



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17(1) of the Property Factors (Scotland) Act 2011 (Act)

Chamber Ref: FTS/HPC/PF/24/1969

Parties

**Mrs Elizabeth Campbell (Applicant)
Hacking and Paterson Management Services (Respondent)**

Mr Frederick Campbell (Applicant's Representative)

Flat 0/2, 43 Queensborough Gardens, Hyndland, Glasgow, G12 9QP (Property)

Tribunal Members:

Alan Strain (Legal Member) and Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor: 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 (**Code**) at Sections 3.1 and 5.3.

Background

This is an application under Rule 43 and section 17(1) of the Act in respect of the Respondent's alleged breaches of the Code of Conduct.

The Tribunal had regard to the following documents:

1. Application received 1 May 2024 and supporting documents;
2. The Respondent lodged a written response with supporting documents by email of 11 July 2024;
3. The Applicant lodged an updated numbered Inventory of Productions with the Tribunal on 12 August 2024;
4. Written Representations from the Respondent to each of the 4 allegations made by the Applicant dated 7 October 2024;

5. Written Representations from the Applicant in response to the Respondent's Written Representations dated 18 October 2024 with updated Inventory and additional documents;
6. Written Representations from the Applicant dated 27 February 2025 with updated Inventory and additional documents.

Section 17 of the **Property Factors (Scotland) Act 2011** provides that a homeowner may apply to the Tribunal for determination that a property factor has failed to perform their duties or breached the Code of Conduct.

The Applicant asserted alleged breaches of sections 1.1, 3.1, 5.3, 5.6 and 6.6 of the Code in respect of the 4 following complaints:

1. The Respondent applied improper charges.

This complaint related to the improper charge of one owner's share of the cost of a property survey instructed prior to the Applicant becoming owner of the Property.

2. The Respondent failed to promptly submit an insurance claim.

This complaint related to alleged erroneous advice from the Respondent regarding insurance liability, poor communication and delay in pursuing an insurance claim.

3. The Respondent failed to provide complete insurance documents when requested by the Applicant.

4. The Respondent failed to balance costs of repairs against likely quality and longevity.

This complaint related to the Respondent proposing to go to tender for works without actually confirming the works were necessary.

Hearing

The case called for a Hearing by conference call on 13 March 2025. The Applicant did not participate but was represented by her husband Mr Campbell. The Respondent was represented by Mr Martin Henderson, Associate Factoring Director with the Respondent.

Both Parties had lodged comprehensive written representations addressing the 4 complaints along with documents referred to therein. The Tribunal intimated at the outset that it would take the Written Representations as read and invited both Parties to address the Tribunal on any additional matters or matters not covered in the Written Representations.

The Tribunal heard from both Mr Campbell and Mr Henderson. Both asked questions of the other and then both made submissions.

Sequence of Events and Tribunal's Findings

It was clear that there was no dispute as to the sequence of events and the content of the correspondence. All of the correspondence has been produced and referred to by the Parties.

The Tribunal found the evidence of both Mr Campbell and Mr Henderson to be credible and reliable.

The material correspondence for the purposes of the Tribunal's determination is referred to below.

The dispute between the Parties was relatively narrow. It related to the 4 complaints referred to above.

The Tribunal dealt with each in turn.

1. The Respondent applied improper charges.

Findings in Fact

1. The Respondent instructed a survey of the block following a report by a Homeowner regarding cracking amongst the front steps and front wall. The Respondent was aware of this report prior to 13 October 2021.
2. The Applicant's solicitors wrote to the Respondent on 23 November 2021 and asked the Respondent to:
 - (a) *provide details of any common repairs which are proposed, outstanding or being considered by the co-proprietors, of which you are aware;*
 - (b) *confirm details of any common building defects, maintenance issues or pending matters of which you are aware, where estimates are being obtained for consideration of the co-proprietors.*
3. The Respondent responded to the Applicant's solicitors on 24 November 2021 and advised they were not aware of any common repairs which are proposed, outstanding or being considered by the co-proprietors or any common building defects, maintenance issues or pending matters, where estimates are being obtained for consideration of the co-proprietors. This was caveated with a statement that there was nothing that would be anticipated to cost in excess of £500 per homeowner.
4. The Applicant received the keys to the Property on 16 December 2021 and moved into the Property on 17 December 2021.
5. The Respondent instructed the survey which was carried out on 17 December 2021 by IGW Associates.
6. The survey cost £420 in respect of which the Respondent's charged the Applicant 1/8 share of £52.50. This was invoiced to the Applicant on 8 February 2022.

