

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/25/0097

Property: 114 Anchor Drive, Paisley PA1 1LH (“the Property”)

The Parties:-

Mr Scott Gibb, 9 Orr Street, Paisley PA2 6LT (“the homeowner”)

Speirs Gumley Property Management Limited, registered in Scotland (SCO78921) and having their registered office at 3rd Floor, Red Tree Magenta, Glasgow Road, Rutherglen Glasgow G73 1UZ (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be determined without a Hearing and that the property factors have not failed to comply with OSP6, OSP11 or Sections 2.7, 6.1, 6.4 and 6.12 of the Property Factors Code of Conduct effective from 16 August 2021.

Background

1. By application, dated 31 December 2024, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. He alleged failures to comply with OSPs 6 and 11 and Sections 2.7, 6.1, 6.4 and 6.12 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code”).
2. The homeowner’s complaints were set out in full in his formal letter of complaint to the property factors of 23 October 2023, which he attached to the application and, taking the two documents together, the following is a summary of the complaint.

3. The homeowner referred to neglected roof and delayed repairs. A roof survey was carried out in 2022. The property factors noted that repairs were required and stated that they would gather quotes, but these were never received. The lack of urgency in gathering and sending out quotes for roof repairs in 2024 resulted in the homeowner's tenant having to live with active water ingress for 5 months. The three quotes of 17, 18 and 30 April were not sent out to owners until 24 May. The amount of damage done in this time was costly and very upsetting for all involved. An internal ceiling collapsed, with water buckets having to be emptied during the night, among other inconveniences. The homeowner understood that collecting the money is not an easy job, but the fact that there was a near 4-week delay in sharing quotes was inexcusable, especially with active water ingress.
4. In relation to the 2022 repairs, the view of the homeowner was that if the recommended repairs had been carried out (specifically the flashing at the boiler flue) the flue would not have come through the ceiling, damaging the boiler beyond repair, and his insurance claim would not have been rejected.
5. Temporary repairs carried out on 9/10 April 2024 had failed. More should have been done to have the repairs carried out. The property factors told the homeowner on 22 May 2024 that the roof had been sealed, but a few hours later it was worse than ever. The three quotes had been gathered fairly quickly, but they were not sent out to owners until 24 May 2024, putting everything back almost 4 weeks. The works were then questioned by another owner and by the homeowner's letting agents, which caused an understandable but far too long delay. It took 7 weeks for the property factors to receive a revised quote and a further two weeks, until 1 August 2024, to share it with the owners.
6. The homeowner stated that his insurance claim had been rejected, the surveyor having noted that the roof was not in good condition. The homeowner's view was that, if the property factors had followed up gathering quotes and carrying out repairs in 2022, his claim would have been fully accepted. His bill, including giving his tenants a 25% rent reduction for 5 months, replacing a boiler and flue, repairing the internal ceiling, installing a tarpaulin with hose going out to divert water and painting the new ceiling was well over £5,000, and he felt he was due compensation due to the delayed responses from the property factors and the fact that the recommended repairs were not carried out in 2022. Everyone he dealt with at the property factors was friendly and said the right things, but they never backed this up with prompt action. It had crippled the homeowner mentally and financially. The mental and physical toll over 5 months was extreme, knowing that every time it rained, water would be coming into the Property.
7. There had been an error in the split of the repairs cost amongst the owners. A fellow owner had told the homeowner that the split should have been between the Block of which the Property forms part and the adjoining Block. This had still not been resolved. The homeowner had contacted the property factors for more information on 8 November 2024. A reply on 14 November said that letters would be sent out but, as at the date of the application, this had not

happened. The view of the homeowner was that the property factors had never treated the water ingress as an emergency and it had left the homeowner and his letting agents to come up with a solution, namely suspending a tarpaulin from the roof with a hose to direct the water out of a window, which then had to be kept open.

8. The homeowner also complained that the property factors had taken more than 28 days to respond to his escalation of his complaint to the final stage. He had done this on 11 November 2024 and did not receive a response until 13 December 2024. He provided the Tribunal with a copy of the property factors' Written Statement of Services ("WSS").
9. The homeowner also provided the Tribunal with a copy of the property factors' response of 8 November 2024 to his complaint. They noted that a report from CRGP determined that the roof was in good condition overall and did not require renewal, although some minor repairs should be considered. They accepted that they had advised that they would obtain costs for the recommended work and that there was no record of these being received or instructed. The property factors presumed that this was due to staff changes at the time and offered their sincere apologies that the matter was not progressed. They did not, however, believe that this had any relevance to the recent incidence of storm damage and the defects noted by the surveyor had since been resolved.
10. The property factors disagreed that there had been a lack of urgency from their end in attempting to progress matters following the roof coming off in the storm of April 2024. They provided a timeline which indicated that they were notified by the homeowner's letting agents on 8 April that there was water ingress to the Property. On the following day, AGM Roofing attended and carried out temporary works to alleviate ingress, and the property factors began the process of ingathering competing quotes from three contractors. On 24 May 2024 a letter was issued to owners requesting funds. The final payment was received on 20 August 2024. While there was a delay in the quotes being issued, this was due to the contractors' recommendations being challenged by owners. As soon as they had three comparable quotes that owners were satisfied with, the property factors issued a funding request to owners. The responsibility then lay with owners to pay promptly. Their service includes fortnightly reminders, and the property factors had spent a significant amount of time calling owners and chasing them for money. They instructed the contractor to proceed as soon as they received the final payment.
11. The property factors said that they could not comment on the homeowner's insurers' decision to decline his claim, but they did know that claims had been accepted by other owners' insurers and settlement made, so they said it could not be speculated that his claim was declined as a direct result of the CRPG recommendations not being progressed.
12. The property factors made written representations to the Tribunal on 7 August 2025. They included a timeline of events and communications, which ended with their advising owners on 6 February 2025 that certain charges had been

