



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/LM/21/0858

Re: Property at 42 Dykebar Avenue, Knightswood, Glasgow, G13 3HF (“the Property”)

Parties:

Lorraine Gray 42 Dykebar Avenue, Knightswood, G13 3HF (“the Applicant)

Lowther, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the respondent”)

Tribunal Members:

Mr Jim Bauld (Legal member)

Mr Robert Buchan (Ordinary Member)

Background

1. By application dated 11 April 2021, the homeowner applied to the Tribunal for a determination on whether the factor had failed to comply with various sections of the Code of Conduct for Property Factors imposed by section 14 of the Property Factors (Scotland) Act 2011 and to carry out the property factor duties in terms of section 17 (1) (a) of the Property Factors (Scotland) Act 2011 (hereafter referred to as “the Act”).
2. On 4 May 2021 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A hearing was set to take place on 9 July 2021 and appropriate intimation of that hearing was given to the parties .

Hearing

4. The hearing took place before the Tribunal on 9 July 2021 by means of a telephone case conference. The applicant was present at the hearing. The respondent was neither present nor represented at the hearing.



5. At the commencement of the hearing, the Chair of the Tribunal explained to the applicant the procedure which would be adopted and the overriding objective of the Tribunal. The Tribunal then proceeded to ask certain questions of the applicant and listened to her responses. The Tribunal noted the position of the applicant with regard to each of the alleged breaches of the Code

Discussion at the hearing

6. The applicant explained to the tribunal that she is the owner of the property which is an upper floor flat in a traditional “four in a block” building. She has exclusive use and ownership of a garden area to the side and rear of the property which shares a common boundary with number 40 Dykebar Avenue. That property is owned by Glasgow Housing Association (“GHA”) and is occupied by one of their tenants.
7. The applicant explained that the boundary fence between her property and the adjacent property had collapsed in or around February 2020. The collapse of the fence had been reported by the tenant to GHA in their capacity as landlord. GHA and Lowther are both subsidiaries of the Wheatley Group. Lowther is the property factor for the applicant.
8. The applicant received a letter from Lowther dated 5 March 2020 which set out a proposed common repair to the fence and indicated that the cost of that repair would be £3131.91 inclusive of VAT. The applicant’s share of those Works was shown as £1565.96
9. On receipt of this proposal the applicant contacted Lowther by telephone call to their call centre to ask for a detailed and itemised breakdown of the proposed costs. She was advised that no such information could be provided as the information was “commercially sensitive”.
10. The applicant was advised by one of the call centre operatives that the works would be covered by her buildings insurance policy and that she should make a claim. She telephoned the buildings insurance company and was advised that the insurance policy which had been organised by the property factor did not cover repairs to fences. She again called the property factors and spoke to a different call centre operative. Again the applicant was advised that the repair would be covered by the insurance policy. When she told the operative that she had already spoken to the insurers who had indicated that the policy did not cover fences she was provided with no answer.
11. On 13 July 2020 the applicant emailed the respondent. She sent that email to the general email address set out in the respondent’s written statement of service. In that email she indicated that she wished the respondent to undertake a reassessment of the works required, that they provide a proper estimate with a full breakdown of costs and labour and an explanation why the property factor did not



provide best value for the customers. A particular concern raised by the applicant was that it was clear a considerable amount of the cost of replacing the fence would be the clearing of the overgrown weeds, shrubbery and bushes on the side of the fence not owned by the applicant, which overgrown nature may well have contributed to the collapse and yet the Factor was proposing to apportion the bill equally. This seemed to the applicant to be inequitable. She received no response to that email

12. On 22nd October the applicant again sent an email to the respondents. It was in similar terms to the email sent in July and sent to the same general email address.. She received no response.
13. Prior to that email the applicant had contacted her local MSP asking the MSP to assist her. She had previously contacted a local councillor. On 9 October 2020 she had received an email from the local councillor enclosing a response which he had received to his correspondence with the respondent. That email contained a name and email address of a specific business advisor within the respondent's staff, namely Michael Gillen.
14. Having not received a response to her own emails of July and October the applicant directly contacted Michael Gillen whose name had appeared in the response to the councillor. She entered into email correspondence with him over a period of some months and had telephone conversations with him. The applicant received no substantive response to her complaints and her emails to him of November 2020, 15 December 2020 and 12 January 2021 remain unanswered.
15. On 11 February 2021 the applicant sent a formal complaint to the respondent regarding this issue. That complaint was sent by email to the general email address set out in the respondent's written statement of services. No response was received.
16. On 11 March 2021 the applicant sent a further formal letter to the respondent using the style notification letter contained on the tribunal's website. In that letter she set out the various sections of the Code of Conduct for Property Factors ("the Code"), with which she believed that the respondent had failed to comply. She also set out details of relevant parts of the respondent's written statement of service with which they had also failed to comply. She received no response to that letter.
17. On 11 April 2021, the applicant lodged her application to the tribunal
18. On 21st April the applicant received a telephone call from Janet McMahon at Lowther. She was advised that Michael Gillen had raised a repair in relation to her fence repair. Miss McMahon did not appear to have any knowledge of the background to the matter and simply told the applicant that a repair had been raised and that a visit from the environmental team would follow.



