



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

**Decision on Homeowner's Application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulations")

Chamber Ref: FTS/HPC/LM/24/1367

The Property: Holmes Park, 13 Joseph Cumming Gardens, Broxburn, West Lothian, EH52 5AN ("The Property")

The Parties:

Mr David McLeod, residing at Holmes Park, 13 Joseph Cumming Gardens, Broxburn, West Lothian, EH52 5AN ("the Applicant") and

Charles White Ltd, 14 New Mart Road, Edinburgh, EH14 1RL ("the Respondent")

Tribunal Members:

Mr G. McWilliams (Legal Member)

Mrs Helen Barclay (Ordinary Member)

Decision

The Respondent has failed to comply with their duties under Section 14(5) of the Property Factors (Scotland) Act 2011 ("the 2011 Act") in that they did not comply with the Overarching Standards of Practice 2, 4 and 6 as well as Section 2.1 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code").

This decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") is unanimous.

The Tribunal considered matters and have determined that, in relation to the Application before it, the Respondent has not complied with the Code. The Tribunal propose to make a Property Factor Enforcement Order ("PFEQ") in the following terms:

The Respondent is to submit to the Tribunal satisfactory documentation confirming a regular and appropriate training schedule for their customer relations managers (CRMs”), specifically relating to CRMs handling of homeowners’ queries and complaints in line with the terms of the Code, within 28 days of the date of issue of the PFEO.

Introduction

- 1.** The Respondent as a registered Property Factor has a duty to comply with the Code, under Section 14(5) of the 2011 Act. The Respondent is the Factor for the development, within which the Property is situated. The Applicant submitted an Application to the Tribunal complaining that the Respondent had acted in breach of the Code. A Case Management Discussion (“CMD”) had taken place on 29th October 2024. Reference is made to the Notes on the CMD.

The Hearing

- 2.** A Hearing was held in person at the Glasgow Tribunals Centre, 20 York Street, Glasgow on 13th March 2025. The Applicant Mr McLeod attended. The Respondent was represented by their Associate Director, Ms R. Rae.
- 3.** Mr McLeod had lodged further written representations with his e-mail sent to the Tribunal’s office on 17th February 2025. Ms Rae had lodged written representations with the Tribunal’s office in her e-mail sent on 25th September 2024.
- 4.** Mr McLeod stated that he considered that the Respondent had acted in breach of the Code’s Overarching Standards of Practice (“OSPs”) numbers 2, 3, 4, 5 and 6 as well as Sections 1.1 and 2.1 of the Code. He acknowledged that he had not referred to OSP 3 in his Application and that this OSP could not be considered by the Tribunal. Mr McLeod stated that he did not wish OSP 5 to be considered.
- 5.** Mr McLeod referred to the documentation in his Application and his further representations. He stated that he had repeatedly received incorrect information from the Respondent’s CRM regarding issue of the Respondent’s Newsletters issued in November and December 2023 and attachment of an updated Written Statement of Services (“WSS”). He said that the CRM repeatedly referred to quarterly invoicing when there had been annual invoicing since 2019. He said that he had been told by the CRM that the Respondent’s portal for the homeowners contained relevant documentation when it did not. Mr McLeod also stated that he considered that the WSS should have been specific to the development at Holmes Park, within which the Property is situated. He referred to certain sections of the WSS, in place at the time of his lodging of the Application, which referred to the Respondent’s services “where applicable”. Mr McLeod stated that this could be confusing for homeowners as they may not be clear as to whether or not particular services were being provided. He referred to the WSS’s statement regarding homeowners incurring bank charges in relation to provision of bike

and bin store keys and questioned why these matters were referred to when there were no such stores in the Holmes Park development. Mr McLeod stated, as he had done at the CMD, that he was not seeking the grant of a PFEO which obliged the Respondent to make any compensatory payment to him. He said that he wanted an apology from the Respondent for their action and/or inaction and a decision from the Tribunal that they had acted in breach of the Code. Mr McLeod further stated that the Respondent had not offered an adequate apology at the time of his second stage complaint. He also commented on the Respondent's current provision of a general WSS with a schedule for each individual development and stated that this was unsatisfactory. He acknowledged that his Application concerned the WSS in existence at the time the Application was lodged.

