



Decision and Statement of Reasons under Section 19 of the Property Factors (Scotland) Act 2011.

Chamber Reference number: FTS/HPC/PF/23/2680

The Parties:

Mr David Grier and Mrs Norma Grier, 23c Greenholme Street Glasgow G44 4DU “the Homeowner”).

Ross and Liddell Ltd having a place of business at 60 St Enoch Square Glasgow G1 4AW (“the Factor”).

Property: 23c Greenholme Street Glasgow G44 4DU (“the Property”).

Legal Member: Lesley Anne Ward Ordinary Member: Jane Heppenstall

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Factor had not complied with the Code of Conduct for Property Factors as required by section 14 of the Property Factors (Scotland) Act 2011 in that there has been a breach of the Code in terms of section 2.1, 2.3, 2.7, 6.1 and 6.4. In all of the circumstances the Tribunal proposes to make a Property Factor Enforcement Order (“PFEO”). The Tribunal’s decision was unanimous.

Background

2. This was a hearing in connection with an application in terms of rule 43 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, ‘the rules’ and section 17 of the Property Factors. The Homeowner made an application to the Tribunal on 30 July 2023. The Homeowner attended the hearing. The Factor was represented by Mr David Doig solicitor and Ms Jennifer Johnstone from the Factor.

3. A case management discussion took place on 31 January 2024 and the Tribunal fixed a hearing and made the following directions:

The Applicants are required to provide:

(1) A written list of headings summarising the main areas in which a breach of the Code of Conduct for Property Factors has occurred and the paragraph of the code to which the alleged breach as occurred, for example: • Failure to arrange outstanding repair to x, paragraph 6.1 of the code.

(2) Any other documents they have to substantiate their position.

(3) A list of witnesses they intend to give evidence at the hearing.

The Respondent is required to provide:

(1) Any correspondence relating to the repair of the soffit and fascia of the property including the quotation for the erection of a scaffold and the repair and communication with the surveyor.

(2) The programme of work for the gardening for the development at Greenholme Street.

(3) Any other documents they have to substantiate their position.

(4) A list of witnesses who will be giving evidence at the hearing.

The said documentation should be lodged with the Chamber no later than close of business on 29 February 2024.

Preliminary matters

4. Both parties had lodged documents in compliance with the Tribunal directions. It was agreed that, as set out in the CMD note of 31 January 2024, the application relates to breaches of paragraph 2.1, 2.3, 2.7, 6.1, 6.4 and 6.7 of the code.

5. The parties also confirmed that the Service Level Agreement ('SLA') relevant to the application was the one from November 2022, which is within the bundle.

6. The Tribunal had the following documents before it:

- Application dated 30 July 2023 with 450 pages of supporting documents.
- Homeowner's email to the Tribunal of 5 November 2023.
- Property Factor's submission dated 24 January 2024.
- Homeowner's email to the Tribunal dated 29 January 2024.
- Homeowner's response to directions of 28 February 2024.
- Property Factor's first, second and third inventory of productions.
- Homeowner's and Property Factor's submission of 11 December 2024.

7. Findings in Fact

- The Homeowners are the proprietor of the Property.
- The Property is part of a development that consists of 5 blocks and 43 flats.
- The Factor performs the role of the Property Factor of the development.
- The Factor had provided to the Homeowner a SLA.
- The SLA contains a written complaints resolution procedure.
- The Homeowner made an earlier application to the Tribunal in connection with breaches of the Code and the Tribunal found in their favour and made a proposed PFEO.
- On 8 February 2023 the Homeowner advised the Tribunal that the PFEO has been complied with and a certificate of compliance was issued on 9 March 2022.
- The Homeowners submitted a detailed and lengthy written complaint to the Factor on 17 February 2023 in connection with inspections, repairs, account disputes and communication.
- The Factors responded in detail to the complaint on 23 March 2023. They made various concessions in connection with the complaint in relation to inspections, communication and they apologised and offered an ex gratia payment of £250.
- The Homeowner made a second level complaint on 19 April 2023.
- The Factor responded on 17 May 2023. The Factor made further concessions, indicated they would full absorb the £985.20 cost of redecorating the front door to the building and made an apology to the Homeowner for their communication and service failures.
- There were various occasions in 2023 when, due to change of personnel with the Factors, the Homeowner did not receive a timeous reply to their inquiries regarding the portal, repairs and meetings.
- The Factors failed to expedite a repair to the communal back door of the property.
- The Factors failed to act on the inspection reports which identified the carpets to the common close of the property were dirty and in need of cleaning or replacement.
- The Factors instruct the gutters to be cleaned annually. There is no programme of cyclical maintenance for any other repairs.
- When tenants leave a property in the development, the Factors practice is to contact the owner to remove the items, failing which a bulk uplift is arranged and all of the owners in the development pay a proportion of the charge.
- The Homeowner contacted the Factor around September 2022 to draw their attention to wet masonry to the rear wall of the property.
- The Factor contacted all of the owners to ascertain if there was an issue with their overflow pipe, which may be causing the wall to be wet.
- The Homeowner only recently became aware of the extent of the problem and as a consequence the Homeowner obtained their own report from Matheson Damp Services on 5 December 2024 which stated that there was significant weathering of the exterior pointing and masonry which should be examined by a qualified building contractor as soon as reasonably practicable.
- The Property Factor intends to pursue further inquiries regarding the issue with the rear wall.

