



First-tier Tribunal for Scotland (Housing and Property Chamber) Property Factors (Scotland) Act 2011 ("the Act"), Section 19

The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulations")

Chamber Ref: FTS/HPC/PF/17/0428

Property at 2/2, 390 Main Street, Rutherglen, G73 3AX ("the property")

The Parties: -

Mr Matthew Hardie, 106 Invergarry Drive, Glasgow, G46 8UN ("the homeowner")

South Lanarkshire Council, Property Services, Hamilton Business Unit, Pollock Avenue, Hillhouse, Hamilton, ML3 9SZ ("the property factor")

Tribunal Members: -

Simone Sweeney (Legal Member) Carol Jones (Ordinary Surveyor Member)

Decision of the Tribunal Chamber

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the property factor has failed to comply with the Property Factor's duties as required by section 17 (5) of the Act but find no breach of sections 6.7, 6.8, 6.9, 7.2 and 7.5 of the Code.

Background

1. By application dated 16th November 2017, the homeowner applied to the Tribunal for a determination on whether the property factor had failed to comply with sections 6.7, 6.8, 6.9, 7.2 and 7.5 of the Code imposed by section 14 of the Act.

2. On a separate form, attached to the application of 16th November 2017, the homeowner alleged that the property factor had failed in their duties in terms of section 17 (5) of the Act.
3. By decision dated 29th January 2018, a convenor referred the application to the Tribunal for a hearing. Notices of referral were sent to the parties on 22nd February 2018. A hearing was assigned for 13th April 2018 in Glasgow. By email of 23rd March the homeowner advised the Tribunal that he would be abroad on this date and due to have eye surgery on his return. Against this background the hearing of 13th April 2018 was discharged. A fresh hearing was assigned for 25th May 2018 in Hamilton.
4. A hearing took place on 25th May 2018 at 10am within the Tribunal building, Brandon Gate, 1, Leechlee Road, Hamilton, ML3 0XB. In attendance at the hearing was the homeowner and, on behalf of the property factor, Mr David Keane, Factoring manager and Mr William Neill, technical officer.

Evidence of the homeowner

Alleged breach of the property factor's duties

5. By way of back of background the homeowner explained that he had purchased the property in May 2016. He himself didn't live at the property but would visit at regular intervals. He noticed, almost immediately, that the condition of the close ceiling and walls of the close landing was poor. Paint was peeling from the walls. The homeowner provided photographs of the area by way of illustration. He reported his concerns to the property factor.
6. The property factor, having investigated the area, issued a letter to the homeowner dated 2nd June 2016. This letter had been produced by the homeowner with his application. The letter read,

"Work description: Renew landing ceiling and paint walls and ceiling. As an owner you would be responsible for a share of the total cost and your bill has been estimated to be approximately £257.17. At this date, I confirm that this price has been provided purely as an indication of the likely costs and may be subject to variation if additional works are found to be necessary once our contractors are on site."

7. The homeowner considered this a competitive cost for the works. He accepted that the sum referred to was no more than a quote.
8. On 1st February 2017 the property factor issued to the homeowner an invoice in the sum of £146.76. The invoice, again produced by the homeowner in support of his application, provided the following description of the charge, "*Renew landing ceiling and paint.*" The homeowner paid this bill in full.
9. Having inspected the close, the homeowner identified that no paint had been applied to the ceiling or the walls. He was satisfied that the ceiling had been repaired but was of the opinion that no further works had been completed.
10. The homeowner raised his concerns with the property factor. He highlighted to the property factor that their description in the invoice of 1st February 2017 was inaccurate and that the walls and ceiling had yet to be painted.
11. The homeowner communicated his concerns by telephone initially and then by email in or around October 2017.
12. The property factor did not dispute that neither the ceiling nor the walls of the close had been painted. However, it was explained that the property factor intended to paint the walls in the following financial year and the ceiling would be dealt with as a separate job. There would be additional charges issued for each of these works.
13. The homeowner submitted that he was issued with an invoice for the sum of £108.36 on 12th April 2017 for painting of the ceiling. He contacted the property factor to complain that he considered this cost to be excessive. The invoice of £108.36 together with the sum of £146.76 which he had paid came to the total figure of, £255.12. This almost exceeded the original quote from the property factors. This did not include the cost of painting the close walls. So aggrieved by this was the homeowner that he refused to make payment of the sum of £108.36. He intimated this to the property factor and advised that he would not make payment until his complaint had been investigated and concluded. Notwithstanding this, the property factor issued letters to the homeowner demanding payment. Each time he

received a letter he contacted the property factor to remind them why he was withholding payment.

