

**First-tier
Tribunal for
Scotland**
(Housing and Property Chamber)

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/22/4515

The Parties: -

Sandra McGhee, 123 Craigton Drive, Dargavel, Bishopston, Renfrewshire, PA7 5T ("the Homeowner")

Residential Management Group Scotland Ltd, RMG House, Essex Road, Hoddesdon, EN11 0DR ("the Property Factor")

The Tribunal: -

**Melanie Barbour (Legal Member)
Mary Lyden (Ordinary Member)**

Decision

The tribunal finds that the Property Factor has not breached the Property Factor's Code of Conduct 2021.

Background

1. By application dated 20 December 2022 the Homeowner complained to the Tribunal that the Property Factor was in breach of OSP 2, OSP4, and Sections 4.3, 4.4, 4.5, 4.6, and 4.11 of the 2021 Code of Conduct.

2. This application was accepted by Notice of Acceptance dated 2 February 2023 by a legal member of the Tribunal with delegated powers and a case management discussion for this application was assigned to take place on 24 April 2023.
3. Written representations were submitted by both parties prior to the case management discussion, namely: -
 - a. Papers from the Property Factor dated 6 March 2023 which included an inventory of productions extending to 177 pages.
 - b. Papers from the Homeowner namely her passport, an invoice from RMG dated 6 February 2023; and email to the Property Factor dated 19 March 2023.
 - c. An email from the Property Factor dated 23 March 2023 (noting that the new invoice was for further quarterly charges, and this had not formed part of the application; had not been through the complaints procedure; and should not be considered in this application).
 - d. Copy of RMG's complaint procedure.
4. Both the Homeowner and Property Factor attended the case management discussion by telephone on 24 April 2023. A note was issued after the case management discussion and the application was continued to a further case management discussion on 7 September 2023. Of particular relevance, the Homeowner had not seen the Property Factor's written submission and had not therefore had the opportunity to consider the Factor's position.
5. On 7 September 2023 in attendance were the Homeowner and for the Property Factor Megan Mitchell (Finance Manager), Lisa Pieper (Regional Manager). Also in attendance was Chelsey Ollier as an observer.
6. Both parties had submitted further papers. The Property Factor objected to the submission of additional papers by the Homeowner as they considered that they raised new and further matters not included in the application. The tribunal confirmed that it did not intend to consider additional new matters, however, if

the papers were evidence relevant to the application before the tribunal, those papers would be considered. The Property Factor had submitted a written response to the Homeowner's further papers, and they asked for these to be considered in the event that the tribunal allowed the Homeowner's papers to be received.

7. The Homeowner confirmed that she had now had the chance to consider the original written submissions by the Property Factor. She advised that she considered that the Property Factor was still in breach of the code.

Discussion

8. Looking at each alleged breach of the code the parties advised as follows: -

Code 4.3: Any charges that a Property Factor imposes in relation to late payment by a Homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that Homeowner.

9. The Homeowner said that there had been a breach under this section. The complaint was related to an unpaid invoice. The Homeowner advised she had received the invoice. She advised that she had simply forgotten to pay it. As far as she was aware she had not received any reminder until a simple procedure claim raised in the sheriff court was served on her. She had paid the invoice as soon as she was served with the court action. She thought that was the end of the matter, but she then received an invoice to pay for court fees. She advised that the court fees were more than the original invoice.
10. She considered that the charges imposed had been unreasonable. The original bill was £154.00. She accepted that she had to pay the late payment fee, but she did not consider that it was reasonable to charge the court fees. She advised that the charges were too high for the size of the invoice.

11. She was convinced that the Property Factor had made no attempt to contact her after the invoice was originally sent out. She advised that sometimes the Factor will hand deliver letters but did not on this occasion. The Factor had gone straight to a lawyer, and they were very expensive.
12. The Property Factor advised that in accordance with their own written procedures they had sent out the invoice, then a first reminder. They then passed the matter to their lawyers, who had sent a further reminder and when there had been no response, they then proceeded to raise a court action against the Homeowner for payment.
13. The Factor went on to advise that there are 3,000 properties in the Dargavel estate, and if they did not pursue unpaid invoices, they would not be able to provide services. She advised that they had an obligation to other Homeowners to make sure they can continue to provide services, and therefore they need to collect maintenance charges and other fees. They do not have a choice of who not to proceed against. Their records show that two reminder letters had been out to the Homeowner.
14. Their written statement of services sets out their procedure for recovery of unpaid invoices. She confirmed that the debt had been repaid but the court expenses still had to be paid. The court expenses include the lawyers' fees and the costs of court action.
15. The Homeowner advised that she had moved into the development in April 2020. At the time of purchase, the settlement price paid the Factoring invoice until 2022. The 21st of March 2022 was the first invoice that the Homeowner had received. The Homeowner was aware of the Factors and that charges were payable; she had just overlooked paying this invoice.
16. From the further papers lodged, there was a discussion about a further charge of £80 which had been applied on 25 January 2023. It appeared that a charge had been served on the Homeowner to recover the expenses. Parties discussed whether the dispute over the fees was "open and ongoing" at that

time and whether instructions should have been given to hold off on serving the charge until this matter had been resolved. The Property Factor advised that, if necessary, they would be prepared to waive that fee.

