

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision

Section 17 and 19 (3) of the Property Factors (Scotland) Act 2011 (“the Act”) and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/24/2025

Re: 32 Parkend Gardens, Saltcoats, KA21 5PH (“the Property”)

The Parties:

Mrs Renate Gondris, 32 Parkend Gardens, Saltcoats, KA21 5PH (“the Applicant”)

Rentolease Estate Management, 52 Templehill, Troon, KA10 6BE (“the Respondent”)

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)

**Mrs Elizabeth. Dickson, (Ordinary Member)
(the “tribunal”)**

Decision

I) The Respondent has breached the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2021 and has failed to comply with the property factor’s duties.

II) The tribunal proposes to make a property factor enforcement order (“PFEO”) requiring the Respondent to pay the sum of ONE HUNDRED AND FIFTY POUNDS (£150) to the Applicant within thirty days of service on it of the Decision and the PFEO.

Background

1. This is an application by Mrs Gondris in respect of the Property in relation to the Respondent’s actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act).
2. The application alleges that the Respondent has failed to comply with Section 11 of the Overarching Standards of Practice, (“OSP”) and Section 2.3, 2.4, 2.7 and

7.1 of the 2021 version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”). The application was accompanied by a number of documents.

3. A case management discussion was held by teleconference on 2 October 2024. Subsequent to the case management discussion, a Direction was issued which set out requirements for future procedure and also required the Respondent to produce copies of electricity accounts relating to the Property for the period covering February 2023 to October 2023.

The Hearing

4. The Hearing took place on 19 March 2025 in Glasgow Tribunals Centre. The Applicant was present and was supported by her son Robert Gondris. The Respondent was represented by Mr Craig Scott, property manager.

Preliminary Matters

5. It was noted that the Respondent manages two buildings at Parkend Gardens, Saltcoats, consisting of two blocks: Block 1 and Block 2 (“the Development”) and that the Property is in Block 1. It was accepted by the parties that, in terms of the title deeds, the common electricity charges are to be shared by the proprietors of each individual block and not aggregated. This means that proprietors of each block pay for electricity relating to their own block.
6. It was noted that both parties had submitted written representations prior to the Hearing and that each had sent a copy to the other party.
7. The Respondent had submitted copies of electricity accounts with the exception of one. Mrs Gondris said that, without the missing electricity account, she could not be satisfied that she had been properly charged.
8. Mr Scott was referred to the email from the Respondent to the Applicant dated 26 April 2024 in which it stated “*....on communication, apologies that you have had to chase on a number of occasions, starting from not receiving Statement of Services right through to the inconsistencies with the billings- on this we must apologise..... there has been a period where they (the electricity accounts) seem to have been split between the full development.*” Mr Scott confirmed that this reflected the Respondent’s position. He explained that, for a period, the Applicant had been wrongly charged for her share of electricity. He referred the tribunal to a reconciliation which he had submitted in which the liability for electricity had been properly allocated and that it showed a credit due to the Applicant. He apologised for the Respondent’s poor communications with the Applicant.
9. Mrs Gondris said that she did not consider that the Respondent had resolved the issue because, without a full set of electricity accounts for Block 1, she could not be certain that she had been properly charged. She accepted that the Respondent had carried out a reconciliation of the electricity accounts and that she had been credited with the sum of £10.50.

Matters Not in Dispute

10. It was accepted by parties that the allocation of common electricity charges had not been properly carried out. Rather than the proprietors of each block in the development sharing the cost for their particular block, the charges for both blocks had been added together and divided amongst all the proprietors of the Development.
11. The Respondent accepted that it had been slow in responding to enquiries from the Applicant and in progressing a solution to the incorrectly allocated electricity charges.

12. Findings in Fact

- 12.1 The Applicant owns the Property.
- 12.2 The Property is situated in a block of six apartments known as Block 1.
- 12.3 There is a block of six apartments adjoining Block 1 which is known as Block 2.
- 12.4 The Respondent manages Blocks 1 and 2.
- 12.5 In terms of the title of Block 1, common electricity charges are to be paid by the proprietors of Block 1.
- 12.6 For a period, the Respondent aggregated the common electricity charges for Blocks 1 and 2 and divided the total costs by 12 and charged the Applicant for a one 12th share of the charges for Blocks 1 and 2 rather than a one 6th share of the common electricity charges for Block 1.
- 12.7 The Respondent has carried out a reconciliation of electricity charges wrongly rendered to the Applicant and has credited her with the sum brought out in the reconciliation.
- 12.8 The Respondent has supplied copy electricity accounts to the Applicant with the exception of one which has not been provided by the utility provider.
- 12.9 The Respondent did not respond timeously to enquiries and complaints raised by the Applicant.

