

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision: Property Factors (Scotland) Act 2011: Section 19(1) (a)**

**Chamber Ref: FTS/HPC/PF/18/1944**

**46 North Road, Liff, by Dundee, Angus, Scotland, DD2 5SQ ("The Property")**

### **The Parties:-**

**Mrs Frances Thomson,  
46 North Road, Liff, by Dundee, Angus, DD2 5SQ  
("the Homeowner")**

**J. Reavley Factoring Limited,  
17-21 Tait's Lane,  
Dundee, DD2 1DZ,  
("the Property Factor")**

### **Tribunal Members:**

**Martin J. McAllister, Solicitor, (Legal Member)  
David Godfrey, Surveyor,(Ordinary Member)  
(the "tribunal")**

### **Introduction**

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

### **Decision**

**It was determined that the property factor had not complied with Sections 2.5, 3.3, 6.1, 6.9 and 7.2 of the Code and had failed to comply with the property factor's duties and that a proposed Property Factor Enforcement Order be issued.**

## **Background**

The application received by the Tribunal on 2<sup>nd</sup> August 2018 had been made by Mr Graham Thomson and on 1<sup>st</sup> October 2018 the Tribunal made an order under Regulation 32 of the Rules substituting Mrs Frances Josephine Thomson as the applicant. She is the registered proprietor of the Property. The Tribunal acknowledged that Mr Graham Thomson is her representative in the matter before it.

The application contended that the property factor had not complied with the property factor's duties and that it had not complied with sections 2.1, 2.2, 2.5, 3.3, 6.1, 6.9 and 7.2 of the Code.

On 27<sup>th</sup> August 2018 a legal member of the Tribunal, acting under delegated powers, referred the application to the tribunal for determination.

On 20<sup>th</sup> August 2018 the Property Factor had written to the homeowner in response to matters of concern raised by him which were included in his application and on 29<sup>th</sup> August the homeowner sent a response to that letter.

## **Hearing**

A Hearing was held on 22<sup>nd</sup> October 2018 in Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB.

Mr Graham Thomson was present and gave evidence.

Mr Jack Reavley and Mr Patrick Skehan, directors of the property factors were present and gave evidence.

## **Preliminary Matters**

It was noted that the letter sent by the Property Factor to the homeowner on 20<sup>th</sup> August 2018 and the Homeowner's reply dated 29<sup>th</sup> August 2018 were useful in setting out the parties' position and Mr Thomson and Mr Reavley confirmed that they were content that both letters be included in the application paperwork even though the latter letter was dated after the date of referral to the tribunal.

Mr Thomson said that his mother no longer owns the Property which had been sold on 28<sup>th</sup> September 2018.

## **Matters of Agreement**

Parties agreed that the Property is one of fourteen apartments contained within a category B listed building known as Greystanes Building and that this building is contained within a development totalling 153 properties which the property factor manages for the owners. The development is known as West Green Park and includes fifty acres of communal landscaped gardens. The Property is contained within the section of Greystanes Building which is referred to in the Deed of Conditions relating to the Property as the "Central Core." Mr Reavley said that, within his office, this is referred to as Greystanes Central Core. Parties agreed that there is a committee which governs the whole development and that there are various sub committees which are responsible for governing particular buildings or groups of dwellinghouses within the development. For the Greystanes Building there is a Committee hereinafter referred to as the "Greystanes Sub Committee." Each property in the development pays a sum in respect of the maintenance of common areas within the development and, in

addition, some properties pay for services specific to them. The base sum paid by all proprietors in the Development is currently £60 per month and Greystanes' owners currently pay the additional monthly sum of £35. Both the Development and the Greystanes sub development have sinking funds which are made up of contributions made by the owners and monies from these funds are used to meet seldom recurring or unforeseen maintenance costs.

Parties agreed that the issues which gave rise to the application related to lighting in the common areas of Greystanes House, the door entrance system, the condition of the hard landscape areas in particular defects to drainage covers and also issues arising from communications between the parties.

### **Homeowners' Position**

Mr Thomson had set out in his application what he was seeking from the Tribunal. He was seeking a written apology from the property factor and an acknowledgement that he had received a substandard service from them, a rebate of the monthly factoring fee of £12, clarification from the Tribunal as to the responsibility for maintenance of the Property's entry system, financial compensation for the time spent by him in trying to have matters resolved and the stress caused to him. Mr Thomson also was seeking a written assurance that matters would be dealt with better by the property factor in the future. Mr Thomson explained that, although the Property belonged to his mother, he had lived in it since it was purchased and that he had most interaction with the Property Factor.

