



**Decision and statement of reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under section 19 of the Property Factors
(Scotland) Act 2011**

Reference number: FTS/HPC/PF/23/1619

The Parties:

**Miss Heather Buist residing at 2/1 Dromore Street Kirkintilloch Glasgow G66 3EJ
'the Homeowner').**

**Homesbook Factoring Limited having a place of business at 66 Townhead
Kirkintilloch Glasgow G66 1NZ (" the Property Factor").**

Property: 2/1 Dromore Street Kirkintilloch Glasgow G66 3EJ ('the Property').

Legal Member: Lesley Anne Ward

Ordinary Member: Nick Allan

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 Practice in relation to paragraphs 1.1, 2.1, 2.3, 2.6, 2.7, 3.1, 3.2, 3.4, 3.11, 6.1, 6, 4, and 6.6 of the 2021 Code of Practice.

The Tribunal made a Property Factor Enforcement Order to be read with this decision.

1. This was a hearing in connection with an application in terms of rule 43 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, 'the rules' and section 17 of the Property Factors (Scotland) Act 2011, 'the Act'. The Homeowner attended the hearing. The Property factor was represented by Mr Craig Rodger, owner and director of Homesbook Factoring Limited. Mr

Wilson Mc Millan attended as a supporter for Mr Rodger. For ease of reference in this written decision Mr Rodger will be referred to as the Property Factor. A case management discussion took place on 29 November 2023 and the Tribunal made the following directions:

The Applicant (ie the Homeowner) is required to provide:

- (1) Any correspondence sent to the Respondent regarding non payment of the factors fees.
- (2) A copy of her first formal letter of complaint from around November 2021.
- (3) Copies of any exchange of emails with the Respondent which show or tend to show the Respondent was abusive, intimidating or threatening.
- (4) Copies of any emails to the Respondent regarding the render or the internal door.
- (5) Any other documents she has to substantiate her position.
- (6) A list of witnesses she intends to give evidence at the hearing.

The Respondent (ie the Property factor) is required to provide:

- (1) A copy of the email dated 30 April 2021 sent to the Applicant.
- (2) Any evidence that the email was received by the Applicant.
- (3) A copy of the documents attached to the email of 30 April 2021 including the written statement of services and the complaints procedure.
- (4) Copies of any invoices sent to the Applicant between May 2021 and September 2023.
- (5) A copy of the written quotation for the re-rendering of the rear elevation of the property.
- (6) Details of any process changes that have been introduced as a result of the report by Mr Wilson McMillan dated 3 August 2023.
- (7) Evidence of any other emails sent to the Applicant with the written statement of services after 3 August 2023.
- (8) Any other documents they have to substantiate their position.
- (9) A list of witnesses who will be giving evidence at the hearing.

The said documentation should be lodged with the Chamber no later than close of business on 21 December 2023.

2. Both parties complied with the directions and lodged a timeous written submission and documents with the Tribunal.
3. The Tribunal had the following documents before it:
 - (a) Application dated 2 May 2023.
 - (b) Formal complaint dated 5 July 2023.

- (c) Homesbook Factoring Ltd leaflet.
- (d) Formal Complaint Findings and Recommendations by Mr Wilson McMillan dated 3 August 2023.
- (e) Undated response to item (d) by the Applicant.
- (f) Property Factor's submission dated 18 December 2023 with supporting documents.
- (g) Homeowner's submission dated 19 and 20 December 2023 with supporting documents.