14. The homeowner submitted that, at this time, all his communications to the property factors were by telephone. As he understood it, it was the factoring department of South Lanarkshire Council that he was contacting by telephone on each occasion. His intention when calling was to complain. He understood that he was making a complaint and that his communications were being regarded by the property factors to be a complaint. The homeowner submitted that he called the property factor many times about the same matter. He never received a conclusion to his complaint. He did not believe that the matter had ever been transferred to a complaints team. He became frustrated by requests to repeat the background to his complaint each time. The homeowner referred to a recorded message when he called the property factor indicating that his phone calls were being recorded. When he requested that an officer of the property factor listen to previous phone calls to avoid the homeowner having to repeat his complaint, he was advised that phone calls were not, in fact, recorded. This simply aggravated his frustration.
15. The homeowner claimed that an officer from the property factor's department recommended that he submit his complaint by email. The homeowner sent an email to Carol Steele on 9th October 2017. The email requested a meeting with senior management to discuss matters but the request was never granted. This email was not within the papers provided to the Tribunal and a copy was requested. On 15th June 2018, the Tribunal was provided with a copy of the email of 9th October 2017 and the subsequent emails between the parties on 31st October and 1st November 2017.
16. The email of 9th October read,

"...the bill I received on 1st of February which states payment for work done is inclusive of renew landing ceiling and paint. Further to inspection I noticed the painting had not been carried out I called the council to make them aware of this. ... Then on 5th July I received a

further bill for painting close ceiling, so basically I am been charged for a oversight.”

17. The response, written by Laura McGarvie, dated 31st October 2017 began,

“Thank you for your email into the factoring section.

A letter was sent to you by my colleague, Ms C Steele....If you are not happy with the response you received you would need to raise a Stage 1 complaint with South Lanarkshire Council. This can be done by emailing the factoring section...”

18. The homeowner sent another email to Laura McGarvie on 1st November.

He warned,

“...if you cannot resolve this I will be contacting the homeowner housing panel....”

19. The homeowner's dissatisfaction was acknowledged by the property factor in the email reply of 1st November 2017,

“I am sorry that you were not happy with our response to your enquiry.... To raise a stage one complaint you can write to us at- The Factoring Section, Hamilton Business Unit....or email your complaint to factoring@southlanarkshire.gov.uk”

20. The homeowner submitted that, following lodging of his application before the Tribunal, he received a letter from the property factor on 15th December 2017. The letter highlighted an error on the part of the property factors in their previous calculation of the works. The letter stated,

“Your share of the cost of the plasterwork repairs was £146.76. Your revised share of the cost of the repainting works was £69.03.”

21. Discovering this error did little to increase his, by now, reduced confidence in the property factors. The homeowner submitted that if the property factor could make a mistake in this calculation then, conceivably, they could make a mistake with others.
22. The homeowner confirmed that the paint work to the walls of the close remain outstanding as at today's date. The outstanding payment of £69.03 in payment of the ceiling paint remains unpaid by the homeowner. On 23rd January 2018 the homeowner received a letter from Stirling Park, Sheriff Officers, on behalf of the property factor, demanding payment of £69.03.

