

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision on Homeowner's application after Review: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/LM/18/1725

**Flat1/1 10 Andrews Street, Paisley PA3 2EP
("the Property")**

The Parties:-

**Mr Dave Sinclair, Flat 1/1 10 Andrews Street, Paisley PA3 2EP
("the Homeowner")**

**Link Group Limited, Watling House, Callendar Business Park, Falkirk FK1 1XR
("the Factor")**

Tribunal Members:

**Graham Harding (Legal Member)
Carol Jones (Ordinary Member)**

DECISION

The Factor has previously failed to carry out its property factor's duties.

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with section 2.1 of the Code

The decision is unanimous

Introduction

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

The Factor became a Registered Property Factor on 7 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

1. By application dated 7 July 2018 the Homeowner complained to the Tribunal that the Factor had breached Sections 2.1 and 6.9 of the Code and had also

failed to carry out its property factor duties. Specifically, the Homeowner complained that the Factor was charging him for landscaping work on a monthly basis but the actual work being done was on a bi-annual basis. He also complained that the Factor had provided him with information that was false and misleading. The homeowner provided the Tribunal with a copy of the Factor's Written Statement of Services and correspondence between himself and the Factor.

2. By Minute of Decision dated 27 August 2018 a Convenor with delegated powers referred the application to a Tribunal.
3. A hearing was fixed to take place at Glasgow Tribunals Centre 20 York Street Glasgow on 29 October 2018.
4. The Tribunal issued directions to the parties on 25 September 2018 to provide date stamped photographs of the ground at the property in support of each party's submissions.
5. Both parties lodged written submissions and productions in advance of the hearing that were fully considered by the Tribunal.

Hearing

6. A hearing took place at the Glasgow Tribunals Centre, 20 York Street, Glasgow on 29 October 2018. The Homeowner represented himself. The Factor was represented by Ms Ronni McMenemy and Mr Jamie Gibb.

Summary of submissions

7. The Homeowner explained to the Tribunal that in June 2017 he had been off work recovering from an illness and had noticed that the weeds at the common ground at the rear of his property were out of control. He had raised his concerns with the Factor and this had led to a plethora of correspondence that had ultimately resulted in the complaint to the Tribunal.
8. The Homeowner explained that the Factor's contractors "Nurture" were contracted to attend to litter picking, weed control and gravel raking at the properties within the development of which his property formed part. He said that by the end of June this year the situation about which he had been complaining had improved and the ground had been brought up to a satisfactory standard however since then things had slipped back. In support of this the Homeowner produced recent photographs showing weed growth at the property and also litter that he said had been lying for more than three weeks..

9. The Homeowner said that at this time of year the weeds were not too bad but litter picking was supposed to be on a regular basis and as far as he was aware it had only happened twice this year.
10. The Homeowner said that in respect of his complaint that the Factor was in breach of Section 2.1 of the Code it had relied upon information provided by the contractors and had not cross referenced that with correspondence provided by him that had been sent to it that showed the contractors' spreadsheets to be incorrect. He said the Factor was therefore providing the Homeowner with false and misleading information.
11. With regards to the alleged breach of Section 6.9 of the Code the Homeowner's position was that the Factor failed to remedy the defects in the ground maintenance that had been pointed out by him. Furthermore, by not following up what he had told the Factor and check up on the contractors the Factor also breached Section 6.9.
12. The Homeowner said that it was not the cost of the service that he was being charged for that was the issue as that was only about £1.50 per month and the Factor had reimbursed him for the winter period. His concern was that the contractors were not doing the job properly.
13. With regards to the alleged failure on the part of the Factor to carry out its property factor duties the Homeowner said that in its Written Statement of Services the Factor was to provide landscaping services. The standard of landscaping service being provided was inadequate and therefore the Factor was failing in its duties.
14. In reply to a question from the Ordinary Member of the Tribunal the Homeowner accepted that the moss brushing at the property had resulted in an amazing transformation. But that since June the improvements had not been maintained. The homeowner said that although the weed situation was not as bad there seemed to be a lack of consistency in how the ground was treated. Sometimes the contractors would strim the weeds, other times they would use chemicals but they did not pull them up from the roots.
15. For the Factor Ms McMenemy accepted that false information had been provided to the Homeowner in that the spreadsheets provided by the contractors were incorrect. She further explained that there had been multiple complaints about the contractors and as a result the Factor had really tightened up on its management of them. There were now monthly meetings in place to highlight any issues and to let the contractors know if there were any unacceptable practices.
16. Ms McMenemy said that following the landscaping issue being raised by the Homeowner in November 2017 and the photographic evidence produced by him contradicting the evidence from the contractor the issue was rectified in February this year.