7. The Applicant disputed liability for this charge on the basis that she was not the Homeowner at the time, had not agreed to the instruction of the survey and that the previous owner should be liable for this cost.

8. The Respondent continued to pursue this until 22 December 2023 when they offered to reimburse the cost of the survey report.

Discussion and Findings

The Tribunal considered that despite the cost caveat of £500 stated in the letter of 24 November 2021 the Respondent should have disclosed the reported issues and proposed survey to the Applicant's solicitors. To fail to do so was misleading. An investigation of cracks in the building was to be carried out and so was a preliminary report where the outcome could be that no further work would be required or, as it turned out, a suggestion of works amounting to around £200,000. The Applicant described this as a "bombshell awaiting them" when they moved in and the Respondent must understand that failure to have advised a prospective purchaser and potential future customer of what was in hand is not "honest, open, transparent and fair" as is required by the Overarching Standards of Practice in the Code. Failure to disclose what was in hand prevented the seller and the purchaser from being able to consider the matter and come to an agreement as to how the sale should have proceeded. The Applicant had a Single Survey in which there is mention of structural movement but considered to be longstanding and so the Applicant may not have been unduly concerned but equally may have decided to await the outcome of the investigation being carried out. It cannot be known now how matters could have unfolded. However, as the Applicant was not a homeowner at the time of the non-disclosure by the Respondent, and as the seller may have had a role to play in this, legal remedy does not lie with the legislation being considered by this Tribunal.

Accordingly, The Tribunal find that the Respondent did not breach section 1.1 of the Code as alleged by the Applicant. The Respondent was not under an obligation to the Applicant in terms of the Written Statement of Services (WSS) to inform a prospective purchaser of apportionment of common charges on change of ownership (Clause 3.4 of the WSS) as the Applicant was not a homeowner at the time.

The Tribunal considered that the Respondent should not have pursued the Applicant for payment given that she was not the homeowner at the time of instruction of the survey, had no knowledge of and had not agreed to the instruction of the survey.

In this regard the Tribunal find that the Respondent breached Section 3.1 of the Code in that the request for payment was improper. It also fails the Overarching Standards of Practice OSP2 of the code in not being honest, open, transparent and fair in the dealings with the Applicant.

2. The Respondent failed to promptly submit an insurance claim.

Findings in Fact

1. The survey report by IGW identified ongoing or recent building movement and recommended investigation into the cause. Following receipt of the survey report by IGW Associates dated 21 December 2021 the Respondent obtained a fee quote from IGW to prepare tender documents in respect of anticipated repair works and for preparation of tender documents for contractors. This was communicated to the Applicant on 23 March 2022.
2. The Respondent submitted an insurance claim in respect of the identified repairs on 28 March 2022 and this was confirmed to the Applicant by email of the same date from the Respondent. The Respondent also communicated that it did not consider the proposed repairs to be covered by insurance.
3. The Applicant obtained and reviewed the Summary of Cover in terms of the insurance and advised the Respondent by telephone in June 2022 that the insurance did cover the potential repairs.
4. The Respondent obtained an estimate from IGW of the cost of repairs identified by the report which was communicated to the Applicant by email of 21 June 2022. The estimate was in excess of £200,000.
5. The Respondent communicated with all owners in July 2022 seeking instruction on pursuing investigations as recommended by IGW. No response having been received from the owners as a collective, the Respondent issued a letter on 15 December 2022 to all owners advising that unless they received instruction by end of January 2023 then they would close the matter and ask the insurers to close the claim.
6. The Applicant responded by letter of 11 January 2023 asking that the claim remain open.
7. The Respondent responded by letter of 24 January 2023 advising that the majority of the owners wished the claim to remain open but that the insurers were not prepared to leave the claim open ended. The Respondent required instruction from homeowners.

