



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011

Case reference: FTS/HPC/PF/22/2047

Re:- 8/7 Hawkhill Close, Edinburgh EH7 6FE

The Parties:-

Mr Iain Jackson, 29 Craigmount Gardens, Edinburgh EH12 8EB
("the Applicant")

and

**Hacking and Patterson Management Services, 103 East London Street,
Edinburgh EH7 4BF**
("the Respondent")

Tribunal Members:

Richard Mill (legal member) and Elizabeth Dickson (ordinary member)

Decision

The Tribunal unanimously determined that the respondent has complied with the Code of Conduct for Property Factors ("the Code").

Introduction

By application dated 24 June 2022, the applicant complains about the respondent breaching a number of sections of the Code. These are specified as sections 4.5, 4.6, 4.8 and 4.9.

The written application also complained that the respondent failed to carry out the property factor's duties. The applicant, on clarification, later confirmed by email on 26 August 2022 that no duties complaint was being insisted upon.

The background complaint of the applicant relates to the alleged failure of the respondent to communicate with him directly regarding outstanding factoring invoices for the property. He owned the property jointly with his ex-partner and lived with her up to January 2014 when they separated. The property, factored by the respondent had been rented out from around 2009. The applicant failed to advise the respondent as to his up to date contact details then but alleges that the respondent ought to have made enquiries themselves regarding his whereabouts. His ex-partner was subsequently sequestered and the applicant further complains that the respondent had a duty to advise him of that.

Documentary evidence

The initial application from the homeowner was accompanied by numerous items of copy correspondence. Supplementary written submissions were received on 21 October 2022. Further submissions and documents were received from the applicant's representative on 28 October 2022. The majority of these were further copy communications.

The respondent lodged formal written submissions dated 21 October 2022 together with an inventory of 44 documentary items.

Hearing

A Case Management Discussion (CMD) took place on 22 November 2022 at 2.00 pm. The applicant was represented by his father, Mr Derek Jackson. The respondent was represented by Miss Emma Blair, Associate Regional Director of the respondent company.

Upon discussion with both parties representatives it was clear that neither had anything additional to submit beyond the terms of their written submissions and documentary productions. The applicant's representative made a clear invitation to the tribunal to determine the application on the basis of the documentary material available without participating in a further hearing.

The Tribunal acceded to the applicant's representative's request concluding that the fixing of an evidential or other hearing was unnecessary and would simply lead to undue delay in the determination of the application. Rule 17(4) provides that the Tribunal may do anything at a case management discussion which it may do at a hearing.

The Tribunal made some further inquiry into the facts, for clarification. Both parties representatives were then afforded the fair opportunity of making final concluding submissions.

The Tribunal reserved its decision.

Findings in Fact

1. The applicant is Mr Iain Jackson. He was the former one-half owner of the property at 8/7 Hawkhill Close, Edinburgh EH7 6FE ("the property"). The other half-share was owned by his ex-partner, Ms Leone Shahfar.
2. The respondent is the appointed property factor for the development within which the property is situated. The respondent assumed responsibility for the factoring duties in 2011.
3. The applicant and Ms Shahfar purchased the property in 2007. They let the property to successive tenants from in or about 2009. The contact details which the respondent had for the applicant and Ms Shahfar were their common residential address of Flat 1, 22 Hesperus Crossway, Edinburgh and an email address for Ms Shahfar.
4. The applicant and Ms Shahfar separated in January 2014. The applicant moved out of the property which he and Ms Shahfar occupied. The applicant returned to live with his parents at 29 Craigmount Gardens, Edinburgh. He did not inform the respondent of his new address or contact details.
5. The applicant suffers from mental health problems. This has impacted upon his ability to deal with administrative matters. The applicant de facto abandoned his responsibilities in respect of the property. He did not seek to ensure that liabilities for the property were being maintained. This included the factoring account with the respondent but also the mortgage, held with Santander.
6. The applicant made enquiry with Ms Shahfar in or about 2016 regarding their financial arrangements as they related to the property. He did not pursue her further and did not take any other steps such as identifying the respondent's contact details, which could have been ascertained by other means, and making direct enquiries. The applicant's family, who were aware of his poor health and financial responsibilities in respect of the property did not assist him further.
7. Ms Shahfar was sequestered on 27 March 2018. It was not the responsibility of the respondent to advise the applicant of this fact and would have been a breach of her personal data to have done so. The respondent was unable to do so in any event due to the applicant failing to provide his contact details.
8. Messrs Russell Gibson McCaffrey, solicitors were instructed by the respondent throughout to pursue the applicant and Ms Shahfar for the factoring fees due. In early August 2018 they were able to make contact with the applicant's father by telephone to advise of the impending action planned to sequester him in respect of the factoring debt. This was the catalyst to the applicant and his father finally taking steps to make further enquiries and arrange for repayment of the debt due to the respondent.

9. The applicant's factoring account with the respondent was in arrears for the period from 17 May 2014, ultimately in the sum of £6,401.52. The applicant and Ms Shahfar, as joint owners, were jointly and severally liable for these sums.
10. Following negotiations between the applicant and Ms Shahfar they entered into a formal agreement regarding the sale of the property and repayment of the factoring charges due to the respondent. The property was sold in August 2020 with the sums due to the respondent being repaid in full. A Notice of Potential Liability previously registered to protect the respondent's interests was discharged. There is no ongoing relationship between the parties.

Reasons for Decision

The Tribunal was satisfied that it had sufficient detailed evidence upon which to reach a fair determination of the application.

The Tribunal's decision is based upon the Tribunal's detailed findings in fact which were established on the basis of the documentary evidence together with clarifications in the oral submissions from the parties representatives.

The Tribunal has considered all the evidence and submissions and made findings in fact in relation to the relevant live disputes between the parties. It is not necessary to make findings in facts in relation to every element of the application. The failure to make more extensive findings in fact does not carry with it any assumption that the Tribunal has failed to consider the whole evidence or that the Tribunal's reasoning was based upon a consideration of only parts of the evidence.

The Tribunal determined the applicants Code complaints with reference to its primary findings.

- 4.5 "You must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue timely written reminders to inform individual homeowners of any amounts outstanding."

The respondent has administrative systems in place to monitor outstanding charges due by homeowners. Their Debt Recovery Procedure is transparent and easily accessible by all their customers. In accordance with this procedure reminders are issued at set intervals following the quarterly accounting periods, in February, May, August and November each year. These reminders are issued by post to either the property address or the alternative address provided for this purpose. The common charge invoices and any reminders were issued to the address provided by the applicant and Ms Shahfar, namely Flat 1, 22 Hesperus Crossway, Edinburgh and the specified email address provided. The respondent cannot be expected to have done any more.

- 4.6 "You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them (subject to the limitations of data protection legislation)."

Whilst the non-payment of common charges can affect neighbouring homeowners, either through the provision of services or the redistribution of debt, this is not an option which is commonplace for the respondent to implement and, in this instance, the outstanding debt did not affect any neighbours. In the circumstances no notification of same was issued. It is not the respondent's obligation to advise the applicant of the financial position of his ex-partner. Further his details were unknown as he had not provided them to the respondent. The applicant's position is that the respondents were in breach of this part of the code by failing to inform him of his ex-partner's factors fees debt. However, the code refers to debt recovery problems of *other* homeowners. The debt recovery problem in this case related to the applicant and his partner's debt as joint owners, therefore there is no obligation under this part of the code to inform him of his own (albeit joint) debt. It has already been established that they have systems in place to ensure the regular monitoring of payments due from homeowners.

- 4.8 "You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention."

