

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/24/1636

19/22, Salamander Place, Edinburgh, EH6 7JJ ('the Property')

Jack Newlands ('the Homeowner and Applicant')

Graham Morris ('The Homeowner and Applicant's Representative')

Ross and Liddell ('the Factor and Respondent')

David Doig, Raeside Chisholm ('The Factor's solicitor and Representative').

Tribunal members:

Jacqui Taylor (Chairperson) and Donald Wooley (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with section 2.7 of the 2021 Code of Conduct.

The decision is unanimous.

Background

1. The Homeowner is heritable proprietor of the property 19/22, Salamander Place, Edinburgh, EH6 7JJ ('the Property').
2. Ross and Liddell are factors of the Property and were registered as a property factor on 7th December 2012.
3. The Homeowner submitted an application to the Tribunal dated 10th April 2024.

The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the specified sections of the Property Factor Code of Conduct 2021.

The Homeowner had sent the Tribunal an email dated 29th April 2024 which stated that he had mistakenly ticked the box on the application which stated that his complaint included a breach of Property factor duties.

4. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 13th May 2024 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 11th April 2024 and 29th April 2024) to a Tribunal.

5. The First Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 21st August 2024 at 10am

The Homeowner was represented by Graham Morris.

Jennifer Johnston, the Factor's Associate Complaints Resolution Director and David Doig, solicitor representing the Factor, also attended.

Both parties had lodged written representations and productions with the Tribunal.

5.1 The parties confirmed the following agreed facts:

5.1.1 The Homeowner bought the Property new in 2017/2018.

5.1.2 The Factor has factored the Property from the beginning.

5.1.3 The Property is a fifth floor flat within a development of 85 properties.

5.1.4 The Written Statement of Services submitted with the Factor's productions is dated February 2024 and the Schedule to the Statement shows changes that have been made to the Statement.

6.Direction.

The Tribunal issued a Direction dated 24th August 2024 which directed the Factor to provide the Tribunal with a copy of the Written Statements of Service that was in place during the period 26th September 2023 and 1st February 2024.

7. Direction Response.

The Factor provided the Tribunal with a copy of their Service Level Agreements dated 2022 and 2024.

8. Mr Morris sent the Tribunal emails dated 24th September 2024 and 15th October 2024 advising that he did not wish an inperson hearing and he would prefer an online meeting as it was easier for his witnesses to attend.

9. Mr Morris also sent the Tribunal an email dated 17th October 2024 which detailed two items he considered had been omitted from the CMD note and one item

which he considered had been inaccurately reported.

10. On 29th October 2025 the Tribunal administration sent the parties notification that a video hearing had been scheduled for 11th November at 2pm. That hearing was subsequently postponed.

11. Additional Productions.

Mr Morris sent the Tribunal additional evidence by email dated 25th February 2025. The additional evidence comprised:

11.1 A copy of Land Certificate MID203192.

11.2 Live chat conversation transcriptions of chats between Mr Morris and the Factor dated September and October 2024.

11.3 A copy of the letter from the Factor to the Homeowner dated 5th March 2024.

11.4 An email from the Factor to Mr Morris dated 13th January 2025 acknowledging his complaint appeal.

11.5 A copy of the letter from the Factor to the Homeowner dated 13th January 2025, acknowledging receipt of his email dated 4th January 2025 intimating his complaint appeal.

11.6 An email from the Factor to Mr Morris dated 28th January 2025 in response to his complaint appeal.

11.7 An email from Mr Morris to the Factor dated 2nd February 2024.

11.8 An email from Mr Morris to the Factor dated 22nd February 2024.

11.9 An email from Mr Morris to the Factor dated 3rd December 2024 and a response from the Factor also dated 3rd December 2024.

11.10 Emails between Mr Morris and the Factor dated 24th, 25th and 26th October 2024.

11.11 An email from the Factor to Mr Morris dated 26th November 2024.

11.12 An email from Mr Morris to the Factor dated 28th November 2024.

11.13 Copies of the Factor's invoices dated 30th October 2023.

11.14 The Factor's Service Level Agreement dated November 2024.

11.15 A copy of sections of the Tenements (Scotland) Act 2004.

12. The Hearing.

A video conference call Case Management Discussion (CMD) took place in respect of the application on 10th March 2025 at 10am

The Homeowner was represented by Graham Morris. No witnesses attended for the Homeowner.

Jennifer Johnston, the Factor's Associate Complaints Resolution Director and David Doig, solicitor representing the Factor, attended.

12.1 As a preliminary matter Mrs Taylor advised the parties that she had considered the terms of the email from Mr Morris dated 17th October 2024 which detailed three amendments required to the CMD Note. She explained that the Tribunal would incorporate the following amendments to the detail of parties representations when they issued their final decision.

