

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision and Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 19 of the Property Factors
(Scotland) Act 2011**

Chamber Ref: FTS/HPC/LM/22/1988 and FTS/HPC/LM/22/1991

Re : 47 Fairbairn Path, Glasgow G40 3RR ("Property")

The Parties: -

James Williamson, 47 Fairbairn Path, Glasgow G40 3RR ("Homeowner")

Thenue Housing Association, 423 London Road, Glasgow G40 1AG("Factor")

**TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Factor's
Representative")**

Tribunal Members:

Joan Devine – Legal Member

Elizabeth Dickson – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") unanimously determined (1) that the Factor has failed to comply with the Code of Conduct for Property Factors as required by section 14 of the Property Factors (Scotland) Act 2011 and (2) that the Factor has not failed to comply with its factor duties in terms of section 17(5) of the 2011 Act.

The Tribunal proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached section 19(2) Notice.

Introduction and Background

1. In this Decision the Property Factors (Scotland) Act 2011 is referred to as the "2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective prior to 16 August 2021 is referred to as the "2012 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 16 August 2021 is referred to as the "2021 Code" .
2. The Homeowner's application to the Tribunal comprised documents received on 20 June 2022. A Form C1 and Form C2 both dated 11 June 2022 were lodged with the Tribunal. A Case Management Discussion ("CMD") was fixed for 30 September 2022.

3. The CMD took place on 30 September 2022. Reference is made to the Note of the CMD dated 30 September 2022 which sets out the detailed submissions made by the Parties. The outcome of the CMD was that the Tribunal determined to adjourn the CMD and to issue a Direction seeking further information including a written submission regarding breach of property factor duties. A Direction was issued dated 30 September 2022 (“Direction”).
4. The Homeowner provided comments on the Note of the CMD on 23 October 2022. The Factor lodged a written submission in response to the Direction on 26 October 2022. The Homeowner provided a response to that submission on 7 November 2022. The Tribunal considered the further submissions received and took the view that they had sufficient information to allow them to proceed to make a Decision. Parties were advised of that.

Complaint in the Form C1

5. The Form C1 referred to a complaint under sections 3.3 and 6.4 of the 2012 Code and to breach of property factor duties.

Complaint in the Form C2

6. The Form C2 referred to a complaint under sections 3.1, 3.2, 3.4, 6.4 and 6.7 of the 2021 Code and to breach of property factor duties.

Findings in Fact

1. The Homeowner is a homeowner in terms of the 2011 Act, the 2012 and 2021 Code.
2. The Factor are property factors in terms of the 2011 Act, the 2012 and 2021 Code.
3. The development of which the Property forms part consists of 110 houses and 4 blocks of flats.
4. The Factor failed to provide to the Homeowner information regarding the relevant apportionment of the Homeowner’s share of the cost of works until 16 September 2022.
5. The Factor prepared a programme of works for planned cyclical maintenance at the development of which the Property forms part.
6. The Factor ensured that people with appropriate professional expertise are involved in the development of a programme of works for the development of which the Property forms part.

Findings in Fact and Law

1. As at 25 May 2016, 2 July 2001 and 28 August 2001 the Factor was under no obligation to comply with section 3.1 of the 2021 Code.
2. The Factor has provided to the Homeowner the clarity and transparency required by section 3.2 of the 2021 Code.
3. The Factor has complied with the property factor duties.

