



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 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference numbers: FTS/HPC/PF/23/4104

Property: 1, Blair Grove, Inverness, IV2 6EY (“the Property”)

The Parties:

Mrs. Pamela Clarkson residing at the Property (“the Homeowner”)

First Port Property Services Scotland, 199, St. Vincent Street, Glasgow G2 5QD (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has not failed to comply with the 2021 Property Factor Code of Conduct (“the 2021 Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

Background

1. By application dated 9 November 2023 (“the C1 Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with Section 3 of the Code of Conduct for Property Factors 2012 (“the 2012 Code”).
2. In support of the C1 Application, the Homeowner submitted the following documents: i) Copy email correspondence between the Parties which focused on the Code of Conduct for Property Factors 2021 (“the 2021 Code”) ; ii) Copy of the Property Factor’s Written Statement of Services and iii) Copy photographs of parts of the development of which the Property forms part.

3. The Application was accepted by the tribunal chamber and a Case Management Discussion (CMD) was fixed for 13 June 2023 at 10.00 by telephone conference call.
4. Prior to the CMD, the Property Factor lodged written representations which referred to the 2021 Code.

Case Management Discussion

5. The CMD took place on 13 June 2024 at 10.00 by telephone conference call. The Homeowner, Mrs. Clarkson, was present and was unrepresented. The Property Factor was represented by Mr. A. Grant, accompanied by Ms. K. Nicol.
6. During the CMD discussion, it became apparent that Mrs. Clarkson had submitted an amended application Form C2 in respect of the 2021 Code, which amended application form had not been issued to the Property Factor or the Tribunal.
7. The outcome of the CMD was that the CMD was adjourned for the amended Form C2 to be issued and for a Hearing by Webex to be fixed.
8. The Tribunal issued a Direction ordering the tribunal administration to issue the amended application Form C2 and ordering the Property Factor to respond to the Form C2. The tribunal administration and the Property Factor complied with the Direction.

Hearing

9. The Hearing took place on 11 November 2024 at 10.00 by telephone conference call. The Homeowner, Mrs. Clarkson, was present and was unrepresented. The Property Factor was represented by Mr. L. Holmes, accompanied by Mr. B. O'Connell and Ms. K. Nicol.
10. The Application which the Tribunal dealt with at the Hearing was the amended application Form C2 which complained of breaches of the 2021 Code at Written Statement of Services at section 1.1; Financial Obligations at section 3.1; Debt Recovery at sections 4.6 and 4.9 and the Overarching Standards of Practice (OSP) at OSP 1, OSP 2, OSP 3 and OSP 8.

Homeowner's evidence.

11. Mrs. Clarkson's evidence, as explained to the Tribunal at the Hearing and as set out in the Application, is that her complaints arise from the same broad matter.

12. She explained that she purchased the Property in 2018 and had been aware that the land management would be carried out by the Property Factor. She was aware of this as she had previously had a nearby property. She had contacted the Property Factor in 2019 as contractors had dug up part of her garden and planted shrubs. She contacted the Property Factor who advised that the Property “did not exist”. She made a complaint in this respect but it was not dealt with by the Property Factor.
13. Mrs. Clarkson explained that she received an invoice from the Property Factor in June 2023 for land maintenance. The invoice listed two payments due: £137.80 to July 2023 and £99.38 from July 2023 to December 2023. No covering letter was issued to explain the invoice. Mrs. Clarkson advised that she disputes the invoice for £137.80 but has paid the amount of £99.38 and has paid subsequent accounts.
14. Following receipt of the above invoice, Mrs. Clarkson contacted the Property Factor and was given an explanation for the invoice. She raised a formal Stage 1 complaint with the Property Factor who, in their email response dated 29 June 2023, explained that the lack of an explanatory letter was due to system error caused by a change of IT systems. They also explained that the reason for the backdated invoice was that the Property Factor had not been notified by the developer that a block of 33 properties, including the Property, should have been included in the development common charges. The email explained that, although the 33 properties ought to have been invoiced from 2018, the invoice covered the period from when the Property Factor was notified.
15. Mrs. Clarkson was not satisfied and escalated her complaint to the Tribunal. It was the tribunal administration who advised that the Property Factor should have issued a Written Statement of Services (WSS). She had not received a WSS and so contacted the Property Factor for this.
16. Mrs. Clarkson’s firm view is that the Property Factor has not dealt with her fairly or professionally. She stated that the Property Factor ought to have acted more promptly and ought to have given fair warning of a large backdated invoice. They ought to have provided more information and the WSS without her having to chase them.
17. Mrs. Clarkson stated that although the Property Factor’s written submissions mention the MyHome portal, she was not previously aware of that.
18. Mrs. Clarkson accepted that she now has access to MyHome and that there have been no residual issues with the Property Factor. She confirmed having received annual reports on development debt.

