



First-tier Tribunal for Scotland (Housing and Property Chamber) under The Property Factors (Scotland) Act 2011

Reference numbers: FTS/HPC/PF/23/2244

Re: Property at 73 Moorpark Avenue, Glasgow ("The Property")

The Parties:

Ms Agata Marczak, 73 Moorpark Avenue, Glasgow ("the Applicant")

Lowther Homes, Wheatley House, 25 Cochrane Street, Glasgow G1 1HL ("the Respondent")

Tribunal Members:

Mr Andrew McLaughlin (Legal Member) Mr Les Forrest (Ordinary Member)

Background

[1] The Applicant alleges that the Respondent has breached various aspects of the Property Factor's Code of Conduct "The Code". The Sections of the Code alleged to have been breached are,

Overarching Standards of Practice

Sections 2

"You must be honest, open, transparent and fair in your dealings with homeowners"

Section 11

"You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure."

Insurance:

Section 5.3

"A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:

- *the basis upon which their share of the insurance premium is calculated;*
- *the sum insured;*
- *the premium paid;*
- *the main elements of insurance cover provided by the policy and any excesses which apply;*
- *the name of the company providing insurance cover; and*
- *any other terms of the policy.*

This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner."

Section 5.5

"A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the policy. They should also disclose any financial or other interest that they have with the insurance provider or any intermediary. A property factor must also disclose any other charge they make or apply for arranging such insurance."

Section 5.8

"On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes".

Section 5.9

"Applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available to homeowners on request".

Basis of the Application

[2] The Applicant accuses the Respondent of breaching their obligations in respect of disclosing information relating to insurance and the ensuing complaint about that issue. The Applicant claims that:

"They failed to provide us with the reasons for selecting this insurer, any commission/benefit received, previous quotes, full documents of the current policy or tendering process upon our request. The initial response from them was received within one day while the subsequent ones were ignored."

[3] The Application was dated 3 June 2023.

The Hearing

[4] The Application called for a Hearing by conference call at 10 am on 22 January 2024. The Applicant was personally present. There was no appearance on behalf of The Respondent. The Respondent had been competently notified of the details of the CMD. Consequently, the Tribunal decided to proceed in the Respondent's absence. The Applicant had no preliminary matters to raise.

[5] The Tribunal had certain observations to discuss with the Applicant. These appeared to represent fundamental challenges as whether or not the Respondent even had a stateable case to answer. The Tribunal discussed these with the Applicant. Having done so, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant is aggrieved at the Respondent as a result of their transparency regarding arranging insurance for the block of four Properties of which the Applicant's home forms part. She has frequently emailed the Respondent over a course of many months challenging them about the quality of the information they have provided and its compatibility with their obligations of the Code.*
- II. *The Respondent provided the Applicant with full information regarding the block buildings insurance policy at least as early as 17 February 2023. Documentation to this effect has been lodged by the Applicant with the Application. This correspondence alone provides a comprehensive statement of the Respondent's block insurance arrangements that satisfies their obligations under paragraphs 5.3 and 5.5 of the Code.*

- III. *The Applicant has been seemingly unsatisfied with this and appears to think she is being overcharged. In support of this contention, she has produced some print outs from online quotes to arrange home insurance for her own property in ignorance of the fact that the Respondent has to take out block building insurance. The Applicant appears misinformed and misguided about how a factor is supposed to go about insuring a building and how such policies are arranged.*
- IV. *The Applicant has repeatedly challenged the Respondent about their insuring of the building for reasons that are not entirely clear.*
- V. *On 13 July 2023, the Respondent emailed the Applicant yet again with comprehensive and unusually detailed information regarding the tender process which the Respondent had conducted to arrange the block building insurance. This provided information about how the tender was conducted and even what metrics were used to score each candidate. It discloses that "AGEAS were the winning bidder with a score of 96.00". The email goes on to say that "I am unable to provide you with the full procurement report information as this contains commercially sensitive information however I hope that you will find this information useful".*
- VI. *The Respondent is specifically entitled to withhold releasing commercially sensitive information by the terms of Paragraph 5.9.*
- VII. *The Applicant has repeatedly requested this information and still requests this information as at today's date despite the clear terms of the Respondent's efforts to resolve this matter with the Applicant.*
- VIII. *The Applicant appears to think she is entitled to see the Respondent's confidential business information. She is not.*
- IX. *The Application submitted makes at least one claim which is demonstrably false and would have been known, or at least ought reasonably to have been known by the Applicant, to have been false at the time she submitted it. The Applicant states that the Respondent: "failed to provide us with the, any commission/benefit received." That is plainly false. The Respondent clearly stated their commission in their written statement of services and confirmed that on more than one further occasion to the Applicant in their extensive email correspondence with the Applicant prior to this Application. The Application therefore appears premised on at least one key allegation that is demonstrably false and must have been known to be false when the Applicant included it in her claim and submitted it to this Tribunal.*
- X. *The Respondent has been very patient with the Applicant's baseless claims and complaints. The Respondent has acted professionally and disclosed all relevant*

information in a polite and business-like manner in keeping with their obligations under the Code.

- XI. *The Applicant's complaints have no merit in them whatsoever and the Respondent has manifestly no statable case to answer.*

Outcome

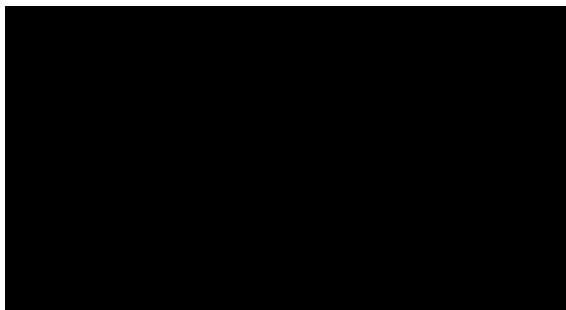
[6] Having made the above findings in fact, The Tribunal refused the Application. The Tribunal considered that, had the Application been opposed and further procedure required and the Respondent put to expense in defending the Application, then the claim may have been considered sufficiently unreasonable as to merit an adverse award of expenses against the Applicant under Rule 40.

- Refused

Right of Appeal

In terms of Section 46 of the Tribunal (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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.



Legal Member

22 January 2024

Date