

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/19/0802**

**Re: Property at Flat G/02, 4 James Watt Way, Greenock PA18 2AN ("the Property")**

**Parties:**

**Mr Michael McGlynn, residing at Flat G/02, 4 James Watt Way, Greenock PA18 2AN ("the homeowner")**

and

**Life Property Management Ltd, incorporated under the Companies Acts (Registered Number SC253869 and having a place of business at 70 West Regent Street, Glasgow G2 2QZ ("the factors")**

**Tribunal Members ("the tribunal"):**

**David Preston (Legal Member) and Andrew Taylor, Surveyor (Ordinary Member).**

**Decision:**

**The tribunal, having made such enquiries as it saw fit for the purpose of determining whether the factors had complied with the Code of Conduct for Property Factors ("the code") determined that the factors were in breach of neither Section 3.3 nor Section 6.7 of the Code.**

**The decision was unanimous.**

**Background:**

1. By application dated 8 March 2019 the homeowner applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) ("the Tribunal") alleging a failure on the part of the factors to comply with various sections of the Code and with their duties under the Act. Following correspondence between the homeowner and the Tribunal, by email dated 12 September 2019 the homeowner confirmed that he sought a determination that the factors had failed to comply with only Sections 3.3 and 6.7 of the Code.

2. By Notice of Acceptance dated 7 October 2019, a legal member of the tribunal with delegated powers so to do referred the application to this tribunal for determination.
3. By letter dated 4 November 2019 the factors submitted a written response together with supporting documentation as per the Inventory submitted by them.

### **Hearing:**

4. A hearing took place at Glasgow Tribunal Centre on 4 December 2019. The homeowner attended in person and represented himself. The factors were represented by Mr David Reid and Mr Alistair Wallace.
5. At the outset, the legal member reminded the parties that the hearing would be conducted in terms of the Procedure Rules and the Code. The proceedings would be as informal as possible but if necessary the tribunal may require a degree of formality to maintain an adequate structure to allow the tribunal to obtain sufficient information and evidence to allow it to reach a fair and just conclusion in accordance with the overriding objective in terms of the rules.

### **Summary of Homeowner's Position**

6. The homeowner referred to his written representations and documents lodged by him with the application.

#### **Section 3.3**

7. The homeowner complained that he had difficulty in getting invoices from the factors to support the charges which had been incurred. In particular, he complained that he had been provided with an invoice from PR24 (in Appendix 2 of the factors' submissions) for an electrical inspection. He thereafter sought further documentation from the factors and, in response to a Subject Access Request (SAR) under GDPR, he was given a box of papers which included the electrical inspection report which he discovered had not been carried out by PR24 who raised the invoice, but by Jim Boyd in respect of whom there was no invoice and the homeowner had sought clarification of the position and had required to make further requests for a copy of that invoice.
8. The homeowner said that the factors had no basis to run an invoice for a periodic electrical inspection through what he regarded as a shell company (PR24), which he contended was unnecessary and did not benefit the homeowners. He contended that the homeowners in the development had not benefitted in any way through the use of that company and that it was only the factors who had done so through their interest in the company.
9. The homeowner believed that the electrical work involved had been routine work and should have been carried out as part of the core services provided by the factors. He did not see why the work had been contracted to PR24 who had subcontracted it to Jim Boyd.
10. The homeowner explained that he had requested the invoices for this work on numerous occasions and had only received copies in April 2019 after he had instigated the SAR. He had received a box of paperwork including the electrical report which had been prepared by Jim Boyd. He therefore sought a copy of the Jim Boyd invoice which had eventually been produced. He complained that this

showed that PR 24 had needlessly appointed Jim Boyd to do the work which had incurred an additional charge from which the factors had benefitted. He did not see what benefit had been achieved for the homeowners from this additional charge.

#### Section 6.7

11. The homeowner contended that the factors had not disclosed the payments which they had received through the involvement of PR24 in the electrical contract in accordance with this section. This had not been clear or transparent and was only discovered after he had obtained the invoices through the SAR. He contended that the mark up on the Jim Boyd invoice had been received by the factors.

