

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/24/1647

Re: 0/1, 70 Fergus Drive, Glasgow G20 6AP ("the Property")

Parties:

**Dr Ben Snow and Ms Aubrey Bierworth, 01, 70 Fergus Drive, Glasgow G20 6AP
("the Homeowners")**

W.M. Cumming Turner & Watt, 40 Carlton Place Glasgow G5 9TS ("the Factor")

Tribunal Member:

**Graham Harding (Legal Member)
Robert Buchan (Ordinary Member)**

DECISION

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 OSP 6, OSP 11 and Sections 2.1, 5.7, 6.1, 6.4, 6.6, 6.9 and 6.11 of the 2021 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 2011 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors July 2021 as "the 2021 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 1 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 email dated 10 April 2024 the Homeowners submitted an application complaining that the Factor was in breach of Sections OSP 6, OSP11 and Sections 2.1, 2.7, 5.7, 6.1, 6.4, 6.6, 6.9, and 6.11 of the 2021 Code. The Homeowners submitted a written statement outlining their complaints together with copies of correspondence between the parties and a series of photographs. In particular the Homeowners complained that the Factor had (i) failed to carry out repairs to the property and to obtain quotes for the repairs; (ii) failed to communicate with the Homeowners regarding issues brought to the Factor’s attention and (iii) failed to respond to emails or return telephone calls. The Applicant submitted that these failures were breaches of the 2021 Code.
2. By Notice of Acceptance dated 20 June 2024 a legal member of the Tribunal with delegated powers accepted the Homeowners’ application and a Case Management Discussion (“CMD”) was assigned.
3. A CMD assigned to take place on 15 October 2024 was postponed at the request of the Factor due to ill health. A further CMD was assigned to take place on 29 January 2025.
4. A CMD was held by teleconference on 29 January 2025. The Homeowners attended in person. The Factor did not attend nor were they represented. The Tribunal was advised by the Homeowners that the internal repairs to their property had finally been completed by June 2024 but that no progress had been made as regards the boundary wall or the door entry system. As the Tribunal did not have sufficient information before it to make a decision the CMD was adjourned to a hearing and the Tribunal issued Directions to both parties. The Factor was warned that failure to comply with the terms of the directions or to attend the hearing may result in the Tribunal making an adverse finding against the Factor.
5. By email dated 4 February 2025 the Homeowners submitted written representations together with a copy of their title deed in compliance with the Tribunal’s Directions.
6. The Factor failed to comply with the Tribunal’s Directions.

The Hearing

7. A hearing was held by teleconference on 6 August 2025. The Homeowners attended in person. The Factor did not attend nor were they represented.
8. Dr Snow referred the Tribunal to his written representations submitted with the application and to the Homeowners' previous submissions made at the CMD on 29 January 2025. Dr Snow confirmed that the Homeowners were in the process of selling the property but were still in occupation. With regards to the alleged breach of OSP6 Dr Snow submitted that the Factor had failed to have the works at the property carried out in a timely manner and that this was a clear breach.
9. With regards to OSP11 Dr Snow referred the Tribunal to an email of 4 March 2024 sent to the Factor regarding the boundary wall to which there had been no reply and said that there had been other incidents of telephone calls not returned.
10. With regards to Section 2.1 Dr Snow said that the Factor had been instructed to obtain quotes for a new boundary wall but had not done this despite various communications going back and forth. Dr Snow said that after finally asking for some action to be taken there had been silence from the Factor.
11. With regards to Section 2.7 Dr Snow said that the Factor had simply failed to respond to the Homeowners' complaints.
12. With regards to Section 5.7 Dr Snow said that despite trying to communicate with the Factor regarding their insurance claim following the flood damage to the property from a blocked drain there was a long period when no information was forthcoming. Dr Snow went on to say that in February 2023 the claim had been approved but the work did not start until September 2023 and the repairs were not completed until June 2024.
13. With regards to the breach of Sections 6.1 of the Code Dr Snow submitted that the Factor had failed to ensure that repairs were carried out promptly and other repairs remained outstanding.
14. With regards to Section 6.4 Dr Snow said that he was not aware of the Factor carrying out any inspections and there had been no communication from the Factor about the outstanding issues such as the boundary wall or the door entry system.
15. With regards to Section 6.6 of the Code Dr Snow said that a range of options had not been considered such as replacing the wall with a fence and cost estimates and further information had not been provided.

