

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision

Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/24/3299

Re: Flat 32 Northwood Court, 114 Strathern Road, Dundee, DD5 1JW ("the Property")

The Parties:

Ms Alison Maclean, Flat 32, Northwood Court, 114 Strathern Road, Dundee, DD5 1JW ("the Applicant")

Caledonia Housing Association, 3 Whitefriars Crescent, Perth, PH2 0PA ("the Respondent")

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)

David Godfrey (Ordinary Member)

(the "tribunal")

Decision

- I) **The Respondent has breached the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2021.**
- II) **The Respondent has failed to comply with the property factor's duties.**
- III) **The tribunal proposes to make a property factor enforcement order requiring the Respondent to pay the sum of £500 to the Applicant.**

Background

1. This is an application by Ms Maclean in respect of the Property in relation to the Respondent's actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 ("the 2011 Act"). The application alleges that the Respondent has failed to comply with Sections 2 and 3 of the Overarching Standards of Practice. It also states that the Applicant considers that

the Property Factor has not carried out the property factor's duties in terms of the 2011 Act. The application was received on 22 July 2024 and was accepted by the Tribunal for determination on 5 August 2024. The application was accompanied by a number of documents and the Respondent submitted written representations and productions

2. A case management discussion was held by teleconference on 16 January 2025 and, following that, a Direction was issued by the Tribunal.

3. Findings in Fact

- 3.1 The Applicant is an owner of the Property.
- 3.2 The Applicant is a participant in a shared ownership scheme and owns 25% of the Property.
- 3.3 The Respondent owns 75% of the Property.
- 3.4 In terms of the occupancy agreement entered into by the Applicant and the Respondent, the Applicant is responsible for paying common charges and the Respondent has no liability for these.
- 3.5 The Property is in a phase of twenty four properties and is part of a development of forty properties.
- 3.6 The Applicant is responsible for paying a one fortieth share of the common charges relating to the whole development and a one twenty fourth share of the charges relating to the phase of twenty four properties which it is part of.
- 3.7 The Applicant purchased the Property on 22 November 2021.
- 3.8 Prior to taking entry to the Property, the Applicant received a copy of a shared ownership handbook which set out a number of pieces of information including details of a "Maintenance and Renewal fund."
- 3.9 On 21 October 2022, the Respondent sent a letter to the Applicant entitled "Maintenance Fund snapshot" and which did not seek payment from the Applicant.
- 3.10 On 27 February 2024, the Respondent sent a letter to the Applicant entitled "Maintenance Fund snapshot" in which it sought payment of £1174.66.
- 3.11 The sum of £1174.66 sought from the Applicant was in respect of sums paid for cyclical painting.
- 3.12 Prior to ownership of the Property the Respondent was unaware of cyclical painting work due to be carried out around the commencement of her ownership of the Property.
- 3.13 The Applicant became aware of her liability for payment for the painting work when she received the letter from the Respondent dated 27 February 2024.
- 3.14 The Respondent was not transparent in providing information to the Applicant prior to or at the point of her ownership of the Property in relation to the Maintenance Fund.
- 3.15 The Respondent failed to provide the Applicant with clear information about the Maintenance Fund.

Hearing 1 July 2025

4. A hearing was held in Endeavour House, Dundee on 1 July 2025. The Applicant was present and was supported by Ms Kathleen Beveridge. The Respondent was represented by Ms Julie Watson, Head of Investment and Sustainability and Mr Stuart Robertson, Governance Manager.

