



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision on homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/17/0393

1D Calderhaugh, Lochwinnoch, Renfrewshire, PA12 4AJ
("the Property")

The Parties:-

MRS CHRISTINE GIBSON, 1D Calderhaugh, Lochwinnoch, Renfrewshire, PA12 4AJ
("the Applicant")

SPEIRS GUMLEY PROPERTY MANAGEMENT, 194 Bath Street, Glasgow, G2 4LE
("the Respondent")

Tribunal Members:

Graham Harding (Legal Member)
Andrew Taylor (Ordinary Member)

DECISION

The First Tier Tribunal for Scotland (Housing & Property Chamber) ("the tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Respondent had complied with the Code of Conduct for Property Factors as required by Section 14 of the 2011 Act, determined unanimously that, in relation to the Application, the Factor has complied with the Code of Conduct for Property Factors.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 "the Regulations"

The Respondent became a Registered Property Factor on 1 November 2012 and its duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it and gave consideration to the Application by the Applicant as referred to above, representations submitted by the Respondent dated 21 December 2017 together with the Inventory of Productions attached thereto; further representations dated 11 January 2018 from the Respondent together with oral submissions made by both parties at the Hearing.

The Applicant appeared personally at the Hearing and was supported by Gillian Sheridan. The Respondent was represented by Ian Friel, Managing Director and Miss Chloe Morrison, Property Inspector.

The Applicant complains under reference to Section 1-F, 2.4, 3.2, 5.6, 6.1 and 7.1 of the Code.

The Code

The elements of the Code relied upon in the Application are as follows:-

1. Section 1-F – How to end the arrangement.

Clear information on how to change or terminate the service arrangement between you and the Homeowner, including sign-posting to the applicable legislation. This information should state clearly any “cooling off period, period of notice or penalty charges for early termination.

Section 2.4

You must have a procedure to consult with the group of homeowners and seek written approval before providing work or service which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

Section 3.2

Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or Property Factors.

Section 5.6

On request you must be able to show how and why you appointed the insurance provider, including any cases where you decided not to obtain multiple quotes.

Section 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 that a cost threshold below which job-specific progress reports are not required.

Section 7.1

You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable time-scales, linking to those set out in the written

statement, which you will follow. This procedure must include how you will handle complaints against contractors.

Hearing

A Hearing took place in Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL, on 19 January 2018. The Applicant attended on her own behalf and was accompanied by her witness and supporter, Gillian Sheridan. The Respondent was represented by Mr Ian Friel, Managing Director, of the Respondent and Chloe Morrison, Property Inspector.

Summary of submissions

2. At the commencement of the Hearing, the Applicant advised the Tribunal that she was no longer insisting in her complaint insofar as it related to the alleged breaches by the Respondent of section 1-F, 3.2 and 7.1 of the code. During the course of the Hearing, the Applicant sought to bring the complaint in terms of Section 6.1 of the Code in respect of proposed external re-decoration of the development, however as the nature of the complaint had not formed part of the initial application to the Tribunal and the Application had not been amended prior to the Hearing, the Tribunal decided that the Applicant's submissions in this regard were inadmissible.
3. The Applicant explained that at the AGM of the Calderhaugh Residents Association held on 25 August 2016, it had been agreed that an up-to-date insurance reinstatement valuation ("IRV") be obtained for each of the blocks forming the whole development in which the Applicant's flat, together with 17 other flats, was located. The Applicant said that as there were 4 different types of flats in the development it had been agreed that access would be required by the Surveyors to one of each type of flat in order to apportion the share of the insurance premium according to the size and type of each flat.
4. The Applicant said that the Respondent obtained two quotes for providing the IRV, one from Bluestone Chartered Building Surveyors ("Bluestone") at a cost of £750 plus VAT and one from Wiseman Associates Limited ("Wiseman") at a cost of £540 plus VAT and that Wiseman had been instructed to produce a Survey Report. The Applicant had assumed that the methodology in preparing the IRV would be the same for both Companies, namely that the four different types of properties would be looked at and individual values apportioned accordingly.
5. The Applicant said she received correspondence from the Respondent (production 15) enclosing Wiseman's Report (production 14). According to the Applicant the Respondent's Association Committee subsequently queried with the Respondent why the Report from Wiseman was not in line with the decision of the Homeowners at the AGM in 2016 that the different properties would be inspected. The Applicant said that the Respondent had said that no such arrangement had been agreed. The Applicant was of the view that if the Respondent intended changing what had been agreed at the meeting it should have held a further meeting.
6. The Applicant explained that subsequently the Respondent acknowledged that if the relative values of each property in the blocks were incorrect, these could be obtained as a separate exercise.

