

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/21/2823

Flat 1/ 2 17 Prospecthill Street, Greenock ("the Property")

Parties:

Helen McGoldrick, Flat 1/ 2 17 Prospecthill Street, Greenock ("the Homeowner")

River Clyde Homes, Clyde View, 22 Pottery Street, Greenock. PA15 2UZ ("the Property Factor")

Tribunal Members:

Josephine Bonnar (Legal Member)

Mary Lyden (Ordinary Member)

DECISION

The Property Factor has not failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not fail to comply with the 2012 Code of Conduct for Property Factors and did not fail to carry out its property factor duties.

The decision is unanimous

Background

- 1. The Homeowner lodged an application with the Tribunal in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application comprises documents received by the Tribunal between 11 November 2021 and 17 February 2022. The application states that the Property Factor has breached Sections 2.1, 2.5, 6.1 and 6.9 of the 2012 Property Factors Code of Conduct ("the 2012 Code"). The application also states that the Property Factor had failed to carry out its property factor duties. Documents were lodged in support of the application including a copy of part of the Land Register title sheet for the property and correspondence with the Property Factor.**

2. On 4 March 2022, a Legal Member of the Tribunal with delegated powers of the President referred the applications to the Tribunal. The parties were notified that a case management discussion (“CMD”) would take place on 30 May 2022 at 10am at Glasgow Tribunal Centre. Prior to the CMD the Property Factor lodged written submissions and documents, including a response to the application which had been sent to the Homeowner in February 2022.
3. The CMD took place on 30 May 2022. The Homeowner attended and was supported by her sister, Frances McGoldrick. The Property Factor was represented by Mr McMenemie. A related application under the 2021 Code was also discussed.

Summary of discussion at the CMD

4. Ms McGoldrick had brought further documents to the CMD. The Tribunal noted that two of the documents were letters from Inverclyde Council and the third was a letter from the Property Factor. The Tribunal allowed these to be submitted but noted that the letters from the Council might not be relevant to the application.
5. The Tribunal noted that several of the Homeowner’s complaints relate to the door entry system at the property. It is stated that the handset which is located inside the property is not suitable for the Homeowner’s needs as she is both hearing and sight impaired. The application states that she requires an adapted handset, but the Property Factor has told her that this is not a factoring issue. They have offered to arrange for an adapted handset to be installed but that Miss McGoldrick will have to pay for this. In response to questions from the Tribunal, Miss McGoldrick said that she paid for the current handset when the new system was installed. An adapted handset ought to have been offered at that time. The Property Factor ought to have been notified by the Council when the housing stock was transferred about her dual sensory impairment. It appears that this did not happen, although the Council was fully aware of the situation. As a result, she was provided with the same handset as the rest of the block and does not know when someone is at the door. Even if she had a handset with a flashing light, this would not solve the problem because she cannot hear when people speak into the door entry system at the main door. The Property Factor notified Ms McGoldrick that they were not responsible for providing a replacement handset which would address her needs because it relates to an issue within her flat and not the common areas at the property. The Tribunal noted that this complaint related to an issue which might be outwith the Property Factor’s remit and responsibility and suggested that Ms McGoldrick might want to take advice. In the meantime, it was also noted that the Property Factor had offered to have the door entry system checked to ensure that there is no defect.
6. The Tribunal proceeded to discuss the Homeowners application. This had been drafted and submitted by a welfare rights officer with Deafblind Scotland on behalf of the Homeowner. Ms McGoldrick advised the Tribunal that she had not reviewed and sorted her papers in advance of the CMD and was not

able to answer questions about the specific complaints listed in her applications. She said that if the matter was continued to another date, she could prepare properly and make sure that she could provide the Tribunal with the information required.

