



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/17/0253

Flat 4/3, 1 Lawn Street, Paisley, PA1 1HA ('the Property')

The Parties:

Martin Docherty residing at Flat 4/3, 1 Lawn Street, Paisley, PA1 1HA ('the Homeowner')

Link Housing Association Limited, Watling House, Callendar Business Park, Falkirk, FK1 1XR ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Colin Campbell (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with sections 2.1, 2.5, 5.2, 6.1 and 7.2 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 7th November 2012.
2. The Homeowner bought the Property on 14th April 2016. The Property was a new build property. It is a top floor flat in a block of ten, of which two flats are owner occupied. The Factor is property factor of the Property. The Factor's related company sold the Property to the Homeowner. The Factor and their related companies act as property factor, heritable proprietors and also Landlords in relation to properties in the block.
3. By application dated 5th July 2017, the Homeowner applied to the First-tier Tribunal (Housing and Property Chamber) for a determination that the Factor had failed to comply with the following sections of the Property Factor Code of Conduct ('The Code of Conduct').

- Section 2: Communications and Consultation.
Sections 2.1 and 2.5
- Section 5: insurance.
Section 5.2
- Section 6: Carrying out Repairs and Maintenance
Section 6.1
- Section 7: Complaints Resolution.
Section 7.1

4. The application had been notified to the Factor.

5. By Minute of Decision by George Clark as Convener of the First-tier Tribunal (Housing and Property Chamber), dated 6th September 2017, he intimated that he had decided to refer the application (which application paperwork comprised documents received in the period of 7th July 2017 to 6th September 2017) to a Tribunal.

6. An oral hearing took place in respect of the application on 12th December 2017 at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL.

The Homeowner appeared on his own behalf. The Factor was represented by Lorna Dunsmore, Commercial Services Manager, Ronni McMenemy, Senior Factoring Officer and Victoria Leaf, Development Officer.

The details of the application and the parties' written and oral representations are as follows:

Section 2: Communications and Consultation.

2.1: 'The Factor must not provide information which is misleading or false.'

The Homeowner's Complaints:

The Homeowner's First complaint:

The Homeowner had telephoned the Factor's repairs telephone line on 21st November 2016 to report a leak in his bathroom, which had been noticed coming through the ceiling of the downstairs neighbour's property.

His complaint is that he was provided with false and misleading information by the Factor as their employee, who spoke to the Homeowner on 21st November 2016, gave the Homeowner the following incorrect information:

(First) It was not the Factor's responsibility to resolve the issue and he should instruct his own plumber.

(Second) There was no builder's warranty to cover the defect as he had owned the Property for more than twelve months.

(Third) There was no buildings insurance in place through the Factors and he should contact his own insurance company.

Since reporting the repair he had been wrongly directed by the Factor to his Solicitor, to the Factor's solicitor, to the Developer and to the NHBC.

The Homeowner's Second complaint:

The Homeowner explained that he was given the wrong/ false information again in October 2016 when he reported a problem that he was not getting any hot water through his bath tap. He was again advised over the phone that he should contact his plumber. The Homeowner confirmed that the defect was eventually repaired in December 2016 by the Developer who was carrying out an end of year defects check in a neighbouring block.

The Homeowner's Third complaint:

The Homeowner explained that when he telephoned the Factor in November 2016 he was wrongly and falsely advised that the Factors only had a common insurance policy in place for his Property. It transpires that the Factors have a full buildings policy in place for his Property.

The Factor's Response:

The Homeowner's First and Second complaints:

The Factor's written representations state that they accept that if the Homeowner contacted the Factor about the leak before 24th November 2017, Link, as factor, should have referred the Homeowner to his NHBC policy and the builder/ developer. They should not have advised the Homeowner to get his own plumber without reference to the potential for NHBC cover via the builder.

The Factor has apologised to the Homeowner for any wrong information he may have been given and offered to pay him the sum of £247.20, being the amount of his plumber's bill for attending to the leak.

