

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Decision on Homeowner's Application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

**The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of
Procedure) Amendment Regulations 2017 ("the 2017 Regulations")**

Chamber Ref: FTS/HPC/PF/19/2144

**Flat 4/2, 6 Haughview Terrace, Glasgow, G5 0LN
("the Property")**

The Parties:-

**Mr Andrew Armstrong and Mrs Samantha Armstrong, residing at the Property;
("the Applicants")**

**Speirs Gumley, Red Tree Magenta, 270 Glasgow Road, Rutherglen, Glasgow,
G73 1UZ
("the Respondent")**

Tribunal Members:

**Mr G. McWilliams (Legal Member)
Ms C. Jones (Ordinary Member)**

Decision

The Respondent has failed to comply with its duties under Section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act") in that it did not comply with Section 2.5 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code") and failed to carry out its Property Factor's duties in terms of Section 17 of the Act.

This decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") is unanimous.

The Tribunal considered matters and has determined that, in relation to the Application before it, the Respondent has not complied with the Code and its Property Factors duties. The Tribunal propose to make a Property Factor Enforcement Order ("PFE0") in the following terms:

The Respondent is to make a compensation payment to the Applicant, in the sum of £500.00, within 14 days of the date of issue of the PFE0.

Introduction

1. The Respondent became a registered Property Factor on 7th December 2012 and its duty to comply with the Code, under Section 14(5) of the Act, arises from that date. The Respondent had become the Factor for the development, within which the Property is situated in July 2015. The Applicants submitted an Application to the Tribunal by lodging documents between 10th and 23rd July 2019.

The Hearing

2. A Hearing was held at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT on 3rd October 2019. The Applicants attended. The Respondent was represented by its Managing Director, Mr I. Friel, and the Associate Director Ms J. Knox.
3. At the commencement of the Hearing parties helpfully outlined the background to matters. The Applicants' Application was lodged after the conclusion of a complaint process. The Applicants' complaint concerned the manner in which the Respondent had dealt with an issue which first came to light in May 2018 in respect of the supply of electricity to common parts at the development in which the Property is situated. The parties discussed matters candidly, to their credit. They also discussed matters directly during a break in the Hearing. The break allowed time for the copying of additional papers produced by the Respondent. It was agreed by the Applicants and the Tribunal that these could be accepted and they were duly lodged. It is to be hoped that the parties' discussions at the beginning of the Hearing and during the break may assist in developing positive communication going forward.
4. The Tribunal then heard from the parties regarding each of the Applicants' complaints. In their Application, the Applicants complained that the Respondent had breached several sections of the Code and failed to comply with its Property Factor's duties.
5. Firstly, the Applicants complained that the Respondent had acted in breach of Section 1 of the Code. The Applicants stated that the Respondent had not complied with the terms of their Written Statement of Services in that they did not check whether or not charges for electricity for the common parts of the development were being levied during the period July 2015 to May 2018. They further stated that the Respondent had mismanaged the issue of utility charges since May 2018 and in particular had made payment to Scottish

Power Plc ("Scottish Power") of the sum of £21,571.29 in October 2018, without consultation with Homeowners at the development. Mr Friel acknowledged, on behalf of the Respondent, that the issue of whether or not utility bills were being rendered for the block, in which the Property is situated, should have been picked up by his colleagues during that period. He stated that there were numerous blocks at the development and that electricity bills were been received for some blocks. He stated that bills had not been received for blocks 2 and 6 Haughview Terrace and that this should have been picked up. Mr Friel said that he thought that, ultimately, Scottish Power would not pursue the balance of common area utility costs, of around £35,000, which was currently in dispute.

