



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

Case references FTS/HPC/PF/23/2030 and FTS/HPC/PF/23/2031

**Parties**

**Mr Joseph Hughes (Applicant)**

**Dundee City Council (Respondent)**

**214 Clepington Road (3/L), Dundee, DD3 8BG (Property)**

**Tribunal Member: Jacqui Taylor (Legal Member)**

The Tribunal rejects the applications by the applicant dated 12<sup>th</sup> June 2023, being two applications under section 17(1) of the Property Factors (Scotland) Act 2011.

The Tribunal sent the applicant an email dated 20th July 2023 which requested further information to enable the application to be processed and asked that the requested information be provided by 17<sup>th</sup> August 2023, the email was in the following terms:

*'A legal member of the Tribunal with delegated powers of the Chamber President has considered the application submitted by you and it has been determined that further information is required before the matter can progress: 1. You have submitted two application forms C1 and C2. The C1 application applies to 2012 Code of Conduct complaints before 16th August 2021. Reference number FTS/HPC/PF/23/2030 has been allocated to the C1 application. The C2 application applies to 2021 Code of Conduct complaints after 16th August 2021. Reference number FTS/HPC/PF/23/2031 has been allocated to the C2 application. We attach copies of the two Codes of Conduct 2012 and 2021. You will note that they are both different. There are no OSPs in the 2012 Code of Conduct. The C1 application only refers to OSP complaints which is incorrect. We attach the C1 application form for amendment. 2. The notifications to the property factor will also have to reflect that you consider that it has failed to comply with each edition of the Code. 3. You have provided a copy of the template letter which you*

*sent to the property factor notifying it of what you consider to be its failure to comply with the 2021 but the letter is not sufficiently detailed. The letter of notification must state the sections of the code of conduct that you have been breached and the detailed reasons for each breach. In respect of alleged breaches of the both Codes of Conduct, you will require to write to the property factor, setting out in turn each specific paragraph of the Code you believe it has failed to comply with, and setting out the reasons why you believe it has failed to comply with each of these paragraphs. We enclose a template notification letters relating to breaches of both the 2012 and 2021 Codes which you may wish to use. 4. Please send us a copy of your letters of notification, together with proof of sending, which may be a copy of a sent email, proof of sending by recorded delivery or a written acknowledgement from the property factor. Please also send us any response you receive from the property factor. You must allow the property factor a reasonable period of time to respond to your letter. Please allow a period of 21 days for the property factor to respond, and let us know if you have not received a response within that timescale. 5. You have not provided a copy of the written statement of services provided to you by the property factor. Please send it to us. Please respond by 17 August 2023, failing which the President may decide to reject the application. If you require any further information please contact us using the above contact details and quoting your reference number'.*

The Applicant replied by email dated 20<sup>th</sup> July 2023 in the following terms:

*'Really don't understand what more evidence that you need every thing we have sent you about the conduct of Dundee city council is in front of you . right from 2019 up to 2023 .they have broken contract agreement from day one .and lied on numerous occasions.about the roofs the chimneys .even their clerk of works has lied about his duties saying he was not allowed to check the work carried out . having employees enter our on two occasions with out letting us know . staff threats police having to be called . because of their behaviour .they have admitted liability .on not doing the work to bs5534 . lying about pointing the chimneys .when the did not .harsing home owners for paper work that they have saw twice . refusing to give us the paperwork for the tile batons to prove that there up BSS 5534standard . using bullying tattics to have chimneys removed when home owners still use through their own incompatance . water ingress still coming in since 2019 till 2023 .and still nothing done about it . legal fees not paid back after admitting liability . scaffolding up for nine months at a time with no work getting done . effecting our security to our property . can't get house insurance because of ingress .or sale of property because of ingress of water .the list is endless .and you ask for more evidence .we have videos photos everything .if this was a court of law .they wouldn't be asking for more evidence.its there to be seen .so I suggest you look at the evidence and decided what code of conduct they have broken . This council do what they like this complaint has cost the people of Dundee £4.4million and not one person was held accountable for it . even the independent inquiry slated the Dundee city council for there incompetent behaviour maybe should look at the damning reports*

*the report made 47pages of it .it looks like this tribunal make it very difficult for members of public in my opinion .to take council's to the tribunal.when the evidence is right there in front of them . You wouldn't even look at the memory stick we sent you .but you can use CCTV as evidence on your building.'*

The Tribunal replied by email dated 14<sup>th</sup> August 2023:

*'The letter to you of 20 July 2023 set out clearly what is required of you. It is not the function of the Tribunal to provide advice and it requires to act within the terms of the Property Factors (Scotland) Act 2011 and the Tribunal rules. Guidance has been provided to you in the form of the letter of 20 July 2023 and it is suggested that you read it carefully and respond accordingly. Advice may be available from a Law Centre, a solicitor in private practice or Citizens Advice Scotland. Please respond by 04 September 2023, failing which the President may consider rejection of your application.'*

The Applicant replied by email also dated 14<sup>th</sup> August 2023:

*'Really don't understand why I have to do all this paperwork again .we have sent you all the evidence .its quite clear this tribunal does not want to look at it .all this paperwork is a deflection so people just don't bother . going through with it . I'm going to ask you to send the paper work again with it marked as what I have to fill in. I don't see why if have to go to a solicitor when Dundee city council have admitted liability on all facts.yet you the tribunal want to baffle us with paperwork .as I said send me the correct paper work.'*

The applicant has not provided the Tribunal with the information requested. Section 17(3) of the Property Factors (Scotland) Act 2011 states that no application may be made unless the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out property factor duties or comply with the property factor code of conduct. The letter of notification the applicant provided to the Tribunal is dated 12<sup>th</sup> June 2023 and it states that the Factor has failed to comply with OSP1,2,4,6,8,11 and 12 and the reasons stated is '*All as detailed extensively over the last two years by means of registered delivery of correspondence and memory stick*'. The letter does not give the Factor sufficient notification of the applicant's complaint as required in terms of section 17(3) of the Property Factors (Scotland) Act 2011.

Accordingly the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

**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**

.....Legal Member Date: 13<sup>th</sup> September 2023