Reasons

Alleged Breaches of the Code

13. Overarching Standard of Practice 11 and Paragraph 2.7

OSP 11- You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

Paragraph 2.7- A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS.

Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

14. Mrs Gondris said that she had asked for copies of electricity accounts in October 2023 and, since she did not receive them, she made a formal complaint on 9 January 2024 which was after she had sent reminder emails on 9 and 20 December 2023. and the Respondent had promised substantive replies which ultimately had not been forthcoming. On 10 January 2024, Julie Hendren, Senior Office Manager of the Respondent emailed the Applicant and stated that “*receipts of the electricity.... will be sent to you by the end of this week.*” Mrs Gondris said that she asked for copies of the relevant electricity accounts so that she could satisfy herself that she had been properly charged.
15. Mrs Gondris said that, on 1 February 2024, the Respondent sent a couple of electricity accounts in respect of Block 1 but that this was limited information since she had been charged in respect of the whole Development.
16. On 5 February 2024 Mrs Gondris emailed the Respondent and expressed concerns about late payment charges which she had noticed in the electricity accounts which she had seen and she also asked for copies of the electricity accounts for Block 2. She said that was told that she could not see the electricity accounts for Block 2 because of GDPR considerations.
17. Mrs Gondris said that, on 22 March 2024, she was once again charged electricity in respect of the Development and she submitted an official complaint on 5 April 2024 which was acknowledged on 8 April 2024.
18. Mrs Gondris said that she had been provided with no evidence that there had been issues with obtaining information and copy invoices from Scottish Power.
19. Mr Scott said that he took issue with Mrs Gondris’ view that no one in the Respondent’s office was trying to resolve the matter. He said that this was far from the case. He accepted that the electricity had been wrongly charged and he accepted that communications with the Applicant had been poor.
20. Mr Scott said that there had been staffing issues and that the Respondent had lost two experienced members of its accounts team. He said that there had been great difficulties in getting information from Scottish Power and said that emails are usually not responded to and communication with the utility provider was normally by telephone or webchats. He accepted that the Respondent had not advised the Applicant of these difficulties.

Discussion

21. The tribunal accepted the oral evidence of Mrs Gondris on this matter. The emails submitted by the Applicant demonstrated that the Respondent had not responded timeously to enquiries and complaints made by the Applicant.

22. Mr Scott accepted that the Respondent's communications with the Applicant had been poor. The tribunal acknowledged that the Respondent may have had difficulties in getting information from Scottish Power but, in the period prior to the Applicant submitting her application to the Tribunal, it had not communicated these difficulties to her.

23. The tribunal determined that the Respondent had not complied with Overarching Standard of Practice 11 and paragraph 2.7 of the Code.

24. Paragraph 2.3

The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

25. Mrs Gondris conceded that the Respondent's written statement of services included the information necessary to comply with this paragraph of the Code. She said that her position was that the Respondent had failed to comply with its written statement of services.

Discussion

26. The tribunal determined that the Respondent had complied with paragraph 2.3 of the Code.

27. Paragraph 2.4

Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

28. Mrs Gondris said that she had requested copies of the electricity accounts for both blocks within the Development. She said that she had good reason to do so because she believed that she was being wrongly charged. She said that the non-provision of the documents "dragged out for an unreasonably long time."

29. Mrs Gondris said that she was still missing a copy of one electricity account.

30. Mrs Gondris said that, for a period, she was told that she could not have a copy of the electricity account for Block 2 because of GDPR regulations. She referred to an email sent to her by the Respondent on 22 February 2024 in which it confirmed this. The communication to her from the Respondent stated that the information could not be provided unless the proprietors of Block 2 consented. She said that she could not understand this because she believed that the regulations were

designed to protect the data of individuals, not a building. She said that she considered that she was entitled to the information because she had been charged on the basis of the information contained within the accounts for Block 2.

31. Mrs Gondris said that she also had concerns because there were late payment charges imposed by Scottish Power and she did not consider that she should have been liable for these. She referred to the Respondent's written representations of 12 March 2025 where it was stated that it accepted that the Applicant had been incorrectly debited with late payment charges.
32. Mr Scott said that there had been delays in Scottish Power providing copy invoices and that this had not been communicated to Mrs Gondris. He said that, in the reconciliation of charges made to Mrs Gondris and the other homeowners, no late payment charges were passed on to them. He said that the Respondent has absorbed any such costs that have been charged by the utility provider.

