

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/20/1595

**Flat 7, 137 Stockwell Street, Glasgow G1 4 LR
("the Property")**

The Parties:-

**Mr Stuart Hannah, Flat 5, 31 Great Sutton Street, London EC1V 0NA
("the Homeowner")**

**James Gibb Residential Factors, Bellahouston Business Centre, 423 Paisley
Road West, Glasgow G51 1PZ
("the Factor")**

**Tribunal Members:
Graham Harding (Legal Member)
Carol Jones (Ordinary Member)**

DECISION

The Factor has failed to carry out its property Factor's duties.

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with Sections 5.5 and 6.1 of the Code.

The decision is unanimous.

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 Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Factor became a Registered Property Factor on 23 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By application dated 20 July 2020 the Homeowner complained to the Tribunal that the Factor was in breach of Sections 5.5, 6.1 and 6.3 of the Code and had failed to carry out its property Factor's duties.
2. By Notice of Acceptance dated 2 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned.
3. By email dated 1 October 2020 the Homeowner submitted further written representations and productions to the Tribunal.
4. By email dated 16 October 2020 the Factor submitted its written response to the application together with appendices.
5. A hearing scheduled for 26 October 2020 was postponed at the request of the Factor and a further hearing assigned.

Hearing

6. A hearing was held by teleconference on 17 December 2020. The Homeowner attended personally. The Factor was represented by its Managing Director Nic Mayall and also Lorraine Steed and Lauren Gallagher.

Summary of submissions

Section 5.5 of the Code

7. The Homeowner referred the Tribunal to his written submissions. He explained that in October 2018 there had been water ingress to the property that had resulted in an insurance claim being made in November 2018. The Factor had been involved in instructing contractors to trace the source of the water ingress and to affect a repair. The Homeowner said there had been a delay of about a year before the insurers would allow the works to go ahead as the Factor had not provided the loss adjusters with evidence that the repair had taken place. The Homeowner said that he had on 7 March 2019 requested from the Factor a copy of the repair invoice but that the only invoice he received was in respect of trace work for the window well at Flat 10 and dated 8 January 2019 (Homeowners productions page 84). The Homeowner confirmed he received the invoice from the Factor on 11 March 2019. The Homeowner explained that there had been an issue with the window well at Flat 10 and that water had been running back into the window well. There had been a temporary repair but a full repair was required. Flat 10 was located immediately above Flat 7. The Homeowner went on to say there had been an AGM of the owner's association at which some discussion had taken place but he had not received any notification from the Factor to confirm if any repair had been effected or any quotes for required repairs. He submitted that the Factor had failed to provide any communication with regards to the

progress of the works. The Homeowner submitted that the Factor was the policy holder for the insurance and that the Factor organised the claim but had not kept him informed as to its progress. The Homeowner confirmed he had intimated the claim to the insurers, Allianz.

8. For the Factor Mr Mayall referred the Tribunal to the Factor's written submissions and to Appendix 6, the James Gibb Insurance Claims Guide. Mr Mayall said it was up to the Homeowner to pursue any claim for damage to his property and not the Factor. In response to a query from the Tribunal Mr Mayall confirmed that where a claim was in respect of communal property that would be pursued by the Factor separately from any internal damage. The Homeowner indicated that he was not certain if the damage to the window well at Flat 10 was communal or not. Mr Mayall pointed out that the insurance company would not cover the cost of repair of any broken pipe only damage caused as a result.
9. The Homeowner went on to explain that following an EGM on 24 April 2019 the Factor had arranged for AGM Roofing to have access to his flat on 7 May 2019. He said that there had been various telephone conversations and that then CCTV inspection of the pipes had been organised but the Factor had not provided any details. He said there was then no follow up to confirm if any repair had taken place. The Homeowner went on to say that if any work was done it must have been in around September or October 2019 as no work had been undertaken at the time of a second EGM in August 2019. He said there had been no update from the Factor between April and August 2019. The Homeowner confirmed he had not emailed the Factor during that period. He said he had placed various calls to the Factor looking for updates including one where he had telephoned the Factor after the EGM and had been told that further CCTV work was required and would be carried out in September 2019. He said he received an email from the Factor on 31 October 2019 confirming the results of the survey of the downpipe and that the Factor was liaising with I&D Cant and the loss adjustors for the best course of action going forward (Homeowner's productions page 38). The Homeowner said he acknowledged the Factor's email on 31 October and sent a follow up email on 11 November (Homeowner's productions page 38) but did not receive a reply. The Homeowner went on to say he received confirmation from the insurers in December 2019 that the repairs to his flat could proceed and that the Factor organised two quotes and the work went ahead in January and February 2020. The Homeowner said the claim was still ongoing and that he had requested cover for tracing and accessing and identifying the source of the leak as he had been charged for this work.
10. The Homeowner referred the Tribunal to the email chain between himself and the Factor from 26 February to 11 April 2020 (Homeowners Productions page 51, page 57 and 65-68). It was his position that he had never received an update from the Factor with regards to the insurers meeting the cost of tracing the leak or any response to his requests for copies of invoices but the Factor had included a response in their written submissions. He said he had not been kept informed of the state of repair of the communal parts.

