



**First-tier tribunal for Scotland (Housing and Property Chamber)
(the tribunal)**

**Decision on homeowners' application: Property Factors (Scotland) Act 2011
(the 2011 Act), Section 19(1)**

Chamber Ref: FTS/HPC/LM/23/4475

Property: Plot 60, 244 Myreside Street, Glasgow, G32 6DX ("the Property")

Parties:

**Mr Gary Mckie, Plot 60, 244 Myreside Street, Glasgow, G32 6DX ("the
Applicant")**

**Newton Property Management Limited, 87 Prot Dundas Road, Glasgow, G4
0HF ("the Respondent")**

Tribunal Members:

**Ms Susanne L. M. Tanner K.C. (Legal Member)
Mrs Helen Barclay (Ordinary Member)**

DECISION

- 1. The Respondent has failed to ensure compliance with section 3.2 of the Code of Conduct, as required by section 14(5) of the 2011 Act (the section 14 duty), in that the Respondent's processes for identifying and correcting erroneous invoicing to homeowners are not clear and transparent.**
- 2. The tribunal proposes to make a Property Factor Enforcement Order (PFE0).**
- 3. The decision of the tribunal is unanimous.**

STATEMENT OF REASONS

1. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as 'the 2011 Act', the Code of Conduct for Property Factors as 'the Code of Conduct' and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) as 'the 2017 Rules'.

Procedural Background

2. The Applicant made an application to the tribunal on 12 December 2023, in terms Section 17(1) of the 2011 Act and the 2017 Rules.
3. The Applicant made allegations that the Respondent had failed to comply with the Code of Conduct, sections 1.1A, 3.2 and 6.10 (later amended at the CMD on 6 February 2025, as discussed below).
4. The tribunal issued its first three Directions as follows: Number 1 on 26 June 2024; number 2 on 1 September 2024 (superseded number 1); and number 3 on 26 September 2024.
5. A Case Management Discussion (CMD) was scheduled to take place on 16 October 2024 but was unable to proceed on the day due to technical difficulties. It was adjourned. Notes on the CMD were produced by the tribunal and sent to the parties after the CMD. The procedural history to that date is outlined in the Notes on the CMD, which are referred to for their terms.
6. The tribunal issued a fourth Direction on 1 February 2025.
7. The adjourned CMD was fixed for 6 February 2025. Both parties lodged written submissions prior to 6 February 2025. The Applicant's submission of 29/1/25 (1628h) included a timeline which referred to embedded documents, however, the attachments could not be opened by the tribunal's administration due to its document policy.
8. A Case Management Discussion (CMD) took place on 6 February 2025. The Applicant attended and was unrepresented. Ms Flanagan from the Respondent attended and was unrepresented.
9. At the CMD, the Applicant **withdrew his allegations in terms of Section 1.1A and 6.10 of the Property Factor's Code of Conduct**; and is insisting on his allegation that the Respondent has not complied with **section 3.2 of the Code of Conduct, bullet point 2**.

10. At the CMD, parties confirmed admitted matters of fact. They each made submissions with reference to the admitted matters of fact and the relevant evidence lodged. The tribunal identified that a copy of the supporting documents referred to in the timeline in the Applicant's submission of 29 January 2025 was required; as well as documents relating to the 2018 supplier invoice which was not issued to the Applicant until 2023. It was agreed that these would be sought by Direction following the CMD. Both parties confirmed that after the Direction was issued and responded to, they wished the tribunal to proceed to reach a decision on the Application on the basis of the admitted matters of fact, relevant evidence lodged and the parties' written and oral submissions. Notes on the CMD were produced by the tribunal and sent to the parties, which are referred to for its terms. The parties' submissions and evidence on the remaining ground in the Application are discussed further in this statement of reasons, below.
11. On the same date as the CMD on 6 February 2025, the tribunal issued Direction number 5, ordering the Applicant to produce the additional documents referred to above. The Applicant requested an extension to submit the documents by 3 March 2025. Direction number 5 was superseded by Direction number 6 dated 23 February 2025 (providing a later date for submission of documents).
12. A CMD was fixed for 18 March 2025. It was agreed that parties' attendance would be excused if the documents were produced and the tribunal was satisfied that it could reach a decision on the basis of the information before it without requiring to hear further from parties.
13. On 27 February 2025, the Applicant responded to the tribunal's Direction number 6 and provided an accessible version of the documents referred to in the timeline; and the documents relating to the 2018 invoice which was rendered in August 2023 (288 pages). A copy of the bundle was sent to the Respondent.
14. Nothing further was submitted by either party.
15. The parties' attendance was excused from the CMD on 18 March 2025. The tribunal deliberated in relation to the remaining ground in the Application. In doing so, the tribunal took cognisance of the admitted matters of fact, all relevant evidence, including the documents produced by the Applicant in response to Direction number 6 and both parties' written and oral submissions on the remaining ground.