19. The applicant advised Ms McMahon that she had lodged an application with the tribunal. She asked Ms McMahon how she wanted to proceed. The applicant was advised that Ms McMahon would make a note of the matter and would wait to see what the tribunal decided. Shortly thereafter the applicant's property was visited by an inspector from the environmental team. She advised the inspector of the situation. She stated the inspector took some photographs of the area and then left the property.
20. The repairs to the fence have still not been done. The applicant has had no further contact from Lowther.
21. The applicant has obtained a quotation from a local contractor for the replacement of the entire fence which runs along her Boundary with the other property. That quotation includes the removal of significant amounts of overgrown shrubbery contained within the neighbouring garden. That quote is for a total cost of £2315.41.
22. The applicant informed the tribunal that she has just received her most recent quarterly factoring bill. The bill is for the sum of £93.57, comprising an insurance cost of £36.93 and a factoring management fee of £47.20 plus VAT on the management fee.

Alleged breaches of the Code

23. The applicant alleges that the property factor has failed to comply with a number of specific sections of the code of conduct.
24. Section 2.1 requires property factors not to provide information which is misleading or false. In two separate telephone conversations the homeowner was advised that her buildings insurance policy would cover the cost of the fence repair. That information is demonstrably false. The respondent has breached this section of the Code. Although it was not specifically raised by the applicant, given that the insurance policy is arranged by the Factor, it is recommended that the respondent should review the insurance policy covering the property to ensure that it is properly comprehensive as required by the Deed of Conditions relating to the property.
25. Section 2.4 requires property factors to have procedures to consult with homeowners and seek their approval before providing work which will incur charges or fees in addition to those in addition to the core service. In this case the applicant was sent a note of the proposed bill. No consultation was undertaken. This is also a breach of the Code.
26. Section 2.5 of the Code requires property factors to respond to enquiries and complaints received by letter or email within prompt timescales. It indicates that the



response time should be confirmed in the written statement of services. The respondent's written statement of service indicates that they will respond to calls and correspondence within five working days. It indicates they will respond to telephone calls within five rings. The statement of service contains a "commitment to excellence". In that statement the respondent indicates that they "put the customer at the heart of everything they do". They commit to providing consistently high-quality responsive services. They indicate they "want to be Scotland's best factor". The respondent has failed abysmally to live up to their own promises. In their failure to respond to the applicant's emails and telephone calls they have also clearly breached section 2.5 of the Code

27. Section 6.3 of the Code requires property factors to show how and why they appointed contractors when requested by a homeowner to do so. Lowther's response to this request is that City Building is their chosen contractor and no further information has been given. In their written statement of service the respondent indicates that City Building is owned jointly by their parent Wheatley Group together with Glasgow City Council. The written statement of service further indicates that the decision to provide repair services directly through the "Wheatley family" came after "an independent options appraisal in 2015/16 which concluded it was the best option for continuing to improve services including for fact that homeowners will achieving maximum value for money". This does not properly explain why City Building have been chosen. Further it fails to explain why no further appraisal has been done in a period of six years to ascertain whether this arrangement remains the best option. Accordingly section 6.3 of the code has been breached.
28. Section 6.6 of the Code indicates that documentation relating to any tendering process should be available for inspection by homeowners on request free of charge (excluding any commercially sensitive information). The applicant has asked the factor to provide a detailed breakdown of the costs involved in the proposed work. The respondents have refused to provide that on the basis that these costs are commercially sensitive information. They have provided no justification for that position. Accordingly section 6.6 of the code is breached
29. Section 7.1 of the Code requires a property factor to have a clear written complaints procedure which they will follow. The tribunal accepts that the respondent in this case has a clear written complaints procedure. It is set out in their written statement of service. However the tribunal accepts the unchallenged evidence of the applicant that the respondent has entirely failed to respond to her complaints in any manner at all. Section 7.1 is accordingly breached
30. Section 7.2 of the Code requires that when the complaints procedure is exhausted without resolving the complaint, a final decision should be confirmed with senior management and the homeowner should be notified in writing. That letter should also provide details to the homeowner of how to apply to this tribunal. No such



letter was ever provided and sent to the homeowner. Section 7.2 of the Code is breached.