7. The Tribunal noted the following complaints in relation to the 2012 Code (pre-August 2021): -
 - (a) **Section 2.1 - You must not provide information which is misleading or false.**
 - (b) **Section 2.5 – 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.**
 - (c) **Section 6.1 – You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of the work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job specific progress reports are not required.**
 - (d) **Section 6.9 – You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.**
8. **The Homeowner also stated that the Property Factor has failed to carry out its property factor duties.**
9. Following the CMD, the Tribunal determined that the application should proceed to a hearing. The parties were notified that the hearing would take place on 23 August 2022. At the request of the Homeowner, the hearing was postponed, and parties were notified that it would take place on 29 September 2022 at 10am at Glasgow Tribunal Centre, York Street, Glasgow. Prior to the hearing Mr McMenemie submitted further documents. These included a letter to the Homeowner dated 5 July 2022. A copy of a report from a contractor (VWS) who inspected the door entry system on 10 June 2022 was attached to the letter. In the letter the Property Factor states that their attempts to convert the report to Font 60, which the Homeowner requires, were unsuccessful. However, they had copied the content of the report into the letter so that the Homeowner could read what was said. They suggested that she could ask her sister to check the report to ensure that their narration of its terms was accurate, if she had any doubts. The report states that the engineer was asked to check the system because the Homeowner (wrongly described as a tenant) “can’t hear visitors who buzz up adamant that this is a common door fault” and asked to “inspect handset for issues.” Following the inspection, they stated that they “adjusted the audio so that is as clear as possible, but the

tenant still cannot hear when I speak but can hear the handset ring, the system is equipt with an entry loop for hearing aids and the owner does set this to the T position.” The engineer also stated that he spoke with “videx technical staff who explained that a videx 3171 handset with an INDICOIL built in will be required as this induction coil works with hearing aid functions.”

10. The hearing took place on 29 September 2022. The Homeowner attended and was supported by her sister, who also gave some evidence to the Tribunal. The Property Factor was again represented by Mr McMenemy. The application under the 2021 Code was also considered.

The Hearing

11. Ms McGoldrick firstly referred the Tribunal to the letter of 5 July 2022. She said that she was not happy with the failure to provide the contractor’s report in Font 60 and the suggestion that she ask her sister to compare the report with the copy in the letter. She said that this takes away her independence and that they are obliged to issue everything in Font 60. She had several other issues. The letter refers to the T position – that should be Number 3. She said that the engineer was only in the house for a short period. The end of the report says that there will be a follow up call to her. She didn’t get a call. She stated that she cannot hear the handset. The only reason that she could do so during the visit was because she was standing next to it. Ms McGoldrick was concerned about the rating on the report of 5/5. She would not have given that rating. She then referred to page 27 onwards of the letter which discusses her attendance at the Property Factor’s office on 16 June 2022 when she asked to see Mr Orr. She was told that he was in a meeting and would call her back. He did not do so. The letter goes on to say that, due to his senior position, he would not usually attend face to face meetings with individual customers. She was unhappy with this because she had approached Inverclyde Council about information passed to the Property Factor at the time of the stock transfer in relation to her impairments. They told her to speak to someone high up so that is what she was trying to do and why she had refused to speak to someone else. Ms McGoldrick then referred to page 35 onwards which states that she had left notes at reception when she had attempted to see Mr Orr. These notes indicated that she wanted to know the name of the person who gave the Property Factor the information (about her impairment), the Council department that the person works for and the date the information was given to the Property Factor. This would allow her to ask the Council to check what information was passed on. The letter (page 41) states that the Property Factor is not aware of a “single party or department... within Inverclyde Council that was responsible for the transfer of data when the property stock transferred to River Clyde Homes on 03/12/2007.” They “have not shared data” with the Council following this so cannot provide the details of a person working for the Council”. Ms McGoldrick stated the situation is a shambles. As she has been wearing a hearing aid since 2005, the correct information should have been passed on. She also told the Tribunal that she made a subject access request but was

sent information with names and other information redacted.

