



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, in an application made to the Tribunal under Section 17 of the Act**

**Chamber reference: FTS/HPC/PF/21/1771**

**The Parties:**

**Miss Alison McDonald, 2/3, 95 London Avenue, Glasgow G40 3GZ (“the homeowner”)**

**and**

**Lowther Homes Limited, incorporated in Scotland under the Companies Acts (SC402836) and having their registered office at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the property factors”)**

**Tribunal Members – George Clark (Legal Member/Chairman) and Elizabeth Dickson (Ordinary Member)**

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided that the property factors have failed to comply with their duties in terms of Section 2.5 of the Property Factors Code of Conduct (“the Code of Conduct”) made under Section 14 of the Property Factors (Scotland) Act 2011 (“the Act”). The Tribunal proposes to make a Property Factor Enforcement Order as set out in the accompanying Notice under Section 19(2)(a) of the Act.**

## **Background**

- 1. By application, dated 9 July 2021, the homeowner sought a Property Factor Enforcement Order (“PFEO”) against the property factors. Her complaint was that they had failed to comply with their duties under Section 2.5 of the Code of Conduct.**

2. The homeowner's complaint was that the homeowner and the other residents in her block had been billed for a number of services during lockdown, but the property factors had refused to confirm whether these services had actually been carried out, despite their having previously told the homeowner that the charges would be removed from her bill if they could not be confirmed.
3. The Applicant stated that she submitted a complaint by email to (then) YourPlace as her property factors on 1 October 2020. She did not receive an acknowledgement within five working days, as provided for in their Written Statement of Services ("WSS") and an email she received on 9 November did not acknowledge that a complaint had been made. She replied later that same day, asking for confirmation that her previous email had been logged as an official complaint and asking how it would be dealt with. She had noted in that email that a rebate had been applied to her account for cleaning and maintenance not carried out during lockdown and asked how various items, for which she was still being billed, had been carried out since March 2020. Specifically, she asked about emergency light maintenance, fire safety equipment maintenance, lift maintenance, and PV panel maintenance, none of which appeared to have been carried out during lockdown. She also queried the property factors' management fee during a period when she doubted any management had taken place.
4. On 24 October, having received no response, she sent a reminder, which she forwarded to Lowther Homes on 28 October, as they had taken over YourPlace. She sent a separate email about stair lighting on 7 November and mentioned that she was still awaiting a response to her query about the various charges, including lift maintenance. On 11 November, half an hour before the deadline for acknowledgement of her previous email, she received a telephone call from Mr Michael Gillan, in which he said her complaint would not be dealt with by the deadline. He told her that if the charges she had queried could not be confirmed as relating to work carried out during lockdown, they would be removed from her bill. On 24 November and 8 December, the homeowner sent follow-up emails, asking for an update on the investigation. She did not receive any response.
5. On 28 January 2021, the homeowner emailed the property factors to say that she could not log on to her online account with them. She had requested a password link on several occasions, but had not received it. On 29 January, Vicky Aitken responded, saying that the homeowner had been sent another password to enable her to reset her online account. She also apologised for the lack of response to her Stage 1 complaint, saying that the adviser handling it had moved on. The homeowner mentioned to Ms Aitken her previous phone call from Mr Gillan. Later that day, the homeowner again emailed the property factors to say that she had still not received any password and provided an

alternative email address to which it could be sent. She did not receive a response to that email and on 11 February, she emailed the property factors again, saying she was unable to log on to her account and repeating that she had not received the password they said they had sent.

6. On 19 February 2021, the homeowner received a response from Elaine Angus, who advised “that one of the team were handling your enquiry and were waiting a reply back from a supplier prior to issuing a full response to you”. While Ms Angus acknowledged that the stage one complaint was never answered and apologised for this, she never addressed the original complaint. Ms Angus went on to say that their IT department had confirmed that her account was disabled. It required to be reset and they had sent her the necessary link. On 22 February, the homeowner confirmed that she had not received any reset link and asked again for her alternative mail address to be used. She did not receive a response to that email.
7. On 9 April 2021, the homeowner sent a follow-up email, summarising the issues and dates, asking for an update on the promise made by Mr Gillan and asking why her float had not been credited back by 15 March, following on a change of property factors in December 2020. She received a response to that email on 15 June 2021, in which the property factors said that the logging-on issue had been escalated to a Business Improvement Lead, who would liaise with their Digital Support team. They also stated that her float would be credited back to her service charge account. The homeowner had, however, been unable to confirm that, as she still could not access the account online.
8. The homeowner summarised her complaint under four headings:
  - She had waited more than a month for her complaint to be acknowledged
  - After 9 months, she had not received a response to or resolution of her complaint
  - She had waited more than 8 months for her response to a query as to whether services for which she was billed during lockdown had ever been carried out and
  - She had been locked out of her online account for more than 5 months.
9. The application was accompanied by copies of the emails to which the homeowner referred in her application.
10. The homeowner contended that the property factors had failed to comply with Section 2.5 of the Property Factors Code of Conduct, which states:

*“You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and*

*complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.”*

- 11.** The homeowner also provided the Tribunal with a copy of the property factors' WSS, which states that they will respond to calls and other correspondence within 5 working days and if unable to deal with the enquiry within that time, will inform the homeowner of progress every 5 days, or at a timescale agreed with the homeowner. If the homeowner is unhappy with the Stage 1 response, the property factors will investigate and review the complaint at Stage 2 of their process, with a decision after no more than 20 working days unless there is clearly a good reason for needing more time.
- 12.** The homeowner wished the charges for services not carried out to be removed, help in accessing her online account, an apology and financial compensation for the sheer amount of time she had wasted.
- 13.** On 3 September 2021, the Tribunal advised the Parties of the date and time of a Hearing, hard copies of the case papers were issued to the property factor and the Parties were invited to make any further written representations by 24 September 2021.
- 14.** On 15 October 2021 Ms Aitken emailed the tribunal and requested “full details of the hearing etc for 95 London Avenue? We don't have any details that will allow me to prepare a submission?”
- 15.** On 19 October 2021 the case papers were emailed to Ms Aitken
- 16.** The property factor did not make any written representations.
- 17.** At a Case Management Discussion held on 7 December 2021, the Tribunal decided to continue the case to a full evidential Hearing, because, as there had been no response at all from the property factors, the Tribunal was concerned that the application might not have been successfully intimated to the property factors. The Tribunal Members were at that time unaware of the emails of 15 and 19 October 2021 referred to in Paragraphs 14 and 15 above. The Tribunal directed that the papers be served again on the property factors, who would be required to lodge any written representations at least 14 days prior to the Hearing. The papers were served again on the property factors, by email and by post. The property factors did not lodge any written representations.

## Hearing

18. A Hearing was held by means of a telephone conference call on the morning of 1 February 2022. The homeowner was present. The property factors were neither present nor represented.
19. The Tribunal Chair advised the homeowner that she could assume that the Tribunal Members had read and were fully conversant with her written representations and that it would not, therefore, be necessary to lead the Tribunal through that evidence in detail again.
20. The homeowner advised the tribunal that nothing had changed. She had still heard nothing from the property factors, apart from their pressing for payment of a “final bill” in the sum of £292.79. She still did not have access to her online account, so was unable to determine whether any items had been removed from the account. She just wanted the matter to be finished.
21. The Applicant then left the Hearing, and the Tribunal Members considered all the evidence, written and oral, that had been presented to them.

## Findings in Fact

- (i) The homeowner is the proprietor of the property 2/3, 95 London Avenue, Glasgow, which is part of a tenement block.
- (ii) The property factors, in the course of their business, formerly managed the common parts of the tenement. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- (iii) The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- (iv) The date of Registration of the property factors was 24 January 2019.
- (v) The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- (vi) The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 9 July 2021, under Section 17(1) of the Act.
- (vii) The concerns set out in the application have not been addressed to the homeowner’s satisfaction.

- (viii) On 27 August 2021, the Housing and Property Chamber intimated to the Parties a decision by the President of the Chamber to refer the application to a Tribunal for determination.
- (ix) The Tribunal is satisfied that the application and other case papers were properly served on the property factors.

## **Reasons for Decision**

- 22.** The Tribunal considered the homeowner's complaint under Section 2.5 of the Code of Conduct. The Tribunal noted that, in her email of 1 October 2020, the homeowner had stated in unambiguous terms, "Please treat this as an official complaint". The complaint was that certain items had been billed to the homeowner that related to maintenance works during the period of lockdown. The homeowner was questioning whether these works had in fact been carried out. Apart from a comment in a telephone call from Mr Gillan more than a month later that if the charges she had queried could not be confirmed as having been carried out during lockdown, they would be removed from her bill, the property factors have never responded to the homeowner's complaint. Thus, 16 months after making the complaint, the homeowner has still not received a substantive response. The position has been made even worse as she has, for more than a year, also been unable to check any detail on the accounts presented by the property factors, because of their failure, despite repeated requests, to resolve the issue of her being locked out of her online account. The property factors have completely failed to deal with the homeowner's complaint or to engage with her in any meaningful way to try and resolve it. They have also failed to appear or be represented at the Case Management Discussion and the Hearing or to provide any written representations to explain their failures. The Tribunal decided that the property factors have failed to comply with Section 2.5 of the Code of Conduct.
- 23.** The Tribunal then considered whether the homeowner had suffered any actual loss. In the absence of any response from the property factors regarding the issue of whether any items had been billed for work which, during lockdown had not been carried out, the Tribunal was unable to determine the question of pecuniary loss, but decided that, as the property factors have failed to establish that the amount shown on a Statement received by the homeowner on 28 January 2022 is actually due, the Final Invoice in the sum of £292.79 should be cancelled.
- 24.** The Tribunal was not in a position to help the homeowner gain access to her online account.

**25.** The Tribunal decided that the property factors should provide a letter of apology to the homeowner in respect of their failure to deal with her complaint in accordance with the Code of Conduct and the WSS.

**26.** The Tribunal also considered whether an award of compensation should be made against the property factors. The complete failure of the property factors to engage with the homeowner in relation to her complaint and to do anything to resolve it had resulted in the homeowner being put to very considerable inconvenience and stress over the last 16 months and the Tribunal decided that the property factors should pay the homeowner a compensation figure of £500.

**27.** The Tribunal's decision was unanimous.

### **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.**

Legal Member/Chairman:

1 February 2022

George Clark