### **Written Representations**

Parties were content to have their letters to each other dated 20<sup>th</sup> and 29<sup>th</sup> August 2018 treated as written submissions.

### **Productions**

The Homeowner had lodged numbered productions with his application. The Property Factor had lodged productions together with an inventory and the tribunal apologised to Mr Thomson for the fact that he had only received copies of them a few days previous to the Hearing notwithstanding the fact that the Property Factor had lodged them timely.

### **The Alleged Failures of the Property Factor**

The homeowner's position is that the property factor did not comply with the property factor's duties and various sections of the code:

#### **Section 2.1**

*You must not provide information which is misleading or false.*

## **Section 2.2**

*You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).*

## **Section 2.5**

*You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).*

## **Section 3.3**

*You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.*

## **Section 6.1**

*You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.*

## **Section 6.9**

*You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor*

## **Section 7.2**

*When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the*

*homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.*

**The tribunal make the following findings in fact:**

1. The Homeowner was the owner of 46 North Road, Liff, by Dundee, DD2 5SQ ("the Property").
2. The Homeowner sold the Property on 28<sup>th</sup> September 2018.
3. The Property is an apartment within West Green Park ( "the Development").
4. The Property is situated in part of the Development referred to as " Central Core" in the relevant Deed of Conditions relating to the Development.
5. The Property Factor performed the role of the property factor of the Development.
6. The Property Factor has not complied with the property factor's duties in terms of the Act.
7. The Property Factor has not complied with Sections 2.5, 3.3, 6.1, 6.9 and 7.2 of the Code.

**Evidence**

Mr Thomson said that the door entry system in his mother's flat had not worked properly since he moved in which was in November 2015. He said that this was when the fault had been reported to the Property Factor. He said that he had been told that any repair required to it was his responsibility and that it was not a common repair. Mr Skehan and Mr Reavley said that this was their understanding as a result of legal advice and that most of the difficulties proprietors in the building had were as a result of the connections within individual properties not being properly made. Mr Skehan said that there was a fault in the control panel within Mrs Thomson's property and that this was therefore not a common repair. Mr Thomson said that the fault may well have been in this control panel but that nevertheless he believed that this was an integral part of the door entry system and therefore formed part of the repairs which should be paid for by all the proprietors.

Mr Reavley referred the tribunal to the property factor's production number 31 which was an email from a solicitor in Messrs Thorntons, solicitors. He said that Thorntons had drafted the relevant Deed of Conditions. The email was from Sylvia Johnstone to Mr Reavley, is dated 7<sup>th</sup> March 2018 and states " I confirm that given the terms of the

Deed of Conditions for the Graystanes Building any part of the door entry system within the flats making up the Central Core is the responsibility of the individual flat owners.” Mr Reavley said that the door entry system was almost unique amongst systems he had come across and that this is because it is designed to work from the occupier’s own telephone although he stated that it could be hard wired into a specific phone dedicated for the system alone. He said that, since McGill electrical contractors had fitted the original system, he thought it better that they be instructed to assess any issues that there may be with the homeowner’s system. Mr Skehan drew the tribunal’s attention to the relevant job instruction to McGills which was production

Number 16 and was dated 18<sup>th</sup> October 2016. Mr Reavley referred the tribunal to Productions numbers 10, 14 and 18 which were copies of exchanges of emails between the property factor and Mr Thomson. The common theme in these emails was that the property factor was advising Mr Thomson that, if the fault in the door entry system was found to be within his flat, the cost of the repair would be a matter for him. They also state that the system had been tested and was found to be operational.

Mr Thomson said that the person from McGills who had come to work on the system had told him that the system was not fit for purpose and was obsolete.

Mr Skehan said that the system keeps the building secure and that it was found to be working properly. Both he and Mr Reavley said that the experience they had with the system in the building was that faults were generally with matters within the flats rather than external to them. Mr Reavley said that the property factor had instructed alternative contractors, Electrogard to assess what was required and he said that the new owner of the Property had accepted that she was responsible for the repair and that, as far as he knew, was arranging for it to be done.

Neither Mr Skehan nor Mr Reavley took issue with Mr Thomson’s position that he had reported the fault shortly after he had moved into the Property in November 2015. Both stated that the property factor had been anxious to assist Mr Thomson in having the matter resolved even if it transpired that it was not a common repair and the responsibility of Mr Thomson alone.

Mr Thomson said that the cost of repair had been quoted at £346 and that he did not dispute that the repair had to be done to the control box within his flat but that it was his contention that the control box is part of the common system.

