

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision: Property Factors (Scotland) Act 2011, section 19(1) and the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, Rule 31**

**Chamber Ref: FTS/HPC/PF/16/1018**

**The Property:**

**Flat 3/1, 142 Fergus Drive, Glasgow G20 6AT**

**The Parties:-**

**Mr Matt Duffy, residing at Flat 3/1, 142 Fergus Drive, aforesaid.**

**(“the homeowner”)**

**and**

**Walker Sandford Property Management Ltd, St George’s Buildings, 5 St Vincent Place, Glasgow G1 2DH**

**(“the factors”)**

**The tribunal (formerly the Homeowner Housing Committee):**

**David M Preston, Legal Member; and Elizabeth Dickson, Ordinary Member**

**Decision:**

**The tribunal, having made such enquiries as it sees fit for the purpose of determining whether the factor had complied with the Code of Conduct for Property Factors (“the Code”) as required by section 14 of the Act, determined unanimously that the factor has failed to comply with their duty to provide clear and concise explanations to the homeowner in response to his enquiries.**

**Background:**

1. By application dated 2 December 2016 the homeowner applied to the Tribunal for a determination as to whether the factors had failed to comply with the Code and to carry out the Property Factor’s duties.
2. In particular the homeowner complained that the factors had failed to comply with sections: 2.1; 2.2; and 2.5 of the Code. Details of the alleged failures were outlined in the application and accompanying papers comprising the documents received in the period of 6 December 2016 to 22 February 2017. In a letter dated 17 February 2017 submitted by the homeowner along with his application, the homeowner also outlined the duties in which he believed the factors had failed. A further copy of that letter was lodged as Item 12 in his Inventory, but for some unknown reason the date on that copy reads “29 March 2017”. These failures comprised: failures on several occasions to respond to or provide

acknowledgement of correspondence in contravention of section A,4,b of the factors' Written Statement; and failure to respond appropriately to the homeowner's complaint; to treat the complaint seriously; and to make the complaints procedure as easy as possible in contravention of section F,a of the factors' Written Statement.

3. By Minute of Decision dated 22 February 2017 a Convener with delegated powers so to do, referred the application to a tribunal. The Minute of Decision specified that the application comprised documents received in the period 6 December 2016 to 22 February 2017.

#### **Hearing:**

4. A hearing took place in Wellington House, 134-136 Wellington Street, Glasgow G2 2XL on 19 April 2017. Present at the hearing were: Mr Paul McGonagle and Mr Douglas Brown, both representing the factors. The homeowner had intimated in his Response pro forma dated 21 March 2017 that he did not intend to attend a hearing and he did not attend.
5. In view of the homeowner having voluntarily waived his right to attend the hearing and make oral representations as indicated in his response form the tribunal was happy to proceed in his absence.
6. Evidence was heard from: Mr McGonagle and Mr Brown.
7. In support of his application, the homeowner had lodged: written representations along with his response form; further representations dated 7 April 2017 in response to the factor's representation; copy correspondence and emails between him and the factor and other documents as enumerated in the Inventory of Productions lodged by him.
8. The factors submitted written representations in answer to the homeowner's complaints together with copy correspondence and documents in support of their position as enumerated in the Inventory of Productions lodged by them. In response to the Direction issued by the tribunal the factors lodged a cd containing a copy recording of a telephone call between the homeowner and the factors' office which had taken place on 4 August 2016 and to which the homeowner had referred in his application.
9. The tribunal had regard to: the written representations submitted by both parties; the correspondence, documents and cd submitted by them; and the oral representations by the factors at the hearing.

#### **Preliminary Matters:**

10. There were no preliminary matters to be considered.
11. The convener outlined the procedure which it was proposed to follow at the hearing.