#### **Summary of Factors' Position**

12. The factors adopted their written representations and documents submitted in response to the homeowner's representations.
13. The factors explained that, as shown in their Written Statement of Services (WSS), copies of which had been lodged with their response, they had an affiliation with PR24. This, in their view complied with the Code. The affiliation arose through the fact that Mr Reid as a Director of the factors was also a Director of PR24. The factors had therefore not received any payments from PR24 nor were they entitled to.
14. In any event, Mr Reid advised that he had resigned as a Director of PR24 and sold his shares in June 2018, after which time he had no involvement with PR24 apart from asking them to recover the copy invoices sought by the homeowner.
15. Mr Reid explained that, having sold his interest in PR24 there had been a delay in obtaining the copy invoices and he passed them to the homeowner when he got them. He said that the homeowner had initially requested 10 years of invoices in respect of which he had calculated the cost of acquiring which was significant. He had offered a number of options to the homeowner to inspect them which would not incur the same level of cost.
16. Mr Reid explained the system of sub-contracting which had occurred in this case. The factors had instructed PR24, who were on their list of approved contractors, but were not registered with NICEIC. They had therefore sub-contracted the work to Jim Boyd, who was registered but was not, at that time, on the factors' list of approved contractors. PR24 therefore had been required to supervise and administer the work, for which they were entitled to make a charge.

#### **Tribunal's Deliberations**

#### Section 3.3

17. The tribunal considered the circumstances in relation to this section and concluded that the factors had not been in breach. They had issued their statements and had responded to the homeowner's request for invoices, including the PR24 invoice of 5 June 2018. They had thereafter responded to the SAR and provided such documentation as was relevant to the SAR. When asked by the homeowner to recover the Jim Boyd invoice, they had done so, although that had taken some

time and chasing up on their part. The homeowner contended that the factors should have retained documentation after Mr Reid had removed himself from PR24.

#### Section 6.7

18. The tribunal considered that the factors did not have any direct interest in PR24 and would not have been in a position to retain such documentation, even if it had been able to identify what documents might be required by homeowners. The interest was personal to Mr Reid and not to the factors, although they had included information about the affiliation in their WSS.
19. The tribunal accepts that the situation is somewhat complex as a result of the legislation and the terms of the Code. Section 6.8 requires the factors to disclose any financial or other interests that they may have with any contractors appointed. The factors took the cautious approach and disclosed the affiliation, although that arguably was not between the factors and PR24 directly, but indirectly through Mr Reid's joint Directorships. However, having made such a disclosure in their WSS it would not be unreasonable to expect that section 6.7 would apply to such an interest, or at least confirmation by them that despite the affiliation they did not receive any commission, fee or other payment or benefit.
20. The homeowner was therefore entitled to raise the issue as he has done, and it falls to the tribunal to determine whether the factors had breached section 6.7, which could be said to be a matter of interpretation of the Code in the particular circumstances of this case.
21. However, in any event the tribunal noted that the invoice from PR24, at Appendix 2 of the factor's submissions, is dated 5 June 2018. The tribunal also consulted the Companies House website and ascertained that Mr Reid had ceased to be a Director and a person having significant control of PR24 on 1 June 2018. Any interest which Mr Reid may have had in that company ceased prior to the date on which that invoice had been raised and he would not, by that time have been entitled to any commission, fee or other payment which might have arisen as a result of him holding those positions.
22. In view of the fact that this point had not been put to the parties at the hearing and had not therefore been addressed, the tribunal determined to issue a Direction dated 6 December 2019 seeking representations from them on this point. No such representations were received so the tribunal has proceeded to its Decision.
23. The tribunal could see the homeowner's position that, on the face of it, there was an interest / affiliation between the factors and PR24 which had been declared under section 6.8 of the Code, but no detail of any fee, commission or other payment or benefit had been provided as required by section 6.7.
24. The tribunal considers that there is a logic in that if the factors consider that an interest under section 6.8 exists, then under section 6.7 homeowners should be entitled to see the detail of what stems from that interest.
25. In all the circumstances the tribunal determines that the factors were not in breach of sections 3.3 or 6.7 of the Code.

26. The tribunal pointed out that the various versions of the WSS were indistinguishable and suggest that future versions should include a date or a version number.
27. The tribunal would also record that had Mr Reid not disposed of his interest in PR24 prior to the invoice being raised, it would have looked for at least a disclosure of the fact that any benefit would have accrued to Mr Reid personally and not to the factors. Whilst the Code may not specifically require this, the tribunal considers that in the interests of transparency and openness as promoted through the use of the Code, as outlined in Section 3, such a statement would put the position beyond any doubt for the benefit of homeowners and would be within the spirit of the Code.

### **Appeals**

**A homeowner or property factor 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.**

David Preston

Chairman

13 January 2020