apportioned incorrectly and, on 19 February 2025 that their accounts had been amended to resolve incorrect charges. The copy correspondence that they provided confirmed that a title deeds interpretation issue raised by another owner had been investigated and they accepted that a number of repairs charges should have been shared with the adjoining tenement. This matter was not considered further by the Tribunal as it post-dated the application. In relation to the 2024 storm damage, the communications provided included an email to owners on 12 April, advising of the damage, that temporary repairs had been carried out and that the property factors were seeking three quotes for permanent repairs. On 24 May 2024, they advised the owners of the three quotes and recommended acceptance of the cheapest one. The homeowner asked the property factors to appoint contractors of his choosing. They said that they could not instruct that firm directly, as they were not on their approved list, but if all the owners agreed, they would ingather the funds and, when instructed to do so, pay them to the contractors. On 29 May 2024, the homeowner's letting agents queried whether the quotes included leadwork. The property factors agreed to ask the contractors, and on 19 June 2024 they confirmed the contractors' responses. On 1 August 2024, the property factors told the owners that the preferred contractor had advised them that work had been missed within their original scope of work, that they had revised their quote, but that it was still the most competitive. The property factors were still waiting for three owners to provide funds and once these shares were settled, they would instruct the contractors to proceed.

13. The remainder of the property factors' representations comprised copies of relevant correspondence, including their written response to the complaint already summarised in Paragraphs 9-11 of this Decision.
14. On 7 August 2025, the homeowner responded to the property factors' representations. He believed that all documents in support of his application had already been submitted and summarised again his main complaints. He directed the Tribunal to his reply to the property factors' response to his complaints which, he said, summed up all the main points.

Case Management Discussion

15. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 19 August 2025. The homeowner was present. The property factors were represented by Ms Michelle Madden and Ms Eileen Elliott.
16. The homeowner confirmed that his insurers have now accepted and paid out on his claim, but he had still suffered a loss of rent of £125 per month. He agreed that Section 6.1 of the Code of Conduct is a general overview statement which does not impose any specific obligations on property factors and that the response of the property factors to his formal complaint had, at most, been only two days overdue, and withdrew his complaints under OSP11 and Section 6.1 of the Code of Conduct.

17. In relation to Section 6.4 of the Code of Conduct, the homeowner referred to the 4-week delay between obtaining the original quotes and sending them out to the owners, then the further 7-week delay in obtaining the revised quotes to include the lead work, and a further 2-week delay in sharing the revised quotes with the owners. The property factors responded that they had instructed three quotes, all of which confirmed that a further temporary repair was not possible. Their delegated authority is £50 per flat owner and the contractors' quotes were around £300, so they could not proceed without funding. They had discussions with two owners between getting the estimates and sending them out. These owners, one of whom was the homeowner, were questioning the specification. The homeowner stated that he had no recollection of discussing the quotes and that the challenges by owners had not happened until the quotes were sent out on 4 May 2024. The property factors replied that there had been "a lot of back and forth" between their Eileen Elliott and the homeowner's letting agents regarding the scope of the work. The property factors added that the boiler flue to which the homeowner had referred in his submissions was not their responsibility. The flues had been put in by the two top flat owners and are not a structural part of the roof, although they accepted that this had not been communicated properly to the homeowner. They also said that they had not stopped the process of ingathering funds while they awaited the amended quotes.
18. The Tribunal explained to the Parties that it could either determine the application based on the written representations and the Parties' evidence at the Case Management Discussion, could continue the application to a further Case Management Discussion, or could fix a full evidential Hearing. Both Parties confirmed that they were content for the Tribunal to determine the application without a full evidential Hearing.

Findings of Fact

- i. The homeowner is the proprietor of the Property.
- ii. The property factors, in the course of their business, manage the common parts of the block of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors are registered on The Scottish Property Factor Register.
- v. The homeowner has notified the property factors in writing as to why he considers that the property factors have breached the Codes of Conduct under the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 31 December 2024, under Section 17(1) of the Act.
- vii. The homeowner notified the property factors of water ingress to the Property on 8 April 2024.