## **Evidence and Representations:**

### *Homeowner*

12. The homeowner complained that the level of communication with the factors was very poor. He referred to a number of emails between November 2015 and August 2016 to which he had neither received an acknowledgement nor a reply. Sometimes a response was received late, which meant that he had to send follow-up emails asking for a response. He also complained that at times the response from the factors was inadequate and did not address the points or questions raised by him.
13. In particular the homeowner referred to a series of emails on 29 June, 1, 4, 5 and 31 August and a telephone call on 4 August in which he had asked for information about responsibility for repairs to blistering plasterwork on the stairwell wall. He said that they had responded to some of the emails but had failed to answer a straightforward question. In his letter to HPC dated 7 April 2017 in response to the factors' representations, he referred to emails dated 29 June, 6 October, 25 July, 24 June and 23 December all 2016 as not having been acknowledged and referred to the factors' Written Statement in relation to acknowledgement of emails.
14. The homeowner said that when he raised the factors' failures as a complaint, they had ignored points made to them and confused the issue by asking him to be more specific about what he was complaining about when he was confident that the points had been clearly made. In his response to the factors' representations he amplified his complaint that the factors asked for clarification of the points which he felt had not been addressed when he said they were clear and succinct.
15. The homeowner referred to an occasion when a contractor who had arrived at the property said that he did not have details of the job for which he had been sent and that his office did not know either.
16. The homeowner complained that an employee of the factors had been rude and argumentative during a telephone call which he had made to the factors on 4 August 2016.
17. In his response to the factors' representations, the homeowner questioned the factors' assertion that they had not received his email of 13 November 2015 to which they had referred in their representations.

### *Factors*

18. In response, the factors maintained that they had responded adequately to the homeowner throughout the period in question. They said that the homeowner had moved to the property in February 2015 said that they had records of 55 items of individual correspondence issued to him excluding the routine items such as monthly invoices and job mandates and maintained that this was a higher level of communication with the homeowner than would normally be the case.

19. Mr McGonagle explained that the blistering plasterwork in the stairwell had been caused by an historical leak from the bathroom in the homeowner's flat which had been resolved before the homeowner took occupation but the plasterwork had not been attended to by his predecessor. He explained that there was no common insurance policy in place for the property and that the predecessor had elected not to attend to the plasterwork. It had been ascertained that there was no ongoing issue of dampness and accordingly the damage was purely "aesthetic". It was for this reason that the factors intended to obtain authority from the owners for the work to be carried out which they considered to be appropriate in the absence of any risk of ongoing damage or health and safety issue.
20. Mr McGonagle said that in addition to the emails there had been a number of telephone calls between himself and the homeowner. In particular, in relation to the homeowner's enquiries about the blistered plasterwork between June and August, he said that there had been a telephone call on 13 July to which reference was made in the first paragraph of the 4<sup>th</sup> page of his written responses at which time the situation regarding the need to obtain quotations and agreement from the other proprietors was explained and discussed. There are subsequent emails made it clear that they were obtaining the necessary quotations before seeking authority.
21. The factors had produced their recording of the telephone call of 4 August 2016 which was played to the tribunal. Mr McGonagle pointed out that the order had said in his response that the call had related to the blistered plasterwork but that had not been mentioned during the call. Mr McGonagle asked the tribunal to consider that the terms and nature of the call had not been inappropriate. He conceded that there may have been one or two minor issues with his employees responses but generally he felt that the call was in acceptable terms.
22. Mr McGonagle said that the homeowner appeared to be expecting immediate responses to his emails. He referred to the email chain at factors' production number 11 from which it could be seen that the homeowner's emails had been replied to within a reasonable time and certainly within the timescale specified in the catalytic Statement.
23. Mr McGonagle pointed out that the homeowner had complained that communications had been intimidated but he refuted such an allegation and asked the tribunal to consider the productions and find that there had been no intimidation.
24. With regard to the homeowner's complaint regarding the factors' complaints procedure not being followed, Mr Brown and Mr McGonagle explained that the time the complaint was received, Mr Brown was on an extended holiday and rather than leave the matter outstanding until his return, Mr McGonagle had decided to respond initially to avoid any delay in the matter being dealt with. Mr Brown had taken the matter up on his return from holiday.
25. In regard to the suggestion made by the homeowner that the factors had falsely denied receiving the email of 13 November 2015, the factors explained that whilst

they did not receive the email at the time was sent, it was included within the homeowner's submissions and accordingly by the time they responded they had seen it as part of the email chain.

