



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17(1) of the Property Factors (Scotland) Act 2011 (Act)

Chamber Ref: FTS/HPC/PF/24/1556

Parties

**Mr Mohit Gajri (Applicant)
Newton Property Management Limited (Respondent)**

Flat 3A Couper Street, Glasgow, G4 0DP (“the Property”)

Tribunal Members:

Alan Strain (Legal Member) and Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at Sections C,D, 3.2 and 3.4.

Background

This is an application under Rule 43 and section 17(1) of the Act in respect of the Respondent’s alleged breaches of the Code of Conduct.

The Tribunal had regard to the following documents:

1. Application received 5 April 2024 and supporting documents;
2. Written Representations from the Parties;
3. Respondent’s Written Statement of Service (**WSS**).

Section 17 of the **Property Factors (Scotland) Act 2011** provides that a homeowner may apply to the Tribunal for determination that a property factor has failed to perform their duties or breached the Code of Conduct.

The Applicant set out the alleged breaches of the Code in his original application and also in a letter to the Respondent of 17 April 2024:

"I believe Newton Property have failed to comply with the 2021 Code of Conduct for Property Factors. The section of the 2021 Code which Newton have failed to complied with are:

1. Written Statement of Service – sections C Financial and Charging Arrangements and D Communication and Consultation
2. Financial Obligations – sections 3.2 provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor and 3.4 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for.
3. Complaint Resolution – Property Factor Complaints Handling Resolution I have provided details of why this is the case in my initial complaint, stage 1 complaint and stage 2.

In summary: A) As per your Written Statement of Services (WSS) management fees will increase in line with inflation and any increase above the rate of inflation requires customers to be notified in advance. Your notification was on the same day as the quarterly statement was issued and not in advance. You increased fees on 29 February 2024 but informed customers the increase would commence from 1 March 2024. CPI inflation which was 3.4% in February 2024 (Consumer price inflation, UK - Office for National Statistics) but your fees increased by 36.6%. B) As per your WSS, responses to stage 2 complaints should be issued by the Head of Property Management. This was not the case."

The Respondent lodged a written response with the Tribunal dated 30 August 2024.

The Applicant lodged further Written Representations on 23 September 2024.

Hearing

The case called for a Hearing by conference call on 23 October 2024. The Applicant participated and represented himself. The Respondent was represented by Ms Catherine Flanagan, Customer Relationship Manager with the Respondent.

Sequence of Events and Tribunal's Findings

The Tribunal heard from both the Applicant and Ms Flanagan for the Respondent. It was clear that there was no dispute as to the above sequence of events and the content of the correspondence. All of the correspondence has been produced and referred to by the Parties.

The material correspondence for the purposes of the Tribunal's determination is referred to below.

The dispute between the Parties was relatively narrow. It related to 2 matters:

1. The Respondent's communication of an increase in management fees by email of 28 February 2024 and

2. The Respondent's response of 19 March 2024 to the Applicant's complaint at Stage 2 of their Complaint's Procedure coming from an Associate Director rather than the Head of Property Services as provided for in their WSS.

The Respondent's communication of an increase in management charges

Findings in Fact

1. This was communicated to the Applicant by email of 28 February 2024 (which was produced and referred to). The email communicated that the increase in management fees would be effective from 1 March 2024 and that details of the increase would be contained in an updated WSS that would be sent under separate cover shortly. A quarterly invoice was included with this email.

2. The email also communicated that discounts were available if the management fee was paid by direct debit and/or by ebilling.

3. There was no dispute between the Parties that the Applicant received the ebilling discount at this time.

4. The Applicant emailed the Respondent the same day and asked for details of the management fee increase.

5. The Respondent responded by email of 29 February 2024 and advised that the increase would be from £60.80 inc VAT per quarter to £83.05 inc VAT. This was with effect from 1 March 2024.

6. The Applicant queried this increase by email of 29 February 2024 on the basis that it was excessive (over 36%).

The Respondent responded by email of 1 March 2024 explaining that the Respondent had changed the way that fees were billed and introduced a new Direct Debit system.

7. The Applicant responded by email of 1 March 2024 complaining that the increase was excessive, that the Respondent had not communicated the increase in advance of implementing it which was contrary to their WSS which provided:

"our management fees will increase each year in line with inflation at least. We will tell you about any increase above the rate of inflation, in writing, before we make the increase."

The Applicant concluded:

"In summary: • You have not been transparent on how much the fees have increased. • You have not provided sufficient notice of increasing fees. • The increase in the management fee is excessive and unreasonable. • I am waiting for a summary of the changes made to your written statement of services.

These are all breaches of your written statement of services. Therefore, I request the management fee to be credited back to my account and for you to consider a more reasonable increase which is in line with inflation.”

8. There was a further exchange of correspondence between the Parties that left the Applicant feeling he had no option other than to complain to the Tribunal.

9. There was no dispute that the WSS was not updated with the increase in management fees until 5 March 2024.

Discussion and Findings

Ms Flanagan sought to explain that the increase was mitigated by the potential for discounts if paying by direct debit and/or e-billing. She also sought to explain that the increase in fees was always communicated in this fashion and at this time of the year.

It was accepted that the increase was in excess of inflation and communicated with immediate effect.

In those circumstances the Tribunal considered that no notice had been provided to the Applicant and that the Respondent had failed to comply with the provisions of its WSS which required any increase above inflation to be communicated before any increase took effect.

As such, the Tribunal considered that the Respondent had breached sections 3.2 and 3.4 of the Code. The Respondent had not included details of the increase until after the increase had taken effect. The email communication of 28 February 2024 presented the Applicant with a *fait accompli* and did not contain details of the actual increase and how that had been calculated. The latter was provided at a later date.

The Stage 2 Response from the Respondent to the Applicant's Complaint.

Findings in Fact

1. The Respondent's WSS contains their Complaints Procedure at Pages 10 to 11 which provides that at Stage 2 the Respondent's Head of Property Management will consider any Stage 1 submission and subsequent correspondence. It also provides that the final response will be issued by the Head of Property Management.

2. The Stage 2 Response issued by the Respondent by email of 19 March 2024 came from the Respondent's Associate Director, Melissa McGirr on the authority of the Respondent's Head of Property Management.

Discussion and Findings

Ms Flanagan explained that the Respondent's WSS did not mean that the Head of Property Management had to physically issue the response, it was enough to be done on their authority and that this was what had happened.

The Applicant's position was that a literal interpretation should be taken and that any response should have come from the Head of Property Management.

The Tribunal conclude that a reasonable interpretation is the position presented by Ms Flanagan and do not find any breach of the Respondent's WSS or the Code in this regard.

Property Factor Enforcement Order (PFEO)

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.”

The Property Factor has made errors and 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.”

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

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Alan Strain

3 November 2024

Legal Member

Date