



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act")

Chamber Ref: FTS/HPC/PF/25/1001

Re: Property at Flat 5, 43 Kent Road, Glasgow, G3 7BY ("the Property")

Parties

Dr Cheng Jin (Applicant)

Speirs Gumley Property Management (Respondent)

Tribunal Members:

James Bauld (Legal Member)

Sara Hesp (Ordinary (Surveyor) Member)

Background

1. By application dated 7 March 2025 the homeowner applied to the Tribunal for a determination on whether the factor had failed to comply with various sections of the Code of Conduct for Property Factors (hereafter referred to as "the Code of Conduct") introduced by section 14 of the Property Factors (Scotland) Act 2011 and to carry out the property factor duties in terms of section 17 (1) (a) of the Property Factors (Scotland) Act 2011 (hereafter referred to as "the 2011 Act").
2. The application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion (CMD) was set to take place on 15 August 2025 via telephone case conference and appropriate intimation of that hearing was given to the parties

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place on 15 August 2025 by telephone case conference. The applicant was in attendance.
5. The property factor was not in attendance. They had lodged written representations amounting to 144 pages which consisted of correspondence between the Parties, notes of meetings relating to the proposed stonework to the block in which the homeowner’s flat was situated, correspondence from the factors to the solicitors who acted for the seller when the homeowner purchased the property in May 2023 and copies of the relevant complaint letters from the homeowner to the property factor and their responses to those complaints. The documents were numbered and indexed allowing the tribunal and the applicant to refer to them during the CMD.
6. The tribunal explained the purpose of the case management discussion to the applicant and set out the details of the overriding objective of the tribunal as contained in the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). The tribunal also explained the manner in which the telephone conference call would be conducted

Discussions at the CMD

7. The homeowner’s complaint in this matter is in relatively short compass. It relates to the handling of a stonework repair project at his property following his purchase of it in May 2023.
8. He alleges that owing to misleading communications and a lack of transparency from the property factor that he was denied access to grant funding that other owners received and was then subsequently pressured to pay a significant amount towards a repairs project that he had been led to believe would not go ahead
9. The homeowner complains that he was told on a number of occasions that the relevant work would only proceed if a specific funding target was met by 28 February 2024
10. He complains that on 1 March 2024, the property factors indicated that the project would proceed despite the target funding not having been reached and that they did not provide clear reasons nor explanations for this decision. This decision was communicated to him after the deadline for applying for grant funding from Glasgow City Heritable Trust (“GCHT”) had expired. His share of the common works amounted to £5925.31 and he was then unable to obtain the potential grant funding of £2,420
11. The tribunal members asked various questions of the applicant during the CMD.

12. He was unable to indicate the name of the solicitor acting for him in his purchase. His attention was drawn to a copy of a letter which has been sent by the property factors to the solicitors acting for the seller of the property dated 19 May 2023. In that letter the property factors advised the seller's solicitor that they require written confirmation as to which party will be responsible for the cost of the stone works which were clearly planned and in which previous correspondence had been issued to owners.
13. The applicant claimed that his solicitor was not informed of the terms of this letter. He stated that he separately was not informed of the terms of that letter.
14. He was asked whether he had been given any information from his solicitor while purchasing about his likely responsibilities and duties relating to the maintenance of the building and its common parts. He claimed he was given no such information
15. The homeowner drew the tribunal's attention to a number of documents which had been lodged by the property factor.
16. He referred to a letter dated 23 August 2023 which was addressed to him and in which it is stated that owners were reminded that contracts for the repair work will only be awarded once all funds are provided
17. He referred to a document which was attached to a letter to him dated 27 September 2023 which was a list of questions and answers which the property factor had prepared in anticipation of a meeting of homeowners on 28 September. In that document he pointed out that the property factors acknowledge that while some homeowners may be struggling in the current economic climate, the repair work is essential. However it says the works will not proceed until such time as all advanced funds are in place.
18. He referred to another document being a letter dated 1 November 2023 from Joanne Knox at Speirs Gumley addressed to him. In that letter it was stated, "*while it remains the position that the contract will only be awarded once all funds are provided in advance. I can confirm the amount now being requested is for contractors costs only (including VAT) as shown in the table below our goal being that these funds are paid by no later than 28 February 2024. The status of funds received is reviewed on a regular basis and I can advise that to date 67 owners have not made payment nor made contact to discuss the project which is of great concern and could compromise the entire project. It is therefore essential that those owners contact me immediately to confirm their position.*"
19. He indicated that there are other similar references in other letters from the property factor which indicate that unless a specific amount of funds was achieved by 28 February 2024 the project would not proceed. He stated that the factors website had a display showing how much funding had been received and he checked that on a regular basis.

