



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref: FTS/HPC/PF/23/2611

5 Longdales Court, Falkirk, FK2 7EP ('the Property')

Bence Fazekas residing at 5 Longdales Court, Falkirk, FK2 7EP ('the Homeowner and Applicant')

Ross and Liddell ('the Factor and Respondent')

David Doig, Raeside Chisholm ('The Factor's Representative')

Tribunal members:

Jacqui Taylor (Chairperson) and Melanie Booth (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has not failed to comply with (i) sections 6.1, 6.2, 6.4, 6.7 and 7.1 of the 2021 Code of Conduct and (ii) Property Factor duties, in relation to the Homeowner's complaints.

The decision is unanimous.

Background

1. The Homeowner is heritable proprietor of the property 5 Longdales Court, Falkirk, FK2 7EP ('the Property').
2. Ross and Liddell are factors of the Property and were registered as a property factor on 7th December 2012.
3. The Homeowner submitted a C2 application to the Tribunal. The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the specified sections of the Property Factor Code of Conduct 2021 and property factor duties.
4. By Notice of Acceptance by James Bauld, Convener of the Tribunal, dated 29th September 2023 he intimated that he had decided to refer the application (which

application paperwork comprises documents received between 4th August 2023 and 6th September 2023) to a Tribunal.

5. The Factor's Written Representations and Productions.

5.1 The Factor's First Inventory of Productions

- 5.1.1 Email exchange between parties 27th January 2024 to 7th February 2024.
- 5.1.2 Ross and Liddell development letter dated 7th February 2024.

5.2 The Factor's Second Inventory of Productions

- 5.2.1 Email from the Homeowner to the Factor dated 3rd November 2023.
- 5.2.2 Email from the Homeowner to the Factor dated 10th November 2023.
- 5.2.3 Email from the Factor to the Homeowner dated 16th November 2023.
- 5.2.4 Email from the Factor to the Homeowner dated 29th December 2023.

5.3 The Factor's Third Inventory of Productions

- 5.3.1 The Factor's internal email re meeting on 20th May 2024.
- 5.3.2 Letter from the Factor to owners with mandate dated 25th June 2024
- 5.3.3 Letter from the Factor to owners with mandate dated 25th June 2024
- 5.3.4 Letter from the Factor to owners with mandate dated 1st August 2024
- 5.3.5 Letter from the Factor to owners dated 2nd August 2024
- 5.3.6 Letter from the Factor to owners with mandate dated 6th August 2024
- 5.3.7 Letter from the Factor to owners dated 4th October 2024.
- 5.3.8 Letter from the Factor to owners dated 15th October 2024.
- 5.3.9 Letter from the Factor to owners with mandate dated 25th October 2024
- 5.3.10 Letter from the Factor to owners with mandate dated 29th October 2024
- 5.3.11 Title sheet STG58538.

5.4 The Factor's written representations.

In summary, the Factor's written representations accept that items have been left in the common areas of the development. However, as the Factor has reported matters to the Local Authority and also sent correspondence to the owners of the development regarding options open to them and also as the required mandates were not forthcoming they cannot be held responsible for the current situation.

6. First Case Management Discussion.

The First Case Management Discussion took place on 15th February 2024. The Legal Member was Graham Harding. He prepared a separate note dated 2nd March 2024. A copy was provided to the parties.

7. Second Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application at 14.00 on 18th November 2024.

The Homeowner attended.

Jennifer Johnston, the Factor's Associate Complaints Resolution Director and David Doig, solicitor representing the Factor, also attended.

8.1 The parties confirmed the following agreed facts:

8.1.1 The Homeowner bought the Property on 22nd April 2022.

8.1.2 The Factor was already factoring the Property in April 2022.

8.1.3 The Property is a first floor flat within a block of six flats.

8.2 The Tribunal made the following findings in fact:

8.2.1 All of the owners of the block of which the Property forms part have not provided the Factor with signed mandates authorising the requested common repairs to proceed.

8.2.2 The Factor carries out property inspections twice a year.

8.3 The detail of the Homeowner's application and the parties' representations in relation to the detailed complaints are as follows:

Details of the Homeowner's factual complaints:

The First Complaint.

There have been large quantities of abandoned items in communal areas, including hazardous waste, for a long time. Ross and Liddell neglects their duties to take meaningful action or offer any solutions.

The Second Complaint.

