

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Ref: FTS/HPC/PF/19/1277

48/7 Hillpark Grove, Edinburgh, EH4 7AP (“the House”)

The Parties:-

Mrs Carol Wood, 48/7 Hillpark Grove, Edinburgh, EH4 7AP (“the Homeowner”)

City Point (Charles White Ltd.), 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Property Factor”)

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with sections 2.1, 2.5, 6.2, 7.1 and 7.2 of the Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

Background

1. By application dated 24th April 2019, the Homeowner applied to the Tribunal for a determination on whether the Factor had failed to comply with sections 1, 2, 6 and 7 of the Code. The Homeowner also alleged that the Factor had failed to carry out its property factor duties; namely it had failed to ensure that the emergency two way communication system in the lift ever worked or was

fit for purpose, that emergency numbers displayed inside and outside the lift were correct and operational, to return phone calls, to adhere to agreed timelines as per the contract between them, to resolve her complaint and provide information.

2. Details of the alleged failures were outlined in the Homeowner's application and associated documents including correspondence to and from the Factor, the Factor's Written Statement of Services and Client Feedback Information Sheet, and lift maintenance contract and associated documentation.
3. The Homeowner intimated her concerns to the Factor by letter dated 16th March 2019. Further intimations were made by the Homeowner to the Factor on 20th May and 6th July 2019.
4. By decision dated 29th July 2019, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
5. By Direction dated 1st September 2019, the Tribunal ordered the Homeowner to clarify the sections of the Code that she alleged had been breached. The Homeowner responded by email dated 21st September 2019.
6. By email dated 4th November 2019, the Factor made written representations, including an incident log dated 21.12.18, correspondence with Otis Ltd., repair visit reports, site inspection logs, development inspection reports, correspondence to the Homeowner, and correspondence addressed to another homeowner.
7. The hearing was held on 27th November 2019 at Riverside House, 502 Gorgie Road, Edinburgh. The Homeowner was present and supported by her husband, Mr Alexander Wood. The Factor was represented by Ms Karen Jenkins, Client Relationship and Support Manager.

Preliminary Matters

8. The Tribunal clarified with parties the specific sections of the Code to be addressed – sections 2.1, 2.5, 6.2, 7.1 and 7.2.

Section 2.1

9. The Code states: *You must not provide information which is misleading or false.*

Evidence of the Homeowner

10. The Homeowner outlined the basis for her complaint. She used the lift in her block of flats on the evening of 21st December 2018. The lift began to move, then juddered to a halt. The Homeowner tried the emergency intercom within the lift. An automated voice said the number could not be connected. There was a number for Express Lift Alliance displayed on a sticker inside the lift,

stating that it was to be used in an emergency. The Homeowner used her mobile phone to call her husband. He came to the lift and she shouted out the number on the sticker. He called the number and received a recorded message stating that the number was not recognised. The Homeowner's husband tried different phone numbers that he found on stickers outside the lift, but the numbers were not recognised. A neighbour tried calling a number on a sticker outside the plant room, but that number was not recognised. The fire brigade was called. The lift was stuck between floors. The fire brigade arranged for the phone numbers to be tried with no success. They were able to open the doors but they advised the Homeowner to stay in the lift until they were able to access the plant room and disable the lift. Access to the plant room was not available, as it was locked. The Homeowner and her dog were able to remove themselves from the lift. The Homeowner then tried to call the Factor. It took 50 minutes to get through to the Factor's emergency out of hours line. The Homeowner said she suffers from claustrophobia. It was unusual for her husband to be at home at the time of the incident, as he works night shift. Had she not had her mobile phone with her, and not been able to contact her husband, she could have been stuck in the lift for hours and suffered considerably.

