

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: **FTS/HPC/PF/21/0020**
 FTS/HPC/PF/21/0042
 FTS/HPC/PF/21/0043
 FTS/HPC/PF/21/0044
 FTS/HPC/PF/21/0045
 FTS/HPC/PF/21/0047

The Property: 3 & 4 Claremont Terrace, Glasgow, G3 7XR (“The Property”)

The Parties:-

Keiron Paterson, residing at Flat 1, 4 Claremont Terrace, Glasgow, G3 7XR

William White, residing at Flat 1, 3 Claremont Terrace, Glasgow, G3 7XR

Usman Kushi, residing at Flat 2, 4 Claremont Terrace, Glasgow, G3 7XR

Claire Nicholas, residing at Flat 3, 4 Claremont Terrace, Glasgow, G3 7XR

Gerry Heggarty residing at Flat 2, 3 Claremont Terrace, Glasgow, G3 7XR

and Pearse Flynn residing at Flat 3, 3 Claremont Terrace, Glasgow, G3 7XR

(“the applicant”)

Redpath Bruce Property Management Ltd, a company incorporated under the Companies Acts and having their registered office at 152 West Regent Street, Glasgow, G2 2RQ
(“The property factor”)

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the property factor has failed to comply with the code of conduct as required by Section 14 of the 2011 Act, determined that the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011.

Committee Members

Paul Doyle

Legal Member

Sara Hesp

Ordinary Member

Background

1 By applications dated 05 January 2021, the applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of their complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act & that the property factor has failed to comply with the property factor's duties.

2 Each application stated that the applicants considered that the respondent failed to comply with Sections 1.B.(c), 2.1, 2.5, 3.1, 5.3, 6.3, 7.1 and 7.2 of the code of conduct for property factors and breached the property factor's duties.

3 By interlocutor dated 15 March 2021, the application was referred to this tribunal. The First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on all parties, directing the parties to make any further written representations.

4 The applicants lodged further written representations on 21 April 2021. The respondent lodged written representations on 27 April 2021. Notice of referral and details of the time date and place of today's hearing were sent to all parties on 7 April 2021.

5. A hearing was held by telephone conference on 19 May 2021. For the applicants, only Keiron Paterson was present, but he acts as representative for all six applicants. The respondent was represented by Stuart McMillan, one of their directors.

Findings in Fact

6 The tribunal finds the following facts to be established:

(a) The applicants each own and occupy separate flatted dwellinghouses within 3 and 4 Claremont Terrace, Glasgow, G3 7XR. The applicants are all members of 3&4 Claremont Terrace Owners Association.

(b) Until 11 November 2020 the respondents were the property factors for the building at 3 and 4 Claremont Terrace, Glasgow, G3 7XR. In 2012 the respondents gave the applicants a copy of their written statement of services.

In 2020 the respondent updated their written statement of services and provided each applicant with a copy of the updated written statement of services.

(c) The property was refurbished in or about 2000. The refurbishment works included internal refurbishment and the roof was recovered.

(d) Between November 2014 and March 2019 several separate insurance claims were made concerning water ingress to different dwellinghouses within the property. Each claim was settled by insurers because the claims related to storm damage. Each time a claim was made, the respondent instructed contractors to carry out repairs. Water damage to the interior of the property was carried out, and repairs to the roof covering at the property were carried out.

(e) On 26 April 2019 the respondent informed Mr Paterson that roofing contractors had reported that localised patch repairs would no longer be effective and recommended that a surveyor should inspect the roof and report. The respondent told the applicants that surveyors had been instructed and explained why.

(f) On 30 April 2019, Stuart Baxter, of Kerr Baxter surveyors carried out a detailed inspection of the roof of the property. He provided the respondent with a written report date 14 May 2019. In that report Mr Baxter noted that there was evidence of previous water ingress from different aspects of the roof of the property. The author of the report says that the roof needs to be completely stripped and re-slatted because there have been a lot of patch repairs and the leadwork is defective. The author of the report says the slate used on the roof is of poor quality.

(g) On 20 May 2019 the respondent circulated the surveyor's report to the applicants. Their covering letter explained that significant work was required and, because of the cost of the work, the respondent sought mandates from the applicants to carry out re-roofing works. A majority of homeowners did not return signed mandates to the respondents.