4. Preliminary matters

- (1) The Tribunal, having read the documents lodged by the Homeowner, was not satisfied that the Homeowner had produced any evidence in support of her contention that the Property Factor had communicated with the Homeowner in an intimidating abusive or threatening manner. In the absence of any written evidence that aspect of the application would not be considered.
- (2) The Homeowner had stated in her application that she made a complaint in December 2021 and this was not considered by the Property Factor. The Tribunal had carefully considered the emails produced and the time-line. In her email of 1 December 2021 she stated "I have been chasing you since August, I think it's time a formal complaint is raised". The Property Factor had replied on 2 December 2021 by stating 'Please find attached our complaints procedure that will allow you to make your formal complaint'. The Homeowner agreed that she did not follow up with a formal complaint and in her application she stated: "The emails I have received from Craig Rodger are intimidating, hence my refusal to liaise with him directly. I do not find him very approachable, which is partly the reason why I did not follow up on my complaint from November/December 2021". The documents lodged had a copy of the Homeowner's formal complaint in 5 July 2023 which was addressed by Mr McMillan in his report of 3 August 2023. The Tribunal therefore decided that a formal complaint had not been made in December 2021 and that aspect of the application would not be considered.
- (3) The Tribunal considered the timeline of email correspondence and a gap between December 2021 and March 2023. The Homeowner clarified that the last communication she had with the Property Factor before her formal complaint of July 2023 was December 2021. She felt frustrated and chose not to push matters with the Property Factor. It was the Homeowner's view that because she did not chase the Property Factor further nothing was done in relation to the two repairs needed to the render and door.

5. Findings in fact

- The Homeowner is the owner occupier of the second floor flat at 2/1 Dromore Street.
- The Homeowner has owned the property for around 14 years and before the Property Factor became factors in 2021 the property was self- factoring.
- The Property Factor sent their terms of business and complaints procedure to

the Homeowner by email on 30 April 2021.

- The Homeowner did not receive the email.
- There is a mix of owner occupiers and tenants in the building. Major refurbishment was carried out in 2014 to 2016 when the property was re-roofed and the two gable walls were re-rendered.
- The rear elevation of the property was not re-rendered during the refurbishment.
- The render was not considered to be a priority given the importance of the other work required.
- The Homeowner paid her factoring fees from May 2021 to August 2021.
- Around April 2021 the Homeowner contacted the Property Factor regarding the render to the rear of the property.
- The Property Factor advised her by email on 25 April 2021 that he had instructed two companies to produce quotes for the render.
- The Homeowner contacted the Property Factor on various occasions between August 2021 and 1 December 2021 regarding the render and regarding a replacement door for her property and the adjoining property.
- The Property Factor replied on two occasions namely 17 August 2021 and 29 September 2021.
- The Homeowner contacted the Property Factor on 1 September 2021 to state that she would be withholding her fees until she receives a response.
- The Homeowner did not pay any factoring fees between September 2021 and August 2023.
- The Homeowner told the Property Factor on 1 December 2021 that she was unhappy with the service and wanted to make a formal complaint.
- The Property Factor sent the Applicant a copy of their complaints procedure on 2 December 2021.
- The Homeowner did not pursue her complaint in December 2021.
- The Homeowner did not pursue matters regarding the door and render with the Property factor until 5 July 2023 when she made a formal written complaint.
- No quotes were obtained for either matter until August 2023 when a quote for new render and a replacement door were obtained.
- The Property Factor did not communicate with the Homeowner regarding the door and render between 2 December 2021 and 3 July 2023.
- The Property Factor raised a small claim against the Homeowner in Glasgow Sheriff Court and decree was granted in March 2023.
- On 3 August 2023 Mr Wilson McMillan produced a report in connection with the complaint.
- He made various findings and upheld several aspects of the complaint regarding communication and repairs.
- The report recommended that the Property Factor incur the cost of installing the door as a goodwill gesture and ask the Homeowner and the adjoining owner to cover the cost of the door.
- The Property Factor obtained a quote for the door but did not make it clear to the Homeowner and the adjoining owner what the net cost of the door was.
- The replacement door has not been chosen, ordered or replaced.
- The render has not been repaired and the Property Factor only obtained one quote for the removal of the failing existing roughcast from the entire wall and

its replacement with silicone render.

