



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/23/2752

Re: 17 Charleston Road North, Cove, Aberdeen AB12 3SZ

Parties:

Ms Catriona Reid, 26 Conglass field Gardens, Inverurie AB51 4AB ("the Applicant")

James Gibb Residential Factors, 27 Chapel street, Aberdeen AB10 1SQ ("the Respondents")

Tribunal Member:

**Graham Harding (Legal Member)
Elizabeth Williams (Ordinary Member)**

DECISION

The Respondent has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections 3.1 and 3.2 of the 2021 Code.

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 2011 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors July 2021 as "the 2021 Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

Background

1. By email dated 12 August 2023 the Applicant's representative, her husband, Mr Jamie Reid submitted an application to the Tribunal complaining that the Respondents were in breach of Sections 3.1 and 3.2 of the 2021 Code. The Applicant submitted written statements outlining their complaint together with a copy of the Respondents' Written Statement of Services and correspondence from the Respondents. The Applicant's representative submitted that these demonstrated breaches of the 2021 Code.
2. By Notice of Acceptance dated 2 October 2023 a legal member of the Tribunal with delegated powers accepted the First Applicant's applications and a Case Management Discussion ("CMD") was assigned.
3. By correspondence dated 20 November 2023 the Respondents submitted written representations to the Tribunal.
4. By correspondence dated 20 and 29 November 2023 and 14 January 2024 the Applicant's representative submitted written representations to the Tribunal.
5. A CMD was held by teleconference on 17 January 2024. The Applicant and her husband were unable to attend. The Respondents were represented by Ms Suzanne Cameron, Ms Leanne McDonald and Mr Phil Blackadder.
6. The Tribunal Ms Cameron explained to the Tribunal that homeowners were billed by the Respondents in May and November each year. She said that the Respondents instructed a utilities broker to manage suppliers and that at least one accurate meter read ought to be recorded in each twelve-month period. Ms Cameron went on to say that the utility suppliers were regulated by Ofgem but that the Respondents were not as they were acting in a management capacity. Ms Cameron said that there was an onus on the energy supplier to obtain accurate meter readings. Ms Cameron went on to say that the building in which the property was located was unusual in that it had been designed for commercial use and converted to residential properties. She explained that there was a laptop located in the building that monitored each property's usage. Ms Cameron said that it was necessary to rely on the software package that ran the system. In response to a query from the Tribunal Ms Cameron confirmed that the system was able to provide an accurate reading of the usage for the whole development and that this was broken down into the usage by each property and then shown as a percentage. She said that there was reference to how costs should be apportioned in the title deeds. Ms Cameron advised the Tribunal that between May and November 2022 the software system had gone down and although accurate readings for the whole development were still being obtained it was not possible to allocate the actual amounts to each property so the cost was shared equally between all owners. When the system was reinstated the bill was reversed and accurate charges applied. She said at around this time there had also been a price increase. In response to a query

from the Tribunal Ms Cameron said that the utility invoices were available to owners who wished to access them on the client portal. Ms Cameron maintained that the costs applied to the Applicant's account were correct although the Applicant would have been undercharged on some bills and these would later be corrected. Ms Cameron acknowledged that owners had not been made aware of the decision to send out invoices based on an equal share of the overall cost and agreed that this should have happened. The Tribunal noted that the Applicant had sold her property on 5 May 2023 and that there remained issues over the VAT charged by the suppliers that was being followed up. The Tribunal noted that it had not had sight of the actual invoices for the gas supply and that it would be helpful to have these. Ms Cameron undertook to provide the Tribunal with the invoices within the following week. The Tribunal noted that the Applicant had been confused by the way in which she had been billed for gas at the property but at this stage it was not possible from the information provided for the Tribunal to determine if the Factor was in breach of Sections 3.1 or 3.2 of the Code. The Tribunal considered that the interests of justice would be best served if the application was adjourned to a face-to-face hearing in order that the Applicant and her representative can further advance the Applicant's position in light of the points made by the Respondents in their written representations and at the CMD.

7. By email dated 24 January 2024 the Respondents submitted further written representations to the Tribunal including gas bills for the development from March 2021 to March 2023.
8. By emails dated 25 and 31 January 2024 the Applicant's representative submitted written representations in response to the Respondents communication of 24 January 2024.
9. The Respondents submitted further written representations by email dated 23 July 2024 and the Applicant's representative responded on the same date.
10. A hearing was held at Aberdeen Sheriff Court on 24 July 2024. The Applicant was unable to attend but was represented by her husband Mr Jamie Reid. The Respondents were represented by Ms Suzanne Cameron. Mr Reid commenced by saying with reference to paragraph 3 of the CMD Note of 17 January that it was incorrect to say that the development had been designed for commercial use and converted for residential use .and referred the Tribunal to an email from the developers, Scotia Homes dated 31 January 2024 confirming that the development was designed and developed as apartment blocks above commercial units. Mr Reid went on to say that in paragraph 5 of the CMD Note it was said that between March 2022 and November 2022 the software at the development providing data to the Respondents for the gas usage had gone down and the cost of gas at this time had been shared equally between the owners in the development. Mr Reid referred the Tribunal to the Applicant's Appendix 5 and the estimate of the previous year's usage of electricity and submitted that by not advising the owners of the issue that had arisen the Respondents had been in clear