Mr Thomson said that his position was that there were sufficient funds in the sinking fund for Graystanes’ proprietors to pay for the repair and to bring the whole system up to standard. He said that he had argued that the Property Factor could write to all proprietors to get authority for this to be done and he said that he had been reassured on numerous occasions that this would be done. Mr Reavley stated that any expenditure for such a repair could not be undertaken without authority of the Graystanes Sub Committee and that such a letter to proprietors would have required to be authorised by the subcommittee. He said that the Property Factor received no such authority.

Mr Thomson referred the tribunal to the documents lodged by him which highlighted that he considered that the Property Factor had told him on numerous occasions that letters would be sent to other proprietors with regard to the possibility of the repair being met from common funds. Mr Skehan did not dispute that Mr Thomson had been so advised and said that the Property Factor did not seek to deceive him in this regard but that, on each occasion it was stated to him that letters would be sent, the Property Factor had a belief that they would be and that they would get authority to send them.

Mr Reavley referred the tribunal to production number 55 which was a letter to Greystanes proprietors dated 2<sup>nd</sup> May 2018 which dealt with a number of issues but, in relation to the secure entry system, states that an owner had tabled a proposal that costs for rectifying faults in the door entry system should be met by common funds but that legal advice was that this would be inequitable and the letter went on to state that this position is supported by the West Green Park Residents and Proprietors Association (WGPRAs).

Mr Reavley said that the position adopted by the proprietors in connection with the communal television satellite system was a useful comparison to how the secure entry system was dealt with. He said that all costs from the satellite to the doors of individual flats were met from common funds but that any internal cabling, repairs etc were the responsibility of individual proprietors.

Mr Reavley said that the residents' association at West Green Park and the sub committees were extremely active and that the Property Factor was employed to carry out their wishes.

Mr Thomson said that when he moved into the Property he had reported to the Property Factor that the light in the corridor outside his flat was not working and that Mr Skehan had told him that it was his responsibility to arrange for and pay for the repair himself.

Mr Skehan said that it was possible that he had told Mr Thomson that it was his responsibility but that he could not be certain of this. He said that at that time he understood that certain lights were the responsibility of individual proprietors within the building. Both Mr Reavley and Mr Skehan said that it was now accepted that such lights were communal. Mr Skehan explained that the understanding that they were not common had been historical and that any repairs to the lights were now dealt with on the basis that they are common.

Mr Thomson said that he had no means to control the operation of the light in question and he did not pay for the electricity for it.

Mr Reavley said that it would be useful for him to explain some background in connection with the lights. He said that the cost of electricity had been high because the lights were on all the time and that the sub committee had decided to disable some lights to save energy costs.

Mr Thomson said that the light outside his flat had not been repaired until 2018. Mr Reavley said that he had misunderstood the issue about the lightshades. He accepted that this was despite Mr Thomson's communications to him clearly stating that he was raising an issue about missing light shades rather than the fitments themselves. Mr Reavley said that the property factor had thought that the issue was to do with the light fitments rather than the shades and he accepted that Mr Thomson had been clear in his communications. Mr Reavley said that the issue with the shades had been easily resolved and Mr Thomson said that this was because of his efforts in obtaining replacement nylon screws. Mr Skehan said that metal screws could not be used because glass expands with heat. Neither Mr Skehan nor Mr Reavley took issue with Mr Thomson's contention that the shades took a long time to be fitted.

Mr Reavley said that the issue of repairing the non functioning light was part of a bigger project to replace lighting and associated switches. The lighting system was now operated by movement sensors which led to a reduction in electricity usage.

Mr Thomson invited the tribunal to look at the specific alleged departures from the Code.

#### **Section 2.1 of the Code**

Mr Thomson said that he had been told on nine occasions between July 2017 and February 2018 that the other residents would be written to in connection with his proposal that the proprietors treat the fault in the entry system as a common repair. Neither Mr Thomson nor Mr Skehan disputed this. Mr Thomson said that he considered the Property Factor's behaviour in this regard to be false and misleading. Mr Reavley said that on every occasion Mr Thomson was told that the letters were being drafted, dispatched etc., he genuinely believed that to be the case but said that he could not action matters without the sanction of the Greystanes Sub Committee.