6. Mr Armstrong stated that there had been continuing mismanagement, and non-compliance with the Written Statement of Services, as there had been no assessment by the Respondent as to whether or not the Applicants and their fellow Homeowners at blocks 2 and 6 Haughview Terrace were being charged utility bills for the common areas at a reasonable rate. It was agreed by the parties that the Applicants and other Homeowners were being billed for such charges in the Respondent's quarterly invoices since February 2019. Mr Friel stated that no evidence had been produced to show that the Applicants were not receiving value. Mr Armstrong asserted that the Applicants and fellow Homeowners were being charged the standard tariff rate which would not be a competitive rate. Mr Friel stated that the Respondent could not terminate Scottish Power's engagement as electricity supplier for the development until the dispute in respect of the balance claimed by Scottish Power had been resolved.
7. The Applicants further complained that the Respondent had provided misleading information, in contravention of section 2.1 of the Code, in their letter sent to the Applicants and other Homeowners on 14 August 2018. Mrs Armstrong stated that the letter referred to various sums of money, including the high sum of £87,000, and that the terms of that letter were unclear and concerning. Mr Friel stated that he did not agree that the terms of the letter were misleading. He further stated that the letter ended with an invitation to Homeowners to contact the Respondent if they required further information. It was accepted by both parties that, following receipt of that letter, Mrs Armstrong had contacted the Respondent's property manager Mr C. Phillips and they exchanged emails in late August going into September 2018. Mrs Armstrong stated that she had requested copies of utility bills but did not receive these.
8. The Applicants also complained that there had been a breach of Section 2.5 of the Code as they did not receive information and copies of invoices which they requested within prompt timescales. They complained that the Respondent had received a "first" bill of £87,000 from Scottish Power in May 2018 but had not contacted and informed the Applicants and other Homeowners of the position until the letter issued in August 2018. Mr Friel stated that when the Respondent received Scottish Power's initial bill they wanted to investigate matters. He stated that they did not want to react in a knee-jerk way and they wanted to ascertain whether or not the bill was accurate before they reverted

to Homeowners. He acknowledged that the Homeowners initial complaint to the Respondent, regarding non timely responses, had been upheld.

9. The Applicants further complained that the Respondent had breached the terms of Section 6.9 of the Code in that they had not pursued Scottish Power to remedy the defects in the inadequate service provided. Mr Friel stated that he had already outlined what action the Respondent had taken with Scottish Power.
10. The Applicants also complained that the Respondent had not adequately carried out its Property Factors duties in relation to the management of the common parts at the development. In this regard the Applicants reiterated their arguments made in support of their complaint regarding the Respondent having breached Section 1 of the Code. In summary, the Applicants stated that the Respondent had not satisfactorily managed the utility supply to common areas at their block, and the adjoining block number 2, and did not pick up that bills had not been rendered for that supply, between the commencement of the role as factor in July 2015 and May 2018. They further complained that the Respondent made a payment to Scottish Power in October 2018 without proper consultation with Homeowners. Mr Armstrong stated that there had not been a consensus that payment should be made and therefore the action of the Respondent was not reasonable and was not sensible. Mr Armstrong stated that Homeowners were now left with the threat of legal action with regard to the outstanding balance of Scottish Power's utility bill, of around £35,000 for the whole development, and that this was concerning. Mr Friel stated that he disagreed that the Respondent's communications in this regard had been inadequate and misleading and that their actions had been unreasonable. He stated that they could not consult on every matter. Mr Friel stated that the Respondent had acted in the best interests of all Homeowners in the development.
11. The Applicants made a brief, final submission. Mr Armstrong asked the Tribunal to take account of the position of Homeowners, who have a threat of legal action hanging over them for the balance of monies sought by Scottish Power. Mr Armstrong submitted that this was due to the inadequate actions of the Respondent who had failed to discharge its Property Factors duties satisfactorily. Mr Friel submitted that he and Ms Knox had given evidence and made submissions regarding the Applicants' complaints throughout the Hearing.

