

# 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 number:**

**FTS/HPC/PF/23/1594**

Re: Flat at 2/1, 70, Millbrae Road, Glasgow, G42 9UG ("the Property")

**The Parties:**

Ms. Jane Moir residing at the Property ("the Homeowner")

W.M. Cumming, Turner and Watt, having a place of business at 40, Carlton Place, Glasgow G5 9TS ("the Property Factor")

**Tribunal Members**

Karen Moore (Chairperson)     Leslie Forrest (Ordinary and Housing 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 OSP 11, Sections 2.7, 6.1, 6.4, 6.12 and 7.1  
and
- (ii)    has failed to comply with the Property Factor's Duties.

**Background**

1. By application received between 18 May 2023 and 31 July 2023 ("the Application") the Homeowner 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

Code of Conduct for Property Factors 2021 ("the 2021 Code") and had failed to comply with the Property Factor Duties.

2. The Application 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: Overarching Standards of Practice at OSP11, Communications and Consultation at Section 2.7, Carrying out repairs and maintenance at Sections 6.1, 6.4, 6.6 and 6.12 and Complaints Resolution at Section, (ii) copy intimation letter to the Property Factor, (iii) copy email correspondence with the Property Factor, (iv) a copy of the Property Factor's Written Statement of Services and )v) photographs of the tenement of which the Property forms part. The Application also complained that the Property Factor had failed to comply with the Property Factor Duties.
3. A legal member of the Chamber with delegated powers of the Chamber President accepted the Applications and a Case Management Discussion (CMD) was fixed for 30 October 2023 at 10.00 by telephone conference call.
4. Prior to the CMD, detailed written submissions were submitted by both Parties. The Property Factor accepted the complaints raised by the Homeowner, offered to remove certain charges and costs from the Homeowner's account and indicated that they did not intend to attend the CMD. The Homeowner submitted a reply objecting to the level of compensation offered. The Property Factor responded further by clarifying the offer.

#### **CMD**

5. The CMD took place on 30 October 2023 at 10.00 by telephone conference call. The Homeowner, Ms. Moir, was present and was not represented. The Property Factor was not present and was not represented.
6. The Tribunal advised Ms.Moir that as the Property Factor did not oppose the Application, there was no requirement on the Tribunal to hold a Hearing of evidence and that the Tribunal would deal with the Application at the CMD.

#### **Heads of Complaint.**

7. Ms .Moir expanded on the Application and supporting documents and answered the Tribunal's questions on the Applications in respect of the broad heads of complaint complained of in the Application and the outcome which was seeking.

##### **i) Core Issue**

Ms. Moir explained that central to the complaint was the way in which the Property Factor has failed over a period of eighteen months to deal with water ingress into the Property caused by blocked gutters and a damaged chimney, a roof repair. The background is that water ingress from the roof area has caused damage to the Property since March 2022. Ms. Moir reported this to the Property Factor who advised that it was not a common repair but an issue with the pipework which served only the Property. Ms. Moir instructed repairs at her own cost which involved the erection of scaffolding and which cost £930.00 in total. The outcome of that repair was that it was evident that failing rendering to one of the chimneys and badly blocked

common guttering was the cause of the water ingress. Ms. Moir reported this to the Property Factor who after some time arranged for gutter clearing which was not completed properly and had to be redone. No work has been instructed in respect of the chimney and quotes for the work not obtained until after the Application was lodged. Two quotes, one of around £6,000.00 and one of around £20,000.00 have now been obtained a third quote is instructed for after 24 November 2023. Ms. Moir spoke of frustration at the Property Factor's approach which comprised a lengthy pattern of lack of responses, failing to grasp the nature of the water ingress and the serious nature of the water damage and potential further damage to the Property.

**ii) Delays in communication and lack of communication.**

With reference to the supporting documents lodged with the Application, Ms. Moir stressed that the Property Factor has consistently failed to correspond and expressed extreme frustration at the lack of service provided by the Property Factor throughout.

**iii) The process followed in dealing with repairs and maintenance**

With further reference to the supporting documents lodged with the Application, Moir advised the Tribunal that the Property Factor has not deal with the chimney repair, has not dealt with less urgent repairs to the other chimneys and failed to ensure that the gutters were cleared properly, despite frequent request and reminders. Ms. Moir herself attended to gutter clearing at a substantial cost due to the need for scaffolding. The Property Factor instructed work for gutter cleaning which was not done properly and so had to be redone. The Property Factor rendered accounts for both sets of work. The Property Factor has only recently obtained quotes for chimney work and circulated these to the owners for instruction.

Ms. Moir stated that the instruction to roofers and invoices for roof work in May 2022 relate only to making the chimney safe and that no action was taken to deal with the repair itself.

This ineffectual gutter cleaning and roof work was invoiced at a total of £750.00.

**iv) Property Factor Duties.**

Again, with reference to the supporting documents lodged with the Application, Ms. Moir stated that the Property Factor has simply not provided a service which is acceptable in any way for the last eighteen months. Again, with reference to the supporting documents lodged with the Application, Ms. Moir stressed that the Property Factor has not dealt with her complaints. In spite of Ms. Moir withholding payment and advising the Property Factor of this, the Property Factor has routinely added late payment charges to her account and has routinely failed to address the removal of these charges properly.

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

Ms. Moir advised that her dealings with the Property Factor has caused frustrations and a feelings of "banging her head against a brick wall". Ms. Moir is out of pocket in respect of the gutter cleaning which she alone paid for. She explained that there are damp patches the walls of the Property close to the electric wiring and that she has a real concern of an electrical fault because of this. Ms. Moir explained that she has not been able to decorate because of the water ingress.

In respect of an outcome which Ms. Moir sought, she advised that she considered that a refund or write off of the factor fee for the previous eighteen months and an order to compel the Property Factor to carry out the chimney repair without further delay would be reasonable.

## **Issues for Tribunal**

8. As the Property Factor did not oppose the Application, 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.**

9. The Tribunal had regard to the Application 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.
10. The Tribunal found the Ms. Moir to be truthful, straightforward and measured in her submissions and found that she did not attempt to exaggerate the complaints.
11. 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 has not acted or has delayed to take action to have the water ingress to the Property remedied;
  - iv) The Homeowner carried out gutter cleaning and common repair work in the sum of £930.00 at her own cost;
  - v) The Property Factor has not carried out satisfactory gutter cleaning or satisfactory chimney work and has rendered accounts totalling £760.00 for this poor and incomplete work;
  - vi) The Property Factor has not dealt with the Homeowners properly and in a professional way and
  - vii) The Homeowner has suffered unnecessary frustration, financial loss and inconvenience due to the Property Factor's failures.

## **Decision of the Tribunal with reasons**

12. 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.

## **Property Factor Enforcement Order (PFEO)**

13. 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.*"
14. The Tribunal's view is that the Property Factor's conduct and treatment of the Homeowner is 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 she ought to be compensated. Therefore, the Tribunal proposes to make a PFEO.

15. 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.*"
16. The Tribunal proposes to make a PFEO to order the Property Factor to carry out the repair to the chimneys as a matter of urgency and at their own cost. The Tribunal agree with the Homeowner that she has not received an acceptable factoring service for at least eighteen months and agrees that these costs should be written off together with all financial penalties. The Tribunal further considers that the Property Factor should make reasonable payment to the Homeowner to compensate her for the cost of the work which she arranged and paid for and for her share of the accounts rendered for the "make safe" chimney repair and the gutter cleaning.
17. 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.
18. 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

30 October 2023

