

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011

Case reference: HOHP/PF/16/0167

Re:- 3/1, 123 Shuna Street, Glasgow G20 9QP

Title No: GLA192906

The Parties:-

Mr Gordon Kelly, residing at 3/1, 123 Shuna Street, Glasgow G20 9QP ('the homeowner');

and

Queens Cross Factoring Limited, 45 Firhill Road, Glasgow G20 7BE ('the respondent')

Tribunal Members:

Richard Mill (legal member) and Mike Links (ordinary member)

Decision

The Tribunal unanimously determined that:

- i. The respondent has not breached Sections 3.3, 6.4 and 6.9 of the Code of Conduct for Property Factors.
- ii. The respondent has not breached their duties as Property Factor.

Background

By way of application dated 11 November 2016, the homeowner complains about the respondent having breached the Code of Conduct for Property Factors ("the Code") and having breached their duties. The homeowner's complaints in respect of the Code are in respect of Sections 3.3, 6.4 and 6.9.

Documentation submitted into evidence

The written application which sets out the relevant complaints was added to thereafter in terms of a copy of a letter issued by the homeowner to the respondent on 5 December 2016 which set out in narrative form all of his complaints. A copy of the relevant Written Statement of Services and the respondent's specific Terms and Conditions relating to the homeowner's residential development were available, together with a copy of the relevant Deed of Conditions.

The respondent lodged written representations in numbered paragraphs 1-14, together with an Inventory of Productions which in summary comprised the relevant Written Statement of Services, relevant exchanges of correspondence between the parties and an inspection report in relation to gutter cleaning from Advanced Heights Services Limited dated 9 December 2016.

Hearing

A Hearing was held in room 3, Wellington House, 134-136 Wellington Street, Glasgow G2 2XL on 6 March 2017.

The homeowner was personally present and presented his own case.

The respondent was represented by Claire Mullen, solicitor. She was accompanied by three members of the respondent's organisation, namely Neil Manley, Director of Business & Finance Services; Donalda Hogg, Head of Business Services; and Sandy Thomson, Property Services Manager.

The proceedings were conducted in a flexible manner. The homeowner was afforded an opportunity to address the Tribunal on each aspect of his complaint beyond the terms of his written application. The respondent's solicitor and the members of their organisation present were afforded the opportunity of addressing the Tribunal. Both the homeowner and the respondent's solicitor made concluding submissions.

The Tribunal reserved their decision.

Findings in Fact

1. The homeowner is the heritable proprietor of flat 3/1, 123 Shuna Street, Glasgow G20 9QP ("the Property"). He purchased the Property in March 2007. The Property is one of a number of flats and other dwelling houses forming part of the development known as the Mondriaan Estate ("the development"). There are eleven blocks of flats on the development, together with a mixture of other house styles.
2. The building of the development was completed in or about 2005. A Deed of Conditions, registered on 22 June 2005 in the Land Register was issued by Bellway Homes Limited which set out the arrangements for the appointment

and actions of a property factor, said arrangements being contained within Clause Eleventh of the said Deed of Conditions. ("the Deed of Conditions").

3. The respondent, Queens Cross Factoring Limited, is a wholly owned subsidiary company of Queens Cross Housing Association.
4. The respondent is a registered Property Factor. The respondent's registration number is PF000258.
5. The respondent issued their Written Statement of Services to the homeowner and other relevant homeowners on 24 June 2013. Attached thereto were their individual Terms and Conditions for the development.
6. The respondent is responsible for managing the common parts of the development. This includes the common areas of the development such as the garden areas, roads and foot pavements; as well as the common areas of the blocks of flats within the development. The respondent is not responsible for maintaining other privately owned properties within the development such as the cottage style properties or town houses.
7. The homeowner's responsibility to meet costs in respect of the maintenance repairs or renewals managed by the respondent is a 1/76th share in respect of common areas pertaining to the whole development and a 1/12th share of the common areas pertaining to his own individual block of flats.
8. The Deed of Conditions sets out the rights of residents within the development to dismiss the Property Factor and to install an alternate property factor. The respondent was appointed in lieu of a former property factor by residents of the development in November 2010.
9. The respondent implements a routine of cyclical maintenance in respect of certain components of the common property. By way of example gutter cleaning to the blocks of flats is carried out annually and internal re-decoration works to the blocks of flats are carried out every 4 years.
10. On occasion the respondent has encountered difficulties with contractors engaged to carry out routine maintenance and repairs. As a consequence of this, they have acted reasonably in pursuing said contractors and thereafter entering into fresh contracts with alternate providers.
11. Quarterly bills are issued by the respondent to the homeowner and other proprietors. There have been occasions when the homeowner has asked for more detailed information in respect of the charges billed for. The respondent has complied with these requests.
12. The respondent, in particular, has complained about the gutter cleaning within the development. Since the respondent took over responsibility as Property Factor, they have arranged for gutter cleaning to be carried out regularly and this has been carried out in May 2012, February 2013, October 2014, December 2015 and December 2016. The respondent has raised concerns