6. Ms Rae referred to the Respondent's written representations. She apologised to Mr McLeod for the Respondent's failures in their previous communications with him. Ms Rae acknowledged that the November 2023 Newsletter was issued without notification of its publication to the homeowners at the development. She further acknowledged that the Newsletter issued at the end of December 2023 did not have an updated WSS attached in e-mails sent to homeowners. Ms Rae repeated what she had stated at the CMD namely that the CRM who had been communicating with Mr McLeod regarding his queries had given incorrect information to Mr McLeod in relation to the frequency of invoicing and availability of documentation. She said, as she had stated at the CMD, that the CRM's employment with the Respondent terminated in August 2024 after a performance review had been carried out. Ms Rae candidly acknowledged that there had been competence issues which led to Mr McLeod being given false information in communications. Ms Rae also re-iterated her wish to have positive direct dialogue with Mr McLeod, and other homeowners going forward in respect of any queries they may have about the Respondent's provision of services at their development. Ms Rae also referred to the terms of the section of the relevant WSS regarding bank charges and keys which provided for a charge to be made if a key is given to a homeowner and then not returned to the Respondent. Ms Rae acknowledged that when dealing with Mr McLeod's second stage complaint she could have been more empathetic in her communications. Ms Rae stated that the Respondent now issues a WSS which is in uniform terms and applicable to all 240 developments which they manage but that each WSS has a specific schedule which is unique to individual developments. Ms Rae acknowledged that the Application concerned the WSS in place at the time of lodging of the Application.

The Tribunal make the following Findings in Fact and Law:

7. Mr McLeod is the owner of the Property.
8. The Respondent performs the role of Property Factor at the development in which the Property is situated.

- 9.** The Respondent was not open and transparent in their dealings with Mr McLeod. They repeatedly provided him with information which was false, in particular regarding frequency of invoicing and availability of relevant documentation.
- 10.** The Respondent negligently provided false information to Mr McLeod. The Respondent should have checked their own documentation, in particular regarding frequency of invoicing and the correct attachment of documentation, when making statements in communications with Mr McLeod. They did not do so.
- 11.** The Respondent's CRM did not provide services to Mr McLeod using reasonable care and skill.
- 12.** The Respondent provided Mr McLeod with a comprehensive WSS. Mr McLeod was aware of sections of the WSS which were not applicable to the development.
- 13.** The Respondent did not ensure that Mr McLeod had access to the information he needed to understand their operation as Property Factor. Relevant and informative documentation was not attached to emails.
- 14.** The Respondent has not acted in accordance with OSPs 2, 4 and 6 and has breached section 2.1 of the Code.
- 15.** The Respondent has acted in compliance with section 1.1 of the Code.

Reasons for Decision

- 16.** The Tribunal considered all of the documentary and oral evidence, of Mr McLeod and Ms Rae, in reaching their findings.
- 17.** OSP 2 states:

"Property Factors must be open, honest, transparent and fair in their dealings with homeowners".
- 18.** OSP 4 states:

"You must not provide information that is deliberately or negligently misleading or false".
- 19.** OSP 6 states:

“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”.

20. Section 1.1 of the Code states:

“A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner”.

21. Section 2.1 of the Code states:

“Homeowners need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations”.

22. The Tribunal made their findings in fact, on a balance of probabilities, in reliance on the oral evidence of Mr McLeod and Ms Rae, as well as the terms of both parties' written representations. Ms Rae was very candid in her acknowledgement of the Respondent's failures, through their former CRM, to communicate and convey necessary information and documentation to Mr McLeod. Mr McLeod acknowledged that the CRM's failings were not deliberate. Given the oral and documentary evidence the Tribunal found that, in their dealings with Mr McLeod, referred to in the Application, the Respondent was not open and transparent, they negligently provided false information and their previous CRM's provision of services to Mr McLeod lacked care and skill. Further, the Respondent's communication failures resulted in Mr McLeod not having access to the information that he needed to understand the Respondent's operation. Regarding the issue of the Respondent's provision to Mr McLeod of a comprehensible WSS, the Tribunal found that Mr McLeod was given a WSS by the Respondent and was able to understand it's terms. Mr McLeod demonstrated this, in particular, in his written representations. He was aware of sections of the WSS which were not applicable to the development in which he resides.

Proposed Property Factor Enforcement Order

- 23.** Having considered and weighed all of the evidence, the Tribunal has decided, and proposes, to make a PFEO, in the above terms, given the nature of the Respondent's non-compliance with and breach of the Code. The non-compliance and breach principally result from the Respondent's former CRM's competence and communication skills,
- 24.** The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

Appeal

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

G McWilliams

Tribunal Legal Member 13th March 2025