



STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Reference: FTS/HPC/PF/23/2978

Property address: 5 Wallfield Place, First Floor Left, Aberdeen, AB25 2JS ("the Property")

The Parties

Mrs Bea Hawkes, 5 Wallfield Place, First Floor Left, Aberdeen, AB25 2JS ("the Homeowner")

Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF ("the Property Factor")

Tribunal Members

Ms H Forbes (Legal Member)

Ms S Brydon (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs OSP2, OSP4 and OSP6 of the 2021 Property Factor Code of Conduct ("the Code") as required by section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act").

The decision is unanimous.

Background

1. By application received on 30th August 2023, the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraphs OSP2, OSP4, OSP6, OSP12 and 6.4 of the 2021 Code. The Homeowner lodged correspondence between the parties and a copy of the Property Factor's Written Statement of Services ("WSS"), and complaints procedure.

2. By email dated 8th November 2023, the Property Factor lodged written representations.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 19th December 2023. The Homeowner was in attendance. The Property Factor was not in attendance, having notified the Tribunal that they did not intend to attend.
4. The Homeowner explained that their complaint concerned the service and communication of the Property Factor following a report by the Homeowner on 9th February 2023 that there had been non-residents in the communal hallways and mail had been opened and had gone missing. The Homeowner asked the Property Factor if it was possible to have an automatic door closer or a more secure entry system. The Homeowner later reported that the lock was broken, and it was repaired on 10th March 2023, but the Property was broken into on or around that day, before the lock was repaired. The Homeowner alleged that a subsequent review of the Property Factor on Trustpilot by the Homeowner was responded to incorrectly by the Property Factor, and there was a refusal to correct the review.
5. The Homeowner said the Property Factor had made the escalation of her complaint from stage 1 to stage 2 very difficult. She had been given contrary information on how to escalate the complaint, and Mr Littlejohn, the member of staff dealing with the stage 2 complaint had not received all the information she had previously provided to the Property Factor. Mr Littlejohn had incorrectly stated that he would need the crime reference number. The Homeowner was reluctant to hand this over as she had been told by the Police that the Property Factor was contacting them for information. She did not find credible the Property Factor’s explanation that they needed the number to ensure the block could be made more secure.
6. The Homeowner said she would wish to pursue the costs related to the break-in as part of her application, although she had not provided any vouching in this regard. The Tribunal said she may wish to take advice on this matter, as it may be difficult to prove that any loss or injury was a direct result of any breach by the Property Factor. This is a complicated area and advice may assist the Homeowner in deciding whether to continue to pursue this matter. The Homeowner said she made a claim on her insurance in respect of the break-in.
7. The application was continued to a hearing.
8. A hearing set down for 27th March 2024 was postponed at the request of the Homeowner.

The Hearing

9. A hearing took place by telephone conference on 25th June 2024. The Homeowner was in attendance. The Property Factor was represented by Ms Flanagan.

Preliminary Issues

10. Both parties confirmed nothing further had been lodged.
11. The Homeowner confirmed that she was not seeking compensation in respect of the costs of the break-in.

Paragraph OSP2

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

The Homeowner's position

12. The Homeowner's position was that the Property Factor had failed to comply with this paragraph by:
 - (i) Not informing homeowners how long repairs to (a) the lock, and (b) internal decorating would take.
 - (ii) Not informing homeowners that the property manager had changed.
 - (iii) Responding to her review on Trustpilot with incorrect information.
 - (iv) Requesting the crime reference number for the break-in.
 - (v) Not dealing properly with her complaint.
13. The Homeowner referred to her email to the Property Factor on 9th February 2023. She received a response on 13th February 2023 stating that quotes would be sought for the work. There was no further information from the Property Factor until after the Property had been broken into, which had actually been 9th March, rather than 10th March 2023. A contractor had attended the block of flats on 1st March. When they left, the lock was not working. The Homeowner contacted the Property Factor on 2nd March 2023 to inform them of this. She was told she would be called back as soon as possible, but there was no call back. She followed up with an email on 4th March. The next contact was an email from the new property manager on 9th March, stating that a locksmith had been instructed to repair the communal door lock, and that quotes were awaited for upgrading the system. At that point the new property manager informed the Homeowner that he had recently taken over the development and that he had missed her message as he was out of the office for a couple of days. The Homeowner said she had been told when she called the office that the previous property manager would be in touch with her. There was no mention of a change of property manager and she felt this had contributed to the failure of the Property Factor to deal with the matter properly. It was her position that, if she had known who

to ask for, the matter would have been dealt with more promptly, as it would have been passed to someone else if the new property manager was not available.

