

# Housing and Property Chamber First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').**

**Chamber Ref:FTS/HPC/PF/19/2289**

**Flat 40, Homeshaw House, 27 Broomhill Gardens, Newton Mearns, Glasgow, G77 5NP ('the Property')**

**The Parties:**

**Robert Crawford, residing flat 40, Homeshaw House, 27 Broomhill Gardens, Newton Mearns, Glasgow, G77 5NP ('The Homeowner')**

**Bield Home & Care, 70 Hopetoun Street, Edinburgh, EH7 4DF ('the Factor')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and Ahsan Khan (Ordinary Member).**

## **Decision of the Tribunal**

The Tribunal determines that the Factor has not failed to comply with sections 1, 2.1, 2.2, 2.3, 2.4, 2.5 and 3 of the Property Factor Code of Conduct and has also not failed to comply with the property factor duties.

The decision is unanimous.

## **Background**

1. The Factor's date of registration as a property factor is 1st November 2012.
2. The Homeowner is heritable proprietor of the Property. He has resided in the Property since June 2014.
3. By application dated 23<sup>rd</sup> July 2019 the Homeowner applied to the First-tier Tribunal (Housing and Property Chamber) for a determination that the Factor had failed to comply with the following sections of the Property Factor Code of Conduct ('The Code') and also failing to carry out the Property Factor's duties:

- Section 1: Written Statement of Services.
- Section 2: Communication and Consultation.

Sections 2.1, 2.2, 2.3, 2.4 and 2.5

- Section3: Financial Obligations

First paragraph

4. The application had been notified to the Factor.

5. By Minute of Decision by Jacqui Taylor, Convener of the First- tier Tribunal (Housing and Property Chamber), dated 6<sup>th</sup> November 2019, she intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 24<sup>th</sup> July 2019 to 28<sup>th</sup> October 2019) to a Tribunal.

6. An oral hearing took place in respect of the application on 13<sup>th</sup> January 2020 at 10.00 am at the Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT.

The Homeowner appeared on his own behalf.

The Factor was represented by David McGuiness, head of owner services and Deborah Gray, Housing Officer.

At the beginning of the hearing the parties confirmed and agreed the following facts, which were accepted by the Tribunal:-

- The Property is located within a sheltered housing development.
- The Factor is property factor of the Homeowner's Property.
- The Homeowner had had three previous applications determined by the Tribunal, case numbers FTS/HPC/PF/17/0164, FTS/HPC/PF/18/0333 and FTS/HPC/PF/18/2626.

### **Preliminary matter**

Mrs Taylor advised the parties that Tribunal Rule 8(1)(e) states that the Tribunal must reject the application if the applicant has made an identical or substantially similar application and there has been no significant change in any material considerations since the identical or substantially similar application was determined.

In connection with the breaches of sections 2.1, 2.2, 2.3 and 2.4 of the Code of Conduct Mr McGuiness advised that he considered that these matters had been previously considered and determined by the Tribunal. This was explained in the written representations that he had submitted to the Tribunal.

The Homeowners email of 19<sup>th</sup> August 2019 to the Tribunal Administration explained the detail of his application. The email states:

'Section 2.1: email of 26/3/19 refers.

Section 2.2: House Manager shouting and screaming at me.

Section 2.3: I have had my emails stopped by Bield.

Section 2.4: Bield have not consulted with us on the Manager's floating hours email 1/8/19 refers.

Section 2.5: This is an ongoing complaint I have had with Bield, especially when I ask to see minutes of meetings and never get an answer.

Section 3: Financial Obligations. First paragraph: Returning to the managers 2 floating hours which was agreed without homeowners permission. Bield charging us for B24 and telling me it was in my title deeds, it is not, and telling me that it was agreed by homeowners and have refused to let me see the minutes of the meeting. I would have thought that BR24 would be up to each homeowner what extra they required and how they would like for it to be delivered.'