7. The Applicant was of the view that the Survey Report obtained was not what had been expected and that the decision to obtain the Report in its original form was that of the Respondent and not the homeowners. The Applicant was concerned that she did not get the opportunity to choose which Company to instruct. She believed that the Respondent should have asked the Homeowners to choose as it was their decision to make.
8. The Applicant said that on 14/12/16 it was agreed that Wiseman would conduct a second Survey to look at the different sizes of the flats in the blocks.
9. The Applicant's witness, Gillian Sheridan, commented that the letter of 29/11/16 disclosed a very significant increase in the IRV of some 55.5% which had caused some of the homeowners to question the accuracy of the Report.
10. The Applicant advised that on 16/12/2016, Wiseman's conducted a second Survey and that the new IRV on her flat was applied, thus increasing her insurance premiums. Thereafter, the Applicant said she heard nothing further from December 2016 until April 2017, a delay of 4 months, although she was aware that there had been some activity between the Respondent and the Resident's Association Committee in March 2017 when she and her husband were on holiday.
11. The Applicant said that on 26/04/17, her insurance premiums were increased again as a result of the further Report prepared by Wiseman and as a result on 04/05/17, the Applicant asked the Respondent if it could obtain comparative Reports from other insurance providers as the increase in her premium was very substantial. She said that she did subsequently receive documentation which she had thought were comparisons from different companies but which she later discovered were in respect of the previous year's renewal, rather than in respect of the revised IRV. The Applicant said that she had been wanting the Respondent to obtain Tenders to reflect the increased IRV and that it was reasonable in the circumstances to expect that to be done.
12. The Applicant said that as a result of the various communications between the Respondent, the Committee and herself, the Respondent decided to call an Extraordinary General Meeting to discuss the insurance issues.
13. The Applicant did not dispute the Respondent had spent a lot of time dealing with insurance matters but she had been concerned that the delays were not attributable to the homeowners who had clear concerns about the anomalies that had been apparent following the second Wiseman Report.
14. The Applicant said that at the Extraordinary General Meeting on 12/06/17, further anomalies became apparent in that two of the flats in block D had en-suites that were actually located in block E and that a further re-calculation was necessary although the original total IRV had never been amended by Wiseman.
15. The Applicant said that it appeared that one of the flats in another block although smaller than the Applicants would have a similar value apportioned on it.

16. The Applicant's witness, Ms Sheridan, said that by mid July there had been growing concern amongst the homeowners about the accuracy of the Wiseman IRV with numerous increases and decreases being apportioned on different flats and as a result the Applicant had lost confidence given the number of errors.
17. The Applicant said that the Respondent had advised an owner that sufficient time had been spent on this matter and that the owners had two options, either to accept the IRV or instruct another alternative independent valuation to be carried out. The Applicant was of the view that she should not have to accept the Wiseman IRV or be expected to pay for another valuation. She felt the Respondent should have been working with the homeowners to resolve the issues that had been raised.
18. The Applicant said that subsequently she had been advised that the Respondent intended to resign as Property Factor and that she had found the Respondent to be rather assertive in its behaviour at this juncture.
19. The Applicant acknowledged that the Respondent had appeared to fulfil the brief but that she continued to question the validity of the Wiseman Valuation.
20. The Applicant was unsure if there had been inaccuracies in the apportionment of values on each flat previously but as a result of the overall increase in the IRV she was paying a substantially higher premium.
21. The Applicant confirmed that following the appointment of a new Factor, the homeowners were still using the Wiseman IRV but that the blocks were insured with a different insurer at a substantially lower premium.
22. The Respondent's representative, Mr Friel, explained that following taking over as Factor from the previous Factors in 2014, a colleague, Mr John Neil, had met with the proprietors and had raised the issue of insurance reinstatement value at this time but no action had been taken by the proprietors. The matter was raised again at the AGM in August 2016 and following various communications between the committee and the Respondent, Wisemans were instructed. Mr Friel stressed that the Respondent was acting as an Agent on behalf of all of the proprietors in the development.
23. Mr Friel was of the view that ultimately Wiseman delivered their brief. It had never been suggested that every individual flat should be surveyed but that the Survey should have regard to different building types and whether or not they were listed.
24. Mr Friel said that following on from what some owners had seen as anomalies in the Wiseman Report it had been appropriate to call an Extraordinary General Meeting to explain how differences had been arrived at.
25. Mr Friel said that the Respondent had inherited the IRV from the previous Factors. There was no consistency in flat to flat but neither the Respondent nor Wiseman were responsible for that.
26. He said that once the initial re-valuation had been obtained, the Respondent had to advise the development insurers and increase the amount covered to reflect the

