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/16/0108

2C Thrush Place, Johnstone, PA5 0RZ ('the Property')

The Parties:

Graham Toman residing at 2C Thrush Place, Johnstone, PA5 0RZ ('the Homeowner')

Linstone Housing Association, 17 Bridge Street, Linwood, PA3 3DB ('the Factor)

Committee members:

Jacqui Taylor (Chairperson) and Sara Hesp (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with Sections 2.1 and 3 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 17th December 2012.

2. By application dated 2nd August 2016 the Homeowner applied to the Homeowner Housing Panel for a determination that the Factor had failed to comply with specified sections of the Property Factor Code of Conduct ('The Code').

Section1:Written Statement of Services.

- Section F

Section 2: Communications and Consultation.

- Sections 2.1and 2.2 and

Section 3: Financial Obligations.

3. The application had been notified to the Factor.

4. By Minute of Decision by Maurice O'Carroll, Convener of the Homeowner Housing Panel, dated 23rd November 2016, he intimated that he had decided to refer the application (which application paperwork comprises documents received in the period 4th August 2016 to 23rd December 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 15th February 2017 at Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL.

The Homeowner appeared on his own behalf. The Factor was represented by Gary Dalziel, Director of Finance and Corporate Services.

The Application:

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

The Homeowner's First Complaint:

Section 1: Written Statement of Services

Section 1 of The Code states that the Property Factor must provide a Written Statement of Service and specifies the details that should be included.

Section 1(f): Financial Charging Arrangements.

'What proportion, expressed as a percentage of a fraction, of the management fees and charges for common works and services each owner within the group is responsible for. If management fees are charged at a flat rate rather than a percentage, this should be stated.'

The Homeowner's complaint is that he did not receive a simple and transparent written statement in connection with the External Wall Insulation ('EWI') works.

Also the invoice he received for the EWI works stated that he owed 100% but it did not explain why he was due a 100% share.

The Factor's response:

Gary Dalziel explained that every occupier was sent a Written Statement of Services. In relation to the EWI invoice he was charged 100% as this matter was raised as an individual charge. This means that the total cost was divided by the total number of owners. The charged was not charged to the block, this would not have been appropriate. He accepted that the invoice could have been clearer.

The Tribunal's Decision:

Section 1 of the Code of Conduct specifies that a written statement of services must be provided to homeowners setting out the terms and delivery standards of the arrangement in place with the homeowner. The Factor had provided the Homeowner with a Written Statement of Services. There is no requirement in the Code to provide a separate Statement in connection with EWI works. In connection with the Factor's fee charging arrangements section 6 of the Factor's Written Statement of Services explains how their fees are charged. The fact that the EWI invoice stated a 100% charge does not breach this section of the Code.

The Tribunal determined that the Factor had not breached Section 1 of the Code.

The Homeowner's Second Complaint

Section 2: Communications and Consultation.

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

The Homeowner's complaint: Misleading information was provided to him when he signed up to have the EWI work carried out. The contract Terms and Conditions he signed with Eon states that he had to pay £0.00 and that any payments he needed to make had to be paid before any work would be carried out. It was only after the work was finished that Linstone asked for any money, or stated that he had any factoring debts.

It was never mentioned at any time, either by Eon or Linstone, that there would be a further charge once he signed up to accept the work to be carried out, whether this be additional work, hidden costs or VAT.

The Homeowner explained that he never received the letter from the Factor that was issued in January 2014 with the details of the Wall Insulation Programme and the residents' liaison officer never told him that he would have to pay the VAT charge.

The Factor's response: Gary Dalziel explained that the letter Linstone sent to the every individual owner in January 2014 was a mail merge letter. Accordingly he cannot provide the Tribunal with a copy of the particular letter that was sent to the Homeowner. The letter stated at the end of paragraph two: 'However the full works costs should be covered by the funding and the Scottish Government grant, which would leave the 5% VAT charge.'