Discussion and Findings

This complaint related to alleged erroneous advice from the Respondent regarding insurance liability, poor communication and delay in pursuing an insurance claim.

The Tribunal considered that the Respondent had lodged the insurance claim within a reasonable period of time and had been communicating openly and transparently with the Homeowners regarding the claim and further progress. The Respondent chased the homeowners for instruction and clearly set out that homeowners' instruction was needed to progress matters.

The Tribunal do not consider that the Respondent breached section 5.6 of the Code in respect of this complaint.

3. The Respondent failed to provide complete insurance documents when requested by the Applicant.

Findings in Fact

1. The Applicant requested the full policy wording from the Respondent several times during February to August 2022.
2. The Respondent's sent the Summary of Cover and some additional documentation on 4 March 2022. This did not include the full policy wording. Following further requests the Respondent emailed the Applicant on 20 July 2022 informing her that the documents could not be provided for data protection reasons; on 12 August 2022 stating all documents available had been provided and on 15 August 2022 stating that all documents have been provided and the Respondent will no longer answer any correspondence on the subject.

Discussion and Findings

The Applicant asserts that the Respondent failed to provide the full block insurance policy documentation despite repeated requests.

It was not disputed that several requests were made between February and August 2022 for this documentation. It was not disputed that the Respondent provided the Summary of Cover along with policy wording documents on request to the Applicant.

The Respondent's position is that there were crossed wires regarding the information requested. Mr Henderson explained that the Respondent had a group insurance which covered their Property portfolio. The Respondent initially provided the policy schedule which detailed the particular properties covered under the block policy and premiums. Once the Respondent understood the request was for the policy wording this was complied with on 4 March 2022. The Respondent has apologised for this misunderstanding.

The Applicant maintain that full details of the cover have still not been provided and that this is a breach of sections 2.4 and 5.3 of the Code.

The Tribunal find that the Respondent has breached sections 2.4 and 5.3 of the Code as they have failed to provide full details of the policy cover when requested to do so by the Applicant and there being no good reason not to have complied.

A breach of section 2.4 was not included in section 7A of the application and is accordingly disregarded.

4. The Respondent failed to balance costs of repairs against likely quality and longevity.

Findings in Fact

1. Following receipt of the survey report by IGW Associates dated 21 December 2021 the Respondent obtained a fee quote from IGW to prepare tender documents in

respect of anticipated repair works and for preparation of tender documents for contractors. This was communicated to the Applicant on 23 March 2022.

2. The Respondent obtained an estimate from IGW of the cost of repairs identified by the report which was communicated to the Applicant by email of 21 June 2022. The estimate was in excess of £200,000.

3. The Applicant along with the other homeowners instructed structural assessments. The Report obtained in respect of these structural assessments in August 2023 concluded there was no evidence of ongoing settlement or movement. Visible cracks were evidence of historic settlement.

Discussion and Findings

The Applicant contends that the Respondent breached section 6.6 of the Code in that it failed to balance cost, quality and longevity by acting in reliance of the IGW Report.

The Tribunal consider that the Respondent acted appropriately in the circumstances. A professional survey was instructed and carried out. The Respondent acted in reliance of the report obtained. No more could be expected of a Property factor in the circumstances.

The Respondent obtained a professional report and acted on the advice of the report. It was always open to the Homeowners to seek a second opinion, which they did, and always open to the Homeowners to decide how the matter should be progressed.

The Tribunal find that there was no breach of section 6.6 in this regard.

The Applicant seeks compensation for inconvenience, stress and financial outlay. It was clear to the Tribunal that the Respondent's breach of duties found above led to considerable effort, stress and inconvenience on the Applicant's behalf. This was clearly evidenced by the documentation produced. The Tribunal consider that the Applicant is entitled to compensation as detailed in the proposed PFEO.

Property Factor Enforcement Order (PFEO)

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.”

The Property Factor has made errors and therefore, the Tribunal proposes to make a PFEO.

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.”

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

Right of Appeal

In terms of Section 46 of the Tribunal (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.

16 April 2025

Legal Member

Date