31. The applicant also complains that the property factor has failed to comply with their own written statement of service. She makes specific reference to three parts of the written statement of service.
32. On page 22 paragraph 1, the respondent states “we are committed to providing you with clear itemised bills“. In this case the applicant asked for a clear itemised bill with respect to be proposed repair. The property factor not only failed to provide it but specifically refused to do so. That is a clear and inexplicable failure to follow their own written statement.
33. On page 14 paragraph 3, the property factor sets out the reason for the decision to provide repair services directly through the “Wheatley family“. Reference is made to that explanation in paragraph 27 above. The applicant’s position is that the current service cannot demonstrate that maximum value for money is being achieved by the respondent to the benefit of homeowners as the property factor refuses to provide any information on their method and basis for choosing a contractor within their own “family”
34. Finally the applicant refers to pages 26 and 27 of the written statement. Those pages are headed “customer service commitments“. In those pages the respondent indicates that they are “committed to listening to homeowners” and that they “value (homeowners’) opinions” and that they will “work hard to develop services and standards that meet (homeowners’) needs“. They set out their response times for calls and complaints and indicate that complaints are important to them. Their actions in dealing with the complaints made by this applicant are in complete and diametric opposition to the claims contained in these pages of the written statement. Lowther have signally failed to live up to their own claims relating to their customer services commitments.

Decision

35. The tribunal notes that the applicant attended the hearing on 9 July 2021. She answered the questions from the tribunal in a measured and restrained fashion. She made no attempt to exaggerate her complaints. The applicant indicated that she had been pursuing this matter for over a year and had got nowhere with the respondent. She was clearly frustrated by the complete failure of the respondent to deal with her complaint.
36. The tribunal noted that the respondent did not attend the hearing and provided no written representations. They appear to have ignored the tribunal application in the same manner in which they have ignored the applicant’s complaints.



37. The tribunal explained to the applicant the scope of the tribunal's power to make a property factor enforcement order ("PFEO"). The applicant indicated that she believed that there should be a penalty. She indicated that she has required to take considerable time over the course of the last year to correspond with the respondent, to telephone the respondent, to obtain alternative quotes, to seek help from her elected representatives, to prepare the tribunal application and finally to take time off work to attend the tribunal hearing. The applicant indicated that she has been unable to use her garden throughout the period of lockdown owing to the condition of the fence and the overgrown shrubbery in the garden next door. She is now considering selling her property. The applicant indicated she had previous difficulties with the respondent in dealing with a simple roof repair.. She indicated to the tribunal her belief that she should not be out of pocket with regard to this repair. She wants the fence to be properly reinstated but believes this should be done at the entire expense of the property factor and GHA as the other owner. The applicant indicated that she had received no reduction in the management fee charged by the factor over the period of the pandemic restrictions despite the property factors clearly operating a reduced service.
38. The tribunal have had little hesitation in finding the property factor is in breach of all the separate sections of the code listed by the applicant. The tribunal are satisfied that a PFEO should be made. A draft of the proposed order is attached to this decision. It is effectively an order that the property factor should carry out the repairs required to the fence at their sole expense, that they should refund the home owner the management charges which have been levied since February 2020 and that they should make a payment of £500 to the homeowner as additional compensation for the inconvenience caused to her by their complete failure to deal properly with her queries and complaints over the last 16 months. The existence of the various restrictions introduced to deal with the Covid pandemic provide no excuse for these failures
39. The tribunal regard the failures in this case by the respondent to be abject and appalling. This view is reinforced by the claims made by Lowther in their own written statement of service and in information available publicly on their website. They have signally failed to live up to their own purported standards
40. Parties are invited to make representations to the tribunal in respect of this proposed order in terms of section 19 (2) of the 2011 Act. Such representations should be remitted to the tribunal within 14 days of the date of intimation 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.

Date: 9 July 2021

Legal Member: