

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference numbers:

FTS/HPC/PF/23/0571

FTS/HPC/PF/23/0574 (withdrawn)

FTS/HPC/PF/23/0575

Re: Flats at 0/1 and 3/1, 64, Thornwood Drive, Glasgow, G11 7PS (“the Properties”)

The Parties:

Dr. Kate Black, residing at Flat 0/1, 64, Thornwood Drive, Glasgow, G11 7PS and Mr. Paul Karnowski, residing at Flat 3/1, 64, Thornwood Drive, Glasgow, G11 7PS (“the Homeowners”)

Lowther Homes, having a place of business at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Mike Links (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -

- (i) has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at Sections 2.7, 6.4, 6.6 and 6.12 in respect of both Applications
and
- (ii) has failed to comply with the Property Factor’s Duties in respect of Application FTS/HPC/23/0575

Background

1. By applications received between 24 February 2023 and 26 June 2023 (“the Applications”) the Homeowners applied to the First-tier Tribunal for Scotland (Housing and Property Chamber for a determination that the Property Factor had failed to comply with the Codes of Conduct for Property Factors and had failed to comply with the Property Factor Duties.
2. Application FTS/HPC/PF/23/0571 by the first-named Homeowner, Dr. Black, in respect of a complaint under the Code of Conduct for Property Factors 2021 (“the 2021 Code”) comprised the following documents: -(i) the First-tier Tribunal standard application form, Form “C2”, indicating that the parts of the 2021 Code complained of are: Communications and Consultation at 2.7 and Carrying out repairs and maintenance at Sections 6.4, 6.6 and 6.12 (ii) copy intimation letter to the Property Factor and (iii) copy email correspondence with the Property Factor.
3. Application FTS/HPC/PF/23/0574 by the second-named Homeowner, Mr. Karnowski, in respect of a complaint under the Code of Conduct for Property Factors 2012 (“the 2012 Code”) comprised the following documents: -(i) the First-tier Tribunal standard application form, Form “C1”, indicating that the parts of the 2012 Code complained of are: Communications and Consultation at Section 2.7 and Carrying out repairs and maintenance at Sections 6.4, 6.6 and 6.12 and complaining of a failure to carry out the Property Factor’s duties (ii) copy intimation letter to the Property Factor and (iii) copy email correspondence with the Property Factor.
4. Application FTS/HPC/PF/23/0575 by the second-named Homeowner, Mr. Karnowski in respect of a complaint under the 2021 Code comprised the following documents: -(i) the First-tier Tribunal standard application form, Form “C2”, indicating that the parts of the 2021 Code complained of are: Communications and Consultation at 2.7 and Carrying out repairs and maintenance at Sections 6.4, 6.6 and 6.12 and a complaint in respect of property factor duty failures (ii) copy intimation letter to the Property Factor and (iii) copy email correspondence with the Property Factor.
5. Legal members of the Chamber with delegated powers of the Chamber President accepted the Applications. A Case Management Discussion (CMD) was fixed for 18 July 2023 at 10.00 for Application FTS/HPC/PF/23/0571 by telephone conference call. The CMD was postponed to 8 September 2023 at the request of the first-named Homeowner and conjoined with the Applications lodged by the second-named Homeowner.

CMD

6. The CMD took place on 8 September 2023 at 10.00 by telephone conference call. The Homeowners were both present on the call and were not represented. The Property Factor was not present and was not represented. The Property Factor did not submit written representations.

7. The Tribunal was satisfied that the Applications have been notified to the Property Factor properly. The Tribunal had regard to the Rules and, in particular, to Rule 2 and took the view that it should proceed in the absence of the Property Factor. The Tribunal advised the Homeowners that as the Property Factor did not oppose the Applications, there was no requirement on the Tribunal to hold a Hearing of evidence and that the Tribunal could deal with the Applications at the CMD. The Homeowners confirmed that they were ready to proceed with the Applications.
8. With regard to Application FTS/HPC/PF/23/0574, the Tribunal drew Mr. Karnowski, the second-named Homeowner's, attention to the inconsistencies between the statutory intimation letter and the Application and advised him that it could only deal with the complaints notified in terms of Section 17(3) of the Act. Mr. Karnowski withdrew Application FTS/HPC/PF/23/0574 in respect of the 2012 Code.

