

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 (“The Act”)

Reference number: FTS/HPC/PF/23/3717

Re: Property at 1 Crescent Grove, Scotstounhill, Glasgow, G13 3RE (“the Property”)

The Parties:

Mr Calum McLenachan, 1 Crescent Grove, Scotstounhill, Glasgow, G13 3RE (“the Applicant”)

Homesbook Factoring Ltd, 111 Cowgate, Kirkintilloch, Glasgow, G66 1JD (“the Respondent”)

Tribunal Members:

Legal Member: Mr Andrew McLaughlin

Ordinary Member: Ms Sandra Brydon

Background

[1] By Application in Form C2, the Applicant seeks a determination that the Respondent has failed to comply with The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors 2021 (“*The Code*”). That Application also answers “*yes*” to the question: “*Does your complaint relate to a failure to carry out the Property Factor’s duties?*” Section 17 (5) of the Property Factors (Scotland) Act 2011 sets out the definition of “*Property Factor’s duties*”. In response to case management orders made by the Tribunal in the form of Directions, the Applicant subsequently submitted detailed representations regarding the alleged breaches of the Code and the Property Factor’s duties.

[2] The Respondent submitted somewhat brief representations restricted largely to denying the allegations.

The Hearing

[3] The Application called for a Hearing at Glasgow Tribunals Centre at 10am on 24 March 2025. The Applicant was present along with his partner, Ms Karen Coyle. The Applicant gave evidence and Ms Coyle also gave some supplementary evidence in respect of the Applicant's sixth allegation regarding failing to correct invoices. The Applicant also brought a neighbour, Mr Kenneth Anderson as a witness who likewise gave evidence in a limited scope regarding the alleged failure to repair the loose drain cover. The Respondent was represented by their own Mr Craig Rodger who is a director of the company and who managed the Respondent's activities for the development the Property is situated in. Mr Rodger was accompanied by a Mr Wilson McMillan who likewise gave evidence in a limited scope to supplement Mr Rodger's evidence in certain areas. Parties had the opportunity to cross-examine each witness and to present closing submissions after all evidence had been heard.

[4] Neither party had any preliminary matters to raise. Both sides confirmed that they were content for the Hearing to commence. The Tribunal began by enquiring whether parties might like the opportunity to discuss their differences outside the Tribunal room to see if a resolution could be reached. The Applicant confirmed he was unwilling to engage in any such settlement discussions. Accordingly, the Tribunal began hearing evidence.

[5] The Tribunal considers each party's evidence on each point in turn.

Allegation 1- false and misleading information regarding the erection of a sign contrary to OSP 2 and 4.

Applicant's evidence

[6] The Applicant explained that the Respondent failed to erect a sign to the development despite multiple assurances that they would do so and that the Respondent's Mr Craig Rodger provided inaccurate and misleading information regarding the sign. The Applicant explained that the Respondent's Estate Handout of October 2020 stated that the Respondent would erect a sign at the entrance to the development. On 15 May 2021, Mr Rodger informed the residents that he had ordered the sign. On 25 June 2021, Mr Rodger informed the Applicant that the order had been placed with a company called "sign of the times" and that this would take four weeks.

[7] On 26 November 2021, Mr Rodger then informed the residents that "*we have put a job out to another supplier as the current company we use is too busy.*" On 22 April 2022, Mr Rodger informed the residents that the Respondents "*now have the sign and I will arrange for this to be fitted ASAP.*" On 29 April 2022, Mr Rodger advised the residents that the Respondent would arrange for the sign to be fitted "*next week*". On 10 March 2023, Mr Rodger advised the residents that the "*Sign company will have this fitted within the next 14*

days Ive just spoken to there (sic) director.” On 21 April 2023, Mr Rodger then informed the Applicant’s partner that “if the owners want the sign, they will be invoiced.” The Applicant explained that the Respondent’s statements were clearly contradictory and confusing.

Respondent’s evidence

[8] Mr Rodger accepted that the sign “took far too long”. He gave evidence that there was a dispute about who actually owned the pillar that the sign was going to be placed on. Nothing was said to dispute the Applicant’s account of the situation.

Allegation 2. (Property Factor’s duties complaint) the Respondent failing to comply with their obligations to keep the bin area clean and tidy.