Discussion

33. Whilst the tribunal accepted that the Respondent had experienced difficulties in obtaining information from Scottish Power, there was evidence that it had failed to provide information in a reasonable timescale. The tribunal considered that the Respondent's GDPR argument was ill-founded. In any event, it had not produced evidence that it had made enquiries of the proprietors of Block 2 in respect of provision of the accounts.
34. The tribunal determined that the Respondent had failed to comply with Paragraph 2.4 of the Code.
35. Paragraph 7.1

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.*

36. Mrs Gondris said that the Respondent has a written complaints procedure and that it is set out in the written statement of services. She said that the issue she has is that she does not believe that it was applied reasonably.

37. Mr Scott said that he believed that the Respondent had dealt with the Applicant's complaint and had brought matters to a conclusion.

Discussion

38. The tribunal did not consider that the Respondent had dealt properly with the complaint made by the Applicant. It determined that the Respondent had delayed in providing substantive responses.
39. The tribunal determined that the Respondent had not complied with Paragraph 7.1 of the Code. It did have a complaints procedure but, in relation to Mrs Gondris, it had not applied it reasonably.

Property Factor's Duties

40. It was a matter of agreement that the Respondent had not properly calculated the Applicant's liability for common electricity charges. The methodology for calculating common charges in respect of electricity was set out in the title to the Property and the Respondent had not followed this.

Discussion

41. The tribunal determined that, in failing to calculate properly the Applicant's liability for electricity charges, the Respondent had failed to carry out the property factor's duties.

Parties' submissions

42. Mrs Gondris set out what she wanted. She said that she wanted to see the missing Scottish Power electricity account and that she wanted to have future factoring invoices to be accompanied with copies of relevant accounts. She said that, for example, she wants to receive copies of any future electricity accounts for Block 1. She said that she wants the Respondent to deal with any complaints within a shorter timeframe and would like it to formulate a management improvement plan. Mrs Gondris accepted that she may not get the missing electricity account if it is not supplied to the Respondent.

43. Mr Scott said that the Respondent accepts shortcomings in its dealings with the Applicant. He said that he would be happy to send a copy of the outstanding Scottish Power account if it is received. Mr Scott said that he would be happy for Mrs Gondris to get copies of any future electricity accounts. He stressed the difficulties the Respondent had experienced in dealing with the utility provider and obtaining documentation from it.

44. Mr Scott said that the Respondent had improved its service and that staff were now better to deal with issues such as the one in relation to the Scottish Power accounts which the Applicant had experienced.

Disposal

45. The tribunal considered it unfortunate that parties had not been able to resolve the issues between them.

46. The tribunal accepted that, in relation to the provision of copies of the Scottish Power accounts, the Respondent had faced issues. The Respondent had failed to notify the Applicant of the issues and had made promises which it was unable to keep.

47. The genesis of the problems experienced by the Applicant had been the Respondent's failure to allocate liability for electricity charges in accordance with the provisions of the title. The other issues followed on from that.

48. The email exchanges between the parties demonstrate the reasonable requests of the Applicant and the Respondent's failure to address them.

49. In disposing of the application, the tribunal considered what Mrs Gondris was seeking. It accepted that, with the exception of provision of a Scottish Power account, the outstanding matters had been resolved and that the absence of the account was *de minimis* given that the Respondent had carried out a reconciliation and had credited the Applicant with the sum which was due to her. It also accepted that provision of that account was not something in the control of the Respondent. The tribunal's remit is to determine compliance with the Code and the property factor's duties. Its role is not to manage the contractual relationship between a property factor and a homeowner. It is therefore not appropriate to consider any property factor enforcement order in relation to anything like a management improvement plan.

50. The tribunal accepted that the Applicant had been required to make efforts to obtain answers and that it must have been frustrating for her not to be responded to in an appropriate manner and within a reasonable timescale. The tribunal considered it appropriate to propose a PFEO requiring the Respondent to pay the sum of £150 to the Applicant to compensate her for the time and effort she had expended in trying to resolve the issues relating to her liability for common charges.

51. It was noted that the written statement of services of the Respondent did not contain timescales for responding to enquiries and complaints. It is for a property factor to ensure that it complies with the Code and that its written statement of

services is compliant with the spirit of the Code. The Respondent should consider a review of its written statement of services to ensure that, in all respects, it complies with the Code.

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.

**Martin J. McAllister
Legal Member
7 April 2025**