11. An engineer attended a couple of days later. He found that the emergency intercom phone line was disconnected. He said he thought it probably had not been working for over a year. The Homeowner did not know what the engineer based that information on, although he said that a BT line would be disconnected if it was not regularly checked. He reprogrammed the intercom.
12. The Homeowner requested information from the Express Lift Company to indicate how often the intercom had been checked. She was told the information was available, but it could only be provided to the bill payer.
13. The Homeowner said she checked the phone numbers on the stickers outside the lifts and plant rooms today and they still displayed the incorrect phone numbers. The phone number inside the lift has been changed by applying a sticker over the original notice.
14. The Homeowner has asked the Factor for information to show a complete audit trail to indicate when the intercom was checked. This information was not provided prior to the Factor making their written representations to the Tribunal. The Homeowner had also asked for information as to historical phone numbers, but this was not forthcoming.
15. The Homeowner said there have been 11 incidents with the lift. The lift is not over-used as there are only 10 people in the block of flats. A significant sum is paid to the Factor to provide various services.
16. The Homeowner submitted that the Factor provided false and misleading information by not ensuring that the numbers, both inside and outside the lift, were correct.

Evidence on behalf of the Factor

17. Ms Jenkins said that she took over the development not long before the lift incident. The Factor carries out checks every six weeks. During such checks, the lift intercom is checked. Ms Jenkins referred the Tribunal to her productions and to the development inspection report dated 13th November 2018. On that date, Ms Jenkins carried out the check. This involved pressing the buzzer, holding for a few seconds, after which a tone is heard, then another. A message then states that the call is connecting. The line is sometimes engaged. When the call connects, the Factor's representative states who they are and asks the operator to reset the intercom. Prior to this incident, the Factor's representative did not record on the inspection report that the intercom was working. A comment would only be made if the intercom was not working. That has now changed and the person inspecting the intercom now states on the report that it is working. Ms Jenkins no longer carries out the inspections.
18. Ms Jenkins said that the lift phone numbers had been provided to the previous factor for the development. A new lift line was installed in 2017. The Factor does not go into the plant room. This is for engineers. The Factor had not picked up that the phone numbers in the various places in the block of flats were incorrect. Ms Jenkins said that this may have been an oversight. Responding to questions from the Ordinary Member, Ms Jenkins said the Factor accepted there had been a failure to change the phone numbers.
19. In relation to the Homeowner's call to the Factor on the night of the incident, Ms Jenkins said Homeowners are told it may take 30 minutes to get a response. Ms Jenkins said she contacted Express Lifts to try and get a full history of the maintenance of the lift, but it had proved very difficult. The Factor was told by the engineer that the lift line had 'dropped out'. She said BT did not provide full records to show when the intercom line was checked.
20. Ms Jenkins said she had attended at the block of flats today and updated the incorrect numbers. She said that phone numbers should not need to be displayed as the intercom should work.
21. Responding to questions from the Tribunal as to a previous incident in 2016 where someone else had been stuck in the lift, and whether 6 weekly checks were sufficient, Ms Jenkins said it would not be practical to check the system every week. It may be the case that homeowners could be asked to carry out more regular checks. Ms Jenkins said the Factor had suggested re-tendering for the lift maintenance but matters have improved recently.

Section 2.5

22. The Code states: *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.*

The Homeowner's Evidence

23. The Homeowner said she had initially contacted the Factor by letter dated 22nd December, which was hand-delivered to the Factor on 27th December 2018. In that letter, she requested information and documentation pertaining to the Factor's service and complaints procedure and various information pertaining to the lift operation and maintenance. She received a response from Ms Jenkins on 6th February 2019. Ms Jenkins included the Factor's 'Client Feedback Form' and the most recent inspection report for the lift. She indicated that she was awaiting further information, and asked the Homeowner to allow a further 14 days for a fuller response. Despite the Homeowner chasing this up by email on 10th February 2019, and making telephone calls to the Factor, no further response or information was provided by the Factor.

Evidence on behalf of the Factor

24. Ms Jenkins accepted that the Factor had failed in this respect. She said she could only apologise. She was waiting for further information, which she is still awaiting, but she did not keep the Homeowner informed in this regard, or send on the information that she had received.

Section 7.1

25. The Code states: *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.*

Section 7.2

26. The Code states: *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.*

The Homeowner's Evidence

27. The Homeowner reiterated her previous comments about the failure to adhere to timescales. She said she was not provided with a copy of the written complaints procedure. On 16th March 2019, she asked that her complaint be taken to the next level. This did not happen.

Evidence on behalf of the Factor

28. Ms Jenkins said the complaints procedure was within the Written Statement of Services. She accepted that the complaints procedure had not been followed

and the complaint had not been escalated. She said she should have sent the complaint on to the Director and escalated it.

