



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/19/3596

Re: Property at 131 Polmuir Road, Aberdeen, AB11 7SJ ("the Property")

The Parties:

Mrs Elizabeth Doyle, 37 Polmuir Gardens, Aberdeen, AB11 7WE ("the Homeowner")

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ("the Property Factor")

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £250.00 in respect of the Property Factor's failure to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* and its failure to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] 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 Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 20th November 2019 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code as required by section 14(5) of the 2011 Act.

[7] On 31st January 2020 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 14th February 2020 both parties were notified that a hearing by conference call would take place at 10.00 am on 1st April 2020.

[8] Thereafter, the Tribunal held a number of hearings in which the issues between the parties were focused, and the Tribunal issued a number of directions both with regard to this application and in relation to a number of other applications brought by other homeowners at the Polmuir Road development.

[9] A Hearing was ultimately held on 8th December 2021 by conference call. The Homeowner participated, and was represented by Mr James Thomson. The Property Factor's David Reid and Suzanne Cameron participated, and were not represented.

[10] The Tribunal at the Hearing went through the Homeowner's various grounds listed in her application of the Property Factor's alleged failures, with an explanation from Mr Thomson of in what particular respects she alleged the Property Factor had failed. In response, having considered the Homeowner's detailed explanation, the Property Factor accepted all of the breaches of the Code which the Homeowner alleged, and that it had also failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act in a number of respects.

[11] The Property Factor explained that it required to investigate historic complaints made against it which involved a member of staff who had left its employment. It had concluded that this member of staff had failed to follow its own procedures in a number of material respects, which was why the Property Factor now accepted the various failures complained of by the Homeowner. The Property Factor had already accepted

a number of the complaints made by the Homeowner in advance of the Hearing, provided much of the information in response to this application, and had already tendered its apologies for its failures. The Property Factor no longer acted as Property Factor for the Homeowner. The Homeowner accepted that the former member of staff was responsible initially for many of the Property Factor's failures, but it was her position that the Property Factor has continued to fail to carry out its property factor duties and to breach the Code after the departure of that member of staff.

Statement of Reasons

[12] Section 17 of the 2011 Act provides:

“17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, “*property factor's duties*” means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.”

[13] Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor's duties and failure to ensure compliance with the Code. The Homeowner proceeded in respect of both.

[14] The Tribunal was satisfied from the uncontested evidence from the Homeowner, which was accepted by the Property Factor, that the Property Factor:

(a) failed to respond to verbal and written complaints and requests within prompt timescales. This was a breach of section 2.5 of the Code;

(b) failed to make available to the Homeowner all financial information that related to his account within three months of termination of their appointment. This was a breach of section 3.1 of the Code;

(c) failed to return any funds due to the Homeowner (less any outstanding debts) automatically at the point of settlement of final bill following change of Property Factor. This was a breach of section 3.2 of the Code;

(d) failed to provide a detailed breakdown of charges made and a description of the activities and works carried out which were charged for, and a final invoice showing a breakdown of charges. This was a breach of section 3.3 of the Code;

(e) failed to have procedures for dealing with payments made in advance by the Homeowner where the Homeowner needed to transfer his share of the funds. This was a breach of section 3.4 of the Code;

(f) failed to keep the Homeowner informed of any debt recovery problems of other homeowners which could have had implications for the Homeowner. This was a breach of section 4.6 of the Code;

(g) failed to be able to demonstrate that it had taken reasonable steps to recover unpaid charges from any other homeowner who had not paid their share of the costs prior to charging the remaining homeowners where they were jointly liable for those costs. This was a breach of section 4.7 of the Code;

(h) failed to comply with section 5.9 of its written statement of services with regard to income recovery;

(i) failed to comply with section 6.0 of its written statement of services with regard to communications;

(j) failed to comply with section 11.0 of its written statement of services with regard to termination of agreement.

[15] The Tribunal considered that the sum of £250.00 was appropriate compensation having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings. In doing so, the Tribunal took account of the fact that the Property Factor had waived its right to recover some expenses from the Homeowner in recognition of its failures

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.