20. The homeowner was questioned with regard to a number of other letters addressed to him by the property factor in which the provision of grant funding and the necessity of applying for such grant funding by each individual homeowner within specific time limits is clearly raised
21. He received a letter dated 1 December 2023 in which the property factors indicate that they were "*delighted to report that the application for grant support from Glasgow City Heritage Trust for a stone repair project has been approved*".
22. That letter also indicated he would shortly receive a letter from GCHT detailing the amount of grant and any conditions and asking him to return the signed offer within 30 days. The letter indicates that the offer of grant from GCHT is not insignificant and is higher than had been expected providing a welcome boost to the cost of the stonework. The letter strongly recommends that he accepts the current offer which is a one-time offer and was only available if the contract letter is signed and returned to GCHT. The letter also indicates that it is a condition of the grant that he must pay his share of the stone work costs by 28 February 2024
23. On 19 December 2023 the property factors wrote to the homeowner including a copy of the minutes of the annual general meeting of the owners of Saint Andrews Court which had taken place on 6 December 2023 and which the homeowner had attended. That letter again referred to the offer of grant from GCHT and again strongly recommended the homeowner should accept it as it was for a significant amount and was a one-time offer
24. The minutes of the AGM also indicate that the property factor had advised the owners that they had been in touch with Glasgow City Council with regard to the prospect that the council would step in and cover any "missing shares" which had not been paid by owners towards these works.
25. The wording in the minute is that the council "*tends to support missing shares when the number is small. 15 missing shares in Saint Andrews Court (in effect 10% of owners not paying) may be too many for the council to support*"
26. The homeowner indicated that his reading of that wording meant that the council would not step in to support the project. He did not accept the suggestion from the tribunal that the use of the word "may" was simply a suggestion that there was a possibility that the council might not get involved rather than explicit conformation to that effect.
27. On 8 January 2024 the property factors wrote again to the homeowner again indicating that he had not made payment nor been in touch and asking him to contact them immediately. That letter again asked him to return the grant contract letter from GCHT and indicated to him that the deadline for returning that grant form was Friday 26 January 2024
28. By email dated 24 January 2024 the property factors contacted the homeowner indicating they had been requested by GCHT to assist them by contacting him

as a final reminder that the contract letter needed to be signed, witnessed and returned to them by Friday 26 January should he wish to accept their offer of grant assistance

29. Accordingly, the homeowner had at least four items of correspondence from the property factor clearly explaining the availability of grant funding and advising and encouraging him to apply for the grant funding
30. On 26 January 2024 the property factors wrote to homeowner indicating that following a review of the project enquiries have been raised with Glasgow City Council about the missing share scheme and advising him that they were required to provide the council with contact details of all owners who have not yet paid in full. The factors advised the homeowner that he was one of those homeowners and that he would soon receive a letter from the council in this regard. They again asked him to be in touch to make payment of his share of the proposed costs
31. An email was sent to the homeowner on 16 February 2024 by the property factor referring to the ongoing project and again referring to the deadline for funds to be submitted of 28 February 2024. That email indicated 141 of 152 owners had sent letters to GCHT accepting grant funding and indicated that it was imperative that the homeowner contacted the property factor to advise whether he intend to make payment by 28 February in order to allow the committee to determine whether project can progress or not
32. On 1 March 2024 the property factors wrote to the homeowner indicating that although the funds accrued in their gateway account was still slightly short of target, they had been in discussions with Glasgow City Council who agreed to cover the shortfall through the missing share scheme and that the project would therefore proceed. That email indicated that a letter would be issued shortly to those owners who had still to pay regarding the scheme. A second email of the same date was sent to the homeowner as he was one of 20 owners who had not yet provided their share of funds due. It indicated that his details would be passed to the y Council in relation to the missing share scheme and that council will then be in touch with them
33. On 7 March 2024, Glasgow City Council wrote to the homeowner setting out their decision in terms of section 50 of the Housing Scotland act 2006 to cover the missing share of the estimated cost of any owner who had not complied with the requirement to make a deposit towards common works. That letter indicated to the homeowner that if he failed to pay the property factor by 22 March 2024, the Council would pay his missing share and then bill him for the full amount plus an additional charge of 15% to cover administrative expenses
34. The homeowner then made payment to the property factor of the total sum of £5925.41 having received that letter from the council
35. The homeowner was asked by the ordinary member of the tribunal why he had failed to lodge the grant application despite being advised and requested to do

so on four separate occasions. He could simply not answer that question in any coherent or sensible fashion.

