Housing and Property Chamber
First-tier Tribunal for Scotland

Decision and Statement of Reasons under Section 17 (1) of the Property Factors (Scotland) Act 2011 ("The Act")

Reference number: FTS/HPC/LM/24/0167

Re: Property at Area of Monobloc carriageway, East of 17 Stance Place, Larbert, FK5 4FA ("the Property")

The Parties:

Mr Alasdair Ross, 65 Galbraith Crescent, Kinnaird Village, Larbert FK5 4GZ ("the Applicant")

Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow G3 7PL ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Frances Wood (Ordinary Member)

Background

[1] The Applicant seeks a determination that the Respondent has breached their obligations under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* ("The Code").

[2] The paragraphs of the Code alleged to have been breached are:

Overarching Standards of Practice: Sections 1; 2; 3; 4; 5; 6
Financial Obligations: 3.1

Overview of Claim

[3] The substance of the allegations is that the Respondent instructed repairs to be effected on land which was not communal to the area that the Respondent factored and which instead ought to have been maintained by Falkirk Council and at the expense of

Falkirk Council. As a result of this, it is alleged that the Respondent spent £696.00 of residents' money inappropriately and that they have now failed to reimburse those residents whose money they manage for factoring services and failed to inform the residents of their error.

Previous Procedure

[4] The Application had previously called for a Case Management Discussion (CMD) by conference call on 17 April 2024. The Tribunal noted that the Respondent's own Mr Cosgrove denied the allegations and disputed that the Respondent had dealt with matters contrary to their obligations under the Code. The Tribunal made a Direction ordering the Respondent to set out their full written response. The Application was then continued to a Hearing for evidence to be heard and a final decision to be made.

The Hearing

[5] The Application then called again for a Hearing, in person, at Forth Valley Sensory Centre at 10 am on 20 August 2024. The Applicant was personally present. The Applicant had no preliminary matters to raise. The Respondent was represented by their own Mr Craig Cosgrove who also had no preliminary matters to raise.

[6] The Tribunal began by adjourning to allow parties an opportunity to see if any resolution could be reached. Parties agreed to have a discussion but after a few minutes it was apparent that no resolution had been found. Accordingly, the Tribunal began hearing evidence. After each witness gave evidence, each had the opportunity to cross examine the other. The Tribunal also asked questions throughout to ensure that it understood the evidence. At the conclusion of evidence, each party also had the opportunity to make closing submissions and to specifically draw the Tribunal's attention to any relevant approach which it was said the Tribunal ought to take to the case. Parties also had the opportunity to draw the Tribunal's attention to the relevant sections of the Code alleged to have been breached.

[7] The Tribunal comments on the evidence heard as follows:

Mr Alasdair Ross

[8] Mr Ross' grievances were straightforward to understand. He was the proprietor of a property which was factored by the Respondent. He had received a bill from the Respondent in or around 7 February 2023 which highlight a charge to *Edinmore Contracts* for the sum of £696.00. Mr Ross did some investigation and established that this related to a repair which had been organised by the Respondent to re-set a piece of kerbing stone within the development. This repair had come about because a resident of another property in the development, 17 Stance Place, had contacted the Respondent and

reported it as being in need of repair. However, the Applicant looked into matters and established that the kerb was in fact on roads which had been adopted by the relevant local authority, Falkirk Council. Maintenance of this kerb stone should therefore have been the responsibility of Falkirk Council and the repair was conducted by the Respondent in ignorance of the correct boundaries and geographical limitations of their duties. The Applicant was concerned that the Respondent then did nothing when this was brought to their attention to reimburse other residents for the sums charged. There were 170 units in the development and each home had therefore been charged the sum of £4.09. The Applicant was aggrieved that he had been reimbursed this sum by the Respondent because he had complained but other residents who had not complained about the matter had not been reimbursed. He felt the Respondent was sweeping their mistake under the carpet even though their error had cost homeowners money.

[9] Mr Ross came across as being entirely credible and reliable to the Tribunal. His style of delivery was direct and to the point. He had produced documentary evidence which corroborated his oral evidence. He answered the Tribunal's questions in a convincing and sensible manner.

[10] The Tribunal then heard from Mr Cosgrove

Mr Craig Cosgrove

[11] Craig Cosgrove is an associate director of the Respondent. He denied that the Respondent had breached any of the sections of the Code. He explained that the Respondent had received a call from an owner of a property in the development requesting a repair to a kerb stone. He explained that he considered that the homeowner ought to have known what areas were communal and therefore the responsibility of the Respondent to maintain and which areas weren't. He explained that the Respondent therefore carried out an emergency repair because they considered that this was in the interests of the homeowners as if the damaged kerbstone had caused an injury then it could have led to potential legal liability.

[12] Mr Cosgrove explained that the Respondent was not aware that the area in question had been adopted as they had not "*been told that by the local authority*". He explained that the Respondent had now refunded the Applicant the sum of £4.09. He explained that there was no financial gain for the Respondent as they had paid out the sum of £696.00 as an outlay to the contractors. It had previously been stated by the Applicant that the Respondent had in fact financially gained from the incident because they had effectively passed the cost of their mistake onto the homeowners in the development.