#### **Section 2.2 of the Code**

Mr Thomson said that the Property Factor was seeking access to his garage to fit a new meter and he said that his response was to say that this would be done when he got his light fixed. He said that on 16<sup>th</sup> November 2017 he got a final demand in respect of funds he had withheld from the Property Factor until issues had been resolved and he said that this letter threatened legal action which he found intimidating. He also said that, when the flat was being sold by his mother, Mr Reavley said that he hoped that he had made the purchaser aware of the issue of the door entry system. Mr Thomson considered this to be threatening and saw no reason why Mr Reavley would be concerned about an issue which Mr Thomson considered to be private between the prospective purchaser and himself. Mr Reavley said that if the solicitors involved in the transaction had asked the Property Factor about any outstanding issues he considered that such information would require to be given.

#### **Section 2.5 of the Code**

Mr Thomson said that there were frequent delays in the Property Factor responding to issues he raised. Mr Reavley accepted that the response could have been quicker. He said that there had been some difficulties during the move to other premises and the installation of a new software system. The Property Factor's letter to Mr Thomson dated 20<sup>th</sup> August 2018 stated " ....we are contrite that response times have not always met our stated times. You have our apologies where this has been the case."

#### **Section 3.3 of the Code**

Mr Thomson said that he wanted to see copies of invoices for electrical work so that he knew the costs. He said that this was in connection with the sale of the Property and that he wanted to show prospective purchasers the sort of things involved in common repairs.

Mr Reavley said that he did not think this to be a reasonable request and that the Committee had seen the full breakdown and that the treasurer of the Greystanes Sub Committee had instructed the property factor not to send the invoices. Mr Thomson said that he was not told that the authority of the Committee was needed and he said that he thought it unreasonable that he was not provided with the information which he had requested.

#### **Section 6.1 of the Code**

Mr Thomson said that he was never given any timescales for the repair of the lights and the refitting of lightshades which were, as he described, an "easy fix" and that he

had been told in April 2017 that the lightshades would be fixed but that this was not done for some considerable time. Mr Reavley accepted that there had been a misunderstanding with regard to what required to be done to the lights.

Mr Thomson said that the issue in the car park also took too long to resolve. Mr Reavley said that he was pleased with the way that particular issue had been dealt with. He said that the issue with drainage slots had been ongoing since 2009 and that each winter there was further deterioration. He said that the Committee had decided that, when funds were available, this would be addressed. He said that the resolution involved civil engineering work and that it had now been completed and had been done as soon as possible once authority had been given by the main Committee.

Mr Thomson disputed that the matter had been dealt with expeditiously and said that he had been told on 29<sup>th</sup> May 2018 that a contractor had been chosen and identified and that it took two months after that before the work was done.

#### Section 6.9 of the Code

Mr Thomson said that patches of paint were falling off the corridor outside the door of the Property and that damage to the paintwork had been caused by the electrical contractor. Mr Reavley said that the repair had been done at no cost to the proprietors. Parties did not dispute that it took some time to resolve.

#### Section 7.2 of the Code.

Mr Thomson said that the Property Factor had not given him the necessary information to go to the Tribunal when matters could not be resolved between them. Mr Skehan said that the information is contained within the written statement of services which the Homeowner would have got when she purchased the Property and that there is also a copy of the written statement of services which can be accessed via the website for the Development. Mr Reavley said that Mr Thomson must have known about the option to make an application to the Tribunal because he had already made reference to it in correspondence to the property factor.

The Property Factor's letter of 20<sup>th</sup> August 2018 states in relation to this matter "We regret the oversight in not directly making you aware of your rights at this juncture.....we shall not make this technical oversight again." The letter goes on to state that the necessary information is contained within the written statement of services.

Mr Thomson referred to the declared objective of the property factor in managing the Development which included "creating a happy living environment." He said that he did not find it to be so and that he took the decision to move out and his mother sold the Property on 28<sup>th</sup> September 2018. He said that, because of the poor service from the Property factor he had withheld £35 from his monthly payment to the property factor and that he had obviously had to pay these arrears prior to the sale of the property.

Mr Reavley said that he considered this to be a well managed Development and that part of the issue was that there were two channels of communication- one with Mr Thomson and one with the Committee for the Development and the Greystanes Sub Committee from whom the property factor took instructions. Mr Reavley said that the monthly management fee was charged to all proprietors in the Development and that no additional fee was charged for the management of Greystanes. He confirmed that

the fee covered the management of the whole development and such things as landscaped areas etc.

### **Reasons for the Decision**

The tribunal considered the oral and written evidence in relation to the application.

It considered that the Property Factor had accepted that, in some matters, it could have dealt with things better and the tribunal considered that the Property Factor had failed to carry out the property factor's duties.

