



**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 numbers:**

FTS/HPC/LM/23/0079

FTS/HPC/LM/23/0081

Re: Land at Dinart Street, Glasgow and Property at Flat 0/1, 95, Dinart Street, Glasgow, G33 2DS (“the Property”)

**The Parties:**

Miss Marlene Hay, residing at Flat 0/1, 95, Dinart Street, Glasgow, G33 2DS, (“the Homeowner”)

Lowther Homes, having a place of business at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Property Factor”)

**Tribunal Members**

Karen Moore (Chairperson)     Mary Lyden (Ordinary 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 2012 at Sections 2.5, 6.9 and 7.1
- (ii) 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 Sections 1.2, 1.3 and 7.1  
and
- (iii) has failed to comply with the Property Factor’s Duties.

**Background**

1. By applications received between 10 January 2023 and 20 March 2023 (“the Applications”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber for a determination that the Factor had failed to comply with

the Codes of Conduct for Property Factors and had failed to comply with the Property Factor Duties.

2. Application FTS/HPC/LM/23/0079 in respect of the complaint under the Code of Conduct for Property Factors 2012 ("the 2012 Code") comprised the following documents: -(i) application form dated 10 January 2023 comprising the First-tier Tribunal standard application form, Form "C1", indicating that the parts of the 2012 Code complained of are; Communications and Consultation at 2.5; Carrying out repairs and maintenance at Section 6.9 and Complaints resolution at Section 7.1 and complaining of a failure to carry out the Property Factor's duties (ii) copy intimation letter to the Property Factor and (iii) copy email correspondence with the Property Factor.
3. The statutory notification letter in terms of Section 17 of the Act listed the complaints as the following breaches of the 2012 Code:-
  - i) Written Statement of Services at Sections 1.2 and 1.3;
  - ii) Communications and Consultation at Section 2.5 and
  - iii) and Complaints resolution at Sections 7.1, 7.4 and 7.5.

The body of the letter contained a complaint in respect of Carrying out Repairs and Maintenance at Section 6.9.

4. Application FTS/HPC/LM/23/0081 in respect of the complaint under the Code of Conduct for Property Factors 2021 ("the 2021 Code") 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: Written Statement of Services, Communications and Consultation at Section 2.5, Carrying out repairs and maintenance at Section 6.9 and Complaints resolution at Section 7.1 and complaining of a failure to carry out the Property Factor's duties (ii) copy intimation letter to the Property Factor and (iii) copy email correspondence with the Property Factor. Although, Application FTS/HPC/LM/23/0081 in respect of the complaint under the Code of Conduct for Property Factors 2021 referred to the 2021 Code, the wording included for that Code was, in fact, the wording for the 2012 Code.
5. The statutory notification letter in terms of Section 17 of the Act listed the complaints as the following breaches of the 2021 Code:-
  - i) Overarching Standards of Practice at OSP 6 and OSP 11;
  - ii) Written Statement of Services at Sections 1.2 and 1.3;
  - iii) Communications and Consultation at Section 2.7 and
  - iv) Complaints resolution at Sections 7.1 and 7.5.
6. A legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (CMD) was fixed for 16 June 2023 at 10.00 by telephone conference call.

**CMD**

7. The CMD took place on 16 June 2023 at 10.00 by telephone conference call. The Homeowner was present on the call and was not represented. The Property Factor was not present and was not represented. The Property Factor did not submit written representations.
8. The Tribunal was satisfied that the Applications has been notified to the Property Factor properly. The Tribunal had regard to the Rules and, in particular, to Rule 2 and took the view that it should proceed in the absence of the Property Factor. The Tribunal advised the Homeowner 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 could deal with the Application at the CMD. The Homeowner confirmed that she was ready to proceed with the Application.
9. The Tribunal drew the Homeowner's attention to the inconsistencies between the statutory intimation letters and the Applications and advised the Homeowner that it could only deal with the complaints notified in the letters. The Homeowner confirmed that she was content to restrict the Applications in this respect.
10. The Tribunal advised that it would deal with the Applications as follows:  
FTS/HPC/LM/23/0079 in respect of the 2012 Code at Communications and Consultation at Section 2.5, Carrying out Repairs and Maintenance at Section 6.9 and Complaints resolution at Sections 7.1;  
FTS/HPC/LM/23/0081 in respect of the 2021 Code at Written Statement of Services at Sections 1.2 and 1.3 and Complaints resolution at Sections 7.1.  
The Tribunal advised that it would deal with both Applications in respect of property factor duties.
11. The Tribunal adjourned the CMD briefly to allow the Homeowner to reassess the Applications in respect of the above.

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

12. The Homeowner then expanded on the Applications and answered the Tribunal's questions on the Applications in respect of the broad heads of complaint complained of in the Applications as restricted to the parts of the Code narrated in the Section 17 statutory notification as set out in paragraph 10 above and in respect of the property factor's duties.

- i) **Written Statement of Services.**

The Homeowner explained the background to the factoring of the Property and the open spaces. She explained that she purchased the Property in 2005, and at that time, factoring was carried out by Glasgow Housing Association and Your Place, both of which carried out a good service without issues. In or around 2020, the factoring service was taken over by Lowther Homes and the standard of service dropped.

The Homeowner advised that she has not received a copy of the Written Statement of Services for the Property and that the Property Factor's response to a request for this document was to refer her to their website on which a Written Statement of Services for properties in Dumfries and Galloway is published.

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

With reference to the supporting documents lodged with the Applications, the Homeowner stressed that the Property Factor has consistently failed to correspond within reasonable timescales and has not provided full and accurate responses to written requests. She explained that most correspondence is unanswered and that as email replies from the Property Factor are from a "no-reply" email address, it is not possible to have a meaningful exchange with them. With regard to telephone communication, although calls are answered, the call handlers are not able to answer specific enquiries and calls are not logged as formal complaints.