Applicant’s evidence

[9] The Applicant referred to the Respondent’s Written Statement of Services “WSS” which provides that “ *it is the Company’s responsibility to arrange and oversee the general upkeep of factored buildings, ensure that common parts are maintained to a high standard and that all necessary repairs are carried out.*”

[10] The Applicant gave evidence that the bin area was frequently left messy although the evidence appeared to suggest that it was the continual presence of leaves that caused the nuisance. The Applicant had also referred in his written submissions to an apparent admission by a Wilson McMillan that the Respondent did not keep the bin area tidy.

Respondent’s evidence

[11] Mr Rodger gave evidence that the bin shelter area was cleaned once a month during winter and twice a month during summer. He also spoke about carrying out annual gutter cleans. In the Respondent’s written representations, Mr Rodger stated that it was “*not the factor’s remit to pick up refuse dropped by residents.*” It was explained that there were overarching branches from which leaves routinely fell into the bin store and that this had been an issue since before the Respondent’s tenure as Property Factor.

Allegation 3. False and Misleading information regarding the replacement of the loose and dangerous drain cover contrary to OSPs 2 and 4.

Applicant’s evidence

[12] The Applicant’s evidence was that on his initial meeting with the residents of the development on 7 October 2020, Mr Craig Rodger himself highlighted how dangerous the loose drain cover was. The Applicant’s neighbour- Mr Kenneth Anderson informed Mr Rodger on 31 January 2022 that there was a two-year-old in the development who was seen jumping up and down on the drain cover. Mr Anderson apparently expressed

concern and remarked that he would hate to think what would happen if there was an accident. The Applicant's evidence was that on 17 February 2022, Mr Rodger informed the residents that *"I have ordered a new cover for the drain from Marley"*. On 22 April 2022, Mr Rodger explained that he would *"chase McNair for this."* On 10 March 2023, Mr Rodger said that the previously employed gardener *"will deal with this in the month of April"*. On 21 April 2023, Mr Rodger informed the Applicant's partner that *"if the owners want the drain cover. they will be invoiced."*

[13] Mr Kenneth Anderson himself also gave evidence in support of this Application. His evidence corroborated the evidence of the Applicant. Mr Anderson himself seemed frustrated with his own dealings with the Respondent.

Respondent's evidence

[14] Mr Rodger explained that the drain cover is not a drain cover but is actually an access point. Mr Rodger described difficulties in obtaining a replacement and described going to Marleys drain covers and having difficulties in getting a replacement. He accepted that at the very least the Respondent's correspondence *"should have been better."*

Allegation 4- failure to paint or fix the bin shelter area, and failure to account for how the 'regeneration fund was spent contrary to OSPs 2,4 and 6 and paragraph 3.4.

The Applicant's evidence

[15] The Applicant explained that the residents paid an £800.00 *"regeneration fee"* as requested by the Respondent. These works were detailed by Craig Rodger in an e-mail to the residents which was sent on 28 January 2021. That e-mail said the regeneration fee is to cover:

"All the work that we will be doing to bring the ground up to a better standard and we will be putting better drainage in and laying approx 6 tonne of stone planting new shrubs and cutting back a lot of overhanging branches shrubs and bushes, we will also paint the bin shelter area once the dryer weather comes in."

[16] The Applicant explained that the bin area was not painted and the works were not all carried out. The Applicant explained that there was a real lack of financial transparency about what happened to the money.

Respondent's evidence

[17] Mr Rodger explained that in respect of the Regeneration fee, the Respondent received a quote from Robbie (the gardener) to remove the moss and membrane and that the Respondent also did the gutters.

[18] As for the allegation that the Respondent had failed to paint the fence in the bin area, Mr Rodger accepted that the Respondent had said that they would paint two panels of fencing in the enclosed bin area- but that the wood had softened and that painting it was no longer viable. He made reference to getting a quote for painting it in March 2022.

[19] In the Respondent's written representations, Mr Rodger wrote that *"Regeneration was ongoing at Crescent Grove. The matter of the bin area fence became an issue. Original inspection showed that due to rot a new fence was required. I deny this part of the Application."*

Allegation 5- Failure to account for how "ground maintenance fee" was spent in breach of Sections 3.1,3.2 and 3.4 of the Code

Applicant's evidence

[20] The Applicant's position was that Crescent Grove is a small development but between February 2021 and October 2022, the residents collectively paid the Respondent approximately £5,799.00 for *"grounds maintenance"*. The Applicant's position was that the only services that were provided during this time period were gardening work carried out by Robbie Anderson, two gutter cleans and some replaced lightbulbs. The Applicant explained that he had sought further clarification from the Respondent as to what services were provided for the fees and had received an email from Wilson McMillan which stated *"Homes book inform me that they will be providing you with a detailed description of all activities and work carried out."*

[21] The Applicant considers that this is a breach of the Section 3.4 of the Code which states that a Factor must provide, at least once a year : *'a detailed description of the activities and works carried out which are charged for'*.