Matters Not in Dispute

5. The Property is part of a development of properties erected around thirty five years ago. It is situated in large grounds and was erected in two phases. The Property is one of twenty four properties which were erected in the second phase. The first phase consists of sixteen properties.
6. All properties in the development are held under a major ownership scheme where the occupier of each property has title to a percentage share with the other share belonging to the Respondent.
7. The Applicant owns a 25% share of the Property and the Respondent owns a 75% share.
8. The detail of the major ownership scheme is set out in an occupancy agreement entered into by parties at the time of the Applicant's purchase of the Property which is a legally binding document.
9. In terms of the arrangement entered into between the occupier of each property in the development and the Respondent, the responsibility for maintenance of common parts rests with the proprietors other than the Respondent which has no liability for payment of these charges.
10. The Applicant is responsible for paying a one fortieth share of the common charges relating to the whole development and a one twenty fourth share of charges applicable to the second phase of the development.
11. The Applicant purchased a 25 % share in the Property from its former owner and took entry on 22 November 2021.
12. Shortly prior to taking entry to the Property, the Applicant was provided with a "Shared Ownership Handbook" relating to various aspects of ownership including respective obligations and responsibilities of owners in the development and the Respondent.
13. Included in the handbook is a section entitled "Repairs and Maintenance." Section 4.5 states "*In most developments, we operate a Maintenance and Renewal Fund which is used to pay for repairs and cyclical paintwork. The balance of the fund is managed carefully and is designed to build up over time, so that when works are required, there is money available without having to invoice you separately for each repair.*"

14. The Respondent confirmed that, in respect of the development of which the Property is part, it does have a maintenance fund to deal with such things as cyclical painting.
15. On 21 October 2022, the Respondent sent a letter to the Respondent entitled “*Maintenance Fund snapshot.*” The letter stated: “*Please see below in connection with your individual property’s Maintenance Fund. There is nothing for you to do. It is for your information regarding the health of your portion of the communal fund.*” The letter set out various figures: “*Balance B/F £82.16, Income £165, Paint work £950.84, repairs £93.50, interest £1.00 and balance £798.18.*”
16. On 27 February 2024, the Respondent sent a letter to the Respondent which was entitled “*Maintenance Fund snapshot – up to 30 September 2023.*” The letter stated: “*Please see below in connection with your individual property’s Maintenance Fund being the total fund highlighted below. **This is not your monthly Direct Debit payment. This is the fund which covers large scale repairs to your property which is held in a separate interest-bearing account.** If your funds are in credit and highlighted in yellow, there is nothing for you to do. **However, if your funds are in deficit (prefixed by a minus and highlighted red) of more than £10.00, please arrange for settlement of same by contacting our Customer Services Team to make payment.** It is for your information regarding the health of your portion of the communal fun which is retained in connection with large scale common repairs to the common part of the development.*” The letter set out various figures: “*Balance b/f £1166.30, income £22.11, Repairs £29, Interest £1.47, Balance c/f £1174.66.*” The letter showed a balance of £1174.66 due by the Applicant.
17. On 25 March 2024, the Applicant wrote to the Respondent and made a complaint with regard to the maintenance fund snapshot. She asked for further information.
18. On 19 April 2024, the Respondent accepted that information about maintenance costs which was supplied to the Applicant was unclear and accepted that “*there is scope to improve the format and clarity of the information provided to you to ensure it is provided in a customer friendly way. We try and ensure our processes are transparent and this has been a case in which we have not succeeded in achieving our goal. I therefor uphold your complaint and would apologise on behalf of the Association for this.*”
19. Subsequent to the application being submitted to the Tribunal, the Respondent wrote to the Applicant on 12 December 2024 and indicated that it considered that the maintenance fund snapshot it provided to the Applicant was correct in stating that the sum of £1174.66 was due by her. The letter stated that the Respondent conceded that, when the Applicant asked for further detail about the works carried out, it “*did not provide the level of clarification that you could have reasonably expected.*” The letter went on to state that the six monthly maintenance snapshot “*is not useful or helpful in its current format.*” The letter stated that the Respondent intended to make changes in this regard and offered to pay the Applicant the sum of £300 in settlement of the Applicant’s dispute with the Respondent. The offer was made without prejudice. The offer of settlement was rejected by the Applicant.

