

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/PF/18/1922

**Flat1/1 10 Andrews Street, Paisley PA3 2EP
("the Property")**

The Parties:-

**Mr Dave Sinclair, Flat 1/1 10 Andrews Street, Paisley PA3 2EP
("the Homeowner")**

**Link Group Limited, Watling House, Callendar Business Park, Falkirk FK1 1XR
("the Factor")**

Tribunal Members:

**Graham Harding (Legal Member)
Carol Jones (Ordinary Member)**

DECISION

The Factor has failed to carry out its property factor's duties.

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 7 November 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 2 August 2018 the Homeowner complained to the Tribunal that the Factor had failed to carry out its property factor's duties by

failing to obtain majority consent for works on Andrews Street, Paisley over the designated authority limit.

2. The homeowner provided the Tribunal with copies of correspondence between himself and the Factor and also copies of the Factor's Written Statement of Services and the Registered Title to the property.
3. By Minute of Decision dated 27 August 2018 a Convenor with delegated powers referred the application to a Tribunal.
4. A hearing was fixed to take place at Glasgow Tribunals Centre 20 York Street Glasgow on 29 October 2018.
5. Both parties lodged written submissions and productions in advance of the hearing that were fully considered by the Tribunal.

Hearing

6. A hearing took place at the Glasgow Tribunals Centre, 20 York Street, Glasgow on 29 October 2018. The Homeowner represented himself. The Factor was represented by Ms Ronni McMenemy and Mr Jamie Gibb.

Summary of submissions

7. The Homeowner submitted that there was a legal point that he wished to make. He explained that in 1953 an error was made by the Ordnance Survey which had resulted in their maps changing the name of Andrews Street, Paisley to Andrew Street. When the street had been formed in 1892 it had been known as Andrews Street.
8. Notwithstanding the name change by the Ordnance Survey the Royal Mail continued to use Andrews Street. The homeowners title had been registered as Andrew Street. He had discovered a problem shortly after moving in when trying to make purchases online. He had contacted the Registers of Scotland in late 2016 and the title sheet had subsequently been amended to reflect that it was Andrews Street.
9. The Homeowner went on to say that in 2014 when he had been asked by the Factor to agree to the upgrading of the road ex aduerso the block of which his flat formed a part to local authority standard he had agreed. The mandate that he had signed at that time referred to his property being 10 Andrew Street and not 10 Andrews Street.
10. It was the Homeowners position that as the street was in fact Andrews street it was a different street and the Factor therefore did not have authority to proceed with the upgrade or recover funds from homeowners beyond that of

their delegated authority of £150.00 (£180.00 specified in the Property Factors Property Specific Schedule).

11. For the Factor Ms McMenemy explained that whilst she could understand where the Homeowner was coming from the Factor was obliged to correspond with the Homeowner in line with how he was designed in the title and in 2014 when the road upgrade consultation was ongoing the correct address according to the title was Andrew Street. Ms McMenemy pointed out that the mandate granting the Homeowners consent had been witnessed by the Homeowners partner who had given her address as Flat 1/1 Andrew Street, Paisley. There was no fraudulent intent or misrepresentation on the part of the Factor.
12. When asked by the Tribunal to provide some authority to support his claim that the error in the name of the street invalidated the mandate signed by him the Homeowner was unable to provide any such authority.
13. The second line of the Homeowner's complaint was that he had agreed to make a payment of £550.23 in respect of his share of the cost of the road upgrade. The mandate had been signed on 28 June 2014. There had then been a period of no action until there was a second consultation in January 2016 by which time the cost of his share had risen to £1050.21. Because of there being such an increase, the Homeowner returned the mandate in the negative. Despite this he never got any feedback from the Factor and the works eventually went ahead. The final cost attributed to the Homeowner was £1280. 95 in November 2017.
14. For the Factor Ms McMenemy said that there had not been a second consultation as none had been required. The Factor had already obtained the required majority consent from the owners in the Homeowners block in 2014. The second mandate was simply to obtain the homeowners confirmation that they would make payment of the required higher amount in accordance with the terms of the mandate.
15. Ms McMenemy accepted that the owners in the block at number 10 could have objected to the works going ahead but they had not.
16. The Tribunal asked Ms McMenemy to explain why if there had not been a second consultation did the mandate give the homeowners the opportunity to consent or not to consent to the upgrade of the road. Ms McMenemy was unable to offer an explanation other than to suggest that it had been an error and the mandate should not have been sent with an option to refuse consent.
17. The Tribunal then queried whether the Factor had submitted evidence to the Tribunal to show that there had in fact been a majority of owners of the block at number 10 in favour of the upgrade given that the Homeowner was clearly not.
18. Ms McMenemy told the Tribunal that she could not say as at the date of the hearing that there was a majority. She confirmed that Link Housing owned

three of the properties in the block and would have been in favour. There were eight properties and therefore a further two owners would have required to have voted positively to provide a majority. Any non-responding owners would be treated as a negative vote. As far as she was aware only the Homeowner had been unhappy about the road upgrade going ahead.