He acknowledged that his letter to the Homeowner dated 1st July 2016 stated that 'it should have been made clearer within the documentation explaining the requirement to pay the 5% VAT charge.' He also acknowledged that the acceptance letter signed by the Homeowner did not contain a statement that the homeowner would be liable for the VAT charge.

The Tribunal's Decision:

The Tribunal acknowledged that the contract between Eon and the Homeowner stated at clause 5.2 that the price includes VAT. However they determined that Factor cannot be held responsible for this inaccuracy.

The Tribunal accepts the Homeowner's evidence that he did not receive the letter from the Factor dated January 2014 which stated that the VAT charge would be payable. The Factor was unable to provide evidence that the letter was received by the Homeowner and the acceptance form that had been signed by the Homeowner was different from the acceptance form on page 2 of the Factor's letter dated January 2014.

The Tribunal determined that as the liability to pay VAT was an important detail of the contract. The undated acceptance form signed by the Homeowner was misleading as it did not clarify that the Homeowner would be liable to pay VAT as a result of receiving the Eon and Scottish Government Funding. Consequently the Tribunal determined that the Factor had breached Section 2.1 of the Code.

The Homeowner's Third Complaint

2.2 'You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that they may take legal action).'

The Homeowner's complaint: He felt intimidated and threatened when he received a letter from Linstone saying that he had a debt to pay and if he didn't pay it within 7 days of that letter they said:

'This would leave Linstone with no option but to proceed with further action which either entails referral to their debt collection agency or raising court action for recovery of the debt, which could have an adverse effect on your credit rating'.

He understood that taking legal action, as stated in the code of conduct,is permitted in the Code. However threatening him with debt collectors is never mentioned, and it is not clear to him that a debt collector is a method of legal action. He felt Linstone have stated this to cause fear and alarm and make him feel forced to pay. These statements were in the initial letter that Linstone sent out dated 16th May 2016, before he even received an invoice from them.

Once he contacted Linstone they said this letter was sent out by mistake and he should wait for an invoice to be sent out. During this time he was very stressed and concerned, as he was worried why he received a factoring bill demanding payment that he knew nothing about. He found it frustrating that he had been sent quite a threatening letter before he was even sent out an invoice.

He also found it to be threatening mentioning his credit rating. He had never had a problem with his credit rating before and he felt it was an unnecessary and irrelevant comment to make.

He acknowledged to the Tribunal that he had only provided page one of the letter from the Factor dated 16th May 2016 and page 1 of that letter does not include the statement that 'This would leave Linstone with no option but to proceed with further action which either entails referral to their debt collection agency or raising court action for recovery of the debt, which could have an adverse effect on your credit rating'

The Factor's response:

Gary Dalziel explained that it was on oversight of the part of the Factor that the letter of 16th May 2016 was sent out before the invoice. He also advised that he did not consider the letter of 16th May 2016 to have been threatening or intimidating.

The Tribunal's Decision:

As the Homeowner had not produced a copy of the second page of the letter from the Factor dated 16th May 2016 to the Tribunal and had not provided any evidence that he received a letter from the Factor including the statement 'This would leave Linstone with no option but to proceed with further action which either entails referral to their debt collection agency or raising court action for recovery of the debt, which could have an adverse effect on your credit rating' the Tribunal determined that they could not make a determination as to whether this statement was abusive or intimidating.

The Tribunal also determined that the first page of the Factor's letter dated 16th May 2016 was not abusive or intimidating, even although it had been sent before the invoice had been sent to the Homeowner. The first page of the letter stated that there was an outstanding balance, it requested payment within 7 days to avoid any further action and advised as to how payment could be made. This content was not abusive or intimidating.

The Homeowner's Fourth Complaint

3: 'While transparency is important in the full range of services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.'

The Homeowner's complaint: When he received the first letter from Linstone about the factoring debt it stated:

'According to our records, you have an outstanding balance of £406 on your factoring account.' There was no explanation of how that charge was calculated, and no explanation of what that charge was actually for. When he received the invoice for the debt, which arrived after the initial letter, the breakdown showed that the £406 was for 'other charges', not repairs or even as a VAT total. The second page of the letter then showed that the £406 was for 'various ECO work'. It has never been clear to him what he is paying for as when he spoke to someone from Linstone he was told he was paying for VAT. To this day he still doesn't know what he is actually paying for, or how the charges have been calculated. As transparency is important in the full range of services, he feels this is another example where Linstone have breached the code of conduct.'

The Factor's response:

Gary Dalziel explained that his letter to the Homeowner dated 1st July 2016 explained the detail of the charge. The letter explained that the actual value of the EWI works was £8000 and the funding that the Factor received from the Scottish Government reduced the actual cost of the works to nil (with the exception of the 5% VAT).

He also explained that the Homeowner had received new gutters, downpipes and facias within the programme of works. As the Homeowner's property was in a block of four and the four properties were non factored properties the Factor was not under an obligation to give the homeowner the opportunity to receive the EWI. The Factor gave them the opportunity to ensure that his property was not different in appearance from the other properties in the estate that were receiving the EWI. In his view the benefits far outweighed the small VAT charge.

The Tribunal's Decision:

The Factor has not demonstrated that the Homeowner knew he would have to pay £406 as a result of the EWI works. The letter from the Factor to the Homeowner dated 1st July 2016 replied to the Homeowner's complaint and they acknowledged that the documentation should have been clearer. The Tribunal determined that the Factor had not been transparent in relation to this and accordingly they had breached section 3 of the Code. The Tribunal acknowledged that the Homeowner had received the benefit of new gutters, downpipes etc, in addition to the EWI, but he was not consulted regarding this. Also the Tribunal was surprised that the Factor had not taken the opportunity to apologize to the Homeowner in their letter of 1st July 2016 given that they accepted that the documentation should have been clearer.

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 Sections 2.1 and 3 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.

The Tribunal proposes to make the following Order:

'Linstone Housing Association are directed to:-

(a) Cancel their invoice dated 20th May 2016 (reference 50006057) and bear the VAT charge of £406 from their own funds and

(b) Forward a credit note in respect of the said cancelled invoice to the Homeowner and a copy to the Tribunal, within 30 days of the date hereof"

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.

Signed J Taylor Date 24th February 2017

Chairperson

Notice of Proposal of the First-tier Tribunal for Scotland (Housing and Property Chamber) Under section 19(2)(a) of the Property Factors (Scotland) Act 2011

Chamber Ref:HOHP/PF/16/0108

2C Thrush Place, Johnstone, PA5 0RZ ('the Property')

The Parties:

Graham Toman residing at 2C Thrush Place, Johnstone, PA5 0RZ ('the Homeowner')

Linstone Housing Association, 17 Bridge Street, Linwood, PA3 3DB ('the Factor)

Committee members:

Jacqui Taylor (Chairperson) and Sara Hesp (Ordinary Member).

NOTICE TO THE PARTIES

Whereas in terms of their decision dated 24th February 2017, the Tribunal decided that the Factor had failed to comply with sections 2.1 and 3 of the Code of Conduct, all as stated in the said decision; The Tribunal proposes to make a property factor enforcement order in the following terms:

'Linstone Housing Association are directed to:-

(a) Cancel their invoice dated 20th May 2016 (reference 50006057) and bear the VAT charge of £406 from their own funds and

(b) Forward a credit note in respect of the said cancelled invoice to the Homeowner and a copy to the Tribunal, within 30 days of the date hereof"

This intimation of the Tribunal's Decision and this Notice to make a Property Factor Enforcement Order to the parties should be taken as notice for the purposes of section 19(2)(a) of the Act and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) of the Act reach the Housing and Property Chamber's office by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale

then the Tribunal is likely to proceed to make a Property Factor Enforcement Order (PFEO) without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and constitute an offence.

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.

Signed ...J Taylor Chairperson Date: 24th February 2017