

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: FTS/HPC/PF/17/0317

Re: 14 Forbes Park, Echt, Westhill, Aberdeenshire, AB82 6HN

The Parties:-

Mrs Paula Houston, 14 Forbes Park, Echt, Westhill, Aberdeenshire, AB82 6HN (“the Homeowner”)

The Property Management Company, Little Square, Old Meldrum, Aberdeenshire, AB51 0AY (“the Factor”) (represented by Mr John Taylor, Solicitor)

Tribunal Members

Helen Forbes (Legal Member)

Mike Scott (Ordinary Member)

Decision

The Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Sections 1.1bDk and 7.1 of the Property Factor Code of Conduct (“the Code”).

The decision is unanimous.

Background

1. By application received on 14th August 2017 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a determination that the Factor had failed to comply with Sections 1.1bDk, 2.1, 2.5 and 7.1 of the Code. The Homeowner also applied for a determination that the Factor had failed to comply with its duties under section 17 of the Act.

2. Details of the alleged failures were outlined in the Homeowner's application and associated documents comprising emails to and from the Factor, and extracts from the Factor's Written Statement of Services. The failures outlined by the Homeowner were in relation to a change by the Factor of the complaints policy, intimated to homeowners on 2nd June 2017, whereby the final stage of the complaints procedure had been altered. Previously, the final stage had been a referral to the Factor's Managing Director. In the new policy, the final stage of the complaints procedure was a referral to Ombudsman Services: Property ("OS:P"). The Homeowner had notified the Factor that OS:P did not deal with factoring complaints from Scotland. The Factor had not revised the complaints procedure, leading to the complaints of breach of the Code by the Homeowner. The Homeowner alleged that the Factor had failed to comply with its duties under section 17 of the Act by unreasonably delaying to change the wording of the complaints policy.
3. On 30th August 2017, the Factor's Property Manager, Richard Burnett, wrote to the Tribunal and stated that the matter of whether OS:P could deal with factoring complaints in Scotland was being considered by the Royal Institution of Chartered Surveyors ("RICS"), OS:P and the Scottish Government, with a meeting to be held on 4th September 2017. Mr Burnett asked that the Tribunal delay any action or decision on the matter until the result of said meeting was known.
4. By Minute of Decision dated 6th September 2017 a Convenor of the Housing and Property Chamber referred the Application to a Tribunal.
5. On 27th October 2017, the Factor's representative lodged written representations as set out in Appendix 1 attached hereto. The Factor's representative indicated that matters could be dealt with by written submissions and a hearing was not required.
6. On 27th October 2017, the Homeowner lodged written representations and an inventory of productions as set out in Appendix 2 attached hereto. The Homeowner indicated that matters could be dealt with by written submissions and a hearing was not required.
7. On 15th November 2017, the Factor's representative emailed the Tribunal and indicated that, having considered the written representations of the Homeowner, there were matters contained therein that required comment, and that this could best be done by addressing a hearing. The Tribunal agreed that the hearing should proceed on 21st November 2017.
8. On 20th November 2017, in response to a request by the Tribunal for further information, the Factor lodged a copy of their Written Statement of Services.
9. **Hearing**

A hearing took place at 10.00 on 21st November 2017 at Westhill Community Church, Old Skene Road, Westhill, Aberdeenshire, AB32 6AQ. The

Homeowner was present. The Factor's, Property Manager, Mr Richard Burnett was present, and the Factor was represented by Mr John Taylor, Solicitor.

Neither party called additional witnesses.

10. The Legal Member raised a preliminary point in relation to the Homeowner's reference in her Application to 'other unresolved complaint issues to be determined by First Tier'. The Tribunal wished to make clear that only those matters outlined in the Application would be considered at the hearing.

Evidence and Representations

11. The Homeowner indicated that she wished to rely on her written representations as her evidence to the Tribunal, and that she was content to answer any questions that arose. Mr Taylor, on behalf of the Factor, indicated that the Factor's written representations were to be taken as their evidence to the Tribunal with the exception of the matters mentioned in the said email of 15th November 2017. Mr Taylor said he and his client had hoped that a hearing would not be necessary. They considered they had answered the original case fully in written submissions; however, the further written representations of the Homeowner had raised a couple of issues that they felt had to be answered.

Further issues from written representations

12. Mr Taylor referred to the fourth paragraph and the following bulleted sub-paragraph on page 1 of the Homeowner's written representations, where the Homeowner mentioned that the Factor had been disingenuous and did not fully understand the implications of changing the complaints policy. Secondly, he referred to the reference to an unresolved conflict in the second sub-paragraph. He appreciated that, in both cases, the Homeowner may be referring back to the original matters, in which case no further submissions were required.

