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

Property Factors (Scotland) Act 2011 ("the Act"), Section 19

The First-tier Tribunal for Scotland, Housing and Property Chamber (Procedure) Regulations 2016 ("the 2016 Regulations")

Chamber Ref: FTS/HPC/PF/17/0207

Property at 62 Brora Street, Glasgow, G33 2DB ("The Property")

The Parties: -

Miss Debbie Archibald, residing at the Property ("the Homeowner")

GHA (Management) Limited, t/a Your Place Property Management, Granite House, 177 Trongate, Glasgow, G1 5HF ("the Factor")

Tribunal Members: -

Maurice O'Carroll (Legal Member)
Ahsan Khan (Ordinary Member)

Decision of the Chamber

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factor has failed to comply with the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the Act.

Background

1. By application dated 23 May 2017, the Homeowner applied to the Tribunal for a determination on whether the Factor had failed to comply with parts of sections 2, 4, 6 and 7 of the Code of Conduct for Property Factors ("the Code"). The application did not raise any issues regarding property factor duties arising from any source other than the Code.

2. Formal notification of the Code breaches in compliance with section 17(3) of the Act was intimated to the Factor by the Homeowner on 22 June 2017. The parts of the Code specifically addressed and which therefore formed the basis of the application were: 2.5, 4.1, 4.8, 4.9, 6.1, 7.1 and 7.2 which are dealt with in turn below.

3. By decision dated 13 July 2017, a Convenor on behalf of the President of the Housing and Property Chamber decided to refer the application to the Tribunal for a hearing. Notices of referral were sent to the parties on 8 August 2017 and a hearing was set down for 24 October 2017 in Glasgow.

4. A hearing duly took place within Wellington House, Wellington Street, Glasgow at 10am on 24 October 2017. The Homeowner was personally present, along with her sister, Kari Archibald who provided support. The Factor appeared and was represented by Miss Donna Baillie, Regional Business Manager and Mr Tom Cuthill, Common Repairs Team Manager. Evidence and submissions were primarily provided by the Homeowner and Mr Cuthill, although all parties present participated.

5. The written submissions and documentation produced by each of the parties were taken into account by the Tribunal, in addition to the oral evidence led at the hearing. No issues of credibility or reliability arose in the course of the hearing. On questioning from the Tribunal at the outset of the hearing, it was accepted on behalf of the Factor that it had breached sections 2.5, 4.1 and 6.1 of the Code. The Tribunal was grateful to both parties for the candid and constructive way in which they gave their evidence and submissions.

Tribunal findings

The Tribunal makes the following general findings in fact pursuant to Rule 31(2)(b)(i) of Schedule 1 to the 2016 Regulations:

6. The Property is situated within a two-storey building with two flats per floor, that is, there are four properties in total within the block. The Property is of a traditional stone built construction and was built in 1924. The Homeowner lives on the upper floor of her block.

7. The difficulties giving rise to the application arose from a finding of dry rot within the Property and other properties adjoining it. The Homeowner provided a timeline of events in an email dated 23 May 2017 setting out her complaint in some detail to the Factor.

8. The nub of the complaint is that whilst a dry rot infestation is an unfortunate occurrence which will normally involve some level of disruption and expense, those inevitable consequences were made much worse by the failure on the part of the Factor to comply with its obligations under the Code.

9. A separate timeline of events produced by the Factor revealed that the issue of dry rot at the Property had occurred at an earlier stage, in October 2013. At that time, the Homeowner was approached by a neighbour downstairs regarding remedying that instance of dry rot. Works were carried out to the mid-floor joists between the two properties. This had been carried out on a private basis between those two proprietors and had not required the involvement of the Factor. The Homeowner was not the proprietor who had taken charge of those works. Rather, it had been her neighbours, Mr and Mrs McKay.

10. The dry rot issues with which the current application is concerned arose in or about May 2016. Between May and September 2016, the Factor obtained the first consent from block proprietors to carry out the necessary works. Works did not in fact commence until 25 January 2017.

11. Photographs of the works carried out subsequently were provided by the Factor. According to the Homeowner, the majority of those works shown were taken from Mr and Mrs McKay's property and did not relate to hers. Notwithstanding that, it was fair to say that they were representative in that they showed (1) the level of dry rot which had become apparent upon investigation; (2) the level of disruption caused during the treatment of the dry rot infestation and (3) that the works had now been completed.

