



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/23/0006 and FTS/HPC/23/0367

Re: Property at 3 Merkland Park, Dundonald, South Ayrshire, KA2 9JN (“the Property”)

Parties:

Pamela Manson, per her representative James Manson, both residing at 3 Merkland Park, Dundonald, South Ayrshire, KA2 9JN (“the Applicant”)

Newton Property Management Limited, 87 Port Dundas Road, Glasgow G4 0HF (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Helen Barclay (Ordinary Member)

Introduction

1. By applications dated 19 December 2022 and 21 January 2023 the Applicant applied to the Tribunal alleging breaches of certain sections of the Code of Conduct for Property Factors issued in terms of the Property Factors (Scotland) Act 2011 (“the 2011 Act”)
2. The applications were accepted and referred to a Tribunal for determination and a Case Management Discussion was set to take place on 16 August 2023 via telephone case conference.

Case Management Discussion

3. The Case Management Discussion (“CMD”) took place on 16 August by telephone case conference. The applicant’s representative, Mr James Manson was in attendance and the property factor was represented by Mr Lewis Littlejohn, Associate Director .
4. A note was issued to parties after the CMD and a hearing was set to take place on 15 November 2023, but was postponed at the direct request of the respondent as the proposed date was not suitable for Mr Littlejohn and a later date was set for 8 January 2024.

The hearing

5. The hearing proceeded on 8 January 2024 in the absence of the respondent.
6. Subsequent to the hearing the tribunal issued a further note indicating it was not in a position to make a final decision and requesting that the respondent provide additional written submissions.
7. By email dated 19 February 2024, the respondent provided further written submissions. These submissions were forwarded to the applicant. No additional response has been received from the applicant.

The issues raised by the applicant

8. Two separate applications had been lodged because the alleged complaints cover a period both before and after the introduction of the revised Code of Conduct, which was introduced with effect from 12 August 2021. Prior to that date original Code of Conduct introduced in 2012 applied.
9. In respect of the complaints under the original code of conduct, the applicant alleged breaches of sections 2.2, 2.6, 3.2, 3.5 7.2 and 7.5.
10. In respect of the alleged breaches of the current code of conduct, the applicant has provided no specific details. In that application, the applicant has simply ticked the boxes on the application form indicating complaints in respect of sections 1, 2, 3, 4 and 7 of the revised Code.
11. In his letter to the respondent dated 22 January 2023 the applicant’s representative indicates that his complaints in respect of the relevant sections of the revised 2021 Code can be summarised as follows.
12. With regard to Section 1, (which relates to the required Written Statement of Services (“WSS”) which must be produced by all property factors it states that the WSS was “never agreed with the residents“

13. With regard to section 2 (which relates to “communications and consultations”) the applicant complains that the respondent never replies to correspondence.
14. With regard to section 3 (which relates to “financial obligations”, the applicant complains that respondent failed to deliver financial details on request.
15. With regard to section 4, (which relates to “debt recovery”), the applicant complains that the respondent failed to provide details of their debt recovery procedure before sending letters relating to alleged debts.
16. With regard to section 7 (which relates to “complaints resolution”) the applicant complains that the respondent never tries to resolve outstanding complaints.
17. The complaints under the original Code relate to similar parts of the Code and to similar issues.
18. The property factors had lodged a written response to the applications setting out their position and similarly lodged a number of documents.

Discussions at the hearing

19. At the hearing, the tribunal asked various questions of the applicant’s representative.
20. In general terms, Mr Manson indicated that the respondent had become the property factor had become the property factor at the Castle Grange development in September 2020. His wife who is the applicant is the owner of the property at 3 Merkland Court. She had no say in the appointment. The tribunal had also noted from both parties at the earlier CMD that in addition to being a property factor for this development, there is also an Owners Association (“Castle Grange Owners Association”) which appears to have been set up in terms of the title deeds.
21. It was noted and agreed that the title is the property created the castle Grange owners Association and the owners Association does have the power to appoint a factor and to delegate to the factor the various duties and responsibilities to organise repairs.
22. The tribunal had requested that parties lodge various documents prior to the hearing, and Mr Manson had lodged copies of all the Factoring accounts received in the period from the respondent’s appointment in 2020.
23. In those invoices, there are a number of items for which no explanation has been obtained.

24. In the invoice covering the period from 1 March 2022 to 28 August 2022, there is an item headed "sinking fund contribution". The total amount being split between all owners in the development is £624.96.
25. In the invoice covering the period from 29 August 2022 to 28 February 2023, there are two items, one headed "contingency Castle Grange properly fund showing a total amount of £1008 being split between the owners and a second amount called "Castle Grange quarterly property fund" again showing a sum of £1008 being split between the owners that invoice also includes entries for professional fees of £5 and an administration fee of £30 representing a late payment fee.
26. In the invoice covering the period from 1 March 2023 to 28 August 2023, there is again an entry headed "Castle Grange contingency fund subs, August 2023" for a total sum of £1008 before being split among the owners.
27. There has been no explanation tendered to Mr Manson showing that the owners association had made any decision regarding any contingency fund or sinking fund. He has asked for an explanation of his matter, and it has not been provided.
28. In the absence of the property factor from the hearing that the tribunal was not able to make full and appropriate enquiries to ascertain the reason behind these invoiced charges.
29. The tribunal had also required the factor to lodge appropriate documents showing compliance with the relevant provisions of the Code relating to the protection and lodging of homeowners' floats. Prior to hearing the property factors had lodged a letter dated 4 January 2024, in which they simply state that with respect to the relevant provision of the Code that they are "fully compliant and segregate all floating funds into a bank account which is separate from our own funds. No actual evidence was provided to support this assertion. No evidence has been provided of how much is held by the respondent, both as floats for the homeowners or in respect of any funds held in any contingency or sinking fund (separate to the floats) which have been obtained from the homeowners.
30. The title deeds to the property require the owners' association to provide an annual accounting to all owners. The respondents appear to have been given the delegated authority of the owners' association to deal with all matters arising from the development in respect of common repairs and common maintenance. No such annual accounting seems have been prepared and delivered to the applicant.