In response, the Homeowner clarified that she did not intend to raise any new matters in the written representations, and the two matters to which Mr Taylor had referred related to the original complaint. She indicated that she had provided evidence and a further letter from OS:P (Production 3) stating that there was a change to the procedures and that Scottish factoring cases would be accepted from 5th September 2017.

Mr Taylor said he was satisfied with the Homeowner's explanation. He pointed out that RICS had understood initially that OS:P could deal with Scottish factoring complaints, and that it was already dealing with Scottish letting complaints. Following representations, OS:P has changed its position and will take applications. There had been no bad faith on the part of the Factor; they had understood the position to be as put forward by RICS initially.

Failure to comply with Section 2.1

13. Section 2.1 of the Code states: *'You must not provide information which is misleading or false'*

The Homeowner confirmed that she did not believe the Factor had deliberately intended to mislead, but the new policy was misleading (until 5th September 2017) due to the fact that OS:P would not deal with factoring complaints in Scotland. Further, it was misleading as it implied that an application could not be made to the Tribunal unless the complaint had been referred to, and dealt with by, OS:P.

The Legal Member asked the Factor whether it was their position that all complaints from homeowners must go to OS:P before a referral could be made to the First-tier Tribunal for Scotland (Housing and Property Chamber). Mr Taylor indicated that this would be the preferred position of the Factor. In response to a further question as to whether the Factor considered the referral to OS:P to form part of the Factor's in-house complaints procedure, as envisaged by the Code, Mr Taylor said it depended on the interpretation of 'in-house'.

Failure to comply with Section 2.5

14. Section 2.5 of the Code states: *'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 HOs informed if you require additional time to respond. Your response times should be confirmed in the written statement.'*

The Homeowner confirmed that this was not a complaint about the responses made by the Factor to individual emails and correspondence; it was a complaint about the length of time taken to make matters clear in respect of the complaints procedure and the issues with OS:P.

Referring to the Homeowner's written representations, Mr Taylor noted that the Homeowner accepted that matters in relation to timescales for addressing the issue with OS:P were outwith the control of the Factor. It was not within the gift of the Factor to decide when the issue would be resolved, and discussions had included the Scottish Government and OS:P. It was inevitable that there would be some delay. The Factor appreciated that this would have caused frustration and anxiety for the Homeowner.

In-house Complaints Handling Procedure – failure to comply with sections 1.1bDk and 7.1 of the Code

15. Section 1.1bDk of the Code states that the written statement of services should set out: *'your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure.'*

Section 7.1 states: *'You must have a clear written complaints resolution 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.'

It was a concern of the Homeowner that she had been informed by OS:P that the investigation and resolution of complaints could take up to 24 weeks. Mr Taylor said a shorter timescale is expected, but it is impossible to know at this stage how long the process would take. OS:P's office has not yet dealt with a Scottish factoring case, but the Factor trusts that the process would be fit for purpose and he would expect a shorter timescale than that quoted. In any event, the hope is that few cases of complaint would get to that stage. Mr Taylor pointed out that the current application before the Tribunal is a hypothetical application. There has been no formal complaint made by the Homeowner that has progressed through the complaints procedure. If she has such a complaint, the Factor would invite her to make a proper complaint and there is a high probability that it would be resolved at stage 1 or 2.

In response to a question from the Ordinary Member as to what checks had been carried out by the Factor as to the remit of OS:P before changing their complaints procedure, Mr Taylor said that the change came about due to the requirements of membership of RICS, which required members to have independent validation and an arbitration process. OS:P was chosen because of its positive reputation, and because it deals with letting agent complaints in Scotland. RICS had indicated that OS:P would be an appropriate body to use. This was accepted by the Factor in good faith. The Factor shares the concerns of the Homeowner over delays by OS:P in handling complaints; however, Mr Burnett said that letting complaints had been dealt with by OS:P in 5 or 6 weeks. It was the Factor's belief that most complaints would be dealt with earlier. The Factor would prefer that matters did not proceed to OS:P or the Tribunal, due to the time and cost of such procedures. It was their feeling that most complaints could be dealt with at an earlier stage and most would not progress as far as OS:P or the Tribunal.

