



Decision and Statement of Reasons under Section 19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/21/1132

Re: 23C Greenholme Street, Glasgow G44 4DU ("Property")

The Parties:-

David and Norma Grier, 23C Greenholme Street, Glasgow G44 4DU ("Homeowners")

Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW ("Factor")

Tribunal Members:

Joan Devine – Chairing and Legal Member
Robert Buchan – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factor had not complied with the Code of Conduct for Property Factors as required by section 14 of the Property Factors (Scotland) Act 2011 in that there had been a breach of the Code in terms of section 2.6, 6.1 and 7. In all the circumstances the Tribunal proposes to make a Property Factor Enforcement Order ("PFEQ"). The Tribunal's decision was unanimous.

Introduction

1. 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"

2. Following on from the Homeowner's application to the Tribunal which comprised documents received on 11 May 2021 ("Application"), the Convener, with delegated powers under section 96 of the Housing (Scotland) Act 2014, referred the Application to the Tribunal on 20 May 2021. The Tribunal had available to it, and gave consideration to, the Application; supporting documents lodged by the Homeowners; written representation from the Homeowners dated 18 July 2021; written representation for the

Factor; response to the written representation for the Factor by the Homeowners; Inventory of Productions for the Factor and the oral submissions made by both Parties at the Hearing.

Hearing

3. A hearing took place by teleconference on 15 September 2021. The Homeowners were in attendance. The Factor was represented by Nichola McAtier of Anderson Strathern, Solicitors, Andrew Cunningham of the Factor and Jennifer Johnston of the Factor
4. The Tribunal noted that at section 7 of the Application, the Homeowner had said that the Application was proceeding under section 2.5; 6.1 and 7 of the Code.

Findings in Fact

1. The Homeowners are the proprietor of the Property.
2. The Property is part of a development that consists of 5 blocks and 43 flats.
3. The Factor performs the role of the Property Factor of the development.
4. The Factor had provided to the Homeowner a Written Statement of Services ("WSS").
6. The WSS contains a written complaints resolution procedure.
7. The Homeowners submitted a complaint to the Factor on 30 November 2020.

Findings in Fact and Law

1. The Factor had failed to respond to enquiries and complaints within prompt timescales.
2. The Factor had failed to inform the Homeowners of the procedures put in place to monitor the provision of cleaning at the development.
3. The Factor had failed to deal with the requirement for the front door of the Property to be painted in a timeous manner.
4. The Factor had failed to deal with the repairs required to the paving at the rear of the Property following the issue being brought to their attention in May and September 2019.

5. The failure to fully investigate the Homeowner's complaint made on 30 November 2020 was a failure by the Factor to comply with its written complaints resolution procedure.

Summary of Submissions

The Property

5. The Homeowners told the Tribunal that they had moved into the Property in October 1991. The Factor had managed the development of which the Property formed part since then. The Factor told the Tribunal that the development consisted of 5 blocks and 43 flats.

Section 2.5 of the Code

6. The Tribunal noted the wording of section 2.5 which relates to responding to enquiries and complaints within prompt timescales and as fully as possible.
7. Mr Grier told the Tribunal that he and his wife had moved into the Property in October 1991. The Property had been managed by the Factor since then. The Homeowners had been very satisfied with the service until approximately three years ago. Since then there has been a failure to respond. The property manager was Robert Armstrong. Mr Grier made reference to his emails of 29 November 2019, 5 June 2020 and 12 November 2020.
8. Mrs Grier told the Tribunal that the Homeowners had met with the property manager, Robert Armstrong, on 6 September 2019 and had identified a number of issues which they wished him to deal with as regards disrepair. Mrs Grier told the Tribunal that when she followed up with Mr Armstrong she received out of office responses and then no follow up reply. She told the Tribunal that numerous emails were not responded to. She said that Mr Cunningham of the Factor had accepted that the communication was not satisfactory and was not in accordance with required service levels. Mrs Grier referred to quotes for painting the front door being put on the Factor's portal which were difficult to understand and she again had to follow up with the Factor. However there was no further communication regarding this item of work until Friday, 10 September 2021. The communication asked the Homeowners if they would agree to the work. Mrs Grier explained that she had agreed to the work and made payment in June 2021.
9. Mrs Grier then referred to an email from Mr Clark of the Factor which related to the electrical cupboard and referred to it as being a fire hazard. Mrs Grier told the Tribunal that the work to clear the cupboard was carried out eight weeks after she raised the issue. She was told that the property manager