Allegations of breaches of the Code

23. Turning to an allegation of a breach of section 6.7 the code, the homeowner indicated that he would like to know which contractor had been carrying out the repair works. The homeowner considered the original quotation to have been very low. The homeowner doubted that a reasonably competent contractor would have provided an estimate to complete the level of work required at such a low amount. When reminded of the terms of section 6.7 of the code (that a property factor was required to disclose to homeowners any commission, fee or other payment or benefit) the homeowner submitted that he had not requested any such information from the property factor.
24. With regards to section 6.8, the homeowner alleged that there had been a "cover up" by the property factor. The original quote of £257.17 seemed too good to be true but ultimately in his view 80% of the work was not done.
25. In response to why he alleged that the property factor had breached section 6.9 was concerned, the homeowner repeated his allegation of a, "cover up".
26. With regards to a breach of section 7.2, the homeowner submitted that the first response he had received from a manager was the letter of 15th December 2017 from Mr Keane, after the application had been made to the Tribunal.
27. Finally, in respect of section 7.5, the homeowner again emphasised the fact that he had not received any communication from senior management until after the application had been made. The homeowner was

disappointed that matters had reached this level and felt that his complaint could have been resolved much sooner had a manager involved themselves. The homeowner submitted that he felt that nobody seemed interested in his complaint and he had no alternative than to proceed with an application to the Tribunal. At no point during the course of the complaint did the property factor direct him to the Tribunal. He had found information about the Tribunal within the written statement of services. Since the letter of 15th December 2017, there has been no attempt by the property factor to resolve the complaint prior to the hearing.

28. The homeowner submitted that matters could be put right by the property factor no longer insisting on the outstanding sum of £69.03, from them issuing no more letters for payment and for communication from the property factor about when the close walls will be painted. The walls of the close are in a very poor state at present and the homeowner accepted that it will be a costly exercise to bring them up to reasonable standard.

Evidence of the property factor

Alleged breach of the property factor's duties

29. In response to the allegation that the property factor had breached their duties by failing to address the homeowner's complaint, Mr Keane denied that any of the communications from the homeowner were considered to be a complaint. Rather the property factor considered all of the homeowner's communications to be enquiries.
30. Mr Keane submitted that the first time the property factor became aware of a complaint from the homeowner was intimation of the application to the Tribunal. Due to an error on part of the Tribunal administration directing correspondence to a PO Box rather than to the property factor, the homeowner's application of 16th November 2017 was not received by the property factor until 17th March 2018.
31. Mr Keane confirmed that he was aware of the email dated 9th October from the homeowner. He was not of the opinion that the terms of the letter amounted to a complaint. Rather, he considered this to be an enquiry.
32. The Tribunal chair referred to letters which the property factor had provided to the Tribunal. The letters were dated, 11th May, 13th July, 21st

September and 4th October 2017. These letters were all sent to the homeowner. All of the letters were in response to communications from the homeowner. They were all issued in response to the same issue by the homeowner. That issue was renewal of the ceiling and painting of the ceiling and walls in the close. Mr Keane denied that they were issued in response to a complaint. Mr Keane confirmed that the homeowner was not directed to the complaints department. Although he did not write these letters himself, Mr Keane conceded that he was aware of the homeowner's issue.

33. Mr Keane referred to the letter of 15th December 2017 which he had issued in response to a letter from the homeowner about his common repair bills. Mr Keane submitted that this letter had been sent to provide an explanation of how the error with the homeowner's share of the costs to repaint the ceiling had been assessed.
34. Mr Keane submitted that the property factor's complaints process is only triggered when a homeowner specifically uses the word, "*complaint*" in their communications. Until that time, the matter remains an enquiry.
35. Mr Keane advised that on the reverse of a common repairs bill it is stated that all enquiries about a bill should be directed to the property factor, in writing but there is no reference to the complaints process provided there.
36. Mr Keane wished to make a formal apology for an error in the invoice dated 1st February 2017 issued to the homeowner. The description read, "*Paint close ceiling after plasterwork.*" The ceiling had not been painted at that time and Mr Keane apologised for the confusion which this may have caused.
37. Mr Keane advised that the invoice for £69 in respect of painting the ceiling would be cancelled. He would remove this from the homeowner's account and confirmed that this would be confirmed to the homeowner, in writing.
38. Mr Keane confirmed that the walls of the close were in a poor state and still required to be painted. After the original quote of 2nd June 2016 had been issued to homeowners, further consideration had been given to the work required to address the state of the walls. A number of properties in the local area were in a similar condition and a decision had been taken by the property factor to address the works as part of a wider maintenance

project. Mr Keane submitted that this would likely result in higher charges to each of the homeowners. He accepted that this had not been communicated to the homeowners and that consultation will be required.