The Tribunal make the following Findings in Fact and Law:

12. The Applicants are the owners of the Property.
13. The Respondent performs the role of Property Factor at the development in which the Property is situated.
14. The Respondent provided the Applicants with a Written Statement of Services setting out the terms and service delivery standards of the arrangement in place between the parties.

15. The terms of the Respondent's letter to the Applicants and Homeowners, dated 14th August 2018, are, at times, unclear. They are not misleading.
16. The Respondent did not provide the Applicants with information and copies of invoices which the Applicants had requested within prompt timescales.
17. The Respondent has pursued Scottish Power regarding the issue of the latter's billing for the electricity supply to common areas at the development in which the Property is situated. The Respondent cannot terminate Scottish Power's engagement as electricity supplier for the development until the dispute in respect of the balance claimed by Scottish Power has been resolved.
18. The Respondent has not adequately discharged its Property Factors duties in respect of the Property. It did not satisfactorily organise and administer, and manage, the utility supply to common areas for the block, in which the Property is situated, and the adjoining block number 2. The Respondent did not check or notice that bills had not been rendered for that supply, between the commencement of their role as Factor, in July 2015, and May 2018. It did not inform the Applicants and Homeowners of the difficulty that had arisen, regarding the costs of that supply, from May 2018 until August 2018. It should have communicated with Homeowners within a shorter period. The Respondent made a payment to Scottish Power in October 2018 without clear and satisfactory communication and consultation with Homeowners.
19. The Respondent has breached Sections 2.5 of the Code.
20. The Respondent has not breached Sections 1, 2.1 and 6.9 of the Code.
21. The Respondent failed to carry out their Property Factor's duties in terms of Section 17 of the Act, as stated above.

Reasons for Decision

22. The Tribunal considered all of the evidence in reaching their findings.
23. Section 1 of the Code states that a Property Factor must provide each Homeowner with a Written Statement of Services setting out the terms and service delivery standards of the arrangement in place between the parties. Whilst it is accepted, and determined by the Tribunal, that, in certain respects, the Respondent did not discharge its service obligations to the Applicants, the arrangement between the parties was set out in a Written Statement of Services which was provided to the Applicants. Having considered all of the evidence in this regard, the Tribunal find, on a balance of probabilities, that the Respondent provided the Applicants with a Written Statement of Services in satisfactory terms. In this regard, the Tribunal further find that as the Respondent cannot terminate Scottish Power's engagement as electricity supplier for the development, they are unable to seek a more financially

competitive utility supply arrangement until the dispute in respect of the balance claimed by Scottish Power has been resolved.

24. Section 2.1 states that a Property Factor must not provide information to a Homeowner which is misleading or false. The Tribunal, having had sight of all the papers and heard the evidence and submissions of the parties, is satisfied that the Respondent did not provide information to the Applicants which was misleading or false. The Tribunal find that the terms of the Respondent's letter to the Applicants and Homeowners, dated 14th August 2018, are, in certain respects, unclear. The terms include reference to a Scottish Power claimed amount, in a significant sum, accounts received, a third party Consultant's assessed amount and the Applicants' individual liability for a set period. The Tribunal find that it would have been helpful to the Applicants and Homeowners if the terms of the letter had included clearer details regarding the basis for the variously stated amounts and the payment to Scottish Power which the Respondent was going to make in October 2018. However the Tribunal find, on a balance of probabilities, that the terms of the letter are not misleading. The Tribunal, in particular, relied on the evidence of the Respondent's offer to discuss matters further, contained within the letter, and find, on a balance of probabilities, that the Respondent's intention was to provide relevant information to the Applicants and Homeowners and not to mislead them.
25. Section 2.5 of the Code states that the Property Factor must respond to enquiries and complaints by letter or e-mail within prompt timescales. The Respondent upheld the Applicants complaint in this regard. Having considered the evidence in this regard, the Tribunal find that the Respondent did not provide information and documentation within prompt timescales.
26. Section 6.9 of the Code states that a Property Factor must pursue a supplier to remedy defects in any inadequate service provided. It was accepted by the Respondent, and the Tribunal find below, that the Respondent did not check or notice that bills had not been rendered for the supply of electricity to the Property, between the commencement of their role as factor, in July 2015, and May 2018. However, having considered all of the evidence, the Tribunal find that, upon realising the difficulty regarding that utility supply, the Respondent has been in dialogue with Scottish Power, and has engaged the services of a third party Consultant for assistance in that dialogue. Accordingly the Tribunal find, on a balance of probabilities, that there has not been a breach of the Code in this regard. It is unfortunate that the issue of Scottish Power's outstanding claim has not yet been resolved but having considered the available evidence the Tribunal find, on a balance of probabilities, that the Respondent has been dealing with the matter adequately since it arose in May 2018.
27. In respect of Property Factor's duties, the Respondent's Written Statement of Services provides that the Respondent will organise and administer the maintenance of common aspects of Homeowners' properties. Section 17 of the Act defines duties as being duties in relation to the management of the common parts of land owned by a Homeowner. Having considered all of the