29 December 2021

Legal Member

Date



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

Proposed Property Factor Enforcement Order: Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/19/3596

Re: Property at 131 Polmuir Road, Aberdeen, AB11 7SJ (“the Property”)

The Parties:

Mrs Elizabeth Doyle, 37 Polmuir Gardens, Aberdeen, AB11 7WE (“the Homeowner”)

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ (“the Property Factor”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] This document should be read in conjunction with the Tribunal’s Decision under Section 19(1)(a) of the Act of the same date.

[2] The Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”).

[3] Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £250.00 in respect of the Property Factor’s failure to carry out its property factor duties and its failure to comply with Section 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings.

[4] The intimation of the Tribunal’s decision and this notice of proposal to make a PFEO should be taken as notice for the purposes of section 19(2)(a) of the Act and parties are hereby given notice that they should ensure that any written representations which

they wish to make under section 19(2)(b) of the Act reach the Tribunal by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

[5] Failure to comply with a PFEO may have serious consequences and may constitute an offence.

29 December 2021

Legal Member

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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/19/3599

Re: Property at 109 Polmuir Road, Aberdeen, AB11 7SJ ("the Property")

The Parties:

Mr James Thomson, 4 Carolines Crescent, Ellon, AB41 8BN ("the Homeowner")

**James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ("the
Property Factor")**

Tribunal Members:

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DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £250.00 in respect of the Property Factor's failure to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* and its failure to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

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[9] A Hearing was ultimately held on 8th December 2021 by conference call. The Homeowner participated, and was not represented. The Property Factor's David Reid and Suzanne Cameron participated, and were not represented.

[10] The Tribunal at the Hearing went through the Homeowner's various grounds listed in his application of the Property Factor's alleged failures, with an explanation from him of in what particular respects he alleged the Property Factor had failed. In response, having considered the Homeowner's detailed explanation, the Property Factor accepted all of the breaches of the Code which the Homeowner alleged, and that it had also failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act in a number of respects.

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[13] Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor's duties and failure to ensure compliance with the Code. The Homeowner proceeded in respect of both.

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- (a) failed to respond to verbal and written complaints and requests within prompt timescales. This was a breach of section 2.5 of the Code;
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- (g) failed to be able to demonstrate that it had taken reasonable steps to recover unpaid charges from any other homeowner who had not paid their share of the costs prior to charging the remaining homeowners where they were jointly liable for those costs. This was a breach of section 4.7 of the Code;
- (h) failed to comply with section 5.9 of its written statement of services with regard to income recovery;
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[15] The Tribunal considered that the sum of £250.00 was appropriate compensation having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings. In doing so, the Tribunal took account of the fact that the Property Factor had waived its right to recover some expenses from the Homeowner in recognition of its failures

Right of Appeal

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Chamber Ref: FTS/HPC/PF/19/3599

Re: Property at 109 Polmuir Road, Aberdeen, AB11 7SJ (“the Property”)

The Parties:

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Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] This document should be read in conjunction with the Tribunal’s Decision under Section 19(1)(a) of the Act of the same date.

[2] The Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”).

[3] Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £250.00 in respect of the Property Factor’s failure to carry out its property factor duties and its failure to comply with Section 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings.

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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/19/3609

Re: Property at 103 Polmuir Road, Aberdeen, AB11 7SJ ("the Property")

The Parties:

Miss Claire Forsyth, 103 Polmuir Road, Aberdeen, AB11 7SJ ("the Homeowner")

**James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ("the
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Tribunal Members:

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DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

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Introduction

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**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/19/3620

Re: Property at 115 Polmuir Road, Aberdeen, AB11 7SJ ("the Property")

The Parties:

Mr Garry Cruickshank, 115 Polmuir Road, Aberdeen, AB11 7SJ ("the Homeowner")

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ("the Property Factor")

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £250.00 in respect of the Property Factor's failure to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* and its failure to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] 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 Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 20th November 2019 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code as required by section 14(5) of the 2011 Act.

[7] On 31st January 2020 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 14th February 2020 both parties were notified that a hearing by conference call would take place at 10.00 am on 1st April 2020.

