sup> June notifying parties of a hearing scheduled for 18<sup>th</sup> August 2021.
6. On 4<sup>th</sup> August 2021, the Property Factor's representative lodged written representations, which included references to a possible contradiction within the Deed of Declaration of Conditions in relation to the description of common property.
7. By Direction dated 11<sup>th</sup> August 2021, the Tribunal requested submission of the block insurance policy pertaining to the Property from the Property Factor.
8. By email dated 17<sup>th</sup> August 2021, the Property Factor's representative lodged the block insurance policy.

### **The Hearing**

9. The hearing was held on 18<sup>th</sup> August 2021 by telephone conference. The Homeowner was in attendance. The Property Factor was represented by Mr David Adams, Solicitor, and Ms Michelle Rush, Business Improvement Lead.

### **Alleged breach of paragraph 2.1**

10. The Code states: *You must not provide information which is misleading or false.*

### **Evidence of the Homeowner**

11. The Homeowner outlined her complaint. In June 2020, there was water ingress to the downstairs flat. The Homeowner had not used any water that morning or the previous evening. The Homeowner's brother inspected the Homeowner's bathroom and could find no apparent issues. Over the next couple of months, there were calls from the Property Factor regarding the matter, sometimes treating the matter as if it was a new issue. The Homeowner instructed a plumber on two occasions. The plumber fixed the bath seal, and found no other defects. The Property Factor instructed

plumbers on several occasions. One plumber felt water on top of the bath drainage pipework . He said it may have run back from the connection at the stack or from a pipe attached to the Homeowner's sink. Eventually, the Homeowner was told that investigative works would have to be carried out in her bathroom to determine the cause of the water ingress. This would involve removing the cladding to a duct, which included an asbestos panel. The Homeowner had not been aware there was an asbestos panel at the time of purchasing the Property.

12. The Homeowner was told by an employee of the Property Factor that she would bear no cost for the investigative works, as it would be covered by insurance. The Homeowner agreed the works could go ahead. She was then told by the Property Factor that she would be liable for the cost. She was then told she would not be liable, and, then that she would be liable. The Homeowner said she had been told she would have to remove herself from the Property for a day, then it was changed to two days.
13. The Homeowner was provided with an indicative figure of £3000 for the work, with no breakdown provided. The Homeowner was not prepared to proceed with the work without knowing the position in relation to liability and insurance.
14. The Homeowner contacted the insurance company and was told they would not cover investigations into the cause of the leak as the leak was not evident in her property and there was no sign of dampness within the Property.
15. The Homeowner referred to the Title Deeds for the Property and the fact that the Property Factor had mentioned that they may be misleading in regard to the definition of common property. She felt there should be some explanation as to how this had happened.
16. The Homeowner made a complaint to the Property Factor, which was dealt with at stage 1 and 2 of the Property Factor's complaints procedure. She said the Property Factor had acknowledged there had been miscommunication and had offered £350 towards the cost of any work carried out. It was her position that this would not make much of a difference with a total cost of £3000.
17. Responding to questions from the Tribunal, the Homeowner said it was her understanding that discussions had taken place between Glasgow Housing Association ("GHA") and the Property Factor and that all costs of investigation and repair would be covered, and the insurance excess waived.
18. The Homeowner said she has suffered a great deal of stress, including panic attacks, as a result of this issue, and being provided with false and misleading information. The Property Factor is a large organisation and she feels their communication skills should be better.

### **Cross-examination of the Homeowner**

19. Under cross-examination by Mr Adams, the Homeowner said she had not obtained any quotes for the work from her own plumbers. In regard to insurance, she said she had nothing in writing from the insurers following her discussion, but that Ms Rush had also spoken to the insurers and she had also said the Homeowner was not covered for this work.