16. With regards to Section 6.9 Dr Snow said he had requested quotes for the repair to the wall and also asked for further information but this had not been provided.
17. With regards to Section 6.11 Dr Snow explained that he was concerned that the Factor only appeared to use Abbey Services for all work carried out at the development. He explained that the company had been paid for work before it had been completed and that the standard of workmanship was sub-optimal. Dr Snow said he had queried if there was any business relationship between the Factor and Abbey Services that ought to be disclosed.
18. In response to a query from the Tribunal Dr Snow said that he thought that the Factor owned one flat at the development but could not be certain.
19. Dr Snow went on to say that the Homeowners wanted the Factor to be held accountable for its failings and that they needed to provide the service they were contracted to provide and comply with the Code. Dr Snow estimated that the Factor's management fee amounted to about £150.00 per year.

Findings in Fact

20. The Homeowners are the owners of 0/1, 70 Fergus Drive, Glasgow G20 6AP.
21. The Factor performed the role of the property factor of the Development of which the Homeowners' property forms part.
22. In February 2023 the Homeowners reported flooding to their property from a blocked drain and an insurance claim was initiated by the Factor.
23. The Factor failed to ensure that the repairs to the Homeowners' property was carried out in a timely manner.
24. The repair was not finally completed until June 2024.
25. Between 2023 and 2024 the Factor was slow or failed to respond to queries and communications from the Homeowners.
26. The Factor has failed to address issues raised by the Homeowners regarding the repair or replacement of a boundary wall or obtain quotes when requested.
27. The Factor has failed to communicate with the Homeowners with regards to an issue with the door entry system.

28. The Factor has failed to respond to the Homeowners complaints.
29. The Factor has failed to respond to the Homeowners request for disclosure if the Factor has any financial or other business interest with the contractors appointed by them namely Abbey Services.
30. Both Homeowners suffered worry and distress as a result of the Factor's delay in dealing with the flood damage to their property and their failure to communicate with regards to the other issues raised.

Reasons for Decision

31. The Factor was given clear directions that they must submit a detailed written response to the application stating which alleged breaches of the 2021 Code of Conduct for Property Factors are accepted and which are denied and attend or be represented at the teleconference hearing on a date to be assigned by the Tribunal. The Factor was also told that any failure to comply with the directions may result in an adverse finding being made against them. Despite this the Factor failed to comply with the Tribunal's directions. In the circumstances the Tribunal considers that the Factor is deemed to have accepted the substance of the Homeowners' complaints.
32. In any event the Tribunal is satisfied from the written representations and documents submitted together with the Homeowners' oral submissions that the Homeowners complaints are well founded. The Factor is in clear breach of all of the sections of the 2021 Code that the Homeowners have alleged have been breached. The Factor has failed to ensure that repairs to the Homeowners property were carried out in a timely manner. The Factor has failed to properly communicate with the Homeowners or deal with their complaints. The Factor has failed to address the issues with the boundary wall and door entry system. The Factor has failed to respond to a request for information about its relationship with a contractor.
33. The Homeowners have not been provided with the service that they are entitled to expect. They have experienced substantial delay in having their property repaired and experienced substantial worry and distress as a result of an appalling lack of service on the part of the Factor and finds that an award of £1000.00 is an appropriate award to reflect the time, inconvenience, worry and distress suffered.

Proposed Property Factor Enforcement Order

34. 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

6 September 2025 Date