[8] Thereafter, the Tribunal held a number of hearings in which the issues between the parties were focused, and the Tribunal issued a number of directions both with regard to this application and in relation to a number of other applications brought by other homeowners at the Polmuir Road development.

[9] A Hearing was ultimately held on 8th December 2021 by conference call. The Homeowner did not participate, and was represented by Mr James Thomson. The Property Factor's David Reid and Suzanne Cameron participated, and were not represented.

[10] The Tribunal at the Hearing went through the Homeowner's various grounds listed in his application of the Property Factor's alleged failures, with an explanation from Mr Thomson of in what particular respects he alleged the Property Factor had failed. In response, having considered the Homeowner's detailed explanation, the Property Factor accepted all of the breaches of the Code which the Homeowner alleged, and that it had also failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act in a number of respects.

[11] The Property Factor explained that it required to investigate historic complaints made against it which involved a member of staff who had left its employment. It had concluded that this member of staff had failed to follow its own procedures in a number of material respects, which was why the Property Factor now accepted the various

failures complained of by the Homeowner. The Property Factor had already accepted a number of the complaints made by the Homeowner in advance of the Hearing, provided much of the information in response to this application, and had already tendered its apologies for its failures. The Property Factor no longer acted as Property Factor for the Homeowner. The Homeowner accepted that the former member of staff was responsible initially for many of the Property Factor's failures, but it was his position that the Property Factor has continued to fail to carry out its property factor duties and to breach the Code after the departure of that member of staff.

Statement of Reasons

[12] Section 17 of the 2011 Act provides:

“17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, “*property factor's duties*” means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.”

[13] Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor's duties and failure to ensure compliance with the Code. The Homeowner proceeded in respect of both.

[14] The Tribunal was satisfied from the uncontested evidence from the Homeowner, which was accepted by the Property Factor, that the Property Factor:

- (a) failed to respond to verbal and written complaints and requests within prompt timescales. This was a breach of section 2.5 of the Code;
- (b) failed to make available to the Homeowner all financial information that related to his account within three months of termination of their appointment. This was a breach of section 3.1 of the Code;
- (c) failed to return any funds due to the Homeowner (less any outstanding debts) automatically at the point of settlement of final bill following change of Property Factor. This was a breach of section 3.2 of the Code;
- (d) failed to provide a detailed breakdown of charges made and a description of the activities and works carried out which were charged for, and a final invoice showing a breakdown of charges. This was a breach of section 3.3 of the Code;
- (e) failed to have procedures for dealing with payments made in advance by the Homeowner where the Homeowner needed to transfer his share of the funds. This was a breach of section 3.4 of the Code;
- (f) failed to keep the Homeowner informed of any debt recovery problems of other homeowners which could have had implications for the Homeowner. This was a breach of section 4.6 of the Code;
- (g) failed to be able to demonstrate that it had taken reasonable steps to recover unpaid charges from any other homeowner who had not paid their share of the costs prior to charging the remaining homeowners where they were jointly liable for those costs. This was a breach of section 4.7 of the Code;
- (h) failed to comply with section 5.9 of its written statement of services with regard to income recovery;
- (i) failed to comply with section 6.0 of its written statement of services with regard to communications;
- (j) failed to comply with section 11.0 of its written statement of services with regard to termination of agreement.

[15] The Tribunal considered that the sum of £250.00 was appropriate compensation having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings. In doing so, the Tribunal took account of the fact that the Property Factor had waived its right to recover some expenses from the Homeowner in recognition of its failures

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.

29 December 2021

Legal Member

Date



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

Proposed Property Factor Enforcement Order: Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/19/3620

Re: Property at 115 Polmuir Road, Aberdeen, AB11 7SJ (“the Property”)

The Parties:

Mr Garry Cruickshank, 115 Polmuir Road, Aberdeen, AB11 7SJ (“the Homeowner”)

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ (“the Property Factor”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] This document should be read in conjunction with the Tribunal’s Decision under Section 19(1)(a) of the Act of the same date.

[2] The Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”).

[3] Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £250.00 in respect of the Property Factor’s failure to carry out its property factor duties and its failure to comply with Section 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings.