The Legal Member asked whether the complaints procedure had been changed because, as stated in the written representations, it was felt that an external body should provide the final stage of the complaints procedure, or because it was a requirement of RICS. Mr Taylor said it was primarily due to being a requirement of RICS, but it was also felt more appropriate to have an external final stage rather than the previous procedure, where the final stage was dealt with by the Factor's Managing Director. It was felt that the new procedure was fairer on clients. In reality, however, it was unlikely that complaints would progress as far as OS:P, as the Factor would probably still review the complaint at the highest level within the company before a referral to OS:P was made. The Managing Director could override the decision of lower tier colleagues at that stage, if appropriate.

The Legal Member referred to the Factor's Written Statement of Services and the statement contained therein to the effect that a complaint would be resolved as quickly as possible, and if unable to resolve the complaint within 4 weeks, an explanation of the reasons and the further action to be taken would be provided to the complainant. She asked if the new complaints policy, involving

OS:P complied with the requirement at section 7.1 of the Code that the complaints procedure must set out a series of steps with reasonable timescales linked to those set out in the written statement. Mr Taylor submitted that it did, and that it was hoped that complaints would be dealt with within the timescale in the written statement, unless there was a referral to OS:P. The timescale would depend on the issue in question. He envisaged that a true emergency would be dealt with quickly by OS:P, and said that many complaints were not time-sensitive. While less time-sensitive complaints would never be 'put on the back-burner', there were some issues where it would not make much difference if the complaint took 4 or 14 weeks to be dealt with.

The Homeowner said she wondered if the matter should have been referred to the Property Managers Association Scotland. They may have been able to offer guidance. She said that, due to her background in audit and with Citizens Advice Scotland, she immediately knew on 2nd June 2017, when she received a copy of the new procedure, that OS:P did not deal with factoring complaints in Scotland. She made a five minute call to OS:P and they were happy to engage with her. It was easy for her to confirm that OS:P was not the appropriate body to deal with this, and she wondered why the Factor took so long to get an answer, given that the Factor had recourse to two professional bodies for assistance. Now that the issue had been resolved, she said, a referral to OS:P should be an alternative to referring matters to the Tribunal. The new complaints policy is not clear in this regard, and it implies that matters must proceed to OS:P before they can be referred to the Tribunal. The wording should be clearer. It has taken two weeks short of six months to get where we are today. This is not a reasonable length of time.

The Homeowner said that she didn't take the decision to refer matters to the Tribunal lightly, but this was an important issue and she wanted the residents to achieve a fair resolution. The residents have had no choice over the appointment of the Factor and related issues such as management fees. She did not want there to be bad feeling between the residents and the Factor.

Failure to carry out the Property Factor's duties

16. The Homeowner confirmed that it was her complaint that the Factor had failed to comply with its duties under section 17 of the Act by unreasonably delaying to change the wording of the complaints policy.

In response to a question from the Ordinary Member, as to whether the Factor had considered informing the homeowners that there may be a problem with the new complaints procedure, Mr Burnett said that the Factor made instant enquiries with RICS when the concern was notified to them by the Homeowner. RICS said that they would have a response within a few days. It was not expected that the matter would take so long to be dealt with. The Factor was awaiting a prompt decision, but matters outwith their control, such as the absence of crucial people within RICS and OS:P, lengthened the process. There was a significant degree of uncertainty. If the Factor had changed the procedure, any new procedure would have had to be retracted when the issue

was resolved, as, indeed, it was. Mr Taylor said that, in hindsight, the Factor might have acted differently.

17. Parties were asked if they wished to make any further representations to support their respective cases, as set out in the written submissions and the evidence heard at the hearing. Both parties declined to make any further submissions.

Findings in Fact

- 18.
- i. The Homeowner is the owner of the property at 14 Forbes Park, Echt, Westhill, Aberdeenshire, AB82 6HN
 - ii. The Factor provides factoring services in respect of the development at Forbes Park, Echt, Westhill.
 - iii. The Factor has been a registered Property Factor since 1st November 2012, with registration number PF000100.
 - iv. On 2nd June 2017, the Factor circulated an amended complaints procedure that substituted a referral to OS:P as the last stage of their procedure. The previous complaints procedure had a referral to the Factor's Managing Director as the last stage of the complaints procedure.
 - v. On or around 2nd June 2017, the Homeowner contacted OS:P and was informed that OS:P did not deal with factoring complaints in Scotland.
 - vi. On 12th June 2017 the Homeowner received an email from Catherine Linacre of RICS informing her that RICS does not offer a service for free mediation for Scottish property factor clients of RICS.
 - vii. On or around 2nd June 2017, the Homeowner informed the Factor that OS:P did not deal with factoring complaints in Scotland.
 - viii. The Factor entered into discussion with OS:P to ascertain whether they deal with factoring complaints in Scotland.
 - ix. Over a period from 2nd June 2017 to late August 2017, the Homeowner corresponded with the Factor and requested that they change their complaints policy, which she considered to be misleading.
 - x. There was a delay on the part of OS:P in providing an answer to the question of whether OS:P could deal with factoring complaints in Scotland.
 - xi. On 6th September 2017 the Factor's Property Manager, Richard Burnett, informed the Homeowner and the First-tier Tribunal for Scotland