12.2. Sections 2.1 and 2.7 of the 2021 Code of Conduct. The first two sentences of the Factor's Response would be amended to clarify that the Homeowner does not to engage with the Factor through the portal.

12.3 Sections 6.1 and 6.4 of the 2021 Code of Conduct. The Homeowner's Representative's submissions would be amended to clarify that the works had been completed on 6th February 2024.

12.4 Section 6.6 of the 2021 Code of Conduct. The Homeowner's Representative's submissions would be amended to clarify that the building is six years old.

Both parties agreed to these amendments. Both parties confirmed that the CMD note was accurate apart from these amendments. The corrected CMD Note is attached as a schedule to this Decision.

13. The detail of the Homeowner's application and the parties' representations in relation to the detailed complaints are as follows:

Section 2.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligation and

Section 2.7 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): 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:

The Factor did not timeously reply to emails dated 26th September 2023, 27th October 2023 and 23rd November 2023. They only jumped into action on 5th December 2023.

The Factor's changed their communication policy in January/ February 2024 such that they no longer accepted communication by email and required communication to be via the Portal, live chat function on the website or the telephone.

The Homeowner does not use the online Portal and he does not read the Factor's newsletter.

He acknowledged that he had received automatic responses to emails he had sent to the Factor after 28th February 2024. The automatic responses advised them to correspond with the Factor via the live chat facility.

At the second CMD Mr Morris referred the Tribunal to the additional productions that he had lodged and the copies of the chat log entry dated 4th September 2024. He said he is still waiting for a follow up call in relation to those entries. He explained that this shows that the Factor continues to be slow to respond to his enquiries.

The Factor's response:

Mr Doig explained that the Homeowner's relationship with the Factor is strained. The Homeowner and the Homeowner's representative choose not to engage with the Factor in relation to the Portal. It would be ideal if the relationship was more positive. The owners are consulted in decision making in relation to large scale repairs. He explained that the Factor's Portal has been in use since 2021. The live chat means of communication was introduced on 28th February 2024. If a customer sent the Factor an email after that date they would receive an automatic response advising them to contact the Factor via the live chat function.

He accepted that the communication times detailed in the Factor's Service Level Agreement have not been fully met. However, this was acknowledged in the Factor's response to the Homeowner's complaint.

Mrs Johnston advised that the Newsletter was delivered to the owners by the communication method the owners have requested such as email or post. The Newsletter covers updates in relation to all of the properties managed by the Factor. It is usually issued in March/April.

In connection with the chat log entry dated 4th September 2024 referred to by Mr Morris he advised that this evidence is not relevant to the present application as the entry is dated after the application was made.

The Factor does not consider that they have failed in their duties under section 2.1 of the Code.

The Tribunal's Decision:

The Tribunal do not find that the Factor has failed to comply with section 2.1 of the Code of Conduct, in relation to the Homeowner's complaints. The Factor has a portal where the owners can access information about their account. The Factor has arranged the live chat facility to enable owners to report repairs. The Factor's service level agreement states that if owners are not prepared to use the live chat facility, they can telephone the Factor. The Factor consulted the owners regarding the water ingress repair required to Flat 10.

In relation to section 2.7 of the Code of Conduct the Factor had provided the Tribunal with the Service Level Agreement dated November 2022 which is the Agreement that was in place at the time the Homeowner/ Homeowner's Representative sent the emails dated 26th September 2023, 27th October 2023 and 23rd November 2023 to the Factor. Section 10 of the Agreement is headed 'Communication Arrangements'. Section 10 (ii) states that the Factor will respond to written queries within seven working days of receipt.

The Tribunal notes that the Factor responded to the emails in question as follows:

Email dated 26th September 2023, the Factor responded on 27th October 2023 which is 16 working days late.

Email dated 27th October 2023, the Factor responded on 7th November 2023 which is 7 working days after the date it was sent.

Email dated 23rd November 2023, the Factor responded on 5th December 2023, which is 1 working day late.

The Tribunal also notes that the Factor apologised to the Homeowner for delayed responses to the emails dated 26th September 2023, 27th October 2023 and 23rd November 2023 in the emails dated 27th October 2023 and 5th December 2023 and the letter dated 5th March 2024. That letter also explained that the Factor had received an unprecedented volume of enquiries which caused responses to take longer than normal. An autoreply was added to the account encouraging clients to contact the Factor's office by telephone where needed and related to billing enquiries.

As the Factor did not reply to the emails from the Homeowner dated 26th September 2023 and 23rd November 2023 within seven working days the Tribunal determine that the Factor has failed to comply with section 2.7 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021):

This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and

good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

And

Section 6.4 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): 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 next steps and what will happen to any money collected to fund the work.