- The Property Factor has not given any consideration to obtaining a quote for a cheaper, more traditional type of render.
- The Property Factor has not given consideration to having a portion of the render replaced.
- The Homeowner has not provided any photographs of any dampness within her property.
- Neither the Property Factor nor any contractor acting on their behalf have inspected the Homeowner's property or made any finding regarding dampness.
- The Property Factor's WSS does not provide any timescale for responding to inquiries.
- The Property Factor's WSS does not set out the procedure for dealing with repairs above £250.
- The Property Factor's WSS does not set out the timescales for the frequency of inspections.
- The monthly invoices sent out by the Homeowner do not make it clear what the deduction for repairs and maintenance relate to.
- The Property Factor has not exhibited any invoices for electricity or gardening to the Homeowner.

Reasons

Sections of the Code at issue

Section 1: Written statement of services

6. The Property Factor's WSS was updated on 15 February 2022. The previous version was updated on 30 January 2021. It was the Homeowner's position that she was not sent a copy of the code in April 2021 and she was not sent the updated version in February 2022. The Property Factor lodged a copy of the email he sent the Homeowner with the January 2021 version of the WSS. The Homeowner's position was that she never received it. The Tribunal decided on the balance of probability the email and copy WSS was sent on 30 April 2021. The Tribunal also accepted on the balance of probability that the Homeowner did not receive it. The Tribunal was not satisfied on the balance of probability that the updated WSS was sent to the Homeowner as the Property Factor was unable to provide any evidence in support of this. He expected that this would have been done but he could not say when. However it was probable that the changes to the WSS were not substantial and the Tribunal concluded there was therefore no breach of 1.2 of the code.
7. Looking at the WSS in the context of the communication and repairs aspects of the application, the WSS was lacking in content. For example, there was nothing in the WSS about the timescale for replying to enquiries. There was nothing in the WSS about repairs above the £250 threshold and nothing about the time scales for inspection. The Tribunal considered that the WSS was less than comprehensive and there had been a breach of 1.1 of the code.

Section 2: Communication and consultations

8. The Property Factor did not dispute that there had been a failure in communication with the Homeowner. He conceded the WSS was silent on the question of response times and he stated that the timescale staff were working to was a response within 14 days. Mr McMillan in his independent report dated 3 August 2023 concluded that the Homeowner has "a legitimate complaint regarding the communication, or at times the lack of it". It was clear from the timeline of emails provided that the Homeowner contacted the Property Factor regarding the rear render and communal door on numerous occasions between August 2021 and December 2021. The Property Factor sent replies on 17 August 2021, 27 September 2021, 1 December and 2 December 2021. These replies were of a 'holding nature' indicating that her request was being dealt with and quotes were awaited. Thereafter there was no communication until the Homeowner's formal complaint of 5 July 2023. The Property Factor did not dispute this version of events. His position was that it was hard to get contractors to quote for the work, there was no appetite for expense and no issue from the other owners about a repair needed to the render. The door was only an issue for the Homeowner and the adjoining owner and the neighbour was not in a position to pay for the replacement door. The WSS was silent on the procedure for repairs exceeding £250 and the Tribunal accepted the Homeowner's evidence that she was given little or no information about the process of obtaining quotations for the render repair and the door. Taking all of the evidence into account the Tribunal was satisfied that there had been a breach of paragraphs 2.1, 2.3, 2.6 and 2.7.

Section 3: Financial Obligations

9. Both parties had provided copies of recent invoices sent out by the Property factor on a monthly basis. It was not disputed that at the zoom meeting in advance of the Property factor taking over taking over as factor, a monthly fee of £40 was mentioned. The Property Factor's monthly management fee since April 2021 has been £9.50 per month plus vat. The £40 fee quotes was to cover the management fee, cleaning of the common close and gardening. The Homeowner's issue was with the additional charges set out in the invoices. The January 2023 invoice had entries for grounds maintenance of £21.20, Utilities of £7.60 and Cleaning of £8. The Property Factor initially stated that the £21.20 was for gardening charges. However the December 2023 invoice has the sum of £9.38 for gardening, £14.06 for repairs and maintenance, £7.60 electricity and £8 for cleaning. The Property Factor was unable to clarify why in the December 2023 invoice the sum of £21.20 was split between gardening and repairs and maintenance. He was also unable to say with any clarity what the repairs and maintenance were carried out. It was the Homeowner's position that repairs (such as the recent gutter repair) are charged separately. Further, as Mr McMillan's report states that there are no charges for