(Housing and Property Chamber) that OS:P had confirmed that they would accept a referral of factoring complaints in Scotland.

- xii. On 13th September 2017, Richard Beaden of OS:P wrote to the Homeowner confirming that, from 5th September 2017, OS:P would consider complaints regarding property management/factor complaints in Scotland from RICS member companies.
- xiii. The letter from Richard Beaden of OS:P confirmed that there is no obligation for a complainant to use the service although OS:P would expect a RICS member to refer a complainant to the service following completion of its complaints handling procedure.

Determination and Reasons for Decision

19. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Failure to comply with Section 2.1

20. The Tribunal considered the terms of the Written Statement of Services provided by the Factor, and both the previous complaints policy and the amended complaints policy, the latter of which was provided to homeowners on 2nd June 2017. The Tribunal did not find that the Factor had failed to comply with Section 2.1. The Factor had relied upon the recommendation of RICS that OS:P would deal with factoring complaints in Scotland. Although it transpired that this was not the case, the Tribunal considered that there was no intent by the Factor to provide information that was misleading or false. Neither did the Tribunal consider that there was any intent by the Factor to mislead homeowners in regard to the complaints procedure to be followed. However, the Tribunal made the following observation:

The Factor's position as set out in the complaints policy, and confirmed in their evidence to the Tribunal, that complaints should be referred to the OS:P before an application can be made to the First-tier Tribunal for Scotland (Housing and Property Chamber) could lead to confusion for homeowners. The Act provides at section 17 that no application to the Tribunal may be made unless the homeowner has notified the factor in writing of a failure of the property factor's duties or section 14 duties, and the property factor has refused to resolve, or unreasonably delayed, in attempting to resolve the homeowner's concern. There is no requirement in the Act that the homeowner must exhaust the factor's complaints procedure before an application to the Tribunal can be made. The Tribunal does not consider that referral to OS:P should form a mandatory part of the Factor's complaints handling procedure. It does not, by any stretch of the imagination, constitute an in-house stage of the complaints procedure. In the letter to the Homeowner from Richard Beaden of OS:P dated 13th September 2017 (Homeowner's document number 3) it is stated that 'There is currently no obligation for a complainant to use our service although we would expect a RICS member to refer you to our service following the completion of its complaints handling procedure.' The referral to OS:P should,

therefore, be made available to the Factor's clients, as an optional route, when the in-house complaints procedure has been exhausted. The Tribunal would recommend that the Factor amends the complaints policy to indicate that this is an optional step, and to make clear that referral to the Tribunal can be made at any stage when the property factor has refused to resolve, or unreasonably delayed, in attempting to resolve the homeowner's concern.

Failure to comply with Section 2.5

21. The Tribunal did not find that the Factor had breached this section of the Code. The emails lodged by the Homeowner indicated that the Factor had responded to enquiries and complaints received by email from the Homeowner within prompt timescales. With regard to the complaint about the length of time taken to make matters clear to homeowners in respect of the complaints procedure and the issues with OS:P, the Tribunal accepted the evidence put forward on behalf of the Factor that a timely response was expected from OS:P and that the Factor was at the mercy of outside bodies, while awaiting a response. The Tribunal accepted the evidence that the Factor was concerned that changing the complaints procedure while an answer was pending, could have led to further confusion for homeowners, particularly if the complaints procedure had to be changed again when the matter was finally settled. The Factor kept the Homeowner informed about the delays throughout the period between the issue being raised and the final resolution.

The Tribunal observed that it might have been advisable for the Factor to have written to homeowners during this period to inform them of the issue with the complaints procedure. This would not have entailed amending the procedure, but would have kept homeowners informed of the issue.

Failure to comply with section 1.1bDk of the Code

22. The Tribunal found that the Factor had breached this section of the Code. The Factor's Written Statement of Services fails to mention how homeowners may make an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the homeowner housing panel) if they remain dissatisfied following completion of the Factor's in-house complaints handling procedure.