The Factor confirmed that they have reviewed their procedures and will change their Written Statement of Services to emphasise to owners that they should intimate such defects to the NHBC.

At the hearing Lorna Dunsmore accepted that it was potentially misleading for the Homeowner to have been advised to arrange his owner plumber to carry out the repair instead of contacting the NHBC. However this was a genuine error. She confirmed that the offer to pay the Homeowner's plumber's bill is still open.

The Homeowner's Third complaint:

At the hearing Lorna Dunsmore explained that they do not actually record telephone conversations in full. They only record the outcomes of telephone calls. She apologized for the Homeowner being given the wrong information about insurance cover over the phone.

The Tribunal's Decision:

The Tribunal accepted the Factor's admission that false information had been provided, as stated, and determined that the Factor had failed to comply with section 2.1 of the Code of Conduct.

2.5: 'You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.'

The Homeowner's Complaint:

The Homeowner's First complaint:

The letter from the Factor to the Homeowner dated 7th April 2017 stated that he would receive a response by 21st April 2017. He did not receive a timely reply. He received an email dated 26th April 2017 which stated that he would receive a response within 7 days.

The Homeowner's Second complaint:

He received an email dated 19th May 2017 saying he would receive a response next week but he did not receive a response.

The Factor's Response:

The Homeowner's First and Second complaint:

The Factor had received a stage one complaint on 25th November 2016 about reimbursement for the plumbing leak and information about insurance. On 25th March 2017 after further correspondence the Factor advised the Homeowner that his

complaint had been escalated to a stage 2 complaint and he would receive a reply by 21st April 2017. Unfortunately due to a delay in logging the complaint the wrong date was logged on the Factor's complaints database resulting in a late response on 28th April 2017 being issued without any prior update regarding a revised timescale. Following the Factor's final response they received follow up communications from the Homeowner, one of which was responded to later than anticipated due to requiring further information from their solicitor.

Unfortunately the Factor's complaints procedures were not followed in terms of escalating complaints at the right point or adhering to timescales. Additional training has been provided to the Factor's staff in order to ensure that the process is understood and adhered to in the future.

The Tribunal's Decision:

The Tribunal accepted the Factor's admission that they had failed to respond to the stated enquiries and complaints timeously and determined that the Factor had failed to comply with section 2.5 of the Code of Conduct.

5.2: 'You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.'

The Homeowner's complaint:

The Homeowner purchased his Property in April 2016 but he did not receive full insurance details until December 2016. Also as previously stated he was wrongly advised by the Factor that they only had a common insurance policy in place.

The Factor's response: The Factor apologised for the delay in providing the Homeowner with the buildings insurance details. They explained that the delay was due to an internal communication failure. The process for issuing insurance documents to new owners has been reviewed and is now monitored to prevent a recurrence of this situation. The Homeowner has complained that he was provided with contradictory information regarding buildings insurance cover. They have no records of the wrong information being provided about insurance other than the complaint received from the Homeowner about this issue on 25th November 2016. However the Factor has apologized to the Homeowner if wrong information was provided and for the late issuing of insurance details.

At the hearing Lorna Dunsmore emphasised that the wrong details were provided due to human error and explained that it was not a deliberate act to conceal. The

Factor has revised their procedures and will now provide homeowners with the insurance details within one month of them moving into their properties.

The Tribunal's Decision:

The Tribunal accepted the Factor's admission that they did not provide the Homeowner with clear insurance information within a reasonable time following his purchase of his Property and incorrect details had been provided by the Factor. Consequently the Tribunal determined that the Factor had failed to comply with section 5.2 of the Code of Conduct.

6.1: You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.'

The Homeowner's complaint: The Homeowner explained that he completed an online form to advise the Factor of a dripping sound in the attic of his Property on 12th October 2016. The defect was repaired in December 2016 but he received no other communication from the Factor regarding the matter.

The Factor's response:

The Factor's repair response times are detailed on the Factor's website as follows:

Emergency Repair: 4 hours.

Routine Repair: 10 working days.

Urgent Repair: 3 working days.

