

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: HPC/PF/25/0301

6 Barony Court, Cambusbarron, Stirling FK7 9NG ("the property")

Mr Robert Skilleter, 6 Barony Court, Cambusbarron, Stirling FK7 9NG ("the Applicant")

**Ross and Liddell, 60 St Enoch Square, Glasgow, G1 4AW ("the Respondent")
Tribunal Members:**

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

DECISION

The Tribunal determined that the Respondent has failed to comply with OSPs 4 and 6, and Section 6.4 of the Property Factor Code of Conduct as required by Section 14(5) of the Act.

The decision of the Tribunal is unanimous.

Background

1. The Applicant lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application states that the Respondent has failed to comply with OSPs 4, 6 and 11 and Sections 2.7 and 6.4 of the Code of Conduct for Property Factors.
2. The parties were notified that a CMD would take place by telephone conference call on 11 September 2025 at 2.30 pm. Prior to the CMD, the Respondent lodged a written submission.
3. The CMD took place on 11 September 2025. The Applicant participated. The Respondent was represented by Ms Johnstone and Mr Alexander, solicitor.

The CMD

4. The Legal Member advised the parties that the Tribunal had no preliminary matters to raise. Both parties also confirmed that they were ready to proceed.

OSP 4

5. Mr Skilleter confirmed that his complaint under OSP 4 related to the contradictory information provided between April and August 2024, when he was told that proposed repair work had been closed down due to lack of funds and then that the Respondent was still awaiting funds. He was subsequently advised again that the work had been cancelled and then that funds were still awaited and reminders sent. Mr Skilleter said that the contradictory information was provided on Live Chat, by email and on one occasion by telephone call. This caused him a great deal of confusion. While he could not claim that the Respondent had deliberately provided misleading information, it was false. Although he can't prove negligence, he dealt with four different people instead of having one regular person to contact. While he appreciates that there was a collective failure on the part of the homeowners to pay for the work, he does not know what the Respondent was doing between April and August 2024 to sort it out.
6. Mr Alexander said that the Respondent concedes that the information provided was inconsistent. However, it is denied that this was deliberate or negligent. He said that the Respondent went back and forth for some time with homeowners to try to ingather sufficient funds. They allowed additional time and investigated getting money from the insurance company or the Local Authority. The Respondent's view is that their actions did not disadvantage the Applicant. Ms Johnstone told the Tribunal that there were internal discussions, and they tried the Council's missing share scheme, unsuccessfully. She told the Tribunal that she is not able to access other staff member email accounts or confirm the content of communications or phone calls.
7. Mr Skilleter disputed references to the insurance policy and the Council as the homeowners had been told in 2023 that these options had been ruled out.
8. In response to questions from the Tribunal, Ms Johnstone said that there are fifteen flats in the block and two stairwells. The proposed work related to the roof void. Eleven out of fifteen paid. Three declined and one failed to engage. She was unable to confirm how many owners are also occupiers and how many properties are rented. She said that Live Chat replaced email communication in February 2024. She does not know how many of the owners use it. A transcript is made of the live chat communications, but they do not make or keep a summary of them. The Tribunal was told that the property was built in 1994. An insurance claim for the work was submitted but repudiated. Ms Johnstone said that they have now managed to ingather the funds and instruct the work. They re-tendered for the work in February 2025 and the work was instructed on 25 April 2025. It was recently completed. The total cost was more than the first estimate - £24000 as opposed to £20000 - but they managed to

ingather £22000, and the Respondent decided to underwrite the remainder so it could proceed. She confirmed that the owner who has not paid will be invoiced for their share.

OSP 6

9. Mr Skilleter said that this although the homeowners were given a final deadline of 5 April 2024, he was not told that the work was definitely cancelled until 26 August 2025. If they had cancelled it earlier, they could have started the re-tendering process sooner. Mr Alexander said that this is somewhat speculative. It cannot be known whether re-tendering earlier would have resulted in the work being carried out sooner. Mr Skilleter said that delay usually results in the cost going up, as happened in this case, and they might have saved money. Mr Alexander said that the point is that not enough money was ingathered the first time round and the work therefore had to be delayed.

OSP 11 and Section 2.7

10. Mr Skilleter said that he had considered the Respondent's submission in relation to the complaints under these sections and was happy to accept what was said and withdraw the complaints

Section 6.4

11. Both parties confirmed that their position in relation to the alleged breach of this section of the Code had been covered earlier in the hearing.

