

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/19/3715

17K Blairmore Road, Greenock,PA15 3JT ('the Property')

The Parties:

Mrs Jenny Buckley residing at 17K Blairmore Road, Greenock, PA15 3JT ('The Homeowner')

Riverclyde Homes, Roxburgh House, 102- 112 Roxburgh Street, Greenock, PA15 4JT ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Kingsley Bruce (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with section 2.1 of the Property Factor Code of Conduct.

The decision is unanimous.

Background

1. The Factor is property factor of the Property and their date of registration as a property factor is 12th December 2012.
2. The Homeowner is heritable proprietor of the Property. She purchased the Property in 2006 and her title is registered in the Land Register of Scotland under title number REN29511.
3. By application dated 20th November 2019 the Homeowner applied to the First-tier Tribunal (Housing and Property Chamber) for a determination that the Factor had failed to comply with section 2.1 of the Property Factor Code of Conduct ('The Code').

- Section 2: Communication and Consultation.

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

4. The application had been notified to the Factor.

5. By Minute of Decision by Sarah O'Neill, Convener of the First- tier Tribunal (Housing and Property Chamber), dated 22nd January 2020, she intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 21st November 2019 to 17th December 2019) to a Tribunal.

6. The Factor had not lodged any written representations.

7. The Hearing

An oral conference call hearing took place in respect of the application on 3rd September 2020 at 10.00 am.

The Homeowner attended on her own behalf. The Factor was represented by Richard Orr, the Factor's senior project manager.

7.1 Agreed Facts

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

- The Property is a maisonette flat constructed in approximately 1960. It forms part of the block 9-25 Blairmore Road, Greenock (hereinafter referred to as 'the block'). There are 17 flats within the block.
- The Factor is property factor of the Homeowner's Property.
- In 2015 the Factor arranged for common repairs and improvements to be carried out to the block, which included replacing the existing roof. The Factor also arranged for the Homeowner to apply for a grant from Inverclyde Council to meet 50% of the cost of the common works.
- The initial estimate dated December 2015 was in the following terms:

Replace existing roof:	£45431.13 / 17 =	£2672.42
Replace Gutters:	£2018.75 / 17 =	£118.75
Repairs to downpipes:	£4694.64 / 17 =	£276.16
Excavate and install perforate drain:	£6196 / 49 =	£126.45
Fitting additional lighting:	£1802.12/ 17 =	£106.01

Jet- washing downpipes:	£640 / 17	=	£37.65
Applying liquid plastic:	£4254.72 / 8	=	£531.84
TOTAL	£63235.24		
The Homeowners' share:	£3763.26		

7.2 Preliminary Matters

7.2.1 The Factor had lodged with the Tribunal Administration a copy of the Homeowner's grant application to Inverclyde Council dated 18th December 2015 on 31st August 2020. The document was lodged late. Mr Orr explained that the document had not been lodged timeously as it was held by Inverclyde Council and they had only recently been able to obtain a copy from them. Mrs Buckley explained that she had no objection to the document being lodged late.

The Tribunal confirmed that they agreed to the document being lodged late as they were satisfied that the Factor had a reasonable excuse.

7.2.2 The Homeowner had sent the Tribunal Administration a letter dated 10th August 2020 with supporting documents. Mrs Taylor emphasised that the Tribunal were only able to consider the matters detailed in the original application and any new matters would have to be the subject of a fresh application.

7.3 The parties' representations and the Tribunal's decisions:

The Code Complaints.

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

The Homeowner's complaints.

First Complaint: Misleading Homeowners with estimated Costs for replacing the existing roof.

The Homeowner's Oral Representations.

Mrs Buckley explained that the financial information that she had been provided with in connection with the common works carried out to the Property was very confusing.

The initial estimate stated that the estimated cost of the replacement roof was £45431.13, the total cost was £63235.24 and the Homeowners' share was £3763.26. The letter from the Factor to the Homeowner dated 8th December 2015, which explained the initial estimate, stated: 'To summarize, the costs for this work are final.

The works are essential maintenance and therefore mandatory, but because this essential maintenance is required to meet SHQS it presents the opportunity that resident owners may apply for Support for owners grant for half of the costs, rather than being billed for the total amount.'

However Mrs Buckley had received a letter from the Factor dated 29th March 2018 which advised that her share of the total cost of the works was £3744.99. The calculation of the amount payable was as follows:

Total cost of works to block:	£72507.45
Share apportioned to her property:	£4438.31
Less SFO Grant	£753.31
Amount payable per enclosed invoice	£3684.99

The invoice dated 29th March 2018 was for £3744.99, which included a registration fee of £60.

Thereafter Mrs Buckley had received a letter from the Factor dated 8th June 2018 which explained that the grant she received was for a higher amount than disclosed in the previous invoice and she was now due to pay £1941.63. A revised Schedule was provided in the following terms:

Total Cost of works to block	£72507.45
Share apportioned to your property	£4438.31
Abated down to our original estimate	£3763.26
Less SFO Grant	£1881.63
Plus grant registration fee	£60.00
Amount payable	£1941.63

Thereafter Mrs Buckley received a further letter from the Factor dated 22nd May 2019 which explained that following her concerns the costs had been reviewed and a fresh invoice was provided. The Schedule detailing the calculation of the amount payable was in the following terms:

Total Cost of works to block	£69890.83
Share apportioned to your property	£4111.22
Abated down to our original estimate	£3231.42
Plus VAT	£646.28
Total cost of works	£3877.70
Less SFO Grant	£1938.85
Plus grant registration fee	£60.00
Amount payable	£1998.85

She explained that these different versions of the costs due were confusing and misleading and she doesn't understand why the figures have changed. No explanation was provided as to the amount of the grant she had received.