At the hearing Victoria Leaf explained that she had advised the Homeowner on the phone in December that the repair would be attended to by the developer in December. She also assured him that there was no plumbing in the attic. Also Lorna Dunsmore acknowledged that the online repair request had not been properly progressed but she assured the Tribunal that they have amended their procedures.

The Tribunal's Decision:

The Tribunal accepted the Factor's admission that the online repair request had not been progressed properly. As a result the Homeowner had not been informed of the progress being made in having the repair carried out between the time the repair was intimated to the factor on 12th October 2016 and the telephone conversation between Victoria Leaf and the Homeowner in December. Consequently the Tribunal determined that the Factor had failed to comply with section 6.1 of the Code of Conduct.

7.1: You must have a clear written complaints procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

The Homeowner's complaint: The Factor did not adhere to their complaints procedure as they did not adhere to the procedures or required timescales set out in their complaints procedure. The Homeowner had obtained copies of emails between the Factor's employees Sarah Dalrymple and Jacqueline Coyle dated 16th and 17th February 2017. The emails are asking for guidance on how to process the Homeowner's complaints. The Homeowner states that the emails demonstrate that the staff do not know how to process a complaint.

The Factor's response: The Factor's written statement of services describes the complaints reporting procedures including online and telephone complaints. The Factor's website details the repairs reporting methods and typical timescales. Repairs are logged in a central database. Target times are provided when a repair is reported, unless it is a non routine matter requiring investigation or referral to the developer in which case it should be advised at the time and the owner kept up to date thereafter.

At the Hearing Lorna Dunsmore explained that the complaints procedure involves two steps. A stage one response will be provided within 5 days and a stage two response within 20 days. The Homeowner has complained that the Factor did not follow procedures or adhere to complaints timescales. She accepts this fault and acknowledges that it took them from November to February before the Homeowner was advised that his complaint would be escalated. However she explained that they have apologised to the Homeowner and offered recompense of £247.20 for the plumbing bill which he had paid for personally.

She also explained that they have improved their complaints training to avoid a recurrence of the difficulties encountered by the Homeowner. They have delivered staff training on complaints handling procedures and how to log them on their database and complaints are now a standard agenda item at team meetings.

The Tribunal's Decision:

The Tribunal accepted the Factor's admission that they had not followed their complaints procedure. The Tribunal determined that the Factor had failed to comply with section 7.1 of the Code of Conduct.

Compensation

The Homeowner's representations:

The Homeowner explained that at the outset the offer by the Factor to pay the cost of the plumbing bill was reasonable. However he suffered inconvenience as he was wrongly passed to many different people regarding his complaint, as he explained. He also has had to take time off work due to stress. He is also concerned that he may have compromised his NHBC warranty. He feels that compensation is due as the whole matter has been a 'nightmare' for him. He considers £1500 compensation to be reasonable.

The Factor's representations:

Lorna Dunsmore emphasised that they have apologised to the Homeowner. They have also offered to reimburse the Homeowner the cost of the plumbing bill he paid and she considers £1500 to be excessive.

Victoria Leaf explained that she does not believe that the NHBC warranty will have been compromised and also it is not the role of Link, as factor, to advise homeowners what is or is not covered by the NHBC.

Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor had failed in its duty under section 17(1)(b) of the 2011 Act, to comply with Sections 2.1, 2.5, 5.2, 6.1 and 7.2 of the Code of Conduct. The Tribunal acknowledged that the Factor has apologised to the Homeowner for their failings and they have taken steps to improve their procedures and staff training to ensure that the failings will not happen again in the future. The Tribunal recognized that the Homeowner had been inconvenienced by the Factor's failings and they accept the Homeowner's evidence that he suffered inconvenience and stress as a result of their failings. They determined that it is reasonable for the Homeowner to receive compensation in the sum of £300.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'Link Housing Association Limited are directed to pay the Homeowner £300 as compensation. The said sums to be paid within 28 days of the communication to them of the Property Factor Enforcement Order'

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.

J Taylor

Signed

Date 28th December 2017

Chairperson