Decision and Note issued after the hearing

31. The tribunal was therefore not able to determine whether the property factor has breached the relevant aspects of the code alleged by the applicant. Taking into account the tribunal's overriding objective "to deal with

proceedings justly”, the tribunal allowed the Property factor a further opportunity to provide written submissions in response to the matters raised by the applicant in his additional written submissions and in the discussions at the hearing.

32. Upon receipt of a response, the tribunal will proceed to make a final decision. If no response is received the tribunal will draw whatever appropriate inference may be drawn from that failure and will prepare and issue its final decision.
33. The tribunal therefore requested that the respondent provides full details of the various entries in the invoices relating to contingency of sinking funds. They are asked to confirm when any decision was made by the owners’ association regarding the amounts to be charged. The property factor was requested to produce relevant evidence of such decisions, possibly from minutes of appropriate meetings where these charges were debated and decided.,
34. The property factor was also invited to provide evidence of the current amount held by the factor in total for this development and was invited to provide copies of the annual accounting required in terms of the title deed which has not been provided by the owners’ association.
35. The property factor was also invited to explain why, when its written statement of services which was initially issued to the applicant indicates that the applicant would be invoiced on an annual accounts from them, they have now started to remit accounts to the applicant on a six-monthly basis. No explanation ever appears to have been tendered for that change.
36. The property factors were invited to respond to this request no later than 19 February 2024 and it was indicated that after that date the tribunal would consider any response received and would proceed to make an issue its final decision in respect of this application.

Further representations from the respondent.

37. The respondent has indicated that they were not directly involved in any decision relating to the amount charged to the various owners respect of the contingency or sinking fund. That amount was decided by the owners association each year.
38. The property factor has provided a spreadsheet showing that the amount in the float held for the Castle Grange Development as at 5 October 2023 was £5324.38. The indicate that they hold a float of £200 for each property.

39. The respondent has provided minutes for the annual general meetings of the owners association for February 2022 and from February 2023
40. The minute of the 2022 AGM indicates that Mr Manson was present and presented a proposal that a new factor should be appointed and that this was rejected. The AGM approved the re-election of the respondent.
41. The minute of the 2023 AGM also indicates that the respondent was duly elected as the property factor for the estate
42. The Property factor also provided a copy of a newsletter dated January 2023 from the owners association to the various owners. In that newsletter it is indicated that the invoicing for ground maintenance would now be done on a six monthly basis and invoices would be sent in February and August of each year. Clearly this is a matter which was decided by the Owners' Association and was subsequently approved at the AGM which took place in February of that year

Discussion and decision

43. The tribunal have carefully considered the additional written submissions received from the respondent together with the written representations received prior to the hearing.
44. Having considered the entirety of the evidence contained both in the written documentation provided by both parties, and from the oral evidence presented by Mr Manson, at the hearing, the tribunal has decided that it cannot find that the respondents have breached any element of the Code of Conduct for property factors.
45. The property factor appears to have been appropriately appointed by an owners association which has been properly and legitimately constituted in terms of the title deeds to the property. The owners association has the power to appoint a factor and to delegate to that factor the various duties and responsibilities regarding the organisation of repairs and ongoing

maintenance to the development. The evidence which has been presented indicates that the owners association has properly instructed the respondent to act as factor, and that all invoicing sent by the property factor to the homeowner has been in accordance with those instructions

46. The tribunal does not accept that the respondents have breached the code of conduct.
47. With regard to the complaint under section 1 of the Code, there is no requirement that the written statement of services requires to be agreed by all residents as stated by the applicant. The requirement in the Code is it a copy is sent to homeowners. That has been done.
48. With regard to the complaint under section 2 of the Code, the complaint that the respondent never replies to the correspondence is not accepted. It is clear from the documentation that the respondent has regularly replied to the applicant. As indicated in the note that followed the initial CMD, the fact that the applicant does not like the terms of the correspondence or does not agree with it does not mean that they respondent has failed to reply.
49. With regard to the complaint on the section 3 of the code relating to financial obligations, the tribunal is satisfied that the respondent is complying with the Code in respect of the retention of homeowners' floats and sinking funds
50. With regard to the complaint under section 4 of the code, it is clear that the respondent has a debt recovery policy which they have previously produced to the tribunal. Any letters they have sent to the applicant relating to debt have simply followed that policy and are not a breach of the code.
51. With regard to the complaint under on the section 7 of the Code, the tribunal does not find any breach of the code. The respondent responded to any complaints raised by the applicant. As indicated in respect of the situation under section 2, the respondents are not required in terms of the code to agree with complaints and to uphold complaints. They are simply required to have a policy relating to complaint resolution and to follow that policy. They have done so

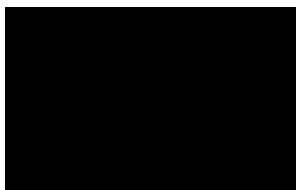
52. Accordingly, the tribunal has determined that there are no breaches of the current Code of Conduct, and the tribunal will make no further order in respect of this application. As indicated earlier in the decision, the applicant's complaints under the original Code relate to similar provisions now contained in the current Code and to similar issues and again the tribunal has determined that there are no breaches of the original Code in respect of any matters arising prior to 18 August 2021.

Decision

The tribunal has therefore decided to make no further order in respect of this application and the application is dismissed

Right of Appeal

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.



25 March 2024

Legal Member

Date