Failure to comply with section 7.1 of the Code

23. The Tribunal found that the Factor had breached this section of the Code by failing to have a series of steps with reasonable timescales linking to those set out in the written statement, in their revised complaints procedure. The only timescale in the revised complaints procedure is at stage 1, when the Factor undertakes to aim to resolve concerns within 5 working days. There are no timescales included for stages 2 and 3.

Failure to carry out the Property Factor's duties

24. The Tribunal did not find that the Factor had failed in carrying out their duties. The Tribunal accepted the Factor's evidence as to why they had not changed the wording of the complaints policy. The Tribunal's reasoning is reflected in paragraph 21 above.

Proposed Property Factor Enforcement Order (PFEO)

25. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO.
26. The Tribunal proposes to make a PFEO requiring the Factor to draft and provide to each homeowner and to the Tribunal within a period of six weeks a Written Statement of Services and a complaints policy taking cognisance of the requirements of the Code in regard to Sections 1.1bDk and 7.1.

Right of Appeal

27. 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.

H Forbes

Legal Member and Chairperson

21st November 2017

This is Appendix 1 referred to in the foregoing Statement of Decision dated 21st November 2017

Written Representations

Reference FTS/HPC/PF/17/0317

Housing and Property Chamber
First-tier Tribunal for Scotland

*Legal Member and
Chairperson
21/11/17*

Re Property Management Company (Aberdeen) Limited

I have been asked to represent the Property Management Company (Aberdeen) Limited in connection with the matter of the complaint raised by Mrs Paula Houston.

The factual background to the complaint by Mrs Houston appears to be capable of agreement. The complaint arises out of a change to the respondents complaints procedures. Mrs Houston complains that the new procedure is not compliant in that it is erroneous and misleading and that there has been an unreasonable delay in changing and amending the wording of the respondents complaints procedures.

Briefly the history of this matter is that the respondents are members of the Royal Institute of Chartered Surveyors (RICS). That professional body has its own code of conduct and regulations in respect of its members. The respondents are required by the RICS regulations to meet certain prescribed standards as a condition of membership. One of those conditions is that they have a process which permits complaints to be resolved in an arbitration process. The RICS specifically say that the Ombudsmen Property Service provides their members with such a service and that was the method chosen by the respondents to meet those obligations. The respondents complaints process was approved by RICS as part of their application to become RICS members. Additionally the respondents had in place a complaints procedure that met the statutory requirements for factors as well. Their "old" complaints process is not the subject of any complaint by Mrs Houston. Their former procedure involved a customer taking any complaint through a process whereby the complaint would be considered at three escalating levels if it could not be resolved at first instance. It was as follows:-

- 1 An initial complaint to the property manager.
- 2 If not resolved at stage 1 then the complaint escalated to the customer service director
- 3 If not then resolved at stage 2 the complaint escalated to the respondents managing director
- 4 Finally if still not resolved the customer could take the complaint to the First-tier Tribunal

The respondents noted that the first three stages of their existing procedure all involved internal review at the hands of the respondents. The respondents had concerns that this process however lacked transparency and fairness and could be viewed as lacking in natural justice. An aggrieved customer might feel that reviews were simply approving or "rubber stamping" internal decisions without truly reconsidering the complaint of new. Additionally it missed out the step in process required by their RICS membership. Accordingly they sought to improve upon the process that was in place. This would seem to be an entirely commendable objective...

After consideration the respondents decided in good faith that the third and final stage in the review process was best served by an external body reviewing and considering the complaint at stage 3. They looked at outside parties that could undertake this role and the RICS requirements. They determined to refer any stage 3 complaints to the Ombudsmen Property Services Panel who the respondents believed could act in such matters. The respondents were aware that other firms had made such a provision in their procedures. The respondents decision was made reasonably and in the belief that based on RICS guidance that this was a perfectly normal, permissible and appropriate way to deal with stage 3 complaints.

The respondents then issued their customers with a new complaints procedure which repeated the process which was already in existence but made one change which was to substitute an external review at stage 3 and refer customers instead to the Ombudsmen Property Services Panel. All other existing rights were preserved and the change only operated to enhance the customers rights.

This in itself does not appear to be exceptional and would be to most fair minded persons an improvement upon the process that had been in place earlier.

Mrs Houstons objection however is that the respondents were referring customers to The Ombudsmen Property Services Panel and from her enquiry it appeared that this body would not act in matters relating to Scotland at least in so far as factoring was concerned. Mrs Houston had seemingly contacted them or at least made some enquiry which disclosed to her that the position of the Ombudsmen Property Service Panel was that they did not deal with such property matters in Scotland. She reported this to the respondents and required them to change their procedures and re-intimate the change to all customers forthwith.