- There is an ongoing outstanding repair to the development, which has been outstanding since 2022. The repair relates to the soffits and gutters. Various quotes were obtained and due to the complexity of the matter, the Factor instructed a surveyor to supervise the matter and deal with the tender process.
- There was a delay of several months in sending the quote to the homeowners in the development due to a dispute with the surveyor in connection with their fee and whether it should be a percentage of the gross figure or net of the scaffold costs of £70000.
- The final report for this work was uploaded to the portal in February 2024.
- Homeowners were asked to contribute in on 4 October 2024 no later than 1 November 2024. This was extended to 13 December 2024.
- The majority of the owners did not contribute or indicate their intention to contribute by the deadline.

The hearing

8. The Tribunal heard detailed oral evidence from the Homeowner in connection with the application. The Homeowner made reference to the 600 or so pages of documents they had lodged in support of the application, including their two letters of complaint. There was no factual dispute in connection with the documents. The Homeowner's position was that the Factor had breached the code by failing to properly inspect the property and expedite repairs. The Homeowner also took issue with the Factors practice of charging other owners in the development for a 'bulk uplift' if a tenant had left belongings in the common areas. The Homeowner also took issue with the frequent staff changes at the Factor and the lack of continuity in communication.

Submissions

By the Factor

9. Mr Doig, solicitor for the Factor submitted that the introduction of the live chat rather than email communication has been welcomed by many clients. He also submitted that although the Factors endeavoured to facilitate Homeowner meetings, there is no legal obligation on them to do so and on his reading of the deed of conditions they may not be entitled to call a meeting.

10. With regard to paragraph 2.1 of the Code, it is not accepted that any of the narrative or documentation presented by the Applicants points to a breach on the part of the Factors which would justify the Tribunal making an order. . The Code describes the benefit to Homeowners and Factors in their being good communication to nurture a positive relationship between the parties and to eliminate or restrict difficulties.

11. In relation to paragraph 2.3 of the Code the Factor's position is that they do have a Service Level agreement with which the Homeowner is familiar. The relevant information and documentation is

ordinarily displayed on the online portal (with paper copies available if requested). The Factors have acknowledged errors and omissions from time to time on the content which has been available to review.

12. Re paragraph 2.7 the Factor does attempt to respond to inquiries and complaints within timescales set out their SLA and they have acknowledged to the Homeowner and apologised when they have failed to meet the SLA response times.

13. With regarding to paragraph 6.1 it is not accepted that the narrative or documentation presented by the Homeowner points to a breach on the part of the Factor which would justify the Tribunal making an order. The Code points to the responsibility of the Homeowner and narrates that Factors can assist in preventing further damage or deterioration by seeking to make prompt repairs to a good standard.

14. The Factors have engaged tradespersons whom they have considered suitable, able and commercially competitive and sought to maintain an appropriate level of repair to avoid deterioration or damage. When issues have been raised over the quality of repair by tradespersons the Factors have made appropriate representations to these trades to address issues and rectify faulty workmanship.

15. In connection with paragraph 6.4 the Factors have sought to arrange relevant inspections and appropriate repairs in appropriate timescales, subject to the work being appropriate, adequately funded or approved by proprietors if not emergency work. When notified by tradespersons of arrangements for attendances and timescales for completion the Factors will share that information with the Homeowners.

16. Re paragraph 6.7 the Factors do arrange for periodic property inspections by suitably qualified /trained staff with a view to ensuring that the property is appropriately maintained. It is recognised that the Homeowner desire the introduction of advance dialogue with the factors concerning proposed inspection visits. The Factors consider the arrangements they have put in place meets the requirements of the Code.

17. Both the Homeowner and the factors have spent considerable time exchanging very full comments in relation to the development. The Factors have gone to considerable lengths to review their procedures and responded fully and frankly to the extensive representations make by the Homeowner. They have offered refunds and credits. The parties have a difference in views on a number of issues, with the Factors having implemented positive revisals to their processes, which do not meet the Homeowner's expectations. Reference is made to the detailed comments offered by Jennifer Johnston and Jennifer Harkins in the most recent complaints process. It is not accepted that the Factors are in breach of the Code and no order should be made.

By the Homeowner

18. The Homeowner's position was set out in their direction response of 28 February 2024 and the various annotations to those submissions made until 11 December 2024.