[4] The intimation of the Tribunal’s decision and this notice of proposal to make a PFEO should be taken as notice for the purposes of section 19(2)(a) of the Act and parties are hereby given notice that they should ensure that any written representations which

they wish to make under section 19(2)(b) of the Act reach the Tribunal by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

[5] Failure to comply with a PFEO may have serious consequences and may constitute an offence.

29 December 2021

Legal Member

Date



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/19/3713

Re: Property at 129 Polmuir Road, Aberdeen, AB11 7SJ ("the Property")

The Parties:

**Mr James Brown, Mrs Margaret Brown, 129 Polmuir Road, Aberdeen, AB11 7SJ
("the Homeowner")**

**James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ("the
Property Factor")**

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £250.00 in respect of the Property Factor's failure to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* and its failure to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] 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 Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 20th November 2019 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code as required by section 14(5) of the 2011 Act.

[7] On 31st January 2020 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 14th February 2020 both parties were notified that a hearing by conference call would take place at 10.00 am on 1st April 2020.

[8] Thereafter, the Tribunal held a number of hearings in which the issues between the parties were focused, and the Tribunal issued a number of directions both with regard to this application and in relation to a number of other applications brought by other homeowners at the Polmuir Road development.

[9] A Hearing was ultimately held on 8th December 2021 by conference call. The Homeowner participated, and was represented by Mr James Thomson. The Property Factor's David Reid and Suzanne Cameron participated, and were not represented.

[10] The Tribunal at the Hearing went through the Homeowner's various grounds listed in their application of the Property Factor's alleged failures, with an explanation from Mr Thomson of in what particular respects they alleged the Property Factor had failed. In response, having considered the Homeowner's detailed explanation, the Property Factor accepted all of the breaches of the Code which the Homeowner alleged, and that it had also failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act in a number of respects.

[11] The Property Factor explained that it required to investigate historic complaints made against it which involved a member of staff who had left its employment. It had concluded that this member of staff had failed to follow its own procedures in a number of material respects, which was why the Property Factor now accepted the various failures complained of by the Homeowner. The Property Factor had already accepted

a number of the complaints made by the Homeowner in advance of the Hearing, provided much of the information in response to this application, and had already tendered its apologies for its failures. The Property Factor no longer acted as Property Factor for the Homeowner. The Homeowner accepted that the former member of staff was responsible initially for many of the Property Factor's failures, but it was their position that the Property Factor has continued to fail to carry out its property factor duties and to breach the Code after the departure of that member of staff.

Statement of Reasons

[12] Section 17 of the 2011 Act provides:

“17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, “*property factor's duties*” means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.”

[13] Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor's duties and failure to ensure compliance with the Code. The Homeowner proceeded in respect of both.

[14] The Tribunal was satisfied from the uncontested evidence from the Homeowner, which was accepted by the Property Factor, that the Property Factor:

(a) failed to respond to verbal and written complaints and requests within prompt timescales. This was a breach of section 2.5 of the Code;

(b) failed to make available to the Homeowner all financial information that related to his account within three months of termination of their appointment. This was a breach of section 3.1 of the Code;

(c) failed to return any funds due to the Homeowner (less any outstanding debts) automatically at the point of settlement of final bill following change of Property Factor. This was a breach of section 3.2 of the Code;

(d) failed to provide a detailed breakdown of charges made and a description of the activities and works carried out which were charged for, and a final invoice showing a breakdown of charges. This was a breach of section 3.3 of the Code;

(e) failed to have procedures for dealing with payments made in advance by the Homeowner where the Homeowner needed to transfer his share of the funds. This was a breach of section 3.4 of the Code;

(f) failed to keep the Homeowner informed of any debt recovery problems of other homeowners which could have had implications for the Homeowner. This was a breach of section 4.6 of the Code;

(g) failed to be able to demonstrate that it had taken reasonable steps to recover unpaid charges from any other homeowner who had not paid their share of the costs prior to charging the remaining homeowners where they were jointly liable for those costs. This was a breach of section 4.7 of the Code;

(h) failed to comply with section 5.9 of its written statement of services with regard to income recovery;

(i) failed to comply with section 6.0 of its written statement of services with regard to communications;

(j) failed to comply with section 11.0 of its written statement of services with regard to termination of agreement.