had left and a new one appointed. Mrs Grier expressed the opinion that she should have been introduced to the new property manager.

10. The Tribunal asked the Homeowners if the copy emails produced by them dated 6 September 2019 to 12 November 2020 were the evidence which they said supported their submission regarding section 2.5 of the Code. The Homeowners confirmed that was their position.
11. On behalf of the Factor Ms McAtier noted that the Homeowners had concerns about communication up to November 2020. She said that this was accepted as being an issue by the Factor and therefore was not outstanding. This was dealt with in the Factor's letter of 19 January 2021 which was produced. Reference was made to page 4. She also referred to Mr Cunningham's letter of 16 March 2021 in which he accepted that there had been failures as regards communication. An apology had been made. Ms McAtier said that the Factor accepted that there had been failings but these had been addressed in correspondence and was therefore not an outstanding issue to be dealt with by the Tribunal.
12. Mr Cunningham said that he wished to extend an apology to the Homeowners. He accepted that there had been a failure of service. His letter of 16 March 2021 provided a response to that. He said that the Homeowners were entitled to better communications. He said that there had been ongoing issues regarding standard of service. He noted that Robert Armstrong was no longer an employee of the Factor.
13. Mr Cunningham told the Tribunal that the Factor was putting in place changes to ensure developments were managed by a team rather than one individual. Mr Cunningham referred to the failure to reply to emails. He said that he did not wish to use Covid as an excuse but he noted that it was harder to monitor staff when they were working from home. He said that the situation at Greenholme Street would improve. He said that James Clark was a team leader who would be corresponding with clients to explain the new processes. Mr Cunningham apologised to the Homeowners for the failure to advise of the new property manager. He said that the apology was sincere and the Factor was aiming to do better.

Section 6.1 of the Code

14. The Tribunal noted the wording of section 6.1 which relates to having in place procedures to allow homeowners to notify the Factor of matters requiring repair or maintenance and the need to inform homeowners of the progress of work.

15. Mrs Grier told the Tribunal that there was an ongoing issue with cleaning at the Property. She said that during the first lockdown there were 21 weeks when the cleaning was not carried out. Notwithstanding that the Homeowners had still been invoiced for the cleaning. She noted that the stair windows were not cleaned for a period of 9 months. The cleaning records were removed. Matters had improved following a change in the cleaner. Her main concern was that the cleaners did not always attend. For example, they had not attended the week prior to the hearing but had attended on 14 September and signed the cleaning schedule indicating that they had attended not only that day but also the previous week. The record was being signed retrospectively. Mrs Grier said the Factor had told her that the cleaners would submit time stamped photographs. She did not know if that had happened.
16. Mr Grier referred to the correspondence from Ms Johnston in which she thought Ms Johnston questioned whether or not the Homeowners were telling the truth. This caused the Homeowners irritation.
17. Mrs Grier referred to the requirement for keys to be provided to the cleaners to allow access. She said that she had been told two years previously that they would be supplied but as far as she knew that had only happened in July 2021. She said that the cleaners required to "buzz" the Homeowners' property in order to gain access. She assumed that matters were now resolved as the cleaners had not "buzzed" the Property since July.
18. Mrs Grier then referred to the peeling paint on the front door. She said that Robert Armstrong had been alerted to this some two years ago and said it would be repaired. She said that the front door was a disgrace. Mr Grier noted that the back doors had been attended to but he had been told that the front door could only be dealt with during the summer. He was concerned that we were now in September with winter approaching. He noted that the Homeowners had paid their share of the cost of painting the door in June 2021. Mr Grier noted that repairs are put to a vote. He noted that there are, however, a number of properties in the development which are let. Owners are absent and he suspected that they would not respond to letters regarding repairs and may not pay for repairs. He noted, however, that the WSS said that the property manager can deal with maintenance. He therefore did not understand why a vote was necessary.
19. Mrs Grier referred to the uneven and loose paving at the rear of the development. She said that this had been brought to the Factor's attention in May and September 2019. Nothing was, however, done. She said that the paving was a health and safety issue.