The Tribunal considered the terms of the Application, the parties' oral representations, the Factor's written representations and the three previous decisions and determined as follows:

The alleged breach of Section 2.1 of the Code of Conduct and the detail set out in the email from the Homeowner dated 26/3/209 refers to the Tribunal decision dated 11<sup>th</sup> July 2018 (PF/18/0333). The Homeowner's complaint is that the Tribunal Decision PF/18/0333 made findings that the Factor had failed to do various matters but the Factor had not contacted him to discuss the failings and they have not changed what they are doing. The Tribunal found that the alleged breach of section 2.1 of the Code of Conduct had been previously determined by the Tribunal in relation to application number PF/18/0333 and that Tribunal did not issue a PFEO.

The alleged breach of section 2.2 of the Code of Conduct refers to the house manager shouting and screaming at the Homeowner. Mr Crawford confirmed that the incident he refers to is the same incident mentioned at pages 8 and 9 of the Tribunal Decision dated 21<sup>st</sup> February 2019 ((FTS/HPC/PF/18/2626). The Tribunal found that the alleged breach of section 2.2 of the Code of Conduct had been previously determined by the Tribunal in relation to application number PF/18/2626 and that Tribunal did not issue a PFEO.

The alleged breach of section 2.3 of the Code of Conduct and the Homeowner's complaint that he has had his emails stopped by Bield. The Tribunal noted that this is referred to in paragraph 23 of the Tribunal Decision dated 5<sup>th</sup> December 2018

((FTS/HPC/PF/18/0333) and determined that this has previously been considered by the Tribunal.

The alleged breach of section 2.4 of the Code of Conduct and the Homeowner's complaint that he was not consulted by the Factor on the manager's floating hours. The Tribunal noted that this had already been considered by the Tribunal in the Tribunal Decision dated 21<sup>st</sup> February 2019 (FTS/HPC/PF/18/2626).

The alleged breach of section 2.5 of the Code of Conduct and the Homeowner's complaint that he sent the Factor a recorded delivery letter dated 4<sup>th</sup> November 2018 and he never received a response.

The Tribunal noted that this had already been considered by the Tribunal in the Tribunal Decision dated 21<sup>st</sup> February 2019 (FTS/HPC/PF/18/2626).

The alleged breach of section 3 of the Code of Conduct and the Homeowner's complaint regarding the manager's two floating hours being agreed without the Homeowner's permission.

The Tribunal noted that this had already been considered by the Tribunal in the Tribunal Decision dated 21<sup>st</sup> February 2019 (FTS/HPC/PF/18/2626).

Accordingly the Tribunal at its own instance and in terms of Tribunal Rule 39 reviewed their Notice of Acceptance being their decision dated 6<sup>th</sup> November 2019 to the effect that there were no grounds for rejection of the application in terms of Tribunal Rule 8.

The Tribunal determined that the Homeowner had already made identical or substantially similar application(s) in relation to the parts of the application that concerned alleged breaches of sections 2.1, 2.2, 2.3, 2.4, section 2.5 (in relation to the non response to the recorded delivery letter dated 4<sup>th</sup> November 2018) and section 3 (in relation to the complaint regarding the managers two floating hours) of the Code of Conduct and accordingly rejected the application in connection with those alleged breaches.

The Tribunal amended the said decision 6<sup>th</sup> November 2019, being the Notice of Acceptance by the Tribunal, such that the Notice of Acceptance was restricted to the breach of the property factor duties in relation to the Written Statement of Services being out of date and alleged breaches of section 2.5 ( in relation to the Homeowner not being provided with a copy of a Minute of a meeting that he had requested), section 3 of the Code of Conduct ( in connection with Bield charging the Homeowner for BR24).

## **The parties' representations and the Tribunal's decisions:**

### **The Code Complaints.**

**Section 2.5: You must respond to enquiries and complaints received by letter or email within prompt timescales.**

#### The Homeowner's complaint.

Mr Crawford explained that he has asked to see the Minute from the residents meeting when the use of the Call handling System BR24 had been authorized. The Minute would have been dated 2011 and it predated the date he bought his property.