17. The Homeowner advised that she thought when she had paid the invoice that would have been the end of the matter.
18. The Property Factor advised in terms of their debt recovery procedures if the invoice is not paid, then a late payment charge is added of £34. Details are then passed to their lawyer to pursue the debt.
19. The Property Factor advised that although there was nothing in the written statement as to the time before “imminent legal proceedings” would be taken, it was normally 14 days before any action would be taken after the second reminder had been sent out.

4.4 A Property Factor must have a clear written procedure for debt recovery which outlines a series of steps which the Property Factor will follow. This procedure must be consistently and reasonably applied. This procedure must set out how the Property Factor will deal with disputed debts and how, and at what stage, debts will be charged to other Homeowners in the group if they are jointly liable for such costs.

20. The Homeowner advised that she still considered that this section had been breached. She agreed that the Property Factor had a written procedure, but in her opinion the Property Factor did not follow the procedure. She advised that they had never received the first reminder from the Property Factor, or the second reminder from the solicitors.
21. The Property Factor advised that they had a debt recovery procedure in place. She said that they had followed it, and all letters had been sent out.

4.5 When dealing with customers in default or arrears difficulties, a Property Factor should treat its customers fairly, with forbearance and due consideration

to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions are available from not-for-profit debt advice bodies.

22. The Homeowner considered that they should have received hand-delivered letters. She also advised that the estate had had difficulties with letters getting delivered generally.
23. The Property Factor advised that they do not have a process for sending mail out by hand delivery. She noted that the reminder letters had been sent out first from the Property Factor and then secondly from their lawyers. The letters had gone out from two separate companies. She noted that the original invoice had been sent out and received by the Homeowner.
24. She considered that the Homeowner had been given a reasonable time to respond, the first reminder was issued on 4 May 2022, and the second reminder on 20 May. She advised it was not until July of that year that court proceedings had been raised. This was a period of 3 months. She noted that the invoice had still not been paid by this point.
25. The Homeowner accepted that the invoice had not been paid, but she insisted that she had not received any reminders, she advised she had been away, however, her partner had been checking the mail and he did not see any reminder letters.
26. The Property Factor noted that the Homeowner indicated that the mail was "hit and miss", given this she suggested that the Homeowner could and should have sought to have her correspondence sent paperless. This was something that the Property Factor offered, and the Homeowner was made aware of this. The Property Factor noted that the Homeowner had still not chosen to have her correspondence sent by email. She advised that the Property Factor cannot control postal delivery. The Property Factor will issue mail by post unless asked to send it online. She submitted that if the Homeowner knew there was a

problem with postal delivery, she could have asked the Property Factor to issue her mail by email. She advised that they had advised the Homeowner she could still change to email, but the Homeowner said she did not want it by email.

27. The Homeowner advised that she had not requested online email, because the Property Factor had said at the first case management discussion that there was no problem with postal delivery. She also advised she did not have a computer when she first moved into the property. That said, she said that while she was getting correspondence through the post, she was aware that her neighbours were still having some problems with mail being delivered. The Homeowner said that there was maybe corruption in terms of sending mail out. She was disappointed that the unpaid invoice had had to end up in court.
28. The Homeowner advised that she had not contacted the Royal Mail about the problems with mail going missing. She advised that other neighbours had contacted the Royal Mail about the missing mail.
29. The Homeowner advised that she did not trust the Property Factor online and had not used emails after she had gotten a computer.

4.6 A Property Factor must have systems in place to ensure the monitoring of payments due from Homeowners and that payment information held on these systems is updated and maintained on a regular basis. A Property Factor must also issue timely written reminders to inform a Homeowner of any amounts they owe.

30. The Homeowner reiterated that she had merely forgotten to pay the invoice. She referred to her earlier submission in support of this breach.

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 (see also section 4.7).

