

Housing and Property Chamber First-tier Tribunal for Scotland



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/18/3190

Flat 8, 112 Hillpark Grove, Edinburgh, EH4 7EF ('the Property')

The Parties:

Michael Sturgeon residing at flat 8, 112 Hillpark Grove, Edinburgh, EH4 7EF ('The Homeowner')

Charles White Limited, City Point, 65 Haymarket Terrace, Edinburgh, EH12 5HD ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Carol Jones (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with section 2.5 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 7th December 2012.
2. By application dated 26th November 2018 the Homeowner applied to the First-tier Tribunal (Housing and Property Chamber) for a determination that the Factor had failed to comply with section 2.5 of the Property Factor Code of Conduct ('The Code').
3. The application had been notified to the Factor.
4. By Minute of Decision by Maurice O'Carroll, Convener of the First-tier Tribunal (Housing and Property Chamber), dated 21st December 2018, he intimated that he

had decided to refer the application (which application paperwork comprises documents received in the period 27 November 2018 to 7 December 2018) to a Tribunal.

5. The Homeowner purchased his property Flat 8, 112 Hillpark Grove, Edinburgh, EH4 7EF in April 2011. Charles White Limited are factors of the property.

5. An oral hearing took place in respect of the application on 18th February 2018 at George House, 126 George Street, Edinburgh, EH2 4HH.

The Homeowner appeared on his own behalf. The Factor was represented by Karen Jenkins, the Factor's client relationship and support manager.

The parties' representations and the Tribunal's decisions:

The Homeowner had sent the Factor a letter dated 26th November 2018 advising the Factor that he considered that they had failed to comply with section 2.5 of the Code of Conduct.

Section 2.5 of the Code of Conduct provides:

'2.5: You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.'

The Homeowners' written complaint.

The Homeowner referred to a previous application he had made to the Tribunal under chamber reference FTS/HPC/PF/17/0336. In connection with that application he had produced a formal letter and 8 separate emails to the Factor which had not been responded to. He advised that the Tribunal's determination had been that the Tribunal had no difficulty in finding that the Factor had acted in breach of section 2.5 of the Code of Conduct. Moreover they found that these breaches appeared commonplace and systemic, which he advised was reflected in the subsequent PFEO.

He explained that he was then disappointed that his next email to the Factor in June 2018 was again not responded to. The Factor offered the Homeowner a refund of one quarters management charge by way of an apology, which he declined. He received further correspondence from the Factor dated 16th August 2018 advising that there

had been an internal discussion and review of internal procedure and the lack of response 'will not happen again'.

His next email query dated 29th September 2018 was again not responded to. He raised this with the Factor again and reminded them of their commitment that 'it would not happen again'. He asked how they could be in a position to give such an undertaking and then not deal with the follow up. He was then referred to the Factor's complaints procedure.

The Homeowner provided the Tribunal with a copy of the Factor's Written Statement of Services which details the Factor's Communication Arrangements at page 18. The Statement states:

'At all times CWL will endeavour to provide a high quality, smooth management service, the main purpose of which is to allow owners within the development to enjoy their homes....

CWL will endeavour to work within the following timescales:

- (i) To return telephone messages within one working day.
- (ii) To acknowledge both electronic and paper correspondence within 48 hours.
- (iii) To respond to both electronic and paper correspondence within five working days....'

The Homeowners' oral representations.

The Homeowner explained that he had sent the Factor the two emails that he had referred to in his written representations, namely the emails dated 15th June 2018 and 29th September 2018 and he did not receive a response to these emails. He explained that the previous tribunal decision (FTS/HPC/PF/17/0336) had upheld his complaint under section 2.5 of the Code. He referred the Tribunal to the previous Tribunal's decision which stated that breaches of section 2.5 of the Code appeared to be commonplace and systemic and that Tribunal had found serious and repeated failures to respond promptly to legitimate enquiries and complaints made by the Homeowner. In connection with his email of 15th June 2018 he explained that his email had replied to an email he had received from Mhairi Epton sent to him at 11am on 15th June 2018. That email had sent him a drainage report, a schedule of repairs and a site plan. No covering letter had been provided. His email to Mhari Epton in response had raised queries in relation to the documents she had sent to him. The email correspondence relates to defects in field drains and this matter is ongoing.