When the respondents were so advised they were frankly surprised. The position of the Ombudsmen Property Services office is at first consideration anomalous in that they have dealt with such matters for letting cases for Scotland in the past without demur. To the knowledge of the respondents the Ombudsmen Property Services Panel had been nominated in the complaints process of other RICS members complaints procedures. A check with RICS disclosed that RICS understood the position to be contrary to what the Ombudsmen Property Services Panel had reported to Mrs Houston. Further enquiries were then made at senior level between RICS and the Ombudsmens Property Services Panel as this matter had national significance for RICS members. This process took several weeks to determine. The time scale was out with the respondents control however they did make several enquiries as to progress as Mrs Houston was pressing them for an answer to her complaint. To the respondents knowledge it appears that no complaint had escalated to the Ombudmens Property Services Panel before so this matter had not been a live issue until Mrs Houston raised it formally.

In the event matters have resolved in that whatever the position may have been when Mrs Houston raised it with the Ombudmens Property Services Panel that body have agreed with RICS that they will indeed handle complaints review from Scotland. That being the case the respondents procedures are compliant and the basis of Mrs Houstons complaint to First-tier Tribunal no longer exists, if it ever did. I say if it ever did as it is far from clear that the Ombudmens Property Services

Panel had reported the correct position in the first place as clearly a body of professional opinion in Scotland was of the opinion they did carry out reviews of Scottish cases.

Further it has to be said that Mrs Houstons' complaint has had the benefit of clarifying the position as now that the issue has been considered by the Ombudsmen Property Services Panel they have determined that whatever they considered the position or policy to be beforehand they do now accept that they have the jurisdiction and authority to deal with these matters. One presumes that had a "live" complaint been formally referred to them before now that the parties to that complaint would have asked the Ombudsmen Property Services Panel to consider their position and that the eventual outcome would have been the same. In short while it is unfortunate that Mrs Houston was told the Ombudsmen could not deal with matters if a complaint was ever raised and escalated that far either that information was not correct or if it was correct it was not commonly understood to be so and in any event it is no longer the case.

On the separate matter of delay the Tribunal will be aware that a matter raising such important national issues was not within the gift of the respondents to resolve at their own pace. Other bodies including RICS and the Scottish Government had to be consulted and it was perhaps inevitable that this would result in the issue taking several weeks to resolve. The issue which Mrs Houstons complaint raised was one a matter of considerable national importance and it was important that the correct position was established beyond doubt in the future for the benefit of other customers and factors. Briefly this was a matter that required enquiry and resolution by bodies other than the parties.

Further on the matter of delay the respondents would respectfully suggest that there has been no prejudice to Mrs Houston. There was no "live" issue as regards service issues. Her concern has been that a procedure that had been put in place was not capable of providing a review of any complaint should one ever get that far. Of course this was never actually tested. Although she has alluded to some other matters that she wishes to raise as complaints with the respondents in future she has not as at the date of this response raised any such complaints on service or similar with the respondents other than the subject matter of this complaint before First-tier Tribunal. Such matters are not properly before the Tribunal. They are not known to the respondents. They have not been subject to the respondents complaints procedures. While she may suggest that she has been unable to make those complaints whatever they may be because of this outstanding matter I would respectfully point out that there has never been any issue with stages 1 & 2 of the respondents complaints process, that any complaints raised by Mrs Houston could well have been resolved at stage 1 or 2 and consequently she is able to pursue any unspecified complaint she may have with the respondents at this time should she choose to do so.

In conclusion I would respectfully suggest that it is not clear that there was an issue for the respondents to address and if there was they have done so properly and that their present position is fully compliant and there is no need for further intervention by the Tribunal. In judicial terms a complainer requires a substantial reason to bring a cause to a judicial forum and if that substantial reason no longer exists at the date of any hearing the court or forum dealing with the matter would normally dismiss the cause. No reasonable person persists with an action once it is satisfactorily resolved. I would respectfully move the Tribunal to dismiss this matter without any direction order.