lighting the Homeowner does not understand what the repairs entry on the invoice relates to. The Homeowner also stated that before the Property Factor took over there were no charges for electricity as the close lighting came on and off with street lighting. The Homeowner also felt the gardening charges were not clear and the gardening carried out was not in accordance with what had been agreed at the zoom meeting. The Property Factor stated he was able to provide an invoice from Scottish Power for the annual electricity charges. He was however unable to clarify what the repairs and maintenance charges were for. The Tribunal considered this to be a potential breach of 3.1 and 3.2 of the code and the Property Factor was asked to clarify if the repairs and maintenance charges constitute a sinking fund based on the estimated costs of meeting future outlays. The Property Factor suggested that the charge may be related to periodic removal of rubbish left in the common garden but failed to explain and specify the source of these recurring charges. The Tribunal considered there had been a breach of paragraph 3.1, 3.2 and 3.4 of the code. Regarding the float, it was the Homeowner's position that she paid her float of £50 in instalments in the first three months that she paid her Factors Fees. This was disputed by the Property Factor. Whether the Homeowner paid her float or not, there was no evidence to suggest floating funds were not kept in a separate account so the Tribunal did not consider there was a breach of 3.11.

Section 4: Debt recovery

10. The Homeowner stated she was not aware of late payment fees. She conceded that the invoices she received from the Property Factor each month stated that the Property Factor reserves the right to charge late payment fees. The late payment fee of £15 is clearly set out in the WSS. Whilst it was accepted that it is probable the Homeowner did not receive the WSS, this was not due to the fault of the Property Factor and the late fees are set on in the WSS and referred to in each monthly statement. The Homeowner stated that she was given no opportunity to discuss the outstanding fees. The Property Factor's position was that she declined the opportunity to discuss matters. The Homeowner had received correspondence from a debt collection company threatening court proceedings. The Homeowner conceded that she did not wish to discuss matters with the Property factor and that she declined to meet with him. Mr Mc Millan states in his report that they have a clear policy for debt collection set out in their WSS. The Tribunal agreed with this conclusion. The Tribunal was not satisfied on the balance of probability that there had been a breach of any aspect of section 4 of the code.

Section 6: Repairs and Maintenance

11. In his report of 3 August 2023 Mr Mc Millan concludes that the Homeowner has a valid complaint in relation to the repair to the render and the door. He stated "there is clear evidence that HBL are at fault". He recommends that:

HFL as soon as practicable and in any event before the end of August 2023, obtain quotes for repair of the render at Drumore Street. This should be notified to all owners

with a view to having the repair funded and carried out if the majority wish to do so. HFL should obtain a quote for the replacement door and surround located on the complainers landing. This repair will only be funded by both landing owners, as a gesture of goodwill HFL should only show material costs on the quote and cover labour charges themselves.