The Respondent's evidence

[22] Mr Rodger stated in his written representations that *"I am of the opinion that our monthly invoices to clients satisfy the requirement of the code of Conduct in regard to financial obligations. I deny this part of the Code."* Mr Rodger's evidence did little to supplement this and he simply more or less maintained that the Respondent met all their obligations under the Code.

Allegation 6- Failure to rectify incorrect invoices

Applicant's evidence

[23] Ms Karen Coyle explained that the Respondent's software system *"Xero"* continued to suggest that the Applicant and Ms Coyle were in debt to the Respondent despite having paid their invoices. Ms Coyle explained that this caused them anxiety.

Respondent's evidence

[24] Mr Rodger explained that this was probably a mix up and he had instructed the 'girls in the office' to reconcile the invoices and that it wasn't a problem. In the Respondent's written representations, Mr Rodger had written *"I am satisfied that the invoices sent to the owners at Crescent Grove were accurate and would refer you to the findings of Mr McMillan on this matter. I deny this part of the Application."*

Comment on the Evidence

[25] The Tribunal found the Applicant, Ms Coyle and Mr Anderson to be entirely credible and reliable. They were well informed about the issues in dispute and courteous in their explanations. They came across as being reasonable people concerned by the Respondent's actions. The Tribunal had no reason to disbelieve their accounts of the facts in any situation which was corroborated by the written materials.

[26] Mr Rodger by contrast came across as somewhat disinterested and casual in his approach. The Respondent was no longer the relevant Property Factor and had only been the factor from February 2021 to June 2023. He very much implied to the Tribunal in his evidence that he considered the development as being too small to be profitable for the Respondent. He said on more than one occasion that *"we just wanted away from the development."* He didn't come across as being particularly interested in the details and was blasé about many of the Applicant's concerns. His evidence about the 'regeneration fund' was lacking in any detail. The Tribunal would have expected the Respondent to establish exactly what this was for and how and when precisely the money was used. Instead, the Tribunal was effectively supplied with little more than some casual remarks on the matter from Mr Rodger.

[27] The Tribunal was also somewhat puzzled by the involvement of Mr Wilson McMillan. He was brought as a witness and appeared to have been used by the Respondent as some sort of external complaint handler who was not employed by the Respondent. This might be intended to give the impression that Mr McMillan is impartial in his approach to the Respondent's general handling of complaints. However, the Tribunal found this to be somewhat unclear as the exact status and financial ties between Mr McMillan and the Respondent are unclear. The Tribunal was therefore cautious about attaching significant weight to anything Mr McMillan said about the issues. That being said, Mr McMillan's evidence was in limited scope in any event. Originally at the outset of the Hearing, Mr Rodger had indicated that Mr McMillan was only there to observe. However, after he had concluded his own evidence, Mr Rodger stated that he wanted the Tribunal to hear from Mr McMillan and so this was allowed. Mr McMillan's evidence was in short compass and seemed to mostly refer to what Mr McMillan thought about the Respondent's complaint handlings.

Findings in fact.

[28] Having heard evidence and having considered all the relevant documentation, the Tribunal made the following findings in fact:

1. *The Applicant is the proprietor of the property known as 1 Crescent Grove, Scotstounhill, Glasgow, G13 3RE.*
2. *The Respondent was the relevant Property Factor within the meaning of the Property Factors (Scotland) Act 2011 for the development within which the Property is situated from February 2021 to June 2023.*
3. *During the period of the Respondent's appointment as Property Factor, the Respondent failed adequately to communicate with residents and sent confusing and contradictory messages about the state of various works they themselves had agreed to carry out. This included erecting a sign at the development and replacing what the residents had understood to be a damaged drain cover.*
4. *On 17 February 2022, the Respondent's Mr Craig Rodger informed the residents that "I have ordered a new cover for the drain from Marley". On 22 April 2022, Mr Rodger explained that he would "chase McNair for this." On 10 March 2023, Mr Rodger said that the previously employed gardener "will deal with this in the month of April". On 21 April 2023, Mr Rodger informed the Applicant's partner that "if the owners want the drain cover, "they will be invoiced".*
5. *On 15 May 2021, Mr Rodger informed the residents that he had ordered a sign which the Respondent themselves had agreed to install in the development. On 25 June 2021, Mr Rodger informed the Applicant that the order had been placed with a company called "sign of the times" and that this would take four weeks. On 26 November 2021, Mr Rodger informed the residents that "we have put a job out to another supplier as the current company we use is too busy." On 22 April 2022, Mr Rodger informed the residents that the Respondents "now have the sign and I will arrange for this to be fitted ASAP." On 29 April 2022, Mr Rodger advised the residents that the Respondent would arrange for the sign to be fitted "next week". On 10 March 2023, Mr Rodger advised the residents that the "Sign company will have this fitted within the next 14 days Ive just spoken to there (sic) director." On 21 April 2023 Mr Rodger then informed the Applicant's partner that "if the owners want the sign, they will be invoiced."*
6. *The Respondent's communications about the sign and the drain cover were confusing and contradictory.*
7. *Leaves frequently fall into the development's bin area. The Applicant believes the Respondent has not adequately maintained the area. The Respondent explained that steps*

