



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference numbers:

FTS/HPC/22/4473

Re: 9U, Melvaig Place, Glasgow, G20 8EY (“the Property”)

The Parties:

Mrs Pei Yuen Foo residing at 3/1, 39, Peel Street, Glasgow G11 5LU, (“the Homeowner”)

Wheatley Homes Glasgow Limited having a place of business at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Colin Campbell (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -

- (i) has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at OSP2, OSP4 and OSP11; Written Statement of Services at Section1; Communications and Consultation at Section 2.6; Financial Obligations at Section 3.1; Debt Recovery at Section 4.11 and Complaints resolution at Sections 7 and
- (ii) has failed to comply with the Property Factor’s Duties and
- (iii) has not failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at OSP7

Background

1. By applications received between 22 December 2022 and 16 January 2023 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Code of Conduct for Property Factors and had failed to comply with the Property Factor Duties.

2. The Application comprised the following documents: -(i) the First-tier Tribunal standard application form, Form "C2", indicating that the parts of the Code of Conduct for Property Factors 2021 ("the 2021 Code") complained of are: Overarching standards of practice at OSP2, OSP4, OSP7 and OSP11; Written Statement of Services at Section1; Communications and Consultation at Section 2.6; Financial Obligations at Section 3.1; Debt Recovery at Section 4.11 and Complaints resolution at Sections 7 and complaining of a failure to carry out the Property Factor's duties, (ii) copy intimation letter to the Property Factor (iii) copy email correspondence with the Property Factor, (iii) copy of the Property Factor's Written Statement of Service by Lowther as part of the Wheatley Group, (iv) copy invoice from the Property Factor for £1,165.58 for "Lowther Common Improvements" and (v) copy Sheriff McKay at Glasgow in respect of Simple Procedure GLW-SG5029-22 7 in which the Property Factor is the claimant and the Homeowner is the Respondent.
3. The complaint of a failure to comply with Property Factor's duties is the way in which the Property Factor failed to carry out owner consultation in terms of the title deeds, applied the costs and the way in which the Property Factor raised debt action against the Homeowner.
4. A legal member of the Chamber with delegated powers of the Chamber President accepted the application ("the Application") and a Case Management Discussion (CMD) was fixed for 13 April 2023 at 10.00 by telephone conference call. The CMD was postponed at the Homeowner's request as she was on holiday on that date. The postponed CMD was fixed for 2 May 2023 at 10.00 by telephone conference call.

First Case Management Discussion

5. The first CMD took place on 2 May 2023 at 10.00 by telephone conference call. The Homeowner took part and was not represented. The Property Factor did not take part, was not represented and did not submit written representations.
6. The Tribunal advised the Homeowner that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required.
7. With reference to the absence of the Property Factor, the Tribunal advised the Homeowner that although the Property Factor was not obliged to enter the proceedings, it was not clear to the Tribunal that the Property Factor had been properly notified and was aware of the proceedings. Therefore, the Tribunal advised the Homeowner that it would adjourn the CMD to a later date or, depending on the responses, if any, from the Property Factor to a Hearing and that it would make enquiries of the Property Factor to inform its decision and the outcome of the Application.

Direction

8. The Tribunal issued the following Direction:
 - "1. *The Chamber Administration is required, no later than 15 May 2023,*
 - i) *re-issue to the case papers by recorded delivery mail to the Property Factor at (a) Wheatley Homes Glasgow Limited, Wheatley House, 25, Cochrane Street, Glasgow, G1 1HL and (b) Wheatley Group, Lipton House, 170, Crown Street,*

- Glasgow, G5 9XD and*
- ii) *confirm to the Tribunal that the case papers have been re-issued and provided proof of delivery;*
2. *In the event that the Property Factor is opposing the Application or intends to enter the proceedings, the Property Factor is required to:*
- i) *Detail exactly what works to the LED lighting system ("the Works") were carried out, by whom and when?*
- ii) *Detail the number and location of LED lights replaced as part of the Works;*
- iii) *Detail the tender process, if any, undertaken in respect of the Works or the quotes obtained;*
- iv) *Confirm if, in the Property Factor's view, the Works were categorised as repair works, renewals of common parts or improvements?*
- v) *With reference to the title deeds or other documents, explain the Property Factor's authority for instructing the Works?*
- vi) *Detail the consultation, if any, which took place with the Homeowner and her fellow homeowners?*
- vii) *Provide a response to the Homeowner's claim that she is the only one out of 19 homeowners being pursued for a debt arising from the Works and*
- viii) *Provide a copy of its complaints procedures and of its debt recovery procedures, together with evidence of the extent to which both procedures have been complied with in respect of the Application.*

The said documentation should be lodged by the Property Factor with the Chamber and copied to the Homeowner no later than close of business on 16 June 2023."

