

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier tribunal for Scotland (Housing and Property Chamber)**  
**("the tribunal")**

**DECISION: Property Factors (Scotland) Act 2011 ("the 2011 Act"), Section 19(3)**

**Chamber Ref: FTS/HPC/PF/19/3983**

**44 Pendeen Crescent, Glasgow, G33 4TL**  
**("The Property")**

**The Parties:-**

**Mrs Lorraine Todd, 44 Pendeen Crescent, Glasgow, G33 4TL**  
**("the Applicant")**

**Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS**  
**("the Respondent")**

**Tribunal Members:**

**Ms Susanne L M Tanner QC (Legal Member)**

**Mr Kingsley Bruce (Ordinary Member)**

### **DECISION**

- 1. The tribunal dismissed the Application in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, because the Applicant failed to cooperate with the First-tier Tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.**
- 2. The decision of the tribunal is unanimous.**

### **STATEMENT OF REASONS**

- 1. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code of Conduct"; the First-tier Tribunal for Scotland Housing and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as "the 2017 Rules".**

2. On 16 December 2019, the Applicant made an application to the tribunal (“the Application”), alleging breach of the Code of Conduct Sections 2.5, 6.1, 7.1 and 7.2; and alleged breaches of property factors’ duties.
3. The Applicant attached the following document(s):
  - a. Letter to the Respondent dated 28 October 2019.
4. On 31 December 2019, the Application was considered by a Legal Member acting under the delegated powers of the Chamber President. The Applicant was required to provide further information, namely proof of notification to the Respondent of the alleged breaches of the Code of Conduct and property factors’ duties.
5. On 31 December 2019 and 8 January 2020 the Applicant replied and in the latter correspondence she provided copies of two letters of notification dated 8 January 2020, which were said to have been sent to the Respondent that day.
6. On 18 February 2020, the Application, which comprised documents received between 16 December 2019 and 30 January 2020, was considered by a Legal Member acting under the delegated powers of the Chamber President and was accepted for determination.
7. On 26 February 2020, both parties were notified that the application had been referred to a tribunal for determination. Both parties were asked to return a form to the tribunal indicating whether they wished to attend a hearing; or whether they wished the tribunal to consider whether the case could be decided without a hearing on the basis of written representations and evidence. The parties were provided with a copy of practice Direction number 3 and told that if they wished to lodge any documents it must be done in accordance with that Direction. The parties were notified that written representations must be returned to the tribunal by March 2020. The parties were notified that a hearing would take place on 16 April 2020 at 1000h in Glasgow Tribunals Centre. The parties were notified that if they wished a postponement of the hearing, they would have to show good reason why a postponement is necessary and that the tribunal may direct them to produce evidence of any fact or matter relied upon in support of an application for postponement; and that before deciding to postpone the hearing, the tribunal will have to be satisfied that the party has shown good reason why a postponement is necessary, having taken into account any evidence requested and produced. An Information Guide was enclosed telling parties what to expect.
8. On or about 18 March 2020, the hearing on 16 April 2020 was postponed on the initiative of the tribunal due to the Covid-19 pandemic, to a future date to

be fixed and both parties were notified of the postponement and that they would be notified of the new hearing date.

9. On 18 March 2020, the Respondent submitted written representations by letter, in which it was stated, amongst other things, that the matter complained of in relation to the water leak had been dealt with and that the Applicant had been given an apology and a credit of £39.00 in respect of the management fee on her next common charge account. The Respondent attached documents including photographs.
10. Both parties returned forms to the tribunal stating that they would like the tribunal to consider deciding the case without a hearing. The tribunal considered both parties' written representations and in terms of Rule 18 of the 2017 Rules, the tribunal did not consider that parties had provided sufficient information for the case to be decided without a hearing.
11. On 1 July 2020, the tribunal issued Directions to both parties, in the following terms:

**1. The Respondent is required to lodge with the Chamber no later than close of business on 10 July 2020:**

- a. *Any documentary evidence (for example, copies of emails, letters, internal file notes, internal memos etc.) to support the proposition that the Respondent formed the view that the Applicant was dealing with Scottish Water herself in relation to the plumbing matter complained of;*
- b. *Copies of any correspondence sent by the Respondent to the Applicant in response to the copy emails she has lodged with the tribunal in support of her Application.*
- c. *Any other documentary evidence (for example reports, notes of telephone discussions, emails, letters etc.) provided to the Respondent by C Hanlon Limited following their visits to the Property on or about 28 October 2019 and 4 December 2019;*
- d. *A copy of any letter of apology sent by the Respondent to the Applicant, as they stated that they intended to do in their letter of 12 March 2020;*
- e. *Any documentary evidence (such as a credit note, customer statement etc.) showing proof of refund of £39.00 management fee to the Applicant, as they stated that they intended to do in their letter of 12 March 2020;*
- f. *A copy of the Respondent's Written Statement of Services for the*

*common property;*

*g. A copy of the Respondent's homeowners' complaints procedure; and*

*h. A list of the facts in the Application and Applicant's written submissions which are not disputed by the Respondent; together with any additional written submissions the Respondent wishes to make in response to the Application.*

**2. Both parties have confirmed in forms returned to the tribunal that they do not wish to attend at hearing. Following receipt of the further information from the Respondent, as ordered above, the tribunal will then consider whether to make a decision on the Application without a hearing, having regard to such facts as are not disputed by the parties and considering whether it is able to make sufficient findings to determine the case. The tribunal will advise parties of its decision in relation to further procedure and may issue further Directions to parties and/or arrange a Case Management Discussion to be held remotely by telephone or video conference.**

**3. If the Applicant wishes to withdraw the Application at any time before the tribunal reaches a decision on the Application, she should confirm that in writing to the tribunal's administration.**

12. Neither party provided a timeous response to the Directions, despite reminders being sent to them on 13 July and 13 August 2020.