were taken to maintain the area. There is insufficient evidence to conclude that the Respondent has failed to keep the bin area tidy in breach of their duties.

8. *The Applicant's partner, Karen Coyle, received notifications through the Respondent's online invoicing system that she was indebted to the Respondent despite the Applicant's account being paid up to date. The Respondent was slow to resolve this issue.*
9. *The Respondent has failed adequately to explain what the "regeneration fund" charged to all residents was for and how exactly this money was used.*
10. *The Respondent has failed adequately to identify exactly what ground maintenance works were carried out between February 2021 and October 2022 that gave rise to the costs incurred in that period of around of £5,799.00.*

Decision

[29] Having made the above findings in fact, The Tribunal decided that certain of the Applicant's allegations were well founded.

[30] The Tribunal considered that the following standards and paragraphs of the Code have been breached.

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

[31] The Tribunal concludes that the Respondent has breached this standard. The Tribunal considers that the Respondent's dealings with the Applicant regarding the drain cover, the sign, the failure to provide information regarding the regeneration fund and to provide the precise details of the ground maintenance works for the period from February 2021 and October 2022, fell short of this standard.

"OSP4. You must not provide information that is deliberately or negligently misleading or false."

[32] The Tribunal concludes that the Respondent has breached this standard. The Tribunal concludes that the Respondent's dealings with the Applicant in respect of the drain cover and the sign were either deliberately or negligently misleading or false.

"OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective."

[33] The Tribunal concludes that the Respondent has breached this standard. The Tribunal concludes that the Respondent's dealings with the Applicant in respect of the drain cover and the sign were not provided using reasonable care and skill and in a timely way.

"3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. 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. If a property factor does not charge for services, the sections on finance and debt recovery do not apply. "

[34] The Tribunal concludes that the Respondent has breached this paragraph as a result of the failure to provide information regarding the regeneration fund and to provide the precise details of the ground maintenance works for the period from February 2021 and October 2022.

"3.2 The overriding objectives of this section are to ensure property factors:

- protect homeowners' funds;*
- provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;*
- make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income"*

[35] The Tribunal concludes that the Respondent has breached this paragraph as a result of the Respondent's failure to provide information regarding the regeneration fund and to provide the precise details of the ground maintenance works for the period from February 2021 and October 2022.

"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."

[36] The Tribunal concludes that the Respondent has breached this paragraph as a result of the failure to provide information regarding the regeneration fund and to provide the precise details of the ground maintenance works for the period from February 2021 and October 2022.

[37] The Tribunal concludes that there is insufficient evidence to conclude that the Respondent failed to carry out their “*Property Factor’s Duties*” in respect of maintaining the bin area and painting the fence.

Proposed Property Factor Enforcement Order

[38] Having made the above findings in respect of the sections of the Code said to have been breached and having set out the reasons for those findings, the Tribunal proposes to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[39] The Tribunal considers that appropriate remedy for the breaches established, is to order that the Respondent “*execute certain action*” in terms of Section 20 (1) (a) of the Act. The action that will be ordered is as follows:

1. The Respondent must provide the Applicant with a detailed breakdown of all ground maintenance works carried out and invoiced for the period from February 2021 and October 2022. This must explain the precise dates and times specific tasks were carried out and how the charges invoiced to residents were calculated.
2. The Respondent must provide the Applicant with a detailed breakdown of all sums collected as a “*regeneration fund*” and provide precise details of exactly how this money was spent.
3. The Respondent must provide a reflective account of how it has improved its practices in light of the findings in the decision.

[40] The Tribunal orders that the above steps are completed within one month of the date of this decision.

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.

Legal Member/Chair

2 May 2025
Date