



Decision with Statement of Reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an Application under The Property Factors (Scotland) Act 2011 ("The Act")

Reference number: FTS/HPC/PF/23/2439

Re: Property at 7/3 Murano Place, Edinburgh, EH7 5HH ("the Property")

The Parties:

Ms Rachael Dixon ("the Applicant")

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the Respondent")

The Tribunal comprised:-

Mr Andrew McLaughlin- **Legal Member**

Mr Andrew Murray- **Ordinary Member**

Background

[1] The Applicant seeks a finding that the Respondent has breached various paragraphs of The Code of Conduct for Property Factors" ("The Code"). Section 14 (5) of the Act obliges the Respondent to act in compliance with the Code. The Application alleges that the Respondent has breached their obligations in respect of:

"The Overarching Standards of Practice;" (Sections 1, 2, 3, 4, 5, 6, 9, 10, 11 and 12)

"Communications and Consultation;" (Sections 1 and 7)

"Carrying Out Repairs and Maintenance;" (Sections 1, 4, 5, 6, and 12)

"Complaints Resolution;" (Sections 1 and 4)

[2] The alleged failings can be summarised as follows:

1. To co-ordinate with Scottish Water in respect of sewage issues in the Applicant's bathroom.
2. To take action to secure mailboxes at the front of the Property in the communal areas.
3. To competently repair the communal front door entry system to the building.
4. To communicate and handle complaints regarding the above appropriately.
5. To maintain adequate communication and repairs procedures and to maintain emergency contact procedures.

[3] A previous Case Management Discussion took place on 25 October 2023. It had been decided that a Hearing would be required to determine matters. The Respondent had set out their formal response to the Application denying breaching the standards founded upon in the Application and attaching various documents they wished to rely on. The Tribunal had before it the Application itself and a large volume of emails and attachments submitted by the Applicants and a formal written response from the Respondent with emails and documents that the Respondent wished to rely on. In total, hundreds of pages of material had been submitted by the Applicant.

The Hearing

[4] The Application then called for an Evidential Hearing at 10 am on 12 February 2024 at George House, Edinburgh. The Applicant was personally present. The Respondent was represented by their own Ms Robyn Rae.

[5] There were two preliminary matters to raise. The Applicant objected to the Respondent's witness, Neil Pringle, being present until such time as he was called upon to give evidence. The Respondent was represented by Ms Rae and Mr Pringle was to present to give further evidence. The Tribunal noted that as a business entity rather than

a natural person, it might be expected that the Respondent's employees could be present throughout. The objection was that apparently it would allow Mr Pringle "*to go with the narrative*". The Tribunal decided to sustain the objection and ordered that Mr Pringle remove himself from the room until such time as he was required to give evidence.

[6] The further preliminary matter related to the Applicant seeking to lodge further late papers. A Direction had been made by the Tribunal on 13 November 2024, ordering that any further evidence to be relied on had to be submitted by 4 December 2023. The Applicant had then attempted to submit another 31 pages of documentation on 7 February 2024. The admission of these papers was objected to by Ms Rae. Having discussed the issue the parties, the Tribunal determined that it would not be in the interests of justice to allow these papers to be received. There was no credible reason provided as to why they were late or explanation as to why it would be in the interests of justice to allow them to be received.

[7] These preliminary matters having been addressed, the Tribunal began hearing evidence. The Tribunal heard evidence from the Applicant and then from Ms Rae. Each party had the opportunity to cross-examine the other and the Tribunal asked questions throughout. At the end of giving her own evidence, Ms Rae decided that she would not call Mr Pringle as a witness. After hearing evidence each party then had the chance to make closing submissions and specifically address the Tribunal on the specific paragraphs of the Code allegedly breached. After hearing parties, the Tribunal made the following findings in fact.

Findings in Fact

I. *The Applicant was the heritable proprietor of the Property known as 7/3 Murano Place, Edinburgh, EH7 5HH.*

II. *The Respondent was the relevant property factor within the meaning of the Act and was responsible for maintaining the common areas in the building in which the Property is situated.*

- III. *On 12 July 2023, the Applicant wrote to the Respondent informing them of her intention to apply to the Tribunal in terms of Section 17 of the Act on the basis that she alleged that the Respondent had failed to comply with the Code as required by Section 14 (5) of the Act. This letter referred to the issues raised in this Application.*
- IV. *There had been an occasion when sewage entered the Applicant's Property via the bathtub drain in December 2022. At that time, Scottish Water had been carrying out works on the entirety of Murano Place to replace the public sewer line. During these works, there was an incident when sewage appeared to enter the bathtub of the Applicant's Property.*
- V. *The Respondent offered prompt support to the Applicant after this incident and arranged contractors to come out that very day to try and fix the problem.*
- VI. *The Respondent gave timely, common-sense advice about the issue and clearly gave the matter a great deal of attention. There were appropriate levels of communication between the parties regarding the issue.*
- VII. *The issue of the provision of sewer services to the building is clearly a complicated matter and not something the Factor could immediately remedy. The Respondent liaised with Scottish Water and tried to move along resolution of the Applicant's concerns. Those concerns related to a potential re occurrence of the sewage issues.*
- VIII. *The Respondent had sent numerous emails to Scottish Water trying to trigger Scottish Water into action following on from the first reporting of sewage entering the Applicant's bathroom.*
- IX. *It is not accurate nor reasonable to suggest that the Respondent failed in their duties to attempt to resolve the Applicant's problems by contacting Scottish Water to coordinate efforts or obtain external quotes for the required repairs as is alleged in the Applicant's letter to the Respondent dated 12 July 2023.*