new valuation as otherwise there was a risk that the insurers would not pay out in full on any claim.

27. Mr Friel accepted that the original Report was not ideal but the Respondent had tried to interpolate individual increases. Mr Friel was of the view that one could not expect to get 18 individual valuations for a cost of £540 plus VAT. However, the Respondent had ultimately agreed with a committee member, Mrs McMillian, to go back to Wiseman to try to arrive at a valuation for each property.
28. Mr Friel commented that Mr Wiseman did not alter the overall IRV of £7.1 million pounds but the values were apportioned differently on the various properties in the blocks. He said that the Respondent produced a series of figures showing the values attributable to each of the 18 flats (production 22). He was of the view that the Respondent had never seen these figures as having mistakes as it had never been proposed that there should be a valuation of each flat. The Respondent had however in the course of conversation with the homeowners, addressed what the homeowners had wanted. Mr Friel was of the view that the development had previously been dramatically under insured. The Respondent accepted that this had resulted in a huge hike in premiums but that was relative to the increased value. The underlying insurance rate had never changed.
29. Mr Friel acknowledged that the Applicant had asked for comparative quotes but that this would have required the majority of proprietors to instruct the Respondent to obtain these and this had not happened.
30. Mr Friel said that at the Extraordinary General Meeting the Respondent had not been asked to re tender. The meeting had been all about the inaccuracy of the Wiseman's Survey Report with owners asking for the Surveyor's individual working documents to be provided by Wiseman. This was to show how the valuations had been carried out. Mr Friel advised that when Wiseman were asked to provide these, they were not available. He also stressed that the Respondent was acting as Agent on behalf of the owners.
31. Mr Friel explained that at the Extraordinary General Meeting he had brought along a representative of the insurance brokers to give the owners advice. Mr Friel said that he had told the owners at the meeting that if they did not accept the Wiseman IRV then that was their choice but the Respondent had to advise the insurers of the increased IRV.
32. Mr Friel said that Mrs McMillan who was on the Committee had offered to get another valuation but that this had not happened; Mr Friel said that the Respondent had concluded it was spending too much time on this matter and having been satisfied that it had discharged its duty it was entitled to take a commercial view to resign as Property Factor.
33. In reply to a question from the tribunal as to whether it had been oversight in the residential managements repair order of 19/09/2016 not to have requested that the Surveyors inspect the 4 different types flats in the blocks as determined by the owners at the meeting on 25/08/16, Mr Friel did not accept that the quotes obtained for providing valuations were not like-for-like but did accept the Repairs Order

lacked specification. Mr Friel went on to say that he had made sure the owners' concerns were addressed by Wiseman without further cost. Wiseman had ultimately delivered what was required of them.

34. In response to a question from the tribunal as to whether the Respondent was aware of the anomalies in the apportionment of values to each flat, Mr Friel said that he had not been aware of this at the start of the revaluation process and doubted that the owners were either but that the revaluation had amplified any anomalies.
35. Mr Friel confirmed that Wiseman were members of the RICS and it had been appropriate to instruct them.
36. Mr Friel confirmed that insurance renewals were dealt with annually and discussions would have commenced in July for an October renewal date. However, this process had not started as the decision had been taken for commercial reasons to resign as Property Factors.
37. Mr Friel said that the Respondent did not accept that there had been a lack of communication between the Respondent and the Applicant and that there had been a substantial amount of communication between the Respondent and the Resident's Association Committee.
38. Mr Friel was of the view that the Respondent could not be expected to provide the Applicant with comparative quotes as this would have needed to be a request from the Committee or the majority of homeowners.
39. Mr Friel thought it significant the homeowners in the development were using the Wiseman IRV in negotiating cover with an insurer using their new Property Factor.

