

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number:

FTS/HPC/PF/22/4114

Re: Property at 1 Manse Place, Falkirk, FK1 1JN (“the Property”)

The Parties:

Mr. William McDonald, residing at 4, Hendry Street, Biansford, Falkirk, FK2 7ND, (“the Homeowner”)

Your Local Factor Limited, having a place of business at Suite 136 (Orkney), First Floor, Lomond Court, Castle Business Park, Stirling, FK9 4TU (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Colin Campbell (Ordinary Member)

Decision

Background

1. By application received between November 2022 and February 2023 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Code of Conduct for Property Factors (“the Code”) and had failed to comply with the Property Factor Duties.
2. The Application comprised the following documents: -(i) application form in the First-tier Tribunal standard application form indicating that the parts of the Code complained of are Overarching Standards of Practice at OSP1, OSP2, OSP3, OSP4, OSP6, OSP11 and OSP12; Communications and Consultation in respect of all Sections; Financial Obligations at Section 3.2; Debt Recovery in respect of all Sections; Carrying out Repairs and Maintenance in respect of all Sections and Complaints resolution in respect of all Sections and alleging a failure to comply with the property factor duties with regard to issuing the Written Statement of Services and other documentation, failing to register as property factors, failing to organise repairs and failing to communicate timeously, (ii) copy correspondence between the Homeowner and the Property Factor, (iii) copies of the Property Factor’s policies, (iii)

a copy of Companies House records and copy record from the Scottish Government Property Factor register.

3. The Application also comprised the statutory notification letter in terms of Section 17 of the Act which listed the complaints as the following breaches of the Code:-
 - i) Overarching Standards of Practice at OSP1, OSP2, OSP3, OSP4, OSP6, OSP11 and OSP12;
 - ii) Written Statement of Services at Sections 1.1, 1.2, 1.3, 1.5A(1), 1.5A(3), 1.5B(4), 1.5C(6), 1.5C(8), 1.5C(8), 1.5c(11), 1.5C(12), 1.5D (13), 1.5D(14), 1.5D(15), 1.5F (18), 1.5G (20) and 1.5G(21)
 - iii) Communications and Consultation at Sections 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.10
 - iv) Financial Obligations at Section 3.2;
 - v) Debt Recovery at Sections 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11;
 - vi) Carrying out Repairs and Maintenance at Sections 6.1, 6.3, 6.5 6.6 6.10 and 6.11 and
 - vii) and Complaints resolution at Sections 7.1, 7.2, 7.3 and 7.4.
4. A legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (CMD) was fixed for 13 April 2023 at 10.00 by telephone conference call.

CMD

5. The CMD took place on 13 April 2023 at 10.00 by telephone conference call. The Homeowner was present on the call and was not represented. The Property Factor was represented by Mr. Gordon Douglas, one of the Property Factor's directors.
6. Mr. Douglas advised the Tribunal that the Property Factor did not oppose the Application and accepted that there had been failings on their part. He explained that the Property Factor is Your Local Factor Limited trading as DJM Property Management and Factoring following a change of name and that this could be evidenced.
7. With regard to the substantive parts of the Application and the core complaints, Mr. Douglas accepted that the Property Factor had failed. The Homeowner emphasised that communication from Your Local Factor Limited exacerbated issues. Following a discussion with the Tribunal, the Homeowner and Mr. Douglas agreed that a meeting and discussion between them might assist in resolving the Homeowner's complaints.
8. The outcome of the CMD was that it was adjourned for the Parties to try to reach a resolution and for the Property Factor to provide the Homeowner with documentary evidence in respect of the change of name and company ownership from DJM Property Management and Factoring to Your Local Factor Limited.
9. The Tribunal issued a Direction requiring the Property Factor to submit documentation from Companies House or from the Property Factor's law agents or accountants to

evidence the change of name from DJM Property Management and Factoring to Your Local Factor Limited and to evidence that the Property Factor trades as DJM Property Management and Factoring. The Property Factor complied with the Direction.

10. A further CMD fixed for 11 May 2023 was postponed at the request of the Property Factor, the request having been opposed by the Homeowner.
11. The postponed further CMD was fixed for 14 June 2023 at 10.00 by telephone conference call. Prior to that CMD, the Property Factor advised the Tribunal in writing that they did not intend to attend the CMD and would respect the decision of the Tribunal on the proceedings.