26. Mr Brown explained that he had asked the homeowner in his email of 23 September for a breakdown of the issues which he did not consider had been addressed as he was of the view that Mr McGonagle had addressed all the matters raised.
27. Mr McGonagle submitted to the tribunal that the homeowner appeared to regard any response to his enquiries which did not provide him with the answer he was expecting as not being a response and in his submission this was the substance of the homeowner's complaint.
28. Mr McGonagle referred the tribunal to paragraphs 3(b) and 4(b) of the Written Statement which deal with responses to correspondence and emails. He explained that the different time limits apply to take account of the fact that emails did not involve the delay of posting. He explained that some correspondence which did not require any response such as letters or emails providing authority for work to proceed etc. it was for that reason that the words "where necessary" were included at 3(b) and "if no instant responses applicable" were in 4(b). He contended that the homeowner was misquoting paragraph 4(b) in his complaint.

#### **Findings and Reasons:**

29. Having considered carefully the submissions and representations of the parties, the tribunal determined that in general terms the factors had complied with the terms of their Written Statement. It considered, however that the Written Statement could provide a clearer explanation of the types of correspondence and emails to which the factors consider a response, or immediate response would not be provided. They responded to the homeowner's emails within reasonable times. The tribunal determined that the homeowner's expectations were unreasonable in this regard.
30. The tribunal noted that rather than submit copies of the email chains, the homeowner had selected individual emails and reproduced them in his submissions which the tribunal found unhelpful. It therefore had regard to the email chain at production 11 from the factors. The tribunal was satisfied that when taken in conjunction with the phone call referred to by the factors on 13 July, the homeowner's emails had been responded to within reasonable times.
31. Notwithstanding these findings, the tribunal considered that the factors could have been clearer in their explanation of the situation. In particular Mr McGonagle's explanation of the situation relating to the blistered plasterwork was not as clear from the emails as might have been the case and the explanation provided at the hearing was necessary for the tribunal to get a proper appreciation of the background situation. The tribunal acknowledged that the homeowner was aware of the background but nonetheless a more detailed explanation would have been helpful.

32. With regard to the allegations of the homeowner that the telephone call of 4 August had been inappropriate, having listened to the recording the tribunal found no fault with the factors in the way the call had been handled. The homeowner had been looking for a response to his email of 1 August which had related to the matter of the blistered plasterwork and that was not specifically referred to in the call, as such the factor's employee had no way of knowing. Rather than the employee being argumentative during the call, the tribunal considered that it had been the homeowner who was unreasonably looking for the factors' receptionist to make comments about the firm's policies and procedures which the tribunal found to be an unreasonable expectation on the part of the homeowner. The receptionist had clearly explained to the homeowner that his manager was otherwise engaged and would provide the emailed response the homeowner was looking for, which was done. The homeowner's further issues should have been taken up with a member of the management team.
33. With regard to the homeowner's complaint that the factors had not complied with the terms of their Written Statement in relation to the complaints procedure, the tribunal was satisfied with the explanation provided by Mr McGonagle in view of Mr Brown's absence from the office. However, it noted that the situation could have been better explained to the homeowner in response to the complaint.
34. Accordingly the tribunal found that, on a very narrow balance the factors had failed to comply with their duty to provide clear and concise explanations to the homeowner in response to his enquiries.

**Proposed Property Factor Enforcement Order (PFE0):**

35. Having determined that the factor has failed to comply with the Code of Conduct, the tribunal was required to decide whether to make PFE0.
36. The tribunal did not consider that PFE0 was appropriate in the circumstances of this application and determined to make no such Order.

**Right of Appeal:**

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.

**D Preston**

Chairman

24 April 2017