- viii. Temporary repairs were carried out on the following day.
- ix. The property factors obtained quotes which are dated 17, 18 and 30 April 2024.
- x. The quotes were sent to homeowners on 24 May 2024, with funding being requested.
- xi. Contractors were instructed on 21 August 2024.
- xii. The property factors' WSS states that they will endeavour to resolve complaints within 28 days.

Reasons for Decision

- 19. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
- 20. The Tribunal considered carefully all the evidence before it, namely the written representations of both Parties and the oral evidence given at the Case Management Discussions. Not every document forming part of the written representations is referred to in the following statement of Reasons for Decision, but the Tribunal took all of them into account in arriving at its Decision.
- 21. The Tribunal then considered the written and oral evidence in relation to the alleged failure to comply with the various Sections of the Code.
- 22. **OSP6** states "You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective." The homeowner's complaint was that the services of the property factor were not carried out in a timely manner. In particular, he referred to the delay in sharing the 3 quotes with owners.
- 23. The Tribunal noted that the property factors had accepted that there had been a delay in April 2022 in following up on a roof inspection report by CRPG Surveyors Ltd of February 2022. This report concluded that the main body of roof tiles was in a reasonable condition and within life expectancy and that the main body of the flat roof was not beyond its economic use. It recommended minor repairs and was sent to owners in April 2022 and the property factors said they would obtain costs for these repairs. The property factors accepted, in their response to the homeowner's complaint, that they could find no record of the costings being instructed or received. They offered their sincere apologies that the matter had not been progressed but did not consider that this failing had any relevance to the storm damage in April 2024 and added that the defects noted

by the surveyor had since been resolved. The view of the Tribunal was that, as the property factors had apologised for their failure to follow up on obtaining costs in 2022 relating to roof repairs, it would not make a finding that the property factors had failed to comply with OSP6, as the repairs appeared to have been minor in nature, had in fact now been carried out and the property factors had issued a sincere apology.

24. In relation to the storm damage in April 2024 and the property factors' actions in obtaining quotes and instructing the work, the Tribunal's view was that the property factors instructed immediate temporary repairs and sought quotes quickly, but they had no control over how long it would take contractors to assess the problem and provide quotes. In the event, they were dated 17, 18 and 30 April 2024. The Tribunal noted that they were not circulated to owners until 24 May 2024, but was of the opinion that, taking into account that the owners would expect them to consider the quotes in order to be able to advise which one they would recommend for acceptance, the delay until 24 May in sending them out was not excessive.
25. Thereafter, the property factors dealt with questions from owners regarding the scope of works and obtained revised quotes, but it appears that they continued to press owners for funding. They had no authority or the necessary funding to instruct works until they received the final payment, which they stated was on 20 August 2024 and they instructed the contractors on the following day. Accordingly, the Tribunal **did not uphold** the complaint under OSP6.
26. At the Case Management Discussion, the homeowner withdrew his complaint under **OSP11**.
27. **Section 2.7** states "A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible. And to keep the homeowner(s) informed if they are not able to respond within the agreed timescale." The homeowner's complaint related to the fact that the property factors had not responded until 13 December 2024 to his escalation of his complaint on 11 November 2024, outwith the 28-day timescale specified in their WSS. The homeowner's complaint is, in essence, the same as his complaint under OSP11, but, as this had not been drawn to his attention at the Case Management Discussion, the Tribunal considered the complaint under Section 2.7. The Tribunal noted that the wording of the WSS is that "We will investigate the complaint and endeavour to resolve it within 28 days". The use of the word "endeavour" means that the 28-day period is not a fixed commitment, and the Tribunal was satisfied that the response had been given very shortly after the end of that period, so the Tribunal **did not uphold** the complaint under Section 2.7 of the Code. The Tribunal noted that the property factors had acknowledged

the complaint on 12 November 2024 and had stated that a full reply would be sent within 28 days. That period would have expired only one day before the response was sent, and, in such circumstances, the Tribunal would not have made a finding that the property factors had failed to comply with the Code.

28. The homeowner's complaint under **Section 6.1** of the Code of Conduct was withdrawn at the Case management Discussion.

29. **Section 6.4** states "Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required." The Tribunal **did not uphold** the complaint under this Section. The Tribunal had addressed the timescale element in its decision under OSP6 and there was no evidence provided to indicate that the property factors had failed to inform the owners of the progress of the work.

30. **Section 6.12** states "If requested by homeowners, a property factor must continue to liaise with third parties. i.e. contractors, within the limits of their "authority to act" in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners." No evidence in support of the complaint under this Section was offered, so the Tribunal **did not uphold** it.

31. The Tribunal's Decision was unanimous.

Right of 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.



12 September 2025
Legal Member