(h) The developer who installed the roof in 2000 is no longer trading. It was that developer who used materials of inferior quality to form the roof. Between 2000 and 2019 a number of patch repairs were carried out, but the roof is past its useful life.

(i) Throughout their tenure, the respondents arranged buildings insurance for the property. The respondents arranged for annual maintenance and inspection of the property and billed the applicants for a proportionate share of the contractors' costs.

(j) In 2019 the respondents wrote to each applicant to advise that the buildings insurers were no longer prepared to indemnify against damage to

the roof because of the number and nature of claims which had been made. On enquiry, the applicants were told that only internal repairs had been carried out following each instance of water ingress.

(k) The applicants have instructed a complete overhaul of the roof of the property. That work will cost in the region of £160,000.00.

(l) Between 7 September 2020 and 9 November 2020, the applicants corresponded with the respondent about the condition of the roof and the history of insurance claims. An email from the applicants dated 21 September 2020 was not replied to until 13 October 2020.

(m) On 13 October 2020 the applicants sent a formal complaint to the respondent. On 5 November 2020 the respondent sent the applicants a copy of their complaints procedures and apologised for the delay in replying.

(n) On 9 November 2020 the applicants emailed the respondent to escalate their complaint. They have not received a response to their complaint.

(o) By email dated 10 December 2020 one of the respondent's directors wrote to the first applicant addressing his complaints. The first applicant did not receive that email.

(p) The respondent's written statement of services sets out the respondent's complaints procedures and explains that if a complaint cannot be resolved, the homeowners remedy lies in an application to the First Tier Tribunal for Scotland (Housing and Property Chamber). None of that information is contained in the email from the respondent dated 10 December 2020.

(q) The contract between the parties ended on 11 November 2020. The applicants did not receive final accounts from the respondent until March 2021, and did not receive reimbursement of sums held to the credit of their account with the respondent until 28 April 2021.

(r) Despite the termination of their contract on 11 November 2020, the respondent wrote to homeowners on 10 February 2021 mistakenly identifying a new property manager for the property, and so creating the impression that they were once again the property factors for the property.

Reasons for decision

7. Section 1 of the property factors code of conduct deals with the written statement of services. In their applications the applicants say that the property factor has breached section 1.B (c) of the code of conduct, which says

The written statement should set out:

- c. The core services that you will provide. This will include the target times for taking action in response to requests for both routine

and emergency repairs and the frequency of property inspections (if part of the core service);

8. The written statement of services sets out the core services provided by the property factor. Mr Paterson confirmed that his complaint was not that the written statement of services was defective. His complaint is that the words of the written statement of services have not been adhered to in practice.

9. The property factor has not breached section 1 of the code of conduct for property factors. Section 1 of the code of practice deals with the contents of the written statement of services. All parties are agreed that there is nothing wrong with the content of the written statement of services.

10. (a) Section 2.1 of the code of conduct says

SECTION 2: COMMUNICATION AND CONSULTATION

Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard:

2.1 You must not provide information which is misleading or false.

(b) Section 2.5 of the code of conduct says

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 as 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 (Section 1 refers).

11. It is a matter of concession that the property factor sent a letter dated 10 February 2021 bearing to introduce a new property manager to the applicants. The letter says that the property manager will manage all aspects of the communal areas on behalf of the homeowners.

12. Three months after the termination of the contract between the parties the respondent issued a letter containing their own standard wording in error to the applicants. Mr McMillan described that error as disappointing. He emphasised that the property factor had not intended to mislead anybody and apologised for the error.

13. The mistake that the property factor made is a breach of section 2.1 the property factors code of conduct.

14. It is a matter of agreement that between 7 September 2020 and 2 December 2020 a number of emails from the applicants were not answered by the respondent. It was clear that both Mr McMillan and Mr Paterson were

disappointed that the property factor's email of 10 December 2020 did not reach Mr Paterson.

15. The property factor accepts that there was a failure to respond to enquiries and complaints within prompt timescales. That amounts to a breach of section 2.5 of the property factors code of conduct.

16. Section 3.1 of the property factors code of conduct says

If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

17. It is not disputed that it took more than three months to produce a final accounting, and nearly 6 months for sums held at credit to be reimbursed to the applicants. Mr McMillan accepted that the accounting practices should have been completed within three months. He explained that there had been a problem with a staff change within the respondent's company, and apologised.

