



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/23/0080**

**Re: Property at 74 Carlisle Road, Hamilton ML3 7TX (“the Property”)**

**Parties:**

**Mr Paul Moreland, residing sometime at 74 Carlisle Road, Hamilton ML3 7TX (“the homeowner”)**

**Avongreen Abodes Limited, incorporated in Scotland (SC484503) and having their registered office at 70 Carlisle Road, Hamilton ML3 7TX (“the property factors”)**

**Tribunal Members:**

**George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be decided without a Hearing and determined that the property factors have failed to comply with Section 3.1 of the Property Factors Code of Conduct effective from 16 August 2021 and have failed to carry out the Property Factor’s Duties. The Tribunal proposes to make a Property Factors Enforcement Order.**

**Background**

1. By application, dated 21 March 2023, the Applicant complained under Section 17(1) of the Property factors (Scotland) Act 2011 that the property factors had failed to comply with the Property Factors Code of Conduct effective from 16 August 2021 (“the Code of Conduct”) and had failed to comply with the Property Factor’s duties.
2. The complaint was made under a number of Sections of the Code of Conduct, but at the first Case Management Discussion described below, the Parties agreed that the only matter at issue between them related to the property factors’ Invoices, and, accordingly, the Tribunal restricted its consideration to OSP2 and Section 3.1 of the Code of Conduct and to the complaint of a failure to comply with the property factor’s duties.

3. OSP2 states “*You must be honest, open, transparent and fair in your dealings with homeowners.*”
4. Section 3.1 of the Code of Conduct provides: “*While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills.*”
5. The alleged failure to comply with the Property Factor’s duties was a failure to comply with the allocation of costs for services as set out in the Deed of Conditions.
6. The homeowner stated that the property factors had sent him an Invoice dated 10 May 2022, in which they had split costs amongst 3 properties, when they should have been shared by 5 owners. There are 3 new-build houses and a serviced plot in the Development, together with the adjacent existing bungalow. The property factors are the developers, and still own the serviced plot. Of the two individuals who are the limited company members of the property factors, one owns the bungalow and the other owns one of the new houses. All 5 units should be responsible for equal shares of the common charges and factoring fees.

### **First Case Management Discussion**

7. A Case Management Discussion was held by means of a telephone conference call on the morning of 29 January 2024. The Applicant was present. The Respondent was represented by Ms Denise Bryson.
8. The initial discussion was designed to help the Tribunal Members better understand the nature of the Development and the issues between the Parties. Ms Bryson told the Tribunal that the services for the new houses and the unbuilt-on plot are contained within a central roundabout around which the 3 new houses and serviced plot are arranged. A water filtration system serves them. A trichel sewage treatment plant serves the 3 new houses, the serviced plot and the bungalow. All share a common driveway and common grassed areas.
9. Ms Bryson stated that, in Invoices, the property factors had excluded the serviced plot, as it does not use any of the services. It was agreed that the first 5 Invoices had proceeded on that basis. Later Invoices had included the bungalow, when the property factors recognised that it was served by the trichel system. The later Invoices, therefore, divided costs by four, the serviced plot still being excluded.
10. The Tribunal Chair told the Parties that, whilst the Tribunal cannot give Parties legal advice, his reading of the relevant Deed of Conditions indicated that “Units” were defined as the 4 plots of land within the Development designed

to be held in separate ownership on which a house is erected or intended to be erected. Accordingly, it appeared that common charges for the Development fell to be divided by four. The owners of the Units and the bungalow were bound to pay equal shares of the costs of maintaining the shared access road, and Ms Bryson had accepted that the bungalow should pay a share of the cost of repair and maintenance of the tricol system.

11. The homeowner confirmed to the Tribunal that he had moved out of the Property in November 2023 and that he had paid the Invoices that he had complained about. All he wanted now was for the property factors to adjust the Invoices to reflect the title deeds.
12. Ms Bryson confirmed that she would be happy to carry out such adjustments to the Invoices as were required to ensure they complied with the title deeds and the Parties agreed that the best way forward was to continue the case to a further Case Management Discussion to be held after the property factors had submitted revised Invoices and the homeowner had had an opportunity to consider them and to make any further comments. These would include the Invoice to the date of entry in the homeowner's sale, which remains outstanding. This process would produce a final reconciliation of the factoring fees and common charges. If the homeowner did not indicate approval of the adjusted Invoices or raise any queries about them within 14 days of his receiving them by email, the Tribunal would regard him as having accepted them as being correct.
13. The property factors stated on several occasions that they had, in effect, been subsidising the new house owners by not charging the full costs of time for grass cutting and maintenance, but the Tribunal reminded them that no items could be added to the Invoices. The process would involve adjusting the Invoices to accord with the title deeds and arriving at a reconciliation figure.
14. The Tribunal issued a Direction to the property factors to review all their Invoices and adjust them to allocate costs according to the Deed of Conditions for the Development and to send the adjusted Invoices to the homeowner, with copies to the Tribunal, with a reconciliation of sums due to or by him.
15. On 28 February 2024, the property factors provided the documentation and information required by the Direction. This included copy Invoices covering the periods November 2020 to November 2021, December 2021 to February 2022, March 2022 to May 2022, June 2022 to August 2022, September to November 2022, December 2022 to February 2023, March 2023 to May 2023, June 2023 to August 2023, and September 2023 to November 2023, all of which had been paid, an Invoice for the supply and installation of a bespoke staircase (showing a balance due on 3 March 2022 of £1,184.94) and an unpaid Invoice of 7 January 2024 for common costs (£95) down to the date of entry in the homeowner's sale of the Property. The property factors also provided details of adjustments to the Invoices from November 2020 to November 2023, to reflect the provisions of the Deed of Conditions for the

Development. The property factors concluded had the homeowner had been overcharged by £1,127.17.