31. The Homeowner reiterated that she did not think there had been reasonable steps as it was such short notice. She only needed a reminder, and she would have paid for it. She said she thought that there must be some other way to manage debt recovery before proceeding to court. She advised that what had happened to her had put her into debt. The Homeowner reiterated that there had been issues with the postal mail delivery, and she was aware that her local MP had raised this issue about mail with the Property Factor.
32. The Property Factor advised that they do offer payment plans to assist in the repayment of debt. The Factor advised that they had spoken with the MP, he had raised the issue of the mail delivery and asked if there was anything the Factor could do. The Factor advised the MP that it was a new estate, and they cleansed all addresses before an address was put on their system. She was not sure that there was an issue with the postal delivery.
33. The Homeowner thought that the Factor could do more to address the problems with the mail delivery.
34. The Factor advised that they encouraged Homeowners if they had any problems with mail, to get invoices emailed. The Homeowner advised that she did not have a computer at the time when she purchased the house.

OSP2. You must be honest, open, transparent and fair in your dealings with Homeowners.

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

35. The Homeowner said that she did not believe that the letters were sent out by either the Property Factor or the solicitor. She believed that it was profitable for both companies not to send the letters out. She considered that this was a

serious statement to make but it was better that it was made. She also said that she did not understand the invoices that had been sent out.

36. The Property Factor advised that they had tried to state the facts in their submission about what they had done. They had not tried to do anything which was misleading or false. They were also happy to go over the invoice with the Homeowner sometime after the case management discussion if that assisted.

Findings in Fact

37. The Homeowner is Sandra McGhee.

38. The Property Factor is Residential Management Group Scotland Limited.

39. The property is 123 Craigton Drive, Dungavel, Bishopton.

40. There is a written statement of services for the Dungavel Estate.

41. That section 4 of the written statement of service sets out Financial and Charging Arrangements, it refers to its Debt Recovery Procedure.

42. The Debt Recovery Procedure confirmed that if the invoice was unpaid for 28 days, a charge of £34 would be added. A stage 1 reminder letter sent, a stage 2 solicitor letter sent, and then stage 3 court proceedings. It advised that legal expenses will be recovered too. It advises that diligence will be used where the decree is not paid.

43. That on 22 March 2022, the Property Factor issued an invoice to the Homeowner for £154.40.

44. That on 4 May 2022, the Property Factor issued a first reminder of the invoice to the Homeowner.
45. On 20 May 2022 BTO issued a second reminder of the invoice to the Homeowner.
46. That the solicitor for the Property Factor raised simple procedure proceedings around July 2022. These proceedings were served on the Homeowner by recorded delivery on 28 July 2022.
47. After receiving the simple procedure court papers sometime in July 2022 the Homeowner paid in full the invoice together with late payment and administration charge.
48. That there were court expenses totalling £217.00. That the Homeowner had not been aware when she settled her account that these expenses were also due to be paid.
49. The Factor's account of 3 November 2022 shows an outstanding balance of £188.93.
50. The Homeowner had raised a complaint about the court expenses with the Factor and had advised the Factor on 27 November 2022 that she intended to complain to the Housing and Property Tribunal.
51. The Homeowner received mail from the Property Factor by post.
52. The Factor also offered to send mail by email. Advice on this is contained in their Development Schedule.
53. The Homeowner had not elected to receive correspondence from the Property Factor by mail.

Reasons for Decision

54. The complaint in this Application relates to the procedure followed by the Property Factor when an invoice had not been paid. The dispute centres on two reminder letters which the Property Factor says were sent to the Homeowner by post. The Homeowner advised that she did not receive either of the two reminder letters. As payment of the invoice was overlooked by the Homeowner because she had forgotten about it, no action was taken after the reminder letters had been issued, the Homeowner subsequently received a court summons for payment of the invoice and legal expenses.
55. The Homeowner paid the invoice promptly after receiving the summons and also paid other charges added by the late payment. She had not however paid the legal expenses; it appears that she was not aware that these would be due too. She was upset that she had now to also meet the court expenses which exceeded the total amount due in the original invoice. The Homeowner spoke about there being problems with the delivery of the mail. She had not opted to move to email correspondence which would have ensured she received emails of the invoices. She had also not raised the matter with the Royal Mail, although she had raised it with her local MP. She stated that she had not received the reminders and she did not think that the Factor had done enough to ensure that invoice reminders were received by owners.
56. The Property Factor advised that they had cleansed (checked) every address when they took on the estate. They said that the reminders had been sent by two different organisations. They noted that the invoice had been received. They considered that they had appropriate procedures in place. They also offered email service. They have a written procedure in place. They had followed that procedure. They have a large number of properties to service, and they would not be able to pick and choose which debts to pursue if they did not collect invoices, they could not carry out the factoring service.