18. The undisputed facts point directly to a breach of section 3.1 of the property factors code of conduct.

19. Mr Paterson told us that he accepts that the property factor did not breach section 5.3 of the code of conduct.

20. Section 6.3 of the code of conduct says

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.

21. Mr Paterson explained that when he was questioning the number and nature of roof repairs, he asked for invoices relating to each insurance claim. He told us that the property factor's inventory of productions (placed before us today) contains invoices that he has not seen before.

22. Taking a holistic view of each strand of evidence we find that the property factor is able to show how and why they appointed contractors. The Property Factor has stated that they aim to ensure that only reputable and experienced contractors carry out work at their properties. For example, they specifically appoint contractors who are accredited under the "Safe Contractor" scheme. They appointed contractors to undertake repairs when problems were reported to them and Mr Paterson accepted that, although he had thought that only internal work had been carried out when he made his application, he now understands that external repairs also took place, having seen the invoices produced.

There is therefore no breach of section 6.3 of the code of conduct.

23. The applicants says that the property factor has breached section 7.1 & 7.2 of the code of conduct for property factors.

24. Section 7.1 & 7.2 of the code of conduct for property factors say

- 7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.
- 7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.

25. The property factor's written statement of services sets out a clear written complaints resolution procedure. The property factor has breached section 7.1 because even though the correct combination of words was used in the written statement of services, the property factor's actions demonstrate that the property factor failed to follow their own complaints resolution procedure.

26. The crucial words in 7.1 are

which you will follow

The problem for the property factor is that they did not timeously follow their own complaints procedure. We accept that the member of staff responsible is no longer employed by the Property Factor.

27. Details of access to the First-tier Tribunal for Scotland (Housing and Property Chamber) are contained in the respondent's written statement of services, but section 7.2 makes it clear that it is the final letter from the respondent concluding the complaints procedure which should contain that information.

28. It is a shame that the applicants did not receive the email of 10 December 2020. We consider the contents of the email and find that details of how the applicants could apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) are not contained within the email.

29. The applications process to the First-tier Tribunal for Scotland (Housing and Property Chamber) is in the wrong place. It is a good idea to have details of the application process in the written statement of services, but those details must also be in the final letter which brings the complaints procedure to an end.

30. The property factor has breached section 7.2 of the code of conduct for property factors.

The Property Factors Duties

31. Section 17(5) of the Property Factors (Scotland) Act 2011 defines the property factor's duties.

32. We have found that the property factor has breached the code of conduct for property factors. By analogy, we find that the property factor has not adhered to their duties in relation to the management of the common parts of land owned by the homeowner.

33. We therefore find that the property factor has failed to carry out the property factors duties.

34. The property factor has failed in their duties and breached the code of conduct. The failure in duties and the breach of the code of conduct formed part of a pattern of behaviour which merits a Property Factor Enforcement Order ("PFEO"). The purpose of the PFEO is not to enrich the applicants. The purpose of the PFEO is to punish the property factor; to mark society's displeasure; to protect society and to ensure the enforcement of the Property Factors (Scotland) Act 2011 and the code of conduct in the future.

Decision

35. The tribunal therefore intend to make the following property factor enforcement order (PFEO)

"Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must pay each applicant £250.00 representing compensation for breaching the code of conduct and failing in the property factors duties."

36. Section 19 of the 2011 Act contains the following:

(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order.

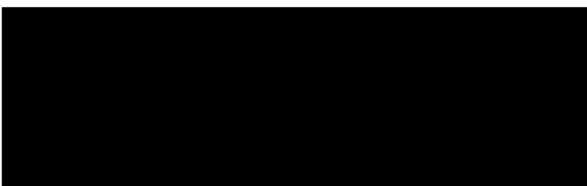
(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

37. The intimation of the tribunal's decision and this proposed PFEO to the parties should be taken as notice for the purposes of s. 19(2)(a) of the 2011 Act, and parties are hereby given notice that they should ensure that any written representations which they wish to make under s.19 (2)(b) of the 2011 Act reach the First-Tier Tribunal for Scotland (Housing and Property Chamber) office not later than 14 days after the date that the Decision and this proposed PFEO is intimated to them. If no representations are received within that 14 day period, then the tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Right of Appeal

38. 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 them.

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.



Signed
Legal Member

31 May 2021