16. On 8 March and 12 April 2024, the homeowner objected to the Invoices of £1,184.94 and £95. He contended that the Invoice for £1,184.94 did not relate to the provision of factoring services and that the Invoice for £95 had been issued after the sale of the Property, all previous outstanding Invoices having been settled. He stated that he had paid Invoices totalling £3,547.98, that the adjustments reduced the amount he should have paid to £2,421.11 and that he was, therefore, due a refund of £1,126.87.

### **Second Case Management Discussion**

17. A second Case Management Discussion was held by means of a telephone conference call on the morning of 24 June 2024. The homeowner was present, and the property factors were again represented by Ms Bryson.
18. The homeowner confirmed that he was content with the adjusted Invoices for the factoring and common charges, and that he accepted the final Invoice of £95, but he did not accept that the Invoice of £1,184.94 should be taken into consideration, as it did not relate to factoring services or common charges. The issues with the Invoices had caused him disruption and stress.
19. The homeowner had contended that adding the Invoices for the staircase installation and the final Invoice of £95 ran counter to the statement of the Tribunal at the first Case Management Discussion that, in providing adjusted Invoices, the property factors could not add items to them. The Tribunal explained that it had been referring to the fact that Ms Bryson argued that the property factors had done much more for the benefit of the owners than was included in the Invoices they submitted. The Tribunal had been concerned to ensure that the property factors, in adjusting the Invoices, did not seek to increase the amounts charged to reflect any such additional work or services.
20. Ms Bryson told the Tribunal that the homeowner had received all the services provided by the property factors, but he had only paid the Invoices because he was selling the Property. He had given them a very stressful time, but they were keen to get the matter resolved.

### **Reasons for Decision**

21. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
22. OSP2 states “*You must be honest, open, transparent and fair in your dealings with homeowners.*” The Tribunal did not uphold the complaint under OSP2.

There was no indication that the property factors had not been honest, open, transparent and fair in their dealings with the homeowner. They had simply made a mistake in their interpretation of the Deed of Conditions and, consequently, in the allocation of common charges. They had shown a willingness to see the matter resolved and the Tribunal did not consider that they had failed to act in good faith.

23. Section 3.1 of the Code of Conduct provides: *“While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills.”*
24. The Tribunal upheld the complaint under Section 3.1. The view of the Tribunal was that the property factors had made an honest mistake, but that, nevertheless, improper, or at least incorrect, payment requests were made as a result of the property factors failing to allocate costs correctly.
25. The homeowner’s complaint regarding failure to comply with the Property Factor’s duties was that the property factors had failed to comply with the allocation of costs for services as set out in the Deed of Conditions.
26. The Tribunal upheld this complaint. The property factors misinterpreted the Deed of Conditions registered on 12 November 2019 and accepted that they had done so. As a result, the allocation of costs had been incorrect.
27. The homeowner’s application sought clarity and accuracy of all the Invoices. He accepted that the property factors had now complied with this request. The Tribunal noted that the adjusted Invoices produced a credit which was due to the homeowner, but the application had not included a request for an Order for Payment and the Tribunal was not prepared to make one.

### **Property Factor Enforcement Order**

28. Having made its Decision on the merits, the Tribunal then considered whether to make a Property Factor Enforcement Order (“PFEO”). The view of the Tribunal was that, whilst the failures of the property factors were the result of mistakes rather than any wilful act, they had caused stress and inconvenience to the homeowner. The property factors had corrected the errors in the Invoices, but not before the homeowner was put through the inconvenience of making an application to the Tribunal. The Tribunal considered that the sum of £100 would represent reasonable, proportionate and fair compensation in this regard.
29. Accordingly, the Tribunal proposes to make a PFEO in accordance with the Section 19(1)(a) Notice attached to this Decision.
30. The Tribunal noted that the property factors are seeking payment from the homeowner of the sum of £1,184.94 for the installation of an oak staircase.

This is not a matter for the Tribunal to consider, but the Tribunal Members would strongly encourage the Parties, through professional advisers if necessary, to engage in further discussion as, if the homeowner accepts, or the property factors establish in separate proceedings, that this sum is due, offsetting it against the amount due to the homeowner following the Invoice adjustments would require a balancing payment of less than £60.

31. The Tribunal's Decision was unanimous.

### **Right of 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.**

**Legal Member**

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**3 July 2024**  
**Date**