Heads of Complaint.

9. The Homeowners then expanded on the Applications and supporting documents and answered the Tribunal's questions on the Applications in respect of the broad heads of complaint complained of in the Applications and, with regard to the second-named Homeowner, in respect of the property factor's duties.

i) Core Issue

The Homeowners explained that central to their complaints was the way in which the Property Factor had dealt with a roof repair.. The background is that water ingress from the roof area caused damage to individual flats and to the common close, bringing down part of the common close ceiling. The Homeowners reported the water ingress and the need for a repair to the Property Factor who were extremely slow to respond, and, when they did responded, recommended roofing work at a cost of £9,000.00. Despite requests from the Homeowners, the Property Factor has not yet provided any information to justify the £9,000.00 quote.

Both Homeowners spoke of frustration and stress at the Property Factor's approach which comprised a lengthy pattern of lack of responses, misinformation, sending the wrong tradesmen, failing to grasp the nature of the water ingress, promoting costly repairs without explanation or a tendering process and poor workmanship requiring the Property Factor to bear the costs of remedial work.

The Homeowners explained that Mr. Karnowski himself sourced a roofer who carried out a successful repair to the roof at a cost of £300.00 which the Homeowners paid themselves.

ii) Delays in communication and lack of communication.

With reference to the supporting documents lodged with the Applications, the Homeowners stressed that the Property Factor has consistently failed to correspond within reasonable timescales and has not provided full and accurate responses to written requests. They explained that correspondence is unanswered or, if answered, the information requested is not addressed nor are the questions raised answered. The Homeowners expressed extreme frustration at the lack of consistency in the Property Factor's staff responses and the fact that they have had to deal with different staff members throughout.

iii) The process followed in dealing with repairs and maintenance

With further reference to the supporting documents lodged with the Applications, the Homeowners advised the Tribunal that the Property Factor did not deal with the roof repair. The Homeowners themselves attended to this. The Property Factor provided a poor quality works specification and recommended a costly repair without carrying out a tender process or obtaining a guarantee. The Property Factor consistently failed to provide answers to the Homeowner's questions in respect of specification and gave contradictory explanations in respect of a tender process, stating at one point that three quotes had been obtained and at another only one quote had been obtained.

The Homeowners explained that a repair to the ceiling damage in the common close carried out by the Property Factor had to be re-done at the Property Factor's own cost as it had been carried out badly.

The Homeowners expressed frustration at the Property Factor relying on the opinions of their preferred and sole contractor, City Building, with regard to the quality of repair work, having no regard to the Homeowners' views and failing to follow up on defective works.

The Homeowners explained that the Property Factor, in August 2023, carried out an inspection at the Property which resulted in a Report issued the day before the date of the CMD. Dr. Black read from the Report's recommendations which highlighted a lack of cleaning and neglect at the Properties and the common areas and which recommended close re-decoration, gutter cleaning and back court work, all of which are services for which the Homeowners are charged

iv) Property Factor Duties.

Again, with reference to the supporting documents lodged with the Applications, Mr. Karnowski stated that the Property Factor simply does not provide a service which is acceptable in any way. Again, with reference to the supporting documents lodged with the Applications, both Homeowners stressed that the Property Factor has simply not dealt with their complaints. Both Homeowners stated that the Property Factor routinely pursues accounts which are in dispute. Although, the Property Factor offered compensation by removing costs from the common charges accounts, the complaints are unresolved and often the charges re-appear on the accounts and referrals are made to debt recovery agencies.

v) Impact of Property Factor's conduct on the Homeowners.

Both Homeowners advised that their dealings with the Property Factor has caused stress, frustrations and feelings of powerlessness. Dr. Black suffered financial loss in respect of loss of income in time taken to prepare the Application and in attending the CMD. Mr. Karnowski explained that he has terminal cancer and the stress and frustration has had a significant impact on his quality of life. The Homeowners, with reluctance, estimated that the effect of the Property Factor's actions could equate to £4,000.00 in monetary terms.

Issues for Tribunal

10. As the Property Factor did not oppose the Applications, the issue for the Tribunal was sufficiency of evidence to make a decision in terms of Rule 17 (4) of the Rules. The Tribunal was satisfied that it had sufficient information and evidence to make a decision.

Findings in Fact.

