

Housing and Property Chamber First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Statement of Decision in respect of an application under Section 17 of the Property Factors
(Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing
and Property Chamber (Procedure) Regulations 2017**

Chamber Ref: FTS/HPC/PF/19/0336

Property: Subjects at 58 Bowencraig, Largs, North Ayrshire, KA30 8TB ("the Property")

The Parties:-

Neil Aitken, residing at 58 Bowencraig, Largs, North Ayrshire, KA30 8TB ("the Homeowner")

and

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

Decision by the Tribunal in an Application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act")

Tribunal Members:

Andrew Cowan (Chairperson)

Mike Links (Ordinary Member)

Decision of the Tribunal

The Tribunal have determined that the Factor has not failed to carry out the Property Factor's duties in terms of Section 17 (1)(a) of the Act and has not failed to ensure compliance with the Property Factor Code of Conduct as required by Section 14(5) of the Act.

Background

1. By an Application dated 29 January 2019 the Homeowner made a complaint to the First-tier Tribunal for Scotland (Housing and Property Chamber) with reference to a potential breach of the Code of Conduct for Property Factors ("the Code") relative to the management of the property at 58 Bowencraig, Largs, North Ayrshire, KA30 8TB.

Findings in Fact

1. The Homeowner is the owner of the upper flat dwellinghouse situated at and known as 58 Bowencraig, Largs, North Ayrshire, KA30 8TB.
2. The Factor has been appointed as the Property Factor for the block of flats in which the property is situated.
3. The Factor is registered as a Factor in terms of the Act, having been so registered on 1 November 2012 under registration number PF000196.
4. The Factor has issued a statement of services (named "Service Level Agreement") in accordance with the requirements of the Act.
5. The Property is a top floor flat. Immediately below the Property is flat 54 and on the ground floor flat 50. On 16 April 2018 the owner of the ground floor flat at number 50 Bowencraig reported water ingress to the Factor. Between that date until repairs were effected on 26 April 2018 the Homeowner and the Property Factor were in correspondence regarding the source of the water ingress, the instruction of appropriate tradesmen to carry out necessary repair works and the costs of said work (together with insurance cover).
6. By letter dated 16 June 2018 the Homeowner lodged a complaint with the Property Factor in relation to how they handled issues arising from the water ingress. The Property Factor responded to the Homeowner's written complaint by letter dated 20 July 2018 and the Homeowner made a further response to the Property Factor by letter dated 14 August 2018.

The Hearing

1. A hearing took place in relation to the application on 3 June 2019.
2. The hearing was held at Ardeer Community Association, Shore Road, Stevenson, KA20 3NB. The Homeowner was present and represented himself. The Factor was represented at the

hearing by Mr Bill Frew. The Factor was also represented by their solicitor, Mr Michael Ritchie of Messrs Hardy McPhail Solicitors.

3. In advance of the hearing both parties had lodged copy correspondence which passed between the parties by both letter and email together with copies of relevant invoices and insurance certificates.
4. In terms of his application, the Homeowner had identified four particular areas where he considered that the Property Factor had failed to comply with the Code of Conduct for Property Factors. The four areas (which the Homeowner referred to by reference to the relevant section of the Code) were:-
 - a. Code paragraph 2.1 – Communication & Consultation
 - b. Complaint regarding Insurance. Paragraph 5.4
 - c. Complaint regarding Carrying Out Repairs and Maintenance. Paragraph 6.2
 - d. Complaint regarding Carrying Out Repairs and Maintenance. Paragraph 6.3

(a) Complaint regarding Communication & Consultation (Paragraph 2.1 of the Code)

1. In terms of the Code of Conduct the Property Factor must not provide information which is misleading or false.
2. The Homeowner considered that he had been misled by information given to him by the Factor. In particular he had requested the Factor confirm whether the cost of “trace and access works” (required to establish the cause of the water ingress, in addition to any repairs) would be covered by the common building insurance policy. The Homeowner maintains that he was advised on the telephone by the Factor that the costs of the “trace and access works” would not be covered by the common building insurance policy and that the Factor indicated that any costs incurred would be apportioned across the whole development in which the property is situated as a common charge. In addition the Homeowner had stated that he had asked the Factor whether alternative accommodation costs would be covered by the common

building insurance policy. The Homeowner stated that again he was advised that such accommodation costs would not be covered by the common building insurance policy.