12. It was not disputed that the Homeowner raised the condition of the render on the rear wall at the zoom meeting around February 2021. There was an email from the Property Factor dated 26 April 2021 in which he states he had instructed two companies to provide quotes for the render. The photographs provided by the Homeowner appear to show some missing render at the top right corner of the rear wall just below the fascia board. The Homeowner stated she has had penetrating dampness in her bedroom since 2018 but she did not produce any photographs of the damp patch and there was no evidence to suggest that other owners were affected. The need for a major repair to the render of the rear wall of the property and the impact of the outstanding repair on the Homeowner's property was not clear and there was no evidence to suggest that any consideration had been given to a patch of the render being repaired rather than the whole wall. The Property Factor had eventually obtained a quote for the render after Mr Mc Millan made his recommendations. The quote was sent to the Homeowner and the other owners on 25 August 2023. The Homeowner took issue with that quote for several reasons. She felt that at least two quotes should have been obtained. She had tried to do some research on the company SM Rendering and she had drawn a blank. They did not appear to be vat registered however in his covering email the Property Factor stated that vat would be added on to the quote. The repair to the render have not been progressed since. The Homeowner's view is that the repair is needed and she has had no communication. The Property Factor's view is that there is no appetite among the other owners to have such major work carried out. He has not considered the option of using a more traditional type of render or targeting a small discrete area with patching. When this was put to him he accepted that this could potentially produce a much cheaper estimate.
13. Regarding the door, it was the Homeowner's position that the external door on her landing needs replaced and this has been outstanding since August 2021. Despite the recommendation made by Mr McMillan that the door be replaced at cost, the quote she and her neighbour were sent does not make it clear the net sum due by them. At the hearing the Property Factor initially said the sum of £625 was the cost of the door and labour was not included. He then stated that the sum of £625 included labour. It therefore appeared that the Homeowner and her neighbour had not been sent a clear note of the cost of the door and the Property Factor had confused matters further by his email of 25 August 2023 when he indicated vat was to be added to the £625 quoted on the invoice. The door has still not been replaced.
14. The WSS was silent on how often the property would be inspected. It was the Property Factor's evidence that inspections are carried out every two weeks or so. This was disputed by the Homeowner. The Tribunal decided that on balance there

had not been a breach of paragraph 6.7 of the code but that the WSS should be updated to give clear details of the periodic property visits included in the management fee.

15. The issue with the render and the door have been outstanding for three years. Matters have not been progressed by the Property Factor and despite the recommendations of Mr McMillan the door has not been replaced at cost and the Homeowner and her neighbour have not been told what the cost to them is likely to be. It is not clear how serious the issue with the render is, but if the Property Factor was complying with the code, appropriate quotes would have been obtained in 2021 when the matter was first brought to his attention. The Tribunal was satisfied on the balance of probability that there had been a breach of paragraphs 6.1, 6.4 and 6.6 of the code.

Penalty applicable.

16. The Tribunal was satisfied that there were clear breaches of the code for the reasons already given. The Tribunal went on to consider the penalty that should be imposed. The Homeowner is seeking compensation of £2000 due to what she described as stress and the impact on her personal and professional life. The Homeowner did not provide any other evidence in support of this in the form of medical evidence or how she has specifically been impacted. The Tribunal did recognise that the Homeowner has had the inconvenience of contacting the Property factor and after all her reminders and prompts she is no further forward.
17. The Property Factor has taken on board the criticism made by Mr Mc Millan and he gave details of an online portal in which clients can register repairs and see their progress and the votes of other owners. He also described how enquiries are logged and followed up. He conceded that the WSS was lacking in relation to repairs over £250 and was silent on the response time for enquiries. He was unable to give a satisfactory explanation to the Tribunal for the charges being made each month, particularly in relation to the £14.06 repairs and maintenance charges. Mr McMillan states in his report that the lighting was to be maintained without charge and this was also the Homeowner's understanding, whereas it appears that the Homeowner is being charged for electricity and maintenance of the lights. The Tribunal decided that a financial penalty is appropriate given the extent of the breaches of the code. The Homeowner was charged a factoring charge from April 2021 until the date of the hearing and she has not received an adequate service from the Property Factor resulting in multiple breaches of the code. The Homeowner has been charged an annual charge of £114 plus vat. Over three years this amounts to £410.40. The Tribunal decided to award a penalty amounting to two thirds of her annual charge which amounts to £273.60. The Tribunal also decided it was fair proportionate and just in all of the circumstances to award a further sum of £476.40 for her inconvenience. The total penalty is therefore £750.

18. The Respondent has acknowledged that the WSS is not clear. In addition to the

financial penalty the Tribunal has made an order for the Respondent to provide a comprehensive updated version of their WSS which gives their response time for enquiries, a procedure for repairs over £250 and details of the periodic visits included in the management fee.

19. Section 19 of the Act states: -

- (2) 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.
- (3) If the First-tier Tribunal is 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 First-tier Tribunal must make a property factor enforcement order.

20. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence

27 February 2024

Lesley A Ward Legal Member

Date