The Homeowner's complaint:

The Factor received a complaint of water ingress at flat ten in May 2023. The Factor explored repair options and the owners voted on the proposed works. The Homeowner rejected the proposed repair options as he wanted the Factor to first explore the possibility of the repair being completed under the Premiere Guarantee. He wanted the Factor to determine if the required repairs were restricted to the one property or if repairs were required to other parts of the building. Initially, twelve out of eighty five owners agreed to the proposed repair.

The Factor claimed that thirty six owners had agreed to the proposed repair as thirty six owners had paid the invoice the Factor had sent them for the repair costs. Mr Morris explained that he does not believe that paying an account is indicative of consent. He pays accounts to ensure that he will not receive a late payment charge. If he wishes to dispute an item in the account he will do this separately.

Mr Morris explained that he had spoken to an employee of the Factor about the Premiere Guarantee on the phone for twenty or thirty minutes. The employee had agreed to investigate the position but they never called him back. The Factor should have told the owner of flat ten to process the repair under his Premiere Guarantee.

He accepted that the works had been completed on 6th February 2024, but he said the works had not been completed promptly.

The total cost of the repair was £1075.25. The cost was divided between the owners within the Homeowner's block. There were 64 properties. The cost per owner was £16.05.

Mr Morris explained that he believed that the Factor had breached section 6.4 of the Code of Conduct as they had taken too long to complete the water ingress repair. He confirmed that he agreed with the time sequence as described by Ms Johnston at the first case management discussion, as outlined in the subsequent CMD note.

The Factor's response:

Mr Doig explained that the Factor cannot instruct the Premiere Guarantee company to complete repairs. The individual owners hold their own Premiere Guarantee policies and it is for each individual owner to make a claim under their policy, as appropriate.

The obligation is on the Factor to make prompt repairs. The Factor cannot be blamed for repairs taking longer than expected if owners block progress in having repairs completed. The Homeowner rejected the proposed repairs. He was the only owner within the block to reject the repairs. He was partly responsible for the delay in having the repairs completed.

Mrs Johnston explained that the Factor requested three quotes for the proposed repair. The Factor accepted the quotation from North Façade as it was the most competitive quote. The Factor ingathered 52.7% of the required cost of the repair in advance and then instructed the repair. She also advised that had the Factor carried out further investigation of the whole block, as Mr Morris suggested, it would have been necessary to instruct a building surveyor to undertake such an investigation and this would have increased the cost.

Mrs Johnston advised that the Factor has not been provided with a copy of the Premiere Guarantee and consequently she does not know the minimum value of a claim that could be made under the guarantee.

Ms Johnston clarified the time line for completion of the repairs in relation to the water ingress to flat ten.

The Factor's first letter to the owners regarding the repair was dated 21st September 2023. That letter requested owners to complete and return mandates authorizing the repair. The letter was reissued on 23rd October 2023. Reminder letters were issued on 23rd and 25th October 2023. On 29th January 2024 the Factor had received 52% of the cost of the repair and decided to proceed. Usually, the Factor would wait until 75% or 80% of the cost had been received. However, on this occasion the Factor instructed the works on 29th January 2024 and they were completed on 6th February 2024. She advised that the Factor has delegated authority to instruct non emergency repairs up to £500.

Mr Doig advised that the repairs have been investigated and carried out within a reasonable period of time. Paragraph 7B of the complaint offers no specification of work not being instructed within appropriate timescales, of owners not being informed of the progress of works or the cancellation of work which had been instructed. There are no outstanding repairs relevant to the common properties.

He advised that clause 10.1.1 of the Deed of Conditions provides that the Factor may order and arrange to be executed any common or mutual operations, maintenance and other works to the common property as in their judgement shall consider necessary to implement their obligations and duties.

He also advised that clause 10.1.2 of the Deed of Conditions provides that the Factor may exercise the whole rights and powers which may be competently be exercised by a majority of those present at any quorate meeting of the Proprietors provided for in this Deed of Conditions.

Mr Doig stated that the Factor rejects the assertion that they are in breach of their duties under section 6.1 of the Code of Conduct. There are not any outstanding repairs relevant to the Homeowner's Property.

The Tribunal's Decision.

It is the Homeowner's position that the repair to flat 10 had not been carried out promptly. Section 6.1 of the Code of Conduct states that a property factor "can help" to prevent further damage or deterioration by seeking to make prompt repairs to a good standard. Section 6.4 of the Code of Conduct requires repairs to be completed within appropriate timescales.

The Deed of Conditions by Teague Homes (UK) Limited registered 31st August 2018 sets out the provisions for maintenance of the common parts of the development. Section 7 states that a majority of votes at an owners meeting may order maintenance or repair of common property.

Section 10.1.2 of the Deed of Conditions authorises the Factor to exercise rights and powers that may be exercised by a majority of those present at any quorate proprietors meeting.