13. The tribunal directed that a new hearing date should be fixed and notified to parties.

14. The hearing was re-scheduled for 8 October 2020 at 1000h to be held by teleconference.

15. On 3 September 2020, "Notification of the Hearing (Conference Call)" was issued to both parties who were advised that at the hearing the tribunal would consider the issue(s) raised under Section 17(1) of the Property Factors (Scotland) Act 2011 for the Property. Dial in details were provided. Parties were advised that they may take part in the hearing or be represented by any other person authorised by them; that if they rely only on written representation they have submitted and do not take part in the hearing, then they will lose the opportunity to respond to any oral representations the other party may make and for that reason, it may be to their advantage to take part; during the hearing they will be given the opportunity of presenting their case and of cross-examining the other party; and that they should have with them any relevant books or papers to which they might wish to refer. Both parties were notified that if they wished to request a postponement of the hearing,

they will have to show a good reason why such postponement is necessary; if practicable; they should notify all other parties of the application for postponement; the tribunal may direct them to produce evidence of any fact or matter relied on in support of their application for postponement; and before deciding to postpone the hearing, the tribunal will have to be satisfied that they have shown a good reason why a postponement is necessary, having taken into account any evidence requested and produced.

16. Neither party made an application for postponement of the hearing.
17. On 24 September 2020, the Respondent emailed the tribunal. He apologised for not responding sooner. He stated that he was under the impression that the matter had been resolved. He stated that he had emailed the Applicant to apologise and he enclosed a copy of the email, in which he also confirmed that he had advised the accounts department to credit the Applicant with a management fee. A copy of the Respondent's email to the tribunal with attachment was sent to the Applicant.
18. On 1 October 2020, the tribunal sent a request to the Applicant to confirm whether the matter had been resolved and whether she wished to withdraw the Application so that the hearing could be cancelled. A response was requested by Friday 2 October at 5pm. The tribunal also advised the Respondent that the position was being checked with the Applicant and that the hearing would remain fixed meantime.
19. On 1 October 2020, the Applicant replied, confirming that she recently received a response from the Respondent and she attached a copy of this for information. She stated that this was in no way a response or resolution to her original complaint but was instead a reply to issues she raised in April this year. She also attached details of that issue, stating that it took her a number of attempts to obtain this reply. She stated that had she not already made a complaint, it was very likely that she would have made one based on the length of time it took to have this recent matter resolved. She stated that *"as the original complaint had not been dealt with then, yes, I would like the hearing to proceed."*
20. On 7 October 2020, a notification was sent to both parties by email, attaching an order issued by the tribunal President confirming the hearing would take place on 8 October 2020 at 1000h and a copy of the Order was attached.
21. On 7 October 2020, the Respondent replied to the notification issued earlier that day. He stated that he was sorry to hear that the Tribunal would still take place and that the Applicant was not happy with the response that they had supplied to her. He stated that obviously he would go along with any decision

the Tribunal made. He further stated that unfortunately, after his previous email he took some time off work and during this time a family member in his household was infected with the Covid-19 and as a result the family have had to self-isolate for 14 days and are currently still doing this. He stated that he could not gain access to his office to see if there was any further information he could supply to the committee.

22. Neither party submitted a postponement request in respect of the hearing.

### **Hearing (teleconference): 8 October 2020, 1000h**

23. Neither party attended the hearing.

24. As a courtesy, the tribunal clerk contacted both parties by telephone to confirm whether they were intending to join the teleconference hearing which had been notified to them.

25. The tribunal clerk spoke to the Applicant. The Applicant stated that she was aware that the hearing was taking place but stated that she did not intend to attend the hearing and would not be dialling into the teleconference. She stated to the tribunal clerk that as she was working from home she had to go and she ended the call.

26. The tribunal clerk spoke to the Respondent's office. The person to whom she spoke advised that Mr Watt was self-isolating at home and that she was unaware if he attended to dial in to the teleconference from home.

27. The teleconference line was kept open until 1030h and neither party joined the teleconference. The hearing ended.

28. Thereafter the tribunal members deliberated.

### **Application of relevant Rules**

29. Rule 18 of the 2017 Rules provides the tribunal with power to determine the proceedings without a hearing but only if having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case and to do so will not be contrary to the interests of parties.

30. The tribunal considered the written representations submitted by parties and considered that it remained unable to make sufficient findings to determine the case without a hearing.

31. Rule 27(b) of the 2017 Rules provides that the tribunal may dismiss the whole or part of the proceedings if the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.
32. In her actings and failures, the Applicant demonstrated a want of insistence in relation to her Application. It is for the Applicant to prove on the balance of probabilities that the alleged breaches of the Code of Conduct and breaches of Property Factors' duties have occurred. The Applicant did not lodge any documents in support of her Application in accordance with Practice Note 3 and the 2017 Rules. The Applicant received notification of a hearing in respect of the Application. On 1 October 2020, the Applicant responded to the Respondent's suggestion that the matter had been resolved by stating that it had not been so resolved and stating that she wished the hearing to proceed. Thereafter, a further notification reminder of the hearing was sent to her on 7 October 2020. Having received said notifications, the Applicant failed to appear at the hearing at 1000h. The Applicant then received the courtesy of a call from the tribunal clerk, after she failed to appear and during that call the Applicant refused to participate in the hearing. The teleconference line was kept open until 1030h and the Applicant did not dial into the hearing.
33. In all of the circumstances the tribunal considered that the Applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly and therefore dismisses the Application in terms of Rule 27 of the 2017 Rules.

## Appeals

- 34. 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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Ms Susanne L M Tanner QC  
Legal Member and Chair

8 October 2020