9. The Chamber Administration complied with the Direction and issued the Application case papers as directed and provided evidence that the Property Factor had received the same. The Chamber Administration complied with the Direction further and issued the Direction to the Property Factor on two occasions and provided evidence that the Property Factor had received the same.
10. The Property Factor did not comply with the Direction to any extent. Tribunal was satisfied that the Application and the Direction have been notified to the Property Factor properly.

Second Case Management Discussion

11. The second CMD took place on 4 August 2023 at 10.00 by telephone conference call. The Homeowner took part and was not represented. The Property Factor did not take part, was not represented and did not submit written representations.
12. The Tribunal had regard to the Rules and, in particular, to Rule 2 and took the view that it should proceed in the absence of the Property Factor. The Tribunal advised the Homeowner that as the Property Factor did not oppose the Application, there was no requirement on the Tribunal to hold a Hearing of evidence and that the Tribunal could deal with the Application at the CMD. The Homeowner confirmed that she was ready to proceed with the Application.

Heads of Complaint.

13. The Homeowner then expanded on the Application and answered the Tribunal's questions in respect of the broad heads of complaint .

i) **Lack of consultation with common owners and Property Factor exceeding power in respect of instructing works.**

With reference to the supporting documents lodged with the Application which include her Land Certificate, the Homeowner explained the background to the factoring of the Property. She explained that the title deeds limited the Property Factor's delegated expenditure to £250.00 per dwellinghouse and that expenditure above this sum required to be agreed by a majority of owners at a meeting to be called in terms of the title deeds. The Homeowner explained that she had received an invoice from the Property Factor for £1,165.58 for "Lowther Common Improvements" and stated that no meeting had been called to instruct these works. She advised that the works in question was the installation of 7 LED lights at a total cost of £22,146.00, being £1,165.58 per dwellinghouse.

ii) **Lack of communication by the Property Factor.**

With reference to the supporting documents lodged with the Application, the Homeowner stressed that the Property Factor has consistently failed to correspond within reasonable timescales and has not provided full and accurate responses to written requests in respect of the invoice. She explained that, in an email of 19 October 2021, the Property Factor's Customer Services Advisor stated that her consent was not required as the cost before VAT was "under the threshold for consent" which is in direct contradiction of the title deeds. The Homeowner expressed extreme frustration at the lack of consistency in the Property Factor's staff responses, the fact that she has had to deal with different staff members and that her enquiries went unresolved.

iii) **The process followed in pursuing debt recovery.**

With reference to the supporting documents lodged with the Application, the Homeowner advised the Tribunal that the tone of correspondence from the Property Factor is unreasonable and threatening, ignoring her requests for an explanation of the breakdown of the invoice.

With further reference to the supporting documents lodged with the Application, the Homeowner advised the Tribunal that, in spite of her clear dispute of the invoice issued, the Property Factor instructed solicitors to raise a Simple Procedure debt action against her. She stated that, on explaining the background to the Sheriff at Glasgow, the Sheriff paused the Simple Procedure action and ordered the Homeowner to submit the Application to the Tribunal. The Homeowner advised the Tribunal that she has queried the invoice with the Property Factor's solicitors without receiving a response.

The Homeowner stated that, following the CMD on 2 May 2023, the Property Factor has instructed solicitors to raise a further Simple Procedure debt action against her for the same invoice.

The Homeowner stated further that, from conversations with other owner, she believes that she is the only owner being pursued for this debt.

iv) **Impact of Property Factor's conduct on the Homeowner.**

The Homeowner advised that her dealings with the Property Factor had caused her stress, worry and frustration and that she feels ignored by the Property Factor.

Issues for Tribunal

14. As the Property Factor did not oppose the Application, the issue for the Tribunal was sufficiency of evidence to make a decision in terms of Rule 17 (4) of the Rules. The Tribunal was satisfied that it had sufficient information and evidence to make a decision.

Findings in Fact.

15. The Tribunal had regard to the Application in full, and to the Homeowner's submissions made at both CMDs, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.
16. The Tribunal found the Homeowner to be truthful, straightforward and measured in her submissions and found that she did not attempt to exaggerate her complaints to any extent. Her frustration and despair were clearly evident.
17. The Tribunal found the following facts established:
 - i) The Parties are as set out in the Application;
 - ii) The Property Factor has not acted to resolve the Homeowner's dispute in respect of the LED invoice;
 - iii) The Property Factor has not provided any detail in respect of the tender or other process in instructing the LED works;
 - iv) The Property Factor has not explained its authority to instruct the LED works and to issue the invoice to the Homeowner;
 - v) The Property Factor is not entitled to issue to the Homeowner and pursue her for the invoice for the LED works;
 - vi) The Property Factor did not deal with correspondence from the Homeowner within reasonable timescales;
 - vii) The Property Factor did not provide the Homeowner with full and accurate information in response to her written requests;
 - viii) There is no evidence that the Property Factor has proper procedures, as required by the Code and the property factor's duties;
 - ix) The Homeowner considers that she has been discriminated against by the Property Factor and
 - x) The Homeowner has suffered distress, frustration and inconvenience due to the Property Factor's failures.