- 12.** Mr McMenemie said that as River Clyde Homes (“RCH”) are only the factor for the property, they hold limited information. They do not hold information regarding health issues and disabilities in relation to Homeowners. They only keep information about specific communication requirements. So, their records indicate that all letters must be sent out in Font 60. In relation to the rating on the VWS report he stated that this is just the general rating given by RCH to this contractor and not a rating specific to the job which was instructed. He confirmed that the stock transfer took place in 2007. He also stated that the letter of 5 July 2022 was sent in place of a phone call.
- 13. Section 2.1 of the 2012 Code.** Ms McGoldrick told the Tribunal that she was led to believe that the intercom system which was installed at a cost of £1970.45 would be suitable for her needs. She did not have any specific discussions with anyone about this, and nothing was put in writing, but she assumed that this would be the case. She stated that if she been told at the time that there would an additional charge for an adapted handset, then she would have agreed to pay. However, she wasn’t asked about this. That is the reason for her current refusal to pay for an adapted or additional handset.
- 14.** Mr McMenemie advised the Tribunal that the Property Factor did not issue information to the Homeowner which indicated that the door entry system being installed was suitable for hearing impairments. In response to questions from the Tribunal he said that the systems were installed at 300 homes in 2017. This involved a mixture of tenants and homeowners. As a social landlord, they hold more information about their tenants than would be appropriate in their role as factor. The contractors would have been given a list of tenanted properties where an adapted handset was needed. They did not have this for homeowners because RCH did not have that information. However, had they done so, any homeowner who requested something different from the standard installation would have had to pay the additional cost. In any event, it was the homeowner’s responsibility to notify RCH if they required something different from the standard handset. Mr McMenemie conceded that the Property Factor could have written to homeowners with information about adaptations which were available but denied that they were required to do so.
- 15. Section 2.5 of the 2012 Code.** Ms McGoldrick said that she is unhappy that her complaint has taken so long to sort out. Although there were 3 visits in January 2021, the matter has not been resolved and she still does not have a handset that meets her needs. In response to a question from the Tribunal, she advised that she did not put her complaint in writing. She stated that she has already paid for the handset. She paid £225 and is not prepared to pay twice. She recalls getting a visit from an RCH employee who said that they could put a phone with a flashing beacon in the living room at a cost of £50. She was not prepared to pay this. However, she is now being quoted £749 or £849.

16. Mr McMenemy referred the Tribunal to a letter sent to Ms McGoldrick on 27 September 2017. The letter is in Font 60. It acknowledges her enquiry about an additional handset and explains that this would be chargeable. It refers to an invoice and asks for payment before the work is instructed. The letter goes on to say that the existing handset was fitted more than 3 years previously as part of the Broomhill regeneration project, but she had only recently complained about its unsuitability. The letter also addresses her enquiry about the transfer of information from Inverclyde Council to RCH. It states that details of her hearing impairment and requirement for Font 60 have been “added” and that they would have a record of her hearing impairment already if it had “been available at the time of transfer”. Mr McMenemy said this letter is the response to the enquiries made by Ms McGoldrick. It explained about the additional cost. She declined to proceed, and the work was not instructed. In response to a question from the Tribunal, Mr McMenemy said that he does not know the current cost of the additional handset because Ms McGoldrick is not prepared to proceed, whatever the cost.
- 17. Section 6.1 of the 2012 Code.** The Tribunal noted that the Homeowner’s complaint under this section is that the Property Factor has failed to provide her with progress reports on the installation of an adapted handset. However, the Property Factor’s position is that they cannot provide a progress report on work which has not been instructed. They have advised Ms McGoldrick that she will have to pay for the handset. She has refused to do so. Following discussion, Ms McGoldrick conceded that this section may not apply to her complaint.
- 18. Section 6.9 of the 2012 Code.** Ms McGoldrick told the Tribunal that the contractors who installed the handset at her door left a mess and caused damage to roughcast and paintwork on her veranda. She complained about this on several occasions. The contractors came back to fix it but did not do so satisfactorily. She can recall a man coming to inspect the damage. He was in charge. He said that the roughcast needed to be replaced but they only patched it up. Although they did return several times, she was unhappy with the result when the contractors eventually left the site. She is not sure when she last complained about this – maybe six months after the work was finished. She was unable to provide details of the dates of her complaints.
- 19.** Mr McMenemy said that the Property Factor’s records indicate that all complaints about mess and damage were actioned, and contractors sent back out to clear the mess and repair any damage. He referred to his written response to the application and advised that he had understood from both the application, and what was said at the CMD, that Ms McGoldrick’s complaint was that the door entry system was defective. That is what led to the contractor being sent out to inspect it in June 2022. It was not clear that her main complaint was about mess and damage. He said that the man referred to by Ms McGoldrick might have been Alan McSkimming. Had he been on site and noted defects he would have ensured that they were addressed. Furthermore, they had a 12-month defects period during which they could have arranged for contractors to return if further issues had been reported.

