Housing and Property Chamber
First-tier Tribunal for Scotland

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

Reference number: FTS/HPC/PF/24/0447

Re: Property Lochty Meadows, Housing Estate, Thornton, Kirkcaldy ("the Property")

The Parties:

Ms Yvonne Herd. 1A Corthan Court, Thornton, Kirkcaldy, KY1 4BS ("the Applicant")

Greenbelt Group, 99 Firhill Road, Glasgow G20 9BE ("the Respondent")

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Mr S Brydon (Ordinary Member)

Background

[1] By Application in Forms C1 and C2, 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 for both 2012 and 2021*. The Respondent has submitted representations denying the allegations and lodging documentary evidence in support of their position.

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

The 2012 Code
Communications and Consultation: Sections 2.5
Financial Obligations: Section: 3.3
Complaints Resolution: 7.1

2021 Code

Communications and Consultation: Sections 2.5
Financial Obligations: Section: 3.3
Complaints Resolution: 7.1

[3] It is also alleged that the Respondent has failed to carry out the Property Factors Duties within the meaning of Section 17 (5) of the Act.

The Hearing

[4] The Application called for a Hearing at The Vine Conference Centre, Dunfermline at 10 am on 12 March 2025. The Applicant was personally present. The Respondent was represented by their own Mr Donald Ferguson and Mr Gerry McQuade. Neither party had any preliminary matters to raise.

[5] The Tribunal began by hearing from the Applicant and then from Mr Ferguson and Mr McQuade for the Respondent. The Tribunal asked questions throughout to ensure that it understood the evidence. After each witness gave evidence, the other party had the right to cross-examine. During the evidence, the Tribunal referred to the documentation submitted throughout. After the conclusion of evidence, each party also had the opportunity to make closing submissions explicitly drawing the Tribunal's attention to the sections of the Code alleged to have been breached.

[6] The Tribunal comments on the evidence heard as follows.

Ms Yvonne Herd

[7] Ms Herd explained that she had lived in the Property for 15 years and that Greenbelt have been the relevant property factor throughout this period. Ms Herd explained that she lives next to a playpark. She described it as an eyesore and that she was at a loss to know what to say about it and other areas of the open spaces managed by the Respondent. The Applicant said that she didn't think the Respondents are good value for money. She said that the Respondents never give you a straight answer. Ms Herd's evidence appeared to focus on general criticisms of the Respondent. It was clear that she held them in low regard and her attitude to them was verging on the hostile at times. However, the Tribunal tried to encourage the Applicant to focus on the details of the particular allegations made.

[8] Ms Herd gave evidence that she was unsatisfied with how the Respondent cut the grass in the green space they managed in the development. She explained that they didn't cut it sufficiently short. In her Application, Ms Herd set out that the Respondent's own written statement of services provided that the grass should be cut between 25 mm and 65 mm in length. She explained that this was rarely done. Ms Herd also explained

that the playpark area was waterlogged and not in an acceptable condition. She also stated that the play area equipment was starting to rust. She also made reference to taking steps to try and obtain what she described as a "*health and safety certificate*" for the playpark. The Application also included allegations that the bins in the open spaces and play park were a health hazard and that they were not emptied regularly enough and certainly not emptied monthly as per the Respondent's commitments under their statement of services. However, after some discussion about this it appeared that the bins had been removed and so this concern was no longer current.

[9] The Applicant explained that she had written a hard copy letter of complaint to the Respondent which she had posted on 11 September 2023. However, this letter had been ignored by Respondent. It subsequently transpired that the Respondent had lost this letter and couldn't locate it. The Applicant explained that consequently the Respondent had failed to respond and deal with the Applicant's complaint within the timescales set out in their written statement of services. The Applicant explained that it took the Respondent 61 days to respond to her letter when the written statement of services provides that a response should have been received within 30 working days. The Applicant also explained that the Respondent fails to maintain the shrub beds appropriately which have been negatively impacted by dead flowers.

[10] The Applicant also described her concerns that she couldn't understand the Respondent's invoices and that they were not sufficiently clear. She explained that last year the residents were charged £1,500 for vegetation removal. When the Applicant queried this, the Respondent was very quick to write off the invoice which the Applicant thought was suspicious. Mrs Herd was also aggrieved as she had queried how the Respondent calculated their admin charge and was told that this information couldn't be shared as the Respondent did not have to disclose how its own profits were calculated.

[11] The Tribunal then heard from Mr Donald Ferguson on behalf of the Respondent.

Mr Donald Ferguson

[12] Mr Donald Ferguson is the Respondent's Green Space Services Director. He explained that he had a meeting with Mrs Herd in October 2023 and considered that they had agreed a way forward to resolve the issues which the Applicant has been raising with the Respondent regarding the open spaces. He explained that he was disappointed then that this Application was then submitted in January 2024. He accepted that the Respondent had lost a letter of complaint which the Applicant had posted to them in September 2023 and this meant that the Respondent did not manage to fully respond to the Applicant's complaint within the timescales set out in their statement of services. Mr Ferguson was apologetic for this.