Findings in Fact

16. In or about 2018, the Applicant purchased the Property in the development in which the Property is situated (the Development).

17. The Respondent produced a Written Statement of Services (WSS) for the Development and issued it to homeowners, including the Applicant.
18. The Respondent issued three erroneous invoices to the Applicant for £1.55 on 8 February 2023, £1.78 on 15 August 2023 and £6.60 on 10 August 2023.
19. All three erroneous invoices were issued as a result of human error by the Respondent's employees acting in the course of their employment.
20. All three invoicing errors were identified by the Applicant rather than the Respondent.
21. The Applicant notified the Respondent about the invoicing errors.
22. All three invoicing errors have since been rectified by the Respondent crediting the amounts incorrectly invoiced to the Applicant's account.
23. The Applicant raised concerns with the Respondent about the lack of clarity and transparency in its processes for identifying erroneous billing and requested details of the processes.
24. The WSS does not contain details of the Respondent's processes for identifying erroneous billing or correcting any errors identified.
25. The Respondent has not provided Applicant with details of its processes for identifying erroneous billing or correcting any errors identified.
26. The Respondent offered to provide the Applicant with access to the underlying supplier invoices for free at its offices and/or to provide copies of the invoices for 12 months for free.
27. The Respondent's processes for identifying and managing erroneous billing to homeowners are not clear and transparent.

Findings in Fact and Law

28. The Respondent has refused to resolve, or unreasonably delayed in attempting to resolve, the Applicant's concerns, in terms of section 17(3)(b) of the 2011 Act.

Discussion

29. The Applicant alleges that the Respondent has not complied with **section 3.2 of the Code of Conduct**, bullet point 2: *'That the overriding objective of [section 3]*

is that property factors ... provide clarity and transparency for homeowners in all accounting procedures undertaken by the Property Factor.'

30. There is no dispute about the underlying facts. There is a Written Statement of Services for the Development within which the Property is situated (the Development). The Respondent issued three invoices to the Applicant which contained erroneous amounts: an invoice for electricity on 8 February 2023 - £1.55; an invoice for a bulk uplift on 27 January 2023, issued on 15 August 2023 - £1.78; and an invoice for a management fee from 20 November 2018, issued on 10 August 2023 - £6.60. All three invoicing errors were identified by the Applicant, rather than the Respondent. The Applicant notified the Respondent about the errors and his concerns. All three errors have since been rectified by the Respondent by crediting the Applicant's account with the three sums.
31. The Applicant submitted that there is a lack of clarity and transparency in the Respondent's accounting procedures in relation to invoicing errors. He stated that the three admitted errors were only rectified as a result of him identifying them and raising the issues with the Respondent. He is not satisfied that the Respondent's processes for identifying and managing invoicing errors are clear and transparent. He thinks that the processes should be more clearly specified. He submitted that this should be done in the Respondent's Written Statement of Services (WSS). He said that the WSS, para. 5.1, makes no reference to how the Respondent will manage any inaccurate billing by them, or what controls they have in place to monitor, or correct this. The Applicant also referred to the charge for requesting copy invoices from the Respondent but confirmed at the CMD that the Respondent later offered to provide 12 months of invoices for free and to provide access at its offices to the older archived invoices. The documents produced by the Applicant after the CMD confirm this in an email dated 11 August 2023. The Applicant submits that as a result of the Respondent's failure to produce details of its processes for identifying and managing invoicing errors, Section 3.2 of the Code of Conduct, bullet point 2, has been breached by the Respondent.
32. The Respondent disputed that there has been any failure to comply with the Code of Conduct. The Respondent accepted that the WSS does not specify how the Respondent will manage inaccurate billing, or what controls they have in place to monitor, or correct any identified errors. However, the Respondent did not accept that this amounted to a failure to comply with the Code of Conduct part 3.2, bullet point 2. The Respondent submitted that the Code of Conduct section 1.1A does not require the Respondent to outline in the WSS its accounting processes for identifying manual invoicing errors. The only process referred to by the Respondent in submissions was its existing complaints process which allows any concerns to be raised by homeowners. The Respondent submitted that the WSS permits the Respondent to charge £5 per invoice

requested and stated that as a matter of fact, the Applicant was offered 12 months of invoices and was also offered the chance to come into the office to see them in full, for free (which was confirmed by the Applicant in his submissions, as above).