14. The Homeowner left a review on Trustpilot, and the Property Factor responded to say they had instructed a locksmith when they received the Homeowner's email about the faulty door, and the lock was repaired the next day. They stated that the Homeowner notified the Property Factor of their break-in the day after the faulty lock was repaired. Subsequent attempts to persuade the Property Factor to amend their review response were unsuccessful. The Homeowner found this not to be honest or open.
15. The Property Factor had asked at various times for the crime reference number provided by the police for the break-in. The Homeowner did not wish to provide this to them until the end of the investigation, as she was concerned they would call the police and hinder the investigation. The police were aware of the matter and said they would call the Property Factor if necessary. She was given different reasons by different Property Factor staff at different times as to why they required the crime reference number. The Property Factor was not fair in the way they responded to the Homeowner in this regard.

The Property Factor's position

16. Ms Flanagan referred to the written representations and said the Property Factor did not accept they had not complied with this paragraph. They had tried to be honest and open at all times. The Property Factor does not always get exact dates from contractors. They are at the mercy of the schedules of other people, and it can be difficult to tie down contractors, who may have to deal with emergencies. A contractor is normally given 10 working days to deal with the matter and this did not fall outwith the 10 working days.
17. The new property manager took over on 1st March 2023. There is usually a 7-to-10-day period for a handover. The Property Factor's response time in their WSS is five working days. The Property Factor complied with their timescale in this instance as the lock was repaired on 9th March 2023. Ms Flanagan was unaware whether there had been any allowance made for the urgency of the situation, given that a faulty lock was involved, but pointed out that a homeowner could use the out of hours service in case of emergency. Ms Flanagan said she had no records before her and was unable to confirm whether the 10-working day scenario had been complied with. It was Ms Flanagan's position that the Property Factor had apologised for failing to inform the Homeowner about the change of property manager, stating that it would seem that the Property Factor was slow in notifying homeowners of this matter. There are property support officers in every office, however, and they would take the call and can instruct repairs.
18. The Property Factor believes the matter of the review response on a social media platform falls outwith the governance of the Code and is not relevant to

the application. Asked by the Tribunal why the Property Factor would not correct the review response if it contained incorrect information, Ms Flanagan said the Property Factor does not believe the information in the review response is incorrect. Asked why they did not lead evidence that their timescales and dates in the review response were correct, which would counter the evidence of the Homeowner as to the dates of correspondence, Ms Flanagan said she did not have that evidence as she is covering for the Head of Property Management, who is on leave.

19. Ms Flanagan said it was not unusual to ask for the crime reference number. There are many reasons why that would be asked for, including insurance matters. The Homeowner was entitled to refuse to provide the number. Ms Flanagan said she could not answer for other people if they gave different reasons for requiring the number.

Paragraph OSP4

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

The Homeowner's position

20. The Homeowner said the Property Factor had failed to comply with this paragraph of the Code by:

- (i) Deliberately making a misleading and false response to the review on Trustpilot, as previously discussed.
- (ii) Giving different reasons for requesting the crime reference number, including stating that they required it to start an investigation, to have for their records, and to contact police for advice.
- (iii) Providing false and misleading information when dealing with the complaint, by repeatedly telling the Homeowner that she had to make her stage 2 complaint to the Head of Property Management, when the complaint procedure states that the complaint will be escalated by the Property Factor.

The Property Factor's position

21. Ms Flanagan referred to the written representations, stating that the matter is subjective to the Homeowner. The Property Factor's records show they have answered numerous emails and dealt with the complaint in line with their WSS. They have not intentionally misled the Homeowner.

22. In response to the matter of the complaint handling, Ms Flanagan said she was unaware why the correct procedure had not been followed. She stated that hers is a new role introduced as part of a range of improvements and she is now dealing with all complaints. She would ask the homeowner for their

reasons for escalating a complaint, and would escalate the complaint to the relevant member of staff.

Paragraph 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.

The Homeowner's position

23. The Homeowner confirmed her complaint was in regard to:

- (i) Issues in respect of the Property Factor failing to inform homeowners of the attendance of decorating contractors.
- (ii) Issues in relation to the manner in which the Property Factor had dealt with the lock issues as previously discussed – they had not carried out their services in a timely way.

24. The Homeowner said she had asked for dates when contractors would attend after the break-in. The property manager had said homeowners would be advised as soon as keys were collected by the decorators, but this did not happen. The Homeowner said this would not have been a big issue prior to the break-in, but there was increased and intense anxiety after the break-in, and knowing who was going to be attending the communal areas, and when they would attend, would have helped to ease the anxiety.