The Factor's Oral Representations.

Mr Orr explained that the original estimate dated December 2015 was an estimate provided by one of their contractor teams and was an 'all inclusive' estimate for grant purposes. He advised that there had been a protracted period of sign off between date of the original estimate and the final invoice being produced. The December 2015 figures were working estimates and indicative costs. He accepted that the issuing of the invoices to Mrs Buckley had not been a clean or well executed job. However he explained that the original estimates had been prepared in good faith and he acknowledged that the actual roof costs were significantly less than the original estimate. The breakdown of costs contained in the initial estimate and final invoice was inconsistent and costs stated as "Preliminaries" in the final breakdown appear to have been included under the heading of Roofing costs in the initial estimate. Consequently Mrs Buckley had not suffered any detriment as a result of this. In connection with the grant payments he advised that the final invoices are sent to the Council and the Council pay the grants based on them. He clarified that there had been no deliberate attempt to mislead Mrs Buckley.

The Tribunal's Decision:

The Tribunal found as a matter of fact that the invoices that had been sent to Mrs Buckley were not clear and they were confusing. They did not explain how the charges related to the original estimates and how the grant had been calculated. They found that the fact that the invoice had to be amended twice was evidence that the initial invoices were incorrect and false. Consequently the Tribunal determined that the invoices dated 29th March 2018 and 8th June 2018 were misleading and false.

The Tribunal were surprised that the information provided by the Factor in relation to the invoices had not been more transparent and detailed. No explanation has been provided to the homeowner as to how the grant had been calculated. Albeit the Tribunal acknowledged that Mr Orr volunteered to let Mrs Buckley have this information.

Second Complaint: Not Balloting Homeowners when necessary

The Homeowner's Oral Representations.

Mrs Buckley explained that works had been carried out to remove graffiti and repair windows were additional, non emergency works which should have been subject to a ballot of the owners to obtain their prior approval. She acknowledged that she had not been charged for these works.

The Factor's Oral Representations.

Mr Orr explained that Mrs Buckley had been deemed to consent to the main scheme of works by the fact that she had signed the grant application form which included a declaration that she agreed to participate in the programme of works. He confirmed that Mrs Buckley had not been charged for the works to remove graffiti and repair windows.

The Tribunal's Decision:

The Tribunal found that the matter of not carrying out a ballot was not a breach of the obligation on the Factor not to provide information which is misleading or false.

Third Complaint: Not supplying an official report regarding the front balcony despite this being requested three times.

The Homeowner's Oral Representations.

Mrs Buckley explained that the homeowners did not want works to be carried out to the balconies as they considered them to be private and they were not defective. The homeowners had explained to the Factor that if a survey report was provided to them and it showed the balconies to be defective they would then agree to the repair works being carried out.

The Factor's Oral Representations.

Mr Orr explained that the Factors had not obtained a report on the condition of the balconies. A survey was carried out by their contractors but no follow up report was obtained. There was a dispute with the homeowners as to whether or not the balconies were common property and at the end of the day Mrs Buckley had not been charged for the work carried out to her private balcony.

The Tribunal's Decision:

The Tribunal found that the matter of not providing a report on the condition of the balcony was not a breach of the obligation on the Factor not to provide information which is misleading or false.

Fourth Complaint: Not informing Homeowners prior to instructing extra works which were of a higher amount to those relating to the core services.

The Homeowner's Oral Representations.

Mrs Buckley explained that the Schedule A, enclosed with the Factor's letter of 22nd May 2019, listed all the works carried out. Included in this list were additional works which had not been included in the original estimate, namely 'Replace Sections of SVP to the rear' and 'Liquid Plastic costs'. The homeowners had not been consulted about these additional items.

The Factor's Oral Representations.

Mr Orr explained that these items referred to by Mrs Buckley were included within the original estimate. They are included under the headings 'Repairs to downpipes' and 'Applying liquid plastic'.

The Tribunal's Decision:

The Tribunal accepted the evidence of Mr Orr to the effect that the items 'Replace Sections of SVP to the rear' and 'Liquid Plastic costs' had been included within the original estimate under the headings 'Repairs to downpipes' and 'Applying liquid plastic'. In any event the Tribunal found that the matter of not informing the homeowners of extra works prior to instructing them was not a breach of the obligation on the Factor not to provide information which is misleading or false.

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 the requirements of the Code of Conduct in respect of section 2.1 of the Code.

Mrs Buckley had stated in her application that the dispute with the Factor had caused her upset, confusion, frustration and stress beyond belief. The Tribunal acknowledged that Mrs Buckley had suffered frustration, confusion and inconvenience as a result of the errors made in the invoices submitted by the Factors and her dealings with the Factor to understand the invoices and have the invoices corrected. The Tribunal also acknowledged that Mrs Buckley had not suffered financial detriment.

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:

'River Clyde Homes are directed to remit the sum of £250 to the Homeowner from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to them of the Property Factor Enforcement Order. River

Clyde Homes are directed to provide the Tribunal with evidence that the said sums have been paid within seven days of the payment being remitted to the Homeowner'

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.

Chairperson

Date: 21st September 2020