19. It was their submission the Factor had breached the code in relation to

- Communication and consultation

They set out examples of poor consultation and communication in their written submission such as:

- *email dated 20/05/2022 from Mr Robert Murray Property Manager stated he would send a letter to all owners concerning bulk uplift.” This did not happen*
- *email dated 17/12/2021 from Mr Clark said “It is our intention in the New Year to set out a schedule which can be issued to owners confirming their inspection dates for this year. A letter will go out early next year confirming the dates for inspection. This did not happen*
- *At the Owners’ Block Meeting on 25/04/2023, Mr Larkins, Senior Property Manager, said: Minutes of the forthcoming Development Meeting would go out to all owners and put on the Online Portal. This did not happen*

- Repairs and Maintenance

They set out examples of what they considered to be breaches such as

- *Painting of front door: this was first raised with our Property Manager, Mr Armstrong in 2019. After numerous e mails from ourselves, the work eventually started in May 2022 – not a prompt repair. The door was not painted to a good standard - it was not sanded down and the peeling and flaking paint was simply painted over, with the finish barely any better than before it had been painted.*
- *At the Owners’ Block Meeting on 25/04/2023, we raised the issue of the peeling and flaked paint of the back door to Block 23 and showed a photograph of this (Appendix C enclosed.) We took along a copy of the Inspection Report 12/04/2023 which states: “Action Required: the exterior of the back door could benefit from a coat of paint. This is not a prompt repair as to date, no action has been taken regarding the painting of back door*
 - *The soffits and fascia: This is not a prompt repair – work has still to commence Damage was first identified in the Inspection Report dated February 2020.*

20. The Homeowners submission contained numerous other matters such as the failure of the Factors to arrange joint meetings, a lack of follow-through and consistency in the inspection reports, inadequate use of the portal, lack of notification and communication when there are staff changes, failure to arrange a cyclical repairs programme.

Breaches of the Code

21. Section 2.1 of the Code Provides

Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

22. It was conceded by the Factor that there had been a failure in communication at times, particularly when there had been a change of staff. The Tribunal did not consider that this aspect of the Code requires a factor to notify a homeowner of a change personnel, however there had been instances in which the Homeowner was not given a response to an inquiry and on several occasions a promised communication did not materialise. This is a breach of the Code.

23. Section 2.3 of the Code provides.

The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

24. It was conceded by the Factor that the portal was not updated and monitored at times and on occasions when documents are uploaded, the Homeowners are not notified. This is a breach of the Code.

25. Section 2.7 of the Code provides.

A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

26. It was conceded by the Factor that there has been a failure to respond to the Homeowner inquiries at times, particularly where there has been a change of staff. This is a breach of the Code.

27. Section 6.1 of the Code provides:

This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

28. It was conceded by the Factor that they have failed to expedite a repair regarding the communal back door to the property. They have also failed to act on inspection reports regarding the communal carpet. This is a breach of the Code.

29. Section 6.4 of the Code provides:

Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

30. The Tribunal did not consider this aspect of the Code requires the Factor to notify the Homeowner in advance of an inspection. There was a lack of understanding on the part of the Homeowner of the inspection process and how this is linked to repairs and maintenance. There was a lack of consistency in the inspection reports and in relation to the carpets and back door, consecutive inspection reports contradicted each other. This is a breach of the Code.

31. Section 6.7 of the Code provides:

It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

32. The Tribunal did not consider this aspect of the Code requires the Factor to carry out both periodic inspections and have a programme for cyclical maintenance. Periodic inspections are carried out by qualified staff. The gutters to the property are carried out annually and all other repairs are demand led. The Tribunal was not satisfied on the balance of probability that there had been a breach of this aspect of the Code.

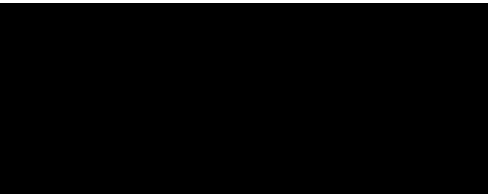
Reasons

33. The tribunal heard oral evidence from the Homeowner and Ms Johnstone gave oral evidence. Mr Doig made submissions and largely relied on his written submissions sent to the Tribunal on 24 January 2024. There was no factual dispute in connection with the large number of documents lodged by each party. Where there was dispute was in relation to whether breaches of the Code had occurred. The Tribunal noted that there were various concessions by the Factor contained in their letters of 23 March 2023 and 17 May 2023 and Ms Johnstone made a concession at the hearing in relation to the repair to the rear door of the property. In addition to the concessions, the Factor had also apologised for their service and communication failures and made an offer of an ex gratia payment of £250. Ms Johnstone also undertook to pursue the matter of water ingress to the rear wall of the property. The repair to the soffits remains outstanding. Despite the Factor's and the Homeowner's endeavours there has been no consensus among the owners in the development to proceed with the repair. The Tribunal decided on

the balance of probability that some breaches of the Code had occurred. The breaches were at the low end of the scale and the factor had already apologised for most of them and offered an ex gratia payment. The Tribunal noted that in terms of the time line, the Homeowner had made an 11 page formal complaint 9 days after notifying the Tribunal that the previous PFEO had been complied with. There have clearly been difficulties in pursuing repairs but in relation to the dampness in the rear wall and the soffit repair, the Tribunal was not satisfied that the delay was due to a breach of the Code by the Factor. The Tribunal decided that the sum of £600 was fair proportionate and just in all of the circumstances to reflect the Homeowners time and energy spent in pursuing matters with the Factor.

Appeal Clause

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.



Lesley Anne Ward

Legal Member