The Homeowner expressed extreme frustration at the lack of consistency in the Property Factor's staff responses and the fact that she has had to deal with different staff members throughout.

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

With further reference to the supporting documents lodged with the Applications, the Homeowner advised the Tribunal that the Property Factor has not dealt with her enquiries in respect of drainage repairs and grass cutting. The Homeowner explained that a common repair to a drain was instructed over two years ago and the contractor did not complete the repair properly. She explained that the drain cover was not lifted, the drain was not cleared, and, that although slabbing was jet washed, the jet washing was carried out on the wrong area of slabs. The Homeowner advised that the Property Factor's response to this issue was to confirm that slabs had been jet washed. The Homeowner explained that she has been withholding payment of the common repair to the drain and that, although this was treated as a disputed invoice and removed from her account, it has now been reinstated without the dispute being resolved and without explanation. The Homeowner also stated that she had considered instructing someone else to complete the work on the drains due to the Property Factor's lack of response.

The Homeowner advised that the previous factor had assisted with fly-tipping complaints on the adjacent open ground but that the Property Factor does not engage with residents, the police or the council to resolve this problem.

With regard to routine garden maintenance and grass cutting, the Homeowner advised that although owners are charged for approximately nine cuts a year, only two cuts are carried out and that the charges for the work does not reflect the standard of the work. She stated that her impression is that the grass is only cut if a resident contacts the Property Factor to remind them the grass cutting needs to be done and that the workmen are taken off other work to carry out the task. On other occasions, the Homeowner had to take out her own lawn mower to cut the grass, a service that she is already paying for via the Property Factor.

**iv) Complaints process**

Again, with reference to the supporting documents lodged with the Applications, the Homeowner stressed that the Property Factor has simply not dealt with her complaints as complaints and has not attempted to reach a resolution.

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

The Homeowner advised that her dealings with the Property Factor had caused her stress and frustrations and that she feels she is "banging her head against a brick wall" when trying to have the Property Factor communicate with her. She explained that she has had to use her

annual leave to attend the CMD and that the preparation of the Applications had taken up a considerable amount of time. The Homeowner advised the Tribunal that the Property Factor's annual fee is approximately £200.00.

### **Issues for Tribunal**

13. 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.**

14. The Tribunal had regard to the Application in full, the written submissions by the Property Factor and to the submissions made at both CMDs, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.

15. The Tribunal found the Homeowner to be truthful, straightforward and measured in her submissions and found that she did not attempt to exaggerate her complaints to any extent.

16. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property Factor did not deal with correspondence from the Homeowner within reasonable timescales;
- iii) The Property Factor did not provide the Homeowner with full and accurate information in response to her written requests;
- iv) The Property Factor did not provide the Homeowner with the Written Statement of Services and ancillary procedures;
- v) The Property Factor has not provided the Homeowner with full contact details;
- vi) There is no evidence that the Property Factor has proper procedures, as required by the Code and the property factor's duties;
- vii) The Property Factor has not acted to resolve the Homeowner's dispute in respect of the drain repair, has not pursued her complaint with the contractor and has not dealt with the withholding of sums from her common charges accounts;
- viii) The Property Factor does not deal with routine garden maintenance and grass cutting properly and in a professional way and
- ix) The Homeowner has suffered distress, frustration and inconvenience due to the Property Factor's failures.

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

17. From the Tribunal's Findings in Fact, the Tribunal had no hesitation in finding that the Property Factor failed to comply with both the 2012 Code and the 2021 Code and with the property factor duties.

18. With regard to the specific breaches of the 2012 Code and the information before it, the Tribunal found that the Property Factor failed to comply with the following parts of the Code:-

- i) Communications and Consultation at Section 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 fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in your Written statement (Section 1 refers)
- ii) Carrying out Repairs and Maintenance at Section 6.9: You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor and
- iii) Complaints resolution at Section 7.1: You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

19. With regard to the specific breaches of the 2021 Code and the information before it, the Tribunal found that the Property Factor failed to comply with the following parts of the Code:-

- i) Written Statement of Services at Sections
  - 1.2: A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners and
  - 1.3 At all other times, a copy of the latest WSS must be made available by the property factor on request by a homeowner.  
and
- ii) Complaints resolution at Section 7.1: A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably.

20. The Tribunal found further that the Property Factor had failed to comply with the Property Factor Duties.

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

21. 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.*"

22. The Tribunal's view is that the Property Factor's conduct and treatment of the Homeowner to be totally unprofessional in all respects. In the Tribunal's opinion, the only service provided to the Homeowner is the arrangement of common buildings

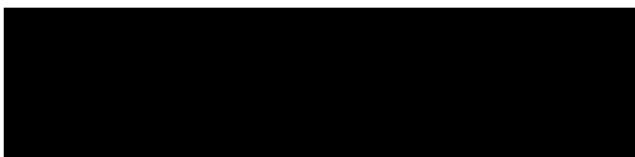
insurance, for which the Property Factor is likely to receive commission. The Tribunal considers that the Property Factor has shown complete disregard for their statutory duties and their customer. The Property Factor's conduct has caused the Homeowner unnecessary frustration and indirect financial loss for which the Homeowner ought to be compensated. Further, it appears to the Tribunal that the information requested by the Homeowner remains unanswered. Therefore, the Tribunal proposes to make a PFEO.

23. 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.*"
24. The Tribunal proposes to make a PFEO to order the Property Factor to provide the Homeowner with the information requested by her and to make reasonable payment to the Homeowner to compensate her for financial loss, inconvenience, frustration and time spent.
25. 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.
26. 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

26 June 2023