### **Evidence on behalf of the Property Factor**

20. Ms Rush said that investigations into the source of the leak had been carried out from the GHA owned flat below, with no success. The only option was to go through the Homeowner's bathroom wall. The Property Factor appreciated there was a significant cost involved and a goodwill gesture had been offered to the Homeowner in the sum of £350 towards the costs. It was impossible to say, without further investigation, whether the ingress was coming from a common or an individual pipe. It was impossible to know the full cost of required works.
21. Mr Adams said that the source of the leak and the issue of whether the pipe is common or individual has yet to be determined and this cannot be done without gaining access to the Homeowner's bathroom. Further conversation has to be had in regard to insurance.
22. Responding to questions from Mr Adams, Ms Rush said that the Property Factor had offered to do the investigative work and, in the event that the source was found to be coming from an individual pipe, to allow an arrangement to be made for payment. There would be no question of payment having to be made by the Homeowner upfront. The same applied if it was a common repair.
23. Ms Rush said that the Property Factor appreciated that contradictory information had been given to the Homeowner. An apology had been made, with an offer of £350 in compensation. Responding to questions from the Tribunal, Ms Rush confirmed that the offer still stands.
24. Asked by the Tribunal whether it had been cavalier of the Property Factor to inform the Homeowner that all costs would be covered, Ms Rush said she did think that was how it was put to the Homeowner. Initially, GHA had said they would cover the costs. It was never said that the Property Factor would cover the costs. GHA changed their mind in due course as the situation unfolded.
25. Mr Adams said that there had been a change of opinion in regard to liability, based on new information. It was not a case of false and misleading information being given by the Property Factor. It was an evolving situation. Even the plumbers differed in their opinion as to the cause of the ingress. All communications by the Property Factor were made in good faith.

## Findings in Fact

- 26.
- i. The Homeowner is the owner and occupier of the Property, which is an upper flatted dwelling house.
  - ii. The Property Factor registered as a Property Factor on 24<sup>th</sup> January 2019 under registration number PF000785.
  - iii. Following an incident of water ingress to the flat below the Property in June 2020, investigations by plumbers have not ascertained the source of the water ingress.
  - iv. It has been impossible to determine if the leak is coming from a common pipe or an individual pipe, therefore, liability for any investigations and repair has not been agreed.
  - v. Discussions have taken place between the parties regarding accessing pipework in the bathroom of the Property. The Homeowner has not agreed to this work being carried out.
  - vi. Prior to 8<sup>th</sup> March 2021, the Homeowner complained to the Property Factor regarding contradictory information provided as to the cost of and liability for investigations and repair.
  - vii. The Property Factor upheld the Homeowner's complaint, admitting miscommunication and offering to look at the costs and apply a slight refund, and an acceptable payment plan, by letter dated 8<sup>th</sup> March 2021.
  - viii. By letter dated 8<sup>th</sup> March 2021, the Homeowner reiterated a request to submit the complaint to stage 2 of the Property Factor's complaint process.
  - ix. By letter dated 7<sup>th</sup> April 2021, the Property Factor responded to the Homeowner, stating that the complaint was not upheld at stage 2. An offer was made to reduce the cost of any required works by £350. The Homeowner has not accepted the offer.

## Determination and Reasons for Decision

### Failure to comply with Paragraph 2.1 of the Code

27. The Tribunal found that the Property Factor has not breached this paragraph of the Code by providing information that was misleading or false. The Tribunal noted that the Property Factor has accepted that there was miscommunication with the Homeowner. The Tribunal agreed that there was an unfortunate degree of miscommunication; however, this did not constitute misleading or false information. There was no intention by the Property Factor

to mislead. Neither was there the degree of recklessness in the provision of information that might constitute a breach of this paragraph of the Code.

28. This was and is an evolving situation, involving not only the Property Factor, but also GHA. There was clearly input from different people and organisations at different times, while no one was in full possession of the facts, as the situation unfolded.
29. The Tribunal accepts that the Homeowner has suffered stress as a result of the situation; however, it is not possible to attribute blame for the situation to the Property Factor.

### **Observations**

30. During the hearing, the Ordinary Member observed that parties may be incorrect in referring to clause (vi) of the Deed of Declaration of Conditions, and that clause (xi) may be the appropriate clause, given that the leak is likely to be attributable to foul water and drainage rather than mains water supply.
31. The Tribunal observed that it is in parties' interests that the situation be resolved as soon as possible. It may be appropriate for the Property Factor to take the lead in discussions with insurers, if at all possible, to try and move matters on.

### **Decision**

32. In all the circumstances of the case, the Tribunal determined that there had not been a breach of the Code.

### **Right of Appeal**

- 33. 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.**

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Legal Member and Chairperson

20<sup>th</sup> August 2021