

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)**

Chamber Ref: FTS/HPC/LM/18/1073

**Open space area in cul-de-sac, Belvedere Road (Numbers 32-35), Bathgate,
EH48 4AX
("the land")**

The Parties: -

**Mrs Gladys Heggie,
(represented by her son Mr Craig Heggie both of 32 Belvedere Road, Bathgate
EH48 4AX
("the Homeowner"))**

**Weslo Housing Management, 66 North Bridge Street, Bathgate EH48 4PP
(represented by their agent TC Young, Solicitors, 7 West George Street
Glasgow G2 1BA)
("the Factor")**

Tribunal Members:

**Graham Harding (Legal Member)
Andrew McFarlane (Ordinary Member)**

DECISION

The Factor has not failed to carry out its property factor's duties.

The Factor has not failed to comply with its duties under section 14(5) of the 2011 Act and has complied with the Code.

The decision is unanimous

Introduction

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 is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Factor became a Registered Property Factor on 12 December 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that

date.

1. By application dated 7 May 2018 the Homeowner complained to the Tribunal that the Factor had failed to comply with the code in respect of an alleged breach of sections 6.1 and 7 and had also failed to properly carry out its property factors duties. Specifically, the Homeowner complained that the land in front of her property that was designed to be an open area was being damaged by vehicles and that the Factor had failed to take action against those responsible despite saying that those responsible would pay for the damage and that bollards would be erected.
2. By Minute of Decision dated 31 May 2018 a Convenor with delegated powers referred the application to a Tribunal.
3. The Factor's agents lodged written representations by correspondence dated 12 July 2018 and 9 August 2018. The Homeowner's representative Mr Craig Heggie responded by email dated 23 July 2018.

Hearing

4. A hearing was held at George House, 126 George Street, Edinburgh on 16 August 2018. The Homeowner was represented by Mr Craig Heggie and the Factor by Mr Alistair McKendrick of T C Young Solicitors and Ms Alison Barker and Ms Caroline Poulson from the Factor.

Summary of Submissions

Section 6.1 of the Code

5. Mr Heggie submitted that as he had stated in the documents submitted with the application there was a contradiction between what had been said in correspondence and what the Factor was now saying in its response to the complaint.
6. Mr Heggie referred to the Factor's letter of 6 March 2015 in which it was said that parking on the grass verges was causing damage that had been repaired by Weslo at considerable cost. The letter also stated that the Factor was working with the police to identify the owners of the vehicles responsible. However, Weslo was now saying it had not carried out any repairs at all.
7. Mr Heggie said that the vehicles were causing damage and that it was generally one individual Weslo tenant who was responsible. He said he had never spoken to the individual but had complained about him to Weslo. Mr Heggie produced some photos of the land in question showing vehicles parked on it. He said that in winter the ground became churned up. It was better in the summer.
8. For the Factor Mr McKendrick adopted the written representations previously submitted to the Tribunal. The Factor had previously seen as a solution to the

problem individually billing those responsible for causing damage to the land by parking on the grass verges but in fact no work had been done by the Factor. The letter of 6 March 2015 contained an unfortunate statement written by a member of the Factor's housing team. In response to a comment from the Tribunal that given the essence of the Code was that of transparency and accuracy the letter did not reflect well on the Factor. Mr McKendrick accepted that the Factor would agree that was the case.

