

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
(“the Tribunal”)

Note of Hearing and Decision of the Tribunal following review: First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, rules 17 and 39

Chamber Ref: FTS/HPC/PF/22/0929

Property at Ferryhill Court, 85 Whinhill Gate, Aberdeen, AB11 7WF
(“The Property”)

The Parties: -

Mr James Murison, residing at the Property (“the Homeowner”)

FirstPort Property Services Scotland, Troon House, 199 St Vincent Street, Glasgow G2 5QD (“the Factor”)

Tribunal Members: -

Maurice O’Carroll (Legal Member)
John Blackwood (Ordinary Member)

Decision of the Tribunal (following review on 5 October 2022)

The Tribunal finds the Factor to have breached sections 7.1 and 7.2 of the Code of Practice for Property Factors (2021).

Background

1. A Case Management Discussion (CMD) was held at 10am on 12 August 2022 by means of a telephone conference. The Homeowner attended the call in person and spoke on his own behalf. The Factor was represented by Mrs Christie Nicol, Estate Co-ordinator Team Leader and Mr Andrew Grant, Head of Operations, Scotland. Mr Grant conducted the hearing on the Factor’s behalf.
2. The current case concerns an application dated 31 March 2022, updated on 14 April 2022 submitted on behalf of the Homeowner. A notification letter dated 7 April 2022 was sent to the Factor by the Homeowner detailing alleged breaches of the Code of Practice (2012 version). The sections referred to were 7.1 and 7.2. Following discussion, it was agreed by the Homeowner that the 2021 Code

of Practice applied but that the terms of sections 7.1 and 7.2 were substantially the same and encompassed the substance of his complaint. The 2021 Code was therefore applied.

3. Section 7 of the Code deals with Complaints resolution. Section 7.1 states that “a property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably.” That section then set out certain minimum requirements of the complaints procedure and states that good practice is to have a 2 stage process.
4. Paragraph 7.2 provides that: “when a property factor’s in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.”
5. Rule 17(4) of the Tribunal Rules provides: “The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.”
6. Following the Tribunal’s original decision of 12 August 2022, a request for review was received by the Homeowner on 27 August 2022 which was accepted as being timeous since a previous intimation of an application for review had been received by the Tribunal on 24 August 2022 but had not been intimated to the Factor. Once intimation had taken place, the request for review was considered by the Tribunal.
7. By decision dated 14 September 2022 (sent to parties on 16 September 2022), the Tribunal decided not to reject the application for review and sought the comments of the Factor in accordance with rule 39(4) of the 2017 rules as amended. Comments from the Factor were received timeously on 29 September 2022.
8. Both parties agreed that no further hearing was required. The current reviewed decision was therefore made without any further hearing being held on the basis of submissions received.
9. The Homeowner also made comments on the proposed Property Factor Enforcement Notice (PFEO) issued at the time of the original decision. Accordingly, the present decision represents the final decision as reviewed of the Tribunal which may be appealed against on a point of law within 30 days.
10. The present decision may not, however, be subject to a further application for review in terms of section 55(2) of the Tribunals (Scotland) Act 2014.
11. The final version of the PFEO in this case is attached to the present decision following comments from the parties.

Evidence at the Case Management Hearing

12. The substance of the application was narrated at page 5 of 15 of the page apart to the Homeowner’s application and spoken to him in evidence. Put briefly, it

concerned a proposal to install an upgraded fire alarm system at the Property further to new legislation prompted by the Grenfell disaster. The Factor had originally suggested a tendering process in 2019 involving three potential bidders. Of these, the Homeowner considered that the bid put forward by a company called Tunstall was technically the best and offered best value for money.