[13] Mr Ferguson denied that the Respondent failed to cut the grass. He explained that the greenspaces in the areas in question are extremely wet due to long standing drainage issues with the ground. This was a long-standing difficulty which had been raised with the developer whose responsibility it ultimately was and remains such. These discussions were ongoing. Mr Ferguson explained that the Respondent had to use different equipment to cut the grass because of this. The ride on mower was causing some superficial damage to the grass and so they had to change the grass cutting equipment to use lighter equipment to avoid any further damage.

[14] Mr Ferguson explained that there had been issues with the communal bins in the development. These bins were for litter and there was a system in place for them to be emptied every three weeks. However, residents regularly put dog waste into the bins. Mr Ferguson explained that this had to be classed as "*hazardous waste*" meaning that the normal bin emptying service could not be done as then special arrangements had to be made. Mr Ferguson explained that in the end to resolve the matter, the Respondent simply removed these bins all together.

[15] Mr Ferguson spoke about the shrub beds. He explained that there had been difficulties in establishing plants because it was all waterlogged but that now they had planted a hedge which had resolved matters.

[16] Mr Ferguson explained that the invoices the Applicant and other residents have received had changed over the years, as the area under the Respondent's management was increased. The Respondent took on responsibility for the management of the playpark in 2018 and the "*suds*" area of the development. There was a corresponding cost increase accounted for in the invoices. The Tribunal was shown the invoices sent to the Applicant. A Woodlands area is now also included in the area of the Respondent's management.

[17] Mr Ferguson explained that the play parks are regularly inspected by approved independent contractors and all inspection reports are carried out and retained in good order. Mr Ferguson also explained that the Respondent was now trying to improve its communication with residents and was now using an online portal for the purposes of communication. He explained that all relevant documentation would be made available to residents on the portal.

[18] Mr Ferguson explained that there had been a legitimate expense of £1,500.00 in the development for the removal of vegetation. Mr Ferguson explained that several neighbours had contacted the Respondent to complain about this. Mr Ferguson explained that the Respondent simply decided to waive any of these charges as a gesture of goodwill notwithstanding that the sums had been spent necessarily on the development. There was an acceptance by the Respondent that perhaps residents hadn't been communicated enough about it all in advance and so they were willing to write off the whole charge.

Mr Gerry McQuade

[19] Mr McQuade manages billings for the Respondent. He spoke to the Respondent's invoices and referred the Tribunal to the relevant invoices sent to the Applicant. Mr McQuade explained that he had personally met the Respondent on 1 April 2024 to discuss the Applicants' concerns. He explained that there had been some miscommunication between the parties about setting up that meeting as Mr McQuade was on holiday and had overlooked confirming the final arrangements of the meeting.

[20] Mr McQuade did then meet with the Applicant and talked her through the invoices issued. Mr McQuade then made himself available to discuss matters directly with the Applicant on the phone whenever required by the Applicant. Mr McQuade explained that the Applicant had actually been deliberately withholding payment of her invoices. The sum of £614.35 was written off by Mr McQuade on 29 April 2024.

Comment on evidence

[21] The Tribunal was impressed with the evidence of both Mr Ferguson and Mr McQuade. They both appeared very knowledgeable about the relevant issues and their responses. They appeared to address each and every one of the allegations made by the Applicant in a very reasonable and considered manner. By contrast the Applicant's evidence appeared scattergun and unfairly critical of the Respondent. Her evidence did not seem balanced or seem to take into account the very reasonable explanations offered by Mr Ferguson and Mr McQuade. The Tribunal was left with the impression that the Applicant's criticism were unwarranted and unfair.

[22] It was true that the Respondent had failed to action a hard copy letter of complaint sent to them by the Respondent within the timescales set out in their written statement of services but in isolation the Tribunal did not consider this to be a significant failing. The evidence also suggested that the parties were in frequent contact with each other around this time in any event. The Respondents did accept that they may not have communicated well with home owners in general on some matters, such as when new areas of maintenance were increasing costs, but were reflective and appeared keen to improve their communication methods.

[23] The Tribunal actually couldn't understand why the Respondent agreed to write off £614.35 from the Applicant's account. There appeared little justification for that as the Tribunal considered virtually all of the Applicant's complaints to be without justification. The Tribunal suspected that the Applicant had received an undeserved windfall simply by virtue of making regular complaints. The Respondent clearly acted diligently in the management of the shrub beds and the green spaces. The invoices were clear and self-explanatory. The Respondent cut the grass in the way they considered best

taking account of ground conditions. The Respondent managed the bin issues appropriately. The play park equipment was managed appropriately. The Respondent clearly did carry out their duties within the meaning of Section 17 (5) of the Act.