breach of Section 3.2 of the Code. Mr Reid said that although it had been said in paragraph 6 of the CMD Note that the utility invoices were available on the Respondents' Client Portal this was not the case for individual properties. With regards to the points made by Ms Cameron and recorded at paragraph 7 of the CMD Note, Mr Reid said that the owners had not been told as to what had been agreed and therefore there had been a clear breach of the Code. Mr Reid went on to say that both he and his wife had bought properties in the same block. He then went on to say that the Applicant's letting agents had prepared a check-in and checkout report at the commencement and end of the Applicant's tenant's tenancy. Mr Reid referred the Tribunal to the meter readings contained in parts 4 and 5 of the Inventory of Productions dated 2 February 2024. Mr Reid submitted that there was a stark difference between the meter readings in the property and the readings used by the Respondents. The Tribunal noted that the opening reading on 29.09.2020 was 11395kwh and the closing reading on 09.03.23 was 19133kwh. This compared with the reading provided by Mr Phil Blackadder by email dated 7 June 2023 on page 24 of the Respondents' Inventory of Productions showing a reading of 28276 kwh for the month ending 30.11.2022. Mr Reid then pointed out that the device number (49677456) on the breakdown of the usage provided by Mr Blackadder did not correspond with the device number (49677458) on the meter in the property. Mr Reid said that the Applicant did not accept that the charges levied by the Applicant for hot water and heating were correct. He said that he and his wife had two young children and had borrowed money from family to clear the debt due to the Respondents to avoid more stress and because of the nature of Mr Reid's employment. He said the Applicant was looking for financial compensation for the stress caused by the Respondent's failings. He submitted that had there been a proper investigation it would not have been necessary to make an application to the Tribunal. Ms Cameron advised the Tribunal that the Respondents had purchased the firm of LPM in 2019 and had taken over factoring of the development from that date. Ms Cameron suggested that there may have been a failure of communication rather than transparency and agreed that it would have been best practice to have advised homeowners that due to the software failure the bills between March and November 2020 were going to be shared equally between the owners. Ms Cameron then went on to say that if there was an error on the device number being allocated to the Applicant's account that would need to be investigated and undertook to meet with Mr Reid to see if that was indeed the case and to see if matters could be settled extra-judicially. The Tribunal indicated that until the issue with the meter readings was resolved it was not in a position to make a final determination and would therefore adjourn the proceedings to a further nominal hearing. The Tribunal indicated that once the outcome of the parties' discussions was known the Tribunal would decide whether a further in-person or teleconference hearing was required or whether the Tribunal could make a final determination on the basis of written representations. The parties were given an oral direction to provide the Tribunal with the outcome of their discussions within one month together with any further written representations they wish to submit.

11. By emails dated 20, 23, 26 and 28 August and 3 and 19 September 2024 the Applicant's representative submitted further written representations to the Tribunal.
12. By emails dated 21 and 26 August 2024 the Respondents submitted further written representations to the Tribunal.
13. By email dated 19 January 2025 the Applicant's representative submitted further written representations to the Tribunal.

The Hearing

14. A hearing was held at AB1, 48 Huntly Street, Aberdeen on 21 January 2025. The Applicant did not attend but was represented by her husband Mr Jamie Reid. The Respondents did not attend.
15. Mr Reid advised the Tribunal that both Mr Phil Blackadder and Ms Suzanne Cameron had left the Respondents' employment. He said that he had been in contact with the Respondents Ms Joanne Cooper and had provided her with full details of the date and time of the hearing and the issues that were to have been resolved by Ms Cameron following the previous CMD. Mr Reid went on to say that Ms Cooper had asked him how he saw the matter resolving and he had told her in an email dated 18 December 2024 that he wanted payment of £1333.43 (9593 units at 13.9p a unit) £1000 compensation, reimbursement of 44 months management fee of £272.80 and the £100 seller fee charged when the property was sold. Mr Reid said he had not received a reply to that email. In response to a query from the Tribunal Mr Reid confirmed that the Respondents had undertaken other duties at the property as part of their contract and that the fee charged for dealing with the sale of the property had been included in the Respondents' Written Statement of Services.
16. Mr Reid confirmed that he did not have a final meter reading for the property at the date of sale only at the date the tenants left the property but he said that there would not be much usage in the weeks following the tenants moving out as the heating was switched off.
17. Mr Reid confirmed that it remained his position that the Respondents had used incorrect meter readings to bill the Applicant for her gas usage at the property. Despite agreeing to resolve the issue following the CMD in October the Respondents had failed to engage with him and he submitted that it was reasonable that the Tribunal make an award of compensation and reimburse his wife for the overcharged gas usage and reimburse the management and seller fee.

