

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:HOHP/PF/16/0124

Flat 16, St Andrews Court, 33 Kent Road, Glasgow, G3 7BY ('the Property')

The Parties:

Michael Lynch residing at 4 Shandwick Place, Inverkip, PA16 0GD ('the Homeowner')

Speirs Gumley Property Management, Glasgow ('the Factor')

Committee members:

Jacqui Taylor (Chairperson) and Mary Lyden (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has not failed to comply with Section 1.1a of the Code of Conduct and has not failed to comply with the Property Factor's duties.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 7th December 2012.
2. By application dated 31st August 2016 the Homeowner applied to the Homeowner Housing Panel for a determination that the Factor had failed to comply with the following section of the Property Factor Code of Conduct ('The Code') and also the following Property Factor's duties.

- Section 1.1a: Written Statement of Services.
- Section 1.1a

The written statement should set out a statement of the basis of any authority you have to act on behalf of all the homeowners in the group.

Property Factor's duties:

(First) The Factor carried out a property revaluation and did not follow the procedures contained in the Written Statement of Services or the Deed of Conditions and consequently they acted out with their authority.

(Second) Thereafter the Factor increased the reinstatement values of individual properties by a level percentage. This was done without permission and out with their authority.

(Third) The Homeowner states that the consequence of these breaches of Property Factor duties is that he is paying more than he should be for his building insurance premium.

3. The application had been notified to the Factor.

4. By Minute of Decision by Patricia Pryce, Convener of the Homeowner Housing Panel, dated 11th November 2016, she intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 31st August 2016 to 8th November 2016) to a Homeowner Housing Committee.

On 1st December 2016 jurisdiction of the Homeowner Housing Committee passed to The Housing and Property Chamber.

5. An oral hearing took place in respect of the application on 7th February 2017 at Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL.

The Homeowner appeared on his own behalf. The Factor was represented by Tom McKie, Director; Michelle Madden, Deputy Team leader of the Property Inspection Department; Robb Jones, Property Inspector and Nigel Fiest, former Managing Director of Deacon Insurance Brokers.

As a preliminary matter the Tribunal considered the terms of the email from Tom Mckie to the Tribunal administration dated 12th December 2016. The email advised that he considered the Homeowner's application to be premature as the Homeowner had not initiated a complaint under the Factor's internal complaints procedure before bringing his application to the Tribunal, as required in terms of the Factor's Written Statement of Services.

Mr Lynch advised that he had been corresponding with the Property Inspector, Mr Mcleod in August 2014 regarding the matters detailed in his application. His concerns were then passed to Robb Jones, Property Inspector, and then to Ian Friel, Managing Director. At no time had he been advised of the requirement to pass his complaint to the customer services department.

Tom McKie explained that Mr Lynch had received a copy of the Written Statement of Services which sets out the procedure to be followed. The procedure was not followed and consequently the application to the Tribunal is premature.

The Tribunal's Decision in relation to the Factor's preliminary concern that the Homeowner had not followed their complaint's procedure.

Section 17(3)(b) of the Act requires that no application may be made unless the Factor has refused to resolve or unreasonably delayed in attempting to resolve the Homeowner's concern.

The Tribunal noted that the Homeowner first raised his concern with the Factor on 12th August 2014. His concerns had been passed to many different people employed by the Factor, including the Managing Director. The Tribunal were surprised that the Factor had not recognized Mr Lynch's concerns as a complaint and directed him to their complaints procedure. The Tribunal considers that the Factors are largely responsible for the fact that the Homeowner did not strictly follow their complaints procedure.

As the Homeowner's concerns had been ongoing since August 2014 the Tribunal considered that the Factor had unreasonably delayed in attempting to resolve the Homeowner's concern and therefore they decided to proceed with the application, even although the Homeowner had not strictly followed the Factor's complaints procedure.

The Application:

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

Section 1: Written Statement of Services

Section 1.1a: The written statement should set out a statement of the basis of any authority you have to act on behalf of all the homeowners in the group.

The Homeowner's complaint:

Section 1.1a of the Code had not been complied with.