12. The Homeowner signed a completion of works document on 2 June 2017 (with the words "dispute in progress" after her signature). She had been out of the Property between the dates of 27 January and 19 May 2017. During that time, she had been forced to stay with friends and family, returning home on occasion to collect fresh clothes and other personal effects. This had a highly disruptive effect on her occupation as a District Nurse and Sister providing palliative care and her life in general.

13. Had she been provided with an adequate indication of the extent and duration of works in advance, she would have been able to have rented alternative accommodation which would greatly have relieved the stress and disruption which she experienced. Adequate, accurate and timely liaison between herself and the Factor in the course of those works would also have eliminated a large part of the difficulties she encountered.

14. The lengthy duration of the works to eradicate the dry rot infestation had been exacerbated by the following factors: (1) initial works carried out in January 2017 revealed that the problem was more extensive than initially thought and (2) the requirement to obtain the consent of the other affected owners within the block for the additional works then found to be necessary. That consent was not obtained until mid-March 2017.

15. Factoring services were provided to the Homeowner by GHA Management Limited which trades under the name of Your Place Property Management. The Factor manages mainly the former Glasgow City Council and GHA stock sold under the "Right to Buy" legislation**.** The Factor is a subsidiary of the Wheatley Group and is the second largest property services company in Scotland. Wheatley Group is the 50/50 joint owner of City Building (Glasgow), along with Glasgow Council.

16. The Written Statement of Services applicable to the parties was provided by the Factor following a Direction issued by the Tribunal on 14 September 2017. It sets out the Factor's complaints procedure at page 14. The Homeowner paid factoring charges of £300 per annum, payable quarterly. The factoring charge includes the payment of the common buildings insurance premium.

Further findings
The Tribunal makes the following specific findings in relation to the alleged breaches of the Code:

Section 2.5 of the Code – Response to enquiries and complaints

17. Section 2.5 of the Code requires factors to respond to enquiries and complaints received by letter or email within prompt timescales.

18. On 1 December 2016, the Homeowner received notification from the Factor that a complaint she had previously made regarding poor communication had been upheld and compensation of £200 provided. The following day, the Homeowner received a feedback request from the Factor regarding the repair work carried out to the Property. Since the necessary works had not yet even commenced, the Homeowner considered that this request merely highlighted the poor communication and procedures operated by the Factor.

19. On 31 March 2017, the Homeowner received a further feedback request on works from the Factor. This prompted her to write an email of complaint to Karen Durnian pointing out that the works had not yet been completed, only having commenced in January 2017, despite having been notified in July 2016. The Homeowner received a formal response from Miss Oliver, Administrative Assistant, seeking her account number and property address so that her complaint could be answered. The Homeowner thereafter received nothing further from the Factor in response to her complaint dated 31 March 2017.

20. On 23 May 2017, the Homeowner wrote a further detailed letter of complaint setting out the time line referred to above. The Factor's Written Statement of Service sets out that in terms of its quality standards, it aims to resolve complaints within 5 working days.

21. The Homeowner did not receive any acknowledgment of her complaint within the 5 working day period. Instead, she received a Stage 2 complaint response dated 21 June 2017 which purported to partially uphold her complaint and offered £500 in compensation.

22. The Factors pointed out that when a complaint is escalated in this way to a Stage 2 complaint, it operates a 20 working day response policy which in this case was exceeded by only one day. In the first place, the Homeowner was not informed that the longer response period would be applicable, given that her complaint was not acknowledged prior to 21 June 2017. Secondly, she was not informed that her complaint was being escalated in this way.

23. In all, she considered that the response was unsatisfactory as it appeared to trivialise her complaint and sought to sweep it under the carpet by the offer of payment of £500 without addressing the underlying issues which her complaint raised. The Factor accepted that evidence and in addition, apart from providing a frank and sincere apology also accepted that the Stage 2 response ought to

have stated that her complaint had been upheld in full, rather than partially upheld. It appeared that the final page of the response had simply adopted a previous template without checking its content.

24. A further matter arose under this heading. The Homeowner enlisted the assistance of her local MP, Anne McLaughlin. On 10 May 2017, the Homeowner received an email from Ms McLaughlin's Communications Manager which reported a response to a query raised by her addressed to the Factor. The response stated that works had been programmed for that week but that they had been cancelled by the Homeowner and that the Factor was waiting for her to re-arrange a suitable time for access. This communication implied that part of the reason for the delay was due to the Homeowner's actions. However, an email dated 4 March 2017 from the Homeowner to Mr Coyle makes clear that she had made arrangements to have keys available to ensure access to the Property at all times so that works could be completed as soon as possible. The representation made to Ms McLaughlin by the Factor was therefore factually incorrect.

