

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/20/1618

5/22 Waterfront Avenue, Granton, Edinburgh, EH5 1RT (“the House”)

The Parties:-

Dr Steven Kerr, 5/22 Waterfront Avenue, Granton, Edinburgh, EH5 1RT (“the Homeowner”)

RMG Scotland, RMG House, Essex Road, Hoddesdon, Hertfordshire, EN11 0DR (“the Property Factor”)

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has not failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraph 2.1 of the Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”), nor has the Factor failed to carry out the property factor’s duties as required by section 17(1) of the Act. .

The decision is unanimous.

Background

1. By application dated 23rd July 2020, the Homeowner applied to the Tribunal for a determination on whether the Factor had failed to comply with paragraph 2.1 of the Code, and whether the Factor had failed in carrying out its property

factor duties by providing inaccurate information about factor fees for the House at the time of purchase.

2. Details of the alleged failures were outlined in the Homeowner's application and associated documents including correspondence between the parties and the Factor's Written Statement of Services. The complaint concerns figures provided to the Homeowner at the time of purchase of the House. The Homeowner claims that the Factor provided false and misleading information in respect of the annual factoring fee, as the figure provided at the time of purchase was £224.16 less than the actual annual factoring fee.
3. The Homeowner intimated his concerns to the Factor by email dated 1st May 2020.
4. By decision dated 8th September 2020, 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. Hearing notification letters were sent out to parties on 18th September notifying parties of a hearing scheduled for 30th October 2020.
6. On 14th October 2020, the Factor lodged written representations and productions, comprising completion notice, maintenance budget, invoice and letter, development schedule, service charge budget, Written Statement of Services and complaint history.

The Hearing

7. The hearing was held on 30th October 2020 by telephone conference. The Factor was represented by Ms Lisa Pieper, Regional Manager. The Homeowner was not in attendance. The hearing was delayed in order to attempt to contact the Homeowner. The Homeowner could not be contacted.
8. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Homeowner had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Homeowner upon the representations of the Respondent and the material before the Tribunal

Alleged breach of paragraph 2.1

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

Position of the Homeowner

10. In his application, the Homeowner stated that he purchased the House in January 2020. In December 2019, the Factor provided a factor fee quote of

£687.04 per year. In February 2020, he received his first bill which stated the ongoing charges per year to be £911.20. The Homeowner's complaint that inaccurate information had been provided at the time of purchase was progressed through the Factor's complaints procedure. The Homeowner was offered a payment of £224.16 as a one-off compensation payment. The Homeowner was not satisfied with this and wished to have the Factor held to the original quote, with a pro-rata increase each year, if applicable.

Evidence on behalf of the Factor

11. In its written representations, the Factor stated that they are one of a group of over 20 companies within the Places for People Group Ltd. ("PfPG"). Another separate company within the group, Places for People Homes Ltd. ("PfPH"), provide property and management services. PfPH are the developers of the development of which the House forms part. The Homeowner purchased the House from PfPH. The Factor is a separate registered company within the group structure of PfPG, and was appointed to provide factoring services to the development. The Factor had no direct contact with the Homeowner at the time of purchase. The first contact between the parties was in February 2020, when the Homeowner received his first invoice together with other relevant documents.
12. Sales negotiations were conducted between the solicitors acting for the Homeowner and PfPH respectively. The maintenance budget provided to the Homeowner is dated 2017. The Factor provides budgets for its developments to PfPH but it is not responsible for what PfPH do with the information. The Factor did not provide any information direct to the Homeowner at this time, therefore, there could be no breach of the Code, and any redress should be sought from the body that provided the information.
13. Ms Pieper said the Factor was not responsible for passing the incorrect figures to the Homeowner. The Homeowner has relied on an outdated document, clearly dated 2017, as the actual costs. These figures were provided as a budget for the developer only and were not intended to be passed to homeowners. The correct information on factoring costs was contained in a sales leaflet that stated annual factoring costs would be around £1000 per year. This leaflet had been updated in 2018 and 2020. In February 2020, the correct information on factoring costs was provided to the Homeowner by the Factor.
14. Responding to questions from the Tribunal, Ms Pieper said, although the Factor falls within the PfPG group, it is a separate company, as if PfPH. PfPH and the Factor have separate solicitors. The figures contained in the maintenance budget provided to the Homeowner are not complete figures for the full site. They are estimated figures, and there appear to be figures missing. She did not know why these figures had been passed to the Homeowner by PfPH. The relationship between the Factor and a homeowner is established when the property becomes occupied. The Factor is notified by the developer and writes to the homeowner within four weeks. There was no

relationship between the Factor and the Homeowner at the time that the maintenance budget was provided by PfPH.