20. **Property Factor duties.** In the application, Ms McGoldrick had identified three failures to carry out property factor duties. Firstly, she frequently receives mail in the wrong font size. Secondly, she has not received responses in a timely manner. Thirdly, the door entry system does not meet her requirements. The Tribunal noted that both parties had already given evidence on these issues in relation to the Code complaints. Ms McGoldrick said that a handset that meets her needs is a priority. If someone goes to the door, she can't hear them and cannot establish who is there. She stated that, as she has already paid for her handset, she should not have to pay again for one which meets her needs.
21. Ms Frances McGoldrick told the Tribunal that her sister has been caused a great deal of stress and that the Property Factor is at fault. She also stated that the receptionist at RCL told them that there was a fault with the door entry system and stated that she had been unable to hear the handset ringing when she was in her sister's home.
22. Mr McMenemy concluded by saying that the handset in the property is a private matter and not the responsibility of the factor. He added that RCH could not use rental income from tenanted properties to pay for a handset for a homeowner.

The Tribunal make the following findings in fact:

23. The Homeowner is the heritable proprietor of the property. She purchased the property in 2003.
24. The Property Factor is the property factor for the property.
25. The Homeowner did not notify the Property Factor of her hearing impairment until September 2019.
26. The Homeowner did not notify the Property Factor that she required all correspondence to be issued in Font 60 until September 2019. Prior to September 2019 correspondence was usually issued in Font 36.
27. The Property Factor had no record of the Homeowner's hearing impairment until September 2019
28. The door entry system at the property is in working order
29. The handset located in the Homeowner's property is not suitable for the Homeowner due to her hearing impairment.
30. The Homeowner did not request an adapted or additional handset when the door entry system was installed.

31. The Homeowner was not told that the handset installed in her property was suitable for a person with hearing loss.
32. The Homeowner was asked to pay the same charge for the door entry system as the other homeowners in the block. She did not pay for an additional and/or adapted handset.

Reasons for Decision

33. At the CMD, the Tribunal noted that several of the Homeowner's complaints relate to the door entry system at the property. Although the application refers to defects, it appeared that the "defects" in question relate to the unsuitability of the internal handset for someone with a hearing impairment, rather than a fault with the system. However, the Property Factor stated at the CMD that the system could be checked to make sure that it is in working order. This was arranged in June 2022. The contractor provided a report which confirms that the system is in working order. At the hearing, it was not clear whether this is disputed by the Homeowner. Her sister, Frances McGoldrick, said that she could not hear the handset buzzing when she visited the property. This had also been mentioned by her at the CMD and appears to pre-date the visit by the engineer who stated that an adjustment had been made to ensure that the "audio is a clear possible". Ms Frances McGoldrick also stated that a receptionist at RCH had told them that there was a defect. Again, this was not confirmed by Ms McGoldrick who told the Tribunal that she could hear the handset if it buzzed when she was standing next to it during the contractor's visit. However, when she is elsewhere in the property, she is unable to do so. The other issue is that she cannot hear who is speaking when she answers the call. The Tribunal is satisfied, from the VWS report, that the door entry system is currently working.
34. The principal complaint regarding the door entry system is that the handset which was installed in 2017 does not meet the needs of the Homeowner. As a result of her hearing impairment, she requires an additional, adapted handset. This is not disputed by the Property Factor and is supported by the contractors' report which provides information about the type of handset which should be installed, although it does not mention cost. Mr McMenemie was unable to provide the information. Ms McGoldrick said that she previously been quoted £50 but had recently been told it would be £749 or £849. Neither party lodged any documents regarding the cost although the Tribunal notes that the letter of 27 September 2019 refers to an invoice which was not lodged.
35. The Tribunal is satisfied that the installation of an additional, adapted handset in the Homeowner's property is not the responsibility of the Property Factor. RCH is responsible for managing the common areas on behalf of the proprietors and arranging for the maintenance and repair of those areas. This being the case, they are under no obligation to assist a Homeowner in relation