Decision of the Tribunal with reasons

18. From the Tribunal's Findings in Fact, the Tribunal had no hesitation in finding that the Property Factor failed to comply with the 2021 Code and with the property factor duties.
19. With regard to the specific breaches of the 2021 Code and the information before it, the Tribunal found that the Property Factor failed to comply with the following parts of that Code:-
 - i) Overarching Standards of Practice
OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

The Property Factor's complete failure to deal with the Homeowner in respect of her dispute of the invoice and its conduct throughout is evidence a failure of this part of the Code.

OSP4. You must not provide information that is deliberately or negligently misleading or false.

The Property Factor provide wrong information to the Homeowner in respect of its power to instruct the works without consent is evidence a failure of this part of the Code.

OSP7. You must not unlawfully discriminate against a homeowner because of their age, disability, sex, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation.

The Homeowner, in her oral submission at the second CMD, did not elaborate on discrimination other than to state that she had been dealt with differently to the other owners.

The Tribunal finds that there is insufficient evidence to make a finding of failure in respect of this part of the Code.

OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

The Property Factor's complete failure to deal with the Homeowner in respect of her dispute of the invoice and its conduct throughout is evidence a failure of this part of the Code.

ii) Written Statement of Services

Section 1 is the overarching Section relating to the Written Statement of Services. It states that the Tribunal will expect property factors to demonstrate compliance with their Written Statement of Services. The Property Factor did not demonstrate compliance and so the Tribunal found that the Property Factor is in breach of this part of the Code.

iii) Communications and Consultation

2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

Having found that the Property Factor did not carry out a consultation in respect of works above its level of delegated authority, the Tribunal found, that on the balance of probabilities, the Property Factor failed to comply with this part of the Code.

iv) Financial Obligations

3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were

calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

The Property Factor's complete failure to deal with the Homeowner in respect of her dispute of the invoice and its conduct throughout is evidence of a failure of this part of the Code.

v) Debt Recovery

4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action

The Property Factor's instruction to solicitors to raise court action and its complete failure to deal with the Homeowner in respect of her dispute of the invoice is evidence of a failure of this part of the Code.

vi) Complaints resolution

The Property Factor's complete failure to deal with the Homeowner's complaints in any meaningful way and its conduct throughout is evidence of a failure of Section 7 of the Code.

20. The Tribunal found further that the Property Factor had failed to comply with the Property Factor Duties as the Property Factor failed to carry out owner consultation in terms of the title deeds, and the way in which the Property Factor raised debt action against the Homeowner.

Property Factor Enforcement Order (PFEO)

21. Having made a decision in terms of Section 19(1) (a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the Property Factor's Duties, the Tribunal then proceeded to consider Section 19 (1) (b) of the Act which states "*(1)The First-tier Tribunal must, in relation to a homeowner's application referred to it ... decide ... whether to make a property factor enforcement order.*"
22. The Tribunal's view is that the Property Factor's conduct and treatment of the Homeowner to be totally unprofessional in all respects. The Tribunal considers that the Property Factor has shown complete disregard for their statutory duties and their customer. The Property Factor's conduct has caused the Homeowner unnecessary frustration, stress and a feeling that she has been discriminated against and ought to be compensated. Further, it appears to the Tribunal that the Homeowner's complaints remain unresolved and she is still being pursued for a debt which the Property Factor is not entitled to have paid. Therefore, the Tribunal proposes to make a PFEO.
23. Section 20 of the Act states: "*(1) A property factor enforcement order is an order requiring the property factor to (a) execute such action as the First-tier Tribunal considers necessary and (b) where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable. (2) A property factor*

enforcement order must specify the period within which any action required must be executed or any payment required must be made. (3)A property factor enforcement order may specify particular steps which the property factor must take.”

24. The Tribunal proposes to make a PFEO to cancel the invoice from the Property Factor for £1,165.58 for “Lowther Common Improvements”, to order the Property Factor to withdraw the Simple Procedure actions and to make reasonable payment to the Homeowner to compensate her for inconvenience, frustration and stress.
25. Section 19 (2) of the Act states: - *“In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so (a)give notice of the proposal to the property factor, and (b)allow the parties an opportunity to make representations to it.”* The Tribunal, by separate notice, intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.
26. The decision is unanimous.

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.

Signed

Karen Moore, Chairperson

18 August 2023