Section 6.2

29. The Code states: If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.

The Homeowner's Evidence

30. The Homeowner referred to her previous evidence that the emergency procedures did not work.

Evidence on behalf of the Factor

31. Ms Jenkins said the Factor has out of hours procedures which have been notified to homeowners.

Findings in Fact

- 32.
- i. The Homeowner is the joint owner and occupier of the property at 48/7 Hillpark Grove, Edinburgh, which is a flatted dwelling-house.
 - ii. The Development is a mixed development consisting of 156 properties.
 - iii. The Factor registered as a Property Factor on 7th December 2012 under registration number PF000153.
 - iv. The Factor acts as agent for the homeowners within the development in terms of a Deed of Conditions registered in the General Register of Sasines by the Developer on 4th April 2002, and the Factor's Written Statement of Services.
 - v. There is a hydraulic lift installed in the block of flats of which the House forms part.
 - vi. On or around 24th November 2016, a person was trapped within the lift.
 - vii. On the evening of 21st December 2018, the Homeowner became trapped within the lift. The intercom within the lift was not in correct working order and her call to gain assistance did not connect. The emergency phone numbers displayed within the lift, outwith the lift and outside the plant room in the block of flats were incorrect and it was not possible to reach those that are contracted to provide an emergency service in this kind of situation. The fire brigade had to be called out to

assist with the matter. They were unable to access the plant room to disable the lift.

- viii. The Homeowner wrote to the Factor by letter dated 22nd December 2018, outlining the situation and requesting documentation and information.
- ix. The Factor wrote to the Homeowner by letter dated 6th February 2019, enclosing some information and promising a fuller response.
- x. By email dated 10th February 2019, the Homeowner reiterated her concerns and request for further information.
- xi. The Homeowner received no further correspondence or information from the Factor.
- xii. On 16th March 2019, the Homeowner asked that her complaint be taken to the next level within the Factor's organisation. This did not happen.

Determination and Reasons for Decision

33. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Failure to comply with Section 2.1 of the Code

34. The Tribunal found that the Factor had provided information that was misleading or false by allowing the display of incorrect phone numbers in and around the lift and block of flats.

Failure to comply with Section 2.5 of the Code

35. The Tribunal found that the Factor had failed to comply with this section of the Code, by failing to respond to enquiries and complaints within prompt timescales.

Failure to comply with Sections 7.1 and 7.2 of the Code

36. The Tribunal found that the Factor had failed to comply with these sections of the Code by failing to follow the procedure set out in their written statement and failing to escalate the Homeowner's complaint to senior management.

Failure to comply with Section 6.2 of the Code

37. The Tribunal found that the Factor had failed to comply with this section of the Code. Despite having out of hours arrangements in place, the incorrect phone numbers meant that the procedures for dealing with emergencies were inadequate and did not work on this occasion. The fire brigade could not carry

out the emergency work required because they could not gain access to the plant room.

Failure to carry out the Property Factor's duties

38. There was discussion about the matters raised by the Homeowner as alleged breaches of the Property Factor duties. It was agreed that all the matters raised fell within the complaints under the Code and it was not necessary or appropriate in the circumstances for the Tribunal to consider whether there had been a breach of Property Factor duties.

Observations

39. The Tribunal was concerned and surprised by the Factor's apparent failure to treat this incident with the seriousness it deserved. The response of the Factor was entirely inadequate. Leaving aside the serious breaches of the Code, the fact that senior management were not involved in assessing the situation and its impact upon the Homeowner, and ensuring that an adequate response was received from the contractor, was a matter of great concern to the Tribunal. The Tribunal was astounded to hear that the Factor did not change the phone numbers displayed outside the lift in the block of flats until the day of the hearing, eleven months after the incident. This showed a complete lack of appreciation and awareness of the seriousness of the matter and the impact upon homeowners.

Proposed Property Factor Enforcement Order (PFEO)

40. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO. The Tribunal decided to make a PFEO.
41. In considering the terms of the PFEO, the Tribunal took into account the distress, frustration and inconvenience caused to the Homeowner by the Factor's failure to comply with the Code.
42. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations.
43. A proposed PFEO accompanies this decision. Comments may be made in respect of the proposed PFEO within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Right of Appeal

44. 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.

H Forbes

Legal Member and Chairperson

27th November 2019