to a handset located inside the property. Since they arranged for the system to be installed, it would not be unreasonable to expect RCH to provide Ms McGoldrick with information about how to go about purchasing an adapted handset. In fact, they are prepared to do more than this. They are willing to arrange for its installation if Ms McGoldrick agrees to pay the associated cost. They have advised her that RCH cannot bear the cost as they cannot use rental revenue for the benefit of a homeowner. The Tribunal also notes that the cost of work carried out by a property factor is usually divided among all homeowners and to charge other owners in the block for work which is exclusive to the Homeowner's flat would be unlawful.

- 36.** The main reason for the Homeowner's assertion that the Property Factor should pay for the handset is that they knew or ought to have known about her dual sensory impairments. She told the Tribunal that she has worn hearing aids since 2005, which was before the transfer of housing stock to RCH in 2007. She stated that Inverclyde Council were aware of both impairments and ought to have told RCH in 2007. They appear to have been told about the visual impairment, as correspondence has generally been issued to her in large font, although not Font 60 which she did not require until 2017 or 2018. However, Ms McGoldrick has been unable to obtain any information about the information which was passed from the Council to RCH. This is not surprising. The stock transfer was in 2007. Ms McGoldrick had purchased her flat in 2003, not under Right to Buy. In relation to the property, which is the subject of the application, she was never a tenant. The Council may have factored the property but the Code and 2011 Act did not come into force until 2012 so neither the Council nor RCH were required to comply with these at the time of the transfer. The Tribunal was advised that, as a social landlord, RCH holds certain information about tenants which it is neither necessary nor appropriate for them to hold in relation to homeowners. Their role as factor is much more limited and clearly defined. The Tribunal also notes that Ms McGoldrick was sent a letter in September 2019 which specifically stated that they had not been aware of her hearing impairment or that she required Font 60. The letter confirmed that they had updated their records. Ms McGoldrick may have expected or assumed that information about her impairments had been passed on in 2007. She may have had good reason for this assumption if all correspondence was in large font from the outset. However, as a Homeowner, it was her responsibility to provide the Property Factor with any necessary information about her needs and the Property Factor cannot be at fault if neither the Council, nor the Homeowner herself, provided that information.

- 37.** The Tribunal proceeded to consider the Homeowners complaints.

Property Factor duties

- 38.** Section 17(5) of the 2011 Act states "In this Act, "property factor 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.” Property factor duties are usually found in the title deeds of a property or the written statement of services.

39. The Tribunal is not persuaded that the issuing of correspondence in the wrong font or the failure to provide a prompt response to enquiries or complaints are failures to carry out property factor duties as they do not relate to the services provided by the Property Factor in relation to the common parts within the block of flats or development. The Tribunal is satisfied that the installation of the door entry system at the property was arranged by RHC in their capacity as property factor, for the properties no longer in RCH ownership. However, once installed, only the parts of the system located within the common parts remain within the Property Factor’s remit. If a repair is required, they should arrange for it to be rectified with the cost being apportioned among all properties in the block, unless the defect is due to damage caused by one of the tenants or homeowners. However, the handset located within the Homeowner’s own property is not the Property Factor’s responsibility. Furthermore, it is the Homeowner’s responsibility to notify the Property Factor if she needed a different or additional handset either at the time of installation, or subsequently, and to pay any additional costs associated with this.
40. The Tribunal is satisfied that the Homeowner has not established that a failure to carry out property factor duties