Evidence

20. Ms Maclean confirmed that the bulk of the £1174.66 which comprised the sum being sought from her by the Respondent related to cyclical painting costs. She said that she thought it had been around Spring 2022 that the painting works were done but that her recollection was not clear because she was involved in doing a lot of work to the Property after she moved in. Mr Robertson said that it was his understanding that the painting work was started at the end of 2021 and was concluded in the early part of 2022.
21. Ms Maclean said that, prior to purchasing the Property, she was unaware of cyclical painting work being planned just after she had purchased the Property. Mr Robertson said that the seller's solicitor had, as is usual in conveyancing transactions, made enquiry of the Respondent for information relating to factoring charges and common repairs. He said that a response had been sent to the solicitor and that, in terms of the usual practice, a copy of this would have been forwarded to the Applicant's solicitor. Mr Robertson said that there would have been an apportionment of common charges as at the date of entry.
22. Mr Robertson said that he was unable to submit a copy of the letter because it contained personal information relating to the seller of the Property. His evidence was that the letter contained no information about the imminent commencement of the cyclical painting.
23. Ms Maclean said that she thought that a fund existed to pay for cyclical works and she was reassured on this by section 4.5 of the Shared Ownership Handbook. She said that the letter of 21 October 2022 was difficult to understand and that she did not realise from its terms that she would have a liability in respect of the whole costs of cyclical painting. She thought that there was money in the fund to pay for it. She also had reassurance from the sentence in the letter: "*There is nothing for you to do.*"
24. There was discussion about whether the maintenance fund was a sinking fund. Mr Robertson and Ms Watson explained that it was not. They said that contributions were taken from owners each year so that, in relation to cyclical painting, (historically carried out every five years), there would be a significant sum in the fund to pay for it. Ms Watson said that the fund was not linked to each property in the development but rather to each owner. She said that a reconciliation would have been carried out at the time of sale to Ms Maclean and that any funds in the maintenance fund attributed to the previous owner would have been returned to them.
25. Ms Maclean's evidence was that she was only aware of her obligation to pay the whole share of the cyclical painting attributable to the Property when she received the letter dated 27 February 2024 and that, when she asked for further clarification and detail, this was not forthcoming in a readily understandable form. She said that she had received a bill with no supporting evidence. She referred to various productions which she had submitted. She said that, even now the information provided on maintenance matters was not as complete as it should be. Ms Maclean said that she thought that she should be provided with full detail of tenders for work,

information on how many hours were worked on a contract with such detail as starting and finishing times and the number of tradesmen engaged.

26. Mr Robertson said that the contractor used for the painting contract was a large multi skilled contractor of the Respondent where day rates and other matters had been agreed. He accepted that the information provided to the Applicant by the Respondent had not been as clear as it should have been when she had asked for further information about the maintenance fund. He said that the Respondent is currently carrying out a review of its factoring services.

Discussion and Decision

27. The Applicant is alleging that the Respondent has failed to comply with two of the overarching standards of service contained in the Code:

OSP 2: You must be honest, open, transparent and fair in your dealings with homeowners.

OSP 3 You must provide information in a clear and easily accessible way.

28. The issues are focused and centre on information given to the Applicant in relation to the maintenance fund.

29. The tribunal was not required to determine issues of credibility. Both the Applicant and the representatives of the Respondent gave their evidence in a clear manner and there was no dispute between the Applicant and Respondent in relation to matters of fact.

30. The tribunal had regard to the written representations submitted by parties and to the copies of emails and letters which each had submitted.

31. The tribunal did not consider that there was evidence that the Respondent had been dishonest or unfair in its dealings with the Applicant and it considered that it had displayed a culture of openness in its dealings with her after she had raised concerns.

32. The tribunal considered that the Respondent had not been transparent in communicating with the Respondent in relation to the maintenance fund in general, and the cyclical painting contract in particular.

33. It is not for the Tribunal to direct how a property factor should arrange matters in connection with repairs unless it is considered that it has not complied with the Code. The Respondent arranges funding for cyclical works in such a way that a fund exists to which the proprietors of properties contribute on an ongoing basis. Any proprietor who sells a property prior to costs being charged to the fund have contributions paid by them returned.