Discussion and reasons for decision

36. In his application the homeowner alleges that the property factor has failed to comply with the Code of Conduct.
37. He makes specific reference to sections 2.1 and 6.4 of the Code which in the Revised version of the Code effective from 16 August 2021 are in the following terms

2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations

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.

38. Section 2.1 indicates good communication is the foundation for a positive relationship between property factors and homeowners. It also sets out very clearly that it is the homeowner's responsibility to make sure that the common parts of the building are maintained to a good standard.
39. Section 6.4 indicates that where a property factor arranges inspections and repairs, this must be done in an appropriate timescale and homeowners should be kept advised of the progress of the works including estimated timescales.
40. The homeowner's position is that he was regularly led to believe by Speirs Gumley that if the total funds they required by 28 February 2024 were not achieved then the entire proposed scheme of stonework would not go ahead. He has indicated specific lines within letters which indicate that information.
41. However, the general tenor of correspondence indicates that the plan is to proceed with these works and to seek the assistance of Glasgow City Council to cover any missing payments by using the missing share scheme

42. The property factors also could not have been clearer in their correspondence to the homeowner regarding the possibility of obtaining grant funding towards some of the cost or of the requirements to obtain same.
43. The tribunal having considered the evidence presented in the application, in the written submission from the property factor and in the oral evidence presented by the homeowner at the hearing take the view that the homeowner has not established that the property factor has failed to comply with the Code of Conduct
44. The homeowner appears to have taken no advice on his responsibilities as a homeowner and in particular the burdens place upon him as a homeowner to contribute to the common maintenance of the building where his flat is situated. The tribunal notes that the property factor wrote on 19 May 2023 to the solicitors acting for the seller of the property when it was being purchased by homeowner. That letter makes clear reference to the proposed stonework project and specifically asks for written confirmation as to which party will be responsible for the cost of these works. This letter appears to be typical of the letters produced by factors when being advised of potential sales of properties. The homeowner indicates that he has never been made aware of the terms of that letter. If that is the case, then that issue requires to be raised with the solicitors instructed by the homeowner. The contents of that letter should have been clearly disclosed to the homeowner and his solicitors should have advised him of his liabilities and duties in respect of common repairs
45. The failure to obtain the grant funding is entirely the fault of the homeowner. There is simply no credible explanation for his failure to apply for the grant, either in his application form or in his evidence to the tribunal. He indicates in his application that he did not apply for it as he did not believe the relevant works would actually proceed. The correspondence from the property factors with regard to the grant could not have been any clearer. Nothing in the letters regarding the grants was remotely misleading or inaccurate.
46. The homeowner complains that he was pressured by Glasgow City Council to pay the full amount of his share of the cost of the project. Again this is a matter entirely outwith the control of the property factor. The letter from the council was not sent at the instigation of the property factor. It was sent by the council in exercise of their powers in terms of the Housing (Scotland) Act 2006 in connection with the council's powers and duties in respect of the payment of "missing shares" in major tenement repair projects. The homeowner complains that he felt pressured to immediately pay the full amount. The letter actually states that once the council have issued an invoice, they would expect a settlement arrangement to be agreed promptly. Again it appears that the homeowner sought no independent device on the terms of this letter.
47. Effectively the tribunal believes that the homeowner is entirely the author of his own misfortune. In this case he should have been aware that this major stone project was being planned. He should have been made aware of that by his own solicitor when purchasing the property. At that point it might even have

been possible to negotiate an agreement with the seller that the costs of the stonework project would be made by the seller or at least shared between the parties. The homeowner thereafter completely ignored numerous letters from the property factor advising and encouraging him to apply for the grant funding. There is nothing in any of the communications from the property factor which says that applying for funding would require you to make any contribution should the proposed works then not proceed.

48. The tribunal does not accept the homeowner's position that there has been a breach of section 2.1 of the code. As narrated above, the tribunal take the view that in general the communication from the property factor to the homeowner was clear and unambiguous, especially in relation to the possibility of obtaining grant funding. The failure to obtain the grant funding lies squarely and entirely with the homeowner and not the property factor.
49. The tribunal cannot find any breach of section 6.4 of the code. In this case the property factor had clearly arranged inspections and repairs and kept homeowners fully advised of the proposals for the works including relevant timescales and relevant costs

Decision

The application is dismissed

Right of Appeal

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.

Jim Bauld

Legal Member

Date: 24 September 2025