



First-tier tribunal for Scotland (Housing and Property Chamber)

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/21/0889

**The Property: 21 Florida Drive, Mount Florida, Glasgow, G42 9DN ("The Property")**

### **The Parties:-**

**Andrew Bussey and Laura Bussey, residing together at 21 Florida Drive, Mount Florida, Glasgow, G42 9DN ("the applicants")**

**Lowther Homes Ltd, a company incorporated under the Companies Acts (SC 402836) having its Registered office at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL ("The property factor")**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the property factor has failed to comply with the code of conduct as required by Section 14 of the 2011 Act, determined that the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011.

### **Tribunal Members**

Paul Doyle	Legal Member
David Godfrey	Ordinary Member

### **Background**

1 By application dated 6 April 2021, the applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of their complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act & that the property factor has failed to comply with the property factor's duties.

2 The application stated that the applicant considered that the respondent failed to comply with Sections 2.1, 2.5, and 6.1 of the code of conduct for property factors and breached the property factor's duties.

3 By interlocutor dated 25 June 2021, the application was referred to this tribunal. The First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations.

4 The applicant lodged further written representations on 9 August 2021. The property factor did not lodge any written representations. Notice of referral and details of the time date and place of today's hearing were sent to both parties on 9 July 2021. Post Office records confirm that the Property Factor received the notice of referral, application and supporting papers on 12 July 2021.

5. A hearing was held by telephone conference on 20 August 2021. The applicants were present, but unrepresented. The property factor was neither present nor represented. The property factor received timely intimation of today's hearing and has chosen not to participate. We are satisfied that we can justly determine this application in the property factor's absence.

### **Findings in Fact**

6 The tribunal finds the following facts to be established:

- (a) The applicants have lived at 21 Florida Drive, Mount Florida, Glasgow ("the property") for nearly 8 years. Throughout that time, the respondent has been the applicants' property factor.
- (b) The property is a top floor flat dwellinghouse entering by a common passage and stair in a stone built tenement. The property factor is responsible for periodic inspections of the roof of the larger building of which the property forms part, and for instructing and coordinating repairs to the roof.
- (c) The property factor has not carried out periodic inspections of the roof of the larger building of which this property forms part. The roof fell into disrepair and in June 2020, water started to leak from the roof and/or gutters into the applicant's property.
- (d) The property factor uses their own direct labour organisation, and does not invite other construction or roof repair organisations to provide estimates for work.
- (e) In June 2020, the applicants contacted the property factor to report that a roof repair was immediately necessary. In June 2020 businesses in Glasgow were affected by the restrictions imposed by the Covid- 19 pandemic. The respondent simply reacted by telling the applicants to phone back .

(f) On 5 July 2020 the applicants told the property factor that an emergency repair was immediately necessary. The same day, a roofer inspected the roof and said that a temporary repair would not be enough, and a complete repair would be arranged.

(g) On 6 July 2020 the applicants received a text message and a letter from the respondent saying that the roof repair had been arranged for 27 July 2020. The roof repair was not carried out on 27 July 2020. The applicant made enquiry and was told that the contents of both the text message and the letter dated 6 July 2020 were inaccurate. The applicants were told the text message and the letter they had received were automated responses, and that no staff were available to undertake repairs.

(h) By July 2020 government restrictions caused by the Covid-19 pandemic had eased and construction work had recommenced.

(i) On 4 August 2020 the applicant contacted the property factor to ask when the repair works would be carried out, but received no response. On 29 September 2020 the property factor told the applicants that roofing contractors were prevented from working because of government guidance.

(j) On 9 October 2020, one of the property factors managers contacted the applicants to say that only emergency works could be undertaken. The property factor declined to make any enquiry with contractors other than their own direct labour organisation, even though other contractors were available and were accepting work.

(k) On 21 October 2020, the applicants raised a stage one complaint with the property factor because water had been seeping into the property since June 2020, and, despite repeated pleas, no repair works to the roof of the tenement of which the property forms part had been carried out.

(l) On 1 November 2020, the property factor told the applicants that a roofing contractor would be in touch. On 5 November 2020 a roofer visited the property and identified cracked capping and a one inch gap in the roof fabric. The advice given at the start of July 2020, that scaffolding would be necessary for the repair works, was repeated.

(m) On 27 November 2020 the property factor wrote to neighbouring homeowners seeking consent to the necessary roof works. Letters of consent were received by the property factor on 3 December 2020.

(n) On 1 December 2020, the property factor wrote to the applicants saying that the roof repair would be carried out on 16 December 2020. The applicant contacted the property factor for confirmation, only to be told that they had once again received an automated letter, the contents of which were inaccurate. The repair had not been booked for 16 December 2020.

(o) On 6 January 2021, scaffolding was erected outside the property and repair work commenced. The applicant's property had water ingress affecting three rooms for six months. The water ingress damaged the decoration furnishings, flooring, and plaster in each of those rooms. Remedial works are necessary, which are likely to cost more than £5000.

(p) The applicants' complaint, raised initially in October 2020, was considered by the property factor at both stage one and stage two of their complaints procedure. The property factor said that the applicants' complaint was not upheld, but acknowledged that their services fell short of what could reasonably be expected.