9. The Tribunal queried why this had not been acknowledged in the complaints process and again Mr McKendrick acknowledged that the information ought to have been available to those dealing with the complaint at that time.
10. Mr McKendrick said that it was not clear what the Homeowner was looking for the Factor to do. Following discussions between Ms Barker and the Homeowner it seemed the Homeowner did not wish to pay a share of the cost of erecting bollards or fencing around the area of land. Any works would require the consent of a majority of owners. Weslo did not own a majority of the properties.
11. Mr McKendrick explained that the crux of the matter was that in addition to being Factor, Weslo were also Social Landlords. It appeared that the Homeowner was having an issue with one tenant in particular and whilst it was a difficult situation the Tribunal was not the correct forum to deal with the Homeowner's complaint.
12. Mr Heggie responded by saying that he had not been present at the meeting with Ms Barker and his mother but was aware that there had been talk of a no parking sign being erected at a cost of £400.00 and that this would be shared between all the owners. He confirmed his mother was not prepared to pay and thought the perpetrator should pay. Mr Heggie also said that despite this he thought in reality his mother had no say in the matter and she would always just have to pay whatever she was asked to pay in the communal bill she received.
13. Ms Barker explained that when it came to making decisions about carrying out works on the estate the Factor would do an assessment as to what would be most cost effective taking account the cost to residents. If the cost was above £50.00 per household it would require majority consent. In the past that had been difficult to obtain and therefore the Factor generally had to wait until it could step in and have the works carried out as an emergency. The Factor generally did not get a lot of response from residents.
14. Mr Heggie said that he had never believed that any work had been done to repair the grass verges.

Section 7

15. The Tribunal asked Mr Heggie to clarify whether he was insisting on this part of his complaint given the terms of his letter to the Tribunal of 23 May 2018. Mr Heggie felt that the whole complaints procedure was flawed. If his

mother's complaint was not against Weslo as Factor then it should have been diverted to another department.

16. For the Factor Mr McKendrick again referred to the points made in the written submissions. The Homeowner's complaint had been considered and dealt with but had not found in the Homeowner's favour. The Factor agreed that there was a problem with parking on the grass verge but that was a separate issue from the Factor failing to deal with the situation. The Factor's staff had tried visiting at different times of the day and had put signs on offending cars advising that people cannot park on the verges.
17. Mr Heggie felt that there had been no repercussions for the offending person who continued to park several vehicles on the verge.

Property Factor's Duties

18. Mr Heggie said he remained concerned at the inaction of the Factor over a prolonged period. He felt by sending letters to owners and tenants but not following it up with action the Factor was just paying lip service to the complaints. 15 years down the line nothing had been achieved. Mr Heggie felt the Factor could have been in more contact with the police. He said if it had been his property he would have done much more in reporting the offending to the police. He also thought there should be more contact between the different departments within Weslo if a tenant was breaching the terms of his tenancy agreement.
19. Mr McKendrick said that whilst there might have been perceived inaction on the part of the Factor Ms Barker had in fact been on site on many occasions and the Factor felt that it had done all that it could. With regards to having more contact with the police, it would be open to any homeowner to complain to the police rather than rely on the Factor.
20. Mr McKendrick said that whilst he sympathised with the Homeowner's situation the issue was in reality a dispute with a Weslo tenant and the correct route was for the Homeowner to make a complaint to Weslo as Landlord not Factor.
21. Mr Heggie queried why he had not been advised of this previously and also pointed out that his mother had spoken to the police but had not been getting anywhere with them.
22. Ms Barker advised that she had contacted a Weslo housing officer and reported that there was an issue with a tenant and there had been contact between the housing officer and the Applicant.

The Tribunal make the following findings in fact:

23. The Homeowner is the owner of 32 Belvedere Road Bathgate ("the property")

24. There is a grassed area of land extending along the cul-de-sac in which the property is located.
25. The Factor is the property factor of the houses located in the cul-de-sac and of the larger development mentioned in the Deed of Conditions recorded G.R.S. (West Lothian) 14 April 1980.
26. In terms of Clause NINTH of said Deed of Conditions the proprietors of properties in the feu'd area are responsible for the cost of maintenance, repair and renewal of *inter alia* open spaces such as the said grassed area of land.
27. A tenant of Weslo who lives in the same cul-de-sac as the Applicant has over a period of about 15 years parked vehicles on the said grassed area. This has caused damage to the grass particularly in winter.
28. Occasionally other parties have parked on the grassed area.
29. The Homeowner has complained to the Factor about vehicles being parked on the grassed area on numerous occasions.
30. The Factor has reported the Homeowner's concerns to the police and has placed signs warning cars not to park on the grassed areas.
31. Although the Factor wrote to the Homeowner by letter dated 6 March 2015 that considerable costs had been incurred for repairs to the grassed area in fact no such repairs had been carried out.
32. The Factor is entitled to recover the cost of erection of signs, bollards or fencing if erected on or around the grassed area from the owners of the properties affected.
33. The Factor would require a majority of owners to be in favour of erecting any signs, bollards or fences before proceeding with such works.
34. The Factor's Chief Executive, Mike Bruce, responded to Mr Heggie's Stage 2 complaint by letter dated 6 April 2018.
35. In addition to being Factor, Weslo is also a Social Landlord in terms of the Housing (Scotland) Act 2010 in respect of properties located within the feu'ing area referred to in the said Deed of Conditions referred to above.