The Factor's response:

Tom McKie explained section 1.1a of the Code has been complied with as paragraph 2 of the Factor's Written Statement of Services states:

'We are the appointed Property Factor (Agent) in accordance with the Deed of Conditions or by homeowners who have delegated authority to do so through established custom and practice.'

The Tribunal's Decision:

This head of complaint not upheld.

Paragraph 2 of the Factor's Written Statement of Services complies with section 1.1a of the Code.

Failure to comply with Property Factor's duties.

The Homeowner's First duties complaint: The Factor carried out a property revaluation and did not follow the procedures for this contained in the Written Statement of Services or the Deed of Conditions and consequently they acted out with their authority.

The Homeowner's complaint:

Mr Lynch advised that the Factor's Written Statement of Services states that they will not carry out an insurance revaluation unless specified in the Deed of Conditions. The Deed of Conditions states that the sum insured may be increased if fixed at a meeting of the proprietors. Mr Lynch explained that the Factors went ahead and had the property revalued without the necessary authority. They also used an inhouse surveyor and not an independent surveyor. He considers that the whole exercise was done in a rush without consulting with the homeowners.

He acknowledged that the matter had been put to the AGM in 2016. He explained that he had not attended that AGM but he believed that the position had not been fairly explained at the meeting. He had simply wanted the valuations of properties that seemed to be underinsured to be individually valued.

The Factor's response:

Tom Mckie explained that they arranged the communal buildings insurance policy through their brokers Deacon Insurance Brokers. They placed the insurance with Zurich. Zurich have a policy of requiring certain listed building properties, including St Andrews Court, to be revalued if the development was valued over a particular threshold. The Factor wrote to the owners on 1st August 2014 advising them that the revaluation had been carried out and the broker had agreed to meet the expense of the revaluation. They obtained quotations from several surveyors and Speirs Gumley's inhouse surveyors were selected as their fees were the lowest.

He emphasized that the Written Statement of Services place the obligation on the individual homeowners to ensure that their properties are properly insured.

He advised that they did not specifically obtain the consent of the homeowners in having the property revalued as it was a stipulation of the insurance company and the policy renewal date was approaching. However at the AGM in 2016 the Factors advised the meeting that the revaluation had been challenged and a request had been made to have the individual properties valued as opposed to the whole

building. He explained that there are 152 properties in the development and it is only Mr Lynch who wants to have the individual properties valued. There was simply no appetite for it. The Minute of the AGM was produced to the Tribunal. It stated *inter alia*:

'It was explained that the revaluation looked at the whole development, not individual properties...and recommended increasing the total development sum insured from £24,724,989 to £29,500,000. This represented an increase of 19.31% and we applied a 19.31% to each of the flats respective sums insured. It was acknowledged that there may be inconsistencies in the sums insured of respective flats, however, the onus is on the owner to provide the Factor with the sums insured for their individual property and the increase was applied to the sums insured, provided to us by each of the owners. The Factor further explained that the owner who is concerned about their handling of this exercise feels that each flat should have been individually assessed in order to arrive at an exact figure for each and whilst attempts have been made to resolve this longstanding complaint with the owner, which including requesting a copy of his valuation in order that we could alter his sum insured in line with what he believes is accurate and also offering to send one of our Building Surveyors to carry out an individual valuation of his property, both requests were refused. Those present at the meeting were satisfied that this exercise was conducted in an appropriate manner and there was no appetite to discuss the matter further, or revisit this exercise with a view of assessing individual flats.'

The Tribunal's Decision:

This head of complaint is not upheld.

The Written Statement of Services states that The Factor will not carry out an insurance revaluation unless specified in the Deed of Conditions. The Deed of Conditions states that a meeting of the individual owners may decide that the property should be revalued.

The Factors did not obtain the consent of the individual owners before they had the property revalued. The Tribunal acknowledge that it was a requirement of the insurance company Zurich that the development was revalued. However the written Statement of Services does not say that the Factors will have the property revalued without consulting the homeowners if this is required by the insurance company.