25. In light of the acceptance of the issues underlying this part of the Homeowner's complaint, the Tribunal found that the Factor had breached section 2.5 of the Code.

26. The Tribunal would also comment that the Homeowner was entitled to treat the Written Statement of Services at face value. If there was to be an alternative time period for a response, the Written Statement ought to have made that clear in its own terms. Separately, the Homeowner's complaint ought to have been acknowledged and she should have been made aware that further time was required to answer it. As part of the PFEO to follow this decision, the Factor is required to amend its Written Statement to reflect these requirements.

27. In relation to the communications with Ms McLaughlin, there was not only a duty to respond to queries promptly, but also to do so accurately.

Section 4.1 of the Code – Debt recovery procedures

28. Section 4.1 of the Code provides that factors must have a clear written procedure for debt recovery which outlines steps which it will follow. The Factor has this within its Written Statement. However, the section goes on to state "this procedure must be clearly, consistently and reasonably applied."

29. The Factor accepts that debt recovery procedures were not reasonably applied in this case. The Tribunal agrees with that concession. On 22 February 2017, the Homeowner received a phone call from a call handler within the Wheatley Group threatening court action in relation to an unpaid repair bill. On 14 March 2017, the Homeowner received two further phone calls from the Wheatley Group, at the beginning and end of the day, alleging that an invoice was unpaid and again threatening legal action. On each of these occasions, the Homeowner was forced to point out that the works had not been completed and therefore that there was no sum due. Also, that any suggestion that she was

refusing to pay an invoice was entirely without foundation. Understandably, the Homeowner found these telephone calls to be very upsetting.

30. Failures in its debt recovery processes were accepted in the Factor's letter of 21 June 2017 and in the course of the hearing. The letter accepted that the Homeowner's account should have been placed on hold until such time as she was satisfied that all work was completed. It might have gone further to state that debt recovery procedures should never even have commenced at all until such time as a final invoice was rendered, and thereafter matters should have been placed on hold pending confirmation of a satisfactory completion. This would have been especially appropriate given the recent upholding of a complaint by the Homeowner in relation to poor communication as recently as 1 December 2016.

31. The Tribunal finds that the Factor acted in breach of section 4.1 of the Code in not applying its debt recovery procedures reasonably, or indeed with any foundation. This appears to be a systemic fault within the Factor's organisation which requires to be addressed and remedied. A Property Factor Enforcement Notice is, however, not required in this respect in light of the undertakings given by the Factor as described below – see discussion of section 6.1 of the Code.

Section 4.8 of the Code – Taking legal action against homeowners

32. Section 4.8 of the Code states that legal action must not be taken against homeowners without taking reasonable steps to resolve the matter and giving notice of the intention to do so. As there was in fact no legal action taken (only threatened), this section is not applicable. Therefore, the Factor did not breach section 4.8 of the Code.

Section 4.9 of the Code – Misrepresenting authority

33. Section 4.9 of the Code states that factors or third parties must not knowingly or carelessly misrepresent their authority and/or the correct legal position when contacting debtors.

34. The Factor initially denied that legal action had been threatened during the course of the phone calls to the Homeowner on 22 February and 14 March 2017. However, Mr Cuthill and Miss Baillie quickly accepted evidence from the Homeowner to the effect that the impression was given that legal authorisation for court action had been obtained and that the telephone call was a final opportunity to avert such enforcement action being taken.

35. Since the Homeowners debt in respect of the works carried out did not crystallise until after 2 June 2017 at the earliest, and since there was no suggestion that the invoice would not be paid, the third party acting on behalf of the Factor misrepresented the correct legal position during the course of the phone calls described above. Therefore, the Tribunal found that there had been a breach of section 4.9 of the Code.

Section 6.1 – Carrying out repairs and maintenance

36. Section 6.1 of the Code requires factors to inform homeowners of the progress of works being carried out, including estimated timescales for completion. It was accepted on behalf of the Factor that it had acted in breach of this obligation. The effect on the Homeowner of this failure and how compliance would have assisted her in managing her own affairs has been outlined above. Moreover, in relation to a leak which arose in one of the bedrooms of the Property, it was accepted that this should have been actioned as an emergency item, dealt with within 24 hours, rather than a non-urgent 30-day work order.