11. For the Factor Mr Mayall submitted that the Factor provided the Homeowner with the means to make a claim and the Homeowner had done this. There had been a lot of communication between the Homeowner and the insurers and the loss adjustors (Appendix 9). A lot of work had been carried out and the cost would be met by the insurers. Mr Mayall explained that it was quite normal for the Factor to charge the owners in the first instance for the tracing work done and then seek to claim it from the insurers. It was then for the insurers to decide whether to pay or not and if they did the funds were then credited back to the owners as was the case here.
12. Ms Gallagher submitted that she had spoken to the Homeowner on numerous occasions. Following the 2019 AGM the downpipes had been flushed out and there was no apparent leak and that information had been passed on to the Homeowner in a telephone call but as the flushing out had not been conclusive that was why further CCTV investigation had been instructed. Ms Gallagher went on to say that it had been hoped that some of the communal work would be grant funded and it had been necessary to let owners know and also to speak to the insurers and that had taken until about July or August 2019. She thought in the circumstances a delay of six months was reasonable although it could have been quicker. She said she had to deal with contractors, write a report and there was a lot of administration involved. Ms Gallagher said that she had relayed the information to the Homeowner and there was not much else she could do and as Mr Mayall had explained it was ultimately passed to the loss adjustors to determine what should happen. Ms Gallagher accepted she had not responded to the Homeowner's email of 11 November 2019.

Section 6.1 of the Code

13. The Homeowner again referred the Tribunal to his written submissions and went on to say that following the issue with the window well at Flat 10 being identified in December 2018 he had not at any point been provided with a timescale for the repair to take place. The Homeowner referred the Tribunal to a letter from the Factor dated 30 April 2019 (Homeowner's productions page 90) and said that there had been no follow up communication thereafter.
14. For the Factor Mr Mayall referred the Tribunal to the Factor's written representations and confirmed that the repair to the window well at Flat 10 was a communal repair. Ms Gallagher explained that it had been necessary to instruct a surveyor who had identified two faults at the window well and that there had been an issue with negative flow. Temporary repairs had been carried out. Ms Gallagher advised the Tribunal that the Factor had maintained communications with all the owners in the building and had communicated with the Homeowner by phone calls and email. Ms Gallagher said that it had taken the surveyors a long time to find the answers needed. The Homeowner stated that he had stopped talking to the Factor on the phone in December 2019. Ms Gallagher confirmed that no timescale for the repairs to the window well had been given as the insurers had only approved the repair in September 2020. In reply to a query from the Tribunal Ms Gallagher confirmed that progress had been delayed as a result of the Covid-19

outbreak. She explained that it had been necessary for lockdown to end before access to the flat could be given and also the tenant had been self-isolating. Mr Mayall pointed out that the Homeowner had multiple correspondence with the loss adjustors.