The Factor's level of delegated authority at that time was £500. The repair bill for the repair to the water ingress to flat 10 amounted to £1075.25. The cost of the repair exceeded the level of the Factor's delegated authority.

No evidence has been produced to the Tribunal to indicate that the repair in question was an emergency repair. The repair was a 'Routine Repair'. No evidence has been produced to the Tribunal that the repair was first reported to the Factor in May 2023.

Section 2 ii of the Factor's Service Level Agreement dated November 2022 applies to 'Routine Repairs'. It states that the Factor aims to instruct contractors as soon as practicable but their ability to do so is entirely governed by funding being made available to them.

The Tribunal find that the Factor was entitled to wait until full funding had been received before instructing the repair.

The Factor instructed the repair once they had received 52.7% of the funding.

The Tribunal determine that the Factor did not delay in having the repair completed and the Factor has not breached sections 6.1 and 6.4 of the Code of Conduct in relation to the Homeowner's complaint.

Section 6.6 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

The Homeowner's complaint:

Mr Morris explained that he believed that the Factor had breached section 6.6 of the Code of Conduct as the Factor did not consider progressing the water ingress claim for flat ten under the Premiere Guarantee. He wants reassurance that the water ingress problem experienced by flat 10 is not part of a bigger problem affecting the whole property. Especially as the Property is only six years old.

He referred to the terms of the Tenement (Scotland) Act and the document 'Under one Roof' which he has produced. He advised that the Act provides that confirmation that votes are required to authorise common works and that payment alone is not sufficient.

The Factor's response:

Mr Doig advised that Mr Morris has not specified a specific breach of section 6.6 of the Code of Conduct. He also explained that the Tenement (Scotland) Act only applies where the provisions for repairs within title deeds are unworkable or owners cannot secure a majority consent.

The Tribunal's Decision:

The Homeowner's complaint is that the Factor did not progress the repair to the water ingress to flat 10 under the Premiere Guarantee and the Factor did not instruct investigations to ensure that the defect to flat ten had not also occurred in other parts of the building.

The Tribunal acknowledge that the individual owners' Premiere Guarantees are contracts between the individual owners and the Premiere Guarantee insurance company. The Factor is not a party to the Premiere Guarantee and is not in a position to make a claim under a particular Premiere Guarantee policy.

The Tribunal also acknowledge that the Factor's Service Level Agreement does not include any matters relating to individual Premiere Guarantee policies.

The Tribunal determine that Section 6.6 of the Code of Conduct does not require the Factor to progress the repair to the water ingress to flat 10 under the Premiere guarantee or to investigate if similar defects have occurred in other parts of the building.

Accordingly, the Tribunal determine that the Factor has not breached section 6.6 of the Code of Conduct in relation to the Homeowner's complaint.

14.Findings in Fact.

The Tribunal made the following findings in fact:

14.1 The Homeowner bought the Property new in 2017/2018.

14.2 The Factor has factored the Property from the beginning.

14.3 The Property is a fifth floor flat within a development of 85 properties.

14.4 The Factor responded to the Email dated 26th September 2023 on 27th October 2023 which is 16 working days late.

14.5 The Factor responded to the Email dated 27th October 2023 on 7th November 2023 which is 7 working days after the date it was sent.

14.6 The Factor responded to the Email dated 23rd November 2023 on 5th December 2023, which is 1 working day late.

14.7 The Factor apologised to the Homeowner for delayed responses to the emails dated 26th September 2023, 27th October 2023 and 23rd November 2023 in the emails dated 27th October 2023 and 5th December 2023 and the letter dated 5th March 2024.

14.8 The Factor's first letter to the owners regarding the repair was dated 21st September 2023. That letter requested owners to complete and return mandates authorizing the repair.

14.9 On 29th January 2024 the Factor had received 52.7% of the cost of the repair

14.10 on 29th January 2024 the Factor instructed the repair.

14.11. The repair was completed on 6th February 2024.

14.12 The delegated authority to instruct non emergency repairs up to £500.

15.Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with section 2.7 of the 2021 Code of Conduct.

Section 17 of the Property Factors (Scotland) Act 2011 provides that the Tribunal must decide whether the Factor has failed to carry out the property factors duties or failed to comply with the Code of Conduct and if so whether to make a property factor enforcement order.

The Tribunal acknowledges that the Factor has apologised for this breach. The Homeowner has not explained the loss or inconvenience that he suffered due to the delay by the Factor in replying to the emails dated 26th September 2023 and 23rd November 2023.

Therefore, the Tribunal do not consider it appropriate to issue a Property Factor Enforcement Order.

16. Appeals

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.

Jacqui Taylor

SignedDate 16th March 2025

Chairperson