37. Given the frank admission on behalf of the Factor both in the course of the hearing and in terms of the letter of 21 June 2017 and in light of the evidence heard, the Tribunal found that the Factor had acted in breach of section 6.1 of the Code.

38. It should however be noted that the Factor has now put in place procedures in order to prevent a recurrence of the same issues which have adversely affected the Homeowner. Mr Cuthill and Miss Baillie explained that the Factor now has an expanded, dedicated timber rot team. The timber rot team will obtain specialist training from Richardson and Starling and others to ensure that procedures are tightened up in relation to dry rot issues. The Factor has employed management consultants Vanguard (Scotland) Ltd to review their processes. It is about to appoint Customer Liaison Officers to keep homeowners updated with progress in instances such as these and will always arrange initial face to face meetings to discuss procedures prior to works commencing. There has been a restructuring in the Factor's team management involving Miss Baillie to address customer satisfaction and to make checks regarding satisfaction as works progress and once finalised. In this way, it is expected that issues regarding false debt claims or inappropriate enforcement and notifications being made of homeowners will be eliminated.

39. The Tribunal is grateful to the Factor for outlining these changes which it has made and is proposing to make. It is hoped that the Factor will abide by those undertakings in order to avoid similar complaints to the Homeowner's arising in the future.

Section 7.1 – Written complaints resolution procedure

40. Section 7.1 of the Code requires factors to have a clear written complaint resolution procedure in place, setting out a series of steps which it will follow. As noted above, the Written Statement indicates that complaints will be dealt with within 5 working days. This was not done, nor was there any acknowledgement of the Homeowner's complaint of 23 May prior to 21 June 2017 explaining the more time was needed to respond and that it was being escalated to a Stage 2 complaint. The Factor's written complaints resolution procedure is therefore clearly lacking both in terms of what is set out within it and in how it was followed through in this case.

41. The Tribunal therefore found that the Factor had acted in breach of section 7.1 of the Code.

Section 7.2 – finalisation of the complaints resolution procedure

42. Section 7.2 of the Code provides that when the factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing by senior management. The letter should provide details as to how to apply to the Tribunal.
43. The letter of 21 June 2017 was written by the Director of Governance of the Wheatley Group. It confirmed that the in-house procedure had been exhausted and provided contact details for the Tribunal. Therefore, there was no breach of section 7.2 of the Code.

Conclusion

44. In light of the above discussion, the Tribunal finds there to have been breaches of sections 2.5, 4.1, 4.9, 6.1 and 7.1 of the Code. A proposed Property Factor Enforcement Notice will therefore follow under separate cover and will accompany this decision.

45. In terms of remedy, the Homeowner made clear that her main aim in bringing the application was to obtain acknowledgement from the Factor and accountability for the difficulties which its breaches of the Code had caused her. The Tribunal expresses the hope that the hearing, which included full apologies made on behalf of the Factor, together with changes in its working processes as described above has gone some way to providing that outcome.

46. Regarding expenses, the Homeowner unnecessarily incurred additional expenditure such as travel costs and laundry bills as well as loss of pay for annual leave fruitlessly taken in an attempt to resolve matters. It was accepted by her that she had not provided any vouching for these items of expenditure and loss. The Tribunal is not in a position to estimate the value of actual loss incurred and to place a figure on it. It can only order the Factor to make payment of a sum of money which is aimed at providing some form of recompense for the time, distress, worry and inconvenience which the Homeowner has suffered.

47. The letter of 21 July 2017 offered the sum of £500 by way of a "goodwill gesture" without specifying what that was meant to cover. The Tribunal considers that sum to be an appropriate amount to be paid by the Factor to mark the time, distress, worry and inconvenience caused by its failures under the Code. It also considers that the Factor should repay the Homeowner an amount of money equivalent to 6 months factoring fees to mark the fact that it did not provide an adequate service during the period from January to June 2017. In round terms, that figure is approximately £150, less the amount attributable to the insurance premiums included within that charge.

Appeals

48. In terms of section 46 of the Tribunals (Scotland) Act 2014, 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 within 30 days of the date the decision was sent to them

Signed: M O'Carroll Date: 7 November 2017
Legal Member