



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, in an application made to the Tribunal under Section 17 of the Act

Chamber reference: FTS/HPC/PF/21/0434

The Parties:

Mr Michael Smith, 165/11 Slateford Road, Edinburgh EH14 1PD (“the homeowner”)

and

James Gibb Property Management Limited, registered as a limited company in Scotland (SC299465) and trading as James Gibb Residential Factors, with places of business at Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ and at 4 Atholl Place, Edinburgh EH3 8HT (“the property factors”)

Tribunal Members – George Clark (Legal Member/Chairman) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided that the property factors had failed to comply with their duties in terms of Section 7.1 of the Property Factors Code of Conduct (“the Code of Conduct”) made under Section 14 of the Property Factors (Scotland) Act 2011 (“the Act”). The Tribunal proposes to make a Property Factor Enforcement Order requiring the property factors to pay to the homeowner the sum of £100 by way of compensation for the inconvenience caused to him by that failure.

Background

1. By application, dated 18 February 2021 and received by the Tribunal on 22 February 2021, the homeowner complained that the property factors had failed to comply with Section 7.1 of the Code of Conduct in that they had not followed the

procedures set out in Section 7 of their Written Statement of Services and in their Customer Complaints Guide.

2. The application stated that the homeowner contacted the property factors by email on 8 December 2020 requesting registration of a formal complaint about their poor/very poor customer service over a lengthy period of time. He did not receive a response, so, on 22 December, he telephoned their Customer Support team to request confirmation of receipt of his original email. He was told in that conversation that there was no record of a complaint registered against his account. He forwarded a copy of his email of 8 December to Mr Martin Murphy, who confirmed by email on 22 December that he would forward it to the property factors' Compliance Manager, Miss Cathy Flanagan and that either he or she would get back to the homeowner to confirm receipt and advise him of what action would be taken.
3. Having received no further communication from either Mr Murphy or Miss Flanagan, the homeowner emailed Mr Murphy on 6 January 2021. Mr Murphy advised him that they had only returned from Christmas and New Year holidays on the previous day and that Miss Flanagan was working methodically through a backlog, "so please be patient".
4. The homeowner had still not had a response by 27 January, and, on that date, he emailed the property factors, reminding them that their Written Statement of Services says that complaints will be acknowledged within 5 working days and that, as he had not had any acknowledgment since 8 December 2020, he was giving notice of his intention to refer the matter to the Tribunal. On the same date, Miss Flanagan emailed the homeowner to advise him that, on 11 December, his complaint had been forwarded to their local office to provide a reply. She had chased it again on 22 December and had now emailed the Local Director to ensure a response was sent.
5. In a later email on 27 January, Miss Flanagan told the homeowner that no complaint reference number had been issued at the time as per their process the complaint was reviewed, and the local office had deemed it as being able to be responded to without the requirement for a formal complaint. The homeowner responded that he did not consider the process in the property factors' Customer Complaints Guide and Written Statement of Services had been adhered to.
6. On 15 February 2021, the homeowner gave the property factors formal notification of his intention to refer the matter to the Tribunal.
7. In the application, the homeowner stated that he was seeking a genuine commitment by the property factors to quickly improve customer service and then maintain it at a standard which is much higher than he had experienced over the

last few years and to re-acquaint themselves with the Tribunal's decision in a previous case (reference FTS/HPC/PF/19/2423).

8. The application was accompanied by copies of the emails dated 8 and 22 December 2020 and 6 and 27 January 2021 and 15 February 2021 referred to in the application.
9. On 23 March 2021, the Tribunal advised the Parties of the date and time of a Hearing and that written representations must be submitted by 13 April 2021.

Written Representations

10. The homeowner provided very lengthy written representations of nearly 150 pages by email on 21 April 2021, and the property factors provided written representations extending to nearly 50 pages on 23 April.
11. Both sets of written representations contained detailed material relating to the period prior to the homeowner's email to the property factors of 8 December 2020, which was the starting point of the complaint in the application. As such, much of the material was not directly relevant to the complaint. It was relevant to the matters complained of in the email of 8 December, but the present application was restricted to Section 7.1 of the Code of Conduct and the manner in which the property factors had handled the complaint and did not extend to a consideration of the merits or otherwise of the issues raised in that email. The written representations from both Parties also included copies of later email correspondence regarding the substance of the homeowner's complaints contained in his email of 8 December.
12. The property factors stated in their written submissions that they do have a complaints procedure, detailed in Section 7 of their Written Statement of Services and also a Customer Guide, the current version of which was included in the papers submitted with the homeowner's application. They stated that their Compliance Manager, Miss Flanagan was on annual leave when the homeowner's email to the dedicated complaints email address arrived on 8 December and that an auto-response was generated advising of this. They referred to their Complaints Guide, which states:

"All formal complaints are assessed. In some cases, if we feel that the issues of the complaint can be quickly and easily resolved, they may be initially sent to a local relevant member of our staff to resolve. If you remain dissatisfied, you may wish to escalate your complaint to the formal stages of the complaints process."
13. As the homeowner's email had referenced a previous complaint in 2018, it was initially referred to the Local Director for review. Their Compliance Manager had confirmed in email exchanges on 27 January 2021 that this had been forwarded on

11 December and followed up on 22 December. It had also been confirmed that under the above phase of the complaint process a formal complaint reference number is not issued. A dedicated reference is notified if the complaint is accepted.

14. The property factors also referred to an email exchange between the homeowner and Miss Jeni Bole, their Technical Manager (Legal) on 22 December, further to a telephone discussion between them. Miss Bole said that she would review past correspondence to ensure that older matters were finalised and that she would revert to the homeowner on all points when she returned from annual leave.

The Hearing

15. A Hearing took place by means of a telephone conference call on the morning of 4 May 2021. The homeowner participated and the property factors were represented by Miss Jeni Bole, their Technical Manager (Legal).
16. The Chairman advised the Parties that the Tribunal members had read the written representations and that the proceedings had to be restricted to matters relating to the alleged failure of the property factors to comply with Section 7.1 of the Code of Conduct. The Parties accepted that this must be the case.
17. The Parties were agreed as to the chronology of events set out in the various emails referred to in the application. The homeowner confirmed that his complaint was that the property factors had failed to respond within 5 working days to his email of 8 December 2020 and that he had had to chase up a response on 22 December and 6 and 27 January.
18. Miss Bole referred the Tribunal to the Customer Guide which states that complaints are initially assessed and either allocated a reference number or, as in this case, because it related to complaints already dealt with, referred to the Local Director. She accepted that a response had not been sent within 5 working days but said that the homeowner would have received an auto-response indicating that a response might take up to 10 working days because of staff holidays. The homeowner told the Tribunal that he had not received any such auto-response.
19. The homeowner expressed his view that both the Written Statement of Services and the Customer Complaints Guide talk about a Customer Services team, but it appeared to him that the whole system was dependent on one individual. In his telephone call of 22 December, he was asking for confirmation of receipt of his email of 8 December, because he had heard nothing. Mr Murphy had said he could not see a record of a formal complaint registered against his account so, during that conversation, the homeowner copied to him the original email, which Mr Murphy then said he would forward.

20. The homeowner told the Tribunal that the property factors appeared to be relying on Page 3 of their Customer Complaints Guide, but he stressed that it is just that, a Guide. The actual complaints procedure is contained within the Written Statement of Services.
21. The Parties confirmed that they had no further information to provide to the Tribunal. The Parties then left the Hearing, and the Tribunal considered all the evidence, written and oral, that had been presented to it.

Findings in Fact

- (i) The homeowner is the proprietor of 165/11 Slateford Road, Edinburgh, part of a Development known as The Maltings.
- (ii) The property factors, in the course of their business, manage the common parts of the Development. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- (iii) The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- (iv) The date of Registration of the property factors was 23 November 2012.
- (v) The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- (vi) The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber, received on 22 February 2021, under Section 17(1) of the Act.
- (vii) The concerns set out in the application have not been addressed to the homeowner’s satisfaction.
- (viii) On 23 March 2021, the Housing and Property Chamber intimated to the parties a decision by the President of the Chamber to refer the application to a Tribunal for determination.
- (ix) On 8 December 2020, the homeowner sent an email to the property factors asking them to register a formal complaint relating to customer service. He detailed his complaint in 20 numbered paragraphs.
- (x) The property factors’ Written Statement of Services contains their detailed Complaints Procedure. It has up to 5 stages. Stage 2 states:

“Our Support Services team will acknowledge receipt of a complaint to the homeowner within 5 working days of initial receipt. If the complaint is accepted, it will be registered, a unique reference number allocated to it, and it will be passed to the relevant Senior Manager. If the complaint is rejected, the homeowner will be advised within 5 working days of receipt along with the reasons for rejection.”