Property Factor's Evidence.

19. The Property Factor's evidence comprised the written submissions of 2 July 2024 and the submissions made by Ms. Holmes at the Hearing.

20. Mrs. Holmes accepted the general facts of the matter as set out by Mrs. Clarkson.

21. In further explanation, Mrs. Holmes explained that the Property is part of the Parks, a large development that which was developed between 2014 and 2022. She explained that the Property Factor had not been notified that 33 properties, including the Property should have been "handed over" by the developer, and, that, when the Property Factor became aware around 2021, they had to obtain the information from the Land Register. Mrs. Holmes explained that it took time to add the 33 properties to the system and stated that, although the title deeds allowed costs to be charged back to 2018, to be fair to the 33 owners, charges were restricted to July 2021.

22. Mrs. Holmes explained that all owners in the Parks development are liable for the whole landscaped areas. She stated that the final handover of the landscaped area was in 2022. With reference to the works carried out to the garden of the Property in 2019, Mrs. Holmes stated that this would likely have been carried out by the developer as that area had not been handed over to the Property Factor at that time and the Property Factor does not carry out planting. Mrs. Holmes explained that often the land maintenance areas take longer to be ready for handover than the houses.

23. With general regard to the Act and the Code, Mrs. Holmes stated that the Property Factor has processes in place to comply. She stated that new customers are given an information pack with the WSS. There is a customer portal called MyHome where all information is made available. Accounts are reconciled annually and owners are provided with this information. She stated that the block of 33 is an exception as the properties had not been handed over but the details were obtained from the Land Register and then had to be uploaded. Thereafter, the Property Factor has treated these properties in the same way as all of the other properties.

24. Mrs. Holmes explained that, in addition to MyPlace, the Property Factor issues an annual report in respect of development debt.

Findings in Fact

25. The Tribunal made the following Findings in Fact:

- i) The Homeowner is the owner of the Property which is part of a development of houses known as the Parks;

- ii) The Property Factor is registered as a Property Factor and provides land management factoring services at the Parks;
- iii) The Parks development was built out in stages and handed over to the Property Factor in blocks of houses;
- iv) The Property was purchased in or around 2018/2019;
- v) The Homeowner was aware that the Property Factor had been appointed to manage the common landscape and amenity ground;
- vi) The Homeowner was aware that she would require to pay a charge for the Property Factor's management of the common landscape and amenity ground;
- vii) The Property Factor was not notified by the developer that a block of 33 houses, including the Property, ought to have been handed over in or around 2018/2019;
- viii) The Property Factor made their own investigations and assumed the block of 33 houses into their customer base around July 2021;
- ix) The Property Factor issued an invoice to the Homeowner for land management charges on or around 23 June 2023;
- x) The invoice was for £237.18 for charges due since July 2021;
- xi) £137.80 was a backdated charge from July 2021 to July 2022;
- xii) The Property Factor did not issue a covering letter with the invoice in explanation of the invoice;
- xiii) The Property Factor issued a full explanation on 29 June 2023 as part of their complaints procedure;
- xiv) The Property Factor was entitled to issue charges backdated to 2018 but elected not to do so;
- xv) The Homeowner disputes that she should pay the charge from July 2021 to July 2022;
- xvi) The Property Factor did not issue a WSS to the Homeowner until 13 December 2023;
- xvii) The Property Factor has policies and processes in place in respect of compliance with those parts of the 2021 Code dealing with Written Statement of Services, Financial Obligations, Debt Recovery and the Overarching Standards of Practice.

Issues for the Tribunal

26. The issue for the Tribunal is whether or not, on the facts before it, the Property Factor complied with the 2021 Code as complained of by the Homeowner.

27. The preamble of the Act states this is *“An Act of the Scottish Parliament to establish a register of property factors and require property factors to be registered; to make provision in relation to the resolution of disputes between*

homeowners and property factors; and for connected purposes.” The provisions of the Act at Section 17 sets out how dispute resolution is to be achieved by application to the First-tier Tribunal. Section 14 of the Act provides for a statutory code of conduct to set out the operating standards with which the property factors must comply and against which disputes between homeowners and property factors will be determined.

28. In terms of Section 14 of the Act, the Scottish Parliament, by Order, made a Code of Conduct which became effective in 2012 and, again by Order, made a replacement Code of Conduct which became effective in 2021, the latter being the Code at the heart of this case. Both Codes of Conduct set out minimum standards of practice for registered property factors.