Further CMD

12. The further CMD took place on 14 June 2023 at 10.00 by telephone conference call. The Homeowner was present on the call and was not represented. The Property Factor was not present and was not represented.
13. The Tribunal advised the Homeowner that as the Property Factor did not oppose the Application, there was no requirement on the Tribunal to hold a Hearing of evidence and that the Tribunal could deal with the Application at the further CMD.
14. The Homeowner confirmed that he was ready to proceed with the Application and stated that, despite Mr. Douglas's assurances at the first CMD, the Property Factor had not met with the Homeowner. He stated that, in their correspondence to the Tribunal, the Property Factor had inferred that it was the Homeowner who had delayed in trying to resolve matters and that this was not the case.

Heads of Complaint.

15. The Homeowner then expanded on the Application and answered the Tribunal's questions on the Application in respect of the broad heads of complaint complained of in the Application as restricted to the parts of the Code narrated in the Section 17 statutory notification as set out in paragraph 3 above and in respect of the property factor's duties.

i) The appointment of the Property Factor, their identity and their authority to act.

After discussion with the Tribunal, the Homeowner accepted that the Property Factor has authority to act as property factor and so did not pursue his complaints in this regard.

ii) The issue of the Written Statement of Services and other procedural documentation.

The Homeowner advised that he now has a copy of the Written Statement of Services, the Property Factor's Debt Recovery procedure and Complaints procedure but stressed that the Property Factor has not complied with or followed any of these procedures. He stated that the Property Factor has not acknowledged or actioned formal complaints.

iii) **Delays in communication and lack of communication.**

With reference to the supporting documents lodged with the Application, the Homeowner stressed that the Property Factor has consistently failed to correspond within reasonable timescales and has not provided full and accurate responses to written requests. He explained that trainee employees of the Property Factor provided wrong and incomplete responses, stated that the Property Factor did not communicate their name change with the owners and did not answer requests for the Written Statement of Services and procedural documentation until the Application was lodged. The Homeowner stated that he still requires answers to some of his written requests, particularly in respect of the repairs process. In the Application, the Homeowner notes that replies from the Property Factor are from a “no-reply” email address and so it is not possible to have a meaningful exchange with them.

iv) **The process followed in dealing with repairs.**

With further reference to the supporting documents lodged with the Application, the Homeowner advised the Tribunal that the Property Factor has not dealt with his enquiries in respect of repairs carried out and has not explained why the Property Factor consistently instructs DJM Property Services and Contracts Limited, who have a direct connection with the Property Factor in respect of directorships. The Homeowner explained that prior to Your Local Factor Limited, the property factor had been DJM Property Management and Factoring and that work had been instructed to other contractors, one of which is his son’s company, in respect of which he also has an interest. The Homeowner stressed that he is not motivated by the lack of instruction to his son’s company but is concerned that work is not tendered properly and that DJM Property Services and Contracts Limited, as contractors, are not sufficiently competent in respect of some of the work which they carry out. The Homeowner stated that in one particular instance DJM Property Services and Contracts Limited, when repairing the door entry buzzer system, caused damage to the Homeowner’s buzzer, incurring him with additional costs. With regard to another instance, vegetation was removed from guttering after numerous requests over a 9 month period.

v) **The debt recovery procedures applied by the Property Factor.**

The Homeowner advised that the Property Factor has not complied with their Debt Recovery procedure. The Homeowner explained that he has been withholding payment of common repairs charges, but the Property Factor has not acknowledged this and has proceeded to issue final demands, default notices and continues to threaten court action. The Homeowner advised the Tribunal that the Property Factor has provided contradictory information in respect of common debt owed by other owners. He explained that he had been made aware that one of the owners had not paid factoring costs for a number of years. He was advised at one point by the Property Factor that the common debt was £12,000.00 and was advised later that there was no common debt. The Homeowner stated that, in any event, he could not reconcile the amount of £12,000 with common charges and repairs noted in the accounts received by him.

iv) **Impact of Property Factor’s conduct on the Homeowner.**

The Homeowner advised that the Application process had taken a considerable time to complete and that the process and the dealings with the Property Factor had caused him stress and anger.

Issues for Tribunal

16. As the Property Factor did not oppose the Application, the issue for the Tribunal was sufficiency of evidence to make a decision in terms of Rule 17 (4) of the Rules. The Tribunal was satisfied that it had sufficient information and evidence to make a decision.
17. Although a significant number of breaches of the Code are cited by the Homeowner, the core issues are relatively narrow and focus on the overall standard of service provided by the Property Factor as outlined in paragraph 14 above.