57. The tribunal does not find that there have been any breaches of any of the sections of the code. Taking each in turn we would note the following: -

- 4.3 Any charges that a Property Factor imposes in relation to late payment by a Homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that Homeowner.

58. We do not find the charges to be excessive, in this case, there was a late payment fee, and an administration fee. Thereafter there were solicitors' fees and court dues. While we note that the fees now exceed the original invoice, we did not find that the fees are excessive. They appeared to be standard amounts for raising a court action. The Homeowner did not object to the late payment fees, what she was unhappy about were the court fees. As the matter had progressed to court these fees do not appear to be unreasonable.

59. From the time of the last case management discussion, further correspondence had been lodged by the Homeowner. The Property Factor objected to it. The tribunal advised that they would not look at new matters unless the information was relevant to this application. The tribunal was prepared to consider the further fee for service of a charge on the Homeowner for £80. It appears that this would have been done by sheriff officers to pursue the debt. We found this to be unreasonable, the Homeowner was clearly aggrieved at the court expenses, had indicated this to the Property Factor in November 2022 and advised that she was taking the matter further. The Factor considered that they were entitled to conclude the complaint process was at an end as they had replied to her complaint. However, they advised that they were prepared to waive this fee. The Tribunal does not consider the service charge of £80 should have to be paid by the Homeowner, as the charge was served when the dispute had not been concluded as far as the Homeowner was concerned. She had taken swift action to proceed to the Tribunal. We do not intend to make an order on this matter as we note that the Factor confirmed they will waive this fee of £80.00.

60. We therefore do not find any breach

- 4.4 A Property Factor must have a clear written procedure for debt recovery which outlines a series of steps which the Property Factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the Property Factor will deal with disputed debts and how, and at what stage, debts will be charged to other Homeowners in the group if they are jointly liable for such costs.

61. We do not find there to be any breach. The written statement of services is clear there is a written procedure for debt recovery. In this case, the factor sent in copy correspondence showing that they had followed their own procedure.

62. While the Homeowner was adamant that she had not received the reminders and we note that there may have been issues with mail, we place weight on the fact that the Homeowner had received the invoice, and the reminders had been issued by two different companies. We do not think that there is corruption and that either organisation did not issue the letters. The Homeowner did not present any evidence of bad practice or corruption.

63. We note that the Homeowner could have elected to receive letters and invoices by email and if she was not receiving all of her mail, this would have been an easy step to take to ensure her mail was delivered to her. We note that she said she did not have a computer when she bought the house, but she said she had used a computer at work. We consider that she would not have needed a computer, as a smartphone would have allowed emails to be sent to her.

64. We can fully sympathise that the Homeowner may be frustrated at having to pay the legal fees, however, we do not find that there has been a breach by the Property Factor in following their procedures.

- 4.5 When dealing with customers in default or in arrears difficulties, a Property Factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions are available from not-for-profit debt advice bodies.

65. We do not find that there has been any breach. The procedure in place allows for a period of about 2 weeks between each letter. The Factor noted that it was about 3 months from the invoice being issued until the court proceedings were raised. We note that the Property Factor will agree a repayment plan with Homeowners.

66. We also thought it was relevant that the Property Factor said that they had to manage 3000 properties on the estate and to discharge their duties they had to be able to pay for the services. We agree that they will need to have in place a working debt recovery service to recover payments from Homeowners.

- 4.6 A Property Factor must have systems in place to ensure the monitoring of payments due from Homeowners and that payment information held on these systems is updated and maintained on a regular basis. A Property Factor must also issue timely written reminders to inform a Homeowner of any amounts they owe.

67. We do not find any breach. We accept that the Property Factor and their lawyers issued reminders for the outstanding invoice.

- 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 (see also section 4.7).

68. We do not find there to be any breach, there was a written system in place, and it appeared to us to be a reasonable procedure before court action was taken. The question of the delivery of mail was a concern, however, the Factor, appeared to have taken reasonable steps to check addresses before mail was sent out. The Homeowner could also have elected to have emails sent to them. We found that reasonable steps had been taken by the factor.

- **OSP2.** You must be honest, open, transparent and fair in your dealings with Homeowners.

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

69. We did not consider that there had been any breach of either overarching standard. We found the Property Factor's written submission to be detailed setting out copies of the letters sent out to the Homeowner. We did not find that they had provided information misleading or false.

70. We are sympathetic to the Homeowner, as we believe that the non-payment of the original invoice was an accidental oversight on her part. Unfortunately, this in itself does not give rise to the Property Factor being in breach of the code.

Decision

71. The tribunal does not find there to be any breach of the code in relation to the Homeowner's application.

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.

Melanie Barbour Legal Member and Chair

27 September 2023 Date