15. For his part the Homeowner submitted that if the insurers had been the impediment to progress then that should have been communicated to him. He also did not agree that his communications with the loss adjustors was relevant as these were mostly asking him to obtain more information from the Factor and in any event, he had complained that the loss adjustor had not kept him informed.
16. The Ordinary member of the Tribunal referred the Factor's representatives to the CRGP report of August 2020 and queried the issue of negative flow. Ms Gallagher explained that during the common stack repairs in 2018 repairs to the downpipes had been carried out that had resulted in some negative flow that had not been resolved as the pipe in question was encased in concrete. The Ordinary member queried if the repair had exacerbated the problem and Ms Gallagher said that it had resolved one problem but caused another. The water ingress was not immediately noticeable but could occur a day or two later. It was not a straightforward repair and it had taken a long time to understand how the water egress was occurring. Ms Gallagher confirmed that repairs to the rainwater goods was not included in the major refurbishment works being carried out at the building.
17. For his part the Homeowner pointed out that prior to his making the application to the Tribunal the Factor had made no mention of the repairs to Flat 6 . He said that he had been in discussion with the owner of Flat 6 and he also said that the issue of negative flow had been identified on an inspection carried out by ID Cant on 8 January 2019 (Homeowner's productions page 84).

Section 6.3 of the Code

18. The Homeowner again referred the Tribunal to his written submissions and went on to say that a lot of contractors had been involved and he had asked the Factor why so many people had been instructed in April 2020 (Homeowner's productions pages 67 & 68) and for details of the tendering process. The Homeowner went on to refer the Tribunal to a letter from the Factor detailing the Allianz claims process (Homeowner's productions page 92) in which it was said that McGregor Property Maintenance Ltd was approved as a contractor by both the Factor and Allianz. The Homeowner said that when he began his complaint against the Factor, he established that Allianz do not have approved contractors. The Homeowner went on to say that he had not received any reply to his April emails. He said that he had asked the Factor to obtain competitive quotes for the internal repairs to the property but that he never received them but that it was his understanding they were sent to the loss adjustors.

19. For the Factor Mr Mayall again referred the Tribunal to the Factor's written submissions and went on to say that when anyone makes an insurance claim, they are free to instruct their own contractor if they are acceptable to the insurers. He said that Allianz would only require one estimate and he had no knowledge of multiple estimates being required but would have been happy to have recommended another contractor if asked. Mr Mayall said that Allianz were happy to accept the Factor's approved contractors but did not have their own approved contractors and the correspondence had not intended to be misleading but could have been. The Homeowner confirmed that the Factor had arranged a second quote from Robb Reinstatement in November 2019. Mr Mayall said he was unaware of this but Ms Gallagher confirmed that she had arranged for a second quote to be submitted to the loss adjustors due to the time lapse since the McGregor quote was obtained.
20. The Homeowner advised the Tribunal that he received an email from the loss adjustors in December 2019 to say that the insurers were willing to go ahead with the repair work being carried out by McGregors. He understood that the CCTV work had happened allowing the repairs to proceed. He said he had not seen the quotes before the works took place and had only ever seen the McGregor quote. Mr Mayall said that the quotes would normally be submitted to the insurers and would not as a matter of course be sent to an owner.
21. The Homeowner went on to say that on 18 June 2020 he had written to the Factor asking for details of the tendering process for all of the parties involved in the claim process for the water ingress at the building (Homeowners productions page 43. He said he did not receive a response.
22. For the Factor Mr Mayall said that the Factor had delegated authority to instruct contractors up to a level of £350.00 plus VAT and in addition the insurers had in the last 6 weeks agreed to pick up all the trace and locate invoices. Mr Mayall confirmed that the fact these costs will be reimbursed has not been communicated to the homeowners.

Property Factors Duties

23. The Homeowner said that there had been water ingress since October 2018 and that this had caused him difficulties as he had been unable to inhabit, rent or sell the property since that time. He said he had never received a timescale for completion of the window well repairs. The flat next door to his had a window removed leaving it partially exposed leading to damage and dilapidation that was affecting his property. He said the window at Flat 6 was partially boarded up and had been since 2019. He explained that his bedroom was on the opposite side from Flat 6 and as a result of further water ingress he could put his foot through the floor there. He said the new flooring that had been put down had gone again and had needed replaced by March 2020 as the floor had buckled. He said he had raised this with the Factor and the loss adjustor and it had been agreed that the claim should be continued. The Homeowner referred the Tribunal to the photograph contained in the CRGP report dated 23 July 2020 of the shower curtain erected in flat 6 to direct water from the floor above (Factor's Productions Appendix 5 [Appendix1]). In

response to a query from the Ordinary member of the Tribunal the Homeowner advised that the window in Flat 6 had been removed by McGregors in August 2019 and the shower curtain had been erected by the owner who had to move out due to the ongoing water ingress. The Homeowner felt that the Factor ought to have done more to protect his property. He said the Factor ought to have organised a longer-term temporary repair.