The Factor had sent the Homeowner a quotation for redecoration of the common parts of the block. However, the condition of the ground floor is in a poorer condition than the upper floors and this has not been reflected in the quote.

The Third Complaint.

The Homeowner had been charged for a repair to a door lock that should have been charged to the Landlord of the property concerned.

Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021):

This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

The Homeowner's complaint:

The Factor has failed to maintain communal areas up to a reasonable standard and has failed to take action to prevent further deterioration. The main problem relates to the condition of the lower landing. Since the first CMD the Factor has obtained quotations for redecoration of the communal areas from two decorators. The cost quoted is £3900. The Factor has failed to obtain the approval of all of the owners. He has been asked to pay £700 for his share of the cost of the redecoration but does not feel that he should have been asked to pay as all of the owners have not agreed to the work.

Mr Fazekas advised that the Factor had prepared a reinspection report in July 2024. He acknowledged that the Tribunal has not been provided with a copy. He is concerned that the required repairs detailed in the report have not been actioned by the Factor.

The Factor's response:

At all times the Factor has endeavored to assist the applicant in resolving difficulties he has encountered, and continues to encounter. This section of the Code is considered to point to good practice. The Factor acknowledges that the Homeowner has the responsibility to keep their Property well maintained, while stating the Factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard. The Factor has embraced the Homeowner's concerns by writing on numerous occasions to the proprietors. They are not permitted to remove items of personal property. They have not received the agreement/instruction of the Homeowner to obtain quotations and to invite the owners of this one block to bear the cost of redecoration or indeed removal of items. In so far as they can properly be instructed. Also, the provisions of this clause are discretionary 'a property factor can help' rather than mandatory 'a property factor must help'.

At the first CMD Mr Doig explained that the lower landing was the area affected by most traffic and it followed that it would show signs of most wear. He confirmed that the Factors had in the past obtained quotations for the redecoration of the common

stairs and landings but said that there would be no point in doing so at present when the Homeowner had said he would not contribute to the cost. The First CMD queried if there had been any meeting of owners arranged to discuss the issues and it was confirmed that there had not been any meetings.

At the second CMD, Mr Doig advised that the quotes for internal decoration of the common areas had been renewed and submitted to the owners with mandates. Only three owners out of six owners of the block responded, and only two homeowners confirmed their agreement. Monthly reminders have been sent to owners. The project has not yet been abandoned but without agreement the work cannot proceed.

Mr Doig referred the Tribunal to paragraph 9 of the CMD Note for the first CMD which explains that the CMD was adjourned to allow time for the Factor to arrange a residents' meeting to address the disposal of rubbish and abandoned items. He explained that the meeting had taken place but the required mandates necessary for the works to proceed had not been provided by the owners.

The Tribunal's Decision:

The Tribunal acknowledge that the title of the Property is Land Certificate STG58538. The burdens that pertain to the Property are detailed at section D of the Land Certificate and are contained in the Deed of Conditions by Tilbury Homes (Scotland) Limited recorded GRS (Stirling) 19th June 1991. Clause Twelfth defines the common parts of the block and includes the common areas of the block. Clause Twelfth (Secundo) places the owners of the block under a burden of upholding and maintaining the common parts of the block in good order and repair. The Tribunal also acknowledges that the section of the Factor's Written Statement of Services headed 'Routine Repairs' states that the Factor's ability to instruct routine repairs is entirely governed by funding being made available by owners. The Tribunal determine that the owners of the block of which the Property forms part are responsible for maintaining the common parts in good order and repair. The Factor is not required to progress routine repairs that have not been agreed and funded by the common owners. The Tribunal find that all of the common owners of the block of which the Property forms part have not provided the Factor with mandates to enable the proposed works to proceed. Therefore, the Factor has not been in a position to progress the works and has not failed to comply with section 6.1 of the Code of Conduct in relation to the Homeowner's complaints.

The complaints in relation to the reinspection report carried out in July 2024 were not included within the application or any amendment to the application.

Section 6.2 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021):

Property factors may also agree, by contract, to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of

homeowners which contribute to fire safety. For example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters e.g. firefighters lifts, rising fire mains etc, or to ensure that common areas are kept free of combustible items and obstructions.

The Homeowner's complaint: The Factor has failed to address fire safety issues, including abandoned dangerous materials.