As he did not receive a response to his email of 15th June 2018 he sent a chasing email on 16th July 2018. Mhari Epton replied on 16th July 2018. She apologised and explained that his email had arrived whilst she was on annual leave and she had not been aware that Karen Jenkins had not replied to his email over her period of absence from the office.

In connection with his email dated 29th September 2018 he explained that this was an email in response to an email that he had received from Karen Jenkins dated 28th September 2018, which had provided a schedule of repairs with costs and recommendations. He did not receive a response to that email and consequently sent a chasing email on 5th October 2018 to Karen Jenkins and Marianne Griffiths. He received a response from Marianne Griffiths dated 12th October 2018 which referred him to the Factor's complaints procedure. He explained that some of his questions in his email of 29th September 2018 have been answered but some have still not been answered. The outstanding questions relate to ongoing maintenance issues.

He explained that he is very frustrated that the Factor does not reply to his emails on time, in terms of their Written Statement of Services. He pays the Factor's for a service but he has not received answers to legitimate questions that he has asked. Despite previous applications to the Tribunal on this point and previous findings in his favour he is very disappointed that the Factor still does not respond to his legitimate correspondence on time.

The Factor's written representations.

The Factor did not provide any written representations.

The Factor's oral representations.

Karen Jenkins advised the Tribunal that she could not dispute the Homeowner's comments.

The Homeowner's email of 15th June 2018 was sent to the Factor whilst Mhari Epton was on holiday and as a result a response had been over looked.

Her email of 28th September 2018 was an email to all of the owners within the development giving them information in advance of a residents meeting. She agreed that the Homeowner did not receive a response to his email of 29th September 2018. She explained that as Factors they have a number of challenging projects on the go which are demanding of their resources. In her view they need a bigger team to deal with correspondence.

She advised that the development at Hillpark Grove is a mixed development of 156 owners. She explained that the Factor will receive a number of emails from one or two engaged owners. She acknowledged that on reflection she could have sent the Homeowner a holding email whilst she gathered the information that he was looking for but she did not do this.

She explained that they have recently taken on new staff and she believes that this will enable her company to deal with correspondence from homeowners better in the future.

The Tribunal's Decision.

The Code of Conduct requires the Factor to respond to complaints as quickly and fully as possible, and to keep homeowners informed if they require additional time to respond. The emails from the Homeowner to the Factor dated 15th June 2018 and 29th September 2019 raised legitimate questions and concerns. The Tribunal find that the Factor did not respond to these emails timeously and has not provided all of the information requested. The Tribunal determine that the Factor did not meet the terms of paragraph section 4 of their Written Statement of Services or the requirements of section 2.5 of the Code of Conduct.

The Tribunal are most concerned that the Factor has had similar section 2.5 of the Code complaints upheld in 2015 and 2018. Notwithstanding this fact the Factor does not appear to have improved their systems to enable correspondence to be responded timeously as required by both the Written Statement of Services and the Code of Conduct.

Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with Section 2.5 of the Code of Conduct.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'1. Charles White Limited are directed to pay the Homeowner £250 as compensation from their own funds and at no cost to the owners. The said sum to be paid by 30th April 2019.

2. Charles White Limited are directed to provide the Tribunal with evidence that the said sum has been paid within seven days of the payment being remitted to the Homeowner.

3. Charles White Limited will give consideration as to how their office systems and procedures can be improved to ensure that section 2.5 of the Code of Conduct and Section 4 of their Written Statement of Services is routinely complied with and provide the Tribunal with a report on the resultant action plan to improve their systems, steps that they will take to implement the required changes and monitor ongoing compliance, all by 30th April 2019.'

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: 7th March 2019

Chairperson

Jacqueline Taylor