The Property Factor's position

25. Ms Flanagan referred to previous discussion about how the Property Factor is at the mercy of contractors, who fit the work into their schedule.

Paragraph OSP12

You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

The Homeowner's position

26. The Homeowner said the property manager had often tried to shut her down in discussions about her concerns. She referred to the response from the property manager in his email of 9th March 2023, where he had highlighted his comments in red. This was intimidating and unnecessary.

The Property Factor's position

27. Ms Flanagan said emails from the property manager do not show any abusive, intimidating or threatening communication. Examples had been

provided in the written representations, and they indicated the property manager was sympathetic. Ms Flanagan said she understood the Homeowner's view in respect of the red text, but everyone uses different methods of highlighting text, and the property manager had not intended to be intimidating.

Paragraph 6.4

Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

The Homeowner's position

- 28.** The Homeowner said homeowners were not informed of progress of work or timescales for completion. The decorating was major work and they were not informed as required by the Code. They were not provided with quotes for the lock despite two requests. The Homeowner was not aware of the cost threshold below which this paragraph may not apply.

The Property Factor's position

- 29.** Ms Flanagan said the cost threshold is set out in the WSS and is £75 per property. It is unlikely the work regarding the lock would be considered major work. The decorating work may have been of a higher value, but she did not have the information to hand.

Submissions

The Homeowner

- 30.** The Homeowner submitted that the issues may seem trivial but they had a significant impact. She is still suffering because of the break-in. The Property Factor was not the direct cause of the break-in, but they failed to respond to her queries and keep her informed. They failed to attend the CMD. They failed to furnish Ms Flanagan with the full information for the hearing. It appeared they were not taking the matter seriously. The Homeowner had found it difficult to pull together all that was required for the application.

The Property Factor

- 31.** Ms Flanagan said she had listened to the Homeowner. The Property Factor has apologised and is upset at the stress caused. They offered compensation previously. They will not be changing their stance otherwise.

32. Asked whether the Property Factor had reflected on the matters that had arisen or carried out any review of procedures, Ms Flanagan said there had been a lot of changes over the past year. She is the first point of contact and discusses issues with homeowners and deals with any Tribunal cases. A customer portal has been introduced. Homeowners are now alerted to events such as contractors collecting keys to carry out work. There has been training of staff and an increase in staff numbers.

Findings in Fact

33.

- (i) The Homeowner is the joint heritable proprietor of the Property.
- (ii) The Property Factor provides factoring services to the development of which the Property forms part.
- (iii) The Homeowner informed the Property Factor on 9th February 2023 of concerns regarding the security of the communal entrance to the block of flats in which the Property is situated.
- (iv) The Property Factor stated in an email to the Homeowner on 13th February 2023 that they would ask contractors to provide quotes for a door entry system and would let all homeowners know.
- (v) The Property Factor failed to inform homeowners timeously that their property manager had changed in March 2023.
- (vi) The Homeowner called the Property Factor on 2nd March 2023 to advise that the communal door was insecure. The Homeowner was informed that the property manager would contact her shortly.
- (vii) The Homeowner's message of 2nd March 2023 was not passed to the property manager timeously.
- (viii) The Homeowner informed the Property Factor on 4th March 2023 that the entry door system was broken.
- (ix) On 9th March 2023, the Property Factor informed the Homeowner that a locksmith had been instructed to repair the lock, and contractors had been chased for quotes.
- (x) On or around 9th March 2023, the Property was broken into.
- (xi) On or around 10th March 2023, the lock on the communal door was repaired.
- (xii) On 15th March 2023, the property manager requested the incident number for the break-in. The Homeowner refused to provide this.

- (xiii) Prior to 16th May 2023, the Homeowner posted a negative review of the Property Factor on Trustpilot.
- (xiv) On 16th May 2023, the Property Factor posted a response to the review. The response contained inaccurate, false and misleading information.
- (xv) On or around 21st June 2023, the Homeowner made a complaint to the Property Factor.
- (xvi) By letter dated 3rd July 2023, the Property Factor apologised for any breakdown in communication in relation to the change of property manager. The Property Factor offered the Homeowner a credit of £78.33, being 1/6 of the share of invoices from the locksmith and a security company.
- (xvii) On 3rd July 2023, the Homeowner requested that the complaint be elevated to stage 2.
- (xviii) On 17th July 2023, the Property Factor requested that the Homeowner contact the Head of Property Management in relation to the stage 2 complaint. This was not in accordance with the Property Factor's complaint procedure.
- (xix) On 18th July 2023, the Property Factor informed the Homeowner that the Head of Property Management would contact her directly.
- (xx) On 26th July 2023, the Head of Property Management requested the crime reference number from the Homeowner. The Homeowner refused to provide the number.