3. The Factor indicated in their evidence that they did not accept the Homeowner's version of the telephone discussions which had taken place concerning these matters. The Factor's evidence was that the Homeowner was advised that a claim could be made but advice in relation to any prospective claim required to be given by the loss adjuster acting for the insurance company in relation to these matters.
4. Having considered this evidence the Tribunal are not satisfied on a balance of probabilities that the Factor provided information which was misleading or false. The Tribunal accept that the communications in this area were perhaps unclear, but note that the Homeowner did manage to establish contact with the Insurer's loss adjuster and was thereafter able to take forward a claim against the insurance policy. This tended to indicate that the Homeowner was able to establish the correct contact for his insurance queries. The Factors have since the date of these matters drafted additional guidance for the Homeowners at the development should a similar situation arise in the future. The Factors indicated that they intended to circulate all Homeowners at the development with this additional guidance to avoid any future misunderstandings.
5. The Homeowner also complains that the Factors gave a commitment that they would provide photographs of the work carried out by the contractor and that they would detail separately the costs of that work. The Homeowner complains that the Factor failed to provide a breakdown of the contractor's costs until requested to do so.
6. The Tribunal noted that some photographs were provided from a consultant's report. Any failure by the Factors to provide information as requested by the Homeowner was not in itself information which was misleading or false. Further the Factor provided a breakdown of the contractor costs after they were requested to do so. In doing so they complied with the terms

of the Code. The Tribunal did not consider there was a specific failure of the Code of Conduct and in particular paragraph 2.1 thereof.

(b) Complaint regarding Insurance (Paragraph 5.4 of the Code)

1. The Code of Conduct for Property Factors requires that "if applicable, you must have a procedure in place for submitting insurance claims on behalf of Homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If Homeowners are responsibly for submitting claims on their own behalf (for example, for private or internal works), you must supply all information that they reasonably require in order to be able to do so". In this respect the Factor highlighted that paragraph 2 of the Factors Service Level Agreement states that at paragraph 6 (VII) *"In the event of a claim occurring at your property, Insurers will have provided delegated authority to Loss Adjusters to deal with all material damage claims on their behalf. Your property manager will deal with claims relating to the common areas with proprietors having direct access to CL-UK to deal with claims relating to their individual properties. CL-UK has a dedicated team with R&L claims with R&L insurance department also available to assist with private claims. Contact details for CL-UK are detailed on your certificate of insurance."* The Tribunal were satisfied that the Statement of Service (Service Level Agreement) issued by the Factor did provide information as to how insurance claims were to be managed and differentiated between those claims which were common and those which related to individual properties. The Tribunal were not satisfied that there was evidence which supported a claim that the Factor failed to supply information reasonably required to the Homeowner to allow a claim to be submitted on his own behalf.

(c) Complaint regarding Carrying Out Repairs and Maintenance (Paragraph 6.2 of the Code)

1. The Homeowner complains that he had to request details of the Factor's procedures for assessing the emergency status of the reported problem to which he received no response. He complained that the requirement for repair was first reported on Monday 16 April 2018 but the contractor did not attend until the evening of the Wednesday 18 April 2018. In the circumstances he complained that the Factor's own response time commitment given in their service level agreement of 4 hours was not met.

2. The Code of Conduct states that “if emergency arrangements are part of the service provided to Homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.” The Homeowner maintains that the Factor did not have in place procedures for dealing with emergencies and for giving contractors access to properties to carry out emergency repairs.
3. The Factor explained that they held email addresses and phone numbers for all owners at the property. It was explained by the Factor that in this case the Factor had attempted to contact the affected Homeowner by the telephone number provided but had been unable to make contact. The nature of the urgency of the matter did not justify forced access to the property and accordingly the Factor considered that they carried out reasonable steps to arrange access to the property.
4. The Tribunal considered that clause 6.2 of the Code primarily relates to arrangements which the Factor should have in place to allow Homeowners to contact the Factors and/or their nominated contractors when an emergency situation arises. The Tribunal were satisfied that the Factor has such arrangements in place. The Tribunal recognised that the Factor could only use information supplied by the Homeowners to contact that Homeowner and that the Factors reasonably exercised their discretion in relation to this matter by considering that the use of the mobile phone number provided by the Homeowner was the most satisfactory way of contacting the Homeowner in relation to this matter.

(d) Complaint regarding Carrying Out Repairs and Maintenance (Paragraph 6.3 of the Code)

1. The Homeowner complains that the Factor instructed a Glasgow based contractor to carry out necessary repairs. He complains that there was a significant cost impact of using a Glasgow based contractor as opposed to a contractor from the locality of Ayrshire.

2. The Code of Conduct requires that “On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.” The Tribunal noted that the Homeowner was not able to confirm that he had requested why certain contractors had been appointed. His concern was that the Factor had not used a local based contractor to deal with the works required at the property and as a Glasgow based contractor had been used there was excessive costs incurred. The Property Factor has not failed to comply with this section of the Code as no request was made by the Homeowner as required by Section 6.3 of the Code.
3. The Property Factor explained that wherever possible the Factor would instruct a local contractor. Their list of approved contractors is limited because smaller local contractors are less able to provide the assured service that is required to ensure availability as required to comply with reasonable timescales for completing repairs. The Factor also explained in evidence that some contractors were not available to join a list of approved contractors as they did not have the necessary insurance (the cost of which was seen as excessive for the limited number of expected instructions).

Decision

1. The Tribunal are satisfied that the Factor has complied with the Code and that accordingly there is no requirement to make any Property Factor Enforcement Order in this case.

Rights of Appeal

1. 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.

2. 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.

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Andrew Cowan, Chairperson

1 August 2019
.....
Date

..... Witness

JENNIFER GLASGOW Full name

SECRETARY.....

Designation

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