20. Mrs Grier referred to the cupboard on the ground floor of the block which was filled with miscellaneous items such as paint tins and old televisions. She said that the Factor had written to homeowners in July 2021 giving them two weeks to uplift any items. The cost of a private contractor clearing the cupboard was to be shared. However, it was not until 27 August 2021 that the cupboard was cleared and locked.
21. Mrs Grier noted that the previous property manager had been very visible and would leave a card with homeowners confirming an inspection had been carried out. That had not taken place for some two/three years. Mr Grier noted that the WSS said that two inspections would be carried out per year and more if issues were raised. He said that he did not think that property inspections were taking place.
22. Mrs Grier then referred to the drying frame at the back of the building. She said that it was rusted and broken. She had received a letter from the Factor on 18 August 2021 asking homeowners if they wanted the frame removed or replaced. She said that the letter contained an excerpt from the title deeds which suggested that inappropriate use of a drying frame may lead to legal action. Mr Grier noted that this was heavy handed.
23. Mrs Grier referred to light bulbs which were not functioning. She noted that if routine inspections were being carried out these issues would be picked up. Mr Grier said that the Factor has neglected their responsibilities and he wished to see matters improve.
24. Ms McAtier spoke on behalf of the Factor. As regards the cleaning she referred to the written submission. She said that the Factor had accepted the complaint. She referred to Mr Cunningham's letter of 16 March 2021 which she said confirmed that it was impossible for the Factor to monitor visits.
25. Ms Johnston said that cleaners are required to submit date stamped photographs on completion of the works. She said that there were signing sheets on each block. She said that the Factor completed periodic inspections and encouraged homeowners to report issues. She said that in January 2021 she had asked Mr Armstrong to put in place a procedure for the cleaners to submit date stamped photographs and schedules. The Tribunal asked Ms Johnston if she could tell from her system if this was happening. She said that she would check.
26. Ms McAtier said that there was a process in place for repair and maintenance of the Property. Responsible contractors were instructed. She said that the Factor accepted that there had been notification of concerns about cleaning

but this was not an ongoing issue. She said that the Factor did, however, accept that this had not been addressed timeously by Mr Armstrong.

27. As regards the provision of keys to cleaners again Ms McAtier referred to the response to the complaint. She said it was not a requirement for a contractor to have keys. She said, however, that keys were now being provided to cleaners.
28. Mr Cunningham said that the non-attendance of the cleaners had been raised. He said that whilst he had been provided with a list of dates when they had not attended it was not practical for him to check that. He said that he had raised it with the cleaners and they had said that time sheets had been submitted showing that the cleaners had attended. The Factor had therefore been invoiced for those attendances. He said that in that situation he cannot say definitively whether the cleaning has or has not been carried out. He noted that the Factor had offered to reimburse the Homeowners a sum equivalent to one year of cleaning. He said that he was trying to resolve matters by offering the payment. He said that it was difficult to monitor a service such as cleaning. It was clear there had been a breakdown in procedures and response times at Greenholme Street. He said that procedures were now in place internally to ensure matters were dealt with. He said that he would be happy to attend an inspection of the development with the Homeowners.
29. Ms Johnston said that she could not find anything on the system to show that the cleaners at Greenholme Street were providing date stamped photographs or submitting schedules confirming they had attended. She said that the cleaners had been provided with keys on 27 July 2021. Mr Cunningham said that he personally spoke to Robert Armstrong in January 2021 about putting in place a procedure to ensure the cleaners had attended. He was told some 10/14 days later that it had been done but accepted that he had not followed it up to check that it had been implemented.
30. As regards painting the front door Ms McAtier referred to the responses from Ms Johnston and Mr Cunningham. It was recognised that this work required to be carried out but it had been delayed. She said that it had now been actioned. Ms Johnston said that exceptional items such as this required to be put to a vote. She said that the cost of these works was £1,251. Approval was required in advance. She said that only 3 out of 7 owners in the block were in favour of the work. She said that a reminder had been sent. She said that the Factor could not proceed without funding.