In relation to possible breaches of the Code the tribunal considered each in turn:

#### **Section 2.1 of the Code**

Mr Thomson said that he had been misled and provided with false information in relation to letters being sent to the Greystanes proprietors. The Property Factor's position was that it had genuinely believed that it would be given instructions by the Greystanes Sub Committee to send these. The tribunal was inclined to accept the evidence of Mr Skehan and Mr Reavley. It considered that to mislead or provide false information required intent and it did not consider that there was evidence of any such intent.

The tribunal found that there had been no breach of this section of the Code.

#### **Section 2.2 of the Code**

Mr Thomson considered that the fact that the Property Factor had questioned whether or not a prospective purchaser had been told about the issue of the door entry system was intimidating and that the fact that legal action had been suggested with regard to arrears was also intimidating. The tribunal accepted Mr Reavley's evidence that his query regarding the knowledge given to the prospective purchaser was reasonable given the information the Property Factor may have been required to give to solicitors acting for the prospective purchaser. The tribunal also considered that a property factor was entitled to raise legal action to recover arrears.

The tribunal found that there had been no breach of this section of the Code.

#### **Section 2.5 of the Code**

The tribunal accepted that the Property Factor had delayed in responding to Mr Thomson. It accepted the evidence of Mr Thomson in this regard which was supported by the copy communications lodged by him. The Property Factor accepted that it could have responded quicker.

The tribunal found that there had been a breach of this section of the Code.

#### **Section 3.3 of the Code**

Mr Thomson wanted copies of invoices. This seemed to the tribunal to be a reasonable request. It accepted that the Property Factor felt that it was in a difficult position when it had not received authorisation from the Committee of the Development but it did not inform Mr Thomson that such authority would be required. Furthermore, with regard

to its obligations to comply with the Code, the Property Factor could have explained to the treasurer that it should provide the information to Mr Thomson. There was no evidence that it had done so.

The tribunal found that there had been a breach of this section of the Code.

#### Section 6.1 of the Code

On one view the issues which there were could be considered minor- the door entry system, the lights and the hard landscaping. The tribunal considered however that it must have been extremely frustrating for Mr Thomson who was dealing with matters on behalf of his mother. The Property Factor accepted that it failed to grasp one of the issues with regard to the lights in the common corridor which related to the shades rather than the fixtures and Mr Thomson had been very clear in his communications on this matter. The tribunal accepted that in relation to the other issue with the lights Mr Thomson was initially given wrong information which Mr Skehan said was possible because of a misunderstanding he had. The light was not working and should have been repaired sooner.

With regard to the door entry system the tribunal considered that it had insufficient evidence presented to it with regard to whether the repair was common or fell to be dealt with by the Homeowner. It accepted that there was, however, considerable delay in having the matter resolved and communicating appropriately with the Homeowner in relation to the matter. The tribunal accepted that, in relation to the hard landscaping and the drain covers, the time taken to have the repairs carried was not unreasonable. The tribunal found that there had been a breach of this section of the Code.

#### Section 6.9 of the Code

The tribunal accepted that there had been defects with the paint work and that the electrical contractor had caused damage to paintwork. It accepted the evidence of the Property Factor that these matters had been resolved at no cost to proprietors. There was however a delay in having matters resolved and the Property Factor made little or no effort to require the electrician to make good the damage caused to the decoration and the tribunal considered that there had been a breach of the Code.

#### Section 7.2 of the Code

The Property Factor accepted in the letter of 20<sup>th</sup> August that it had not signposted Mr Thomson to the Tribunal. No prejudice appears to have been caused to the Homeowner but nevertheless the Property Factor had not complied with the Code in this regard.

The tribunal found that there had been a breach of this section of the Code.

The tribunal considered that, based on the evidence before it, the Property Factor had failed to comply with the property factor's duties

The tribunal considered what it would require the Property Factor to do in relation to a property factor enforcement order. It noted that the Homeowner was looking for a return of the management fee for twenty months. It considered this to be unreasonable

since the Homeowner was getting the benefit of all that the Property Factor had done in managing the whole Development excepting Greystanes. It considered it reasonable for half the fee to be rebated. It also considered that the Homeowner had been inconvenienced and had been required to be involved in correspondence and work that would have been unnecessary had the Property Factor complied with the property factor's duties and complied with the Code. In totality the tribunal considered that an award of £300 inclusive of any consideration of rebate of management fees would be an appropriate level of compensation.

### **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.

### **Note**

The tribunal also considered that, although not part of the application by the Homeowner, the written statement of services did not comply with Section D k. of the Code and that this was something which the Property Factor should consider addressing.

### **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.**

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**Legal Member and Chair**

Martin J. McAllister

12<sup>th</sup> November 2018