19. The Homeowner raised that one of the joint owners of a property in the block had died in April 2016 and another property had been sold in 2017. He thought this might have had an impact on these owners decision to proceed with the upgrade to the road. For the Factor Ms McMenemy pointed out these would have had no impact as they occurred after January 2016 when the second mandates were sent out.
20. The Homeowner queried whether there had been any attempt by the Factor to obtain further quotes for the works after the local authority had demanded amendments to the upgrade proposals. Ms McMenemy said that there had not been another tendering process as the contractors had already been appointed and in any event their original tender had been substantially lower than the others.

The Tribunal make the following findings in fact:

21. The Homeowner is the joint owner of the property.
22. The Property is a flat within the block forming 10 Andrews Street, Paisley and part of the larger development of Andrews Street (hereinafter "the Development").
23. The Factor performed the role of the property factor of the Development.
24. When the Homeowner purchased the property along with his partner Arlene McLeod the Registered title address was shown as Flat 1/1 10 Andrew Street, Paisley.
25. At various times the street in which the Homeowners property is located has been known as both Andrew Street and Andrews Street.
26. The correct street name is Andrews Street.
27. The Homeowners Registered title address has been amended to reflect the correct street address.
28. The incorrect address on the mandate signed by the Homeowner dated 28 June 2014 in no way invalidates it.
29. There was a second consultation of the owners of 10 Andrews Street in respect of the proposed road upgrade in January 2016 following an increase in the cost per owner to £1050.21.
30. The Homeowner did not consent to the upgrade at that time.

31. The Factors parent body Link Housing own three of the properties in the Homeowners block and were in favour of the upgrade.
32. The Factor produced no documentation and could not confirm at the hearing that it had received the consent of the majority of the owners to the increased cost of the road upgrade in January 2016.
33. The road upgrade proceeded and the final cost invoiced to the Homeowner in November 2017 was £1280.95.
34. Andrews Street Paisley has been adopted by Renfrewshire Council and who will be responsible for its future maintenance.

Reasons for Decision

35. The Tribunal did not accept the Homeowners argument that any error in the name of the street had a bearing on whether or not there was an agreement between him and the Factor in respect of the upgrade to the road ex adverso the block of which his flat formed part. Whilst it was perhaps unfortunate that there had been an error made by the Ordnance Survey mappers or some other organisation that had resulted in the Homeowner's and others titles being incorrect the Factor had correctly communicated with the Homeowner at the address shown on his title at the time. The mandate signed by the Homeowner was binding on him.
36. Although there was a significant delay between granting his consent in 2014 and the works being completed in 2017 time was not of the essence of the contract and therefore in the Tribunal's opinion the Homeowner remained liable to pay the amount mandated to the Factor namely £550.23.
37. Whilst the form of consent with the mandate issued by the Factor in January 2016 may have been added in error it was an error on the part of the Factor and did result in a second consultation. The Homeowner did not agree to the road upgrade going ahead.
38. The Factor produced a significant amount of documentation in advance of the hearing in support of their case. It did not produce what in the Tribunal's view was an essential pillar of its case namely documentary evidence to show that it had obtained the consent of the majority of the owners in the block at number 10 to the revised cost of the upgrade. In the absence of that consent whilst it would be open to Link Housing to proceed with the upgrade it could only ask the Factor to recover the agreed mandated amount of £550.23 from the Homeowner.
39. The Tribunal did not accept the Homeowner's submission that the death of one of the joint owners of another property in the block or the sale of another property at some time after the second consultation had any bearing on the

case. The issue was really whether there was a majority of owners in favour of the road upgrade at the time of the second consultation.

40. The Tribunal was conscious of the fact that although the cost of the road upgrade had increased substantially from the original estimated cost there was an undoubted benefit being gained by the Homeowner in having his obligation to contribute to all the future cost of repairing the road being removed and passed on to Renfrewshire Council.
41. The Tribunal also acknowledged that in any works of the nature of those undertaken there may well be delays and increased costs and therefore it would not be unusual for there to have been some increase in the amount the Homeowner might have been expected to pay.
42. After taking everything into account the Tribunal considered that the Factor was in breach of its property factor's duties in that it did not address the issues raised by the Homeowner following his refusal of consent to the upgrade in January 2016. It did not provide clear information following the second consultation as to the numbers in the block who were in favour and there had been generally poor communication with the Homeowner in this regard. As a result, the Homeowner has had to spend considerable time taking his complaint to the Tribunal and attending the hearing.
43. The difference between the amount invoiced to the Homeowner for the road upgrade and the amount agreed to be paid by him in the mandate of 28 June 2014 is £730.72. Following careful consideration of all of the above factors the Tribunal considers it reasonable that the Factor credits the Homeowner's account in the sum of £700.00.

Proposed Property Factor Enforcement Order

The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

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

10 November 2018 Date