- X. *The Applicant is aggrieved that she suffered personal inconvenience as a result of the sewage leak into her bathroom. The Applicant is aggrieved that she was asked to stay in the Property to allow for a contractor to speak to her and address the issue when it was first reported. The Applicant's expectations of what the Respondent could do without any cooperation from the Applicant herself appear misguided.*
- XI. *In August 2022, the Applicant brought to the attention of the Respondent that there was a need to secure the mailboxes at the front of the Property. There appear to be letter boxes on the outside of the building that can be accessed by the public. Inside the building, there are then separate mailboxes which are akin to pigeon holes. The Respondent is not responsible for the upkeep and maintenance of the letterboxes in the internal common areas. Upkeep and maintenance of these areas is the responsibility of the relevant individual proprietors. The Applicant has produced no evidence to counter the Respondent's position that these are the responsibility of the individual proprietors.*
- XII. *In any event, due to residents not paying their fees (which includes the Applicant), there are insufficient funds available to carry out such repairs even if it were the responsibility of the Respondent. As such, the Respondent has acted reasonably even if the maintenance of the mailboxes was the responsibility of the Respondent.*
- XIII. *There was an issue with the front door lock of the building. A homeless person had been taking advantage of this security breach and had been entering the common areas of the building. The Applicant had complained about this to the Respondent. The Respondent emailed the Applicant on 11 January 2023 explaining what the Respondent had done about this issue. They explained that a lock smith had attended on two occasions to rectify the issue with the current locks before it was recommended to replace the locks. They explained that it took a further two months to obtain quotes to have the locks finally replaced in October 2022. The Respondent explained in that email that they used third party contractors for all repairs and had continually chased their contractor for progress.*

The Respondent acted reasonably in dealing with the issue and also in how they communicated with the Applicant about it.

- XIV. *The Applicant has sent numerous complaints to the Respondent about the issues raised in this Application. This resembles an almost continual conversation. The Applicant's complaints have been excessive and unreasonable. The Respondent has acted reasonably in dealing with the constant back and forth of complaints.*
- XV. *The Respondent has delivered appropriate out of hours emergency repair procedures and has communicated with the Applicant appropriately. Their repairs procedures are adequate.*

[8] Having made the above findings in fact, the Tribunal finds as follows in respect of the specific allegations raised in the Application.

Decision

Overarching Standards of Practice ("OSP")

"OSP1. You must conduct your business in a way that complies with all relevant legislation."

[9] The Respondent has acted in compliance with relevant legislation. This allegation is not upheld.

"OSP2. You must be honest, open, transparent and fair in your dealings with homeowners."

[10] The Respondent has been honest, open, transparent and fair in their dealings with the Applicant. There is no basis for suggesting otherwise. This allegation is not upheld.

"OSP3. You must provide information in a clear and easily accessible way."

[11] The Respondent has provided information in a clear and easily accessible way. The precise detail of the specific allegation is unclear but this allegation is not upheld.

“OSP4. You must not provide information that is deliberately or negligently misleading or false.”

[12] This allegation is not upheld. There is nothing to substantiate the claim that the Respondent has provided information that is deliberately or negligently misleading or false.”

“OSP5. You must apply your policies consistently and reasonably.”

[13] The detail of the specific allegation is unclear but this allegation is not upheld.

“OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.”

[14] This allegation is not upheld. The Respondent in fact offered the Applicant a commendable service. Their rapid reaction to the sewage issue was impressive.

“OSP9. You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code’s requirements.”

[15] The detail of the specific allegation is unclear but this allegation is not upheld.

“OSP10. You must ensure you handle all personal information sensitively and in line with legal requirements on data protection.”

[16] The detail of the specific allegation is unclear but this allegation is not upheld.

“OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure”.

[17] The Respondent did respond to enquiries and complaints within reasonable timescales. The Respondent was patient and thorough with the Applicant’s sustained and near constant flow of complaints.

“OSP12. You must not communicate with homeowners in any way that is abusive, intimidating or threatening.”

[18] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

Communications and Consultation

2.1 “Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners’ responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligation”.

[19] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

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”.

[20] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

Carrying Out Repairs and Maintenance

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners’ responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

[21] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

[22] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

"6.5 If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible."

[23] The Respondent offered a most impressive out of hours emergency service. Ms Rae herself personally answered the phone late at night when the Applicant phoned the emergency number. There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

"6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner."

[24] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

"6.12 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner."

[25] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

Complaints Resolution

"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."*

[26] There is no legitimate basis for suggesting that the Respondent breached this standard. This allegation is not upheld.

"7.4 A property factor must retain (in either electronic or paper format) all correspondence relating to a homeowner's complaint for a period of at least 3 years from the date of the receipt of the first complaint."

[27] The detail of the specific allegation is unclear but this allegation is not upheld

Decision

[28] Having made the above findings in fact and having considered the Standards of the Code, the Tribunal finds that the Respondent has not breached any of the standards of the Code.

APPEAL PROVISIONS

[29] A party 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.

[30] Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member:

18 March 2024