



2024UT24
Ref: UTS/AP/24/0015

DECISION OF

Sheriff Iain Fleming

**ON AN APPEAL
IN THE CASE OF**

Miss Lawrie Anne Brown

Appellant

- and -

Park Property Management Ltd

Respondent

FTS Case Reference - FTS/HPC/PF/23/1674

April 2024

Decision

The appeal is allowed. The decision of the First-tier Tribunal for Scotland Housing and Property Chamber dated 16 January 2024 is quashed. The case is remitted to a differently constituted First- Tier Tribunal for Scotland Housing and Property Chamber for re-determination.

1 The appellant is the owner of the property at Flat 0/1, 48 Minerva Way, Finnieston Glasgow. The respondent provides factoring services to the development of which the appellant's property forms part.

2 There is a common insurance policy for the development.



3 On or around 6 August 2021 an annual insurance statement was circulated by the respondent to homeowners, including the appellant.

4 On or around 1 September 2022 the respondent arranged for renewal of the annual insurance policy. Homeowners were not provided with an annual insurance statement at that time. Following a communication from the appellant the respondent issued an annual insurance statement to the appellant on 22 December 2022. The appellant raised a complaint with the respondent in January 2022 claiming that the respondent had breached paragraph 5.3 of the 2021 Property Factor Code of Conduct (hereafter “the code.”) The respondent initially accepted and then later repudiated the appellant’s claim. The respondent advised the FTS that the admission of the claim was made in error and upon the basis of a factual and legal misunderstanding.

5 The matter came before the First-tier Tribunal for Scotland (Housing and Property Chamber) (hereafter “the FTS”) on 9 January 2024 and in terms of a decision of 16 January 2024 the FTS held that the respondent was not in breach of paragraph 5.3 of the code. The FTS did comment in paragraph 20 of its decision that the respondent did not observe “good practice” when it failed to send out an annual insurance statement at an earlier stage. Permission to appeal was granted by the FTS on 31 January 2024. The appellant contended before the FTS and now contends before the Upper Tribunal that the respondent is in breach of the code because it did not supply the appellant with the annual insurance statement within “the legal timeframe.”

6 In terms of section 14(5) of the Property Factors (Scotland) Act 2011(hereafter “the Act”) the respondent must ensure compliance with the property factor code of conduct for the time being in force. As such, adherence to the code is mandatory in this context and not directory as in some other professional fields where the existence of a code of practice is demonstrative only of good practice and not necessarily taxative.

7 In terms of paragraph 5.3 of the code a property factor

“must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:

- *the basis upon which their share of the insurance premium is calculated;*
- *the sum insured;*
- *the premium paid;*
- *the main elements of insurance cover provided by the policy and any excesses which apply;*
- *the name of the company providing insurance cover; and*



- *any other terms of the policy.*

8 In practical terms the appellant's position is that the respondent having sent out an annual insurance statement on 6 August 2021 and having renewed the policy on 1 September 2022 did not provide information to homeowners until 22 December 2022. She submits that as a result of that delay the respondent is in breach of the code. The appellant submitted that because she did not receive an annual statement from August 2021 until December 2022 that there was a breach of the code. She argues that "annual" means once per year and in terms of the code the annual insurance statement requires to be sent out within 365 days of the previous intimation if the code. The appellant accepts that it would be reasonable if the annual statement was sent out a few days early or late but since a period of one year and four months had elapsed that was not reasonable.

9 It was also argued by the appellant that the respondent had accepted that they were in breach of the code on an earlier occasion and had offered compensation.

10 The respondent does not accept the alleged breach. In response it is argued that in terms of paragraph 5.3 of the code the legislature did not impose any time limit upon the factors, other than in the case of a situation in which a new insurance provider was identified.

11 Since the code did not contain a specific time limit referable to this aspect it was submitted that the legislature did not intend that there should be a specific time frame for implementation. The respondent, by means of example, referred to annual reports from the Law Society of Scotland and the Scottish Civil Justice Committee both of which were issued each year but within a broad timeframe. Both these bodies considered that annual reports could be issued within such a time frame that went beyond 365 days from the previously issued report.