about whether the work was carried out and the standard of it. As a consequence the respondent has engaged a new contractor, named Advanced Heights Services Limited. They have carried out the most recent gutter cleaning in December 2016 and have provided a Report attaching photographs to evidence the work carried out.

Reasons for Decision

The Tribunal has had regard to all of the documentary and oral evidence placed before it. The Tribunal is satisfied that it had sufficient evidence upon which to reach a fair determination of the reference.

The Tribunal had regard to the First-tier Tribunal for Scotland Housing Property Chamber (Procedure) Regulations 2016. The Tribunal had regard to the overriding objective to deal with the proceedings in a manner which was appropriate to the complexity of the issues and the resources of the parties. The Tribunal accordingly has had regard to a number of headline issues as follows:-

i. Section 3.3 of the Code

This section of the Code requires homeowners to be provided, at least once a year, whether as part of billing arrangements or otherwise, a detailed financial breakdown of the charges made and the description of the activities and works carried out which are charged for.

The homeowner's main complaint in this respect is that there are some items of work which are carried out over the whole eleven blocks of flats within the development and the charges in the quarterly billing show a 1/12th share. In fact, the relevant share is 1/12th of 1/11th of the total bill. This is because these works are carried out in relation to all eleven blocks of flats in the development – for example the gutter cleaning. The homeowner does not complain that he is being overcharged. He complains simply that the charges are not transparent. He has however asked for further detailed information from the respondent and has always been provided with this.

The respondent has agreed that in future billing, any charges which cover all of the blocks of flats will be specifically categorised in a way which shows that individual proprietors, including the homeowner, are paying a 1/12th of a 1/11th share of the total invoice.

The Tribunal conclude that whilst historically the respondent's billing could have been more transparent, that in practical terms the nature of such charging makes no difference. Any reasonable requests for additional information have been provided by the respondent.

The Tribunal concluded that the respondent has complied fully with Section 3.3 of the Code.

The Tribunal noted that the homeowner complained otherwise that a share of the respondent's profits have been paid to their parent company, Queens Cross Housing Association. He complains that the respondent sought appointment as property factor on the basis that it was a not for profit organisation. He refers to the fact that "gift aid" payments have been made.

The Tribunal does not consider this of relevance to the respondent's compliance otherwise to the Code of Conduct. The Tribunal does not have jurisdiction to regulate what a property factor does with any profits from the running of their business. The Tribunal cannot adjudicate on this complaint of the homeowner.

The Tribunal noted that in the written material lodged by the homeowner, reference is made to irregular and inaccurate billing and duplicate erroneous charges being made. There is no documentary evidence produced to support this and the homeowner did not insist upon these complaints at the Oral Hearing.

ii. Section 6.4 of the Code

Section 6.4 of the Code requires a programme of works to be prepared in respect of any periodic property inspections or planned programme of cyclical maintenance.

In fact, it is not a matter of dispute between the parties that such a planned programme exists. Property inspections are carried out quarterly. Homeowners are advised of the day inspections are to be carried out and are afforded an opportunity to join with the relevant representative of the respondent's organisation to discuss any issues of concern.

The respondent has fully complied with Section 6.4 of the Code.

iii. Section 6.9 of the Code

Section 6.9 of the Code requires a property factor to pursue a contractor or supplier to remedy defects and any inadequate work or service provided.

The main complaint of the homeowner was in relation to former gutter cleaning. His complaint was specifically in relation to the former contractors employed to do this work. The homeowner confirmed that he has no complaints at all with the new contractor put in place by the respondent, being Advanced Heights Services Limited who carried out the cleaning in December 2016.