This is Appendix 2 referred to in the foregoing Statement of Decision dated 21st November 2017

Reference: **FTS/HPC/PF/17/0317**

Address: 14 Forbes Park, Echt, Westhill AB32 6HN

Applicant: **Mrs Paula A Houston**

Property Factor: **The Property Management Company**

Local Member
and Chairperson
21/11/17

WRITTEN REPRESENTATIONS

Further to my last communication dated 3 September 2017 included in my case file and sent to me with the notice of referral and hearing dated 10 October 2017, I enclose an inventory of documents to be lodged with this form for consideration (and copies have been sent to Richard Burnett of the Property Management Company (PMC) in accordance with Practice Direction No 3).

My issue with PMC's complaint policy change wording is that before 5 September, Ombudsman Property Service did not deal with Scottish property factor complaints.

It took over three months since raising this complaint with PMC for it to be decided that RICS and Ombudsman Property Services (Ombudsman) (see documents 1 and 3) would now accept property factor complaints, but only from 5 September 2017.

I accept that once RICS/Ombudsman had been asked to consider PMC's request for a meeting that this timescale was out of PMC's control. However, I believe PMC have been disingenuous their response to me in document 1:

- in not fully understanding the implication of changing their complaints policy on 2 June; and
- in not clarifying the process since becoming aware of the issues raised in any communication to their property factor clients in general; despite knowing since my complaint was raised that an unresolved conflict in the mediation process remained up to meeting on 4 September with RICS/Ombudsman.

In the communication from PMC advising me that their procedure "was confirmed as correct and fully acceptable" (document 1) there was no apology or acknowledgement that for over three months the explicit referral of their property factor clients to Ombudsman Property Services was erroneous (confusing and inaccurate policy wording).

In addition, on 12 June 2017, RICS confirmed to me that, unlike First Tier, RICS did not offer a service for free mediation for Scottish Property Factor clients of RICS members (document 2), a statement I also made PMC aware of in my complaint resolution negotiations on 19 June.

Reference: **FTS/HPC/PF/17/0317**

Address: 14 Forbes Park, Echt, Westhill AB32 6HN

Applicant: **Mrs Paula A Houston**

Property Factor: **The Property Management Company**

WRITTEN REPRESENTATIONS (continued)

It was only through my direct communication with Ombudsman Property Service (document 3) that clarification was made to me that there is no obligation for a complainant to use this service. I understand that an alternative direct route to First Tier is still acceptable as a means of obtaining free mediation and a decision should a client decide not to approach Ombudsman Property Services first.

The Ombudsman advised in document 3, I have a choice to submit my complaint first to them; but implicit in the wording of my factor's complaint procedure is that, if I am not happy with their decision, I may then go to First Tier, i.e. one only follows on from the other.

I believe it is not clear from my factor's complaint policy that there is no obligation to first go down this route, and if a customer chooses not to, then their option to make a First Tier application is not negated.

The Ombudsman Property Service has advised me on 3 October that an investigation can take 24 weeks to complete. If a client declines their decision and then seeks resolution through First Tier then, in my view, the timescale involved to reach a final decision may not be seen to be reasonable. I understand, the Code of Conduct expressly requires the factor's complaints procedure to indicate the timescales and for these to be reasonable.

In addition, when a client is referred online to www.ombudsman-services.org by PMC's new complaint policy, I will point out that through the web-site property section, <https://www.ombudsman-services.org/sectors/property>, and a search through the link..."If you have a problem sorting out a complaint with a property firm or company listed on our website we may be able to help", the search box directs you to a list of "Property (Other) and not Property (RICS) companies. PMC is not listed under Property (Other) under T (for The) or P (for property). I believe this link is confusing and contributed to me raising my complaint with PMC after 2 June.

Please note, if my application can be considered by written representations and without a hearing, and a decision is found in my favour, then I accept I will not look for compensation for lost wages pertaining to my hourly paid contracted employment to attend a hearing, as indicated in section 7 of my application responses (dated 10 August 2017), as to what would help resolve the problem I have raised.

Reference: **FTS/HPC/PF/17/0317**

Address: 14 Forbes Park, Echt, Westhill AB32 6HN

Applicant: **Mrs Paula A Houston**

Property Factor: **The Property Management Company**

WRITTEN REPRESENTATIONS (continued)

I have, however, spent many hours trying to understand how best to bring my unresolved complaints with PMC's services forward with reference to their new complaint policy. I ask, therefore, that you can confirm that on conclusion of any decision, the time my complaint has taken to get to this stage from 2 June, will be taken into consideration in deciding on the acceptance of whether any future unresolved complaints against PMC that I may take to First Tier, would or would not be time-barred.

I refer you to the details of my application dated 10 August 2017, made under Section 17(1) of the Property Factors (Scotland) Act 2011, for consideration.