12 In its response to the appeal the respondent argues that "annual" is used loosely to prescribe a recurring submission or action to be performed once every year. There is no specified time provided for the implementation of the requirement.

13 The FTS decided that there had been no breach of the code. It concluded that the term "annual insurance statement" means that the property factor must send out an insurance statement annually, namely once per year. The code does not require that this be 365 days from the date of the last statement, or within a certain period after renewal with the same insurer. The FTS concluded that had the legislature intended a strict deadline for the issue of an annual insurance statement it would have so specified.

Reasons for the Decision.



14 The Upper Tribunal grants the appeal. The FTS did not have regard to the Overarching Standards of Practice which require the respondent to carry out services provided to homeowners in a “timely” way.

15 The word “annual” was inserted into the revised property factors code and was effective from 2021. In its previous incarnation, namely the 2012 code, the word “annual” did not appear in what was the equivalent section (5.2). That said, it is important not to conflate the obligation to provide details of the annual policy with the separate question of a time limit within which the detail of that policy is to be provided. I agree with the conclusion of the FTS that the insertion of the word “annual” will require the respondents to provide information once per year. That does not mean that if the information is not provided within 365 days of the previous provision that the code has been breached. It means that once per year the respondent must send out the necessary annual insurance policy details.

16 The legislature thought it appropriate to insert a time frame in relation to the obligation upon a landlord to intimate details to the tenant in the event of a change of insurance provider. It did not do so in relation to the obligation to provide details of the annual insurance policy. The absence of a directive time frame together with the insertion of the word “annual” in relation to this section is to be interpreted as meaning that in terms of paragraph 5.3 of the code, when read in isolation, the timeframe with which the respondent need comply is to provide details once per year. Thus far I agree with the conclusion of the FTS in relation to this matter.

17 In order to arrive at a true interpretation of the legislation, however, a clause must not be considered in isolation but considered in the context of the whole document. The legislature chose to introduce to the code the “Overarching Standards of Practice.” Paragraph 6 requires that factors carry out the services they provide to homeowners “*using reasonable care and skill and in a timely way.*” While there is no specific time frame within paragraph 5.3 of the code there is a requirement upon the respondent to provide the details of the insurance policy in a “timely way.” In terms of its decision the FTS refused the application but did comment within paragraph 20 of its decision that the respondent did not observe “good practice.” The basis for the observation given by the FTS is that the respondent did not send out the information “at an earlier stage.”

18 The question of the Overarching Standards of Practice does not appear to have been addressed either before the FTS, or by the FTS. It was incumbent upon the FTS to consider paragraph 6 of the Overarching Standards of Practice in considering its decision in order to address what was intended by the legislature.



19 Notwithstanding that the FTS is critical of the property factor it held that there had been no breach of the code. Its explanation was that paragraph 5.3 of the code does not impose a time limit upon the respondent in relation to the provision of information. However, it reached that conclusion without considering paragraph 6 of the Overarching Standards of Practice. I hold that it cannot be the case that the legislature, in introducing the Overarching Standards of Practice, did not intend that its terms be addressed. In not so doing the FTS erred in law. The FTS was critical of the respondent for not providing information to the appellant at an “earlier stage.” As such, the question of compliance with the terms of the code in a “timely” fashion is clearly of significance to the decision. The FTS should have considered the Overarching Standards of Practice and determined upon their application to the issues before it. In fairness to the FTS such an argument was not placed before it when matters were being considered.

20 It should also be said that simply because there has not been a rigorous adherence to the code in every respect that a finding of a breach will necessarily be made. Issues such as context and proportionality are relevant. Further, the fact that the respondent may have admitted breaching the code and then withdrawn that admission upon the premise that there had been a misunderstanding is a feature which the FTS was entitled to consider. If it holds that the admission was made in error it is entitled to disregard or attach limited weight to that admission as it sees fit. The decision about whether there has been a breach of the code is for the FTS alone.

21 There having been an error in law the appeal is granted and the case remitted to the FTS to be heard by a differently constituted tribunal.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*