



**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/22/2730

Re: Property at 22 McLennan Street, Mount Florida, Glasgow, G42 9DQ ("the Property")

Parties:

William McDevitt, 22 McLennan Street, Mount Florida, Glasgow, G42 9DQ ("the Homeowner")

D&A Scott, 1 Carment Drive, Shawlands, Glasgow, G41 3PP ("the Property Factor")

Tribunal Member:

**Melanie Barbour (Legal Member)
Helen Barclay (Ordinary Member)**

DECISION

The Factor failed to comply in part with Section 6.3 of the 2012 Property Factor's Code of Conduct. The Factor did not fail to comply Section 6.9 of the 2012 Property Factor's Code of Conduct. The decision is unanimous.

INTRODUCTION

1. In this application the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 1 October 2012 is referred to as "the 2012 Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules".

2. The Property Factor is a Registered Property Factor and its duty under section 14(5) of the 2011 Act to comply with the Codes arising from that registration.

BACKGROUND

3. An application has been brought by the Homeowner against the Property Factor in relation to the Property, 22 McLennan Street, Mount Florida, Glasgow, G42 9DQ.
4. The Homeowner has by application dated 5 August 2022 complained to the Tribunal that the Property Factor has breached two section of the 2012 Code, namely section 6.3 and 6.9.
5. The Homeowner submitted with his application:-
 1. a written statement of services;
 2. emails between the Property Factor and Homeowner between 7 January to 26 April 2021;
 3. photographs of the back door to tenement building;
 4. WSS Group Ltd common close door list; and
 5. Email from Homeowner to Property Factor dated 1 September 2022 setting out complaint.
6. The Property Factor had submitted a written response to the complaint dated 2 November 2022 with inventory of productions attached totalling 9 appendices.
7. The Homeowner and the Property Factor both appeared at the case management discussion on 13 December 2023. A note was taken of the Case Management Discussion. The terms of that Note as set out as follows;-
8. The Property Factor was represented by Alan Scott (partner in firm) and Gillian Scott (part of senior management team). The Homeowner confirmed that he had had sight of the Property Factor's written response. He confirmed that he remained dissatisfied in relation to his complaint.

9. The Homeowner advised that the complaint related to the replacement of the back door. He advised that prior to the door being replaced, it had been a door with a large pane of glass in it. The glass had been smashed. There had been previous repairs to the door carried out. The Homeowner knew someone who could have carried out the last repairs. Someone had damaged the slats in the lower part of the door. He advised that repairs to the slats were required, but it did not mean that a new door was required. He did not consider that there would have been much needing to be done to carry out the repairs to the door. He advised it was also a solid door and the glass permitted light in to the close.
10. The proposed plan of the replacement doors showed what could be provided. It was a simple sketch only. There had been no photos provided of the proposed new door. No one from the Property Factor had seen the door "in the flesh". They did not know what had been put in. The Homeowner said that the door was in effect "a garden gate". It was very poor quality; it was rough; and it had massive gaps in it.
11. It had been said that the door was the "closest match" to what had been there before. He said that this is not the case. The two doors were not alike. He is involved in a proprietor group chat and other owners were also unhappy about the replacement door which had been installed. He suggested that the common vote which had taken place had been based on inadequate information. He advised that the new door, is not weatherproof, it allows the cold weather in, it allows pests in, and without the window it is very dark. He suggested that the Property Factor should have suggested repairs first before moving to replacement.
12. In terms of his complaint, they were made under :
13. Paragraphs: 6.3 of the 2012 Code *"on request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff."*