24. The Homeowner went on to say that he was still not certain what repairs had taken place and thought that there should be a timeline for the repairs and that the Factor's communication had been pretty poor. In response to a query from the Tribunal the Homeowner said that he had agreed to use McGregors rather than find his own contractor because of the initial letter from the Factor and because he did not know of any contractors and as McGregors were approved by the insurance company.
25. For the Factor Mr Mayall said he did not have a lot to add to the Factor's written submissions. He said it was not clear where it could be said that the Factor had failed in its duties. The Factor had explained about McGregors and that the Homeowner could have instructed his own contractor. He said it was not clear if the Homeowner was dissatisfied with the work that had been done and wished to know if the damage to the flooring had been intimated to the insurers as the photograph in the CRGP report only showed a damp patch on the wall and no mention of damage to the laminate flooring.
26. The Homeowner advised the Tribunal that he had not kept the Factor up to date every month and had not told them previously of the damage to the laminate floor. Ms Gallagher submitted that it was up to the Homeowner to advise the Factor of an issue with the floor. She was aware of the issue with the window in Flat 6 and this was going to be replaced as part of the ongoing insurance claim. Mr Mayall confirmed that the Factor had no information about any new damage to the Homeowner's property.
27. The Homeowner submitted that he would like the Tribunal to make a PFEO requiring the Factor to fix the leak causing the water ingress to his property and produce copies of the invoices previously requested and still outstanding. That if any trace and locate invoices were not met by the insurers that they should be met by the Factor and that as he had not had the use of his property for two years and had suffered loss of amenity, he should be awarded compensation. The Homeowner went on to say that were it not for the water ingress he would have sold the property or rented it for £550.00 per month. Instead, he had continued to pay Council Tax of £180.00 per month and regular fees to the Factor. The Homeowner explained that the property had not previously been rented as there had been renovations ongoing to the building that were supposed to be completed in September 2018 and he had intended selling the property thereafter but had been unable to do so because of the water ingress. He said there had been plaster everywhere caused by removal of sections of wall to expose the downpipes and extensive mould behind the radiator in the bedroom He said that he could have moved into the

property in the summer of 2020 but it was not habitable at that time because of the further water ingress.

28. For the Factor Mr Mayall pointed out that the Homeowners claim for the property being uninhabitable was not accepted by the Factor or the loss adjustor or the insurers.

The Tribunal make the following findings in fact:

29. The Homeowner is the owner of Flat 7, 137 Stockwell Street, Glasgow ("the Property")
30. The Property is a flat within 137 Stockwell Street, Glasgow (hereinafter "the building").
31. The Factor performed the role of the property Factor of the building.
32. There was water ingress to the Homeowner's property in October 2018.
33. The Homeowner submitted a claim to his insurers in November 2018.
34. There was a further communal insurance claim submitted by the Factor to the same insurers in respect of water damage to communal property.
35. The loss adjustor appointed by the insurers, Allianz, required information from the Homeowner confirming that communal repairs had been carried out before authorising the repairs to the Homeowner's property.
36. The Factor failed to provide the Homeowner with adequate information regarding the progress of the communal repairs required to the building between March and November 2019 to allow him to progress his insurance claim.
37. The Factor failed to provide the Homeowner with a response to his email query of 11 April 2020.
38. Prior to insurers confirming they would meet the cost of trace and locate services it was normal practice for the Factor to charge such costs to owners.
39. The Factor failed to respond to the Homeowner's email of 11 November 2019.
40. There has been an unacceptably long delay between identifying an issue with the window well at Flat 10 in December 2018 and instructing surveyors in August 2020 and obtaining quotes and instructing repairs.
41. The Factor has failed to keep the Homeowner informed as to the likely timescale for the completion of the repairs to the window well at Flat 10.