The insurance renewal date was 31st October 2014 and the Factors wrote to the individual owners on 1st August 2014 advising that the revaluation had already taken place. The Tribunal consider that there would have been sufficient time to obtain the prior approval of the owners, but this was not done. However the Tribunal acknowledge that the Factors obtained the retrospective agreement of the homeowners at the AGM in 2016 and therefore this technical breach was retrospectively cured. The Tribunal would urge the Factor to obtain timeous consent of the owners in relation to this matter in the future.

The Homeowner's Second duties complaint: Following the Property revaluation the Factor increased the reinstatement values of individual properties by a level percentage. This was done without permission and outwith their authority.

The Homeowner's complaint:

Mr Lynch explained that the across the board increase of 19.31% in the sums insured of individual properties was done without the authority or permission of the individual owners.

He also explained that of the 152 individual properties in the development there is only one property that has a higher rebuild valuation than his property. He considers this to be inaccurate. There are other properties in the development that are directly comparable to his property but they have a lower rebuild valuation.

Mr Lynch explained that he was happy with the sum insured before the revaluation was carried out and he considers the revalued rebuild valuation to be incorrect and excessive.

The Factor's response:

Mr McKie explained that the Factors had the whole development revalued. They had used a broad brush approach and increased the buildings insurance premiums of each individual property by 19.31%. This percentage reflects the increase in the overall value of the development. He acknowledged that the broad brush approach may result in some anomalies due to the particular sizes and features of individual properties however it would not be reasonable for the Factors to incur the cost of having every individual property revalued. The only way to iron out discrepancies is for owners to have their properties valued individually. The Written Statement of Services states that it is the sole responsibility of the homeowner to ensure the property is insured for full reinstatement value.

In attempting to resolve matters with the Homeowner the Factors had written to the Homeowner on 3rd December 2014 offering to have his property revalued by the inhouse Speirs Gumley surveyor. Mr Lynch had declined this offer. They pressed Mr Lynch to provide his own valuation, but he did not provide one. The obligation on the Factor is to ensure that the whole development is properly insured. It is for each individual owner to ensure that their own property is adequately insured.

He emphasized that there are 152 properties in the development and Mr Lynch is the only owner to complain about the insurance values.

The Tribunal's Decision:

This head of complaint is not upheld.

The Written Statement of Services places the obligation on ensuring the Property is insured for the full reinstatement value on the Homeowner. Notwithstanding this fact the Factor offered to have one of their inhouse surveyors value the Homeowner's property but he declined this offer. It is still open to the Homeowner to have his own valuation carried out and if the Factor's valuation is incorrect request that the valuation is adjusted to correspond to the valuation. It is unreasonable for the Homeowner to request the valuation of his Property to be adjusted downwards without the benefit of an individual valuation.

The Homeowner's Third duties complaint: As a result of increasing the reinstatement values of individual properties by a level percentage his property is over insured and his premiums are consequently too high.

The Homeowner's complaint:

The Homeowner explained that as his property is overinsured his insurance premiums are too high.

The Factor's response:

Michelle Madden explained that the Homeowner's quarterly insurance premium before the revaluation was £86.99 per quarter. After the renewal the premium was £89.97 per quarter. The Factors had secured a rate reduction due to the increase in the sum insured resulting in a net increase of 3.2% from one quarter to the next.

The Tribunal's Decision:

This head of complaint is not upheld.

The Homeowner has not produced a valuation to the Tribunal evidencing that his property is overinsured. The Tribunal accepts that the schedule of the sums insured of the individual properties in the development provided by the Factor does suggest some valuation anomalies. However without the backing of individual property valuations the Tribunal are unable to determine if the Homeowner's property is over insured. In any event, the Tribunal considered the increase in premium of £2.98 per quarter to be de minimis.

In all of the circumstances narrated above, the Tribunal finds that the Factor has not failed in its duty under section 17(1)(b) of the 2011 Act, to comply with Section 1.1a of the Code of Conduct or the Property Factor's duties.

Appeals

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 8 February 2017

Chairperson