31. As regards the paving stones Ms McAtier said that this was not raised in the complaint to Ms Johnston and Mr Cunningham. She said that the letters of 5 June and 12 November 2020 set out the basis of the complaint.
32. Ms Johnston said that the Factor was gathering estimates to re-lay the paving stones. She said that a contractor had told her that the cause of the issue was tree roots. She understood that this needed to be addressed. She said that comparable estimates were being obtained. She said that there would be a communication to homeowners.
33. Ms McAtier reiterated that there are procedures in place in terms of Section 6.1 of the Code.
34. As regards the cupboard on the ground floor, Ms McAtier noted that this had not been raised in the escalated complaint. She noted, however, that the necessary works had been carried out and the cupboard locked. She said that this showed that there was a process in place.
35. Ms Johnston said that she accepted that Mr Armstrong had said in July 2021 that he would arrange for the items to be removed. He left the Factor's employment on that date without having arranged for removal. She noted that once the issue was raised, it had been actioned.
36. As regards property inspections Ms McAtier noted that the WSS requires inspections twice per year. She noted that there had been inspections in July and August 2021. Ms Johnston said that as a minimum the Factor would attend twice per year. In addition managers would attend when specific items were raised. She said that cards were no longer left to confirm attendance. Going forward inspection forms would be uploaded to the portal.
37. Mr Cunningham said that the Factor was now looking to bring in electronic inspections so that the manager can take photographs during the inspection and upload those onto the portal. He said that training was ongoing. He said that the Factor was actively taking steps to improve the system.
38. As regards the drying frame Ms McAtier noted that this did not form part of the escalated complaint or the application to the Tribunal. Ms Johnston referred to the letter from Mr Clark and noted that he reiterated the entire property burden in the letter. She said that a vote was ongoing and there had been 20 responses in favour of replacement of the drying frame. 5 had voted against.
39. As regards the complaint about light bulbs, Ms McAtier said that this was not part of the escalated complaint or the Tribunal application. She noted that there are processes in place for dealing with repairs and processes to allow

things like light bulbs to be remedied. Ms Johnston said that she had instructed an electrician to check the lights on 15 July. He attended on 20 July and all light bulbs were functioning.

40. The Tribunal asked about the invoices for cleaning. Ms Johnston said that the invoices are received, processed then paid. She said that homeowners are billed six months in arrears. She said that the Property was checked during inspections to ensure standards were being upheld. As regards the cleaning she said that photographs should be submitted on each visit.
41. The Tribunal asked the Factor how cleaners were to obtain access without keys. Ms Johnston said that a service button was often used. She said that she believed that the Property had a service button.
42. The Tribunal noted that the verification of cleaning having taken place was not a new issue in the property factor sphere. The Tribunal expressed surprise that it had taken until 2021 for the Factor to implement monitoring. Ms Johnston said that the issue had not been raised prior to the formal complaint from the Homeowners.
43. Mr Cunningham said that it did seem to be a simple solution to provide keys to cleaners but it was not always the same cleaner, keys got lost etc. He said that the Factor's instruction to contractors was that they required before and after photographs before they would pay for work carried out. However, cleaning does not lend itself to that process.
44. The Tribunal referred to the concern raised regarding the painting of the front door. The Tribunal noted that if the issue was not addressed for some time then the state of the door would get worse and costs would increase. The Tribunal expressed surprise at the estimated cost of the works.
45. Mr Cunningham said that the Factor needs to advise owners where the cost of works exceeds £500. Ms Johnston said that the estimate for this work was not limited to the door. The quotes covered the entrance door and screen, 5 windows, timber fascias and soffits and external balconies.
46. Ms Johnston said that the work was scheduled for June 2020 but required to be cancelled due to the pandemic. She accepted that there had been a delay.
47. The Tribunal raised the question of inspections and asked whether homeowners had been canvassed as to what they would like to have inspected and whether homeowners were advised in advance that an inspection was taking place. Mr Cunningham said that the Factor tries to