Reasons for Decision

Section 6.1 of the Code

36. It appeared to the Tribunal that there was no problem as far as the Applicant was concerned in reporting matters requiring repair to the Factor. The issue was whether any repairs to the grass verge had in fact been carried out. Although the Factor's letter of 6 March 2015 appeared to indicate that work

had been done in actual fact this was not the case. However, Mr Heggie and therefore presumably the Homeowner thought no repairs had been done. It seemed to the Tribunal that the letter was probably sent to all the residents in the cul-de-sac more as a threat to any who may be parking on the verge that they could be faced with a bill in the future if they were identified.

37. It did appear to the Tribunal that there was some confusion in the minds of the Homeowner and Mr Heggie between the role of Weslo as Factor and that of Landlord. It seemed apparent to the Tribunal that there were other longstanding issues between the Homeowner and Weslo's tenant aside from parking on the grass verge that clearly did not form part of the matter to be determined by the Tribunal. Mr Heggie had sought to raise these in his oral submissions to the Tribunal but as these were not directly relevant to the matter in hand was not permitted to do so.
38. In all the circumstances it did not appear to the Tribunal that the Factor could be said to have breached Section 6.1 of the Code.

Section 7 of the Code

39. It seemed to the Tribunal from the terms of Mr Heggie's letter to the Tribunal of 23 May 2018 that he did not intend to insist upon his complaint in terms of a breach of Section 7 and indeed he was unable to specify a specific subsection that he considered to have been breached. In the circumstances whilst the Tribunal considered that in dealing with the complaint the Factor's Chief Executive could have provided a clearer explanation as to why it had been stated in the letter of 6 March 2015 there had been considerable expense incurred in carrying out repairs to the grass verge when this was manifestly not the case this did not amount to a breach of Section 7 of the Code.
40. Although in his letter of complaint to the Factor Mr Heggie had referred to a breach of Section 1 of the Code by failing to provide a copy of the Factor's complaints procedure this had not formed part of the Applicants complaint to the Tribunal and was not considered by it.

Property Factors Duties

41. The Applicant and Mr Heggie were clearly frustrated by the continuing inertia as they saw it on the part of the Factor to take action against an individual tenant who was primarily responsible for causing damage to the grass verge by parking vehicles on it.
42. There was no doubt that there had been complaints over a prolonged period with little or no effect. However, the role of the Factor in dealing with an issue such as this is limited. It appeared to the Tribunal that in that capacity the Factor had done all that might be expected of it. It had investigated the complaints and responded to them. It had placed warning notices on vehicles parking on the verges. It had contacted the police. It had written to residents threatening further action. It had discussed with at least the Applicant the

possibility of erecting signs, bollards or fencing and the likely costs that might involve. It was clear to the Tribunal that as Factor Weslo could not realistically do more to try to resolve the Applicant's concerns. The Tribunal was therefore satisfied that the Factor had not failed to carry out its property factor duties.

43. As was pointed out during the course of the hearing by Mr McKendrick his clients wore two hats, one as Factor and another as a Social Landlord. It is beyond the jurisdiction of the Tribunal to consider what other remedies may be open to the Applicant but the Tribunal was pleased to note that Weslo was prepared to discuss matters further with Mr Heggie after the hearing had ended.

Appeals

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.

G Harding

Legal Member and Chair

25 August 2018

Date