Reasons for Decision

7. As regards **section 3.3** of the 2012 Code The Tribunal noted that detailed breakdowns were provided in quarterly invoices. The Tribunal was satisfied that the level of detail provided as regards the description of works was compliant with the 2012 Code. The Factor accepted there had been a breach of section 3.3 in that the relevant apportionment of the share of costs was not provided to the Homeowner until September 2020. Reference is made to productions 1/1 and 4/1 for the Factor. The Tribunal determined that there had been a breach of section 3.3 of the 2012 Code.
8. As regards **section 6.4** of the 2012 Code the written statement of services provides for planned cyclical maintenance at schedule 2 item 7. Production 4/4 for the Factor was a programme of works and evidenced compliance with section 6.4. The Homeowner's position was that production 4/4 was "made up". The Tribunal did not accept that to be correct. The Tribunal determined that there had been no breach of section 6.4 of the 2012 Code.
9. As regards **section 3.1** of the 2021 Code the Homeowner founded upon an invoice dated 25 May 2016 which included a credit of £1.63 and invoices dated 2 July 2001 and 28 August 2001 which showed the correction of a bill for £91.36 which was corrected and reduced to £50.46. The effective date of the 2021 Code was 16 August 2021. At the date of the invoices founded upon, the Factor was under no obligation in respect of section 3.1 of the 2021 Code. The Tribunal determined that there had been no breach of section 3.1 of the 2021 Code.
10. As regards **section 3.2** of the 2021 Code the Tribunal consider productions 1/1 to 1/7 for the Factor which were letters dated 4 August 2022 and 9 October 2015 along with productions 2/1 and 2/2, which was a spreadsheet showing monthly costs, and 3/3 and 3/4 which was a detailed contract specification for ground maintenance services and determined that they provided the clarity and transparency required by section 3.2. The Tribunal determined that there had been no breach of section 3.2 of the 2021 Code.

11. As regards **section 3.4** of the 2021 Code the Tribunal noted that section 3.4 of the 2021 Code is in similar terms to section 3.3 of the 2012 Code. Parties relied upon their submissions relating to section 3.3 of the 2012 Code as regards the allegation of breach of the 2021 Code. Reference is made to paragraph 7 above. The Tribunal determined that there had been a breach of section 3.3 of the 2012 Code as the relevant apportionment of costs had not been provided to the Homeowner until September 2022 by which time the 2021 Code was in force. In those circumstances the Tribunal determined that there had been a breach of section 3.4 of the 2021 Code.
12. As regards **section 6.4** of the 2021 Code, at the CMD the Homeowner accepted there had been no breach of section 6.4 of the 2021 Code.
13. As regards **section 6.7** of the 2021 Code the Tribunal noted that the service of carrying out periodic property visits was not agreed with homeowners by virtue of the written statement of services. There was however a planned programme of cyclical maintenance provided for in the written statement of services and therefore section 6.7 was engaged. The obligation in section 6.7 is to “ensure that people with appropriate professional expertise are involved in the development of the programme of works”. The Tribunal considered the detailed information provided by the Factor in the submission lodged on 26 October 2022 which set out the qualifications of the employees of the Factor and their contractor. The Tribunal determined that there had been no breach of section 6.7 of the 2021 Code.
14. As regards property factor duties, in their submission the Factor provided a detailed explanation of the monthly cost for landscaping in the period January 2021 to March 2022 including increases in the contract price and negotiated reductions to compensate for the contractor’s performance not meeting the standard required. The information is set out in production 2/1 and 2/2 for the Factor. In his response to the submission the Homeowner summarised his underlying problem which was that he was of the view that he had been overcharged for substandard work for many years which became more apparent in the year he made his complaint as there was a substantial drop in an already poor service. He questioned the veracity of production 3/2 for the Factor which shows the work carried out by the contractor compared to the planned programme of works.
15. The Tribunal considered that a property factor’s duty is to comply with the written statement of services. In this case the obligations in the written statement of services as regards landscaping are set out in schedule 2 sections 3, 7, 8 and 9. It was clear to the Tribunal from submissions at the CMD that the Factor instructed contractors in accordance with their

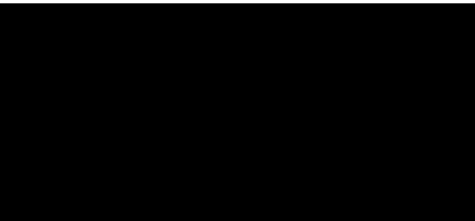
procurement policy. From the response to the Direction it was clear to the Tribunal that the Factor employs professionals. It appeared to be the Homeowner's position that the Factor did not carry out necessary landscaping and a planned programme of cyclical maintenance in accordance with the written statement of services. The landscaping service provided by the contractor was below standard for a period of time. The Tribunal noted that the Factor recognised that and negotiated a reduction in price. In those circumstances the Tribunal determined there had been no breach of property factor duties.

Proposed Property Factor Enforcement Order

16. The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 a homeowner or property factor 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

Date : 24 November 2022