The Tribunal accepts the evidence given on behalf of the respondent that following the homeowner's previous concerns regarding the gutter cleaning carried out by the former contractor, that they made relevant

enquiries and were satisfied that the work had been carried out. Ultimately, following difficulties ensuring that the former company was timeously carrying out the routine maintenance requested, the respondent entered into a new contract which the homeowner is now happy with.

The Tribunal was satisfied that on occasions that issues of concern are raised with the respondent regarding the quality or defects or work carried out by any service provider that this is adequately investigated. The homeowner confirmed that following enquiries and complaints being made by him that the respondent did make enquiries and returned to him with further information.

The respondent has complied with Section 6.9 of the Code.

iv. Consideration of the Respondent's compliance with their duties.

The homeowner complained that the respondent is not performing as property factor to all homes within the development. The respondent accepts this and stipulates that town house and cottage properties within the development are not factored and the relevant Deed of Conditions does not provide for this.

The Deed of Conditions sets out clearly that the respondent in their role as Property Factor has a responsibility to maintain the common parts of the whole development and the relevant common parts of the individual blocks of flats. The town houses and cottage properties do not form part of the common parts of the development.

The homeowner relied upon Clause (EIGHTH) of the Deed of Conditions which sets out that there is common responsibility with adjoining neighbouring properties to upkeep matters such as pipes and drains and that adjoining properties have relevant rights of access. This does not mean that town houses and cottage style properties form part of the common property of the whole development for which the respondent is responsible for.

The homeowner's complaints are borne out of concern that routine maintenance of these other style of properties (other than the flats in the development) are in a state of disrepair. The respondent, in the absence of any obligation to do so, has offered for gutter cleaning to be carried out by their instructed contractor at the same time as the gutter cleaning is being carried out to the blocks of flats. Owners of these other properties are not obliged to take up this service, but the Tribunal was informed that the vast majority have and will pay for these services at their own cost. The homeowner confirmed that he is happy with this arrangement.

The Tribunal is satisfied that the respondent has carried out their duties in respect of the areas for which they are responsible for.

The homeowner also made complaints regarding the standard of service generally provided by the respondent. He made reference to shoddy work. No vouching or documentary evidence has been submitted to the Tribunal to evidence such assertions. On the basis of the totality of the evidence the Tribunal is not satisfied that this is factually accurate.

The homeowner described one specific concern in relation to repairs carried out to the common door area of his block of flats. A new door and entry system required to be fitted in the summer of 2015. Re-decoration works have not been completed. The respondent explained that a former employee, now deceased, signed the job off as finished. It seemed to the Tribunal that the respondent's representatives in attendance accepted that there were matters or re-decoration outstanding, albeit of a relatively minor nature. Quarterly inspections have been carried out which have not resulted in the work being undertaken. Following discussions at the Hearing, the respondent's representatives undertook to have the required work completed immediately (subject to the relevant costs being met by all of the proprietors of the homeowners block) or, alternatively, that the work be programmed into the intended internal re-decoration to be carried out later in the year. The homeowner advised that he would prefer the work to be carried out later in the year as part of the larger re-decoration programme.

The Tribunal concluded that the respondent has adequate procedures in place for the notification of and undertaking of repairs and maintenance. The outstanding issue complained of regarding re-decoration does not appear to the Tribunal to be material, albeit that it is of concern to the homeowner which is equally understandable. In the course of the hearing when identifying that the homeowner has been unhappy with the work the respondent made an offer in good faith to remedy the situation forthwith.

The Tribunal is satisfied that respondent has carried out their duties to maintain and repair the homeowner's property, including relevant common property to an acceptable standard.

Concluding Comments

The Tribunal was encouraged throughout the duration of the hearing by the homeowner sharing his thoughts with the Tribunal to the effect that the process of bringing the application had, in his view, resulted in a favourable outcome, regardless of whether or not his formal complaints were upheld by the Tribunal. His concerns have led to the appointment of an alternate contractor to carry out the gutter cleaning and an offer being made to the owners of the other types of property in the development having their gutters cleaned at the same time. He is also pleased that the respondent has agreed to make billing clearer moving forward,

certainly so far as it pertains to the proportionate shares charged for across the development.

The Tribunal was also encouraged to note the flexible approach taken by the respondent to seek to meet the concerns of the homeowner. Although information has been provided to the homeowner on request previously, a specific undertaking was given that any reasonable requests in respect of relevant information will be shared without undue delay.

Appeals

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 to appeal within 30 days of the date the decision was sent to them.

R Mill

Legal Member Signature

... Date 9 March 2017