(xi) The property factors also have a Customer Complaints Guide which states:

“All formal complaints are assessed. In some cases, if we feel that the issues of the complaint can be quickly and easily resolved, they may be initially sent to a local relevant member of our staff to resolve.”

(xii) The property factors did not acknowledge receipt of the homeowner’s email within 5 working days of its receipt on 8 December 2020.

Reasons for Decision

22. Section 7.1 of the Code of Conduct provides:

“You must have a clear written complaints procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow.”

23. The Tribunal was satisfied that the property factors do have a clear written complaints procedure. The homeowner’s complaint, however, was that they had failed to follow that procedure, which states that, whether a complaint is accepted or rejected, the decision will be intimated within 5 working days. The view of the Tribunal was that the words “which you will follow” imply an obligation to comply with the complaints procedure set out in the Written Statement of Services and not simply to have such a procedure. The Tribunal noted that the property factors accepted that they had not acknowledged the homeowner’s complaint within 5 working days of its receipt and the Tribunal therefore held that they had failed to comply with Section 7.1 of the Code of Practice.

24. The Tribunal noted that the property factors also produce a Customer Complaints Guide which states that, if the property factors feel that the issues of the complaint can be quickly and easily resolved, they may be initially sent to a local member of staff to resolve. This, however, is not reflected in the Written Statement of Services and it is Section 7 of that document which sets out the complaints procedure on which homeowners are entitled to rely. Section 7 admits of only two possibilities. Either the complaint is accepted when it has been assessed, or it is rejected and, either way, within 5 working days of receipt of a formal complaint, the complaint is to be acknowledged or the homeowner advised of the reasons for its being rejected.

25. In the present case, no contact whatsoever was made with the homeowner between the date that he emailed his complaint (8 December 2020) and the first date on

which he chased it up (22 December). The words he used in his email of 8 December were completely unambiguous and the recipients could have been in no doubt that he was asking them to register a formal complaint. At no point prior to 27 January 2021 did anyone explain to the homeowner that they were considering locally whether this should proceed as a complaint or whether it might be resolved quickly by less formal means. Miss Bole did not mention it in her email to the homeowner of 22 December, nor was evidence led to suggest that it had been discussed in the telephone conversation that preceded that email. In any event, it is not up to property factors to decide whether a communication from a homeowner is a complaint where, as in this case, it is quite clearly stated to be so.

26. The property factors stated in their written representations and at the Hearing that the homeowner would have received an auto-response to his emails. The homeowner denied ever having received such a response and, as there was no additional evidence on this point, the Tribunal made no finding as to whether an auto-response to the homeowner's email of 8 December was sent.
27. Having determined that the property factors had failed to comply with Section 7.1 of the Code of Conduct, the Tribunal then considered whether any order to compensate the homeowner should be made. The view of the Tribunal was that the application would not have been necessary, had the property factors provided a written response to the homeowner within the timescale set out in their Written Statement of Services, and that their failure to do so had caused the homeowner considerable inconvenience, not only in making the application but also in providing very lengthy written representations and in having to prepare for and participate in a Hearing. The Tribunal's view was that an award of compensation should be ordered and having considered all the facts and circumstances, decided that the figure of £100 would be appropriate. The Tribunal therefore proposes to make a Property Factor Enforcement Order as detailed in the accompanying Notice made under Section 19(2)(a) of the Act.
28. This case has highlighted a disconnect between the property factors' Written Statement of Services and its Customer Complaints Guide document and the Tribunal recommends that the property factors take steps to review both documents. The homeowner had asked in his application that the property factors re-acquaint themselves with the Tribunal's decision in *Robinson v James Gibb Property Management Ltd* [FTS/HPC/PF/19/2423] where the Tribunal said that the property factor "must recognise all complaints notified to it and investigate them fully in line with its complaints policy." The Tribunal in the present case endorse the view expressed in the *Robinson* case.
29. The Tribunal's Decision was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 [REDACTED]em.

[REDACTED]

Legal Member/Chairman:

4 May 2021

George Clark