Final submissions

12. Mr Skilleter said that he understands that the Tribunal order can only relate to him and not to the other homeowners. However, the offer of £40 was insufficient given the inconvenience he experienced. He is also concerned about the same thing happening again in the future. Mr Alexander said that the Applicant is assuming that the Tribunal will find in his favour and even if they do, forcing the Respondent to change their processes is disproportionate as there has only been a single complaint. In response to a question from the Tribunal, Ms Johnstone said that the Respondent does not provide a dedicated property manager but has a team-based approach. This is better as there can be times when people are off sick or otherwise unavailable. However, they have introduced a major works team to deal with large jobs. This did not exist during the period complained about. Mr Skilleter said the introduction of the major works team has been good. However, he feels that the communication arrangements via Live Chat needs to be improved, with a facility for leaving messages, as it is not always possible for homeowners to deal with things during office hours. Ms Johnstone said that it is possible to leave messages. Mr Skilleter said that he twice tried to do so without success.

Findings in Fact

13. On 5 March 2024, the Respondent sent a final reminder to the homeowners of Barony Court, Cambusbarron, Stirling requesting funds for a roof void repair. The reminder stated that the funds had to be paid by 5 April 2024.
14. In response to an email enquiry from the Applicant on 21 May 2024, the Respondent stated that the matter was being considered by the Respondent's directors and the Repairs Team to determine the next course of action as only 60% of the funding had been received. The response also stated that if the work did not proceed, the funds which had been paid would be returned to the homeowners.
15. The Applicant made a further enquiry by email on 27 June 2024. He was directed to the live chat but not provided with an update.
16. On the live chat on 11 July 2024, the Applicant was told that the proposal was being closed down due to lack of funding and that a letter would be issued to confirm this decision.
17. On the live chat on 22 July 2024, the Applicant was told that the Respondent was still awaiting funds. They had only received 60% and required at least 75%. Later that day, the Respondent apologised for the confusion and stated that the work was being cancelled. The member of staff stated that the system had not yet been updated with this information, and this was the reason for the confusion. The Applicant was also told that a refund was being processed.
18. In response to an email to the Finance Team, the Applicant received a response by email on 2 August 2025. This stated that the Respondent had only received 60% of the funding and that a final review would take place before a decision would be taken about closing down the work. The Applicant was advised that the matter was being dealt with as a matter of urgency but that the Respondent wanted to exhaust all avenues before making a decision.
19. On 26 August 2024, the Applicant was notified by letter that the work had been cancelled. No information was provided about how the sums paid by the Applicant would be refunded.
20. The Applicant received a refund at the beginning of October 2024.

Reasons for Decision

21. The Tribunal notes there is no significant factual dispute in relation to the Applicant's complaints. The Respondent accepts that contradictory information was given at various times, although Ms Johnstone said that she could not confirm what was said during phone calls to (or emails from) other members and former members of staff. The Respondent also accepts that there was a

delay between the deadline for payment and the decision to cancel the work. The Tribunal notes that the Applicant paid his share of the work when this was first requested in October 2023. He did not receive a refund until almost a year later, in early October 2024. His complaint relates to the period 5 April 2024 to the date that he received the refund.

OSP 4 – You must not provide information that is deliberately or negligently misleading or false.

22. Although the Respondent concedes that the information provided was inconsistent, they do not accept that there has been a breach of this section of the Code. Having reviewed the communications between April and August 2024, the Tribunal is satisfied that the following statements were misleading and/or false; -

- (a) The statement made on 11 July 2024 that the work was being cancelled due to lack of funds.
- (b) The statement made on 22 July 2024 that the work was being cancelled due to lack of funds.

23. It is clear from the submissions and evidence that the Respondent did not make a final decision in relation to the repair work until sometime between 2 August 2024 and 26 August 2024, when a letter was issued that confirmed the work was cancelled. The earlier statements were therefore not accurate and also misleading, since they caused the Applicant to believe that the decision had been made.

24. The Applicant did not seek to persuade the Tribunal that false information was provided deliberately. There is no evidence of this and no reason for the Respondent to intend to mislead the Applicant. However, the Tribunal is satisfied that the false information was negligently provided. To be “negligent” is to fail to take proper care over something. The Respondent’s representatives were unable to explain the reason for the inconsistent statements. Instead, they focused on the Respondent’s efforts to ingather sufficient funds for the work to proceed. However, that does not excuse the provision of misleading information. It may have been that the Respondent’s records were not updated or clear. Alternatively, the staff members who provided the information may have failed to check the position before answering enquiries. However, in the absence of an explanation which establishes that the errors were unavoidable or outwith the control of the Respondent, the only conclusion which can be reached is that the Respondent failed to exercise proper care. The Tribunal is satisfied that the Respondent has failed to comply with OSP 4.

OSP 6 – 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.

25. The basis of this complaint is that the time taken to make the decision to cancel the work was excessive and unreasonable. As a result, the services were not carried out in a timely way. The Applicant argued that the cost of the work may have been less if the Respondent had cancelled the work and re-tendered sooner. As the Respondent points out, there is no guarantee that the Respondent would have successfully ingathered sufficient funds if the re-tendering had taken place in the Summer or Autumn of 2024 rather than February 2025. Furthermore, the price may not have been lower.