Response to allegations of breaches of the Code

39. With regards to an allegation of a breach of section 6.7, Mr Keane denied any breach by the property factor. Mr Keane denied that there was any commission or benefit received by the property factor from any contractors appointed by them.
40. The property factor denied any breach of section 6.8.
41. Mr Keane denied any breach of section 6.9 by the property factor. He explained that, as a matter of course, the property factor pursues contractors where there are defects from inadequate work or in the service provided. This was irrelevant here. Mr Keane believed that the homeowner made this allegation based on his dissatisfaction with the incorrect description on the invoice of 1st February 2017. Mr Keane conceded, again, that this description was incorrect and could create confusion.
42. With regards to a breach of section 7.2, this was denied by Mr Keane. It was the position of the property factor that, for this section to apply, there required to be a complaint before the property factor. As they had addressed the homeowner's issues as enquiries rather than a complaint then section 7 didn't apply.
43. Finally, it was denied by Mr Keane that there had been any breach of section 7.5 of the Code by the property factor. Mr Keane submitted that the property factor had complied with all that was required of them by the Tribunal.

Findings in fact

44. That the homeowner is the heritable proprietor of the property and received property management and factoring services from the property factor from 2016.
45. That the property factor issued a letter to the homeowner on 2nd June 2016 in which they undertook to renew the ceiling and paint the ceiling and walls of the close and provided a quote for the works at an approximate cost of £257.17.

46. That the property factor renewed the ceiling but did not paint the ceiling or walls. The property factor issued an invoice to the homeowner for this work dated, 1st February 2017. That the invoice was for the sum of £146.76 and described the work charged as, “Renew landing ceiling and paint.” That this description was incorrect.
47. That the homeowner identified that the ceiling had not been painted.
48. The homeowner contacted the property factor by telephone to highlight that the ceiling had not been painted. The property factor did not dispute this evidence.
49. That the property factor issued to the homeowner a further invoice for the sum of £108.36 on 12th April 2017 in respect of the homeowner’s share of the painting of the ceiling of the close.
50. That the homeowner contacted the property factor and expressed his dissatisfaction with this cost and enquired about the painting of the walls remaining outstanding.
51. That the property factor did not dispute having received communication from the homeowner in this regard.
52. That the property factor provided to the Tribunal a letter sent to the homeowner on 13th July 2017.
53. That the letter of 13th July 2017 was in response to a telephone call from the homeowner in connection with his common repair account. That the letter was issued in response to the homeowner’s queries.
54. That the letter of 13th July 2017 provided,

“I believe you received a notification letter or repair number 216021555 to renew landing ceiling however the work was not carried out on this repair instruction therefore you have not received a bill in relation to this repair number. Following that repair number 216092529 to paint close ceiling after plaster work repair, this work was instructed however this could not be completed as the previous repair had not yet been completed.

In the meantime repair number 216092511 was instructed to renew the landing ceiling which was carried out and following that repair number

217003683 to paint close ceiling after plaster work repair which has not yet been completed.”

55. That the property factor issued a letter to the homeowner on 21st September 2017 which was in response to the homeowner’s, “enquiry regarding a Common repair bill issued to you from South Lanarkshire Council.”
56. That the property factor issued a letter to the homeowner on 4th October 2017 in response to an email from the homeowner. It provided that,

“...following an inspection of the property the Technical officer has confirmed that the cost for the painting is incorrect. The area which required to be painted was 20m2 and not 25m2 therefore the total cost for the work is £414.20 and not £650.13. Your share being £69.03 and not £108.36 as originally advised.”

57. That the property factor received emails from the homeowner on 9th October and 1st November 2017 in which the homeowner expressed his dissatisfaction at being charged for work which had not been completed.
58. That, by email of 31st October, the property factor confirmed that these emails had been received by the “factoring section.”
59. That, notwithstanding this acknowledgement, the property factors replied to the homeowner by email of 1st November requesting that the homeowner email his complaint to the “factoring section.”
60. That the property factor issued a letter from manager Mr Keane to the homeowner on 15th December 2017 in response to a letter from the homeowner in connection with the same issues he had about the repair invoices.
61. That the letter of 15th December 2017 was the first time Mr Keane had communicated to the homeowner
62. That Mr Keane had been aware of the issues raised by the homeowner prior to this date.
63. That the letter of 15th December 2017 provided,

"Your share of the cost of the plasterwork repairs was £146.76. Your revised share of the cost of the repainting works was £69.03. Both jobs total £215.79 which is lower than the original estimate provided by the Council in our letter of 2 June 2016 which had provided an initial estimate of £257.17."