14. Paragraph 6.9 *“you must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate you should obtain a collateral warranty from the contractor.”*
15. The Homeowner explained that it is his position that the door is defective as it is not an environmental barrier. It needs to be secure and hold back the weather. He accepted that the majority of the other homeowners may have voted for the particular replacement door, but this was because the correspondence with the door replacement information was not clear enough. The door could not been seen in the flesh to allow assessment as to how suitable the door was. He thinks it looks horrendous. The previous door could have been repaired.
16. He agreed that he had got the page of door options from the WSS Group Ltd. He did not consider that this was sufficient information; he advised that the image is hard to see properly. He was also concerned that it was one proprietor who made the decision to pick the door.
17. The Homeowner confirmed that he was not acting on behalf of the other homeowners.
18. The Property Factor advised that they did not consider that they had breached paragraphs 6.3 or 6.9 of the 2012 Code. They advised that they have the authority to instruct such work in terms of the written statement of services and the title deeds.
19. In terms of why the door had been replaced instead of being repaired. He advised that the door had been vandalised. Therefore, there were issues of security. The glass kept getting broken. They advised that the written statement of services which had been submitted was no longer in force at the time the work was done. They advised that in terms of having the door replaced, one of the owners had made a request to have the door replaced. The Property Factor advised that they do not assess if the door should be replaced or not. They will note the request and then ask the other owners if they want the door to be

replaced, If a majority agree to the door being replaced then they will proceed to replace it. That is what had happened in this case.

20. They advised that they had not received any complaints from the other owners in the building about the replacement door. They had also received payment for the door from all of the owners.

21. The tribunal advised that it wished sight of the following documents before it would be in a position to come to a conclusion on this matter:

1. Written statement of services in force during the period when the issues leading to the complaint arose;
2. Copy of the title deeds;
3. A copy of the letter of 17 January 2020 sent from the Property Factor to the homeowners together with any attachment to that letter

22. Parties had both set out their positions. The Homeowner considers that there remains two breaches of the 2012 Code. The Property Factor disputes this. It appears to the tribunal members that to determine the application it should proceed to a hearing: this will allow the tribunal to have sight of the three documents referred to in the preceding paragraph; and also, in order that if either party wishes to call witnesses or lodge any further evidence in support of their position they can do so at the hearing.

23. The outcome of the Case Management Discussion was to proceed to a hearing and issue a Direction seeking

1. written statement of services in force during the period when the issues leading to the complaint arose;
2. a copy of the title deeds; and
3. a copy of the letter of 17 January 2020 sent from Property Factor to the owners together with any attachment sent with that letter.
4. In addition, either party could lodge further written evidence prior to the hearing at least 14 days before the hearing; and provide a list of any

witnesses either party wished to call again at least 14 days before the hearing.

24. The Property Factor complied with the Direction on 20 December 2022, and included in those papers was also a copy of the original request they received from an owner asking that the back door be replaced.

25. The Homeowner supplied further photographs of the door showing that wooden cladding had now been added to the door.

DISCUSSION

26. Both parties confirmed that they had sight of the CMD Note and they both confirmed that the terms of the Note reflected each parties' position.

27. The Homeowner advised that he had submitted the updated photographs of the door to show the current state of it. He advised that the owners WhatsApp group had discussed the door. One of the owners had then sought permission from the other owners to put the wooden cladding on the door. The other owners had agreed to this proposal. He believed that about 80/90% of the owners were part of the WhatsApp group.

28. The Homeowner advised that he did not have anything further to add to the terms of his complaint, other than the submitted photographs which he submitted showed that the majority of the owners were not happy with the replacement door.

29. He maintained his complaint that the Factor should have made sure that the replacement door was appropriate. He suggested that the situation occurred because people took the path of least resistance and went for the cheapest option. The Factor had not looked at the door in person or once it was in situ at the property. The Factor should have chosen a door which was fit for purpose, he maintained that this one was not. He suggested that anything that the Factor

had proposed as a replacement should have been suitable. He suggested that this door will need to be replaced sooner rather than later.