15. Responding to questions as to how the Factor was in a position to offer compensation on behalf of PfPH if they are, indeed, operating as separate companies in the manner that Ms Pieper had alleged, Ms Pieper said the operating director had looked at the issue from the point of view of the group, rather than just the Factor.
16. Asked by the Tribunal about a quote on the Factor's website that states that the Factor prides itself on its ability to collaborate across the specialist companies within the group, Ms Pieper said PfPG is a huge group with some operations that she is not familiar with. She said she was not best placed to answer questions on the group structure. PfPH and the Factor are separate companies within the group, with separate registration numbers. The Factor provides the information for the sales leaflet and that should be passed to a prospective purchaser.
17. Responding to questions from the Tribunal regarding the written representation made by the Factor that both the Factor and PfPH could have acted quicker in updating the budget document, Ms Pieper said this referred to the sales leaflet and the fact that it had not been updated in 2019. However, despite the failure to update, the figures in the 2018 leaflet were not out of date.

Breach of Property Factors Duties

18. Ms Pieper relied on the submissions previously made, and had nothing further to add in respect of this alleged breach other than to deny any breach had occurred.

Findings in Fact

19.
 - i. The Homeowner is the owner and occupier of the House.
 - ii. The Factor registered as a Property Factor on 5th April 2018 under registration number PF000763.
 - iii. The Factor is a separate registered company within the group structure Places for People Group Ltd.
 - iv. People for Places Homes Ltd. is a separate company within the group structure Places for People Group Ltd.
 - v. Places for People Homes Ltd. were the heritable proprietors of the House and the development within which it is situated.
 - vi. The Factor was appointed as factor of the development by Places for People Homes Ltd.

- vii. During sale negotiations in or around December 2019, the Homeowner's solicitor was provided with a document by the solicitor acting for Places for People Homes Ltd. purporting to be a maintenance budget for the factoring service in respect of the House.
- viii. In February 2020, the Homeowner received an invoice for factoring services from the Factor, showing an increase of £224.16 on the figure previously provided in the maintenance budget.
- ix. Between 1st May and 13th July 2020, the Homeowner's complaint was progressed through the Factor's complaints procedure.
- x. The Factor offered a one-off compensation payment of £224.16 to the Homeowner, made on behalf of the Factor and Places for People Homes Ltd. The Homeowner refused the payment.

Determination and Reasons for Decision

20. 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

21. The Tribunal found, on the balance of probabilities, that the Factor had not provided information that was misleading or false. It was not clear on the evidence before the Tribunal that the inaccurate information provided to the Homeowner at the time of purchase of the House, in the form of a maintenance budget, was provided to the Homeowner by the Factor. Although the information appears to have originated with the Factor, it was provided to PfPH by the Factor for the purposes of producing budgets, and was not intended for distribution to homeowners. The information was then provided to the Homeowner by PfPH. It was not clear to the Tribunal that, at the time of the provision of the information, there was any relationship between the parties.

Failure to carry out the Property Factor's duties

22. The Tribunal did not find that there had been a failure to carry out the property factor's duties, for the reasons mentioned in the previous paragraph.

Observations

23. The Tribunal was concerned that inaccurate information was passed to the Homeowner by PfPH, a group allied to the Factor. This is an unsatisfactory situation given the claims of collaboration across the specialist companies within the group. Although the Tribunal found Ms Pieper to be a credible and reliable witness, it observed that it would have been helpful to have heard from someone that knew more about the relationship and boundaries between the Factor, PfPH and PfPG, and details of the group structure.

24. The Tribunal observed that it was not helpful that the Homeowner did not participate; however, the Tribunal considered that the Homeowner had set out his case clearly in the application, and there was sufficient information before the Tribunal to proceed with the hearing.
25. In all the circumstances of the case, the Tribunal determined that there had not been a breach of the Code or a failure to carry out the property factor's duties.

Right of Appeal

26. **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.**



Legal Member

30th October 2020