Findings in Fact

18. The Applicant was the proprietor of the property until it was sold in about June 2023.

19. LPM were the factors of the development in which the property is located and the Respondents purchased that firm in 2019 and continued to factor the development thereafter.
20. The development consists of a mix of lower floor commercial properties and residential flats on the upper floors.
21. The property has its own gas and electricity meter located within the property.
22. The Respondents used software located within the boiler room of the development to submit meter readings to utility suppliers for each property.
23. There were lengthy periods when the software system was down and the Respondents provided the utility suppliers with estimated readings spread equally among all the owners in the development.
24. The Respondents believed the system was operating correctly by November 2022.
25. The device number (49677458) on the gas meter in the property does not correspond with the device number (49677456) used by the Respondents on the software system providing meter readings to the gas supplier to the development.
26. The reading on the gas meter in the property on 29.09.2020 was 11395kwh and the reading on 09.03.23 was 19133kwh.
27. Only a small amount of gas was used between 09.03.23 and June 2023 when the property was sold as the property was empty and the heating switched off.
28. The meter reading used by the Respondents on the software system recorded the Applicant's gas usage as at 30.11.2022 as 28276 kwh.

Reasons for Decision

29. There can be occasions when software systems break down and this may result in as happened in his case utility suppliers issuing estimated bills. In such cases it is important that factors keep owners fully advised of any issues that have arisen and properly explain that any owner who has been overcharged or undercharged in their quarterly or half yearly bill will have the issue resolved on the next occasion. In this case there was a clear lack of communication on the part of the Respondents to properly inform the Applicant of the issues that had arisen with the software system between May and November 2022.
30. Nevertheless had the Respondents resolved the software issue by November 2022 any overpayment or underpayment by the Applicant would then have been resolved by the submission to the utility supplier the correct meter

reading. The Applicant's representative could not understand why his wife's property was using much more gas than would be expected for a property of its size particularly when the Applicant's tenants worked off shore much of the time. It became apparent at the hearing on 24 July 2024 that the meter number in the property did not correspond with the number being allocated to the property on the software system being used by the Respondents. The Tribunal has no reason to doubt that the meter in the property was working properly and that between September 2020 and March 2023 there had been usage of 7738kwh. Given that the Respondents had recorded reading of 28276kwh on 30 November 2023 it was clear that the Applicant had been overcharged for her gas usage.

31. The Tribunal was surprised that the Respondents did not make a greater effort to resolve the issue that had arisen. It is possible that may have been as a result of Mr Blackadder and Ms Cameron leaving the Respondents' employment but the Respondents have made no effort to engage further with the Tribunal since August 2024. Furthermore, they did not respond to the Applicant's representative's email of 18 December 2024 to Ms Cooper. In conclusion the Tribunal is satisfied that the Respondents are in breach of Sections 3.1 and 3.2 of the 2021 Code. The Respondents have not been transparent in the way in which they have calculated the Applicant's gas usage. They have overcharged the Applicant for her gas usage. There is an issue with the meter numbering at the development that they have failed to properly investigate or rectify.
32. The Respondents have failed to provide any substantive explanation for the discrepancy between the meter number in the property and the meter number being used in the software system. The Tribunal is satisfied that the Respondents have failed to be transparent in their billing for gas at the Applicant's property and that the Applicant has been overcharged for her gas usage. The Tribunal is unable to calculate the exact amount the Applicant has been overcharged. The Applicant's representative has claimed 9593 units. That may be a conservative estimate given the figures provided by the Respondents in their Appendix 6 (page 27 of their written representations of 20 November 2023. However the Tribunal is prepared to accept the Applicant's representative's calculation.
33. The Tribunal is not satisfied that the Applicant should be refunded her management charges for the period from taking over LPM until the sale of the property. Although there was a clear issue as regards billing for utilities the Tribunal was satisfied that the Respondents undertook its other factoring duties properly.
34. The Tribunal was also not satisfied that the Applicant was entitled to reimbursement of the seller fee charged by the Respondents as this was a contractual fee contained within the Respondents terms of service. The Tribunal did consider that the Applicant was entitled to compensation for the considerable amount of stress, worry and distress she and her husband have been put through as a result of the Respondents' breaches of the Code and their failure to properly engage in finding a resolution to the issues. The

Tribunal considers that the sum of £1000.00 is a reasonable award in the circumstances.

Proposed Property Factor Enforcement Order

35. 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.

Graham Harding Legal Member and Chair

27 January 2025 Date