17. The Homeowner commented that whilst some work had been done in February, no litter picking had been carried out and there had been no communication at that time from the Factor to say that action was being taken.
18. Mr Gibb advised the Tribunal that since June of this year a separate mailbox had been setup by the Factor to deal with ground management issues and there was a different manager responsible. There had been big changes made by the Factor to ensure a much smoother process of dealing with land management issues.
19. The Homeowner was of the view that despite any changes that had been made the system was still not working and referred to the photos he had recently taken. Mr Gibb said that weed control was difficult to manage because of statutory restrictions on the use of chemicals and the prevailing weather conditions.
20. Ms McMenemy went on to say that in the event of the contractors failing to provide an adequate service monies would be withheld. The contractors were aware of the Factor's concerns and these would be discussed at their monthly meetings. The contractors had also had management changes and it was a growth process for them also.
21. The Tribunal queried as to whether there was a membrane under the gravel to prevent weed growth and was advised there was not. It was thought that there might be a shortage of gravel and the Factor was looking at this with a view to replacing the existing gravel. This was being looked at by the Factor's Asset Management Team.
22. Mr Gibb confirmed that there was currently a quarterly inspection of the ground carried out. There could be additional inspections if someone from the Factor had cause to be in the area. He accepted that given the issues raised by the Homeowner with regards to litter picking and weed control and the apparent slipping in standards since June that a move to monthly inspections rather than quarterly could be taken on board. Any move to monthly inspections would result in a change to the core services provided and an increase in cost to Homeowners and would require the consent of the majority of homeowners.
23. Mr Gibb confirmed that the contractors should be conducting litter picking at the property on a fortnightly rota and gravel raking and weeding monthly. Consideration was being given to introducing moss brushing on an annual basis.
24. Ms McMenemy confirmed that the contractors were responsible for maintaining the landscaping at some 4000 of the Factor's properties. She was aware that there had been issues in other areas beside the Homeowners and these were being addressed. She said there were more complaints in relation to the properties where the properties were hard landscaped and significantly

less in relation to the maintenance of communal ground which was laid out in grass.

25. The Homeowner said he was not looking for reimbursement of the cost of the landscaping works but he wanted the work to be done properly. He had spent a lot of time corresponding with the Factor and felt he had not been getting anywhere and had to resort to applying to the Tribunal.
26. Ms McMenemy acknowledged that the process had been failing but that it had been addressed and that there were now much better lines of communication between homeowners and the Factor. The Homeowner said he could not comment on that as he had not tried to communicate with the Factor since making his application to the Tribunal.

The Tribunal make the following findings in fact:

27. The Homeowner is the joint owner of the property
28. The Property is a flat within the block forming 10 Andrews Street part of the larger development at Andrews Street (hereinafter "the Development").
29. The Factor performed the role of the property factor of the Development.
30. The Factor provided the Homeowner with information relating to ground maintenance at the development that had been provided by the Factor's contractors that was incorrect.
31. The standard of ground maintenance service provided by the Factor between June 2017 and June 2018 was below that which could be reasonably expected by a homeowner in respect of weed control, litter picking and gravel raking.
32. There was an improvement in the ground maintenance services provided by the Factor in about June 2018 that has not been maintained.
33. The Factor has taken steps to monitor the effectiveness of the ground maintenance work by its contractor, Nurture, through management changes and by instigating monthly meetings.
34. Quarterly inspections by the Factor of the ground maintenance at the development may be insufficient to monitor the standard of ground maintenance work being done by its contractors but any change to monthly inspections would require the consent of the majority of homeowners.