26. There are three distinct time periods involved: -

- (a) 3 October 2023 to 5 April 2024. The Applicant does not express any concerns or complaints about this period. It is not clear why the meetings with the surveyor and the engineer took place after the first three letters were issued to the homeowners, and before the final reminder, but the Applicant appears to be satisfied that the number of reminders issued, and the deadline of 5 April 2024, were both acceptable.
- (b) 5 April 2024 to 26 August 2024. The Applicant is concerned that it took the Respondent four and a half months to decide to cancel the work. He also states that he did not receive any unprompted communication from the Respondent during this period, the only updates provided being in response to enquiries.
- (c) 26 August 2024 to early October 2024. The Applicant states that he did not receive his refund cheque until a week after he received the complaint response dated 25 September 2024.

27. In his submission, the Applicant refers to section 3 of the WSS which states that homeowners will be told about cancelled work within a “reasonable timescale” and information will be provided about the refund of monies paid. The Respondent’s representatives were vague as to the precise reasons for the delay between 5 April 2024 and the letter of 26 August 2024. It was argued that it was appropriate to give the homeowners additional time to pay. They also referred to contacting the Local Authority and making an insurance claim, although Ms Johnstone did not dispute Mr Skilleter’s statement that these avenues were explored unsuccessfully in 2023 rather than April to August 2024. In the stage 2 complaint response, the Respondent states, “I agree that this process could have been completed quicker and I would offer my apologies for the time taken to cancel the proposal. As outlined above, staff involved considered that additional time may have resulted in the proposal being progressed.” The letter goes on to confirm that there are no records of any homeowners asking for additional time.

28. It therefore appears that the Respondent conceded that the delay was excessive in November 2024, although they now argue that it was appropriate to allow additional time. However, there is no suggestion that they were in correspondence with the non-payers during the relevant period or that they told the other homeowners what was happening. The Tribunal is therefore satisfied that the failure to reach a decision more quickly was a failure to carry out their

services in a timely manner, particularly since the homeowners had already been given six months to provide the funds.

29. The Tribunal notes that the response to the stage 1 complaint states that the refund process started on 28 August with cheques being issued on 11 September. It is not clear why it took two weeks to issue eleven refunds. It also seems unlikely that the Applicant's cheque was issued on this date, as he did not receive it until three weeks later and only after he contacted the Finance Team on or around 25 September 2024 to notify them that his payment had not arrived. In the circumstances, the Tribunal is satisfied that the Respondent failed to process the refund in accordance with their WSS and in a timely way as required by OSP 6

Section 6.4 - 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. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on the next steps and what will happen to any money collected to fund the work

30. It is the last part of this section which is relied upon by the Applicant. There are two aspects to the complaint – the time taken to notify the Applicant that the work has been cancelled and the failure by the Respondent to tell him what would happen with the money he had paid.

- (a) It is not clear when the Respondent actually made the decision to cancel the work. Based on the submissions and evidence, it appears that a final decision had not been made by 2 August 2024 when the Applicant was told that a final review was to take place and a decision would then be made. A letter was issued on 26 August confirming the cancellation. Assuming the decision was made within a couple of weeks of the email of 30 July 2024, the delay between the decision and the notification of the decision does not appear to be excessive.
- (b) The Applicant stated that the letter of 26 August did not tell him how the refund was to be made. This was not addressed in the Respondent's submissions or in either complaint response. In the absence of a denial, or evidence that the Applicant was notified of how and when the refund would be made, the Tribunal is satisfied that the Respondent has failed to comply with this section of the Code.

Proposed Property Factor Enforcement Order

31. The Applicant asked the Tribunal to consider the following orders: -

(a) Compensation for inconvenience and lost interest on the sums held by the Respondent between 5 April 2024 and the date that the refund was received (early October 2024).

(b) Progress in relation to re-tendering and arranging the roof void repair.

(c) Homeowners to be offered different payment options.

(d) A letter of apology to all homeowners.

32. As the Respondent pointed out, the Tribunal cannot order the Respondent to make reparation to homeowners who are not party to the application. The Tribunal can only make an order in relation to the Applicant, although there is nothing to prevent the Tribunal from making an order in favour of the Applicant which may also benefit the rest of the development.

33. The Tribunal is satisfied that the breaches of the Code have caused the Applicant inconvenience. He had to chase the Respondent for information and for his refund. He is also out of pocket in relation to the sums paid in October 2023 and not refunded until October 2024, as these were held in a non interest bearing account. Since the application was lodged, the re-tendering has taken place and the work has been carried out, so this does not require to be considered.

34. Having regard to all the circumstances, the Tribunal proposes a modest award of compensation for the inconvenience and lost interest, as the period involved was only a few months. The Tribunal is also of the view that the Respondent should make a formal apology to the Applicant in relation to the breaches of the Code. The Tribunal therefore proposes to make a Property Factor Enforcement Order (“PFEO”). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

Appeals

A homeowner or property factor 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.