30. He made reference to the December email which had been submitted from the owner who had asked for the replacement door. He advised that the firm used to comment on the damp issue, AC Roofing, were a roofing company and not a building company, and rather than replacing the door to address condensation, a damp course should have been considered to the close walls. He submitted that the original door was a solid door and had a mortice lock. He could not recall if he had raised the matter regarding the condensation with the Factor requesting that they should seek appropriate advice about damp treatment.
31. The Tribunal asked the Homeowner if he had asked the Factor if he could see the replacement door. He advised that he had not, because he had said no to the suggested door - full stop. He said that the old door was not a bad door, it was weather tight, it had a window, and a lock. It had therefore all the ingredients of a fully functional door. The Homeowner was asked in what way he considered that Section 6.9 of the Code had been breached, i.e. in what way has the door been defective. He advised that it was effective as a "garden gate" but it was defective as a back door as it was not fit for purpose. He submitted that the door does not prevent the elements coming into the building or unwanted guests; but it does prevent light coming in. Therefore, he considered it was defective.
32. The Homeowner referred to the WSS Group leaflet showing the various door styles, and submitted that the one chosen did not resemble the old door. He advised that the old door had a key and a lock and could be secured.
33. The Factor advised that there had been two reasons why the door had been replaced one was security and the other to do with the condensation. He advised that the replacement door was a style they used in other properties. He reiterated that they had sent out pictures of various replacement doors, and it was an owner who had picked that door.

34. The Tribunal asked the Factor to comment on whether the replacement door was “like for like” as was indicated in their correspondence to owners. The Factor advised that they had asked the owner to tell them which door was most like the back door. They thought that someone at the property was best placed to determine which style of door should be chosen as the replacement door.
35. The Factor advised that they do not go and look at the door, it is not part of their core services. If an owner approaches them to get something replaced, they contact the other owners and then leave the decision to them. He advised that different developments have different standards when it came to replacing items.
36. The Tribunal asked the Factor about the issue of possible rising damp being an issue at the property and not condensation. They advised that they carry out an annual inspection and if they identify a damp issue they will raise it with owners. The Factor then indicated that the damp issue was in fact in the owner’s flat and not the close.

FINDINGS IN FACT AND LAW

37. The Tribunal made the following findings in fact and law:
- a. That there was a written statement of services in place for 22 McLennan Steet, Glasgow. This set out various matters including authority for the Factor to act; and services provided. Section B states that “D&I Scott Property Management will provide quality management services as follows:- (d) notify all owners of any large repairs required, i.e. those repairs where we have obtained quotes costing more than £150 per flat. We may at our discretion advise owners of repairs costing less than £150 per flat. In these circumstances the owners will be given the opportunity to object to the repair and where the majority of owners object then the repair will not be instructed.

- b. The title deeds contained deeds of conditions which included Burden 6 and in that clause (eighth) which provided that a majority of owners could agree to repairs being carried out to the common parts of the property. It also made provision for the appointment of a factor who would have delegated authority of the whole rights and powers of a majority of homeowners.
- c. That an owner requested a replacement back door on 10 December 2019. The owner chose a replacement door from a quote with a picture of various style doors sent to them.
- d. Letters were issued to all owners on 17 January 2020 regarding the replacement door and attaching a copy of the quote; advising of the style door chosen was *like for like* with the current door; and further advising that if a majority of owners accepted the proposal the door would be replaced. Majority consent from the owners was reached on 29 February 2020.
- e. The Homeowner contacted the Factor to advise that he did not consider that there was a need for a replacement door on 3 February and 13 March both 2020.
- f. The door was replaced on 27 August 2020.
- g. The Factor states that they did not receive any complaints from owners until the Homeowner's complaint of 29 October 2020.
- h. The Homeowner states that the other owners are unhappy with the style of the replacement door.

DECISION

38. Paragraph 6.3 of the 2012 Code of Conduct states that *"on request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff."*

39. We partially uphold a breach of this section of the code. The Factors have clearly set out in their correspondence to the Tribunal why the door was

replaced; how they went about obtaining the quotes; choosing the replacement door; and that they issued letters to the owners seeking majority consent. They have also provided the title deeds and their written statement services which provides them with the authority to take the action that they did. It also appears that the majority of the owners agreed to the replacement door. The tribunal considered that the Factor acted in a competent way in undertaking this work.