inspect more than twice per year. Mr Cunningham said that an inspection sheet is put on the portal after the inspection has taken place.

48. Mrs Grier asked about the process for monitoring cleaners as she felt the issue had not been answered. She asked if time stamped photographs are available and what happened to the cleaning schedules. She queried whether they were uploaded to the portal or were provided in hard copy.
49. Mrs Grier said that whilst there may be a process in place, it was another matter as to whether or not the process was being complied with. She felt that the Factor was believing the cleaner rather than their longstanding customer.
50. Ms Johnston said that the provision of date stamped photographs and cleaning schedules had been instructed but she had not been able to find any evidence that this process had been put in place for the development at Greenholme Street.
51. Mr Cunningham said that he did not monitor cleaning at any particular development. He relied on the process being followed. He noted it was clear that time sheets had not been uploaded to the system for Greenholme Street. He said that whilst a procedure was available it appeared not to have been followed here. He said that the procedure is that time sheets should be uploaded with photographs before payment is made. It was clear that the property manager had not done what he should have in this case. He said that the Factor was actively changing their system.
52. Mr Grier said that there was no service button to allow cleaners access at the Property. He said that he had seen no inspection sheets on the portal.
53. Mr Cunningham noted that the Homeowners had said that they had been happy with the service three years ago. He said that the procedures in place are the same. He accepted that in some instances the Factor had fallen below the required standard but they were putting changes in place. He said that matters would improve. He said the Factor accepted the processes had not been followed.

Section 7 of the Code

54. The Tribunal noted that section 7 relates to complaints resolution.
55. Mrs Grier said that she was disappointed that the Homeowner's complaint had not been '*thoroughly investigated and a definitive response given*'. She said that the discussion before the Tribunal had shown that a lot of things which the Factor thought were happening were not in fact taking place. She said

that the homeowners wanted the Factor to manage the development in return for the fee which they were paid.

56. On behalf of the Factor Ms McAtier said, with reference to section 7.1 of the Code, that the Factor had a process in place that had been followed and had been exhausted. A written response to the complaint had been provided and payments had been offered in order to recognise the failures. She referred to the letters from Mr Cunningham to the Homeowners and said that a number of issues had already been dealt with by Ms Johnston. She said that there was no breach of section 7.
57. Mr Cunningham referred to his letter of 16 March 2021. He noted that the Homeowners were concerned that he had said that he would not address each point. He said that was not his position. He said that his position was that he would not deal with each individual comment. He noted that he had provided a five-page response. The Homeowners had outlined certain expectations and he thought he had fully investigated and responded to that.
58. Mr Cunningham said that he acknowledged there had been failures for example Mr Armstrong had told him that the cleaners were to be provided with keys. Mr Armstrong did not in fact do that. Mr Cunningham did not know that at the time. He said that The Factor did thoroughly investigate the complaint.

Property Factor Duties

59. The question of the Property Factor Duties was not discussed separately as the issues of attending to the door, slabs and understair cupboard were discussed as Code issues.