Section 2.1 of the 2012 Code

41. The Homeowner initially advised the Tribunal that she was led to believe that the door entry system being installed would be suitable for her needs. However, she then conceded that there were no discussions with anyone about this and she did not receive any correspondence which referred to her hearing impairment or the suitability of the system. It is not in dispute that the handset which was installed is identical to the other properties or that she was charged the same as the other proprietors. In the circumstances, the Tribunal is not satisfied that the Homeowner has established that she was provided with information which was misleading or false

Section 2.5 of the 2012 Code

42. The Tribunal notes that this section of the Code refers to enquires and complaints which are in writing. Ms McGoldrick told the Tribunal that it is difficult for her to send written enquires because of her visual impairment. In the circumstances, the Tribunal determined that verbal complaints and enquires could be considered under this section of the Code.
43. Prior to the hearing, there was some confusion about this complaint. In their response to the application, the Property Factor made specific reference to stage 1 and stage 2 complaints and the responses issued to the Homeowner. It was stated that these responses were issued within appropriate timescales. During the hearing Mr McMenemie also referred to the letter of 27 September 2019, which was a response to an enquiry (possibly verbal) about the adapted

handset. The date of the enquiry is not provided so it is not possible to establish whether a timeous response was given. At the hearing, Ms McGoldrick told the Tribunal that it is the Property Factor's failure to provide her with an adapted handset which is the issue. She said that she had raised the issue in 2019, had several visits in 2021, but has still not been given the handset which is required.

- 44.** The Tribunal noted that Ms McGoldrick is not complaining about the Property Factor's failure to provide a written or verbal response to a complaint or enquiry. As a result, this section of the Code does not apply. In any event, the failure by the Property Factor to supply the handset is not due to unreasonable delay or a failure by staff to action the request. It is due only to the Homeowner's refusal to pay for the new set. No breach of this section is therefore established.

Section 6.1 of the 2012 Code

- 45.** The Homeowner's complaint under this section is that she has not been given progress reports on the installation of the adapted handset. The Tribunal is satisfied that the Property Factor is unable to provide a progress report on this work until it has been instructed. This will not be arranged until the Homeowner agrees to pay for it. The Tribunal also notes that the assistance being offered by RCL in relation to the handset is outwith their remit as property factor, since it does not relate to common parts of the property. This being the case the Code would not apply to their action (or lack of action) in relation to the handset. No breach of this section has been established.

Section 6.9 of the 2012 Code

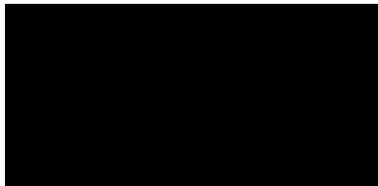
- 46.** The application states that the complaint under this section of the Code is the failure of the door entry system to meet the Homeowner's requirements. Although there are references to defects and repairs being required, it does not appear that the Homeowner is saying that it is actually broken, only that it does not work properly for her. This is addressed by the Property Factor in their response. However, during the hearing, Ms McGoldrick said that her complaint under this section was about the failure by the Property Factor to pursue the contractors for the damage caused to her roughcast and paintwork during the installation of the system. She said that she reported the matter several times following completion of the work and although the contractors returned, the repair was not satisfactory. The Tribunal notes that the Property Factor did not have advance notice of this issue in either the application form or the letters which notified them of the complaints. In any event, Ms McGoldrick did not provide evidence of the damage or details of any reports made by her which did not result in the contractors returning to repair the damage. The Tribunal is not satisfied that a breach of this section has been established.

Decision

The Tribunal determines that the Homeowner has not established that the Property Factor has failed to comply with the Code of Conduct or failed to carry out its property factor duties.

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.



Josephine Bonnar, Legal Member

19 October 2022