33. It appears to the tribunal that there is a mis-match between the Applicant's key concern in the amended Application and the Respondent's response. The tribunal considers that the Respondent's offer to the Applicant to provide 12 months of supplier invoices for free, or to allow all invoices to be consulted at their offices, is missing the key concern. The Applicant is concerned that there is a lack of clarity and transparency in the Respondent's processes for identifying and managing invoicing errors (i.e. by the Respondent rather than relying on homeowners identifying errors) and that despite his requests, details of the process have not been provided by the Respondent.

34. The tribunal notes (although not specifically relied on by either party in submissions) that the WSS provides in Section D, Communication Arrangements:

'... (b) If you would like information, documents and policies or procedures that may help you understand our work, please write to you local Newton Office. We may not share commercially sensitive information with you.'

35. The Applicant has requested details of the procedures for identifying and managing invoicing errors and the Respondent has failed, or delayed, to provide them. For example, the tribunal was provided with evidence in the documents sent in response to the Direction of 6 February 2025, the following correspondence from the Applicant to the Respondent:

'The onus is on you to prove your billing is accurate, as I've already identified errors with the previous cycles. I have read your written statement 5.1 on the charges but I did not identify anywhere within stating how you'd manage erroneous billing or validation.' (Page 71 of 288, 11 August 2023).

36. The Respondent has not provided evidence of details of their processes or procedures for identifying or managing invoicing errors, either to the Applicant, or to the tribunal. The Applicant has not been shown a policy or procedure in relation to this matter that would help him to understand the Respondent's work. It is unclear on the evidence of the Respondent whether there is such a written procedure which has not been provided; or whether there is no such written procedure. There was no submission by the Respondent that the information sought by the Applicant exists but is commercially sensitive.

37. The tribunal is satisfied that the Respondent has not complied with the Code of Conduct, para 3.2, bullet point 2, in respect of a lack of clarity and

transparency in the Respondent's processes and procedures for identifying and managing invoicing errors.

Proposed Property Factor Enforcement Order

32. Because the tribunal has found that there has been a failure to comply with the Code of Conduct, it proposes to make a Property Factor Enforcement Order (PFEО). The terms of the proposed PFEО are set out in the attached Notice in terms of Section 19(2) of the 2011 Act.
33. In considering the PFEО, the tribunal took into account both parties' submissions on remedy and the terms of any such order.
34. The Applicant is not seeking financial compensation. He said that he rejected the Respondent's offer of a bill for management fees being waived (the email from the Respondent to the Applicant dated 11 August 2023 shows the offer to waive the '*next management fee*'.) The Applicant said that he intends to pay his outstanding invoices. He said that his purpose with the Application is to ensure greater transparency and accuracy by the Respondent in relation to invoicing. He said that is why he had hoped to engage with the Respondent to settle the matter outwith the tribunal process.
35. The Applicant seeks:
- a. That the Respondent is ordered to put provisions in the WSS for the Development to provide clarity as to how they handle, prevent and control invoicing errors; and
 - b. a guarantee that he will not be penalised for not signing up to the Respondent's Direct Debit scheme for his outstanding invoices.
36. In response, the Respondent submitted that it is not practical to put the Respondent's detailed processes for accounting in the WSS and it does not believe that there is any requirement in the Code of Conduct to do so.
37. The tribunal is not persuaded by the Applicant's submission that the Respondent's processes for identifying and managing invoicing errors should be incorporated in detail in the WSS. The WSS for any development is intended to be a high level document, which complies with the requirements of the Code of Conduct. It may be supplemented by other policies and procedures. However, the tribunal considers that it is reasonable that the Respondent is required to provide clarity and transparency of the details of its processes and procedures for identifying and managing invoicing errors. The tribunal proposes to include an order to that effect in the PFEО.

38. The tribunal also considered the Applicant's request that a guarantee is given that he will not be penalised for not signing up to the direct debit scheme for paying invoices. This is a matter which relates to the way in which the Applicant chooses to pay his invoices for factoring services. The tribunal does not propose to frame such an order. The Applicant indicated during the CMD on 6 February 2025 that he intends to pay his outstanding invoices to the Respondent. If he does not do so (whether by direct debit, or otherwise), the Respondent can, of course, follow its existing processes to deal with arrears.
39. Despite the extremely small amounts involved in the three invoicing errors underlying this complaint and the fact that credits were made to the Applicant's account by the Respondent after he identified the errors, the tribunal would have considered proposing an order for payment by the Respondent to the Applicant for his time and inconvenience in relation to the allegation which forms the basis of this Application, as amended. However, the Applicant indicated to the tribunal that he is not seeking a financial order, so no such order is proposed.
40. The parties are entitled to make representations on the proposed PFEO.

Appeals

- 41. 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.**

Ms Susanne L M Tanner KC
Legal Member
3 May 2025