[15] The Tribunal considered that the sum of £250.00 was appropriate compensation having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings. In doing so, the Tribunal took account of the fact that the Property Factor had waived its right to recover some expenses from the Homeowner in recognition of its failures

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.

29 December 2021

Legal Member

Date



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

Proposed Property Factor Enforcement Order: Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/19/3713

Re: Property at 129 Polmuir Road, Aberdeen, AB11 7SJ (“the Property”)

The Parties:

Mr James Brown, Mrs Margaret Brown, 129 Polmuir Road, Aberdeen, AB11 7SJ (“the Homeowner”)

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ (“the Property Factor”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] This document should be read in conjunction with the Tribunal’s Decision under Section 19(1)(a) of the Act of the same date.

[2] The Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”).

[3] Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £250.00 in respect of the Property Factor’s failure to carry out its property factor duties and its failure to comply with Section 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings.

[4] The intimation of the Tribunal’s decision and this notice of proposal to make a PFEO should be taken as notice for the purposes of section 19(2)(a) of the Act and parties are hereby given notice that they should ensure that any written representations which

they wish to make under section 19(2)(b) of the Act reach the Tribunal by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

[5] Failure to comply with a PFEO may have serious consequences and may constitute an offence.

29 December 2021

Legal Member

Date



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/19/3739

Re: Property at 105 Polmuir Road, Aberdeen, AB11 7SJ ("the Property")

The Parties:

Dr Fiona-Jane Brown, 105 Polmuir Road, Aberdeen, AB11 7SJ ("the Homeowner")

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ("the Property Factor")

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £250.00 in respect of the Property Factor's failure to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* and its failure to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] 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 Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 20th November 2019 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act, and had failed to comply with sections 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code as required by section 14(5) of the 2011 Act.

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(3) No such application may be made unless—

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(b) failed to make available to the Homeowner all financial information that related to his account within three months of termination of their appointment. This was a breach of section 3.1 of the Code;

(c) failed to return any funds due to the Homeowner (less any outstanding debts) automatically at the point of settlement of final bill following change of Property Factor. This was a breach of section 3.2 of the Code;

(d) failed to provide a detailed breakdown of charges made and a description of the activities and works carried out which were charged for, and a final invoice showing a breakdown of charges. This was a breach of section 3.3 of the Code;

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(g) failed to be able to demonstrate that it had taken reasonable steps to recover unpaid charges from any other homeowner who had not paid their share of the costs prior to charging the remaining homeowners where they were jointly liable for those costs. This was a breach of section 4.7 of the Code;

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[15] The Tribunal considered that the sum of £250.00 was appropriate compensation having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings. In doing so, the Tribunal took account of the fact that the Property Factor had waived its right to recover some expenses from the Homeowner in recognition of its failures

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.

29 December 2021

Legal Member

Date

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Proposed Property Factor Enforcement Order: Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/19/3739

Re: Property at 105 Polmuir Road, Aberdeen, AB11 7SJ (“the Property”)

The Parties:

Dr Fiona-Jane Brown, 105 Polmuir Road, Aberdeen, AB11 7SJ (“the Homeowner”)

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ (“the Property Factor”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] This document should be read in conjunction with the Tribunal’s Decision under Section 19(1)(a) of the Act of the same date.

[2] The Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”).

[3] Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £250.00 in respect of the Property Factor’s failure to carry out its property factor duties and its failure to comply with Section 2.5, 3.1, 3.2, 3.3, 3.4, 4.6 and 4.7 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings.

[4] The intimation of the Tribunal’s decision and this notice of proposal to make a PFEO should be taken as notice for the purposes of section 19(2)(a) of the Act and parties are hereby given notice that they should ensure that any written representations which

they wish to make under section 19(2)(b) of the Act reach the Tribunal by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

[5] Failure to comply with a PFEO may have serious consequences and may constitute an offence.

29 December 2021

Legal Member

Date