40. The Homeowner does not dispute the actions of the Factor in terms of the “administration” of getting the door replaced. What the Homeowner complains about was the Factor’s alleged failure to ensure that the replacement door was fit for purpose. The Tribunal had some sympathy with both parties in terms of this question.
41. The Factor spoke to carrying out their duties as requested by the owners, that it was for the owners to determine if a door needed to be replaced, and also for the owners to choose the type of door. They said that in other developments they manage different groups of owners apply different standards to repair and replacement, and given this, they do not interfere with owners’ decisions. We can see logic to this approach.
42. We also find that the door was replaced as an owner had advised the Factor that there was a problem with condensation and an issue with security of the door. The Factor then wrote to the other owners advising that one of the owners wished to obtain agreement in principle for the replacement of the rear close door due to having issues with condensation and in the interest of building security. We find that this correctly reflects the reason for the other owner’s request for a new door.
43. Where we find the Factor to have erred and consequently to have partially breached the “how” and “why” in this section, is in terms of the fact that the letter to the owners, dated 17 January 2020, seeking the agreement in principle to the replacement door, advised owners that the Factor “*would propose to accept the quote from WSS Ltd, rear door, number 304, as this is like for like with the current door in place at the property*”. We do not agree that the

replacement door was “*like for like*” with the original door. The doors were different as explained by the Homeowner. We note that the Factor said that they did not see the actual replacement door before it was fitted, and further they indicated that they did not go and look at the original door, this is for owners to do. Such a position might be acceptable for a Factor to adopt, but in this case, as the Factor advised the owners that the doors were *like for like*, we consider that the use of this phrase to have been misleading or careless. It may have been an inadvertent use of language on the part of the Factor; however, we consider that the phrase “*like for like*” may well have been a material factor in why owners decided to agree to the replacement door being fitted.

44. We consider that the statement that the replacement door was “*like for like*” with the original door was misleading. We find this leads to a partial breach of section 6.3 of the Code as we consider that owners’ consent as to how and why the door was replaced was based in part on information which was incorrect.

45. Paragraph 6.9 “*you must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate you should obtain a collateral warranty from the contractor.*”

46. We do not find that there is a breach under this section of the code. While we accept that the Homeowner does not find the door to be fit for purpose or as suitable as the previous door. We do not however have any evidence before us that the door is itself “defective”. We find that the owners agreed to the replacement door. The replacement door was installed. The Homeowner’s concern that it is not as suitable as the previous door does not, in itself, make the door defective.

REMEDY

47. While we find that there has been a partial breach of the Property Factor’s Code of Conduct 20112, we nonetheless consider that the Factor was instructed to replace the door and a copy of the leaflet showing the replacement was attached to the letter sent to the owners. Although we consider that the use of

the words “*like for like*” was misleading, considering the full terms of the letter and the attachment sent to owners, we consider that any breach of that section of the code is not a serious breach. We do not consider that there was any intention to mislead the owners. We consider the use of that language was more likely careless. We do not consider therefore that the Factor should have to replace the door with the old one or one of similar quality. We accept that the Factor does not consider that they would have authority to do so. We agree. We also note that one of the reasons for the replacement was in terms of a problem with condensation in the building and we do not know if replacing the door with the old style door or similar would encourage condensation. The Homeowner has been consistent in this position that he did not agree to the replacement of the door and also in his concerns about the style. As we partially uphold his complaint, we consider that an appropriate remedy would be an order for compensation. We consider that an appropriate sum would be £200 for this breach.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

48. The Tribunal proposes to make a Property Factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

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.

Melanie Barbour Legal Member and Chair

22 March 2023 Date