42. The Factor claimed in correspondence that its approved contractor McGregor Property Maintenance Ltd was also approved by Allianz when Allianz did not have approved contractors.
43. The Factors obtained two quotes for the repairs to the Homeowner's property and sent these to the loss adjustors.
44. The Homeowner's insurers have not accepted his claim for loss of rent or the cost of alternative accommodation.
45. There has been a lack of communication on the part of the Factor both in responding to queries by the Homeowner and in keeping the Homeowner advised of progress or the reasons for lack of progress in respect of communal repairs including the window well at Flat 10.
46. The Factor did not provide a response to a written request from the Homeowner for details of the tendering process for those contractors involved in the claim process for water ingress.
47. The Factor has delegated authority in respect of expenditure up to £350.00 and does not require to tender for work up to that amount.
48. The property continues to be affected by water ingress probably from Flats 10 and 6.
49. The Homeowner has not reported the full extent of the damage to the Factor or his insurers.

Reasons for Decision

Section 5.5 of the Code

50. Whilst the Tribunal accepts that dealing with claims through loss adjustors and insurance companies can add to the time it takes for repairs to be completed it does seem in this case that a period of well in excess of a year is unusually long. The Tribunal noted from the correspondence between the loss adjustors and the Homeowner that some of the delay could be attributed to the loss adjustors requiring confirmation that the communal repairs had been effected prior to authorising the works going ahead at the Homeowner's property. It was clear that the Homeowner had requested confirmation from the Factor that the works had been completed but there was a delay of the best part of a year before the loss adjustors were satisfied. Requests for information from the Factor did not receive the attention that could reasonably be expected by the Homeowner. Accordingly, the Tribunal was satisfied that the Factor was to that extent in breach of Section 5.5 of the Code.

Section 6.1 of the Code

51. The issue with the window well at Flat 10 was identified in December 2018 yet by December 2020 had not been resolved and there continued to be water ingress to Flats 6 and 7. There may well have been issues affecting the progress of the repair in 2020 due to the Covid outbreak but even allowing for this it did appear to the Tribunal that there had been a lack of urgency on the part of the Factor in identifying the source of the problem, the remedy and instructing a repair irrespective of whether insurers were involved or not. Furthermore, there appeared to be no indication that the Homeowner was given any timescale for the completion of the works throughout the two-year period. The communications referred to by the Factor in its written representations in no way addressed the Homeowner's concerns in this regard. Accordingly, the Tribunal was satisfied the Factor was in breach of Section 6.1 of the Code.

Section 6.3 of the Code

52. The Tribunal accepted that the majority of the invoices relating to the trace and locate costs would have fallen within the Factor's authorised expenditure limit although not all of the costs have been disclosed. However, as it now appears that the insurers are prepared to meet the whole of the costs incurred the Tribunal has concluded that the Factor was not in breach of Section 6.3 of the Code.

Property Factor's Duties

53. As has already been indicated above there has been a lack of communication on the part of the Factor in its dealings with the Homeowner that has led the Homeowner to complain to the Tribunal. The Tribunal was not satisfied from the evidence of Ms Gallagher that she had kept the Homeowner informed by regular telephone calls as to what was or was not happening and the Homeowner's frustration is evident from his numerous emails, some of which regrettably went unanswered.

54. It may well have been difficult for the Factor to identify the source of the water ingress but that does not provide an excuse for inordinate delay, lack of attempts to at least make the property safe or a failure to respond to legitimate enquiries.

55. The suggestion that the Factor's approved contractor was also approved by the insurers was misleading. However, given that the Homeowner did not know of any contractor himself and given that the Factor also arranged for a second quote for the work and that the Homeowner has not faulted the work carried out at the property there does not appear to be any direct prejudice to the Homeowner.

56. The Homeowner has been unable to satisfy the insurers that he has a valid claim for loss of rent or alternative accommodation and that must be a matter for him to pursue elsewhere and not before this Tribunal. From the evidence presented to it the Tribunal was unable to conclude that the property was uninhabitable throughout the period claimed or that it was unsellable. If it had

been uninhabitable then it is the Tribunal's understanding that the Homeowner could have made a claim for exemption from Council Tax for at least some of the period in question.

57. The Tribunal was however satisfied that for the reasons given at paragraphs 53 and 54 above that the Factor was in breach of its property factor's duties and that as result of the breaches of Sections 5.5 and 6.1 of the Code it was appropriate to make a Property Factor Enforcement Order that included a financial award to reflect the inconvenience suffered by the Homeowner for the Factor's delay and failure to communicate with him over a prolonged period.

Proposed Property Factor Enforcement Order

The Tribunal proposes to make a property Factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

A Homeowner or property Factor 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.

Graham Harding Legal Member and Chair

5 January 2021 Date