Remedy Sought

60. The Tribunal asked the Homeowners what they wanted the Tribunal to do.
61. Mrs Grier said that she wished to see visible property inspections. She wished the Factor to carry out repairs and maintenance such as dealing with the paving stones which was essential. She wished the Factor to respond to communications, to monitor cleaning and not to charge for cleaning that had not taken place. She said that she wished there to be improvements and to be told the specifics of how the service would improve.
62. Mr Grier noted that the Homeowners had had a good relationship with the Factor but over recent years it had broken down. He hoped that the relationship would be rebuilt. He referred to the ex gratia payment that had been offered. He said that the Homeowners had deferred a decision on the

ex gratia payment until the complaint was resolved. He said that the complaint was not about money but about a desire to see service levels improve.

63. Mrs Grier said that the Homeowners would expect to be reimbursed for cleaning that had not been carried out. She said that the Homeowners would also expect to receive compensation for the stress and inconvenience that they had been subjected to.
64. Mr Cunningham said that he believed that the Factor had dealt with the Homeowner's complaint. He said he would leave it to the Tribunal to determine whether a payment was appropriate. Mr Cunningham again apologised to the Homeowners for the level of service and for the inconvenience caused. He said that he believed the appropriate procedures were in place but implementation had not happened.

The Code

65. Section 2.5 of the Code states:

"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 of services."

66. Section 6.1 of the Code states:

"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 ."

67. Section 7.1 of the Code states:

"You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors."

Tribunal Findings and Reasons for Decision

68. The Tribunal determined that there had been a breach of section 2.5 of the Code.

69. The Homeowner's basis for complaint under Section 2.5 related to the Factor's failure to respond to emails in the period 6 September 2019 to 12 November 2020. This was fully set out in the Homeowner's letter of 9 February 2021 which referred to appendix 2 enclosed with the letter. The Factor has already accepted and apologised for the breach.
70. The Tribunal determined that there had been a breach of section 6.1 of the Code. The Homeowner's basis for complaint under section 6.1 related to a number of issues. The Tribunal determined that the failure by the Factor to implement procedures to monitor the provision of cleaning services and to supply cleaners with keys to access the development and the failure to deal with the repairs required to the front door of the Property and the paving stones at the rear of the Property in a timeous manner was a breach of section 6.1 of the Code. It is not enough simply to say that there are procedures in place if they are not being implemented. The Tribunal accepts that the property manager had been advised of the need for attention to the attendance of cleaners, the decoration of the front door and the uneven paving slabs but nothing was done.
71. The Tribunal determined that there had been a breach of section 7 of the Code. The Homeowner's basis for complaint under section 7 was that their complaint had not been thoroughly investigated.
72. Section 12 of the WSS referred to complaints being "thoroughly investigated" and a definitive response provided. One of the main bases for the Homeowners' complaint was that there was inadequate monitoring of cleaning services and no keys were provided to cleaners to allow them access. The evidence before the Tribunal was that the Factor had decided to implement a procedure for monitoring cleaning services involving the submission of photographs and cleaning schedules and believed that it had been put in place for the development at Greenholme Street when in fact it had not been put in place. The evidence before the Tribunal was that the Factor had decided to provide keys to cleaners to allow access to the development and believed that it had been put in place in March 2020 when in fact it was not done until July 2021. A thorough investigation would have revealed that procedures the Factor thought were in place had not been implemented.
73. The Tribunal was struck by the Homeowners over-riding desire to look to the future and how matters can be improved and the Tribunal appreciates just how frustrating that it must have been for the Homeowners to have spent so much time and effort trying to get the Factor to accept that there was a problem at the development. Their comment that they thought the Factor believed the cleaner rather than them was noteworthy. Senior management

appears to have been slow to realise that there was a management problem and the Factor might reflect on whether or not a more personal complaint management procedure in the first instance might have been more appropriate.

Property Factor Enforcement Order

74. The Tribunal proposes to make a Property Factor Enforcement Order ("PFEO") the terms of which are set out in the attached Notice in terms of section 19(2) of the 2011 Act.
75. The Parties will be allowed to make representations on the proposed PFEO.

Appeals

76. In terms of section 46 of the Tribunals (Scotland) Act 2014 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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Signed
Joan Devine, Legal Member

Date: 22 September 2021