11. The Tribunal had regard to the Applications in full, and to the submissions made at the CMD, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.
12. The Tribunal found the Homeowners to be truthful, straightforward and measured in their submissions and found that they did not attempt to exaggerate their complaints.
13. The Tribunal found the following facts established:
 - i) The Parties are as set out in the Applications;
 - ii) The Property Factor did not deal with correspondence from the Homeowners within reasonable timescales;
 - iii) The Property Factor did not provide the Homeowners with full and accurate information in response to their written requests;
 - iv) The Property Factor has not acted to resolve the Homeowners' dispute in respect of the roof repair, did not carry out a proper survey of roof, did not prepare a proper specification of the work required to the roof and did not carry out a tender process for the work;
 - v) The Property Factor instructs only one contractor and does not have a process for tendering;
 - vi) The Homeowners carried out the roof repair at their own cost;
 - vii) The Property Factor has not carried out satisfactory repairs to the ceiling collapse;
 - viii) The Property Factor has not carried out routine maintenance and repair work for which charges have been made;
 - ix) The Property Factor has not dealt with the Homeowners properly and in a professional way and
 - x) The Homeowners have suffered unnecessary distress, frustration, financial loss and inconvenience due to the Property Factor's failures.

Decision of the Tribunal with reasons

14. From the Tribunal's Findings in Fact, the Tribunal had no hesitation in finding that the Property Factor failed to comply with the 2021 Code and with the property factor duties.
15. With regard to the specific breaches of the 2021 Code and the information before it, the Tribunal found that the Property Factor failed to comply with the following parts of the Code:-
 16. 2021 Code at Section 2.7
"A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their Written Statement Services. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale."
The Tribunal found that the Property Factor did not comply with this part of the Code to any extent.
 17. 2021 Code at Section 6.4
"Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated

timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work”.

The Tribunal found that the Property Factor did not comply with this part of the Code to any extent.

18. 2021 Code at Section 6.6

“A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.”

The Tribunal found that the Property Factor did not comply with this part of the Code to any extent.

19. 2021 Code at Section 6.12

“If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their ‘authority to act’ (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.”

The Tribunal found that the Property Factor did not comply with this part of the Code to any extent.

20. Property Factor Duties

The Tribunal found further that the Property Factor had failed to comply with the Property Factor Duties.

Property Factor Enforcement Order (PFEO)

21. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the property factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *“(1)The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.”*

22. The Tribunal’s view is that the Property Factor’s conduct and treatment of the Homeowners to be totally unprofessional in all respects. The Tribunal considers that the Property Factor has shown complete disregard for their statutory duties and their customers. The Property Factor’s conduct has caused the Homeowner unnecessary frustration and both direct and indirect financial loss for which the Homeowners ought

to be compensated. Further, it appears to the Tribunal that the information requested by the Homeowners remains unanswered. Therefore, the Tribunal proposes to make a PFEO.

23. Section 20 of the Act states: *“(1) A property factor enforcement order is an order requiring the property factor to (a) execute such action as the First-tier Tribunal considers necessary and (b) where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable. (2) A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made. (3) A property factor enforcement order may specify particular steps which the property factor must take.”*

24. The Tribunal proposes to make a PFEO to order the Property Factor to provide the Homeowners with the information requested by them and to make reasonable payment to the Homeowners to compensate them for financial loss, inconvenience, frustration and time spent. There being no direct evidence of financial loss, the Tribunal considers that a sum of £500.00 each is reasonable in all the circumstances.

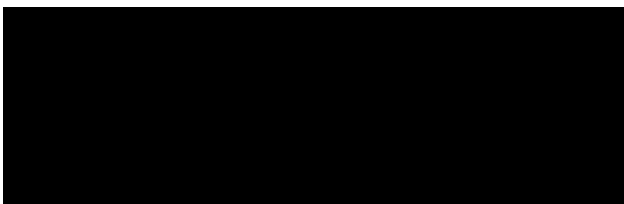
25. Section 19 (2) of the Act states: - *“In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so (a) give notice of the proposal to the property factor, and (b) allow the parties an opportunity to make representations to it.”* The Tribunal, by separate notice intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.

26. The decision is unanimous.

Appeal

In terms of section 46 of the Tribunals (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.

Signed



Karen Moore, Chairperson

5 October 2023