[13] Ms Cosgrove never did give a satisfactory explanation as to why it had to fall to Mr Ross to educate the Respondent about the geographical limits of their responsibilities in the development. There appeared to be no regard to the fact that if Mr Ross had not brought this Application then the Respondent would in all likelihood still to this day

misapprehend their duties and potentially make further errors in the discharge of those duties. They had assumed that the homeowner who called to log the repair was competent and knowledgeable about the remit of the Factor. Mr Cosgrove said that it was not for the estate manager in any area to be up to date with titles and which areas were adopted, but rather for homeowners to be aware of same and only instruct repairs if they fell within factored areas. However, it is the Tribunal's view that the Respondent should have checked that what they were doing was within their remit. In response to questions from the Tribunal, Mr Cosgrove said that it was an extremely rare event for the factor to instruct works on adopted land. This begs the question as to why if this was the case, the factor did not simply accept their error and refund all residents who were wrongly charged. Mr Cosgrove also couldn't give a satisfactory explanation about why the Respondent hadn't then brought the error to the attention of all homeowners. It was one thing for the Respondent to make an error by instructing the work erroneously, but it seemed a separate matter entirely as to how the Respondent dealt with the matter when the mistake was brought to their attention.

[14] Having heard evidence and also having considered the documentation before the Tribunal, the Tribunal makes the following findings in fact.

Findings in facts

I. *The Applicant is the proprietor of 65 Galbraith Crescent, Kinnaird Village, Larbert. The Property is factored by the Respondent within the meaning of the Property Factors (Scotland) Act 2011.*

II. *The Applicant received a bill from the Respondent in or around 7 February 2023 which included a pro rata charge of £4.09 for a total sum paid to Edinmore Contracts of £696.00.*

III. *The Applicant investigated and established that this charge related to a repair which had been organised by the Respondent to re-set a piece of kerbing stone within the development.*

IV. *A resident of another property in the development, 17 Stance Place, had contacted the Respondent and reported a kerbing stone as being in need of repair. The Respondent had promptly instructed Edinmore Contracts to fix the issue by resetting the kerb stone. However, the Applicant established that the kerb was in fact on roads which had been adopted by the relevant local authority, Falkirk Council.*

V. *Maintenance of this kerb stone should therefore have been the responsibility of Falkirk Council and the repair was conducted by the Respondent in ignorance of the correct boundaries and geographical limitations of their duties.*

VI. *There were 170 units in the development and each home were subsequently charged the sum of £4.09. for this cost of the wok erroneously instructed.*

VII. *The Applicant has complained to the Respondent about the matter and received a refund of £4.09. The Respondent have not offered any other homeowner a refund nor informed the residents of the mistake.*

[15] Having made the above findings in fact, the Tribunal makes the following findings in respect of the paragraphs of the Code alleged to have been breached and for the following reasons.

The Code

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

[16] The Tribunal finds that this standard has not been breached. The issues raised in the Application are more appropriately considered against other sections of the Code.

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

[17] The Tribunal find that this standard has been breached. The Respondent has not been transparent regarding the error made regarding the kerb stone. The Respondent should have brought the matter to the attention of all homeowners.

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

[18] The Tribunal finds that this standard has not been breached. The issues raised in the Application are more appropriately considered against other sections of the Code

"OSP4. *You must not provide information that is deliberately or negligently misleading or false."*

[19] The Tribunal finds that this standard has not been breached. The issues raised in the Application are more appropriately considered against other sections of the Code.

"OSP5. *You must apply your policies consistently and reasonably".*

[20] The Tribunal finds that this standard has not been breached. The issues raised in the Application are more appropriately considered against other sections of the Code.

"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."*

[21] The Tribunal finds that that standard has been breached. The Respondent should have known what areas of the development were their responsibility to factor and whether the roads had been adopted. The Tribunal considers that it is a fundamental part of the Respondent's responsibilities to be aware of such matters. The Tribunal was not impressed that it took the Applicant to educate the Respondent about these issues and the Respondent took such a casual approach to the matter.

"3.1 *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. If a property factor does not charge for services, the sections on finance and debt recovery do not apply*."

[22] The Tribunal finds that that standard has been breached. The Respondent should have informed the residents regarding their error and been transparent about the issue. The residents ought to have confidence that the bills they receive only include charges properly and legitimately incurred. The Tribunal concludes that the residents ought to have at least been informed about the issue given it was their money which was spent unnecessarily.

Proposed Property Factor Enforcement Order

[23] Having made the above findings in respect of the sections of the Code said to have been breached and having set out the reasons for those findings, the Tribunal proposes to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[24] The Tribunal considers that appropriate remedy for the breaches established, is to order that the Respondent "*execute certain action*" in terms of Section 20 (1) (a) of the Act. The action that will be ordered is as follows:

Action to be taken

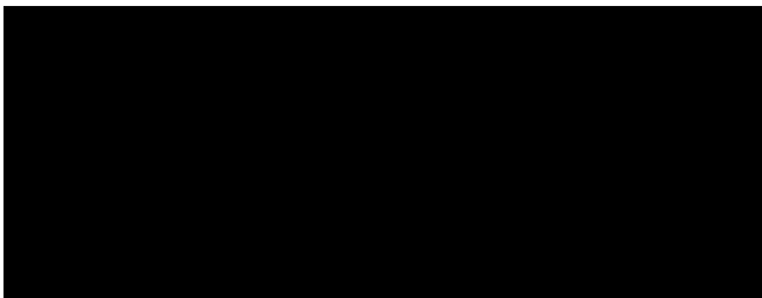
[25] The Respondent is ordered to issue a communication to all residents of the development explaining what happened with the mistaken repair and setting out what steps they have taken to avoid any repetition.

APPEAL PROVISIONS

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.



_______________________________ **26 August 2024.**

Legal Member