evidence, the Tribunal find, on a balance of probabilities, that the Respondent did not satisfactorily organise and administer, and manage, the utility supply to common areas for the block, in which the Property is situated, and the adjoining block number 2 Haughview Terrace, between July 2015 and May 2018. The Tribunal find that the Respondent did not check or notice that bills had not been rendered for the supply of electricity to the Property, between the commencement of their role as factor, in July 2015, and May 2018. This was accepted by the Respondent. The Tribunal also find that the Respondent did not inform the Applicants and Homeowners of the issue that had arisen, regarding the costs of that supply, from May 2018 until August 2018 and that this was a breach of their Property Factors duties. The Tribunal considered the Respondent's explanation that they had been investigating matters but find that they should have communicated with Homeowners within a shorter period, given the importance of the issue and, in particular, as there is a possibility that Court proceedings may result. The Tribunal find that the Respondent, in terms of their duties as Property Factor, should have informed Homeowners as soon as they had an opportunity to consider the position. A delay of 3 months in informing Homeowners was unreasonable.

28. Further the Tribunal find that the terms of the Respondent's letter to the Applicants and Homeowners, dated 14th August 2018, are, in certain respects, unclear. The terms include reference to a Scottish Power claimed amount, in the significant sum of £87,000, another account received from Scottish Power, a third party Consultant's assessed amount and the Applicants' individual liability for a set period. The Tribunal find that it would have been helpful to the Applicants and Homeowners if the terms of the letter had included clearer details regarding the basis for the variously stated amounts and the payment to Scottish Power which the Respondent was going to make in October 2018. Accordingly the Tribunal also find that the lack of clarity in the terms of the Respondent's letter to Homeowners, dated 14th August 2018, represents a failure to comply with Property Factor's duties.
29. Additionally, the Tribunal find that the Respondent made a substantial payment to Scottish Power, in respect of such costs, in October 2018 without proper communication and consultation with Homeowners. The letter dated 14th August 2018 stated that payment to Scottish Power would be made. It did not specifically invite input from Homeowners in respect of the payment. The Tribunal accept the evidence of the Respondent that they acted in good faith, to try to protect Homeowners from greater liability, by informing Scottish Power that the payment was made in full and final settlement of all costs. However the Tribunal find that making such a payment without clear communication and consultation with Homeowners was also in breach of the Respondent's Property Factors duties.
30. The Tribunal therefore find that the Respondent, in terms of the above findings, acted in breach of the Property Factors duties incumbent on them in terms of Section 17 of the Act.

Proposed Property Factor Enforcement Order

31. The Tribunal proposes to make a PFEO. The terms of the proposed PFEO are set out in the attached Section 19(2)(a) Notice.

Appeals

32. In terms of section 46 of the Tribunals (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 within 30 days of the date the decision was sent to them.

G McWilliams
Legal Member

23rd October 2019