Case inventory (Property factor)

Reference: **FTS/HPC/PF/17/0317**

Address: 14 Forbes Park, Echt, Westhill AB32 6HN

Applicant: **Mrs Paula A Houston**

Property Factor: **The Property Management Company**

List of Documents:

1. Email received from Richard Burnett on 6 September 2017, addressed to me, advising of the Ombudsman Service decision change brought in on 5 September 2017 (as forwarded to First Tier);
2. An email from Cathy Linacre, Head of Reference Services of RICS, dated 12 June 2017 as forwarded to First Tier on 7 September 2017, advising me that RICS does not offer a service for free mediation for Scottish Property Factor clients of RICS members;
3. A letter from Ombudsman Services: Property dated 13 September 2017 clarifying the change regarding the consideration of complaints regarding property management/factor complaints in Scotland from some RICS member companies, only from 5 September 2017.

Richard Burnett
RE: FTS/HPC/PF/17/0317
6 Sep 2017 at 19:55:43
Paula Gmail

Good Morning Paula

Our detailed letter to the Ombudsman and Property Chamber has been confirmed as correct and fully acceptable by the Ombudsman Service – Property, and we have notified the First Tier Tribunal per the letter below.

Kind Regards

Richard

First Tier Tribunal for Scotland (Housing and Property Chamber)
4th Floor
1 Atlantic Quay
45 Robertson Street
Glasgow G2 8JB

Dear Sir

Application from Paula Houston, 14 Forbes Park, Echt, Westhill, Aberdeen. AB32 6HN
Reference Number - FTS/HPC/PF/17/0317

We refer to the above and to our letter of 30 August. We met on Monday 4 September at the RICS with the Ombudsman Service, Mr David Pilling and his team. He has confirmed that he is in complete agreement with our Complaints procedure, and that he has consulted with Scottish Government before confirming this agreement. The Ombudsman Service – Property would accept a referral of a complaint dealing with Factoring, and would address it as with any other property related topic.

Obviously, as we have always stated in our Complaints Procedure, an client who was dissatisfied with the Ombudsman Service – Property would still have the normal recourse to the First Tier Tribunal

Should you wish to discuss this matter, please do not hesitate to contact me.

Yours sincerely



Richard S Burnett
Director

The Property Management Company
Little Square
20th Floor
Aberdeen

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Direct Line: +44 (0) 1651 871086
Fax: +44 (0) 1651 871357
Email: enquiries@pmcmanab.co.uk
Web: www.pmcmanab.co.uk

From: BT Account jpca1000@btinternet.com

Subject: Re: FTS/HPC/PF/17/0317

Date: 7 Sep 2017 at 05:57:34

To: First Tier Tribunal Service

HPCAdmin@scotcourtsribunals.gov.uk

Also further to my emails to you yesterday, I also wish to include this email received from the RICS technical department in June as a response to my enquiry concerning my attempt to follow PMC's disputed complaints policy change, before my application to the HPC.

So, I still have no clarification by my factor's response of yesterday.....am I able to still seek **free** mediation now or not, should I attempt to bring unresolved complaints forward?

Regards,

Paula Houston

Jpca1001@gmail.com

Begin forwarded message:

From: "Linacre, Catherine" <clinacre@rics.org>
Date: 12 June 2017 at 12:19:47 BST
To: "Houston, John" <jpca1000@btinternet.com>
Subject: Technical guidance CRM:000270513

Dear Paula,

Apologies that I misunderstood your initial question.

I am afraid RICS does not offer a service for free mediation for Scottish Property Factor clients of RICS members.

Yours sincerely

Cathy Linacre

Good for consumers – Good for business

Mrs Paula Houston
14 Forbes Park
Echt
Westhill
Aberdeenshire
AB32 6HN

Our ref: 1252179

13th September 2017

Dear Mrs Houston

COMPLAINT ABOUT YOUR SERVICE PROVIDER

Thank you for your recent telephone call.

As we discussed during the telephone conversation Ombudsman Services: Property can consider complaints regarding property management/factor complaints in Scotland from some RICS member companies. This change was brought in on 5 September 2017.

In relation to complaints our service is an alternative to court proceedings such as a First Tier Property Tribunal. There is currently no obligation for a complainant to use our service although we would expect a RICS member to refer you to our service following the completion of its complaints handling procedure.

The decisions our service makes are binding upon a company and any remedy we award would have to be implemented within 28 days.

I hope this email answers your questions in relation to our service.

Yours sincerely



Richard Beaden
Enquiry Officer