13. The follow up proposal put forward by the Factor on 10 November 2020 however recommended a company called OpenView at a proposed cost of £394 per flat. No reason was provided for not preferring the Tunstall bid in that letter.
14. The Tribunal was provided with the Factor's Written Statement of Service (WSS). Section 5 sets out a 2-stage procedure with the third stage being an application to this Tribunal. In relation to Stage 1, it is provided that the factor will acknowledge your complaint and aim to respond to the homeowner within 10 working days. Stage 2 provides that a final response will be provided within four weeks.
15. The Homeowner raised a Stage 1 complaint on 9 December 2020 in which he detailed his concerns. He discussed the building standards issues in his complaint with the Factor's Regional Manager by the name of Mr Bodden (now no longer employed by the Factor) via video link on 30 December 2020. This was already well past the ten working days stipulated in the WSS. During that meeting Mr Bodden undertook to carry out certain steps further to the Homeowner's complaint.
16. By letter dated 31 December 2020, Mr Bodden letter summarised the meeting and at page 3 thereof identified the steps and actions which the Factor would undertake. He also undertook to arrange a follow up meeting to review any future recommendation, prior to any other recommendation being made for all homeowners to vote upon again.
17. None of those agreed actions were in fact carried out by Mr Bodden or anyone else with the Factor's organisation. The Homeowner's complaint was therefore left unresolved and a significant amount of time was allowed to pass.
18. The Homeowner therefore progressed his complaint to Stage 2 in May 2021. By letter dated 19 May 2022, Mr Bodden advised the Homeowner (erroneously) that his Complaint Stage 1 had been dealt with by his letter of 31 December 2020. A video call meeting was arranged for 2 June 2022.
19. At that meeting, the Homeowner was told "in no uncertain terms" that his opinion regarding the technical issues he outlined in his complaint were not agreed with by the Factor and that they would be proceeding as they saw fit unless he produced evidence from the Council's Building Standards Department to support his complaint. His technical issues and concerns were therefore ignored by the Factor.

20. Accordingly, the Homeowner obtained and demonstrated the necessary technical advice from the local authority building standards department in relation to building standards and the relevant electrical installation regulations.
21. In the event, by letter dated 13 December 2021, the Factor wrote to all homeowners to state that they would not be proceeding with the tender process or the works to the Property. Instead, individual homeowners would be required to take steps themselves in order to meet the new legislative requirements. The Homeowner's individual letter of complaint was therefore not specifically addressed.
22. Mr Grant gave evidence to the Tribunal that the Factor did not have an obligation to finalised the tender process and see the works through as they were in respect of individual flats and not communal areas. The alarm upgrade proposal was initially undertaken by the Factor because it would have provided the opportunity to make provision across all the properties managed by it and achieved benefits of scale. In the end, it became too cumbersome and expensive and so was abandoned.
23. In relation to the treatment of the Homeowner, he fully accepted that "the complaints process was not managed particularly well." He also accepted that the timescales set out in the WSS were not adhered to and that he could not seek to defend the Factor's quality of communication.
24. Mr Grant also undertook to provide an apology for the treatment experienced by the Homeowner and to provide assurance for the future in relation to the Factor's approach and procedures in relation to its tendering process.

Tribunal findings following CMD and review

25. In light of Mr Grant's admissions at the CMD and in light of the above evidence heard, the Tribunal found that the Factor had breached section 7.1 of the Code. The complaints procedure was not handled consistently or appropriately.
26. On review, the Tribunal found that section 7.2 of the Code was also breached. In December 2021, the Factor advised all homeowners that the proposed works would not proceed. In so doing, it failed to correspond directly with the Homeowner and to address his complaints raised at stages 1 and 2 of the Factor's internal complaints procedure. See paragraph 21 above.
27. The Tribunal further finds that the breach of sections 7.1 and 7.2 was aggravated by the way in which the Homeowner was treated. His legitimate concerns were simply ignored despite having gone to the extra trouble of obtaining advice in building standards and electrical safety which was strictly speaking the Factor's responsibility. Promises that were made to him were not adhered to (see paragraphs 16 and 17 above). The Tribunal agrees that an apology is appropriate and this will be reflected in the Property Factor Enforcement Order attached to the present decision.

28. Albeit the fire alarm system upgrade was eventually abandoned by the Factor, the way in which the tender process was dealt with raises systemic issues with regard to the Factor's handling of tender processes in a wider sense. Specifically, there was a lack of transparency in the process used in the course of accepting a tender prior to the process eventually being abandoned.
29. The Homeowner identified a bid which he considered to preferable at the early stage of the process. The bid was disregarded for reasons which were not properly explained to the Homeowner. Other bids were taken forward, prior to abandonment of the project, despite the Homeowner having raised clear concerns of a substantial nature and having provided evidence to support those concerns in relation to the other bids preferred by the Factor.
30. The Tribunal agrees that the Homeowner should be provided with assurance with regard to the implementation of that process for future reference. This will also form part of the Property Factor Enforcement Order to follow.

Conclusion

31. For the above reasons, the Tribunal upholds the Homeowner's application and finds that the Factor breached sections 7.1 and 7.2 of the Code of Conduct for Property Factors. A final Property Factor Enforcement Notice will follow under separate cover.
32. **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 within 30 days of the date the decision was sent to them.**

Signed:

Date: 5 October 2022

Legal Member and Chair