29. The Code provides that the purpose of these standards is *“encouraging transparency in the way that they conduct their business in connection with the management of common property or the maintenance of land as detailed in the homeowner’s title deeds.”* The 2021 Code sets out twelve OSPs to underpin the way in which property factors must act in order to comply with the 2021 Code. The 2021 Code sets out specific actions which property factors must take and behaviours which they must adopt.

30. In this case, the complaints all relate to the way in which the Property Factor dealt with retrospective matters being the assumption of properties into their customer base and invoicing backdated charges due by those customers. In assessing the evidence, the Tribunal had regard to the purpose of the Code.

Decision of the Tribunal and reasons for the Decision.

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

31. No evidence was led or set out in respect of homeowners other than the Homeowner. The Homeowner accepted that she had received a WSS in December 2023. The Property Factor accepted that this should have been issued sooner but explained that the omission was likely to have been caused by the non-standard way in which the Homeowner had been added to their customer base. The Tribunal finds this to be an acceptable reason.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

Section 3.1 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.

32. The evidence before the Tribunal is that, with regard to the invoice issued in June 2023, although an explanation was not provided on the date of issue, an explanation was provided by email on 29 June 2023. Although the Homeowner stated that the Property Factor ought to have given earlier warning of a proposed charge, the Tribunal noted that the Homeowner was aware as far back as 2018/2019 that the Property Factor had been appointed and that she would be liable for charges. The Tribunal had regard to the tasks which the Property Factor carried out to include the 33 houses in its IT system and took the view that there had been no unreasonable delay. The Tribunal noted that the Property Factor restricted the charges due by the Homeowner to July 2021 and did not seek to recover costs from 2018/2019. Therefore, no improper payment request was made.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

Section 4.6 A property Factor must have systems in place to ensure the monitoring of payments due from home owners and that the payment information on these systems is updated and maintained on a regular basis.

33. The Homeowner's complaint in this respect is historic and predates the Property being added to the Property Factor's IT system. The evidence before the Tribunal is that the Property Factor has a portal, MyHome, which provides all of this information. The Homeowner confirmed that she now has access to MyHome.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

Section 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.

34. Again, the Homeowner's complaint in this respect is historic and predates the Property being added to the Property Factor's IT system. The evidence before the Tribunal is that the Property Factor has a portal, MyHome, which provides all of this information. The Homeowner confirmed that she now has access to MyHome. The Homeowner further confirmed that she receives the Property Factor's annual accounts reconciliation which details all relevant debt information for the development and relates to any debt incurred by another owner within the Parks development.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

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

35. The Homeowner confirmed that this related to compliance with the Act. From the Findings in Fact, the Tribunal found that the Property Factor acts in accordance with the Act and the Code.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

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

36. From the evidence before it, the Tribunal found that the Property Factor acted in accordance with this OSP. The Property Factor provided clear explanations in respect of the Homeowner's complaint and did not attempt to mislead or to hide any facts. The Tribunal noted that the Property Factor restricted the charges due by the Homeowner to July 2021 and did not seek to recover costs from 2018/2019. The Tribunal found this to be a fair way in which to mitigate the impact of the developer's failure.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

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

37. Again, the Homeowner's complaint in this respect is historic and predates the Property being added to the Property Factor's IT system. It again relates to the time taken from the Property Factor becoming aware in July 2021 that the Homeowner ought to be charged for land maintenance and not issuing an invoice until June 2023, and, that with a lack of background information. As set out in the paragraphs above, the Tribunal accepts the reasons for the Property Factor issuing the invoice in June 2023 and accepts the system error in respect of the issue of the covering letter. No other evidence was led in respect of any other matter pertaining to clear or inaccessible information.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

OSP8. You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code of Conduct and your legal requirements in connection with your maintenance of land and or in your business with homeowners in connection with the management of common property.

38. Again, the Homeowner's complaint in this respect is historic and predates the Property being added to the Property Factor's IT system. It again relates to the time taken from the Property Factor becoming aware in July 2021 that the Homeowner ought to be charged for land maintenance and not issuing an invoice until June 2023, and, that with a lack of background information. As set out in the paragraphs above, the Tribunal accepts the reasons for the Property Factor issuing the invoice in June 2023 and accepts the system error in

respect of the issue of the covering letter. No other evidence was led in respect of any other matter relating to legal requirements.

Accordingly, the Tribunal finds that the Property Factor has not failed to comply with this part of the 2021 Code.

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.

Signed

Karen Moore, Chairperson

11 November 2024

Legal Member

Date