Tribunal Decision and Reasons

Paragraph OSP2

- 34.** The Tribunal found that the Property Factor failed to comply with this paragraph of the Code by failing to be honest, open, transparent and fair in their dealings with the Homeowner in respect of their response to the Trustpilot review. The Property Factor misrepresented the facts in relation to crucial dates, as substantiated by evidence lodged by the Homeowner. The Property Factor repeatedly refused to correct their response. This was not honest, open, transparent or fair to the Homeowner.
- 35.** The Tribunal did not find that the Property Factor failed to comply with this paragraph in relation to failing to inform homeowners how long repairs to (a) the lock, and (b) internal decorating would take. Those matters are covered elsewhere.

- 36.** The Tribunal did not find that the Property Factor failed to comply with this paragraph in relation to failing to inform homeowners that the property manager had changed. There was no element of dishonesty in this regard, and the Property Factor has apologised for this oversight.
- 37.** The Tribunal did not find that the Property Factor had failed to comply with this paragraph by requesting the crime reference number for the break-in. The Tribunal considered there were legitimate reasons why the Property Factor may wish to request this number, even if a different reason was given on different occasions.
- 38.** The Tribunal did not find that the Property Factor had failed to comply with this paragraph by failing to deal properly with the Homeowner's complaint. The Property Factor deviated from their complaints procedure in their email of 17th July 2023, however, they corrected their mistake the following day, informing the Homeowner that the Head of Property Management would be in touch with her and apologising for the confusion.

Paragraph OSP4

- 39.** The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code by providing information that was negligently misleading or false in responding to the Trustpilot review in the first instance, and deliberately misleading or false in refusing to correct their review response when it was pointed out to them that it contained incorrect information.
- 40.** The Tribunal did not find that the Property Factor had failed to comply with this paragraph by providing misleading or false information in respect of the complaints procedure, for the reasons set out at paragraph 38 above.

Paragraph OSP6

- 41.** The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code by failing to deal with the matter of the lock in a timely way. The Homeowner contacted the Property Factor on 9th February 2023 with her concerns. Even if it was not considered an emergency, it was incumbent upon the Property Factor to progress this matter promptly, given the security issues. The Tribunal accepts that the Property Factor is at the mercy of contractors' schedules, however, there was no evidence before the Tribunal to show that the Property Factor had tried to expedite the matter of obtaining quotes. One month later, when the lock was fixed after another complaint raised by the Homeowner, the Property Factor was still awaiting quotes in respect of security systems. The Property Factor also failed to deal with the Homeowner's complaint of 2nd March 2023 with reasonable care and skill and in a timely way by failing to pass it to the property manager.
- 42.** The Tribunal made no findings regarding decoration works, as there was an insufficiency of evidence lodged by the Homeowner in this regard, despite the Homeowner having stated at the CMD that further evidence would be lodged..

Paragraph OSP12

43. The Tribunal did not find that the Property Factor had failed to comply with this paragraph of the Code by using red to highlight their response in an email. The Tribunal accepts that the Homeowner found this intimidating, however, it is a subjective matter, and the Tribunal did not accept that the Property Factor intended to be abusive, intimidating or threatening by highlighting the text in red. The Tribunal took into account that the content of the text highlighted in red was entirely appropriate and reasonable, and was not in any way abusive, intimidating or threatening.

Paragraph 6.4

44. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. There was an insufficiency of evidence lodged by parties in this regard. It was not clear whether the works to the lock or the security system fell under the cost threshold of £75 below which job-specific progress reports are not required. The Tribunal noted that the Property Factor's offer to refund £78.33 to the Homeowner stated that this was a sixth share of the total cost of the locksmith and the security company, which would suggest that each repair fell below the cost threshold, in which case, the Property Factor was not bound by the Code to keep homeowners informed of the progress of the work including estimated timescales for completion.

45. There was no evidence lodged by the Homeowner to substantiate her complaints in regard to decoration, despite having stated at the CMD that further evidence would be lodged. It was not clear whether these works fell under the cost threshold. The Tribunal was unable to make any findings in this regard.

Proposed Property Factor Enforcement Order (PFEO)

46. Having determined that the Property Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO. The Tribunal decided to make a PFEO.

47. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations.

48. A proposed PFEO accompanies this decision. Comments may be made in respect of the proposed PFEO within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Right of Appeal

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 to appeal within 30 days of the date the decision was sent to them.

Legal Member and Chairperson
1st July 2024