

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier tribunal for Scotland (Housing and Property Chamber)

Decision on the Homeowner's application: Section 19(1)(a) of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/18/1405

Flat 15, 4 Thorntreeside, Edinburgh, EH6 8FF ('the Property')

The Parties:

Derek Main, Flat 15, 4 Thorntreeside, Edinburgh, EH6 8FF ('the Homeowner')

Redpath Bruce, Crown House, 152, West Regent Street, Glasgow, G2 2RQ ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Andrew Murray (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with to comply with section 6.1 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 7th December 2012.
2. By application dated 12th June 2018 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') and also failing to carry out the Property Factor's duties.

- Section 2: Communications and Consultation.
Sections 2.1 and 2.5.
- Section 6: Carrying out repairs and maintenance
Sections 6.1 and 6.9.

3. The application had been notified to the Factor.

4. By Minute of Decision by George Clark, Convener of the First- tier Tribunal (Housing and Property Chamber), dated 27th June 2018, he intimated that he had decided to refer the application (which application paperwork comprises documents received on 12th June 2018) to a Tribunal.

5. The Homeowner's complaint, as detailed in the application:

The Homeowner's property is a top floor flat. In the two years that he has owned it his second bedroom has been severely affected by water ingress from a defective roof on two separate occasions. (7 February 2017) (March 2018).

In the last instance, it took eight weeks to see the fault was rectified. The fault was reported on 18th February and patch repaired on 6 April. The delay was caused by the Factor falsely advising that the issue must have been caused by internal pipework and failing to chase contractors, or providing them with incorrect instructions or misleading information. Only after the Homeowner wrote to the owner of the company Christian Bruce directly on 4th April was any action taken.

During this time, the Homeowner's second bedroom was inundated with water and damaged to the point it required complete redecoration, which was dealt with under his building insurance. It took more than 11 weeks from the date of reporting the problem to the room being completely repaired.

The Homeowner has learned that the Factor had been aware of the significantly poor state of repair of the roof since October 2017 when it had instructed Thomas & Adamson to survey the roof. Their report is dated 6th December 2017. The Homeowner only became aware of the survey in April 2018. He believes the Factor intended to withhold this information from the homeowners.

The Factor lodged an incorrect claim with the NHBC as they falsely attributed the roof problem as only affecting the Homeowner's property. The Homeowner considers that the claim should have been in respect of the whole roof which is faulty. As the NHBC claim had been wrongly submitted in respect of the Homeowner's property alone the claim was rejected.

Redpath Bruce have promised to pursue a claim against the manufacturer's warranty for the roof, as the roof is under ten years old, but no details have been provided.

The Homeowner believes that the roof problems encountered by the homeowners could have been avoided had Redpath Bruce acted sooner and more forcefully to resolve the roof problems when they first became apparent.

6. An oral hearing took place in respect of the application on 4th September 2018 at George House Room D8, 126 George Street, Edinburgh, EH2 4HH.

The Homeowner appeared on his own behalf. The Factor was represented by Robert Campbell a Director of Redpath Bruce.

As a preliminary matter the parties confirmed and agreed the following facts, which were accepted by the Tribunal:-

- The Homeowner purchased the Property in March 2016 .
- The Property is part of a development of 89 flatted dwelling houses.
- The roof of the block, of which the Property forms part, falls within the definition of common parts of the development as defined in the Deed of Conditions for the development namely the Deed of Conditions by Westpoint Developments (Scotland) Limited dated 1st August 2008.
- The Factor has factored the Property since the development was built by Westpoint Homes, approximately nine years ago.

The parties' representations and the Tribunal's decisions:

Section 2: Communications and Consultation.

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

The Homeowner's Complaint:

The Homeowner considers that the Factor has been misleading as they failed to disclose the existence of the survey by Thomas & Adamson when the water ingress was first reported.

The Factor's response:

At no time has the Factor provided misleading or false information. The information passed to the Homeowner has always been consistent and informative. The homeowners were advised of the Thomas & Adamson by letter on 26th April 2018, albeit that the Homeowner received a copy by email on 6th March 2018. They had delayed advising the homeowners of the survey as they were carrying out further investigations with regards to the roof issue. As a result of these investigations they have found out that the roofing contractor West Coast Roofing is no longer in business. However they have ascertained that the roof panels were manufactured by Kingspan and a manufacturer's warranty exists albeit that the required routine maintenance has not been carried out.

The Tribunal's Decision:

The Tribunal determine that the Factor has not failed to comply with Section 2.1 of the Code by failing to disclose the existence of the Thomas & Adamson survey as they have not provided false or misleading information by not disclosing the survey.

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 explained that the Factor took 8 weeks to resolve the roof repair. Initially the Factor had instructed R3 to inspect the water ingress problem. They had advised that a vent pipe was the cause of the problem. The Homeowner did not believe this to be the case and queried the report. Acorn were then instructed to carry out a further investigation on 18th March 2018. They reported back to the Factor on 28th March 2018. The cost of the repair was £393 and the works were instructed. He considers that the whole process took too long.

The Factor's Response:

They issued an instruction to R3, who are general maintenance contractors. They were slow in reporting and mixed up the job with another development. They accept that they did not advise the Homeowner of the delay and they did not chase up the contractor's report. They apologised for the delay in chasing up the contractors for their report, which subsequently indicated that the water ingress was from a defective vent pipe. The Homeowner disagreed with the report findings and Acorn Services were asked to investigate. They quoted for remedial work internally to rectify the damage resulting from the water ingress and did not check on the condition of the roof which led to unnecessary delay because no quote was provided for the cause of the initial water ingress. The roof was checked again and a quote submitted for flash band repairs. The work was authorised and carried out. All replies were given within the timescales set down in the Written Statement of Services, namely 5 working days. They do not consider that they have breached the terms of section 2.5 of the Code.

The Tribunal's Decision:

The Tribunal acknowledge that the Factor took 8 weeks to have the roof repaired. However, no evidence was provided that the Factor had they failed to respond to enquiries and complaints received by letter or email within five working days, as specified in the Written Statement of Services.

Accordingly, the Tribunal determine that the Factor has not failed to comply with Section 2.1 of the Code.

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 the Factor had taken 8 weeks to have the roof repair carried out. Too little information was provided to him as to the progress being made with the repair. He considered that the Factor only responded after being prompted. For example, it took Acorn Services seven days to report to the Factor after they had inspected the roof.

The Factor's Response:

Redpath Bruce have arrangements in place to allow individual clients to report necessary works to rectify common faults, as provided for in the Written Statement of Services and Property Specific Schedule of Services. Redpath Bruce rely on

individual contractors/suppliers to provide accurate information and reports on their findings, this information is thereafter passed on to their clients. They do not believe that a breach has occurred. At the hearing Robert Campbell accepted that there was a delay in having the work done but this matter was outwith their control as they rely on their contractors. He acknowledged that their reporting could have been better but does not consider that they have breached section 6.1 of the Code.

The Tribunal's Decision:

The parties are agreed that the fault was reported on 18th February and patch repaired on 6 April. Section 6.1 of the Code requires the Factor to inform the homeowners of the progress of repairs, including estimated timescales for completion. Emails between the parties have been provided with the parties representations but no evidence has been provided to demonstrate that the Factor advised the Homeowner of the progress of the work or estimated timescales for completion.

Accordingly, the Tribunal determine that the Factor has failed to comply with Section 6.1 of the Code

6.9: 'You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.'

The Homeowner's complaint:

The Homeowner explained that the first instance of water ingress to his Property was on 7th February 2017. The problem recurred in March 2018. There are clearly ongoing issues regarding defects to the roof. He was unaware of issues regarding the warranties for the roof until he submitted his application to the Tribunal. At the date of his application it was two weeks since Redpath Bruce promised to pursue a claim against the manufacturer's warranty for the roof and he has received no further contact.

The Factor's response:

There were delays in investigations and sourcing the fault which allowed water ingress into the building. However, the works were ultimately carried out in an entirely satisfactory manner and there has been no further water ingress thereafter. They do not consider that they have breached section 6.9 of the Code.

They acknowledge that there was a delay of eleven weeks, as a result of reporting issues from contractors. The delay was entirely due to failings by contractors.

At the hearing Robert Campbell explained that Redpath Bruce has pursued the original developers Westpoint Homes and continue to do so. However, they do not have any authority from the homeowners to pursue the matter through the courts. Robert Campbell advised that an owners meeting has been arranged for 24th September 2018 to advise the homeowners of the position regarding the repairs required and the contribution from the original developer and Kingspan (if any) and to seek the instructions of the owners as to how they wish to proceed.

The Tribunal's Decision:

The water ingress to the Homeowner's Property has been repaired.

The report the Factor obtained from Thomas & Adamson on the condition of the roofs of all of the blocks in the development advises that *inter alia* there is evidence of cut edge corrosion, mechanical damage to metal roof panels and missing roof fixings. These defects stem from the original erection of the development.

The Factor has pursued a claim with the NHBC. The claim was unsuccessful as the Property is over three years old and the particular defect is not covered by the NHBC warranty.

The Factor also pursued claims with the original builder and Kingspan (the company that supplied the roof panels). The Factor is continuing to negotiate with Kingspan and the original builder to remedy the defects in the roof and these matters are ongoing.

The Tribunal determine that there has been no breach of section 6.9 of the Code as the original defect has been repaired and the Factor is continuing to pursue the defects in the roof that stem from when the Property was erected. The options open to the homeowners will be put to the homeowners at the residents meeting that has been arranged to take place on 24th September 2018.

Alleged Breach of Property Factor Duties:**The Homeowner's complaint:**

The Factor has failed in its responsibilities to find a solution to the problem with the condition of the roof identified in the report from Thomas & Adamson. At the hearing the Homeowner was unable to direct the Tribunal to a specific breach of the title deeds or written statement of services beyond the points that had been considered under the breaches of the code of Conduct.

The Factor's response:

At the hearing Robert Campbell explained that Redpath Bruce manages the development in terms of the Deed of Conditions. He does not consider that Redpath Bruce have breached their obligations under the Deed of Conditions.

The Tribunal's Decision:

The Tribunal do not consider that the property factor duties detailed in the Homeowners application are duties above and beyond the obligations contained in the Code of Conduct, which have already been considered.

Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with Section 6.1 of the Code of Conduct.

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.