Reasons for Decision

35. Section 2.1 of the Code

Although the Factor may have thought that it could have relied on the validity of the information provided by its contractor, Nurture, it should have been apparent to it fairly quickly given that it was receiving multiple complaints

about the standard of service being provided that there was a problem. This would be even more apparent in the Homeowner's case where he was able to provide photographs that clearly showed that the information provided by Nurture was incorrect. Although there was no wilful intent on the part of the Factor to mislead or provide false information the Factor could and should have communicated more openly with the Homeowner and explained in some detail that the information that had been provided was false. Whilst the Tribunal accepted that the Factor did take steps to monitor the situation in light of the Homeowners complaint, on balance the Tribunal considered there had been a breach of Section 2.1 of the Code.

36. Section 6.9 of the Code

Once the Factor became aware of the failings of its contractor and possibly its own management of the situation it did take steps to remedy the situation by arranging for a moss brush of the back court to be carried out at the contractor's expense. It has taken the complaints it has received about the contractors seriously and has pursued them appropriately to remedy the problems. It therefore cannot be said that it has breached Section 6.9 of the Code.

37. Property Factors Duties

Part of the Core Service provided by the Factor as set out in its Written Statement of Services is appointing, managing and paying contractors for repairs, landscaping and cyclical maintenance work within Link's delegated authority. It follows that the Homeowner can expect that the contractors employed by the Factor carry out ground maintenance to a reasonable standard and that the Factor will exercise due diligence in ensuring that the work is being carried out to a satisfactory standard. Prior to the Homeowner complaining to the Factor the contractor was falsifying records and that was clearly unacceptable. It follows that the Factor at that time did not have a system in place to properly check upon the contractor. Whilst the Tribunal was encouraged to note that a more robust system was now in place it did seem that there were still issues that needed to be addressed. The Homeowner provided fairly compelling evidence that the contractor was still not carrying out its contracted duties. It therefore seemed to the Tribunal that the current quarterly inspection undertaken by the Factor was insufficient and would not provide it with sufficient evidence either to answer a complaint by a homeowner or to effectively challenge the contractor at its monthly meeting. The Tribunal noted however that for a six-month period at no additional cost to homeowners the Factor was undertaking monthly inspections to monitor the contractors work. The Tribunal accepted that any change to core services would require the consent of a majority of owners. The Tribunal noted that the Factor would canvas the owners in the Homeowners block to see if the majority wished to increase the inspections from quarterly to monthly. The Tribunal was therefore satisfied that whilst there had initially been a failure with regard to its property factor duties, given the steps taken by the Factor to address the issues it was no longer failing in its property factor duties.

38. Although not part of the issues to be determined by the Tribunal it did seem that there would be a benefit to homeowners and Link's tenants at the development if a more permanent solution was found to weed prevention and whilst there will undoubtedly be cost implications for all owners the laying of a membrane and new gravel at the properties may well be an effective solution in the longer term.

39. The Tribunal were conscious that the direct financial cost of the ground maintenance incurred by the Homeowner was quite minimal but there was no doubt that he had been put to a considerable amount of inconvenience and indirect expense in taking his complaint to the Tribunal and attending at the hearing. The Tribunal was therefore of the view that it would be appropriate to make an award of compensation to the Homeowner in the sum of £150.00 to reflect this.

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.

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.

G Harding

Legal Member and Chair

30 March 2019 Date