64. That the letters of 13th July, 21st September and 4th October and 15th December 2017 were issued by the property factors in relation to a complaint by the homeowner about the value and accuracy of the repair invoices issued by the property factor.
65. That the letters of 13th July, 21st September and 4th October and 15th December 2017 either did not contain any reference to the property factor's complaints procedure or mentioned it but did not provide any information on how to complain.
66. That the homeowner made an application to the Tribunal on 16th November 2017.
67. That due to an administrative oversight the application did not reach the property factor until March 2018.
68. That the letter of 15th December 2017 provides,

"As requested, I have enclosed a copy of the Council's Statement of Services leaflet and note your comments in connection with a referral to the First Tier tribunal for Scotland (Housing and Property Chamber)."

69. That the letter of 15th December 2017 indicates that the property factor had notice that the homeowner was considering escalating his complaint to the Tribunal.
70. That the property factor sought recovery of the sum of £69.03 from the homeowner through sheriff officers.
71. That the homeowner advised the property factors by telephone on several occasions that he was refusing to pay this amount until his complaint was resolved. This evidence was not disputed by the property factor.

72. That there is no breach of the Code by the property factor.

Reasons for Decision

73. The Tribunal heard evidence that the homeowner had made contact with the property factor as early as February 2017 when he received an invoice for the sum of £146.76. The property factor knew that the description for the works being charged was incorrect. The property factor did not dispute the homeowner's evidence that he continued to contact them by telephone and email querying the same invoice and raising concerns about the works undertaken and works to be completed. The property factors received details of the homeowner's complaint in his email of 9th November 2017.

They acknowledged this having been received by the "factoring section" in their email response of 31st October. Despite this, the property factors suggested on 1st November 2017 that the homeowner could only commence the stage one complaints process by sending an email to the same department which had already acknowledged the homeowner's issue. Mr Keane confirmed that he was aware of the homeowner's issue prior to issuing his letter of 15th December 2017. The homeowner was contacting the property factor about the same issue between February 2017 and him lodging an application in November 2017. The property factor made no further communication to the homeowner to resolve the complaint between receipt of the application in March 2018 and the hearing before the Tribunal. The Tribunal accepts the evidence of the homeowner that the purpose of his communications were to complain. The Tribunal is of the view that the matter should have been considered a complaint by the property factor and should have followed the relevant complaints procedure. That did not happen. The Tribunal does not accept that the communications of the homeowner were enquiries. On each occasion he made contact with the property factor, the homeowner was expressing dissatisfaction with the same matter. By definition, that is a complaint. The Tribunal does not consider it satisfactory that the property factor's complaints procedure does not commence until the word "complaint" is specifically expressed by a customer. By failing to handle the homeowner's dissatisfaction as a complaint the property factor caused

the homeowner to incur time and inconvenience, unnecessarily. The Tribunal suggests that the property factor reviews its approach to customer's complaints in that regard. The Tribunal does not consider the homeowner's complaint to have been handled effectively by the property factor. For these reasons, the Tribunal finds that the property factor has not complied with the Property Factor's duties as required by section 17(5) of the Act.

74. The Tribunal did not find that any evidence had been provided by the homeowner which showed a breach of sections 6.7, 6.8, 6.9, 7.2 and 7.5 of the Code imposed by section 14 of the Act.

Decision to issue a Property Factor Enforcement Order

75. The Tribunal, having found the factor to fail to comply with the Property Factor's duties as required by Section 17 (5) of the Act, propose a Property Factor Enforcement Order ("PFEO") to accompany this decision.

Appeals

76. 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.

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Simone Sweeney, Legal member, 19th June 2018