In accordance with their debt recovery procedure, the respondent issued all common charge notices, reminder statements and letters which contain the full details of the consequences of non-payment. This correspondence was issued to the sources historically nominated by the applicant and Ms Shahfar for this purpose. The respondent could not have been expected to know about the applicant's separation or be reasonably expected to make enquiries into their relationship. It was not the duty of the respondent to issue correspondence to any other source or by other means which would have been a breach of data protection obligations. All fair and reasonable notice of the debt recovery steps being taken were issued in a professional and transparent manner to the sources nominated by the applicant and Ms Shahfar.

- 4.9 "When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position."

The applicant's complaints in this respect are not directed towards the respondent directly, but are directed in relation to the alleged actions of their agent, Russell Gibson McCaffrey solicitors. On the basis of all the

evidence available it was clear to the Tribunal that the solicitors acting did nothing other than (helpfully) advise the applicant via his father that further legal action by way of sequestration was planned. They appear to have acted professionally by agreeing to delay the commencement of such action once engagement with the applicant had taken place. They were entitled to advise of the planned legal action. By doing so this cannot be construed as intimidating or threatening. The Code makes it very clear that a reasonable indication of taking legal action is unsurprisingly permitted. There was actually a benefit to the applicant by being advised of these facts.

Further comments

The Tribunal had no hesitation in concluding that the applicant's complaints against the respondent are without merit.

The applicant, being a co-owner of the property, always had joint and several liability for the property. This was the case for all aspects of the property, including the factoring fees, mortgage payments, any repairs and responsibility a landlord. The fact that he had delegated his responsibilities, in a less than formal fashion, does not relinquish him of his own legal obligations.

It is appreciated that the applicant had personal health problems but there is no evidence that he lacked legal capacity to deal with his financial affairs or delegate his own responsibilities to another via a power of attorney arrangement for example.

The applicant complains that his parent's telephone number was always available to the respondent and they failed to contact him. There is no evidence that the respondent had such contact details until recently. The document listed as item 29 in the respondent's inventory stipulates the information held as at 10 March 2022. It is clear that the details reflected there are post sale of the property in 2020.

The applicant complains that his former address, at the time of purchase of the property in 2007, was recorded wrongly. A copy of the standard security signed by him in favour of Alliance and Leicester Building Society was produced. The respondent is not responsible for this. The applicant's solicitor would have prepared the document on the direct instructions of the applicant and it is noted that he personally signed the document. He obviously wished, for reasons only known to him, to have his address specified as it was.

The applicant questions the legality of the Sheriff Officer's service of documents upon him (on the instructions of the respondent's solicitors Russell Gibson McCaffrey). There is no need for personal service. The Sheriff Officers were clearly satisfied that lawful service was effected by them and certified that.

The respondent cannot have been reasonably expected to question the standing instructions to their organisation regarding the contact details for the applicant and Ms Shahfar. It was not their responsibility to seek out alternative contact details for their customers. They were entitled to assume and act upon the assumption that the

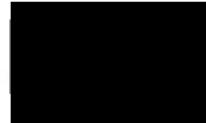
contact details provided previously by the applicant and Ms Shahfar were correct in the absence of being told otherwise. It is incredible to find, as the applicant invited us to, that the respondent had the applicant's contact telephone number all along and chose, either willingly or otherwise to not contact him despite them carrying a significant debt of several thousand pounds.

There are a couple of very clear admissions regarding the applicant's own failings which are stark in their terms. Comprised within the supplementary written submissions requesting an oral CMD the applicant's representative states "There is no way my son contacted Hacking and Paterson..." ; and in an email sent by the applicant's father to Elizabeth Cleghorn of the respondent's organisation on 6 December 2021 "My son did not think to inform your company of his new address..." The applicant cannot seek to place obligations upon others to excuse him of his own legal responsibilities, regardless of his own state of health. The respondent is not culpable for the administrative and financial errors made by the applicant himself.

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.

Legal Member



Date: 24 November 2022