The Tribunal make the following findings in fact:-

40. The Applicant is the joint owner of the property.
41. The property is a flat within Calderhaugh Mill, Lochwinnoch ("the Development").
42. The Respondent performed the role of Property Factor at the Development from December 2014 until August 2017.
43. The Residential Management Repair Order issued by the Respondent and dated 19/09/2016 addressed to Wiseman lacked specification and did not reflect the Residents' Association decision taken at the AGM on 25/08/16, to have each of the four types of flats valued as part of the insurance reinstatement and valuation exercise.
44. The Respondent took account of representations made by the Residents Association Committee and arranged for Wiseman to provide a second IRV Report that reflected the variations in size and type of flats in the development.

45. The Respondent took further account of anomalies brought to its attention and instructed Wiseman to amend their valuation to reflect these anomalies.
46. The length of time taken by Wiseman to address an anomalies was unsatisfactory but outwith the control of the Respondent.
47. The increase in the Applicant's premium was due to the increase in the value apportioned on the property and reflected the overall increase in the value of the Development.
48. The Respondent was not instructed by the Residents Association Committee or a majority of homeowners to seek comparative quotes following the revaluation of the development.
49. In the absence of such an instruction the Respondent could not be instructed to provide the Applicant with comparative quotes.
50. The Homeowners in the development have through their new Property Factor obtained lower premiums for their Insurance but have not so far instructed a further IRV and are using the Wiseman Report IRV.
51. There is no provision in the titles of the development for the constitution of a Residents Association. Any issues between homeowners and the Residents Association Committee are raised at the Annual General Meeting or at any Extraordinary General Meeting of the Association. It appears that some powers have been delegated to the Committee to give instructions to the Property Factor employed by the homeowners but with a majority of the homeowners being required to agree in some circumstances. The exact degree of autonomy given to the committee is not clear.
52. The Respondent has not breached the code but could have been more specific in its original instructions to Wiseman.

Reasons for Decision

53. The Tribunal had sympathy for the Applicant in that the Wiseman IRV was initially inadequate for its purpose and this could have been avoided if the Respondent had clarified its original instructions. However, it is likely that a more detailed valuation by either Wiseman or Bluestone would have been more expensive.
54. Whilst the length of time taken by Wiseman to arrive at a final apportionment of values on each flat was unsatisfactory it did not appear to the Tribunal the delay was the fault of the Respondent and the final version of the Report was obtained at no extra cost to the Applicant.
55. The Respondent was acting as Agents on behalf of the owners of the Development and were not responsible for the actions by Wiseman. If the Applicant or the Residents Association were dissatisfied with the Wiseman Report, their remedy would have been to take that up with Wiseman and to have instructed a further independent report.

56. There appear to be competing interests between different homeowners in respect of the apportioned valuations and this may have contributed to some of the delay and dissatisfaction between homeowners.
57. Whilst it is entirely understandable that the Applicant was aggrieved at the increase in her insurance premium, this was largely down to the significant increase in the overall valuation of the development.
58. The Tribunal accepted that any requirement to the Respondent to obtain comparative quotes from our insurers would have needed to have been instructed by the Residents Association Committee or by a majority of homeowners and not simply at the request of the Applicant.
59. Given that the Applicant and other homeowners had not at the date of the Hearing sought to challenge the overall IRV prepared by Wiseman, by instructing another valuation the Tribunal could not support the view that the Respondent had breached the code by failing to obtain a further valuation from another Firm of Surveyors.
60. It did appear to the Tribunal that the Respondent did have procedures in place to consult with the homeowners, either by directly communicating with homeowners or through the Residents Association Committee.
61. The Respondent was not asked by the Residents Association Committee or a majority of homeowners to explain why the insurers had been appointed during the course of the IRV process. This matter would have been raised with homeowners during the renewal process had the Respondent remained as Property Factors.
62. Although the Respondent did not produce all of the communications between individual homeowners and the Resident's Association Committee, there were substantial documents lodged by the Respondent that confirmed that the Respondent did keep homeowners informed of progress.
63. Accordingly, the Tribunal concluded that the Respondent had not breached Section 2.4, 5.6 and 6.1 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.

G Harding

Legal Member and Chair

2 February 2018

Date