#### The Factor's response

Mr McGuiness explained that Bield were appointed as factors for the Homeowner's property in 2011. His company made a presentation to the residents prior to their appointment, which included details of the BR24 call handling system. He advised that the system had two functions. It handled emergency health calls and emergency property matters. The Minute of the meeting at which he made that presentation would be held by the chairperson or secretary of the Residents Association at that time. Bield do not have a copy.

In their written representations they state:

'We have replied to every communication that you have sent despite the impact this has on our other customers. Whether you accept our answers is a matter for you but it is incorrect to state that you receive no reply. This was a point discussed at mediation and also at the FTT hearing.

#### The Tribunal's Decision.

The Tribunal accept the evidence of Mr McGuiness to the effect that Bield do not hold a copy of the Minute of the meeting at which Bield made a presentation to the residents, prior to their appointment, which included details of the BR24 call handling system. The meeting took place prior to Bield being appointed as Factors of the development and accordingly they would not have any reason to hold a Minute of the meeting. Consequently the Tribunal determined that the Factor has not failed to comply with section 2.5 of the

Code of Conduct by failing to provide the Homeowner with a copy of the Minute of that meeting as they never had a copy of the Minute.

### **Section 3: Financial Obligations**

**While Transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is that they are paying for, how the charges were calculated and that no improper payment requests are involved.**

**The over riding objectives of this section are:**

- **Protection of homeowners' funds.**
- **Clarity and transparency in all accounting procedures.**
- **Ability to make a clear distinction between homeowners' funds and a property factor's funds.**

#### The Homeowner's complaint.

Mr Crawford explained that his complaint is that he is paying for the BR24 call handling system. He has a local authority pendant which he pays for in addition to the BR24 call handling system. He does not want to pay for BR 24 as well.

#### The Factor's response.

Mr McGuiness explained that Bield has provided the BR24 call handling system since they were appointed as Factors. It is not possible for one individual homeowner to contract out of their provision of this service. However he has taken onboard the Homeowner's concerns and going forward a menu of services may be something that Bield could investigate.

#### The Tribunal's Decision

The Tribunal accept the evidence of Mr McGuiness to the effect that Bield has provided the BR24 service since they first became factors of the development. The Tribunal determine that the provision of the BR24 service and the inability of the Homeowner to contract out of the BR24 service is not a breach of section 3 of the

Code of Conduct. There has been no lack of transparency by the Factor in the provision of the BR24 service.

### Breach of the Property Factors Duties

#### The Homeowner's Complaint

The Written Statement of Services is out of date. Mr Crawford referred the Tribunal to clause 2 of the Written Statement of Services which states that the Written Statement of Services will continue for a period of five years and it is now out of date and no new Written Statement of Services has been provided by the Factor.

#### The Factor's Response

Mr McGuinness advised that he accepted that it was an error on behalf of Bield to include a time period in the Written Statement of Services. The time period of five years was included with the best intentions. The purpose was to prompt a review. Bield have prepared a new Written Statement of services which was discussed at the AGM in November 2019. The finer details were also discussed at the owners' forum which took place at the end of November 2019. There is no time period included in the new Written Statement of Services. The new Written Statement of Services had been prepared 18 months ago and they had been holding off issuing the updated Statement as they were aware that the Code of Practice was being reviewed. The new Written Statement of services will be issued on 1<sup>st</sup> April 2020.

#### The Tribunal's Decision

The Tribunal accepted the evidence of Mr McGuinness to the effect that a Written Statement of Services had been prepared and would be issued in April 2020 accordingly they found that there had been no breach of the Property Factor's duties by failing to renew the Written Statement of Services after the initial period of five years.

### **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.**

Signed ....

Date: 29<sup>th</sup> January 2020

Chairperson