[24] Having heard from parties, The Tribunal made the following findings in fact

Findings in fact

1. *The Applicant is the proprietor of 1A Corthan Court, Thornton, Kirkcaldy, KY1 4BS. The Respondent commenced operating as the relevant property factor for the development in July 2009. The Applicant took entry into the Property on 18 December 2009.*

2. *The Respondent provided the Applicant with a written statement of services in June 2013 which was at the first billing point after the Act came into force. This document also identified the areas of open space managed and maintained by the Respondent for which residents were billed.*

3. *The Respondent's management and maintenance of the open space areas at Lochty Meadows comprises regular inspection and monitoring by experienced staff. The Respondent has adequate provision for the management and maintenance of the open spaces in the development which is regularly inspected and maintained.*

4. *The appointed ground maintenance contractor since 2020 is Kene Landscape Services Limited. They attend the development every two weeks between April and October and every month between November and March.*

5. *The Play area in the development is regularly inspected by a specialist contractor Active Playground Management Ltd.*

6. *The relevant areas are all adequately managed and maintained by the Respondent in accordance with their obligations as Property Factor.*

7. *The Respondent operates a customer care charter which is referred to in its written statement of services under the heading "Communications Arrangements". This makes adequate provision for managing customer care issues. The Respondent also had an adequate complaints procedure detailed in its written statement of services.*

8. *The Applicant sent the Respondent a letter headed "Official Complaint" dated 11 September 2023. This letter appeared to have been misfiled by the Respondent who has no record of having received or retained it. Nevertheless, the parties were frequently in communication at the time and when this issue was identified, the Respondent took steps to engage swiftly with the Applicant regarding her complaint.*

9. *The Respondent has adequately managed the shrub beds in the development. The Respondent has adequately addressed misuse of the bins in the development by removing them as they were incorrectly being used to deposit dog waste.*

10. *The playparks on the development are adequately inspected.*

11. *The Respondent's invoices which have been issued to the Applicant are suitably clear and straightforward to understand.*

12. *The Applicant has been credited with the sum of £614.35 by the Respondent for reasons which appear less than justified.*

13. *The Respondent carried out their Property Factor Duties adequately.*

[25] Having made the above findings in fact, the Tribunal then proceeded specifically to consider each part of the Codes said to have been breached by the Respondent.

[26] The Applicant had submitted two separate C1 and C2 Forms. C1 is the Form used to bring proceedings for alleged breaches of the 2012 Code and C2 is the Form used to bring proceedings under the 2021 Code. The 2021 Code took effect from 16 August 2021. The 2012 Code remains in force for any allegations of breaches which pre-date 16 August 2021.

[27] The Applicant's Forms are largely identical and set out the same paragraph numbers of the Code in each Application notwithstanding that those parts of the Code are not then identical in each Code. The Tribunal suspects that this might have been done inadvertently by the Applicant.

[28] The relevant Sections founded upon under the 2012 and 2021 Codes and the Tribunal's decision on each is as follows:

2012 Code

*"*2.5 *You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1refers)."*

[29] The Applicant's letter of complaint which was said to be unanswered within the requisite timescales was dated 11 September 2023. This post-dates 16 August 2021 and so this allegation is incompetently included in the Form C1 submitted. It falls to be rejected. In any event, the Tribunal accepts that the Respondent missed a single letter sent to them as a complaint by the Applicant. The Tribunal however cannot conclude that this isolated and minor incident could reasonably amount to a breach of this paragraph. Even if it did and had been included in the Form C2 rather than the Form C1, the Tribunal would not have made any Property Factor Enforcement Order in respect of any breach. It was clear that the parties were in frequent contact with each other and the Tribunal is impressed with the Respondent's professionalism in respect of handling the Applicants allegations.

"3.3 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance."

[30] The Tribunal finds there to be no breach here. The Respondent's invoices are suitably clear and the Respondent has taken great care to answer any of the Applicant's queries.

"7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors."

[31] The Tribunal finds that there to be no breach here and that the Respondent has the appropriate policies in place.

2021 Code

"2.5 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for

dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors."

[32] The Tribunal finds there to be no breach here.

"3.3 All property factors should be aware of the threat of money laundering and must comply with all relevant legislation and guidance to minimise the risk that they and their business will be used to launder the proceeds of crime."

[33] The Tribunal finds there to be no breach here.

"7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.
The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*
- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*
- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*
- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*
- *Where the property factor provides access to alternative dispute resolution services, information on this.*

[34] The Tribunal finds that there to be no breach here. The appropriate policies are all in place.

Property Factor Enforcement Order

[35] Having made the above findings, the Tribunal found no basis for making a Property Factor Enforcement Order in terms of Section 19 (2) of the Act. The Tribunal therefore made no such order.

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.

Andrew McLaughlin

_____ **26 March 2025**

Legal Member