The Factor's response: The requirements are discretionary, good practice that on which they have not fallen foul.

The Tribunal's Decision.

The Tribunal determine that the provisions of section 6.2 of the Code of Conduct are discretionary and consequently the Factor has not failed to comply with section 6.2 of the Code of Conduct in relation to this complaint.

Section 6.4 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): 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 complaint:

The Factor has neglected legally required inspections and deliberately omitted the concerned areas.

The Factor's response:

The Factor has not breached section 6.4. The Factor has not received the consent of the Homeowner nor the majority of the owners to instruct removal of items left in the common areas and redecoration. The Homeowner challenges the basis of the proposed apportionment of the costs. The issues complained of do not point to a failure on the part of the Factors. They have arranged inspections and identified repairs. Approval has not been given from the homeowners. They cannot therefore offer a likely timescale for completion to the Homeowner.

The Tribunal's Decision:

As found by the Tribunal in relation to section 6.1 of the Code of Conduct, the Tribunal determine that as the owners have not provided the Factor with sufficient mandates to enable the proposed works to proceed with the result that the Factor has not been in a position to progress the works. Consequently, the Tribunal

determine that the Factor has not failed to comply with section 6.4 of the Code of Conduct in relation to the Homeowner's complaints.

Section 6.7 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

The Homeowner's complaint:

The Factor has neglected legally required inspections and deliberately omitted the concerned areas. At the inspection conducted by the Factor on 24th October 2023 it was reported that the window frames required attention but he queried if there had been any follow up as a result. Also, the Factor has not progressed repairs identified as necessary including repairs to fencing, redecoration and structural repairs at the back of the building.

The Factor's response:

The Factor refutes the assertion that they have breached section 6.7 of the Code. They have undertaken periodic visits inspections and complied reports. There have been no works which have been undertaken by a third party contractor in a negligent manner which is defective and which requires to be remedied. Ms Johnston confirmed that property inspections are carried out twice a year.

The Tribunal's Decision:

Paragraph 1 of the Factor's written statement of services states that properties under the management of the Factor will be inspected a minimum of twice per year. The Tribunal noted that Mr Fazekas refers to inspections that have taken place in October 2023 and July 2024 and Ms Johnston confirmed that inspections had taken place twice per year. The Tribunal were satisfied that the Factor was carrying out the required property inspections. The Tribunal noted that Mr Fazekas' main complaint is that the works identified in the inspection reports are not being instructed. As with the complaints under sections 6.1 and 6.4 of the Code of Conduct, the Tribunal determine that as the owners have not provided the Factor with sufficient mandates to enable the proposed works to proceed the Factor has not been in a position to progress the works and has not failed to comply with section 6.7 of the Code of Conduct in relation to the Homeowner's complaints.

Section 7.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021):

A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.
- The complaints process must, at some point, require the homeowner to make their complaint in writing.
- Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.
- How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.
- Where the property factor provides access to alternative dispute resolution services, information on this.

The Homeowner's complaint:

The Factor failed to meet its own deadlines. Employees giving contradicting information. Ignoring enquiries regarding certain matters in communication.

The Factor's response:

The Factor refutes the assertion that they have breached section 7.1 of the Code of Conduct. The Factor has a complaints handling procedure which is applied consistently and reasonably. The procedure does include a maximum timescale for the progression of the complaint through the various steps. The Factor accepts they failed to respond to the stage one complaint within the outlined timescales. The Homeowner, being aware of the complaints process, unilaterally moved on to the next stage of the process with no prejudice to him.

The Tribunal's Decision:

Section 7.1 of the Code of Conduct requires the Factor to have a written complaints handling procedure. Mr Fazekas' complaint is not in relation to the failure of the Factor to have a written complaints handling procedure but concerns issues of communication which are not a requirement of section 7.1 of the Code of Conduct. The Tribunal determine that the Factor has not failed to comply with section 7.1 of the Code of Conduct in relation to the Homeowner's complaints.

Property Factor duties:

Mr Fazekas advised that he has no additional complaints in relation to a failure to comply with Property Factor duties.

The Tribunal noted that whilst Mr Fazekas detailed the Third Complaint in relation to a charge for a repair to a door lock, this was not linked to a failure by the Factor to comply with particular sections of the Code of Conduct or Property Factor duties.

9. Appeals

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.

Jacqui Taylor

Signed Date 20th November 2024

Chairperson