34. The tribunal accepted that, on the basis of the way that the Respondent organises the fund, the Applicant was responsible for paying the share of cyclical painting attributable to the Property.

35. The tribunal did not accept that the Respondent had been transparent in its dealings with the Applicant when she purchased the Property. It seemed reasonable that, if an incoming owner was to be liable for an expense such as cyclical maintenance, they should be made aware of this at the time of purchase. This was particularly pertinent when the terms of section 4.5 of the Shared Ownership Handbook is considered. The tribunal accepted the Applicant's evidence that one reading of that is that a fund exists to pay for such costs.
36. The letter of the Respondent dated 21 October 2022 was not transparent in stating that the Applicant had liability for the costs of painting, particularly since it advised the Applicant that she did not have to do anything about the letter.
37. It was not until February 2024 that the Applicant was made clearly aware that she had to pay money for the painting.
38. The tribunal determined that, with regard to liability for the painting costs, the Respondent was less than transparent and therefore failed to comply with overarching standard of practice 2 of the Code.
39. The Shared Ownership Handbook refers to a Maintenance and Renewal fund and sets out clearly what its purpose is. What is not made clear is that the fund is linked to a proprietor rather than an individual property. Had the handbook clearly stated this, any prospective or new purchaser would be made aware of a potential liability, depending on where the maintenance was on the cycle.
40. The Respondent has conceded that it did not provide detailed and clear information. The tribunal considered the copy documents submitted by parties and agreed that the Respondent had failed in this regard. It had not provided clear information in its letters of 21 October 2022 and 27 February 2024 and had not done so when responding to the requests from the Applicant following the latter letter which it had sent her.
41. The tribunal determined that the Respondent had failed to comply with overarching standard of practice 3 of the Code.
42. The Applicant considers that she should have been provided with detail on what had been done by contractors and that she should receive such information as work orders, hours spent, number of personnel involved, starting and finishing times etc. The tribunal did not consider that, in failing to provide such information, the Respondent had failed to comply with the Code. The Respondent has delegated authority in terms of the written statement of services and it is not a homeowner's role to micro manage how a property factor chooses to have common works undertaken providing that the Code and written statement of services is complied with.
43. The Applicant contends that the Respondent has failed to carry out the property factor's duties.

44. In terms of the written statement of services, the Respondent is obliged to provide homeowners on an annual basis with information with regard to the Maintenance Fund. In the particular circumstances of the application before it, the tribunal determined that it had failed to do so and had therefore not carried out the property factor's duties.

Disposal

45. In arriving at a disposal, the tribunal had no regard to the offer of compensation of £300 which had been by the Respondent as it had been made on a without prejudice basis.

46. The Applicant had suggested that she be relieved of all the costs for the painting work done around the time she took ownership of the Property. Arguably, it was unfair that the Applicant should be required to pay the whole costs of the painting work. The tribunal did not accept that position. The Respondent had a system in place for administering the repairs maintenance fund. There may be a view that it is not a fair system and a that a sinking fund might be more appropriate but that is not a matter for the tribunal to determine. The tribunal had determined that the Respondent had failed to be transparent with the Applicant in the provision of information and that information it had provided had not been supplied in a clear and accessible way.

47. The Applicant had been disadvantaged in not having been made aware timeously of her obligation to pay for the painting work and she had been put to inconvenience in trying to get information from the Respondent and in bringing an application to the Tribunal. The tribunal determined that it would be fair to make a property factor enforcement order requiring the Respondent to pay the sum of £500 to the Applicant as compensation.

48. The Applicant sought to recover the cost of the purchase of a printer which she said had been necessary in connection with her application to the Tribunal. She had not made any submissions in this regard and the tribunal did not consider that it was necessary for her to have purchased a printer to submit an application and it made no finding in this regard.

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.

**Martin J. McAllister,
Legal Member
8 July 2025**