(q) Roofing works were completed in January 2021, but in August 2021 water started to leak into the property again. The applicants have reported the renewed water ingress to the property factor, but also contacted the roofing contractors directly. Roofing contractors are investigating the source of the new water ingress.

### **Reasons for decision**

7. Section 2.1 of the code of conduct says

#### **SECTION 2: COMMUNICATION AND CONSULTATION**

Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard:

2.1 You must not provide information which is misleading or false.

8. The applicants lived with a leaking roof and watched the deteriorating condition of the decoration, the furnishings, the flooring, and plasterwork in three rooms of the property whilst waiting for the property factor to carry out repairs, and stop the damage. On 6 July 2020, and again on 1 December 2020 the applicants received letters from the property factor saying that roofing works had been instructed, and would start in the next few days.

9. On enquiry, the applicants found that a text message received from 6 July 2020, a letter dated 6 July 2020, and a letter dated 1 December 2020, all promising imminent roof repairs, contained inaccurate information. The property factor says that each of those communications were automatically generated responses which should have simply said that the need for roof repair is logged into their repairs management system.

10. There is a difference between recording the need for roof repair and telling a homeowner (waiting for the roof repair) that the repair has been instructed, and a date has been identified for the works to be carried out.

11. The difference between what the property factor should have said, and what the property factor actually said, is so significant that we must come to the conclusion that the information provided is false and misleading. The property factor might not have intended to provide false and misleading information, but, on the facts as we find them to be, one text and two letters contained information so inaccurate that the information was both false and misleading.

12. Section 2.5 of the code of conduct says

2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).

13. A chronology of the pleas from the applicants to the property factor to carry out necessary roof repair works can be found in our findings of fact. Between the start of July and the end of September, both 2020, the property factor did not respond to the applicants. Between June 2020 and the start of January 2021 roof repair works were not carried out.

14. On the facts as we find them to be, the property factor did not respond to enquiries within prompt timescales. If the property factor's aim was to deal with enquiries and complaints as quickly and fully as possible, then they manifestly failed.

15. On the undisputed facts in this case, the property factor clearly breached section 2.5 of the code of conduct.

16. Section 6.1 of the code of conduct says

6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

17. It is the second sentence of section 6.1 of the code of conduct which is relevant in this case. We have already found that there was a failure in communication between July 2020 and January 2021. We have already found that the property factor misled the applicants into believing that repairs would commence in July 2020 and in December 2020. By analogy, we must find that

the property factor did not inform the homeowners of the progress of the work, nor did the property factor provide estimated timescales for completion.

18. We therefore find that the property factor breached sections 2.1, section 2.5, and section 6.5 of the code of conduct for property factors.

### The Property Factors Duties

19. Section 17(5) of the Property Factors (Scotland) Act 2011 defines the property factor's duties.

20. We have found that the property factor has breached the code of conduct for property factors. For the same reasons we find that the respondent has not adhered to their duties in relation to the management of the common parts of land owned by the homeowner.

21. We therefore find that the respondent has failed to carry out the property factors duties.

22. The unchallenged evidence placed before us is that the applicants now face the cost of repairs to flooring, furnishings, plasterwork & decoration in three rooms within the property. The applicants have made unsuccessful attempts to claim the cost of repairs from their insurers. Taking an holistic view of the evidence in this case, we reach the conclusion that it is only fair that the applicants should be reimbursed for part of that expense.

23. The property factor has failed in their duties and breached the code of conduct. The failure in duties and the breach of the code of conduct merits a Property Factor Enforcement Order ("PFEO"). The purpose of the PFEO is not to enrich the applicant. The purpose of the PFEO lies in the public interest to ensure the remedy of a breach of the code of conduct and to procure compliance with The Property Factors (Scotland) Act 2011 by the Respondent in all future dealings.

### **Decision**

24. The tribunal therefore intend to make the following property factor enforcement order (PFEO)

*"Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must pay the applicant £3,500.00 representing a proportion of the cost of remedial works made necessary to the interior of the homeowners property by a*

*prolonged period of water ingress caused by damage to the roof of the property.”*

25. Section 19 of the 2011 Act contains the following:

(2) In any case where the committee proposes to make a property factor enforcement order, they 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 them.

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

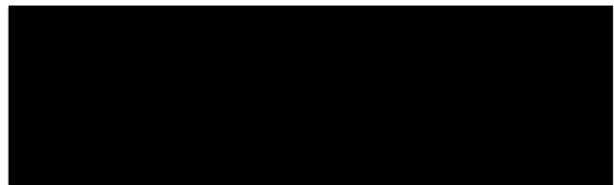
26. The intimation of the tribunal's decision and this proposed PFEO to the parties should be taken as notice for the purposes of s. 19(2)(a) of the 2011 Act, and parties are hereby given notice that they should ensure that any written representations which they wish to make under s.19 (2)(b) of the 2011 Act reach the First-Tier Tribunal for Scotland (Housing and Property Chamber) office not later than 14 days after the date that the Decision and this proposed PFEO is intimated to them. If no representations are received within that 14 day period, then the tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

### **Right of Appeal**

**27. 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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will**

**be treated as having effect from the day on which the appeal is abandoned or so determined.**



Signed  
Legal Member

20 August 2021