Findings in Fact.

18. The Tribunal had regard to the Application in full, the written submissions by the Property Factor and to the submissions made at both CMDs, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.
19. The Tribunal found the following facts established:
 - i) The Parties are as set out in the Application;
 - ii) The Property Factor did not provide the Homeowner with copies of the Written Statement of Services, their Debt Recovery procedure and their Complaints procedure when requested and as required by the Code;
 - iii) The Property Factor did not deal with correspondence from the Homeowner within reasonable timescales;
 - iv) The Property Factor did not provide the Homeowner with full and accurate information in response to his written requests;
 - v) The Property Factor did not follow the procedures set out in the Written Statement of Services, their Debt Recovery procedure and their Complaints procedure, all as required by the Code and the property factor's duties;
 - vi) The Property Factor did not keep the Homeowner informed about common debt;
 - vii) The Property Factor did not acknowledge that the Homeowner has withheld sums from his common charges accounts in respect of disputed invoicing and has not acted to resolve these disputes;
 - viii) The Property Factor did not deal with the Homeowner's complaints;
 - ix) The Property Factor did not carry out repairs properly or timeously and
 - x) The Homeowner suffered distress and inconvenience due to the Property Factor's failures.

Decision of the Tribunal with reasons

20. From the Tribunal's Findings in Fact, the Tribunal had no hesitation in finding that the Property Factor failed to comply with both the Code and the property factor duties.

21. With regard to the specific breaches of the Code and the information before it, the Tribunal found that the Property Factor failed to comply with the following parts of the Code:-

i) Overarching Standards of Practice at

OSP1: You must conduct your business in a way that complies with all relevant legislation.

OSP2: You must be honest, open, transparent and fair in your dealings with homeowners.

OSP3: You must provide information in a clear and easily accessible way.

OSP6: You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective and

OSP11 You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

ii) Written Statement of Services at Sections:

1.1: A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner and

1.3: At all other times, a copy of the latest WSS must be made available by the property factor on request by a homeowner.

iii) Communications and Consultation at Sections

2.1: Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect;

2.4: Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to;

2.5: A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries;

2.7: 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;

2.8: A property factor must take all reasonable steps to ensure that their property factor registered number is included in any document sent to a homeowner.

iv) Debt Recovery at Sections

4.1: Non-payment by some homeowners may affect provision of services to others, or may result in other homeowners in the group being liable to meet the nonpaying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such

costs). For this reason it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating;

4.2: It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners;

4.4, A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs;

4.5: When dealing with customers in default or in arrears difficulties, a property factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions is available from not-for-profit debt advice bodies;

4.6: A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe. On request, a property factor must provide homeowners with a statement of how service delivery and charges will be affected if one or more homeowners does not pay their bills;

4.9: A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation and

4.10: A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if they are jointly liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).

iv) Carrying out Repairs and Maintenance at Sections

6.1: 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

6.11: A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them and

v) Complaints resolution at Section

7.1: A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably.

22. With regard to the remainder of the breaches of the Code complained of, the Tribunal found that there was insufficient information to support these particular complaints.

Property Factor Enforcement Order (PFEO)

23. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the property factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *“(1) The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.”*

24. The Tribunal had regard to the fact that, the Property Factor’s failures emanate from the same issues, and so, the Tribunal was mindful not to penalise the Property Factor for this duplication of failings. These failings and breaches have caused the Homeowner unnecessary frustration and financial loss for which the Homeowner ought to be compensated. Further, it appears to the Tribunal that the information requested by the Homeowner in respect of tendering for repairs and maintenance work and common debt remains unanswered.

25. Therefore, the Tribunal proposes to make a PFEO. Section 20 of the Act states: *“(1) A property factor enforcement order is an order requiring the property factor to (a) execute such action as the First-tier Tribunal considers necessary and (b) where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable. (2) A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made. (3) A property factor enforcement order may specify particular steps which the property factor must take.”*

26. The Tribunal proposes to make a PFEO to order the Property Factor to provide the Homeowner with the information requested by him and to make reasonable payment to the Homeowner to compensate him for financial loss, inconvenience, frustration and time spent.

27. Section 19 (2) of the Act states: - *“In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so (a) give notice of the proposal to the property factor, and (b) allow the parties an opportunity to make representations to it.”* The Tribunal, by separate notice intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.

28. The decision is unanimous.

Appeal

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.

Signed

Karen Moore, Chairperson

26 June 2023